



ขอบคุณภาพจาก <https://goo.gl/NanPch>

วิกฤตโรHINGYA: ภาพสะท้อนของบทบาทกลไก การคุ้มครองสิทธิมนุษยชน ในภูมิภาคเอเชียตะวันออกเฉียงใต้

Rohingya Crisis: The Reflection of the Roles
of Regional Human Rights Protection in Southeast Asia

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บทคัดย่อ

โรHINGYA เป็นชนกลุ่มน้อยชาติพันธุ์มุสลิมที่อาศัยอยู่ในรัฐอาระกันหรือยะไข่ในพม่า เป็นเวลาหลายปีที่โรHINGYA ได้เผชิญการเลือกปฏิบัติที่ลิด落ติสิทธิมนุษยชนและเผชิญกับความตึงเครียดทางศาสนาและความรุนแรงทางชาติพันธุ์เป็นจำนวนมากหลายหลอก รัฐบาลพม่าไม่ได้ให้การรับรองว่าโรHINGYA เป็นพลเมืองของประเทศ โรHINGYA จึงมีสถานะไร้รัฐ และได้พยายามอพยพลี้ภัยออกจากพม่าไปยังประเทศเพื่อนบ้านอีก ๑ ในเอเชียตะวันออกเฉียงใต้ เช่น อินโดเนเซีย มาเลเซีย และไทย ประเทศในเอเชียตะวันออกเฉียงใต้ที่เป็นปลายทางของโรHINGYA จึงตกอยู่ในสภาพภัยไม่测 เข้าถูกจับกุมและถูกขังในคุก ไม่ถูกให้สิทธิทางการเมือง เช่น ไม่ได้รับการรับรองสถานะความเป็นพลเมืองพม่า และศึกษาถึงบทบาทของกลไกการคุ้มครองสิทธิมนุษยชนทั้งในระดับประเทศและระดับภูมิภาค โดยเฉพาะกลไกการคุ้มครองสิทธิมนุษยชนของสมาคมประชาชาติแห่งเอเชียตะวันออกเฉียงใต้ (อาเซียน) ในการพิทักษ์คุ้มครองสิทธิมนุษยชน สำหรับชนกลุ่มน้อยไร้รัฐโรHINGYA การศึกษาพบว่าโรHINGYA ไม่ได้รับการรับรองให้เป็นพลเมืองของพม่ามาตั้งแต่ก่อนมีกฎหมายสัญชาติพม่าปี 1982 ประเด็นปัญหานี้เป็นผลสืบเนื่องทางประวัติศาสตร์มาตั้งแต่คุกจักรวรรดินิยมที่พม่าถูกผนวกและถูกปกครองในฐานะเป็นจังหวัดหนึ่งของบริติชอินเดีย ความพยายามในการคุ้มครองสิทธิมนุษยชนให้แก่โรHINGYA โดยประชาคมโลกและอาเซียนนั้นด้อยประสิทธิภาพ อันเป็นผลสืบเนื่องมาจากการที่รัฐบาลพม่าไม่เคยลงนามและให้สัตยาบันแก่กฎหมายระหว่างประเทศด้านสิทธิมนุษยชนใด แม้ว่าเมื่อไม่นานมานี้จะมีการก่อตั้งกลไกสิทธิมนุษยชนในอาเซียนขึ้นมา แต่ก็ไร้ประสิทธิภาพเพรavis ของอาเซียนที่มีแนวทางไม่แทรกแซงกิจกรรมภายในเชิงกันและกัน

คำสำคัญ: โรHINGYA, สิทธิมนุษยชน, อาเซียน, กลไกสิทธิมนุษยชนระหว่างประเทศ

Abstract

Rohingya is a Muslim ethnic minority that has settled down in Arakan or Rakhine State in Myanmar. For decades, Rohingya people have encountered discriminatory deprivation of human rights and numerous waves of religious tension and ethnic violence. Myanmar government has not recognized them as its nationals so they have become stateless and been seeking refuge from Myanmar to the neighboring countries in Southeast Asia including Indonesia, Malaysia and Thailand. As Rohingya's destination, the Southeast Asian countries have been in a quandary about this issue.

This article attempts to find out why the Rohingya has not been recognized as Myanmar citizens and to examine the roles of human rights protection mechanisms both regionally and internationally, especially of the Association of Southeast Asian Nations (ASEAN) in safeguarding human rights of the stateless Rohingya minority group. It is found that the Rohingya has not been legally recognized as the citizen of Myanmar due to the 1982 Citizenship Law. The conflict has been a historical consequence of the colonial era since territories of modern Myanmar were annexed and administered as a province of British India. The efforts of human rights protection of the global community and ASEAN for the Rohingya have been handicapped. This is due to the fact that the government of Myanmar has neither signed nor ratified any international human rights laws. Moreover, although the ASEAN regional human rights body has recently been established, it is ineffective because of ASEAN's tradition of non-interference in each other's internal affairs.

Keywords: Rohingya, Human Rights, ASEAN, International Human Rights Mechanisms

Introduction

Myanmar or Burma is a country in which there is rich diversity regarding its ethnic groups. There are 135 official national races, of which Burman is the majority, and various more unofficial indigenous groups. However, the tapestry of people has been tarnished with conflicts between the government and the ethnic minorities. Myanmar is divided society. Several ethnic groups such as Mon, Karen, and Shan have unsuccessfully waged long insurgencies against the central government to free themselves. Under both the military rule and the current parliamentary government, they have allegedly been practicing human rights violations against their ethnic minorities. Rohingya is among those groups recounted to be abused by its authorities.

