

A REVIEW OF INTERNATIONAL CRIMINAL LAW ON HUMAN RIGHTS VIOLATIONS TO THE ROHINGYA ETHNICITY

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Abstract

The Rohingya ethnic minority faces discrimination as a result of the policies and actions of the Myanmar government. This discussion will centre on the delineation of violations and the manner in which international law evaluates human rights transgressions perpetrated against the Rohingya ethnic group in Myanmar. The research methodology employed in this study is a normative juridical approach, specifically utilising legal ideas and norms that are applicable in broader society. The legal materials utilised encompass elementary, secondary, and tertiary legal sources. The grave human rights atrocities that took place in Myanmar can be categorised as international crimes, specifically genocide and crimes against humanity. These violations satisfy the significant standards of mass murder, widespread prejudice against religious minorities, and intentional targeting of specific ethnicities and communities. The crimes mentioned are delineated in articles 6 and 7 of the Rome Statute, which are under the purview of the International Criminal Court (ICC).

Keywords: Human rights violations; Genocide; Humanity.

Abstrak

Etnis minoritas Rohingya menghadapi diskriminasi akibat kebijakan dan tindakan yang dilakukan Pemerintah Myanmar. Diskusi ini akan berpusat pada penggambaran pelanggaran dan cara hukum internasional mengevaluasi pelanggaran hak asasi manusia yang dilakukan terhadap kelompok etnis Rohingya di Myanmar. Metodologi penelitian yang digunakan dalam penelitian ini adalah pendekatan yuridis normatif, khususnya memanfaatkan gagasan dan norma hukum yang berlaku dalam masyarakat luas. Bahan hukum yang digunakan meliputi sumber hukum dasar, sekunder, dan tersier. Kekejaman berat terhadap hak asasi manusia yang terjadi di Myanmar dapat dikategorikan sebagai kejahatan internasional, khususnya genosida dan kejahatan terhadap kemanusiaan. Pelanggaran-pelanggaran ini memenuhi standar signifikan yaitu pembunuhan massal, prasangka luas terhadap kelompok agama minoritas, dan penargetan yang disengaja terhadap etnis dan komunitas tertentu. Kejahatan-kejahatan tersebut dijelaskan dalam pasal 6 dan 7 Statuta Roma, yang berada di bawah lingkup Pengadilan Kriminal Internasional (ICC).

Kata Kunci: Pelanggaran HAM; Genosida; Kemanusiaan.

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INTRODUCTION

The world's eyes must be increasingly open to see the humanitarian crisis experienced by the Rohingya ethnic group. When all humans are free to roam the earth, moving here and there. Carry out daily activities to meet life's needs, and freely express your aspirations without being imprisoned, unlike prisoners. Zhaenal Fanani said "When other generations are free to carry out activities such as making history of greatness, conquering dimensions of the world with technology, and expressing their dreams, the Rohingya minority generation is isolated in intolerance: living under pressure, humming with poverty, and sinking into neurosis due to the rule of the Myanmar regime".¹

The conflict between communist countries in Vietnam and Cambodia, which in their constitutions is ideally a socialist, communist country, but also states that the majority of their religion is Buddhism and has the main place. Likewise, Myanmar adheres to the constitution, but Buddhism is the majority religion which gets privileges from the government. This prioritization of religion has had an impact on other religious minorities, especially Islam. The Rohingya ethnic group as adherents of the Islamic religion are discriminated against as a minority.²

The Rohingya are considered illegal citizens who have no right to live in Myanmar. There was a massive exodus of the Rohingya ethnic group to Bangladesh and even to Indonesia, causing a sad feeling of tightness in the chest. The Rohingya ethnic group fled from their place of origin, they have land but their existence is not recognized or recognized as citizens and they even deliberately want to be exterminated in radical movements in Myanmar but the Myanmar government is avoiding it. Multiple egregious human rights crimes have taken place in that area, including the purported perpetration of the Rohingya ethnic cleansing genocide. Massacres that specifically target certain ethnic groups and blatantly violate human rights, especially the right to life, are a serious violation of human rights.³

