

# Rape against Rohingya Muslim Women: Unresolved Violation against International Law

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Abstract: The history of human rights violations against Rohingya Muslims, believed to have started since 1784. Rohingya ethnic conflict is a conflict based on discriminatory treatment because of ethnic and religious differences. Based on Amnesty International's report, this prolonged conflict is fuelling the issue of Rohingya Muslims who are not considered and recognized as citizens based on Myanmar law. This was proven by the issuance of the Myanmar Citizenship Regulation (1982 Burma Citizenship Law), Myanmar has removed Rohingya from the list of 8 main ethnicities. During this time, in its handling, rape became one of the indications and evidence of the lack of protection of women's human rights from sexual violence. It should be emphasized, however, that the true international law and regional law in Southeast Asia actually provides a legal basis that affirms that they have the right to protect themselves against rape even by the government. Using a statutory approach and case approach, this study analyzes the compliance of Myanmar's state in applying international law and regional law to meet and protect the rights of Muslim Rohingya women. Ultimately, the study found evidence of disobedience by the Burmese government that violated the prohibition of rape against Muslim Rohingya.

## 1 INTRODUCTION

Global developments in various parts of the world concerning human rights have not shown an encouraging situation yet. Human rights is still in the form of discourse and has not been fully realized. A number of dark world incidents have always been a serious issue. Although the Universal Declaration of Human Rights (UDHR) along with other instruments - such as conventions and declarations, and international human rights instruments - developed very rapidly since 1948; but we still watch alarming reports from all over the world regarding human rights violations almost every day. This study will focus on how far the international law have the role in protecting the discrimination faced by Rohingya Muslim women.

## 2 THEORY

The history of human rights violations against Rohingya Muslims is believed to have begun since

1784 when Burman Buddhists attacked Arakan. The government allegedly contributed to or incited this anti-Muslim violence, so that more than 250,000 people fled to neighbouring country, Bangladesh. Based on International Amnesty report, this protracted conflict has increasingly fuelled the issue of Rohingya Muslim population who are not considered and recognized as citizens under Myanmar law (Veen 2005).

In 1978 the Burmese military carried out a huge attack on Arakan, called "Ye The Ha". In this operation, government soldiers killed, raped and tortured the targeted Muslim population and forced them to return to Bangladesh. Since then, human rights abuses continue to be carried out by the Myanmar government, their homes burned down, physically beaten by the Myanmar military, suffering mentally, having no access to education, living in poverty and a number of other cruel treatment as one researcher reported (Zada 2017).

Precisely on May 28, 2012, three Rohingya men were accused of raping and murdering a 28-year-old female Rakhine Buddhist (Human Rights Watch

2013). A few days later, the Arakan Buddhist community retaliated by beating and killing 10 Rohingya people in a bus interception. The Arakan Buddhist group, supported by local Buddhist monks and Myanmar security forces, carried out various acts of violence systematically, ranging from beatings, beheading, murder, rape, burning of homes, evictions, to isolation of economic aid (Rizki 2015).

Starting from that, the conflict between these two groups is increasingly unavoidable. Because there are fewer in population and marginalized for hundreds of years, Rohingya Muslims are pressed. Hundreds of Muslim villages were burned and destroyed, and around 850-1000 people were killed (Susetyo 2013).

The Rohingya humanitarian tragedy is called as serious human rights violation and it is a crime against humanity (Human Rights Watch 2012). The neglect of human rights of Rohingya Muslims can be explained as follows: first, Rohingya Muslims are not recognized as Myanmar citizen (stateless); second, they experience discriminatory and racist treatment economically, socially and politically; and thirdly, they experience various tortures and human rights violations (Yuliatiningsih 2013).

