

PROTECTION FOR ROHINGYA IMMIGRANTS UNDER SERIOUS HUMAN RIGHTS VIOLATIONS IN MYANMAR

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Rohingya people are a minority ethnic group in Myanmar that is getting serious attention on discrimination to them. The Myanmar government does not give them any nationality status so that they do not have any national protection for any harshness toward them. Inhumanity treatment toward them has caused them to flee their own country. They flee their homeland and move to other countries, either by land or by sea. Their arrival in the neighboring countries has caused an alarm to the destination nations which assume that the increasing number of the Rohingya will threaten the stability and the national defense of the respective nations. Moreover, they believe that the Rohingya will be a burden on them since there is no sign of goodwill from the Myanmar government to cope with this problem. The anguish of the Rohingya not only occurs in their homeland but also in the neighboring countries where they have been stranded. The destination nations make any effort and any policy to avoid their arrival. It seems that the Rohingya's anguish becomes worse since they have no assurance for their lives; for example, the relocation places have no health standard at all. Therefore, all nations are expected to cope with this case. They have to compel the Myanmar government to solve this problem immediately by giving nationality status to the Rohingya. The Myanmar government has to take serious measures toward any violation on human right since it is a crime, particularly the criminal act by the army regime toward the Rohingya.

Keywords: Protection, Rohingya Immigrants, Human Right.

1. INTRODUCTION

Based on the International Law, a country which is a legal subject and has international personality can be defined as the capacity to have International Personality. International Personality can be defined as the capacity to have international right and obligation so that a national government will take the responsibility when it commits an act or negligence which can bring about violation against an international obligation and other international legal sources. Therefore, in general, the elements of the responsibilities of the government of a country are the existence of act and omission which can be imputable with a certain country and the act and omission are violation against an international obligation which is emanated either from an international agreement or from other international legal sources. The problem of imputability becomes important because it is an indispensable condition for the existence or nonexistence of responsibility of a certain government of a country in an act or omission which violates against international law. The imputability is considered as existing when an act or omission

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(which violates international legal obligation) is accomplished by an organ of a certain country or by those who get the status as organs of a country. What it means by 'organ' here is referred to government officials, state department, and any other agencies.

Responsibility of the government of a country is adhered to the State which means that a State takes the responsibility for giving compensation when it is detrimental to other countries. The adherence of obligation of a State to pay for compensation is regulated under Article 2, paragraph 3 of the International Agreement on the Civil Right and Politics. The regulation of this article governs the provision that victims of Human Rights violations have to be given effective restoration of rights even though the violation is done by state officials (Maulida, 2012). Therefore, the Myanmar government is required to make any effort to perform restoration of rights and protection for the Rohingya who have undergone harshness and atrocity.

The action of the Myanmar government against the Rohingya can be indicated as an action of a weak country. One of the indicators of a weak country (and a failed country) is the incapacity of the government to provide political goods for its people, particularly which is related to human security in a domestic domain. A weak country caused by economic, geographical, and physical limitation is probably basically strong, but at a certain time it becomes weak because of the problems of internal antagonism, management impotence, greed, despotism, or hostile attack from outside. A weak country usually has high level of plurality in ethnicity, religion, and language, and has a number of problems which at any time can change to violence. A weak country can change to be a failed country when the oppression of those in power is paid back by their opponents and the result is a multiplier reaction. Further, those in power in a weak country usually become the predators for their own people. Based on these indicators, there is an indicator that Myanmar is categorized as a weak country, especially in its policies which are related to minority ethnic groups. Myanmar is a weak country under the power of strong regime/military.

Terrorism is one of harsh actions of a weak country toward its people. This tactic is used by the Myanmar government to coerce the Rohingya to flee Myanmar for avoiding ethnic genocide. Here, the State uses its force to influence its population segment or uses coercive aspect from State agencies. Internal security force is used to terrorize in order to oppress any different opinion between the State and its citizens. Terrorism which is practiced by the Myanmar government and *tatmadaw*, Myanmar Security Force, has succeeded in evicting the Rohingya from Myanmar to the neighboring countries. From the explanation above, it can be said that the Myanmar government has to be liable for Human Rights violations toward the Rohingya. Here, the perpetrator of Human Rights violation is the Myanmar government itself; it is done by the State organ, Military regime, which is the Myanmar government.

