

Protection of Legal and Human Rights for Uncitizenship Transit Refugees Under International Law and National Law (Rohingya Refugee Case Study)

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ABSTRACT

The State has an obligation to protect human rights, regardless of race, ethnicity, nation and religion. Human rights are part of the study of international law, because the nature and character of human rights itself is an individual defense and protection mechanism against the power of the state that is highly vulnerable to misuse, as has often been demonstrated in the history of human beings on Earth. This was the cause of the Rohingya refugees to feel frightened and unwilling to return to his home country, and chose to leave his country in order to get shelter in another country. However, a new problem arises, where the country that becomes the destination country or transit country does not require or reject the arrival.

Refugee case study the research raised several issues, including the protection of legal and human rights for uncitizenship Transit refugees in international law and national law. The methods used in this study are normative juridical uses of primary legal materials and secondary data in the use of data. In addition, secondary data will also be supported by data from interviews with several speakers in 2 (two) cities, namely Medan and Makassar.

Keywords: *protection of law and human rights, transit refugees, citizenship, international law, national law*

1. INTRODUCTION

Citizenship is a human right and foundation of identity, dignity, justice, peace, and security. Being a person who has no nationality means no legal protection or right to participate in the political process, not gaining adequate access to health and education, the prospect of poor work and poverty, Restrictions on its own property rights, travel restrictions, social exclusion, vulnerability to human trafficking, harassment, and violence. In international law only citizens can enter and settle in a country. Therefore, people without citizenship can end up without the status of residence, even worse is the longterm detention.[1] Citizenship Status is a part of human rights, which is very important for people to get protection from the country. Human rights, which are essential elements in the country, then the status of citizenship gives rise to mutual relations between the citizens and the country. Everyone is obliged to have citizenship, because with citizenship, the relationship between the country and the person becomes clear so that there is legal certainty. [2]

Recognition as a citizen is a fundamental right for a human being. The Declaration of Human Rights in 1948 article 15 states that everyone has the right to obtain citizenship. Citizenship is a juridical relationship between individuals and countries, therefore, the existence of citizenship

ensures the obligation of the State to fulfill the rights of its citizens. The right of citizenship is said to be a fundamental right, as many countries only grant civil, political, economic, and social rights to its citizens. [3]. People who do not have citizenship can be found almost all regions in the world. The most vulnerable group of this category is Rohingya in Myanmar. Rohingya is one of the ethnic living in Myanmar. The Rohingya ethnic has inhabited the city in the north of the Rakhaing state, also known as Arakan, the western region of Myanmar, since the 7th century AD. Currently there are about 600,000 Rohingya living in Myanmar.[4] Despite centuries of living in Burma, the Burmese government considers Rohingya to be included in ethnic Bengali so that the Burmese government does not recognise them as an ethnic Burmese, this causes them to not get Burmese citizenship.[5]

Many factors led to their displaced situation, such as political change, expulsion of people from the region, discrimination, granting of citizenship based solely on Offspring, and laws governing marriage and recording Birth. A large number of international and regional instruments assert one's rights to citizenship. Universal Declaration of Human Rights 1948. [6] Article 15 is that "every person has the right to a citizen. [7] and that "No

one can arbitrarily repealed his nationality, or denied his right to replace his nationality ".[8]

So important nationality status of a person then the international community makes some legal instruments related to the status of citizenship, in the various legal instruments can be used as a basis for the implementation of Protection and fulfillment of human rights. Some declarations or other documents relating to human rights are as follows;

1. Universal Declaration of Human Rights (UDHR) 1948.
2. International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1966. International Covenant on Civil and Political Rights (ICCPR).
3. International Convention On The Elimination of All Forms of Racial Discrimination (ICERD) 1965.
4. Convention On The Elimination Of All Form Of Discrimination Against Women 1979 (CEDAW).
5. Convention On The Rights of The Child 1989.