Following are some of the actions of the Myanmar government against Rohingya, including:

- Military operations in 1948;
- Burma Territorial Force (BTF) Operations in 1949-1950;
- Military operations (Second Chin Emergency Regiment) in March 1951-1952;
- Mayu Operation in 1952-1953;
- Mone-Thone Operation in October 1954;
- Military and immigration operations in January 1955;
- Joint military police operations in 1955-1958;
- Captain Htin Kyaw operation in 1959;
- Shwe Kyi operation in October 1966;
- Kyi Gan operation in October-December 1966;
- Ngazinka operation in 1967-1969;
- Myat Mon operation in February 1969-1971;
- Major Aung Than operation in 1973;
- Sabe operation in February 1974-1979;
- Nagamin operation in February 1978-1980;
- Swe Hintha operation in August 1978-1980;
- Galone Operation in 1979;
- Pyi Thaya operation in 1991-1992;
- Na-Sa-Ka operation in 1992 until now (Susanti 2014).

Rohingya ethnic conflict is a conflict based on discriminatory treatment because of ethnic and religious differences. Rohingya ethnicity is not

recognized by the state of Myanmar and does not get citizenship. This was proven by the issuance of the Myanmar Citizenship Regulation (Burma Citizenship Law 1982), Myanmar removed Rohingya from the list of 8 main ethnicities namely Burmans, Kachin, Karen, Karenni, Chin, Mon, Arakan, Shan. Rohingya are foreign and illegal communities that are not listed as one of the 135 official ethnicities recognized in Burma. Thus, the majority of them are not entitled to national identity cards (Take 2009).

Myanmar President Thein Sein has expelled this ethnic group by saying in an international forum that "Rohingya are not our people and we have no duty to protect them", President Thein Sein wanted Rohingya to be managed by UNHCR (United Nations High Commissioner for Refugee) or accommodated in a third country. In addition, President Thein Sein called Rohingya in Arakan as "a threat to national security". The statement made by President Thein Sein gives a very bad impact for the Rohingya (Susanti 2014).

In discussing human rights violations against Rohingya Muslims, it is very important to know about Nay-Sat-Kut-Kwey Ye or commonly referred to as NaSaKa. They have a big role in the suffering faced by Rohingya people. NaSaKa consists of police, military intelligence, anti-riot troops (known as Lon Htein), customary officers, immigration officers, and labor, who work in North Arakan on the Myanmar-Bangladesh border. NaSaKa has the authority to decide matters related to special regulations for Rohingya people, which basically has made a difference to Rohingya people from other ethnic groups in North Arakan. Human rights violations committed by NaSaKa include forced labor, restrictions on freedom contained in special regulations, even rape and sexual violence (Irish Centre for Human Rights 2010).

The Special Rapporteur for Human Rights in Myanmar stated that, the results of an interview with 30 Muslim women from Rakhine indicated that there had been a rape committed by several military groups in Arakan. Some women stated that they were taken by members of the military to barracks and then raped. In other circumstances, some of them were taken by members of the military when their husbands or families were away on military orders. Meanwhile, young women were raped in front of their families, then taken away. Women who returned to the village said that some of them died from continuing rape. Two medical workers said that usually rape victims who came to the clinic died from bleeding and infection (Amritsjar 2014).

The Myanmar army deliberately impregnates women from ethnic minorities so that "Burmese

babies" are born. After that the soldiers forced them to marry rape victims. Another purpose of the crime is as a form of dawn attack. Rape is a weapon to bring down morals and weaken ethnic minorities. This information shows the fact that the practice of rape and various other forms of sexual crimes has become a strategy to facilitate the "Burmanization" policy. Rape is sometimes associated with forced displacement, because in some cases forced displacement is accompanied by rape. A report shows the results of interviews with several women, who claimed that they were forced to leave their homes because they felt unable to deal with the crime of rape by the army (Saputra 2010). Women involved in forced labor practices are also vulnerable to being victims of sexual crimes by the army (Ahsan Ullah 2016).

Morally, every human being as a part of civilized humanity is obliged to implement the principles of human rights, without exception the government of a country. As affirmed in the 1995 Vienna Declaration that is the duty of a state to respect, protect and fulfill human rights (to respect, to protect, to fulfill), namely: the responsibility to respect human rights is the responsibility of the state to take policies that save human rights ; the responsibility to protect human rights is the responsibility to prevent, stop and punish any human rights violations; while the responsibility to fulfill human rights is the obligation of the state to carry out, provide, guarantee every human rights through its actions and policies (Saraswati and Basari 2006).