2. LITERATURE REVIEW

2.1. Convention of Prevention and Punishment on Genocide Criminal Act

Based on Article IV concerning Convention of Prevention and Punishment on Genocide Criminal Act, it is stated that "Those who commit genocide on a nation intentionally or any other act stipulated in Article III are liable to punishment, whether they are the responsible people, the State officials, or individuals. Article IV of the Convention of Prevention and Punishment on Genocide Criminal Act states that "Those who are accused of committing genocide on a nation or any other act stipulated in Article III can be examined by the Court in the country where the criminal act takes place or by the International Court with jurisdiction which is agreed by the convention participants." This convention clearly states that the perpetrators of genocide and those who are planning to commit genocide, whether they are the responsible leaders constitutionally, public officials, or individuals can be tried in the Court where the genocide criminal act takes place or by the International Court that has jurisdiction.

Based on Article 27 of Rome Statutes, jurisdiction of the International Criminal Court can be effective when there is an incidence of the lack of serious national investigation and prosecution or the unwillingness and incapability of the country where the perpetrator(s) or the Human Rights violations take place for processing the violation (Xavier Philippe, 2006). Based on this Article, it is found that the Myanmar government is confirmed by evidence of not making any effort to use legal remedy and unwilling to settle harshness toward the Rohingya. Article 17 of Rome Statutes: Paragraph 10 of the Preface and Article 1 state that a case cannot be accepted when:

- a) The case is being investigated or prosecuted by a country that has its jurisdiction on the case, unless the country refuses or is not able to carry out investigation or prosecution;
- b) The case has been investigated by a certain country that has jurisdiction and the country has determined not to prosecute the perpetrators unless the country where the criminal act takes place refuses or is unable to prosecute the case;
- c) The defendant has been tried for his criminal act as the substance of the complaint and the tribunal session by the Court of Justice is not allowed, based on Article 20, paragraph 3;
- d) The case is not very serious for the following act by the Court of Justice.

Paragraph 2

"To determine the unwillingness or refusal in a certain case, the Court of Justice considers, according to the principles of the process which should have been recognized by the international law, whether one or more than one of the following items exist and can be implemented:

- a) Any legal measures which have been or are being taken or any national decision which has been made in order to protect the perpetrator from any criminal liability for the crime which takes place in the jurisdiction of the Court of Justice as it is stipulated in Article 5;
- b) Any postponement which cannot be justified in legal measures that are not in accordance with the intention to bring the perpetrator to the Court of Justice;
- c) The previous or today's legal measures are not taken independently or impartial; in this case, the legal measures are not in accordance with the intention to bring the perpetrator to the Court of justice.

Paragraph 3

“To determine the incapability in a certain case, the Court of Justice considers whether it is caused by the entire damage or as a part of its national court of justice system which make the country unable to bring the accused or to produce evidence or testimony to the Court or it is unable to take its legal measures.” In this case, Rome Statutes allows the United Nations Security Council to refer to or pursue Human Rights violations to the International Criminal Court (Article 3 of Rome Statutes). Unfortunately, however, Article 12, paragraph 2 of Rome Statutes states that a country is considered accepting jurisdiction of the Court of Justice when it has ratified its Statutes. This is, of course, not advantageous since a country that has not ratified its statutes cannot be tried. This indicates that international provision is very weak in putting criminal case in human rights on trial which has been proudly proclaimed. Several articles have been proved to be violated by the Myanmar government so that they cannot be implemented. The problem is that Myanmar is a country which does not ratify any single regulation of Human Rights above. Therefore, the liability for any violation committed by the Myanmar government is very difficult to be implemented.

As it has been mentioned above, the Rohingya have met the criteria to be immigrants so that the neighboring countries and the countries of their transit destination must not drive them away or repatriate them to their homeland because there is the principle of non-refoulement which has become the international unwritten law. It is expected that the neighboring countries welcome the Rohingya who have fled their homeland because of the harshness and atrocity of the Myanmar government. As it is also stated in the other international unwritten laws, this principle should be respected by all nations that participate or not participate in the 1951 Refugee Convention.

