

# State Responsibility in Protecting Human Rights: An International Legal Perspective

Syarifaatul Hidayah <sup>a</sup>✉

<sup>a</sup> Center for Southeast Asian Studies, Universitas Negeri Semarang, Indonesia

✉ Corresponding email: [hidayahsari109@students.unnes.ac.id](mailto:hidayahsari109@students.unnes.ac.id)

## Abstract

The protection of human rights is a cornerstone of international law, with states bearing primary responsibility for ensuring the rights and freedoms of individuals within their jurisdiction. This study provides an in-depth analysis of state responsibility in safeguarding human rights from an international legal perspective. Beginning with an exploration of the foundational principles enshrined in international human rights instruments and customary international law, the study examines the legal obligations incumbent upon states in upholding human rights standards. Key components of state responsibility in protecting human rights are delineated, including the duty to respect, protect, and fulfill human rights, as well as the obligation to prevent and remedy human rights violations. Through a comprehensive review of relevant case law, treaties, and legal scholarship, the study elucidates the evolving nature of state responsibility and the mechanisms available for holding states accountable for human rights abuses. Furthermore, the study explores the role of international institutions, such as regional human rights bodies and the International



Criminal Court, in adjudicating human rights violations and enforcing state compliance with international legal standards. Special attention is given to the intersection of state sovereignty and human rights protection, examining the balance between state autonomy and international intervention in cases of egregious human rights violations. In conclusion, the study underscores the indispensable role of states in fulfilling their duty to protect human rights, emphasizing the importance of effective domestic legislation, institutional mechanisms, and accountability measures. By elucidating the legal framework governing state responsibility in human rights protection, this analysis aims to contribute to the advancement of human rights norms and the promotion of global justice and dignity for all individuals.

**KEYWORDS** *State Responsibility, Human Rights Protection, International Law Principles, Fundamental Rights*

## Introduction

The protection of human rights stands as a fundamental pillar of international law, embodying the collective commitment to uphold the inherent dignity and freedoms of every individual.<sup>1</sup> Within this framework, states assume a primary responsibility for safeguarding human rights within their jurisdiction, enshrined in a myriad of international treaties, conventions, and customary legal norms.<sup>2</sup> This study delves into the intricate web of state responsibility in protecting human rights from

---

<sup>1</sup> Peters, Anne. *Beyond human rights: the legal status of the individual in international law*. Vol. 126. Cambridge University Press, 2016.

<sup>2</sup> Nowak, Manfred. *Introduction to the international human rights regime*. Vol. 14. Brill, 2021; Backer, Larry Cata. "On the Evolution of the United Nations" Protect-Respect-Remedy Project": The State, the Corporation and Human Rights in a Global Governance Context." *Santa Clara Journal of International Law* 9.1 (2011): 37. See also Hafner-Burton, Emilie M., and Kiyoteru Tsutsui. "Justice lost! The failure of international human rights law to matter where needed most." *Journal of Peace Research* 44.4 (2007): 407-425; Ciampi, Annalisa, et al. "International Human Rights Law." *Public International Law*. Routledge 531-614.

an international legal perspective, aiming to illuminate the rights, duties, and accountability mechanisms inherent in this domain.

At its core, state responsibility in human rights protection encompasses a multifaceted set of obligations, ranging from the duty to respect and refrain from infringing upon human rights, to the obligation to protect individuals from abuses perpetrated by both state and non-state actors, and to fulfill rights by creating conditions conducive to their realization. This intricate tapestry of responsibilities reflects the evolving nature of international human rights law, shaped by the ongoing dialogue between states, international organizations, civil society, and individuals.<sup>3</sup>

In addition, human rights are basic rights that are integrated and exist in every individual as a human being. States have the primary responsibility to respect, protect and fulfil human rights. State responsibilities include avoiding violations of individual rights, protecting individuals from infringement by third parties, and fulfilling the fundamental rights of individuals and minority groups. This responsibility also involves international cooperation in safeguarding and enhancing global human rights protection.

In fulfilling and protecting human rights, one of the main responsibilities is the state. The responsibility of the state in protecting human rights lies in various legal instruments and norms that govern the relationship between the state and individuals. The responsibility of the state when respecting human rights is not to violate those rights. This means that states should avoid actions or policies that, directly or indirectly, continue to violate individual rights.<sup>4</sup> For example, the state may not commit torture, may not restrict an individual's freedom of expression or religious rights, and may not discriminate against individuals on a variety of grounds.

States have a responsibility to protect human rights from violations. This means that the state must prevent, investigate, prosecute, and punish human rights violations. States should also provide mechanisms and

---

<sup>3</sup> Ciampi, et al. "International Human Rights Law."

<sup>4</sup> Shelton, Dinah. "Protecting Human Rights in a Globalized World." *Boston College International and Comparative Law Review* 25.2 (2002): 273; Sen, Amartya. "Elements of a theory of human rights." *Justice and the capabilities approach*. Routledge, 2017. 221-262.

institutions for human rights protection, such as independent institutions and human rights ombudsmen, to address grievances and protect victims of human rights violations.

States bear the responsibility not only to respect and protect human rights but also to fulfill them. This entails creating conducive environments wherein individuals can access their fundamental rights and necessities, including education, housing, healthcare, and dignified employment. Furthermore, states are obligated to safeguard the rights of minority and vulnerable groups, such as children, women, persons with disabilities, and immigrants. State responsibility in human rights protection extends to fostering international cooperation. States are urged to collaborate with other nations, international organizations, and non-state entities to bolster the global protection of human rights. Moreover, adherence to international human rights law is imperative for states, encompassing the adoption, implementation, and enforcement of ratified human rights treaties and instruments. By upholding these obligations, states contribute to the advancement of human rights on a global scale, fostering a more equitable and just society for all individuals.<sup>5</sup>

Protecting human rights is the essence of the principle of the state based on law, where the state is responsible for affirming that all citizens have equal rights, recognized, and protected. This principle exists in various international instruments, such as the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights (ICCPR). States must also ensure fair and equal access to the justice system to preserve, fight for, and safeguard human rights. This means that states must have effective, independent, and fair systems in place to address human rights violations and ensure that victims receive justice.<sup>6</sup>

---

<sup>5</sup> Bird, Annie. "Third state responsibility for human rights violations." *European Journal of International Law* 21.4 (2010): 883-900; McCorquodale, Robert, and Penelope Simons. "Responsibility beyond borders: state responsibility for extraterritorial violations by corporations of international human rights law." *The Modern Law Review* 70.4 (2007): 598-625.