The World Conference on Human Rights condemns these disgusting practices, and repeats the call for criminals to be punished. Crimes based on sex and all forms of sexual violations and harassment, including those that occur because of cultural prejudice and international trade, are not in accordance with the dignity and dignity of a human being and must be abolished. The World Conference on Human Rights also reaffirms the earnest commitment of all countries to fulfill their obligations to promote respect, obedience and universal protection of human rights and fundamental freedoms for all people, in accordance with the United Nations Charter and other instruments relating to human rights in international law (United Nations Departemen of Public Information 1993).

In various environments in the community and in the family, women's position becomes unsafe in enjoying comfort and peace. The phenomenon of violence against women is a manifestation of the historical inequality of power relations between men and women which has resulted in domination and

discrimination against women (Yuliatiningsih 2013). This is certainly disapprove the provisions stipulated in the International Covenant on Civil and Political Rights (ICCPR), that:

Article 2: 1. Each State Party in the present Covenant promises to respect and guarantee the rights recognized in this Covenant for all persons within its territory and comply to its jurisdiction, without any distinction such as race, color, sex, language , religion, politics or other opinions, national or social origin, wealth, birth or other status.

Article 7: No person can be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

The 1949 Geneva Conventions and the Additional Protocol to the Geneva Conventions place non-combatants to be given the right to avoid physical, mental, torture and rape violations. This is very different from what is experienced by Rohingya who suffer from torture, rape and various types of violence in Myanmar. The Myanmar government has actually violated the principle stated in the convention. In addition, to protect human rights, the United Nations also adopted a number of international conventions and agreements. Some of them are the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Zada 2017). In particular, the Geneva Convention affirms that women must be protected from attacks of rape, forced prostitution and other forms, even though there is no further protection against victims of sexual violence (Wahid and Irfan 2001).

During this time, in its handling, rape became one of the indications and evidences on the lack of protection of women's human rights from acts of sexual violence. Since December 10, 1948, the United Nations has established guarantees for the protection of human rights, especially the protection of individuals against the arbitrariness of the state ((KDT) 2000). The Universal Declaration of Human Rights (UDHR) is a key element of the protection of human rights. Article 2 of the Universal Declaration of Human Rights has affirmed that:

"Everyone has the right to all the rights and freedoms undermentioned in this declaration with no exceptions, such as differences in race, color, sex, language, religion, politics or other views, national or social origin, rights property, birth or other position. Furthermore, there will be no distinction based on the political, law or international position of the country

or region from which a person originated, whether from an independent country, in the form of guardianship regions, colonies, or under the limits of other sovereignty".

State violence committed by the Government of Myanmar has tarnished the existence of human rights and freedoms in the Universal Declaration of Human Rights (UDHR), namely in section 3 which states, "everyone has the right to life, freedom and safety as individuals", and in section 5 which states, "no one may be tortured or abused, treated or punished inhumanely or insulted" (Nation 1948).

Brad Adams, Director of HRW Asia, briefly questioned the claims of the Myanmar government which claimed to have committed to end the sectarian nuances of conflict. But in fact, various forms of violence and ethnic conflict continue to occur. Brad Adams also regretted that the reaction of the international community seemed slow (Yuliatiningsih 2013).

As a follow-up to the World Human Rights Conference on the protection of women from all forms of discrimination, on December 20, 1993 the Convention on the Elimination of all the Forms of Discrimination against Women emphasized to eliminate all forms of discrimination such as:

Article 1: In this Declaration, what is meant by violence against women is any act based on gender differences which results in or may result in misery or suffering of women physically, sexually and psychologically, including threats of certain actions, coercion or arbitrary deprivation of liberty, whether that happens in the public domain or in private life.