Besides that, since the Rohingya do not have any citizenship, they need an international protection. The international protection is all actions which are done to guarantee the equality in access and opportunity and to enjoy the rights among women, men, and children that become the attention of UNHCR (United Nations

High Commissioner for Refugees) according to the provisions stipulated in laws, either the international human law, human rights, or law on immigrants (UNHCR, 2009). The involvement of the neighboring countries and the transit countries in handling the problem of the Rohingya must be based on human consideration on the suffering of the Rohingya, protection for Human Rights, and solidarity for the unity of ASEAN. This problem must be handled thoroughly but not inflict damage on bilateral and regional relationship (ASEAN).

In this case, the neighboring country, Bangladesh, becomes the main destination of the Rohingya immigrants. Besides its location is close to Myanmar, the same ethnicity and religion with the Rohingya have made it the safest place for the refugees. The Rohingya who immigrate to Bangladesh are generally the victims of atrocity, military occupation, and ethnic clearance which have done systematically by the Myanmar government (International Federation of Human Rights League, 2000). Bangladesh does not have any law which regulates refugees and asylum seekers. This country is also not the participant of the 1951 Refugee Convention and the Protocol of 1967. Therefore, each person who enters Bangladesh has to comply with the requirements attached in the Passport Act of 1920 so that all asylum seekers or refugees who enter Bangladesh without official document will be arrested.

Article 3 of the Passport Act of 1920 states that

1. The government may make rules requiring that persons entering Bangladesh shall be in possession of passports, and for all matters ancillary or incidental to that purpose;
2. Without having any prejudice against the generality of the foregoing power such rules may
 - a) prohibit the entry into Bangladesh or any part thereof of any person who has not in his possession a passport issued to him,
 - b) prescribe the authorities by whom passports must comply, for the purpose of this Act, and
 - c) provide for the exemption, either absolutely or any other condition, of any person or class of persons from any provision of such rules;
3. Rules made under this Section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to three months, or with fine or with both."

At the beginning, Bangladesh cordially welcomed the Rohingya and the Bangladesh government was expected to be able to cope with this problem by conducting diplomacy with the Myanmar government. However, in 2009 there was a campaign of anti-Rohingya in Bangladesh which was moved by media and political elites. The realization of this refusal was indicated by the arrest and

imprisonment of about 500 Rohingya people who stayed outside of Nayapura, tight patrols along the borders, and cessation of international aid for supply.

The harsh attitude of Bangladesh that does not want to receive the Rohingyas because of the great influx of the Rohingya entering the borders. For more than 4 decades, Bangladesh has received and attempted at its best to do repatriation, but Myanmar does not have any response to it. In reality, up to the present Myanmar has not recognized the Rohingya as the citizens of Myanmar.

Besides that, the Rohingya who stay in Bangladesh are considered as a threat for the economic, social, and political continuance in Bangladesh. The existence of the Rohingya who have long stayed in Bangladesh has caused existential threat such as the increase in unemployment, social conflict, and fear for terrorists that will trouble the Bangladeshi national security. Here, it can be seen that the responsibility of a neighboring country like Bangladesh is not serious anymore because there is no goodwill from Myanmar as the original country to settle the problem seriously.

2.2. The Handling by the Indonesian Government as the Member of ASEAN and OKI toward Rohingya Refugees

Horizontal conflict in Myanmar is occurring and it seems that it is intentionally intended by the Myanmar government. Various atrocities and oppressions toward the Rohingya never come to an end. Thousands of them have become the victims and the other hundred thousands of them flee their homeland to the neighboring countries. This severe condition is relevant to what is stated by the United Nations that the Rohingya are the most oppressed ethnic group in the world.

