

CHAPTER IV

FINDING AND ANALYSIS

A. Overview of the History of Rohingya Ethnic

Myanmar is the largest state in mainland Southeast Asia with about 45 million people, and borders several important Asian states including China, India, Thailand, Bangladesh and Laos. It used to be one of the richest countries in Southeast Asia in term of its natural resources, now it is one of the poorest in terms of economic and social development. Regime after regime has laid waste to these resources or else exploited them for their own gain, usually at the expense of different ethnic groups.¹

Rohingyas is an ethnic minority living in Arakan, which is now called Rakhine province in western Myanmar, bordering Bangladesh. Myanmar is a country with a lot of ethnics, but there are 8 huge ethnics such as Kachin, Kayah, Kayin (Karen), Chin, Burma, Mon, Rakhine and Shan, the rest are ethnics of minorities. The Rohingya are Muslims who reside in the northern parts of the Rakhine (historically known as Arakan) State, a geographically isolated area in western Burma, bordering Bangladesh. The British annexed the region after an 1824-26 conflict and encouraged migration from India. Since independence in 1948, successive Burmese governments have

¹ Kenneth Christie and Denny Roy, 2001, *Politics of Human Rights in East Asia*, London, Pluto Press, p. 82

considered these migration flows as illegal. Claiming that the Rohingya are in fact Bengalis, they have refused to recognize them as citizens. Shortly after General Ne Win and his Burma Socialist Programme Party (BSPP) seized power in 1962, the military government began to dissolve Rohingya social and political organizations. The 1974 Emergency Immigration Act stripped Burmese nationality from the Rohingya. In 1977, Operation Nagamin (Dragon King) constituted a national effort to register citizens and screen out foreigners prior to a national census.²

For centuries, the Rohingya Muslims coexisted relatively peacefully with the Rakhine Buddhists. However, this changed around the Second World War, when communal riots erupted between the two ethnic groups at the instigation of third parties, most notably the British Raj. The bitterness was fuelled by the pogrom of March 28, 1942 in which approximately 100,000 Rohingyas were massacred and another 80,000 had to flee from their ancestral homes. Two hundred and ninety four Rohingya villages were totally destroyed. Since then the relationship between the two communities deteriorated to the extent that for the Rohingya there remained hardly any option open other than self-determination in an autonomous territory that would protect their basic human rights. After Burma's independence in 1948, Muslims carried out an unsuccessful armed rebellion demanding an autonomous state within the Union of Burma. This resulted in a backlash

² Anonymous, The International Observatory on Statelessness, taken from <http://www.nationalityforall.org/burma-myanmar> accessed on May 25th 2016 on 22.09 p.m

against the Muslims that led to their removal from civil posts, restrictions on their movement, and confiscation of their property.³

Upon achieving independence from England in 1948, Myanmar struggled with armed ethnic conflict and political instability during a prolonged period of political reformation. In 1962, a military coup produced a one-party, military state informed by socialist notions of governance—it would last for more than sixty years. During that time, the Burmese army committed numerous human rights abuses, such as killing, raping, and torturing the state's Rohingya Muslim population. Notably, the army subjected the group to mass expulsions in 1977 and 1992, creating what has been widely viewed as a chronic refugee crisis in neighboring Bangladesh.⁴

The resulting military campaign led to widespread killings, rape, and destruction of mosques and religious persecution. By 1978, more than 200,000 Rohingya had fled to Bangladesh. The Burmese authorities claimed that their flight served as proof of the Rohingya's illegal status in Burma. Under the 1982 Citizenship Law, Rohingya were declared "non-national" or "foreign residents." This law designated three categories of citizens: (1) full citizens, (2) associate citizens, and (3) naturalized citizens. None of the categories applies to the Rohingya as they are not recognized as one of the 135 "national races" by the Myanmar government. More than 700,000

³ Habib Siddiqui, "A Long History of Injustice Ignored: Rohingya: The Forgotten People of Our Time", Islam Awareness, taken from http://www.islamawareness.net/Asia/Burma/ro_article003.html accessed on March 23th 2016, at 7.03 a.m

⁴ Engy Abdelkader, "The Rohingya Muslims in Myanmar: Past, Present, and Future", *Oregon Review of International Law*, 2014, p. 2-3.