Rohingya refers to the Muslim ethnic minority group settling in the north of Arakan or Rakhine State on the western border of Myanmar and Bangladesh. Rohingya people have endured years of discriminatory abuses at

the hands of their government since the country attained independence from the British Commonwealth. However, their plights have just come into the attention of international society and made headlines around the world in less than a decade. In 2009, For example, news agencies such as Cable News Network (CNN) had made countless accusations that hundreds of Rohingya refugees arriving on the shores of Thailand after fleeing Myanmar in rickety boats were detained on a beach, lying prone on the sun-drenched sand, struck with a whip, and set adrift by Thai authorities (Rivers, 2011). The British Broadcasting Corporation (BBC) reported a similar story with additional information that the Rohingya people were taken to detention in an island for several days, forced to sleep out in the open air at night and their hands were tied (BBC, 2009). The BBC allegedly reported that Thai naval authorities committed inhumane treatments to those boat people before deporting them to the sea on boats without functioning engines and leaving them with little supply of food and water. Thai army authorities denied these allegations. The situation turned into a dilemma among Rohingya's countries of destination in Southeast Asia such as Indonesia and Thailand when they announced that these illegal migrants would be repatriated to the country of their origin, Myanmar. Meanwhile, Myanmar government at that time responded by simply stating that they were not its citizens but in fact illegal immigrants living on its soil. The fact that those Rohingya people have apparently fled from Myanmar but their government has rejected them as not belonging to the country has deteriorated their situation. The Rohingya people have become stateless, pledging that they have no place to live and have nowhere to go.

Thus, the Rohingya crisis destabilizes security, stability and integrity of ASEAN. It causes social, economic and political issues such as ethnic violence spreading into neighboring countries, human trafficking, illegal immigrations, religious extremism, etc. Moreover, the impasse of Rohingya's migration has ignited tensions among Southeast Asian countries for decade. While Myanmar, a country of Rohingya's origin, is condemned by international community for treating the Rohingya inhumanely, other countries such as Indonesia, Malaysia

and Thailand must have struggled with continuous influxes of Rohingya fleeing to their territories. In May 2015, there was an international outcry due to the plight of over 6,000 Rohingya people left stranded in open seas for weeks while these three countries turning away the ships (Guo Xiong, 2015, 1). This migration crisis was finally solved by Indonesia and Malaysia agreed to provide temporary shelter for Rohingya people living in their country for a year before resettling them to the third country. As for Thailand in particular, the country is a major transit point for the Rohingya trying to reach Malaysia (European Commission, 2017). Thailand has long been a center for human trafficking networks of Rohingya smuggling Rohingya migrants to Malaysia and other destination countries (Gaughran, 2017). Whereas Thailand has strongly rejected to accept Rohingya into the country and therefore been facing international condemnation over loads of scandalous harsh treatment of this stateless minority, Malaysia's standpoint is by far from Thailand. Malaysia has had a sympathetic stance toward Rohingya. In November 2016, Malaysia threatened to withdraw from the ASEAN Football Federation Suzuki Cup co-hosted by Myanmar so as to protest the crackdown of Rohingya in Rakhine State launched by Myanmar security forces (Sipalan, 2016). To further clearly protest against this incident, two under-22 friendly football matches with Myanmar were cancelled by Malaysia's national football team (Reuters, 2016). In February 2017, Malaysia sent humanitarian aid through a ship carrying 2,300 tons of food and emergency supplies to Rohingya people in Myanmar (VOA News, 2017). It has also urged ASEAN to provide assistance and inspect alleged atrocities committed against the Rohingya, and Myanmar in turn responded that Malaysia exploited this crisis "to promote a certain political agenda" (Latiff, 2017).

At present, even though there are some better changes in Myanmar such as a general election in 2010 with the parliamentary government and the appointment of the former Secretary General of United Nations (UN) Kofi Annan as an Advisory Commission in Rakhine State, the adversity of this unaccepted minority group has rarely changed. There are voluminous reports

documenting military operations by the government to systematically and increasingly oppress the Rohingya. For instance, the Office of the UN High Commissioner for Human Rights (OHCHR) released a report in February 2017, based on interviews with Rohingya fleeing from Myanmar since 9 October 2016, claiming that the Myanmar security forces have practiced grave human rights violations against the Rohingya population and these abuses were “the very likely commission of crimes against humanity” (UN News Center, 2017). Myanmar government has denied such allegations by stating that these reports of prosecutions against Rohingya were fabricated.

Hence, the article is aimed at 1) investigating why the Rohingya are not recognized as Myanmar citizens and 2) examining the roles of human rights protection of both internationally and especially regionally regarding ASEAN in safeguarding human rights as reflected from the predicament of the stateless Rohingya minority group.

It is found that the Citizenship Law of 1982 had a severe impact on the Rohingya. This ethnic minority is not legally recognized as the citizen of Myanmar to date. Although having intense conflicts with the former ruler, the military junta, other ethnic minorities such as Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan are recognized as its citizens, but the Rohingya is not included as one of them. With regard to the background of the Rohingya, there is an ardent argument on the authentic status of Rohingya between its proponents and opponents. The former insist that this ethnic minority does belong to the soil of Arakan State in Myanmar for centuries whereas the latter keep arguing that the Rohingya does not; this ethnic group is merely illegal immigrants. This article argues that the Citizenship Law of 1982 is an arbitrary discrimination against minority rights, and the issue of Rohingya’s background is a problematic consequence of the British colonization. The denial of Rohingya’s recognition has been a historical consequence of the colonial era when Myanmar was annexed and administered as a province of British India. To illustrate, this article investigates ‘the unrecognized citizenship’ status of the Rohingya granted by the Citizenship Law of 1982 and the controversy about their background.