Indonesia is the country which becomes one of the destinations for Rohingya refugees. This is because Indonesia is the country with the majority of Muslims so that it is expected to be able to become the safe place for them. Based on the interviews with some Rohingya refugees who are accommodated at the Immigration Detention House (Rudenim) Belawan, Medan, and Tanjung Pinang, Riau Archipelago, it was found that they did not come directly from Myanmar to Indonesia. First, they arrived in Indonesia through Malaysia (after having stayed in Malaysia for years). Their reason to come to Indonesia was that they could not get any adequate education in Malaysia; they wanted to get a better life in Indonesia and, if possible, they wanted to become the Indonesian citizens by marrying Indonesian women. Secondly, their rickety boats were stranded in Indonesia from Myanmar since their destination was Malaysia or Australia (they sailed traditionally). Thirdly, they were deceived by Tekongs (ship's captains under the orders of the owner) who promised to take them to Australia (from Malaysia or Myanmar) (HeriAryanto, 2010).

In their arrival in Indonesia, the Rohingya are stranded in several areas along the coasts of Indonesia; some of them were arrested and some others surrendered

to the Indonesian Immigration agency. Indonesia welcomes them cordially. It can be proved by the fact that they are received and taken care of properly; they are placed in some detention houses in various areas in Indonesia. In handling the problem of the Rohingya in Indonesia, the Indonesian government gets aid from UNHCR and IOM (International Organization for Migration). Rudenim Medan actually has limited fund in handling the detention. Therefore, in its daily operational implementation, Rudenim Medan is aided by IOM. UNHCR and IOM also do assessment on the Rohingya immigrants about giving their status of international refugees. Besides that, the Rohingya immigrants who have had the status of international refugees from UNHCR are allowed to stay outside of Rudenim and each of them gets pocket money from IOM around 1.2 million rupiahs per month while waiting for their permanent homes in the Third Country. Meanwhile, those who have not gotten the status of international refugees have to wait in Rudenim, but they still get the facilities like food, health, and consultation from IOM and UNHCR (HeriAryanto, 2010).

Besides that, as the member of ASEAN and OKI, the Indonesian government; in this case, its President, Susilo Bambang Yudhoyono (SBY), sent a letter to Myanmar President, Thein Sein, on August 4, 2012, stating that Indonesia expected the Myanmar government to cope with Rohingya conflict properly. President Susilo Bambang Yudhoyono, in his capacity as the President of the Republic of Indonesia, delivered a speech which was publicized in some national media. This speech was considered as the official response of the Indonesian government to the insistence of the Indonesian people to the Myanmar government to take firm measures concerning the conflict which involved the Rohingya (Yudhoyono, 2012).

The following is the excerpt of the Speech delivered by President Susilo Bambang Yudhoyono: "...regarding this Rohingya, the Government is also concerned. The government is not only concerned but also has attempted, is attempting, and will continuously attempt to find the solution through diplomacy or to find other methods which are related to the topic of humanity upon the Rohingya in Myanmar... For all Indonesian people, I want to tell you about what has been done by Indonesia, particularly the Indonesian government. The government actively, either multilaterally or regionally, participates in discussing any problem which is related to the Rohingya, in the United Nations, in ASEAN, and in the other forums. Bilaterally, we actively establish diplomacy and collaboration."

Implicitly, the Indonesian government has taken some concrete measures to help the Myanmar government pass if it cannot be called settle the conflict. There were some attempts which had been made: bilateral diplomacy, regional diplomacy, and multilateral diplomacy. In bilateral diplomacy, Indonesia, through the Foreign Minister, Marty Natalegawa, used diplomatic track to encourage national reconciliation and conflict settlement in Myanmar which had involved the Rohingya by meeting with the Myanmar Foreign Minister, Wunna Maung Lwin in Myanmar

on August 7, 2012. In the meeting, Marty suggested that Myanmar open and give access to humanity aid. He also suggested that OKI observe the factual situation in the post-conflict in the Rakhine State. This suggestion was followed up by the Myanmar government by opening its borders for foreign aid and OKI.

On January, 2013, Foreign Minister, Marty Natalegawa, representing the Indonesian government, delivered humanity aid of one million American dollars for the need of emergency response to the Myanmar government. The written statement of the Foreign Minister said that the Indonesian government determined to give its contribution for creating the feeling of mutual trust among the community members and developing the economy in the Rakhine State. Besides the basic needs such as dwelling, food, medicines, and education, there were also more important need, encouragement to develop the feeling of self-confidence and reconciliation between the two groups of community in the Rakhine State (The Foreign Minister, Marty, 2012).