The general statement on human rights refers to the declaration established by the United Nations in 1946, which includes the protection of human rights and freedoms. This Declaration encompasses inherent liberties for all individuals, regardless of gender, devoid of any form of prejudice or bias. Human rights are inherent to individuals from the moment of conception, continue through birth, persist throughout one's lifetime, and last until death. Myanmar is legally obligated to ensure the human rights of its residents without any kind of discrimination. Power should be subordinate to the law, rather than the law being subordinate to power. The primary objective of law should be to safeguard the welfare of its citizens, as it upholds the idea of legal equality, which establishes the equal treatment of both citizens and those in positions of authority under the law. Human rights are inherent to human beings. Put simply, human rights have been in existence for as long as humans have been in existence.

Human rights are a set of freedoms granted to humans, highlighting their superiority over other organisms. In order to safeguard all the fundamental rights of individuals, it is necessary to establish a comprehensive legal framework that serves as a regulatory mechanism to ensure legal certainty with regards to human rights as universally recognized rights. Internationally, human rights are primarily established through international treaties, whereas at the national level, human rights are regulated by legislation that comprehensively governs these rights. Practically, individuals who are considered legal subjects are the ones who commit violations or crimes against human rights. Violations of human rights

¹Zhaenal Fanani, "The Rakhine Dust Feels of Not Recognizing the Boundaries of Home" (Yogyakarta: La ksana, 2013) p. 8

²Jawahir Thontowi, "The Myanmar Government's Treatment of the Rohingya Muslim Minority, Historical Perspective and International Law" (Sui Generis Legal Studies, Faculty of Science and Social Sciences, Ganesha Education University, vol. 2, issue. 3, 2022)

³Angela Merici Siba, "Human Rights Violations in the Rohingya Conflict Human Rights Violations On Rohingya Conflict" (Islamic World and Politics, vol. 2, issue. 2, 2018) p. 6.

can be classified as crimes or criminal acts due to their infringement of human rights legislation requirements and their eligibility for criminal penalties. on a domestic and global scale.⁴

Genocide, as defined by the Rome Statute and Law Number 26 of 2000 on Human Rights Courts, is the intentional and organised action of completely destroying or eliminating a specific national, racial, ethnic, or religious group. This is accomplished by eliminating members of the group, causing them intense physical or psychological pain, creating situations that result in the group's partial or total physical annihilation, implementing measures to prevent group members from having children, and forcibly moving children from the group to another location. Cultural genocide refers to the deliberate eradication of a civilization by imposing restrictions on the language of a particular group or tribe, altering or obliterating its historical records, or demolishing the symbols that represent its culture.⁵

International law has established a strong basis for imposing appropriate penalties on those who commit serious human rights abuses, which are classified as both criminal and civil responsibility. The international human rights legal instruments have established the state's responsibility to penalise individuals who commit human rights breaches. International law unequivocally prohibits any type of retribution for severe human rights abuses that are executed in a systematic manner.⁶

Genocide is a serious violation in international criminal law and is specifically forbidden by many legal instruments, such as the 1948 Genocide Convention, the statutes of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), and the 1998 Rome Statute. These legal frameworks acknowledge genocide as one of the gravest offences that the international community is profoundly concerned about. Genocide is deemed a serious infringement of human rights, as stated in Article 7 of Law Number 26 of 2000 on Human Rights Courts. This offence entails the deliberate termination of persons' lives, leading to intense agony, devastation, and the coerced relocation of children from one faction to another. Hence, the statute of the human rights court clearly has mechanisms to counter threats made towards the perpetrators.⁷

Examining this issue is captivating because it can deepen our comprehension of severe violations of human rights perpetrated against the Rohingya community in Myanmar, from the perspective of International Law. More precisely, it provides insight into the regulation of the crime of genocide as delineated in Article 6 of the 1998 Rome Statute of the International Criminal Court. Based on this, a problem identification can be obtained, firstly, What precise examples of human rights breaches have occurred against the Rohingya ethnic minority in Myanmar? Second, what is the worldwide legal evaluation of severe violations of human rights perpetrated against the Rohingya ethnic minority in Myanmar?

⁴Dewa GS Mangku, "The Case of Human Rights Violations of the Rohingya Ethnic: From an Asean Perspective" (FIS Communication Media, vol. 12, issue. 2, 2013) p. 2.