Furthermore, the efforts of human rights protection implemented by the global community on the situation have been handicapped because the Myanmar government has neither signed nor ratified any international human rights laws. Since the Rohingya crisis has become a challenging issue in the Southeast Asian region, the roles of ASEAN and its human rights body are also examined whether or not they are able to address human rights abuses and discrimination practices against the Rohingya. In the last section, this research article concludes with lessons learned from this case study.

The Citizenship Law of 1982

“What I am going to speak today is about an important law, the Burmese Citizenship Law. If this law must be explained, what has happened in the past must necessarily be recalled. I have no desire to hurt anybody in recounting this recent history. However, the truth might perhaps hurt somebody sometimes. But I do not wish to hurt anyone and I will try not to do so” (Online Burma Library, 1982, 1).

This is a speech given by General Ne Win at a meeting held in the President House in October 1982. In fact, the law in this narrative did gravely affect certain ethnic groups, particularly the Rohingya. The promulgation of Citizenship Law in 1982 or Pyithu Hluttaw Law No. 4 of 1982 was the beginning of the Rohingya in being officially stateless. It was promulgated by the military government led by Ne Win. The heart of this law is stated in Chapter II - Citizenship, Section 3:

Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D. are Burma citizens (United Nations High Commissioner for Refugees, 1982).

Interestingly, this section provides the timeframe indicating that an ethnic group

must have settled in Myanmar prior to 1823 A.D. in order to be recognized as its citizens. There is an underlying motivation behind enacting this law by declaring 1823 A.D. as a determinate year.

After the year 1823, Myanmar had started to lose its territories to the British. In 1824, the Burmese kingdom was defeated in the First Anglo-Burmese War. After that, most territories were gradually ceded to the British, and in the Third Anglo-Burmese War of 1885, the kingdom was totally annexed with the British India, as a province of British colony in India. One significant consequence over the time of the British domination was the influx of foreign people. According to Silverstein (1997, 172-173), Indian migrants were initially brought to be farmers, soldiers, and lower-rank civil servants and many of them later became laborers, merchants and moneylenders. In addition, Silverstein described that the Chinese also immigrated to Myanmar to do various kinds of work such as labors or businesspersons. He contended that while the British ruler favored other indigenous minorities and opened an opportunity to foreign immigrants to enjoy their political and economic privileges, the Burmans were kept inferior. It was the British's infamous 'divide-and-rule' policy. Because of this oppression, Burmans were growing discontent to the British ruler and those aliens. This dissatisfaction is obviously portrayed through the 1982 General Ne Win's speech as he stated that:

During the period between 1824 and the time we regained independence in January 1948, foreigners, or aliens, entered our country un-hindered under various pretexts.

They came to live in Burma and mainly for economic reasons. The first to come were the English who ruled our country. After them came many of their camp followers (Online Burma Library, 1982, 1).

After Myanmar gained independence in 1948, the citizenship issue was one aspect to be addressed by civilian government. The Union Citizenship Act of 1948 rendered Myanmar citizenship for the British subjects who had lived in Myanmar for a period of not less than eight years in the ten years

immediately before the date of the 1948 Constitution or immediately before the year of the 1942 Pacific War (Khin Maung Kyi, 1993, 657). Silverstein (1997, 181) pointed out that the Rohingya, whom he classified as ‘Indian Muslim’, was also recognized by this law. Therefore, this law did not threaten the status of this ethnic minority at first because during the parliamentary government led by U Nu in the 1950s, the Rohingya people were accepted as its citizen.

However, when the military regime successfully staged the coup d'état and had come into power since 1962, the situation of the Rohingya has dramatically changed. The regime strongly determined to impose the policy to exclude foreigners who had come into Myanmar during the British rule to be expelled from the country. Silverstein (1997, 181) stated that the military's ruling body called the Revolutionary Council reinterpreted the 1948 citizenship law and withdrew the Rohingya's recognition as Myanmar citizen and granted this group foreign registration cards. He explained that the junta adopted a new constitution in 1974 requiring non-citizens to relinquish their old identity cards before applying a new foreign registration certificate. He described that when the Rohingya people ceded their old identity cards, the new ones were not always issued. Silverstein exemplified that the officials had conducted an identity check in 1977 and posed an intensified inspection in Arakan State. He mentioned that this incident caused an exodus of more than 200,000 Rohingya people to Bangladesh while the government announced that those refugees were illegal immigrants since they did not hold identity documents of Myanmar. This incident was known as an operation under the code ‘Naga Min’ or ‘King of Dragon’ (Lintner, 1999, 317). Besides, at this stage, the United Nations High Commissioner for Refugees (UNHCR) played its part to provide shelters for the Rohingya and then tried to negotiate with the Myanmar government to accept these people back. The government agreed because it was pressured by international community. However, there was the restriction that those returnees must provide identity cards and evidence through old village's record of residency (Silverstein, 1997).

An agreement to embrace the Rohingya back did not mark an end

of the Rohingya's quest for nationality. The military government pursued another procedure by enacting a new law on citizenship, the Citizenship Law of 1982. The law has classified citizenship into three categories: full citizens, associate citizens, and naturalized citizens. The indigenous people who had settled in the country before 1823 would be granted full citizenship, people who could not provide a proof that their ancestors had come from Myanmar were grouped as associate citizenship and must apply for this second type of citizenship within one year of the promulgation of the law, and a person whose one parent was full citizen and the other a foreigner, or one parent was an associate citizen and the other a naturalized citizen or a foreigner could qualify for naturalized citizenship (Silverstein, 1997, 182). Arraiza (2017, 2) explained that the full citizenship comprised of eight national groups: Bamar, Chin, Kayah, Kayin, Kachin, Mon, Rakhine and Shan, which were later separated into 135 sub-groups; the associate citizens were called 'eh-naing-ngan-tha'; and the naturalized citizens were referred to 'naing-ngan-thapyu-khwint-ya-thu'. None of these three categories is beneficial to most Rohingya (Zawacki, 2013, 18).