In the regional domain, by the initiative of the Foreign Minister, Marty Natalegawa, the Foreign Ministers of ASEAN agreed on the mutual statement of ASEAN on August 17, 2012, in taking a position on the last development in the Rakhine State of Myanmar. In general, the Foreign Ministers of ASEAN in their statement supported every effort made by the Myanmar government to restore favorable condition, especially humanity situation in Rakhine, Myanmar. ASEAN countries are always ready to help the Myanmar government cope with the problem in Rakhine. As the member of ASEAN, Indonesia always complies with one of the ASEAN principles, the doctrine of nonintervention. The consequence of this principle is the limitation of room to maneuver for a country to react against an upheaval which occurs in other countries. As the member of OKI, Indonesia and OKI attempt to settle this crisis by participating in every activity conducted by OKI.

From February 6 until February 7, 2013, OKI held the 12th Summit Conference (KTT) in Cairo. One of its agendas was about the Rohingya conflict in Myanmar. The KTT urged the Myanmar government to seriously handle the crisis in Myanmar, and OKI continuously encouraged the Myanmar government to end up this humanity crisis (KTT OKI, at.al, 2013). Previously, OKI had held a humanity consultation meeting in Kuala Lumpur on August 13, 2012. In this meeting OKI issued three recommendations for the settlement of the Rohingya case in Myanmar. First, humanity aid was created through the establishment of international fund which was coordinated properly in order that the victims of harshness, either the victims that had fled to Bangladesh or those who were still in Arakan Province could be saved. Secondly, the diplomatic team would continuously meet with the Myanmar government and Bangladesh to remove the obstacles from the Rohingya. Thirdly, Permanent solution on the Rohingya problem should be made by recognizing their basic rights like their status of citizenship and diplomatic approach through ASEAN, OKI, and the United Nations.

The Indonesian Red Cross (PMI) became the first Indonesian institution which was successful in entering Myanmar. The President of Myanmar invited the General Chairperson of the Indonesian Red Cross, Jusuf Kalla, and his team to directly witness the condition in the Rhakine State. The Indonesian Red Cross (PMI) and the Myanmar Red Cross (MRCS) collaborated to distribute humanity aid to the victims of the Rohingya conflict. The aid was the symbol of solidarity and care by PMI and the Indonesian people for the victims of the Rohingya conflict in Myanmar (PMI, et.al, 2012). After that, the Indonesian humanity institutions, Dompethuafa, PKPU, and Rumah Zakat had prepared funds of one billion rupiahs to help the Rohingya Muslims. These three institutions also sent a humanity team and several medical personnel to Chitagong Refugee Camp, Bangladesh (Aid for the Rohingya, 2012).

Up to the present, Indonesia has not ratified the 1951 Refugee Convention on the status of refugees so that Indonesia does not have any liability and authority to take any international measures toward the Rohingya immigrants who enter Indonesia. In consequence, Indonesia can accommodate them only in the span of ten years maximally without being able to do and having the right of doing any further action related to the Rohingya immigrants who have entered the Indonesian territory. In practice, however, even though Indonesia does not ratify the 1951 Refugee Convention, Indonesia implements it in several of its administrative rules on handling refugees substantially such as the Circle Letter of the Prime Minister No. 11/RI/1956 on the Protection for Political Refugees, the Presidential Decree No. 38/1979 on the Coordination of the Settlement of the Problem of Vietnamese Refugees, the Presidential Decree No. 3/2001 on the Disaster Response Coordination Board and the Handling of Refugees, and the Decree of the Minister of Justice and Human Rights of the Republic of Indonesia No M.05.H.02.01/2006 on Immigration Detention House. In handling the problems of these Rohingya immigrants, Indonesia encounters many serious problems which can disturb its security stability. They, among others, are as follows:

1. The difficulty in the process of returning or repatriating the Rohingya immigrants to their own country, Myanmar, because security condition is getting worse;
2. It seems that the Myanmar embassy in Indonesia is indifferent to the Rohingya problems because they actually do not recognize the Rohingya as the Myanmar citizens;
3. The Rohingya do not have any passports so that it becomes the obstacle in the process of assessment to be the international refugees;
4. The Rohingya do not want to be repatriated to their own homeland because of bad security condition;
5. There is no third country that is willing to receive the Rohingya immigrants;
6. The Rohingya are not the priority immigrants for IOM so that it becomes the obstacle in the process of assessment to their status of refugees;

7. The Rohingya have been accommodated in Indonesia for a long time so that they become the burden for the Indonesian government.
8. The Rohingya immigrants cannot speak Malay and English so that it is difficult to handle immigration affairs (Aryanto, 2010).

As a country which has the same experience, Indonesia quite understands the complexity and challenge which are faced by the Myanmar government in handling the conflict. Indonesia has encouraged, is encouraging, and will always encourage the Myanmar government to settle the problem peacefully and comprehensively and to reconcile and settle its various internal conflicts peacefully, including the Rohingya conflict.

3. RESEARCH METHODS

Qualitative research aims to understand the phenomenon of what the research subjects experience by means of descriptions in the form of words and languages, in a specific, natural context and by utilizing various natural methods. In qualitative research, researchers do not use intermediate numbers as a transposition phenomenon, but directly interact with subjects studied, make observations or by conducting interviews to reveal the recognition of the subject under study either through symbols or behavior that appears in the field. Symbols, recognition, or series of actions are then collected and used as the main input in describing the subject or research descriptively descriptive (Lubis *et al.*, 2016; Erlina *et al.*, 2017; Azlina *et al.*, 2017 and Yahya *et al.*, 2017). Every phenomenon can be basically researched, When want to examine a phenomenon with certain approach, must understand with the problem. Likewise in the quantitative approach has the characteristics of the question (Tarmizi *et al.*, 2016 & 2017). Unit analysis in this research are Rohingya people are a minority ethnic group in Myanmar. Normative law research method or literature law research method is a method or method used in legal research conducted by examining the existing literature. The first stage of normative law research is research aimed at obtaining objective law (legal norm) by conducting research on legal issues. The second stage of normative law research is research aimed at obtaining subjective laws (rights and obligations).

4. RESULT AND DISCUSSION

4.1. Result

4.1.1. Efforts of the Original Country, Transit Countries, Destination Countries, and other International Countries to Give Protection

As it has been mentioned above, asylum seekers, the Rohingya, meet the criteria of being refugees so that the countries which become their transit are not allowed to evict them or repatriate them to their own homeland due to the principle of non-

refoulment which has been the unwritten international law. In consequence, it has to be respected by all countries, either the countries as the members of the 1951 Refugee Convention or not. The involvement of the transit countries in handling boatpeople, the Rohingya, should be based on humanity consideration toward their suffering, protection for human resources, and solidarity toward the unity of ASEAN. Besides that, handling the Rohingya as the asylum seekers should involve UNHCR as an international institution which specifically handles the problems of refugees. According to the mandate of the United Nations, the principal aim of UNHCR is to protect the rights and the welfare of refugees (UNHCR *et.al*, 2012).

4.2. Discussion

Broadly speaking, transit countries and the other ASEAN countries have agreed on using Bali Process, a forum in the level of Ministers which aim is to determine and take measures needed in coping with human trafficking and the other incidences which occur among the Asia-Pacific countries in order to search for the best solution in handling the case of the Rohingya refugees (L.G. Saraswati, 2006). The effort of the countries around the world to give protection can be seen from the efforts given by the international organizations as follows:

1. ASEAN (Association of Southeast Asia Nations)

As one of the regional entities which covers the countries in Southeast Asia, ASEAN plays its crucial role in creating regional stability through political, economic, socio-cultural, and security regulations and several other aspects. In order to exercise its organizational functions properly, ASEAN as an association has shared values and principles which are used as the guidance in its policies and activities.