Rohingya in northern Rakhine today are effectively stateless and denied basic human rights.⁵

In Arakan state, for instance, the Rohingyas have largely been discriminated against; they are denied national identity cards and they restrict the Muslims' travel and freedom of movement. In 1982 a Citizenship Act had effectively removed citizenship from this group making them ineligible for basic social services, health and education. In early 1992 as many as 250.000 of these Burmese Muslims fled into neighboring Bangladesh, claiming that the army had been engaging in plunder, rape and massacres against them, aimed at expelling them from the country. Although the majority has returned, they still claim that they face discrimination and unequal rights; between 1996 and 1997, many of them tried to establish their case for asylum, in Bangladesh, citing the potentially fatal threat that awaited them if they returned.⁶ Besides doing discriminate, the government does not recognize Rohingyas as citizens of Myanmar, which is regulated on Burma Citizen Law 1982, in article (4) stated: "*The Council of State may decide whether any ethnic group is national or not*" that is one of the reasons that the Rohingyas ethnic becomes stateless.

Under the military regime of General Ne Win, beginning in 1962, the Muslim residents of Arakan were wrongfully labeled illegal immigrants who had settled in Burma during the British rule. Their history and culture to their ancestral land was conveniently ignored. The Burmese central government

⁵ *Ibid.*

⁶ Kenneth Christie and Denny Roy, *Op. Cit.*, p. 95-96

made all efforts to drive them out of Burma, starting with the denial of their citizenship. The 1974 Emergency Immigration Act took away Burmese nationality from the Rohingyas, making them foreigners in their own country. Then came the Burma Citizenship Law of 1982 violating several fundamental principles of the international law and effectively reduced them to the status of Stateless.⁷

The human rights and humanitarian condition of the Rohingya is further exasperated by their official “statelessness.” The Citizenship Act, enacted in 1982, codified the legal exclusion of the Rohingya, presently numbering approximately one million, by denying the group citizenship rights. The Act officially recognizes 135 “national races” that qualify for citizenship. The Rohingya Muslims are not included on that list and as such are denied the full benefits of citizenship on account of what the Burmese government has described as their “nonindigenous ancestry.” Widespread societal prejudice against the group informs the historical (and contemporary) lack of political will to repeal the law. To be sure, the denial of Burmese citizenship has resulted in additional injustices and inequalities. Illustrative is a Burmese law—the Emergency Immigration Act—requiring the possession of National Registration Certificates by all citizens. As non-citizens, however, the Rohingya can only possess Foreign Registration Cards, which are rejected by a number of schools and employers.⁸

⁷ Habib Siddiqui, “A Long History of Injustice Ignored: Rohingya: The Forgotten People of Our Time”, Islam Awareness, taken from http://www.islamawareness.net/Asia/Burma/ro_article003.html accessed on March 23th 2016, at 7.03 a.m

⁸ Engy Abdelkader, *Op. Cit.*, p. 103-104

As of 1999, there have been no less than 20 major operations of eviction campaigns directed against the Rohingyas that were carried out by the successive Governments of Burma. In pursuance of the 20-year Rohingya Extermination Plan, the Arakan State Council under direct supervision of State Council of Burma carried out a Rohingya drive operation code named Naga Min or King Dragon Operation. It was the largest, the most notorious and probably the best-documented operation of 1978. The operation started on 6th February 1978 from the biggest Muslim village of Sakkipara in Akyab, which sent shock waves over the whole region within a short time. News of mass arrest of Muslims, male and female, young and old, torture, rape and killing in Akyab frustrated Muslims in other towns of North Arakan. In March 1978 the operation reached at Buthidaung and Maungdaw. Hundreds of Muslim men and women were thrown into the jail and many of them were being tortured and killed. Muslim women were raped freely in the detention centers. Terrified by the ruthlessness of the operation and total uncertainty of their life, property, honor and dignity, a large number Rohingya Muslims left their homes to cross the Burma-Bangladesh border.⁹

In 2012, local Buddhists blame the Muslims Rohingyas for the outbreak of violence, which appeared to have started when a woman was raped and killed. Three Muslim men are in custody following the attack. In what seems to have been a revenge attack, 10 Muslims were killed in an attack

⁹ *Ibid.*

on a bus.¹⁰ That's made the situation become worse and a riots between both of ethnic Rakhine and ethnic Rohingyas arouse in Arakan.