<sup>6</sup> See Joseph, Sarah, and Melissa Castan. *The international covenant on civil and political rights: cases, materials, and commentary*. OUP Oxford, 2013; Thielbörger, Pierre. "The "Essence" of international human rights." *German Law Journal* 20.6 (2019): 924-939.

In carrying out its responsibilities, states also need to collaborate with various institutions, civil society organizations, and international bodies to ensure that individual rights are truly protected. This cooperation is important to strengthen the capacity of countries to fulfill and promote human rights effectively. Because the responsibility of the state in protecting human rights is the main foundation in building a just, democratic and just society where all citizens have equal opportunities and are respected as human beings who have values and dignity.<sup>7</sup>

Article 28I paragraph 4 of the 1945 Constitution clearly states that the protection, promotion, implementation and realization of human rights are the responsibility of the state, especially the government. This is also explained in Law Number 39 of 1999 concerning Article 71i of Human Rights which states: "*The Government has the duty and responsibility to respect, protect, defend, and promote human rights as stipulated in this law, other provisions of laws and regulations, and international human rights instruments adopted by the Republic of Indonesia.*" Under the law it is clear that governments have an obligation to respect, protect, maintain and promote human rights.<sup>8</sup>

---

<sup>7</sup> Hidayat, Eko. "Perlindungan hak asasi manusia dalam negara hukum indonesia." *ASAS: Jurnal Hukum Ekonomi Syariah* 8.2 (2016).

<sup>8</sup> The implementation of this Article faces several challenges hindering the government's efforts to protect, promote, enforce, and fulfill human rights. Firstly, there is a challenge of non-compliance with the Article, often influenced by policies inconsistent with human rights principles. Resource constraints are also a serious issue, with limited budgets for human rights programs and inadequate law enforcement institutions often impeding implementation. Moreover, lack of awareness and education among the public about human rights presents a significant obstacle. Insufficient understanding of basic rights and the importance of implementing the Article within society can hinder government efforts to uphold human rights principles. Corruption in public administration and violence by security forces also disrupt human rights enforcement and contravene the principles of the Article. Additionally, political instability and social conflicts may divert attention and resources from human rights issues. Lastly, legal uncertainty within the legal framework and law enforcement mechanisms can impede implementation due to a lack of clarity or uncertainty in these areas. *See also* Triwahyuningsih, Susani. "Perlindungan dan Penegakan Hak Asasi Manusia (HAM) di Indonesia." *Legal Standing: Jurnal Ilmu Hukum* 2.2 (2018): 113-121; Warjiyati, Sri. "Instrumen Hukum Penegakan Hak Asasi Manusia di Indonesia." *Justicia*

In general, the main responsibility for the promotion and protection of human rights rests with the state. Such responsibilities cannot be reduced for political, economic or cultural reasons. At the same time, in everyday reality, the state commits many human rights violations through civil and military organs or apparatus that abuse their power. Various injustices and gross human rights violations have occurred in Indonesia, both during the old order and today, or the current renewal period. These grave violations have inflicted tremendous misery on the victims, their families and citizens. Moreover, the crimes that occurred have never been objectively revealed and there has never been a just solution.

Against the backdrop of this evolving legal landscape, this study embarks on a journey to dissect the contours of state responsibility in protecting human rights. Through a comprehensive examination of international legal instruments, landmark cases, and scholarly discourse, the study seeks to unravel the complexities inherent in the implementation and enforcement of human rights standards by states. Moreover, it aims to shed light on the role of international institutions and mechanisms in holding states accountable for human rights violations and promoting compliance with international legal norms.

In charting this course, the study aspires to contribute to the advancement of human rights norms, the promotion of global justice, and the realization of the vision enshrined in the Universal Declaration of Human Rights. By exploring state responsibility in protecting human rights from an international legal perspective, this analysis endeavors to provide insights, stimulate dialogue, and inspire action towards the fulfillment of human rights for all individuals, irrespective of nationality, ethnicity, gender, or creed.

---

*Islamica* 15.1 (2018): 123-138; Selian, Della Luysky, and Cairin Melina. "Freedom of Expression in the Era of Democracy: Records of Human Rights Enforcement [Kebebasan Berekspresi di Era Demokrasi: Catatan Penegakan Hak Asasi Manusia]." *Lex Scientia Law Review* 2.2 (2018): 189-198; Arifin, Ridwan, Rasdi Rasdi, and Riska Alkadri. "Tinjauan Atas Permasalahan Penegakan Hukum dan Pemenuhan Hak dalam Konteks Universalime dan Relativisme Hak Asasi Manusia di Indonesia." *Legality: Jurnal Ilmiah Hukum* 26.1 (2018): 17-39; Huda, Khoiril, and Ridwan Arifin. "Human Rights in Indonesia: Between Protection, Fulfillment, and Law Enforcement." *Lex Scientia Law Review* 2.2 (2018).



## The Discourse of Human Rights in International Law: Problems and Challenges in the Contemporary Development

Human rights in international law refer to fundamental rights that are universally accepted and protected for every individual without discrimination. These principles are recognized in various international documents, such as the Universal Declaration of Human Rights (UDHR) of 1948. The concept of international human rights includes civil and political rights, such as freedom of opinion and the right not to be tortured, as well as economic, social, and cultural rights, such as the right to education and an adequate standard of living. The main normative sources for international human rights involve international treaties and conventions, as well as the practice of states forming as customary law.<sup>9</sup>

The importance of international human rights reflects concerted efforts to protect the dignity and freedom of individuals around the world. Human rights encapsulate basic universal values, such as the right to life, freedom of expression, and protection from unnatural or degrading acts.<sup>10</sup> By focusing on these rights, international human rights seeks to address inequality and promote global justice. Although human rights are recognized as an important norm, challenges in implementation and enforcement often arise. Cultural differences, a country's internal policies, and political barriers are often obstacles to achieving full respect for human rights. However, the international community continues to be committed to tackling this problem.