The enactment of the 1982 Citizenship Law was an effort to address what the junta perceived as a historical wrong of the surge of migrants in seeking economic opportunities throughout the colonial era, so the military junta sought to identify colonial foreigners and relegate any ethnic group not considered indigenous (Arraiza, 2017, 2-3). This law is widely known that it was promulgated in order to exclude the ethnic races with foreign origin; namely the Indian and Chinese, from Myanmar society. These two groups immigrated during the British rule so they could not meet the requisite of being the residents before 1823 to gain full citizenship. Silverstein (1997, 182) stated that the timing and framing obviously indicated that it was drafted directly against the Rohingya. Islam (2007, 330) maintained that this law was specifically drafted to decline the rights of nationality of Rohingya because it was enacted soon after the return of the Rohingya from Bangladesh after these people fled to Bangladesh in 1978.

To satisfy the new citizenship law and claim the rights as full citizens,

the ethnic groups must provide evidence to prove that they had inhabited in the country before the signified timeframe. Unfortunately, the Rohingya were unable to do so. Islam (2007, 330) mentioned that most of the Rohingya had failed to attain any of the three categories of citizenship. He firstly reasoned that the Rohingya could not qualify to claim full citizenship because this ethnic minority was not recognized as a national ethnic group according to the rule stated in Section 3 of the 1982 Citizenship Law. Secondly, he contended that a large number of the Rohingya people did not know the importance of the law and were not aware that they must apply for either full citizenship or associate citizenship within the passage of this law. Lastly, in order to acquire naturalized citizenship, the Rohingya must present crucial documents to conclusively evidence the necessary bloodlines or entry and residence preceding 4 January 1948. Islam asserted that there was only a few of Rohingya people holding these types of document. The military junta led by General Ne Win announced that the Rohingya had come to the country during the first Anglo-Burmese War and declared them ‘Indian Bengalis’ (Balazo, 2015, 8).

The result of being non-citizen is a catastrophe. The inability to gain citizenship has caused the Rohingya people to become illegal. Without Myanmar citizenship, they are unable to get access to education, basic medical treatment, or land possession. It is reported that the Rohingya people have encountered numerous kinds of human rights abuses. Islam (2007) demonstrated that this ethnic minority is restricted on mobility; that is, permission to travel beyond its community has to be gained from the officials. He illustrated that any changes in a family such as births or deaths must be reported to the local authority and the fee must be paid for these registration. Moreover, he depicted that they must be approved from the officials before getting married and both the bride and the groom have to pay a large amount of money to be granted permission. Islam exemplified that deprivation of rights to education, extortion and arbitrary taxation, extensive forced labor without paid, and land confiscation and evictions are other measures imposed upon the Rohingya. This ethnic group has lived with hardship. Rohingya people are known as poor and illiterate, and these abuses aggravate their situation.

As a consequence, the Rohingya had set another exodus of hundreds of thousands flooding into Bangladesh. There were more than two hundred thousand refugees residing along the border by early 1992 (Lintner, 1999, 397). This is a big burden for the government of Bangladesh although it was working with the UNHCR. So, the government of Bangladesh had sought a negotiation with the Myanmar government. Although there is an agreement between the governments of Bangladesh and Myanmar that the latter agrees to allow the Rohingya back, it does not ease the situation. Returning to Myanmar means that they have to face the same repeated oppression. So the stateless Rohingya people have fled to seek sanctuary in other neighboring countries in Southeast Asia until the present.

It is noticeably shown that the Citizenship Law of 1982 does not comply with international human rights standards. It was deliberately designed against minority rights, ignoring to embrace all residents in the country both indigenous and foreign ones on the basis of equality. Taylor (as cited in Mya Than 1997, 136) remarked that because of the allegedly racist features, this law has been criticized domestically and internationally. The citizenship legal framework of this government is still based on the 1982 Citizenship Law (Arraiza, 2017). International attempts to solve this legal citizenship status of the Rohingya have been made. For example, the UN called on Myanmar government to grant the citizenship to this ethnic minority in 2013 (Brooten, 2015, 136). Nonetheless, thus far, the parliamentary government continues to deny full citizenship for the Rohingya. President Thein Sein even maintained in July 2012 that “the Rohingya would not be accepted as either citizens or residents of Myanmar” (Zawacki, 2013, 22).

Controversial Background of the Rohingya

Because of the unrecognition of the Rohingya people as Myanmar citizens enforced by the promulgation of the Citizenship Law of 1982, the discourse on the background of the Rohingya has arisen. This topic is highly controversial. There are two notions between those who claim that the

Rohingya is native to Arakan and those who repeatedly insist the Rohingya is foreign to Arakan soil.