⁵Komang Ayu Dita Febriyani, "Human Rights Violations in the Crime of Genocide in the Perspective of International Criminal Law" (e-Journal of the Justisia Community, Ganesha Education University, vol . 4, issue. 3, 2021) p. 5.

⁶Herman Sujarwo, "Resolving Serious Human Rights Violations in International Legal Instruments" (SYARIATI: Journal of Al-Qur'an and Legal Studies, vol. 3, issue. 2, 2017) p. 6.

⁷ Mujiono Hafidh Prasetyo, "The Crime of Genocide in the Perspective of International Law" (Echoes of Justice, vol. 7, issue. 3, 2020) p. 4.

METHOD

The research employed a juridical-normative approach, primarily relying on a literature review. The study primarily examined secondary materials such as Article 6 and Article 7 of the 1998 Rome Statute, the Citizenship Law implemented by the Government of Myanmar, Law Number 39 of 1999 on Human Rights, literature on Genocide, Journals on International Law, and Books.⁸ Acquisition device used in this research is document study. Secondary legal materials are obtained from assessments and other references related to the identified problems. These legal materials include legal dictionaries and other materials outside the legal field. This research was also studied using qualitative analysis.

RESULT AND DISCUSSION

1. *Human Rights Violations That Occurred Against the Rohingya Ethnicity in Myanmar*

Various cases of serious violations of human rights (HAM) in the past often left many problems, especially for the victims. This happens because victims are usually in a weak position when dealing with the State as the perpetrator and in fact this problem occurred in Myanmar. The view that victims of serious human rights violations are in a weak position and at a disadvantage was aptly linked by a former Director General of *the United Nations Educational, Scientific and Cultural Organization* (UNESCO) in a publication marking the 20th anniversary of the *Universal Declaration of Human Rights. Rights*.

In the case of the conflict that occurred in Myanmar between Islam and Buddhism, it had a long-term impact on the Muslim Rohingya ethnic group. The egoism of the Myanmar government in not recognizing the existence of the Rohingya ethnic group in Myanmar has resulted in human rights violations against the Rohingya people. The conflict that has occurred in Myanmar has existed since the implementation of a policy called burmanization. Burmanization is a policy that only recognizes the existence of Buddhism in Myanmar. The Rohingya ethnic group, which is one of the ethnic groups in Myanmar, has not had its citizenship recognized, resulting in acts of violence and discrimination. These actions include murder, rape, burning of homes, abuse and oppression. As a result of these various actions, Rohingya residents suffered injuries and eventually died.⁹

The religious conflict in Myanmar between Islam and Buddhism, is better known as the Rohingya and Rakhine ethnic conflict. Even though this conflict occurred internally in Myanmar, it had an impact on the international world, especially countries close to Myanmar such as Indonesia, Malaysia and Bangladesh. The Rohingya ethnic group received discriminatory treatment from the Myanmar government so that many fled and then took refuge in neighboring countries. The initial trigger for the Rohingya ethnic violent conflict occurred in July 2012 and has continued to become an international topic of discussion until the last few years. Many say that this conflict occurred between minorities and the majority, namely the Buddhist and Rohingya ethnic groups who live in the Rakhine region. Below are the actions and consequences of human rights violations that occurred in Myanmar against the Rohingya ethnic group, namely:

⁸Ibrahim Johnny, "Methodological Theory of Normative Legal Education" (Malang: Bayu Media Publishing, 2006) p. 295.

⁹Andrey Sujatmoko, "The Right to Recovery for Victims of Serious Human Rights Violations in Indonesia and Its Relation to the Principle of State Responsibility in International Law" (Journal of Legal Studies, vol. 3, issue. 2) p. 3.