With the number of international legal instruments relating to the citizenship status of a person it can be called that the problem of citizenship status is very important not only to the individual and the country where the person But also in the realm of the Inter-national law and national law.

1.1. Related Work

According to the generation type of assumptions, we divided the existed work into two categories.

1.1.1. The history and the Rohingya ethnic conditions in Myanmar

The Rakhaing region, known as Arakan. Under the Sultanate of Arakan since 1430. Then in 1734, this region was seized and conquered by King Bodaw Paya from the Kingdom of Bamar. In 1824, the British colonized Rakhaing and the region was merged with India. In early colonization, the British noted that the population inhabited the region was half Bengali and half Magh, the language in which Maghi was a mixture of the Arakan, Bengali, and Urdu languages. In 1942, when the British came out of Rakhaing, the Burmese government provoked Buddhists in Rakhaing so that there was a major riot that caused 100,000 people to be killed and hundreds of thousands fled to east Bengal. [9]

Now the state of Rakhaing is a region with the largest Muslim population in Myanmar. The Rohingya ethnic is one of the ethnic Muslims and has been mendiamikota in northern Rakhaing state since the 7th century AD. Despite centuries of living in Burma, Burma's military junta government considers Rohingya to be included in ethnic Bengali so that Burma's military junta government does not recognise them as one of the ethnic Burmese. With the

enactment of Burma Citizenship Law 1982, the Rohingya ethnicity lost its nationality. [10]

Not accepting the Rohingya ethnic existence in Burma made the Burmese military junta perform various actions to expel the Rohingya ethnicity from its ancestral lands, so most of the Rohingya people fled to other countries. As for those who remain in Burma still have human rights violations. Violations committed against the Rohingya ethnic are not granted a business license; The high taxation of the Rohingya ethnic, if not able to pay the tax, then most of the agricultural land, ponds, and property belonging to the Rohingya people will be seized; To exit the village required permission from the local authorities; The Rohingya ethnic in North Rakhaing was incorporated into a concentration camp and served as a forced labour; is not permitted to pursue university education in Myanmar or Burma. Difficult to obtain a marriage permit; Rape of the Rohingya women conducted by soldiers, rape usually occurs at midnight and performed in front of the husband and children of rape victims, the complaint of this action only leads to the detention of the reporter, even In some cases the reporter was tortured and murdered; Murder Torture and illegal detention that occurs almost daily.

1.1.2. Protection of law and human rights for uncitizenship Transit refugees under international law

The loss of citizenship makes the Rohingya ethnicity not gaining national protection. National protection can be realized when the government is functioning properly so it can fulfill various rights such as civil rights, political rights, economic rights, social and cultural rights; and service to its citizens, such as protection by police, public courts and courts against crime and torture.

Article 15 paragraph (1) of the Universal Declaration of Human Rights 1948. The Universal Declaration of Human Rights is a fundamental instrument of human rights governing the right to citizenship determines that "everyone has the right to citizenship". [11]

Other international instruments also complement these provisions, such as section 1-3 Convention on The Nationality of Married Women, Convention on the Reduction of Statelessness, article 5 International Convention on The Elimination of All Forms of Racial Discrimination, article 24 paragraph 2 International Covenant on Civil and Political Rights, article 9 Convention on the Elimination of All Forms of Discrimination against Women, article 7 and article 8 Convention on the Rights of the Child, and article 29 International Convention on the Protection of the Rights of All Migrant Workers.

Article 1 of the Convention 1954 referred to as non-citizenship is "a person who is not considered as a national by any State under the operation of its law". The absence of recognition as citizens of any country resulted in the person not gaining national protection. This condition is vulnerable to the arbitrary actions of the rulers.[12]

In Article 1A (2) *Konvensi 1951* said that: ... any person who: "As a result of events occurring before 1 January 1951 and owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." [13]

Based on the Convention, a person who has no citizenship and has suffered persecution then crosses the boundaries of the country to seek refuge, and he can be categorized as a refugee. Thus protection against them is like protection given against refugees.