The first group comprises the Rohingya's proponents and the Rohingya people who claim for their own rights. They have similar ideas that the Rohingya is a descendant of Muslim traders who had settled in Arakan for centuries. Islam (2007, 326-327) believed that the Rohingya has inhabited in Arakan since its ancestors, who were Arabs, Moors, Pathans, Moghuls, Bengalis and some Indo-Mongoloid people, had come into this area around the seventh century. He also defined the term 'Rohingya' that it is derived from the Arabic word 'Rahan' which means 'God's blessed people'. Other opinions are alike. Lintner (1999, 65) stated that the Moorish, Arab and Persian traders arrived in Arakan between the ninth and the fifteenth centuries, some settled there and married the locals and their offspring became the forefathers of Rohingya. Nyi Nyi Kyaw (2008: 2) explained that the Rohingya's story could be dated back to the seventh century when there was the settlement of Arab Muslim traders in Arakan. Likewise, Moshe Yegar (as cited in Farzana, 2015) stated that the ancestors of the Rohingya were Arab and Persian traders who settled in lower Myanmar and Arakan in the ninth century, and that Rohingya or Roewengyah are the words that their descendants have used to called themselves. Balazo (2015, 7) quoted the work of Francis Buchanan's 'A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire' which claimed that the name Rohingya appeared since the Burma Empire as the Mohammedans who had long settled in Arakan and called themselves 'Rooinga'. He explained that the exodus of farmers and Indians from neighboring Bengal and India into Arakan under the British colonization did obscure the historical existence of Rohingya and damaged its indigenous population. He concluded that because of this, they were legally classified as 'Indian Muslims'. From these perspectives, it is believed that the Rohingya people have belonged to the Arakan for centuries. Grundy-Warr and Wong (1997) suggestd that the Rohingya people were the result of the process of the formation of a Muslim community in Arakan since the ninth century and claimed that the Bengali Muslims who were

the newcomers during the British rule had merged with the Rohingya community.

Notwithstanding, another perception is totally different. The opponents of the Rohingya, led by the military government or even this new one, repeatedly maintained that the Rohingya is not native to this country. The military junta once made a statement denying the Rohingya as being genuine ethnic minority in Myanmar that:

In actual fact, although there are (135) national races living in Myanmar today, the so called Rohingya people are not one of them. Historically, there has never been a 'Rohingya' race in Myanmar. The very name Rohingya is a creation of a group of insurgents in Rakhine State. Since the First Anglo-Myanmar War in 1824, people of Muslim Faith from the adjacent country illegally entered Myanmar, particularly Rakhine State. Being illegal immigrants they do not hold immigration papers like other nationals of the country (Islam, 2007, 329).

After the scandalous abandonment of the Rohingya by Thai authorities headlined in the news, the Burmese chargé d'affaires to Thailand has stressed the above notion that the Rohingya people are not recognized as Myanmar citizens, because they were brought into the country during the colonial era, and Myanmar allowed them to live in the country because of humanitarian reasons (Bangkok Post, 2009).

Other Myanmar scholars who studied the history of Myanmar confirm that this ethnicity is not native to their country's soil. Aye Chan (2005, 397) argued that the claim of Rohingya historians describing themselves an indigenous of Arakan for more than a thousand years has not been accepted as a fact in academic circles. He asserted that the term 'Rohingya' was first used by the Bengali Muslim intellectuals of the northwestern part of Arakan to refer to their group. In fact, the ancestors of the Rohingya people were immigrants of the Chittagong District of East Bengal, or the present-day

Bangladesh, who had come into Arakan after the annexation by the British ruler. He elaborated his work by referencing the primary sources since colonial time and affirmed that in the British colonial records they were called Chittagonians. Aye Chan also acknowledged the other Muslim groups who had settled in Arakan since ancient time. Previously, Khin Muang Saw (1994) argued that ‘Rohingya’ was not the word of Burmese and Arakanese or existing in the contributions of the British colonial officers. He claimed that ‘Mujahids’, the Muslim rebels who were illegal immigrants in Arakan later named themselves Rohingya.

During the sectarian violence between the Muslim Rohingya and the Buddhist Rakhine in 2012, the rhetoric of naming this ethnic minority groups remained persisted. Local Buddhists and government officials refuse to accept the term ‘Rohingya’ and call this ethnic group ‘Bengali’ or ‘illegal Bengali’ (Brooten, 2015, 136). They still insist that the Rohingya people are illegal aliens from Bangladesh. Furthermore, the government had asked foreign correspondents and officials, and aid workers for not using the word ‘Rohingya’. Aid workers and foreign officials in Myanmar had been repeatedly pressured by the government not to use this offensive term (Aljazeera, 2014). Yanghee Lee, UN Special Rapporteur on the Situation of Human Rights in Myanmar, has revealed that during the 2014 visit she was “repeatedly told not to use the term ‘Rohingya’ as this was not recognized by the government”, yet she defiantly refused since she was an independent expert on human rights and “guided by international human rights law” (Southwick, 2015, 140-141).

This perspective of Myanmar government and those academics has been criticized by the Rohingya and their proponents as an act of racism. Yet, the claim of those who support the Rohingya is not a piece of work based on the conduct of historical research or reliable methodology. It proves nothing and could not help the Rohingya to gain citizenship. In this controversy, one has to admit that theory of the Rohingya’s opponents vividly portrays an underlying reason why the Rohingya are not included as Myanmar citizen: the military ruler of Myanmar and its successor government consider them as one

of those aliens who had come during the British colonization. For other ethnic minorities such as Mon, Shan, or Karen, the government has treated them as dreadfully as the Rohingya but it does not deny their existence as indigenous groups of the country. The fact that the Rohingya is the product of the British colonization has made them unaccepted as one of the Myanmar citizens. The promulgation of the 1982 Citizenship Law can be viewed as a reprisal for the discontent and inferiority to foreign subjects of the British.