Article 2: Violence against women must be understood to include, but not limited to, the following: (a) acts of physical, sexual and psychological violence, including beatings, sexual abuse of girls in the family, violence related to dowry, marital rape, female genital mutilation and other traditional practices of violence against women, violence outside of husband-wife relations and violence related to exploitation; (b) physical, sexual and psychological violence that occurs in the wider community, including rape, sexual abuse, sexual harassment and threats at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) physical, sexual and psychological violence committed or ignored by the State, wherever it occurs [23].

Besides adopting the Declaration on the Elimination of Violence against Women, the United Nations General Assembly also adopted the Optional Protocol to the Convention on the Elimination of All

Forms of Discrimination against Women on October 6, 1999 (Luhulima and Sudiarti 2014).

### 3 RESEARCH TYPES AND APPROACHES

In collecting material, the author uses a type of normative juridical research (normative legal research), namely legal research conducted by examining library material or secondary data (Soekanto and Mamudji 2001). In accordance with the characteristics of the study, this study uses the method of library research with a qualitative approach. This study also uses a statutory approach and a case approach (Marzuki 2014). The law approach is carried out by examining all laws and regulations relating to the issues examined in this case international instruments. Meanwhile, the case approach is done by finding legal reasons related to material facts in the form of people, place, time, and all that accompanies.

#### 3.1 Data Source

Data sources used in this study are divided into two types of data, namely as follows:

- Secondary data, namely supporting data sources, in the form of international human rights instruments, books and literature relating to women's human rights as human beings, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Universal Declaration of Human Rights (UDHR) and others.
- Tertiary Data, which is non-legal data that is expected to support the writing of this study, such as dictionaries, print and electronic media, and encyclopedias related to the discussion.

#### 3.2 Data Collection Methods and Techniques

This study uses one method of data collection, namely using library research (library research). Literature study was conducted to explore theories about concepts and understanding, especially related to the research theme, namely the prohibition of rape against Rohingya Muslim women in the international law.

### 3.3 Data Analysis Techniques

The data obtained from the research results, will be analysed directly in the form of documents or other material critically analytical. The author analyses the data by reviewing and examining the data, synthesizing, and interpreting the collected data. Then the data will be written in narrative form so that it becomes a clear and easily understood sentence.

## 4 RESULTS

It should be noted that Myanmar is one of the ASEAN members that has ratified several conventions, including the Convention on the Elimination of All Forms of Discrimination against Women. Based on the principle of *pacta sunt servanda*, the state is obliged to obey and implement the provisions of the ratified agreement (Parthiana 2005). Ratification is an action taken by the state in giving written approval to state that is bound to an international agreement. If ratification has been carried out, the relevant country officially becomes a participant in the international agreement, or it is better known as "State Party" (Luhulima and Sudiarti 2014).

In addition, based on the doctrine of incorporation, international law can be part of national law. In the event that a country signs and ratifies the treaty, the agreement can be directly bound on its citizens without any prior legislation. The incorporation doctrine assumes that international law automatically integrates with national law (Thontowi and Iskandar 2006). In other words, the Convention on the Elimination of All Forms of Discrimination against Women has become part of the national law of the Myanmar state without legislation, thus binding all citizens.

Table 1: Following is the international covenant which ratified by Myanmar (Zada 2017)

Covenan/Convention	Myanmar
Convention on the Elimination of all Forms of Discrimination against Women	22/7/1997
Convention on the Rights of the Child	15/7/1991
Convention on the Rights of Persons with Disabilities	7/12/2011
United Nations Convention against	30/3/2004

Transnational Organised Crime	
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime	30/3/2004

In responding to rape of Rohingya Muslim women in Myanmar, the Convention on the Elimination of All Forms of Discrimination Against Women should be the main reference. Since its enactment in September 1981, this convention has become an international instrument that has the role of obliging state parties to eliminate discrimination against women, both in the political, economic, socio-cultural and civil fields. This Convention requires the state to do all appropriate means to prevent and eliminate all forms of discrimination against women without delay (Malahayati 2005).

Unfortunately, Myanmar does not show its compliance toward international customary law. In fact, Rohingyas are not recognized for their existence so they do not get citizenship in Myanmar and have experienced various human rights violations. Based on the United Nations special report on human rights in Myanmar, Myanmar women from various ethnic groups directly related the sexual violence they experienced in 2002 and 2003 (Saputra 2010).