Although the provisions contained in the instrument are the protection of the rights of individuals. Ethnicity as a group remains protective of this nationality. This is because ethnic groups consist of individuals who are group-based on the same cultural origins. Each individual in the ethnic group has a right of citizenship. The granting of citizenship to an individual in an ethnic group is a form of protection against the ethnic existence itself. With the citizenship of an individual, the members of the ethnic group may enjoy other rights guaranteed in national regulations. [14]

In the case of the Rohingya ethnic, they are not recognised in his nationality by the Burmese Government with the issuance of the Burma Citizenship Law 1982. In article 3 the Burmese Citizenship Law 1982 stated: Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.C., 1823 A.D. are Burma citizens. [15]

According to this article, the Rohingya ethnic should have Burmese citizenship, but in article 4 it is stated that "the Council of State may decide whether any ethnic group is national or not", so that based on the provisions of the ethnic Rohingya Losing his nationality.

The absence of recognition as a citizen of any country makes the Rohingya ethnicity an ethnic who is not a citizen. Therefore, the Rohingya ethnicity belongs to the category of other people who got the attention of UNHCR. The involvement of UNHCR to take care of persons who have no nationality comes from the resolutions of the General Assembly 3274 (XXIX) on 10 December 1974, 324 now based on the Executive Committee's conclusion No. 78 (XLVI) and the General Assembly resolution NO. 50/152 Years 1995, UNHCR has a broad and global mandate on behalf of people without citizenship. [16]

2. PROTECTION OF LAW AND HUMAN RIGHT FOR UNCITIZENSHIP TRANSIT RUFUGEES UNDER NATIONAL LAW

The state is a human society organization that jointly inhabits certain territories and has sovereign governments. Members of the human society are named "Citizens", to distinguish from non-members of the State community concerned, called "foreigners". Citizens and foreigners who are together residing within a country, are called "residents" of the country concerned. [17] The country has the right to determine who is a citizen or foreigner. In determining who is the citizen of each country is sovereign. It means that each country can self-determine freely who they desire as a citizen, who is not. This can be seen as a right that cannot be waived from the sovereignty of each country. Who is an Indonesian citizen, that is the right of the Republic of Indonesia to determine. Other countries are not able to interfere. A juridical citizenship Status is governed by national legislation. In the absence of uniformiteit in determining the requirement to be recognized as a citizen of the various consequences of the basic differences used in citizenship then arise various kinds of citizenship issues. [18]

Citizenship status contains two aspects, i.e. juridical aspect which means from a juridical point of view, citizenship is a state legal status, a complex of rights and obligations, especially in the field of public law, which is owned by Foreigners, and socio-cultural aspects that means social culture, citizenship is a membership of a certain nation, a number of people bound by one another because of the unity of language, social and cultural life and Its national consciousness. The Status of citizenship is governed by the national legislation of each country, because it is essentially the right of each country to establish any citizen of the country, and to determine the conditions for becoming a citizen Country. [19]

For the country of Indonesia, the status of citizenship is a human rights, which is contained in article 26 paragraph (1) and paragraph (2) of human rights law. So that the Rohingya also have the right to citizenship status without any discrimination. In order for the requirements of the citizenship application to be granted, there must be a document issued by Myanmar, Bangladesh and a third country recognizing the status of Rohingya citizenship, so that with such documents Rohingya can To submit citizenship status in Indonesia, even if the process is very long and difficult. The importance of citizenship status for a person is contained in article 15 of the Universal Declaration of Human Rights (hereinafter abbreviated DUHAM), it indicates that the status of citizenship is very important and cannot be revoked by Anyone. The strict provisions of citizenship are very important to every citizen.