This article is not an attempt to agree with the idea that the Rohingya is not the bona fide native to Myanmar so this ethnic minority deserves to be legally unrecognized. Rather, it points out the root of the problem why they are not granted the citizenship. The government of Myanmar and the Rohingya are both victims of the colonization. The ‘divide-and-rule’ policy of the British has significantly caused Myanmar to become a country with divided society. What the British ruler left behind is complicated conflicts among its ethnic groups. When the British left, the Burmans, the old ethnic dwellers, have tried to repulse the newcomers Rohingya from its country since the former regard the latter as ‘others’. In addition, this prolonged hatred was deeply rooted during the annexation of Myanmar and the Second World War. The first step of the British imperial power in colonizing Myanmar was to annex Arakan as a buffer zone and since the Arakanese was severely suppressed by the Burmese king, they supported the British Empire (Farzana, 2015, 296). And when the Burmese nationalists were fighting to gain independence, those Arakanese Muslims preferred to back the British as well as demanded autonomy from the central government (Southwick, 2015, 139).

Thus, the people who are called the Rohingya today are those who were born in Myanmar and this country has been their home for many generations, at least since the British rule. Bangladesh, where their ancestors might come from, does not recognize them as its people because they were not born in this country. The Rohingya is not the ethnic group of Bangladesh but it de facto belongs to Myanmar. The fact that this group has existed and settled down for a period of time in this country cannot be denied.

International Human Rights Protection

Several international legal documents and human rights doctrines are examined and discussed in order to find the solution to the Rohingya crisis. International human rights protection in this case has been feeble because of certain factors. These include the national interest obstructing states to participate in International human rights laws, the noncompliance of international human rights agreements, and the lack of a central enforcement mechanism of International human rights laws.

The roles of international human rights agreements concerning Rohingya crisis is examined. Essentially, the government of Myanmar is not legally and morally responsible to the minority rights. Rohingya people should have the rights to enjoy fundamental human rights as it clearly stated in Article 27 of the International Covenant on Civil and Political Rights (ICCPR) that:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language (as cited in Smith, 2007).

Although there is a discussion on Article 27 of ICCPR whether ‘immigrant group’ that a state refuses to recognize within its law should be included as a ‘national minority’ or not, the Article has made it clear with the word ‘exist’ and this should not be distortedly interpreted.

The alleged mistreatment of the Rohingya by the Myanmar government violates a long list of human rights laws. Besides the ICCPR, there are the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Reduction of Statelessness (CRS), the Convention Relating to the Status of Stateless Persons (CSSP), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Unfortunately, the ICCPR or any other international human rights laws appear

meaningless and are viewed as a paper tiger because they cannot secure the protection for the Rohingya. It is because these international human rights laws are not legally binding to the Myanmar government since it has neither signed nor ratified these conventions. Thus, these conventions have no power to enforce the government of Myanmar to stop human rights violations or to respect the fundamental principle of these human rights laws. This is a very large loophole of international human rights laws. They are impossibly unable to enforce legal compliance of a state that is not their party or has neither signed nor ratified them. To avoid a threat to national interest and security, many nations have chosen a path of non-ratification of any international human rights law.

Other related, although indirectly, international human rights agreements are instead cited so as to find the solution to this problem. There are the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in which Myanmar has both ratified in 1991 and 1997 respectively. Zawacki (2013: 19) demonstrated that Myanmar, as a state party to these conventions, must be legally obliged to the provisions. He further contended that Myanmar obviously violated Article 7 of the CRC in not granting a nationality to Rohingya children and making them stateless. Although Myanmar does not adhere to these international legal obligations, no punishment has been made for the case of Myanmar's human rights violations against the Rohingya. This validates the thesis that international law cannot be enforced due to the absence of direct international law enforcement body.

Additionally, a global governance actor like the UN is not equivalent to the national judicial institutions. The UN General Assembly, the main body representing all member states, has no authority to penalize its member states. In 2013, this organ adopted a resolution regarding Myanmar by expressing its concern about the situation in Rakhine State of the Rohingya and called upon the Myanmar government to grant citizenship for Rohingya and warrant its full access to humanitarian assistance (Southwick, 2015, 147 & Zawacki, 2013, 23).

The Resolutions of the UN General Assembly cannot bind member states since their nature is a recommendatory one (Rehman, 2003, 15). The United Nation Security Council (UNSC), a body that is able to pass peacekeeping mandates, in other words, military enforcement by the name of humanitarian intervention, is always hindered by internal politics. It is very unlikely that the UNSC would launch humanitarian intervention by sending a peacekeeping troop to Myanmar because the Rohingya crisis does not pose a critical threat to peace and security of international community. Besides, had there been any UNSC resolution in relation to Myanmar, it is expected that China, one of the UNSC member, would do a ‘veto’ over it because of its outstanding stance in not accepting military humanitarian intervention and the close relationship between these two countries. In international society, non-intervention is generally acknowledged as the norm (Bellamy & Wheeler, 2011). This code of practice is contested and deeply controversial that there should be a military humanitarian intervention in a country where its government extremely violates the human rights of its citizens.

Regarding human rights doctrine, the ‘Responsibility to Protect’ or ‘R2P’ is widely conferred in the case of Rohingya crisis. This principle is the report of the International Commission on Intervention and State Sovereignty (ICISS) in 2001 which were later adopted at the World Summit Outcome Document by the UN General Assembly in 2005 (Bellamy & Wheeler, 2011: 521-523). It spells out the responsibilities of states to sustain human rights within their own boundary and abroad. Within their border, states are responsible for protecting their own citizens. Outside their border, international community has a responsibility to take an action to protect the population of any state that fails to protect its own population from the four crimes – genocide, war crimes, ethnic cleansing and crime against humanity. Many critics have raised this doctrine so that the international community could launch a justifiable humanitarian intervention in Myanmar. Southwick (2015) pointed out that the accusation of potential genocide against the Rohingya has been growing. She therefore contended that the international

community through the UN and the UNSC has the responsibility to utilize appropriate diplomatic, humanitarian and other peaceful means to solve this crisis.