Therefore, the Myanmar state was found guilty of violating an international agreement concerning sexual violence. In addition, Myanmar also does not show facts related to exceptions in carrying out ratified international agreements, such as entering derogation in its law by registering derogations or submitting reservations and notifying all parties. The two mechanisms above are exceptions made so that the state can avoid responsibility or can commit human rights violations, with some terms and conditions that apply, such as the state in an emergency or threatening the continuation of a country.

Human rights violations, especially rape against Rohingya Muslim women, certainly lead to disappointment for the international community. It is necessary to impose sanctions as political and economic pressure on the state of Myanmar. One of them is through the International Criminal Court (ICC). However, it should be noted that the jurisdiction or authority to adjudicate, the ICC is

limited by several things: first, the ICC can only prosecute individuals, including government officials, military and civilian commanders; secondly, crimes that are within the scope of the ICC are regulated in Article 5-8 of the 1998 Rome Statute, namely, crimes of genocide, crimes against humanity, war crimes, and crime of statute aggression; thirdly, the ICC only has jurisdiction over crimes committed after the entry into force of the Rome Statute on 1 July 2002; fourthly, the ICC can hear cases submitted by participating countries whose territories are the place where international crime is committed (Sefriani 1998).

In international law, sanctions are not always physical sanctions, but can be in the form of sanctions for termination of diplomatic relations, economic sanctions, and sanctions for release from membership of the United Nations (UN). These sanctions can be given by countries, international organizations and an international community. Diplomatic sanctions can be made in the form of termination of diplomatic relations, withdrawing diplomatic staff, and delaying visits from officials from other countries. Diplomatic sanctions have the advantage that they do not need to spend money, troops or reasons that can isolate the regime in Myanmar. In addition there are economic sanctions that can be an attempt to punish, and contain compliance goals. Economic sanctions can be aimed at punishing by weakening economic potential, such as trade restrictions (export controls and import barriers), investment restrictions (in the form of bans or licenses), provision of financial embargoes (loan restrictions, economic aid cuts, asset freeze, blockade), prohibition of financial transactions and other economic tactics. These sanctions can be carried out in a way, through the United Nations Security Council, each country, especially China which plays an important role in the country's export and import sector (Gaol and Nugroho 2017).

In his theory, Muladi stated, the state needed to take several actions as a form of accountability for the occurrence of human rights violations, among others; the state must protect witnesses and victims; (Susanti 2014) In fact, international law does not explain further about the form of protection for victims of sexual violence.

## 5 CONCLUSIONS

Based on the above explanations, the Myanmar government and its staff were found guilty of not complying with and violating the human rights of Rohingya Muslim women, namely; first, Rohingya

Muslims are not recognized as Myanmar people (stateless); second, they experience discriminatory and racist treatment both economically, socially and politically; and thirdly, they experienced various tortures and human rights violations. Therefore, the Myanmar government can be subject to international legal sanctions both physical and non-physical sanctions, for two main reasons; first, generally as a member state of the United Nations since April 19, 1948, it has violated the general provisions for the protection of human rights in the Universal Declaration of Human Rights (UDHR); secondly, specifically as a party that has ratified the Convention on the Elimination of All Forms of Discrimination against Women, Myanmar has proven to have violated regulations concerning the prohibition of any form of sexual violence against Rohingya Muslim women.