The implementation of citizenship status in Indonesia has been governed in the Constitution of the Republic of Indonesia. The rights and obligations are animated and become the foundation of life as citizens. Primary the basis of balance between obligation and right is the absolute

requirement of harmony and welfare. The awareness of this obligation is that citizens receive a private or personal protection of their rights. This balance is the character of Pancasila, the belief of God Almighty (first) as creator and regulator of the universe. Men are obliged to believe that the one true God, obey His commandments and prohibitions, and worship and fear him. This principle of life is the reflection of the obligations of citizens. Balancing the constitutional rights of the citizens above, the Constitution 1945 also governs the constitutional obligations of every citizen of the country. Article 27 paragraph (2) Constitution 1945 states "that each citizen has the right to employment and livelihood that is worthy of humanity".[20] The article mentions that each citizen has the right to obtain employment to defend life. "Article 28 of the Constitution 1945 states" that every person has independence in the Union, to take the mind with the oral and written".[21] Spirit and content of article 28 it is a second and fourth practice, namely ensuring human rights for the similarity in Politics, organization and in the application of opinions.

Spirit and content of article 28 it is a second and fourth practice, namely ensuring human rights for the similarity in Politics, organization and in the application of opinions. Spirit and content of article 28 it is a second and fourth practice, namely ensuring human rights for the similarity in Politics, organization and in the application of opinions. In the case of this Rohingya evacuation, the Rohingya were declared as foreigners in the territory of Indonesia. Foreigners can be given understanding, which is a person who is not an Indonesian citizen and is in Indonesia. The understanding of foreigners including foreign legal entities is a legal entity established under foreign law. In connection with that understanding, article 7 of the Nationality law mentions any person who is not an Indonesian citizen treated as a foreigner. Subject to the provisions of the immigration law, each foreigner may be limited to a movement chamber, even to be deported or handed over to another country, especially when committing a criminal offence. This situation is certainly different from the status as an Indonesian citizen (who has the right to enter Indonesia), but for foreigners only have the right to exit the territory of Indonesia. In addition, every foreigner must register in accordance with the prevailing laws and regulations.

2.1. Role of home country, Transit country, and UNHCR in Rohingya handling

As previously stated, Rohingya asylum seekers meet the criteria as refugees. So that countries that become their transit countries should not repel or return them to their home country because there is a principle of non refoulement that has become the law of international Customs. As is the principle in other international customs law, the principle must be respected by all countries either of the countries that are parties to the Convention 1951 or not.

In addition, because human Rohingya boats do not have citizenship then they need an international protection. International protection is all measures aimed at guaranteeing the equality of access and the opportunity to enjoy the right to women, men and children who concern UNHCR, in accordance with the provisions stated in the International humanitarian law, human rights, as well as refugee laws. [22]

The involvement of transit countries in the handling of the Rohingya boat must be based on humanitarian considerations against the Rohingya ethnic suffering, human rights protection and ASEAN unity solidarity. The handling of this problem must be complete but not injure bilateral and regional relations (ASEAN). In addition, the handling of Rohingya asylum seekers should involve UNHCR as an international institution that specifically addresses refugee problems. In accordance with the mandate given by the United Nations to UNHCR is to lead and coordinate international action to protect refugees and resolve refugee problems around the world. The main objective of UNHCR is to protect the rights and welfare of refugees.[23]

The role of UNHCR as stated in article 1 of the UNHCR, is to seek a permanent solution for refugees. The solutions that UNHCR offers may include voluntary repatriation (voluntary repatriation) if security includes legal, physical, and property security. Security in the field of law includes the ratification and implementation of the amnesty law to protect people returning from evacuation for escaping from his country; Regulations that guarantee the citizenship status of those who have returned and access to obtain personal identification documents. Physical security encompasses a whole safe situation and guarantees from the safety of returning refugees. While property security includes access to survival facilities and basic services such as drinking water, health care, and education. As well as the restoration of national protection against the Rohingya ethnicity, it can be seen from the government functioning properly so as to fulfill various rights such as civil rights, political rights, economic rights, social rights and culture; and service to its citizens, such as protection by police, public courts and courts against crime and torture.