The norms and principles which become the foundation of the continued existence of relationship among the ASEAN members are as follows: (BambangCipto, 2007)

1. Opposing any use of violence and prioritizing peaceful solution;
2. Regional autonomy;
3. Not interfering with internal affairs of another country (non-intervention principle);
4. Opposing any military pact and supporting bilateral defense collaboration.

Humanity problems in Southeast Asia has a long root in the charter of the Establishment of ASEAN in which, through non-intervention principle, every ASEAN member country is prohibited to intervene in or even prohibited to recognize the violation against humanity in the other ASEAN members. In this Rohingya case, although some data reveal that there is strong indication of the incidence of Human Rights violations, the ASEAN member countries fail to handle the crisis. Besides that, since Myanmar governmental system is far from having democratic values, ASEAN member countries had to take serious measures in the form of intervention on this problem.

Finally, in the 21st ASEAN Summit Conference (KTT) in Phnom Penh, Cambodia, a number of ASEAN heads of state agreed to urge Myanmar to settle and put an end to the violence in this country. The KTT was attended by ten ASEAN leaders: President Benigno Aquino III (the Philippines), the Prime Minister of Singapore Lee HsienLoong, the Prime Minister of Thailand Yingluck Shinawatra, the Prime Minister of Vietnam Nguyen Tan Dung, the Prime Minister of Cambodia Hun Sen, Sultan Hassanal Bolkiah (Brunei Darussalam), President Susilo Bambang Yudhoyono (Indonesia), the Prime Minister of Laos Thongsing Thammavong, the Prime Minister of Malaysia Najib Razak, and President Thien Sein (Myanmar). The ASEAN leaders committed to reduce the internal conflict in each ASEAN country in order to make the unification plan of the economic zone in Southeast Asia in 2015 (ASEAN, 2012).

On August 18, 2012, ASEAN released joint statement about the bloody conflict in Myanmar. This joint statement was emanated from intensive communication between all ASEAN Prime Ministers and the Prime Minister of Myanmar. All Prime Ministers of ASEAN confirmed that they were ready to give human aid and to support the Myanmar government to restore favorable condition in Myanmar.

The Secretary General of ASEAN, Dr. Surin Pitsuwan stated his deep concern upon the violence which struck the Rohingya Muslims in Myanmar; he discussed it with the Foreign Minister of Myanmar, U Wunna Maung Lwin and the Foreign Minister of Bangladesh, Dipu Moni. Both Foreign Ministers promised to inform the development of the Rohingya case to ASEAN. Besides that, according to Dr. Surin Pitsuwan, the violence which occurred in Myanmar was not religious violence but it was about political, democratic, and Human Rights problems (ASEAN Surin Pitsuwan et.al, 2012). Therefore, ASEAN needed to do humanity approach to release the Rohingya from poverty, dislocation, and coercive eviction (Secretary General of ASEAN, 2012).

The Secretary General of ASEAN had also given his suggestion to hold a meeting among the three parties, ASEAN, the United Nations, and the Government of Myanmar to settle the violence in Myanmar so that it would not spread to the neighboring countries. However, the Myanmar government refused the goodwill of ASEAN to talk about the solution for the violence in Rakhine State. The Government of Myanmar stated that it was their internal affairs.

2. The United Nations

On December 24, 2012, the General Council of the United Nations agreed on a resolution regarding the fate of the Rohingya Muslims in Myanmar. The resolution put pressure on the Myanmar government to improve the situation of the Rohingya Muslims minority and to protect their Human Rights. The General Council of the United Nations agreed that the violence upon the Rohingya was Human Rights violation. The United Nations believed that the Myanmar authorities had oppressed violence on 800,000 (eight hundred thousand) Rohingya minorities. The resolution

which was signed by 193 countries stated that the United Nations expressed their concern about Rohingya minorities in Rakhine, Myanmar. The United Nations also ordered the Government in Naypyitaw to do some improvements and required the Government to protect all ethnic groups, including the right of the Rohingya to obtain legal citizenship (the United Nations Resolution, 2013).