## REFERENCES

- (KDT), Perpustakaan Nasional RI. Katalog dalam Terbitan. 2000. *Negara Dan Kekerasan Terhadap Perempuan*. Jakarta: Yayasan Jurnal Perempuan.
- Ahsan Ullah, A. K.M. 2016. "Rohingya Crisis in Myanmar: Seeking Justice for the 'Stateless.'" *Journal of Contemporary Criminal Justice* 32 (3): 285–301. <https://doi.org/10.1177/1043986216660811>.
- Amritsjar, Sabrina Putripratama. 2014. "Tinjauan Hukum Internasional Terhadap Tindakan Pelanggaran HAM Pemerintah Myanmar Atas Etnis Rohingya." Universitas Hasanudin Makasar.
- Gaol, David C. L., and Arinto Nugroho. 2017. *Penyelesaian Sengketa Pelanggaran Hak Asasi Manusia Terhadap Etnis Rohingya Di Myanmar Ditinjau Dari Hukum Internasional*. UNESA.
- Human Rights Watch. 2012. "The Government Could Have Stopped This." *Sectarian Violence and Ensuing Abuses in Burma's Arakan State*.
- . 2013. *All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya*.
- Irish Centre for Human Rights. 2010. "Crimes Against Humanity in Western Burma: The Situation of the Rohingyas." *NUI Galway*, 1–154. [http://burmaactionireland.org/images/uploads/ICHR\\_Rohingya\\_Report\\_2010.pdf](http://burmaactionireland.org/images/uploads/ICHR_Rohingya_Report_2010.pdf).
- Luhulima, and Achie Sudiarti. 2014. *Menegakkan Hak Asasi Perempuan*. Jakarta: Pustaka Obor Indonesia.
- Malahayati. 2005. "Instrumen Hukum Internasional: Hak Asasi Manusia."
- Marzuki, Peter Mahmud. 2014. *Penelitian Hukum*. Jakarta: Kencana Penada Media.
- Nation, United. 1948. "Universal Declaration of Human Rights | United Nations." 1948. <http://www.un.org/en/universal-declaration-human-rights/>.

- Parthiana, I Wayan. 2005. *Hukum Perjanjian Internasional*. Bandung: Mandar Maju.
- Rizki, Rika. 2015. "Peran Office of The High Commissioner for Human Rights (OHCHR) Menyelamatkan Kekerasan Etnis Muslim Rohingya Di Myanmar (2012-2014)." *JOM FISIP* 2 (2): 5–6.
- Saputra, Vidya Tama. 2010. "Diskriminasi Etnis Rohingya Oleh Pemerintah Myanmar." Universitas Jember.
- Saraswati, LG., and Taufik Basari. 2006. *Hak Asasi Manusia : Teori, Hukum. Depok*. Jakarta: Filsafat UI Press.
- Sefriani. 1998. "Yurisdiksi ICC Terhadap Negara Non Anggota Statuta Roma 1998." *Jurnal Hukum* 14 (2): 319–21.
- Soekanto, Soerjono, and Sri Mamudji. 2001. *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Jakarta: Rajawali Press.
- Susanti, Aviantina. 2014. "Penyelesaian Kasus Pelanggaran HAM Berat Terhadap Etnis Rohingya Di Myanmar Berdasarkan Hukum Internasional." *Scientific Journal, Universitas Brawijaya*, 7–9.
- Susetyo, Heru. 2013. *Suara Etnis Yang Tak Boleh Bersuara*.
- Take, Rohingya. 2009. "Perilous Plight."
- Thontowi, Jawahir, and Pranoto Iskandar. 2006. *Hukum Internasional Kontemporer*.
- United Nations Departemen of Public Information. 1993. *World Conference on Human Right, the Vienna Declaration and Programme June 1993*. Komisi Nasional HAM, 1997.
- Veen, Rianne ten. 2005. Myanmar's Muslims: The Oppressed of the Oppressed 9.
- Wahid, Abdul, and Muhammad Irfan. 2001. *Perlindungan Terhadap Korban Kekerasan Seksual: Advokasi Atas Hak Asasi Perempuan*. Bandung: Refika Aditama.
- Yuliatiningsih, Aryuni. 2013. "Perlindungan Pengungsi Dalam Perspektif Hukum Internasional Dan Hukum Islam (Studi Terhadap Kasus Manusia Perahu Rohingya)." *Dinamika Hukum Journal* 13 (1): 161–67.
- Zada, Khamami. 2017. "The Rohingya's Muslim Asylum Seekers in Southeast Asia: From National to International Law Perspective." *Ahkam Jurnal Ilmu Syariah* 17 (1): 3–5.