- a. 2012 was the peak of the conflict which resulted in 98 people being killed, 123 injured, 5,338 houses burned and 75,000 displaced. The conflict continued to escalate so that the number of victims in 2012 continued to increase, namely 140,000 Rohingya chose to flee while 120,000 others chose to remain in Rakhine and nearly 200 people died.¹⁰
- b. The refugees who had settled in Bangladesh chose to leave Bangladesh and 3,000 of them chose to flee to Malaysia, Indonesia and Thailand.
- c. There was an attack by ethnic Rakhine gangs which resulted in the killing and evacuation of 300 people and 140,000 people were displaced
- d. 700,000 ethnic Rohingya were deprived of their rights, namely they were not recognized as citizens of Myanmar. Meanwhile, 30,000 Muslim children have lost their education and a place to study. A total of around 2000 people died at sea as a result of fleeing for refuge.
- e. In October 2016 there was a military attack by the Rakhine ethnic group who carried out retaliation in the form of murder, rape and arson which resulted in 100,000 fleeing to Bangladesh.
- f. the most violence during the Rohingya ethnic conflict. 9,000 people died from August 25 to September 24 2017. However, the conflict continues to increase. By the end of September, this had increased to 13,759 people dead, including 1,000 children under 5 years old. For the percentages: 69% of deaths were due to violence, 9% of houses were burned until the victim died and 5% were beaten to death. For children under 5 years: 59% were shot, 15% were burned to death, 7% were beaten to death and 2% died from landmine explosions.¹¹

Since 1948, the military regime has conducted multiple military operations with the aim of eliminating the Rohingya population from Myanmar. The Myanmar Government use many mechanisms to execute these actions, which encompass:¹²

- a. "Extra judicial killing" namely where since 1989, thousands of teenagers and madrasah students have been massacred.
- b. Arbitrary arrests and extortion, which are the daily tasks of the Na-Sa-Ka and the police, are more popularly known as Kalar Hmu.
- c. Property confiscation, namely confiscating residents' land and cattle and then distributing them to "model villages" in Myanmar which are inhabited by the Buddhist majority. There are 100 sample villages, where each village consists of 70-100 households. Each household is given 4 hectares of land and two pairs of cows. Anti-Rohingya and anti-Muslim propaganda was carried out by the military junta by inciting the community by giving permits for the distribution of books or videos that insulted Islam and Muslims.
- d. Rape, which occurs everywhere as an official strategy to terrorize and force the Rohingya people to flee.
- e. Forced Labor, which is common throughout Myanmar, but in North Arakan only applies to Rohingya.

¹⁰ <https://www.bbc.com/indonesia/dunia-41105830>, accessed 15 June 2024 .

¹¹ <https://www.voaindonesia.com/a/as-resmi-nyatakan-kekerasan-terhadap-rohingya-di-myanmar-genosida/6494172.html>, accessed 15 June 2024 .

¹² <https://indonesia4rohingyadotorg.files.wordpress.com/2013/03/conditionfaktual-muslim-rohingyadiindonesia.pdf>, accessed 10 June 2024 .

- f. Movement restrictions, where Rohingya are not allowed to travel from one place to another, even in the same location.
- g. Restrictions on marriage, where Rohingya take years to get permission to marry, and even have to pay bribes. Illegal marriage is considered a crime and carries a sentence of 4-7 years.
- h. Restrictions on employment opportunities, as non-citizens, Rohingya are forced to be unemployed because they are prohibited from all types of work.
- i. Restrictions on education, illiteracy is 80% where primary and secondary education is neglected. Due to movement restrictions, Rohingya are forced not to pursue higher education.
- j. Prohibitions on practicing religion, including many mosques have been closed and destroyed and there is no permission to renovate any mosques, building new mosques is completely prohibited.”

Considering the frequency of violent acts and the number of victims committed by the Myanmar government against the Rohingya ethnic group, it is evident that these actions can be classified as genocide, since they have clearly violated the human rights of the Rohingya people. Genocide is categorised as one of the four international offences, along with crimes against humanity, war crimes, and crimes of aggression. The regulation of genocide arrangements is specified in various significant documents, such as the Nuremberg International Military Tribunal Charter, the 1948 Genocide Convention, the ICTY Statute, the ICTR Statute, the 1998 Rome Statute of the International Criminal Court, and National Legal Arrangements.