As a country that adheres to the legal system, Indonesia has an obligation to provide protection of human rights for all its citizens.

---

<sup>9</sup> Hannum, Hurst. "The Status of the Universal Declaration of Human Rights in National and International Law." *Georgia Journal of International & Comparative Law* 25.1 (1996): 287; Baderin, Mashood A., and Manisuli Ssenyonjo. "Development of International Human Rights Law before and after the UDHR." *International Human Rights Law*. Routledge, 2016. 19-44.

<sup>10</sup> See also Maulana, Mohammad, and Nur Akifah Janur. "Tanggung Jawab Negara Dalam Pemenuhan HAM di Bidang Ekonomi, Sosial, dan Budaya." *Qisthosia: Jurnal Syariah Dan Hukum* 1.2 (2020): 107-129.

Human rights are a nature that every individual is born with. By nature, human beings have the rights to liberty, as explained by Roosevelt in the concept of "*The Four Freedoms*," which involve freedom of speech and expression, freedom of religion, freedom from fear, and freedom from destitution.<sup>11</sup>

International organizations such as the United Nations (UN) and regional institutions play a central role in the effort. Through conventions, declarations, and oversight mechanisms, the UN becomes a global platform for developing and monitoring human rights standards. So do regional institutions such as the European Union, the Council of Europe, and the African Commission that have a role to play in strengthening human rights protections at the regional level. The importance of international human rights is not only at the legal level, but also in creating global awareness and mobilizing support for the protection of human rights. Therefore, joint efforts between countries and international organizations are urgently needed to safeguard and enhance respect for human rights around the world.

The concept of human rights has become a deep moral and legal foothold in the international legal order. Its development involves the evolution of thought and responses to violations of fundamental human

---

<sup>11</sup> "The Four Freedoms Speech," delivered by President Franklin Delano Roosevelt on January 6, 1941, encapsulates a pivotal moment in American history as Roosevelt articulated the core principles of freedom deemed essential for democracy and human dignity. Against the backdrop of global conflict during World War II, Roosevelt outlined four fundamental freedoms—freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear—aiming to rally public support for the Allied cause and prepare the nation for potential involvement in the war. This landmark address resonated not only with Americans but also with people worldwide, emphasizing the values of democracy and human rights that the United States aimed to champion. "The Four Freedoms Speech" remains an enduring symbol of American ideals, underscoring the ongoing importance of freedom and the imperative to defend it. See Enchelmaier, Stefan. "Four Freedoms, Ever More Principles?." *Oxford Journal of Legal Studies* 36.1 (2016): 192-217; Borgwardt, Elizabeth. "FDR's Four Freedoms as a Human Rights Instrument." *OAH Magazine of History* 22.2 (2008): 8-13.



rights throughout history.<sup>12</sup> Here is a brief overview of the development of the concept of human rights in the history of international law:

1. Era of Concept Formation (17th Century - 18th Century)  
The idea of human rights dates back to the Enlightenment, where thinkers such as John Lock and Jean-Jacques Rousseau advanced the idea of natural and universal rights. The Charter of Rights (Bill of Rights) in England (1689) and the United States Declaration of Independence (1776) express rights considered fundamental to every individual.
2. Abolition of Slavery and Humanitarian Law (19th Century)  
The development of the abolition movement raised international awareness of flagrant human rights violations. The Saint Petersburg Declaration (1868) established humanitarian norms in armed conflict, marking the first step towards the protection of human rights at the international level.
3. Formation of the League of Nations (1919) and the United Nations (1945)  
With the end of World War I, the League of Nations was founded in 1919 with the aim of fostering world peace and security. The Charter of the League of Nations contains human rights principles, but efforts to uphold these rights are limited.
4. Universal Statement of Human Rights (1948):  
In the aftermath of World War II, the trauma of the Holocaust and the experience of war led to international efforts to ensure that human rights were protected globally. The Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, became an important milestone in the recognition of the fundamental rights of all individuals.
5. The Convention of Human Rights (1950 - 1960s):  
Several human rights conventions that have been adopted, such as the European Convention on Human Rights (1950) and the

---

<sup>12</sup> See Ishay, Micheline. *The history of human rights: From ancient times to the globalization era*. Univ of California Press, 2008; Iriye, Akira, Petra Goedde, and William I. Hitchcock, eds. *The human rights revolution: an international history*. Vol. 3. Oxford University Press, 2012.

American Convention on Human Rights (1969), provide concrete legal foundations for overseeing human rights at the regional level.

6. Contemporary Era (1980s–present):

Increased awareness and contemporary issues, such as women's rights, children's rights, and LGBT rights, led to the establishment of special conventions. International Courts are increasingly playing a role in upholding human rights law, such as the International Court of Justice and the International Criminal Court.

These developments reflect the evolution of the worldview of human rights as a universal value that must be respected by all humanity. Although challenges and violations still occur, this concept continues to be an important cornerstone in building a more just and dignified international community.