The role of the United Nations in this case can also be done through the UNHCR, the highest institution of the United Nations for refugees. This is because a great number of Rohingya people flee to other countries in order to get asylum since they are oppressed by their own government. In the international level, UNHCR promotes International Refugee Agreement and monitors the compliance of the Government of Myanmar with the international law on refugees. In the field level, UNHCR staffs strive to protect refugees through some activities such as:

1. Responding to emergency situation;
2. Relocating refugee camps to be far from the borders in order to increase security for refugees;
3. Assuring that female refugees have the same right in food distribution and social services;
4. Unifying separated families;
5. Giving recognition of refugee status to Rohingya refugees in the country where there is no national legal instrument for refugee status;
6. Giving information to the refugees about the condition of their homeland in order that they can make decision to return voluntarily;
7. Documenting the needs of refugees to be relocated to the asylum country;
8. Providing the right to visit detention centers and giving consultation to the government about policies and practices in regulation on refugees.

Based on Article 1 of the statutes of UNHCR, it is stated that the role of UNHCR is to find a permanent solution for refugees. The solution offered by UNHCR for the Rohingya case is voluntary repatriation when there is the security which includes law, physic, and property. Security in the domain of law includes the legality and the implementation of legal amnesty to protect those who are repatriated to their homeland; it is the regulation which guarantees the civil status of the repatriated people and the access to obtaining their identification documents. Security in the physical domain includes a complete safe situation for all repatriated refugees and guarantee from the authority on their safety. Security in the property domain includes an access to any facility for viability of the repatriated refugees such as drinking water, health services, and education. Besides that, it is also important for the restoration of national protection for the Rohingya when the Government is functioned properly so that it can fulfill various aspects such as civil rights, political rights, economic rights, socio-cultural rights,

and services for its citizens like protection by the police force, district courts, and punishment on crime and atrocity.

Another permanent and sustainable solution is local integration. UNHCR can offer this choice to the transit countries or the destination countries in order that refugees can dwell permanently in their new place so that it is possible to give them citizenship naturalization and resettlement in the third countries. In this sustainable solution, UNHCR needs to collaborate with the transit countries, the original country, and the third countries (Achmad Romsan, 2003). Rohingya refugees are accommodated in refugee camps which are monitored by UNHCR. UNHCR also provides facility and aid for them so that the destination countries are not fully responsible. They can share the responsibility with UNHCR in providing aid, either in finance or equipment, taking care of and protecting the refugees. UNHCR also encourages the collaboration between the Myanmar government and the countries which accommodate Rohingya refugees in order to find the solution for the Rohingya crisis. One of the best solutions offered by UNHCR is voluntary repatriation to their homeland in Myanmar. However, UNHCR finds it difficult to realize this solution since up to the present the Myanmar government has been unwilling to collaborate and has not recognized the status of the Rohingya as a part of the ethnic groups in Myanmar.

5. CONCLUSION

Up to the present, the Rohingya refugees have been stranded throughout the Myanmar neighboring countries since they make a hazardous journey without any concrete destination. Therefore, the status of the Rohingya Muslims will be different in different countries where they are accommodated. It depends on how far the process of determining their status in each country. In other words, the determination of a refugee status depends on his eligibility. In the terminology of law on refugees, there are two categories of refugees; first, mandate refugee which is based on the factor when a country has not yet been the member of the 1951 Refugee Convention. Here, the refugee status is determined by UNHCR officials in the respective country; therefore, it is called mandate refugee. Secondly, convention refugee in which the procedure of determining refugee status is conducted by the country that has become the member of the 1951 Refugee Convention although there is still the collaboration with UNHCR representative in that country. Usually, the country establishes a special committee which consists of the agencies that are related to refugees. Based on the data obtained from mass-media, it is found that the neighboring countries where the Rohingya refugees are stranded are Asian countries like Bangladesh, Indonesia, Malaysia, and Singapore that are not the members of the 1951 Refugee Convention. Therefore, the Rohingya people who have fled to these countries can be categorized as mandate refugees. In this case, UNHCR plays its role in determining their status. In the statutes of UNHCR, especially in Article 6, refugee

is stated as any person who is outside the country of his nationality, or, if he has no nationality, the country of his former habitual residence, because he has or had well founded fear of persecution by reasons of his race, religion, nationality, or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, to return to the country of his former habitual residence.”

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