In an effort to find the nature of the evil behind genocide, Michael Mann briefly stated that, “*evil does not arrive from outside of... civilization, from a separate realm we are tempted to call "primitive". Evil is generated by civilization itself*”. Manns statement contains an important meaning because in it there is a "recognition" that genocide, even though it has been practiced since the past, does not mean that the crime of genocide only “belongs” to primitive civilization. There are many academic paths that have been taken to explore the factors that cause genocide, but it is generally understood that the crime of genocide is motivated by several multicausal factors such as race, ethnicity, religion.¹³

2. *International Law Review of Serious Human Rights Violations Against the Rohingya Ethnic in Myanmar*

The crime of genocide in international criminal law is an exceptional offence and has been designated as a forbidden conduct, as explicitly stated in the 1948 Genocide Convention, which serves as the legal framework for addressing such crimes. “*International Criminal Tribunals for the Former Yugoslavia (ICTY), the statute of the International Criminal Tribunals for Rwanda (ICTR) and the 1998 Rome statute which states that the crime of genocide is the most serious crimes of concern of the international community as a whole*”.¹⁴

Article 6 of the Rome Statute defines genocide as a grave violation of human rights, involving the deliberate death of individuals, resulting in great suffering, damage, and coercion by groups. It may also involve the forced transfer of children from one group to another. Therefore, the human rights court statute explicitly includes provisions for addressing threats made against the offenders.

¹³ Stefany Mindoria, "Settings and Elements of the Crime of Genocide According to International Law" (Lampung University, Faculty of Law, 2019) p. 20.

¹⁴ Mujiono Hafidh Prasetyo, *Op. Cit*, h . 4.

The atrocities perpetrated by Myanmar against the Rohingya ethnic group were exceedingly brutal as they systematically violated the fundamental human rights of the Rohingya community. Actions carried out such as killing, raping, exterminating, burning, not accepting their respective religions, planning to exterminate their Rohingya ethnic group are very serious crimes. It is hoped that the United Nations will act in this matter so that this case is resolved as quickly as possible and that similar cases are not found in other countries.¹⁵

The activities carried out by the Myanmar Government towards the Rohingya ethnic minority fulfil the requirements to be classified as acts of genocide and crimes against humanity. According to Article 5, paragraph (1) of the 1998 Rome Statute, the International Criminal Court has the authority to prosecute the crime of genocide, which is considered one of the international crimes. Furthermore, Article 6 of the Statute includes additional elements of the offence of genocide. The elements comprising the offence of genocide are:¹⁶

- a. "Kill members of the group;
- b. Causing serious physical or mental injury to members of the group;
- c. Deliberately inflicting on the group conditions of life which are calculated to cause physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly moving children from that group to another group."

The conditions for an action can be said to be an act of genocide, if it meets the elements such as mass murder, is carried out systematically, discriminates against a religion, and aims to eliminate an ethnic group or certain group which is a minority. Hence, the researcher can assert that the measures implemented by the Myanmar government have not only met but also surpassed the fundamental criteria mentioned earlier. Hence, it can be inferred that the measures implemented by the Myanmar government against the Rohingya Muslim ethnic minority constitute an international offence of genocide and crimes against humanity.

Furthermore, the Myanmar government has violated article 7 of the Rome Statute by the perpetration of crimes against humanity against the Rohingya ethnic group. This includes the forced expulsion or transfer of population, which constitutes crimes against humanity of deportation or forcible transfer of population. The phrase "deportation or forcible transfer of population" mentioned in article 7 paragraph 2 letter d of the Rome Statute pertains to the act of forcefully relocating individuals from a location where they have legal residency, employing expulsion or other coercive means, without providing valid justifications permitted by international law.

The Rome Statute supports the concept of personal responsibility. Individuals are subject to accountability for their unlawful conduct and are subsequently penalised according to the seriousness or scale of the offence. Nevertheless, the commission of illegal acts by individuals or government officials within a state does not affect the legal responsibility and continued existence of the state in accordance with international law. The punishment or repercussions imposed on perpetrators of the crime of genocide are specifically designed to fulfil the criteria established by the prosecutor.

The jurisdiction of the International Criminal Court is limited to four specific criteria: geographical region, temporal breadth, nature of the case material, and the involvement of individuals

¹⁵Elda Maisy Rahmi and Rahmiati, "The Crime of Genocide in the Case of Rohingya Myanmar in the Perspective of International Law" (Jurnal of Law and Government Science, vol. 18, issue. 1, 2022) p. 40.