## **State's Responsibility to Protect Human Rights under International Law**

The state has a great responsibility in overseeing the human rights of its citizens. This responsibility covers a number of important aspects that reflect the country's commitment to justice, freedom and human dignity. Within the basis of state obligations lies the principle of recognition and respect for human rights, which involves the recognition of the state of the importance of the existence of these rights as an integral part of human dignity. This is the foundation for all state efforts to protect human rights. The state has a leading role when it comes to the prevention of human rights violations. This involves developing policies, regulations, and internal control mechanisms to prevent actions that could harm individual human rights. The state needs to ensure that every citizen can enjoy his rights without fear of becoming a victim of injustice or abuse of power.<sup>13</sup>

The importance of investigation and law enforcement mechanisms cannot be ignored. States have a responsibility to effectively investigate any alleged violations of human rights and to enforce the law against perpetrators of such crimes. Independent and transparent law enforcement

---

<sup>13</sup> See Marentek, Yanes S. "Tanggung Jawab Negara dalam Perlindungan Hak Asasi Manusia Menurut Hukum Internasional." *Lex Privatum* 6.9 (2019).

agencies are key in ensuring fairness and accountability. Justice and fair justice are fundamental principles that must be upheld by the state. The justice system must provide guarantees that every individual, indiscriminately, has equal and equal access before the law. Legal proceedings must be conducted in good faith and without discrimination.<sup>14</sup> States also have responsibility for the rights of vulnerable groups, including children, women, and minority groups. Special safeguards must be provided to ensure that their rights are preserved and not neglected. The importance of active participation of citizens in the political process and decision-making is also the responsibility of the state. Freedom of opinion, assembly, and expression of opinion are rights that must be guaranteed by the state.<sup>15</sup>

The responsibility of the state is not limited to its own territory. International cooperation is a crucial part of protecting human rights. States are expected to cooperate with the international community, human rights organizations, and other States to achieve the common goal of safeguarding and promoting human rights. Overall, the responsibility of the state in protecting human rights is the foundation for a just and civilized society. States have a central role to play in creating an environment that supports the well-being and freedom of every individual, as well as ensuring that violations of human rights are not left unchecked for action and accountability

International law regarding the responsibilities of states is an international legal system derived from international treaties and international customs. International customs develop through the actions of states and the decisions of international courts. In accordance with Article 38i Paragraph (1) of the Statute of the International Court of Justice, such measures would further strengthen the position of

---

<sup>14</sup> Setiyani and Joko Setiyono, 'Application of the Principle of State Accountability to Cases of Human Rights Violations', *Indonesian Journal of Legal Development*, 2.2 (2022)

<sup>15</sup> Sinaga, Thor B. "Peranan Hukum Internasional dalam penegakan hak asasi manusia." *Jurnal Hukum Unsrat* 1.2 (2018): 94-105; Sardol, S. Masribut. "Human Rights Arrangement on Indonesian Law." *Rechtsidee* 1.1 (2014): 85-100.

international custom as the main source of international law governing the accountability of states.<sup>16</sup>

International conventions governing the responsibilities of states are primarily concerned with the protection and respect of human rights. Some international legal instruments that play an important role in setting standards and obligations of states related to human rights include:

1. This Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, provides a universal basis for human rights. Although declarative, the UDHR sets out basic principles that must be upheld and protected by every state.
2. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966 and entered into force in 1976, provide a more specific and binding legal basis. The ICCPR establishes civil and political rights, while the ICESCR deals with economic, social, and cultural rights. States parties are expected to periodically report their achievements to the UN Committee on Economic, Social and Cultural Rights or the UN Committee on Civil and Political Rights.
3. Convention on the Elimination of All Forms of Racial Discrimination (CERD): This Convention, adopted in 1965 and entered into force in 1969, requires States parties to take effective measures against racial discrimination in all spheres of life.
4. Convention on the Eradication of Discrimination Against Women (CEDAW): Adopted in 1979 and entered into force in 1981, CEDAW establishes state obligations in combating discrimination against women and promoting gender equality.
5. Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CAT): This convention, adopted in 1984 and entered into force in 1987, prohibits torture and cruel treatment or punishment.

---

<sup>16</sup> See Gutteridge, Harold C. "The Meaning and Scope of Article 38 (1)(c) of the Statute of the International Court of Justice." *Transactions of the Grotius Society* 38 (1952): 125-134.

6. Convention on the Rights of the Child (CRC): The CRC, adopted in 1989 and entered into force in 1990, establishes children's rights and state obligations in protecting children from all forms of exploitation and violence.
7. Roma Statute: Although not a convention, the Rome Statute established the International Criminal Court (ICC) in 2002. The ICC has jurisdiction against crimes of genocide, crimes against humanity, war crimes, and crimes of aggression.

The provisions of these conventions provide a clear legal basis for States to exercise their responsibilities in protecting and promoting human rights. States parties are expected to take concrete steps and report on such measures periodically to measure progress and ensure international accountability. At the national level, these conventions can also be the basis for the establishment or change of policies and laws that better protect human rights.

The state's obligation to prevent human rights violations plays a crucial role in creating a fair and dignified environment for its citizens. States have a responsibility to recognize, protect and promote human rights without discrimination. Efforts to prevent human rights violations reflect the country's commitment to universal values recognized by the international community. A state is expected to develop and enact policies, laws, and mechanisms that ensure the protection of human rights. This includes drafting laws consistent with international standards, establishing independent law enforcement agencies, and increasing the capacity of law enforcement officials to identify and address potential violations. Education and counseling on human rights are key in prevention efforts.<sup>17</sup>

States have an obligation to raise public awareness of their rights and provide a better understanding of human values. By increasing literacy related to human rights, people can more actively involve themselves in the development and maintenance of human rights norms. In addition,

---

<sup>17</sup> Jailani, Muhammad. *Tanggung Jawab Negara dalam Memberikan Perlindungan Terhadap Hak-Hak Korban Pelanggaran HAM Berat di Indonesia*. Bandung Islamic University, 2011; Huda, Muhammad Miftakhul, Suwandi Suwandi, and Aunur Rofiq. "Implementasi tanggung jawab negara terhadap pelanggaran HAM berat paniai perspektif teori efektivitas hukum Soerjono Soekanto." *IN RIGHT Jurnal Agama dan Hak Azazi Manusia* 11.1 (2022): 115-134.