Another permanent solution is local integration, UNHCR can offer this option to transit countries so that refugees can stay permanently in the region. So there is a possibility of naturalization of refugee citizenship; and resettlement of refugees to third countries. In carrying out these long-term solutions, UNHCR requires cooperation with government transit countries, home countries, and third countries. If necessary, UNHCR will provide material assistance for a short period of time. [24]

At a wider level, transit countries and other ASEAN countries have agreed to use Bali Process meetings, a ministerial-level forum aimed at establishing and taking the necessary measures to address issues Human trafficking and other transnational crimes in the Asia-Pacific region, in order to find the best solution to handle this Rohingya refugee case. [25]

3. CONCLUSION

Protection against the Rohingya ethnicity that has no nationality has quite a lot of settings in international law but, in practice there are still shortcomings and there are still many violations. The Rohingya ethnicity is a refugee that does not have many nationalities gaining violations of human rights. As ethnicities have no kewarganegaran, they belong to those who receive UNHCR's attention. This ethnicity has fundamental rights in international law which must be protected by the country of origin, transit country and UNHCR.

The weakness of power and control of his life is what makes ethnic minorities experiencing various discrimination. From being unable to participate in the elections, enjoy education, not to be given citizenship. The absence of citizenship either individually or in groups, causing ethnic minorities not within national protection of any country. The absence of this national protection causes ethnic minorities to experience various forms of persecution such as being arrested without even being killed. Therefore in international law there are legal instruments that can be used to protect their existence both individually and in groups.

The Universal Declaration of Human Rights is the fundamental instrument of human rights and freedoms and the principles of non-discrimination and equality. Other human rights instruments that can be used for the protection of a person in relation to their membership in the ethnic group are the Convention on the Prevention and Punishment of the Crime of Genocide; Convention Against Discrimination in Education; International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights; Declaration on Race and Racial Prejudice; Convention on the Rights of the Child; and Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. These international instruments complement each other with the specificity of the protection of the rights set out therein. Protected rights include protection against genocide, torture and ill-treatment, the right to education, nurturing and promoting identity, etc.

For transit countries and destinations the two have a role in which human rights violations that befall Rohingya refugees do not increase even if they do not have national regulations governing refugee problems. These roles are based on humanitarian considerations against Rohingya refugee suffering, human rights protection and ASEAN unity solidarity. The handling of this problem must be complete but not injure bilateral relations. In the framework of long-term solutions, both transit countries and destination countries can offer naturalization for Rohingya refugees.

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The study uses qualitative analysis methods by analyzing the primary sources and secondary sources that have been acquired during the study. This research is a normative juridical study that uses secondary data sources in the form of literature study results. The examined legal material is the primary legal material that is the Convention and Protocol on Refugee Status year 1951 and Law number 39 year 1999 concerning human rights. In addition to secondary data, this research will also be supported by data from interviews with speakers. The research also uses secondary data, a literature study. However, in order to support data originating from secondary sources such as books, magazine articles, and journals, the primary source is also used, i.e. interviews with speakers.

SUGGESTIONS

The State has an obligation to protect human rights, regardless of race, ethnicity, nation and religion. Human rights are part of the study of international law, because the nature and character of human rights itself is an individual defense and protection mechanism against the power of the state that is highly vulnerable to misuse, as Has often been demonstrated in the history of human beings on Earth. This was the cause of the Rohingya refugees to feel frightened and unwilling to return to his home country, and chose to leave his country in order to get shelter in another country. And The refugee treatment must be based on humanitarian consideration of their suffering and the protection of human rights.

The Indonesian Government ratified the Convention and Protocols on refugee Status in 1951 and 1967. In order not to have the legal void to provide legal and human rights protection for the Rohingya transit refugees. So Indonesia should make a priority to ratify the Convention immediately. So there will be harmonization of understanding of some of the rights given specifically to the child in the Children's Rights convention with the 1951 Refugee Convention.

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