¹⁶ *Ibid*

or persons. The International Criminal Court (ICC) is authorised to fulfil its responsibilities and enforce its legal authority inside the borders of nations that have formally accepted the Rome Statute. Furthermore, the International Criminal Court (ICC) has the authority to apply its jurisdiction to states that have not officially approved the Rome Statute, as long as there is a bilateral agreement in effect. Article 77 of the Rome Statute clearly delineates the sanctions imposed on individuals who engage in the act of genocide:¹⁷

1. *“Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute : (Free translation: In accordance with article 110, the Court may impose one of the following penalties on a person who convicted of a crime as intended in article 5 of this Statute)*
 - a) *Imprisonment for a specified number of years, which may not exceed a maximum of 30 years;*
 - b) *A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person .*
2. *In addition to imprisonment, the Court may order :*
 - a) *A fine under the criteria provided for in the Rules of Procedure and Evidence ;*
 - b) *A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.”*

The UN has sharply condemned the Myanmar government for its failure to promptly halt the violence against the Rohingya ethnic group in response to the case that took place in Myanmar. Regrettably, the Myanmar government has exhibited a poor response to this issue, and thus far, no efforts have been made to address it. If the state has made an effort to use mediation to remedy the current issue but has not been successful, the matter may be elevated to the UN Security Council for resolution through the process of the International Criminal Court. The International Criminal Court (ICC) consists of four jurisdictions, namely:¹⁸

“First, material jurisdiction: crimes that have been committed such as genocide, crimes against humanity, war crimes and crimes of aggression, as explained in articles 5-8 of the 1998 Rome Statute. So what the Rohingya experienced is included in the category of crimes of genocide and crimes against humanity.

Second, personal jurisdiction: based on article 25 of the 1998 Rome Statute, the ICC only tries individuals regardless of whether they are state officials and so on. In the case of the Rohingya ethnic group, the individual is responsible. So a deeper investigation is needed, individuals who are responsible regardless of rank or particular group.

Third, territorial jurisdiction: the ICC can try cases that occur in participating countries where the crime occurred. This is regulated in article 12 of the 1998 Rome Statute.

Fourth, temporal jurisdiction: based on article 11 of the 1998 Rome Statute, the ICC can only try crimes committed after July 1 2002”.

¹⁷Nimas Masrullail Miftahuddini Ashar, "International Law Concerning Genocide in the Perspective of Dauliy Fiqh" (Islamic Law and Legislation, vol . 4, issue. 1, 2014) p. 15.

¹⁸Ketut Ali Putera et al, "Analysis of the crime of genocide by Myanmar against the Rohingya ethnic group viewed from the perspective of international criminal law" (Ganesha Singaraja University of Education, vol. 1, issue. 1, 2018)

Article 6 of the Genocide Convention states that cases of genocide will be tried by a court in the territory where the act was committed or by an international tribunal. If Myanmar does not take action and prosecute the perpetrators of the crime, then Universal principles as regulated by International Law will apply. That every State can exercise jurisdiction over criminal acts that violate the interests of the international community, the aim of which is to ensure that crimes do not go unpunished.¹⁹

Although Myanmar is not a State party to the International Criminal Court (ICC), the ICC has the authority to assume jurisdiction over this matter if Myanmar is found incapable of resolving and prosecuting the individuals responsible, as outlined in Article 17 paragraph (1) letter (a) of the Rome Statute. "Case is investigated or prosecuted by a State that has jurisdiction over it, unless that State is unwilling or unable to carry out such investigation or prosecution." Regarding the legal penalties that the International Criminal Court (ICC) can impose on Myanmar, reference might be made to Article 25 Paragraph (2) of the Rome Statute. The ICC has undertaken a series of endeavours to address this situation. According to Article 15 of the Rome Statute, the ICC Public Prosecutor received and subsequently investigated 34 reports.²⁰

The serious violations of human rights experienced by the Rohingya ethnic group, which have received criticism from the world community, are very worrying. The UN organization, which is actually an organization that has the principle of achieving world peace, becomes a contrarian if it is merged with the veto right, where the veto right makes the UN no longer democratic. Therefore, it is necessary to review the Veto Rights granted by the 5 permanent members of the UN, namely America, England, China, Russia and France. The veto right makes the UN undemocratic and prevents joint decisions by UN members from other countries who have tried to resolve this conflict.