states have the responsibility to monitor and evaluate the implementation of human rights policies periodically. This evaluation mechanism can involve the participation of civil society, human rights institutions, and international institutions. Transparent and accountable evaluation is an important step to proactively address human rights violations and must also create an environment that supports freedom of expression, freedom of organization, and active participation of citizens in decision-making. The establishment of dialogue between governments, civil society, and the private sector can establish a framework that enables collaborative identification and resolution of potential human rights violations. The State's obligation to prevent human rights violations reflects its commitment to creating a society that respects the dignity of every individual. By taking these proactive measures, countries can form a solid foundation for the continued protection of human rights.<sup>18</sup>

In the Draft submitted by the International Law Commission in 2001, it is explained that the responsibility of a State arises when an act that is considered internationally wrong, whether it arises as a result of one or several (acts) or omissions (negligence), or a combination of both. In Article 11, the formulation states: every internationally wrong act by a State carries the consequences of international responsibility for that State. That is, any violation committed by a State that is considered internationally wrong has implications for the international responsibilities of that State. Although national law may recognize such acts as valid, if international law states otherwise, the provisions of international law apply.

The involvement and function of the state as an enforcer of human rights (HAM) expressly affirms that the state is fully responsible for all aspects related to respect, protection, fulfillment, and improvement of human rights. If the state is unable to fulfill its role as an enforcer of human rights, it can be labeled as a human rights violator. This situation involves the principle of state responsibility, where the state can be held accountable for human rights violations against certain groups or

---

<sup>18</sup> Sujatmoko, Andrey. "Hak atas pemulihan korban pelanggaran berat HAM di Indonesia dan kaitannya dengan prinsip tanggung jawab negara dalam hukum internasional." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 3.2 (2016): 330-350.



individuals. In general, state responsibility arises when states commit actions that are considered wrong in the international context.<sup>19</sup>

States are liable when they violate the rules of International Law or harm another sovereign state. In national law, state accountability arises because the state has sovereignty and power over actions against its citizens under its jurisdiction. However, in its development, the principle of state responsibility has become closely related to Human Rights. In international law, the responsibility of states is reflected in the principles contained in the Preamble of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

## **Implementation of State Responsibility in Practice and Case Studies of State Responsibility in Protecting Human Rights**

Human Rights Violations refers to actions or policies that violate generally recognized human rights norms. Human rights include the fundamental rights and principles that every individual has, without discrimination and without exception. Human rights violations can occur in a variety of contexts, both at the national and international levels, and involve acts detrimental to the well-being, freedom, and dignity of individuals. Human rights violations can be diverse, including violations of civil and political rights such as arbitrary arrest, torture, or prohibition of freedom of expression

It is important to recognize that human rights violations are not only limited to state actions, but can also involve non-state actors, such as armed groups, private companies, or individuals. In addition, human rights violations can occur in the context of armed conflict, emergency situations, or under normal everyday circumstances. The consequences of human rights violations are very serious, and they can include human

---

<sup>19</sup> Hayati, Dyah Kemala. "Human Rights Defenders: Tanggung Jawab Negara Dan Perlindungan Hukum Pembela HAM Perempuan." *Jurnal Esensi Hukum* 5.1 (2023): 67-81.

suffering, loss of life, and undermining social stability. Therefore, it is important for the international community to unequivocally oppose and respond to human rights violations, take steps to prevent them, and ensure that perpetrators of violations are brought to justice and held accountable.<sup>20</sup>

## **Case: Handling Human Rights Conflict in Myanmar**

In this context, there are examples of cases of human rights violations against the Rohingya ethnic group in Myanmar. The humanitarian crisis afflicting the Rohingya in Myanmar has captured the world's attention in recent years. The Rohingya are a Muslim ethnic minority group inhabiting Rakhine state in western Myanmar. The background to this conflict involves a number of complex factors, including colonial history, inequality, discrimination, and religious factors.

There are several important points regarding the background of this case, namely:

1. Colonial History

During the colonial period, the territory that is now Myanmar was once controlled by the United Kingdom. They brought many Rohingya workers from Bengal (now Bangladesh) to work on plantations and as other laborers. After Myanmar's independence in 1948, the status and citizenship rights of the Rohingya became a controversial issue.

2. Inequality and Discrimination

Myanmar's government refuses to recognize the Rohingya as citizens and designates them as foreigners who came illegally from Bangladesh, even though most of them have lived in the region for centuries. The Myanmar government imposes discriminatory policies against the Rohingya, such as restrictions on movement,

---

<sup>20</sup> Muchtar, Henni. "Analisis Yuridis Normatif Sinkronisasi Peraturan Daerah Dengan Hak Asasi Manusia." *Humanus: Jurnal Ilmiah Ilmu-Ilmu Humaniora* 14.1 (2015): 80-91; Patra, Rommy. "Penyelenggaraan Pemerintahan Daerah Yang Berbasis Hak Asasi Manusia." *Jurnal Pendidikan Kewarganegaraan Undiksha* 10.3 (2022): 125-137.

access to education, and prohibitions on having more than two children.

### 3. Violence and Repression

Since the 1970s, there have been numerous incidents of violence and repression against the Rohingya, which include military operations and attacks by armed groups. In 2017, large-scale attacks by Myanmar's military were followed by systematic acts of violence against the Rohingya, including mass killings, rape, and the burning of villages. Thousands were killed and more than 700,000 Rohingya fled to Bangladesh.

### 4. Refugee Crisis

Those fleeing face difficult living conditions in refugee camps in Bangladesh, such as a lack of health, education, and decent living facilities. The international community reacted with condemnation of Myanmar's violent actions and provided humanitarian aid to Rohingya refugees.

### 5. International Response

The Rohingya case has drawn worldwide attention and drawn condemnation from various parties, including human rights organizations and international figures. Several countries and international institutions have imposed sanctions on Myanmar's government in response to human rights abuses.