Some critics argue that international pressure is more advisable than humanitarian intervention by sending forces to deal with the critical situation of Rohingya in Myanmar. The failure of allowing for intervention is best seen from Libya's case. After UN Security Council invoking the R2P and endorsing a no-fly zone over Libya to help Western-led air strikes to overthrow Qaddafi from power, this ultimately led on to the spilling over of upheaval from Libya into other countries in the region, and as a result, global support of the R2P doctrine has declined and regional and global bodies have given pause to humanitarian interventions (Bajoria, 2013). So far, little efforts have been made to put political, economic or diplomatic pressure on Myanmar regarding the Rohingya issue. Thus, international human rights protection has been seen as weak to resolve the problems of human rights abuses and discrimination practices against ethnic minority Rohingya in Myanmar.

The Roles of Regional Human Rights Protection of ASEAN

Since there is no international law to force Myanmar government to respect human rights norms, ASEAN becomes the most anticipated organization to address this problem because this regional organization is the closest to Myanmar and it is an ASEAN member state. However, ASEAN is widely criticized for ignoring to rectify the Rohingya issue in Myanmar. Hitherto, the ASEAN way of constructive engagement is the policy that ASEAN nations have utilized to deal with human rights issue in Myanmar. The constructive engagement, the peer pressure and friendly advice, is known as ASEAN policy (Mya Than, 2005: 19). Nevertheless, this mechanism is too weak to pressure the government of Myanmar. The roles of ASEAN involving ethnic conflicts in this country are visibly mirrored through the statement of Smith (2005: 285) that:

The Association of South East Asian Nations (ASEAN),
seemingly best placed to influence Myanmar, and

constantly troubled in its relations with the West by the adverse effect of Myanmar's regular involvement in its major meetings, has been challenged from within to adopt a more proactive stance with regard to Myanmar. However, it has always in the end stepped back from the challenge, to avoid appearing to 'interfere' overtly in Myanmar's internal affairs, which is seen as a basic principle of ASEAN. Therefore, it has had nothing also to offer regarding the ethnic conflict.

The pivotal reason explains why ASEAN seems to ignore monitoring and addressing human rights abuses and discriminatory practices against the Rohingya in Myanmar because this issue is regarded as Myanmar's domestic affairs. Because of 'principle of non-intervention', ASEAN countries traditionally follow the non-interference policy for a long time. They are not willing to interfere in domestic affairs of other members because they do not want to get such treatment in return. They oblige themselves to avoid intervening in internal affairs and jurisdiction of Myanmar. For Myanmar, the country has maintained to preserve that the issue be treated as its internal affairs (Yadav, 2017). ASEAN members would act something only when the ethnic conflicts in Myanmar expanded into their countries. Because of this, here comes what is known as Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. It is established to tighten border control and enhance security enforcement mechanisms related to the problems of people smuggling, trafficking in persons and related transnational crime among members. It is a dialogue in which ASEAN nations and other affected countries have used to discuss the issue of perceived illegal Rohingya migrants together. They do not accept the Rohingya as the refugees. Those three countries of ASEAN; namely, Indonesia, Malaysia and Thailand which have been affected by the surge of Rohingya migrants are not states party to the Convention relating to the Status of Refugees. They deliberately avoided binding themselves to this human rights agreement that will

undesirably create the economic burden, threat of national security or social aggregation. Primarily dealing with human trafficking, the Bali Process is viewed as a failed forum to sufficiently cover the situations where the Rohingya may not have been trafficked (Yadav, 2017).

The current issue of illegal Rohingya migrants is the best example depicting how ASEAN is coping with the matter of Rohingya. ASEAN countries avoid interfering Myanmar internal affairs even though this government is accused of committing inhumane abuses against Rohingya and other ethnic minorities. A few meetings on the Rohingya have been held (Southwick, 2015, 148). However, when the Rohingya issue is escalated to be an international problem and poses a threat to the security of other members as Rohingya people have illegally fled to their countries, it was raised to be discussed on ASEAN meeting. Nonetheless, it is merely the migration problem, not the Rohingya's persecuted situation in Myanmar. ASEAN members such as Indonesia, Malaysia and Thailand try to play active roles in the Rohingya issue because this ethnic minority has fled to their countries and threatened their security. The discussion ended with the same requirement when Myanmar agreed to accept only those people who can identify themselves as Bengali ethnic minority, not the Rohingya. This reaction can only relieve the situation. It is not the way to cure the Rohingya crisis or enforce Myanmar to recognize the Rohingya as citizens with full rights and protection. Rohingya must be conferred the citizenship because one million of this ethnic minority group cannot be permanently resettled in other countries (Southwick, 2015, 149). Thom (2016, 59) criticized that ASEAN preferred to employ the Bali process because it failed to take action by deploying human rights mechanisms in the region. He expressed that the region was even short of the most basic regional protection or cooperation framework. Therefore, ASEAN has been seen as not playing an adequate and effective role to address the human rights violation against Rohingya within the sovereignty of Myanmar.