In an effort to resolve this case for now in accordance with what the Myanmar regime promised in the UN forum, it is the repatriation of the Rohingya ethnic group to Myanmar. The repatriation of the Rohingya ethnic group received strict but gradual UN supervision. It is hoped that this repatriation will be an effort to provide citizenship to the Rohingya ethnic group. This repatriation is also expected to be a form of peaceful resolution of this case in accordance with the jurisdiction of International Law in resolving problems. In International Law there are two methods of resolving international disputes:²¹

- a. Peaceful settlement, namely when the parties can agree to find an amicable solution.
- b. Forced or violent resolution, namely if the solution used or imposed is through violence.

Myanmar as a sovereign country must resolve the Rohingya Ethnic case in accordance with the theory of state responsibility. The Myanmar government, which allows the Rohingya population to be stateless, is clearly violating this because they have lived in Myanmar for centuries. The Immigration Law of 1974 and the Citizenship Law of 1982 are in direct contradiction with the Citizenship Convention and the Anti-Discrimination Convention (Convention on the Elimination of All Forms of Racial Discrimination / CERD 1965).

The Myanmar government's exclusion of the Rohingya ethnic minority from citizenship is a blatant breach of human rights and the Citizenship Convention, leading to severe human rights abuses against this particular population. Hence, it is anticipated that the Myanmar Government's repatriation endeavours, serving as a means of peaceful conflict resolution, will be executed effectively. Following

¹⁹Fattah Kaloko et al, "Implementation of International Law Against the Crime of Genocide Against the Rohingya Ethnic" (Cahaya Mandalika, vol. 4, issue. 3, 2023) p. 77.

²⁰Ketut Ali Putera et al, *Loc., Cit.*

²¹Nimas Masrullail Miftahuddini Ashar, *Op., Cit.*

repatriation, it is expected that the Rohingya ethnic group will promptly be granted citizenship, thereby obviating the need for harsh dispute resolution via the International Court of Justice (ICC). If the Myanmar government fails to act impartially in resolving the disagreement, it may be necessary to bring the case to the International Court of Justice (ICC) in accordance with international law.²²

CONCLUSION

The mistreatment of the Rohingya ethnic group in Myanmar, as per the provisions outlined in Article 6 and Article 7 of the 1998 Rome Statute of the International Criminal Court, can be classified as acts of genocide and crimes against humanity. The Myanmar government has carried out actions that could cause the extinction of some or all members of the Rohingya Ethnicity, such as forcibly expelling or relocating the population, killing members of the Rohingya Ethnicity, physically or mentally damaging members of the Rohingya Ethnicity, deliberately causing suffering to the living conditions of the Rohingya Ethnicity.

The ICC, or International Criminal Court, has the authority to prosecute crimes related to major human rights abuses committed against the Rohingya ethnic minority in Myanmar. This jurisdiction is particularly granted under Article 6 and Article 7 of the Rome Statute. The dispute settlement process in this Court carefully adheres to the norms of conflict resolution in International Law. Although Myanmar has not ratified the 1998 Rome Statute of the International Criminal Court, the ICC has the power to take control of this issue if it determines that Myanmar is unable to resolve and adjudicate it, as stated in Article 17 paragraph (1) letter (a). "The case is investigated or prosecuted by a State that has jurisdiction over it, unless that State is unwilling or unable to carry out such investigation or prosecution." In criminal responsibility, crimes of genocide and crimes against humanity are imposed individually and regardless of whether they are members of the military, civilians or others. After deliberations took place in the UN forum and there were two permanent UN countries that exercised veto rights, efforts to resolve this dispute were carried out peacefully, namely by repatriating the Rohingya ethnic group.

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²²Febi Fajar Iswari, "The Crime of Genocide Perspective of International Law and Islamic Law (Analysis of the Case of the Rohingya Ethnic in Rakhine Myanmar)" (Faculty of Law, Indonesian Islamic University, 2018) p. 53.

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