The backdrop of the conflict between the Rohingya and the Myanmar government reflects the complexity of centuries-old relationships, linked to complex historical, social and political factors. Discrimination against the Rohingya by the Myanmar government has had a serious impact on their daily lives, including restrictions on basic rights such as access to education, employment, and health. This series of discriminatory policies has created unstable and adverse conditions for the Rohingya. Furthermore, the military offensive in 2017 that led to a mass exodus of the Rohingya population to Bangladesh came under international scrutiny. The military's brutal crackdown, involving mass killings, rape and forced evictions, raises the urgent need for a global response to human rights abuses in Myanmar. The international community broadly condemned the act and stressed the need for concrete action to end this humanitarian crisis.

The Rohingya crisis is a wake-up call for countries and international institutions to come together in response to human rights abuses and the ongoing conflict in Myanmar. The need for global cooperation in providing humanitarian assistance, supporting refugees, and pressuring the Myanmar government to end discriminatory measures is urgent. Thus, the backdrop of this conflict sets the stage for reinforcing the importance of international solidarity in response to a series of serious and profound human rights crimes in Myanmar.<sup>21</sup>

In this conflict, of course, there is accountability from a country. States have a number of responsibilities to assume to respond to and address the situation. The responsibility covers various aspects, including the protection of fundamental rights, conflict prevention, and humanitarian remedy. Some of the responsibilities of the state in this case are:

1. First, the state is obliged to protect the human rights of all its citizens regardless of ethnicity, religion, or ethnicity. Therefore, the Myanmar government needs to respect the fundamental rights of the Rohingya ethnicity, including the right to education, health, and security.
2. Second, states have a responsibility to prevent conflict and violence that could threaten the security and well-being of their citizens. This includes close monitoring of conflict dynamics, as well as diplomatic and mediation efforts to ease tensions between different ethnic groups.
3. Third, the state must act decisively to stop all forms of discrimination and unfair treatment against certain ethnic groups, in this case the Rohingya. Policy reforms and legislation that support inclusiveness and equal rights of citizens are essential to creating a just and harmonious society.
4. Fourth, in the case of the refugee crisis, states have a responsibility to provide humanitarian assistance to their citizens devastated by

---

<sup>21</sup> See Albert, Eleanor, and Lindsay Maizland. "The rohingya crisis." *Council on Foreign Relations* 23 (2020); MacLean, Ken. "The Rohingya crisis and the practices of erasure." *Journal of Genocide Research* 21.1 (2019): 83-95; Ahsan Ullah, A. K. M. "Rohingya crisis in Myanmar: Seeking justice for the "stateless"." *Journal of Contemporary Criminal Justice* 32.3 (2016): 285-301.

conflict. This includes providing shelter, food, clean water, health services, and education to those affected.

5. Fifth, countries need to work with the international community, human rights institutions, and humanitarian organizations to respond effectively to this crisis. This cooperation may include the receipt of international assistance, the establishment of peace mechanisms, and participation in international dialogue to seek long-term, sustainable solutions.

By assuming this responsibility, the state can play an important role in creating a safe, just, and sustainable environment for all its citizens, regardless of their ethnic or religious background.

Countries working to address human rights abuses against the Rohingya in Myanmar face a number of complex challenges. Namely the existence of Military Action and Armed Conflict. Some countries may be faced with ethical and practical dilemmas regarding the possibility of military intervention or direct interference in the conflict in Myanmar. Regional and global security considerations can discourage countries from involving themselves directly. In addition, there are also challenges where there are limitations in access to information. Due to the difficulty of access to conflict areas and the lack of transparency from authorities in Myanmar, this can hamper efforts by countries and international institutions to properly understand the situation on the ground and assess the impact of human rights violations.<sup>22</sup>

Handling cases of human rights violations against the Rohingya in Myanmar requires close cooperation and coordination between countries and international institutions. These challenges reflect the complexity and sensitivity of the issue, which requires a careful and sustained approach to achieving positive change. Despite international pressure on Myanmar, the handling of the case points to several challenges, including government resistance to external interference, limited access for international investigators, and efforts to secure cooperation on recovery and reconciliation. This case highlights the complexity of state accountability in overseeing human rights. The Myanmar government is expected to be

---

<sup>22</sup> Krause, Jana, and Erin Kamler. "Ceasefires and civilian protection monitoring in Myanmar." *Global Studies Quarterly* 2.1 (2022).

more proactive in preventing human rights violations, investigating and enforcing laws against perpetrators, and ensuring protection and recovery for vulnerable groups. At the same time, international cooperation and pressure from the international community are essential to achieve positive change in the protection of human rights in Myanmar.<sup>23</sup>

The implementation of state responsibilities in protecting human rights is often faced with a number of complex obstacles and challenges. Although states have an obligation to protect the basic rights of their citizens, there are a variety of factors that can complicate this effort. First, internal politics and government stability can be obstacles. Unstable governments, internal conflicts, or political uncertainty often distract from human rights issues and reduce the state's ability to provide adequate protection. In addition, sometimes authoritarian or less democratic government policies can be a hindrance, where authoritarian leaders tend to suppress opposition and ignore the basic rights of their citizens. Second, the lack of institutional resources and capacity is also a serious challenge. States may face limitations in terms of personnel, funds, and infrastructure needed to manage and respond to situations of human rights violations.

Weak law enforcement institutions and lack of training for security forces can reduce the effectiveness of human rights protections at the national level. Furthermore, resistance to legal change and reform can also be an obstacle. Some governments may be unwilling to change policies or laws that contradict international human rights norms. Cultural and historical factors can also play a role in hindering change, especially if there are traditional practices that conflict with human rights. Another important aspect is information imbalance. States that are not transparent or have control over the flow of information can often control narratives around human rights violations, resulting in incomprehension or ignorance of the international community as well as nationals.<sup>24</sup>

---

<sup>23</sup> Arendshorst, John. "The Dilemma of Non-Interference: Myanmar, Human Rights, and the ASEAN Charter." *Northwestern Journal of Human Rights* 8.1 (2009): 102.

<sup>24</sup> Flood, Patrick J. *The effectiveness of UN human rights institutions*. Bloomsbury Publishing USA, 1998; Cole, Wade M. "Mind the gap: State capacity and the implementation of human rights treaties." *International Organization* 69.2 (2015): 405-441.