In other regions such as Europe, Inter-America and even Africa, there are regional protection mechanisms of human rights. For example, in Europe,

there are the Council of Europe and Protection of Civil and Political Rights and European Court of Justice and human rights; in Inter-America, there are the Organization of American States Charter System and the American Declaration of the Rights and Duties of Man and the Inter-American Court of Human Rights; and in Africa, there are African Charter on Human and People's Rights and the African Court of Human Rights. ASEAN has tried to follow these paths of other regional organization. The establishment of human rights body under ASEAN Charter lightens hope among human rights observers and activists that this new body might help to solve the problems in Myanmar including the Rohingya issue. The Charter of ASEAN, which was adopted at the 13th ASEAN Summit in 2007, will serve as a firm foundation to accomplish the ASEAN Community. In this ASEAN Charter, it is proposed to establish ASEAN human rights body as stated in Article 14 that (ASEAN, 2008: 19)

1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.
2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.

Its outcome is the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 and the organization subsequently adopted the ASEAN Human Rights Declaration (AHRD) in 2012. Yet, there is a doubt on this progressive step of ASEAN whether or not the AICHR could really help to end human rights problem in Myanmar, especially the Rohingya crisis. The answer is very unlikely.

It is improbable that the AICHR will be able to implement the promotion and protection of human rights to the unrecognized ethnic minority like Rohingya. The problems are the power of enforcement, the paradox of nonintervention principle with human rights, and the noncompliance of Myanmar government. At this stage, the AHRD is a mere political document, not treaty which is legally binding. Moreover, the AICHR does not have the

powers of complaint investigation and punishment provision of human rights violations for the contravention of the member states. As a ‘Consultative Intergovernmental Body’, the authority of AICHR is simply to give an advice and recommendation. Thus, AICHR has no power to make an investigation in a country of ASEAN where there are human rights violations. Even though there was a 2013 meeting of AICHR in Indonesia to discuss the Rohingya crisis, no resolution could come out of this meeting. The case of Rohingya’s plight has been submitted for review to the AICHR by civil society group but there is any response from this commission (Gamez, 2017, 60-61). So far, the AICHR’s response towards the Rohingya crisis in Myanmar has not been addressed.

In order to effectively address human rights violation in Myanmar, the AICHR with its AHRD must be empowered otherwise it will be ‘a paper tiger’, unable to protect persecuted people like Rohingya. It seems to be a paradox if ASEAN adheres to the principle of noninterference while fostering Human Rights Body. ASEAN’s noninterference principle and the attempt to promote the safeguarding of human rights do not get along with each other. Since the Myanmar government has ignored the criticisms from outside world on its policy towards the ethnic minority, the likelihood that the government will adhere to the principle of human rights enshrined in the AHRD is still questionable. On the subject of Rohingya, the AICHR has not made any progress. In March 2013, it is reported that the commission held a closed-door meeting in order to discuss the situation of Rohingya, but there are no indications that further measure has been taken. At present, the AICHR is in a developmental stage. The task of the AICHR in promoting and protecting human rights in the region is in fact it merely tends to emphasize on the promotion of human rights rather than the protection (Nordin, Maliki, Masrur & Hashemi 2006, 596).

One of the ultimate purposes of the study of International Relations is to examine what actors ought to do. This is international ethics which is extremely vital to international politics. The international ethics in which the ASEAN nations have sustained is pluralism. To preserve their long inter-state peace, ASEAN member states hold sovereignty and non-intervention to be

their prime importance (Masilamani & Peterson, 2014, 10). Every ASEAN's efforts regarding constructive engagement is the way in which ASEAN nations try to live peacefully together to avoid any disputes. This behavior of ASEAN portrays its pluralist ethic of coexistence based on sovereignty. ASEAN nations have their own ethics but they can agree upon a framework to tolerate each other. According to Shapcott (2011, 202), pluralists distrust the use of human rights in diplomacy because it provides some states the opportunity to intervene the sovereignty of other countries and they also disbelieve in universal distributive justice since imposing any specific values or ethics on other countries is detrimental to those communities and a whole international order. This is the reason why the regional protection mechanism of human rights in ASEAN, the AICHR, is a mere 'Consultative Intergovernmental Body'.

In international relations, the notion of state sovereignty is paramount (Balazo, 2015, 6). ASEAN is a political community that considers sovereignty to be its ethical principle since it allows ASEAN's member states with different cultures to exist along each other. Sometimes to justify whether constructive engagement of ASEAN is successful or not is misleading. This brings about a judgement that ASEAN is a failed regional organization to promote the safeguarding of human rights within the region.

Conclusion: Lesson Learned on Human Rights

The Rohingya case study is the real challenge to international human rights. It reflects flaws and obstacles of human rights mechanisms of both the international community and international human rights laws.

Firstly, the Rohingya issue depicts vivid weakness of international human rights laws that they become meaningless mechanism unless states sign or ratify these laws. When these states violate human rights, those laws absolutely fail to force them to respect human rights since they are not state parties of the conventions. The international human rights laws could do nothing in this case. Secondly, international community is obliged to the principle of non-intervention. States expect each other not to interfere in

domestic affairs so they avoid doing this. Thirdly, noncompliance is another problem. Being a party to an international organization or international human rights convention does not guarantee that state will adhere to the rules of the organization or convention. Finally, state sovereignty is the main obstacle of international community and international human rights law to monitor human rights issue effectively. This becomes a critical problem. There is a line that either the international community must cross in order to safeguard the rights for individuals or ethnic minority groups, or it must continue to avoid crossing the line because it does not want to intervene in the domestic affairs of other countries. This line is the state sovereignty.

A way of ensuring respect for human rights is not an easy task. The case of the Rohingya issue is the best illustration of what the challenges of human rights are.

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