The efforts made by the state to fulfill its responsibility in protecting human rights are a benchmark of government maturity and commitment to human rights principles. States are responsible for developing and implementing concrete policies and actions to ensure the protection of the fundamental rights of their citizens. The role of the legislature has a central role in fulfilling this responsibility. States must have clear laws and comply with international human rights standards. The establishment of laws protecting human rights creates a strong legal foundation to ensure the protection of citizens from human rights violations.<sup>25</sup> Furthermore, the existence of independent and transparent law enforcement agencies is essential. States shall ensure that law enforcement officials have the capacity to investigate and prosecute human rights violations in good faith. Institutions such as ombudsmen and human rights commissions serve as mechanisms for monitoring and enforcing individual rights.

Education efforts and public awareness are also crucial. States must ensure that their citizens understand their rights and have access to relevant information. Human rights education in schools, social campaigns, and training for law enforcement officials can increase public awareness and participation in protecting their rights. International cooperation is also an integral part of the country's efforts. States should participate in international forums, establish cooperation with human rights organizations, and engage in knowledge exchange to strengthen capacity and implementation of standards. The importance of monitoring and evaluation mechanisms cannot be ignored.<sup>26</sup> States should regularly evaluate their policies and practices to ensure compliance with international human rights standards. This mechanism can involve the active participation of civil society groups and independent institutions. Overall, the efforts made by the state to fulfill its human rights

---

<sup>25</sup> Knox, John H. "Horizontal human rights law." *American Journal of International Law* 102.1 (2008): 1-47; Buergenthal, Thomas. "International Human Rights Law and Institutions: Accomplishments and Prospects." *Washington Law Review* 63.1 (1988).

<sup>26</sup> Becker, Jo. *Campaigning for justice: human rights advocacy in practice*. Stanford University Press, 2012; Tibbitts, Felisa. "Understanding what we do: Emerging models for human rights education." *International review of education* 48.3 (2002): 159-171.

responsibilities reflect the government's sincerity in creating a fair, equal and dignified environment for all its citizens. It is a vital step in building a society that respects and protects human rights universally.

## Conclusion

Human rights, enshrined in international law, constitute a set of universal principles that transcend borders and are essential for safeguarding the dignity and freedom of all individuals. These rights, encompassing civil, political, economic, social, and cultural dimensions, underscore the collective commitment to uphold human dignity worldwide. Indonesia, as a state bound by legal obligations, is tasked with ensuring human rights protection for its citizens, with international organizations such as the United Nations playing a pivotal role in setting and monitoring human rights standards. Despite historical and contemporary challenges, the concept of human rights remains a cornerstone of the international legal order, shaping the pursuit of justice and dignity in the global community.

The implementation of state responsibilities in protecting human rights is fraught with complex obstacles, including internal political dynamics, authoritarian policies, resource constraints, and resistance to legal reform. Overcoming these barriers is paramount to effectively safeguarding human rights and ensuring accountability. Proactive measures, including international cooperation, adherence to human rights conventions, and transparent evaluation mechanisms, are indispensable in laying a solid foundation for sustained human rights protection. By addressing these challenges head-on, states can fulfill their obligations and foster a more just and dignified international community.

## References

- Ahsan Ullah, A. K. M. "Rohingya crisis in Myanmar: Seeking justice for the "stateless"." *Journal of Contemporary Criminal Justice* 32.3 (2016): 285-301.
- Albert, Eleanor, and Lindsay Maizland. "The rohingya crisis." *Council on Foreign Relations* 23 (2020).

- Arendshorst, John. "The Dilemma of Non-Interference: Myanmar, Human Rights, and the ASEAN Charter." *Northwestern Journal of Human Rights* 8.1 (2009): 102.
- Arifin, Ridwan, Rasdi Rasdi, and Riska Alkadri. "Tinjauan Atas Permasalahan Penegakan Hukum dan Pemenuhan Hak dalam Konteks Universalime dan Relativisme Hak Asasi Manusia di Indonesia." *Legality: Jurnal Ilmiah Hukum* 26.1 (2018): 17-39.
- Backer, Larry Cata. "On the Evolution of the United Nations" Protect-Respect-Remedy Project": The State, the Corporation and Human Rights in a Global Governance Context." *Santa Clara Journal of International Law* 9.1 (2011): 37.
- Baderin, Mashood A., and Manisuli Ssenyonjo. "Development of International Human Rights Law before and after the UDHR." *International Human Rights Law*. Routledge, 2016. 19-44.
- Becker, Jo. *Campaigning for justice: human rights advocacy in practice*. Stanford University Press, 2012.
- Bird, Annie. "Third state responsibility for human rights violations." *European Journal of International Law* 21.4 (2010): 883-900.
- Borgwardt, Elizabeth. "FDR's Four Freedoms as a Human Rights Instrument." *OAH Magazine of History* 22.2 (2008): 8-13.
- Buergenthal, Thomas. "International Human Rights Law and Institutions: Accomplishments and Prospects." *Washington Law Review* 63.1 (1988).
- Ciampi, Annalisa, et al. "International Human Rights Law." *Public International Law*. Routledge 531-614.
- Cole, Wade M. "Mind the gap: State capacity and the implementation of human rights treaties." *International Organization* 69.2 (2015): 405-441.
- Enchelmaier, Stefan. "Four Freedoms, Ever More Principles?." *Oxford Journal of Legal Studies* 36.1 (2016): 192-217.
- Flood, Patrick J. *The effectiveness of UN human rights institutions*. Bloomsbury Publishing USA, 1998.
- Gutteridge, Harold C. "The Meaning and Scope of Article 38 (1)(c) of the Statute of the International Court of Justice." *Transactions of the Grotius Society* 38 (1952): 125-134.

- Hafner-Burton, Emilie M., and Kiyoteru Tsutsui. "Justice lost! The failure of international human rights law to matter where needed most." *Journal of Peace Research* 44.4 (2007): 407-425.
- Hannum, Hurst. "The Status of the Universal Declaration of Human Rights in National and International Law." *Georgia Journal of International & Comparative Law* 25.1 (1996): 287.
- Hayati, Dyah Kemala. "Human Rights Defenders: Tanggung Jawab Negara Dan Perlindungan Hukum Pembela HAM Perempuan." *Jurnal Esensi Hukum* 5.1 (2023): 67-81.
- Hidayat, Eko. "Perlindungan hak asasi manusia dalam negara hukum indonesia." *ASAS: Jurnal Hukum Ekonomi Syariah* 8.2 (2016).
- Huda, Khoiril, and Ridwan Arifin. "Human Rights in Indonesia: Between Protection, Fulfillment, and Law Enforcement." *Lex Scientia Law Review* 2.2 (2018).
- Huda, Muhammad Miftakhul, Suwandi Suwandi, and Aunur Rofiq. "Implementasi tanggung jawab negara terhadap pelanggaran HAM berat paniai perspektif teori efektivitas hukum Soerjono Soekanto." *IN RIGHT Jurnal Agama dan Hak Azazi Manusia* 11.1 (2022): 115-134.
- Iriye, Akira, Petra Goedde, and William I. Hitchcock, eds. *The human rights revolution: an international history*. Vol. 3. Oxford University Press, 2012.
- Ishay, Micheline. *The history of human rights: From ancient times to the globalization era*. Univ of California Press, 2008.
- Jailani, Muhammad. *Tanggung Jawab Negara dalam Memberikan Perlindungan Terhadap Hak-Hak Korban Pelanggaran HAM Berat di Indonesia*. Bandung Islamic University, 2011.
- Joseph, Sarah, and Melissa Castan. *The international covenant on civil and political rights: cases, materials, and commentary*. OUP Oxford, 2013.
- Knox, John H. "Horizontal human rights law." *American Journal of International Law* 102.1 (2008): 1-47.
- Krause, Jana, and Erin Kamler. "Ceasefires and civilian protection monitoring in Myanmar." *Global Studies Quarterly* 2.1 (2022).
- MacLean, Ken. "The Rohingya crisis and the practices of erasure." *Journal of Genocide Research* 21.1 (2019): 83-95.

- Marentek, Yanes S. "Tanggung Jawab Negara dalam Perlindungan Hak Asasi Manusia Menurut Hukum Internasional." *Lex Privatum* 6.9 (2019).
- Maulana, Mohammad, and Nur Akifah Janur. "Tanggung Jawab Negara Dalam Pemenuhan HAM di Bidang Ekonomi, Sosial, dan Budaya." *Qisthosia: Jurnal Syariah Dan Hukum* 1.2 (2020): 107-129.
- McCorquodale, Robert, and Penelope Simons. "Responsibility beyond borders: state responsibility for extraterritorial violations by corporations of international human rights law." *The Modern Law Review* 70.4 (2007): 598-625.
- Muchtar, Henni. "Analisis Yuridis Normatif Sinkronisasi Peraturan Daerah Dengan Hak Asasi Manusia." *Humanus: Jurnal Ilmiah Ilmu-Ilmu Humaniora* 14.1 (2015): 80-91.
- Nowak, Manfred. *Introduction to the international human rights regime*. Vol. 14. Brill, 2021.
- Patra, Rommy. "Penyelenggaraan Pemerintahan Daerah Yang Berbasis Hak Asasi Manusia." *Jurnal Pendidikan Kewarganegaraan Undiksha* 10.3 (2022): 125-137.
- Peters, Anne. *Beyond human rights: the legal status of the individual in international law*. Vol. 126. Cambridge University Press, 2016.
- Sardol, S. Masribut. "Human Rights Arrangement on Indonesian Law." *Rechtsidee* 1.1 (2014): 85-100.
- Selian, Della Luysky, and Cairin Melina. "Freedom of Expression in the Era of Democracy: Records of Human Rights Enforcement [Kebebasan Berekspresi di Era Demokrasi: Catatan Penegakan Hak Asasi Manusia]." *Lex Scientia Law Review* 2.2 (2018): 189-198.
- Sen, Amartya. "Elements of a theory of human rights." *Justice and the capabilities approach*. Routledge, 2017. 221-262.
- Setiyani and Joko Setiyono, 'Application of the Principle of State Accountability to Cases of Human Rights Violations', *Indonesian Journal of Legal Development*, 2.2 (2022)
- Shelton, Dinah. "Protecting Human Rights in a Globalized World." *Boston College International and Comparative Law Review* 25.2 (2002): 273.

- Sinaga, Thor B. "Peranan Hukum Internasional dalam penegakan hak asasi manusia." *Jurnal Hukum Unsrat* 1.2 (2018): 94-105.
- Sujatmoko, Andrey. "Hak atas pemulihan korban pelanggaran berat HAM di Indonesia dan kaitannya dengan prinsip tanggung jawab negara dalam hukum internasional." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 3.2 (2016): 330-350.
- Thielbörger, Pierre. "The "Essence" of international human rights." *German Law Journal* 20.6 (2019): 924-939.
- Tibbitts, Felisa. "Understanding what we do: Emerging models for human rights education." *International Review of Education* 48.3 (2002): 159-171.
- Triwahyuningsih, Susani. "Perlindungan dan Penegakan Hak Asasi Manusia (HAM) di Indonesia." *Legal Standing: Jurnal Ilmu Hukum* 2.2 (2018): 113-121.
- Warjiyati, Sri. "Instrumen Hukum Penegakan Hak Asasi Manusia di Indonesia." *Justicia Islamica* 15.1 (2018): 123-138.

\*\*\*

## DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

## FUNDING INFORMATION

None

## ACKNOWLEDGMENT

None

## HISTORY OF ARTICLE

Submitted : November 3, 2022  
Revised : March 8, 2023; June 22, 2023  
Accepted : July 15, 2023  
Published : July 31, 2023