As a result of the riots, 88 people lost their lives of which 31 people were Rakhine and 57 were Muslim Bengalis. Similarly, houses and religious buildings from both communities were burnt down. The Government took immediate actions with full restraint to restore law and order and stability in places where riots broke out since the very beginning of violence. As a result, law and order in Rakhine State is improving and overall situation is now returning to normalcy.¹¹ This condition forced them to become boat people and fled to get an asylum especially in Thailand, Malaysia and Indonesia.

On May 2015, hundreds of Rohingyas people escape form Myanmar in boats to find good welfare in new country. They stayed in the boat for almost 2 months with no food and water. Even some people jumped into the sea because theirlive jostle in the boat. Finally Rohingys have landed in Aceh, Indonesia and have received proper treatment by the Government of Indonesia. They also get help from many other countries.

Until nowadays, there are the Rohingya Muslims in Indonesia as many as 11,941 people, it is based on the data received by the Foreign Minister of Indonesia since 2005. For the Rohingyas who arrived in Indonesia recently, the number was around 1,346 people. The first group of as many as 558

¹⁰ Anonymous, "Old tensions bubble in Burma", BBC News, taken from <http://www.bbc.co.uk/news/world-asia-18402678> accessed on November 6th 2015 at 12.14 a.m.

¹¹ Ministry of Foreign Affairs Nay Pyi Taw, "The Government of the Republic of the Union of Myanmar Ministry of Foreign Affairs", Webcitation, taken from <http://www.webcitation.org/6Bj9aSWM5> accessed on November 4th 2015 on 7.15 p.m.

people, second until the third group of as many as 664, followed by 47 and 96.¹²

B. The Protection of Refugee According to International Refugee Law

Every citizen has rights to get protection from their government, because protecting citizen is primarily their responsibility of States. Sometimes in reality, not all of States are able to protect their citizen. Moreover, some of the States commit discrimination and human rights abuse or similar harm to its citizens. If the state cannot provide the protection to their citizens itself, in the end citizens need to survive and leave their homeland to seek a safe place to live in another country.

Someone who is very vulnerable to safety because he is a stateless person, or who is persecuted in their homeland and also does not have any protection is called as a Refugee. The existence of Refugees has increased in number from year to year. It shows that the existence of refugees should be given special attention. International community try to solve the problems of refugees, the humanity as human beings has led them to provide protection and help refugees. This was due to the refugees who escaped from their country and have no protection from their country, and it will difficult for the refugees to survive in their new environment. According to Universal

¹² Yudha Manggala P Putra, *Op. Cit.*,

Declaration of Human Rights 1948, article 14 stated “*Everyone has right to seek and enjoy in other countries asylum from persecution.*”

To ensure that the fundamental rights of refugees are still protected, when their habitual residence is unable to protect the rights of citizens, the refugee problems will be taken over by the international community to ensure that those refugees are safe and protected. A refugee must obtain a basic protection as a human being. It was the duty of the state, and also the obligations of the international community. The issues of refugees have been considered as humanity problems that could happen to anyone. Refugees also become a serious global crisis that and can afflict any country.

When a person is compelled to flee his country of origin or nationality his immediate concern is protection against refoulement. Such protection is necessary and at times, the only means of preventing further human rights violations. As his forcible return to a country where he or she has reason to fear persecution may endanger his life, security and integrity, the international community has recognized the principle of non-refoulement, which prohibits both rejection of a refugee at the frontier and expulsion after entry. This rule derives its existence and validity from the twin concepts of ‘international community’ and ‘common humanity’ and must be seen as an integral part of that foundation of freedom, justice and peace in the world which is human rights. Legal basis for protection against forced return of refugees to countries where they apprehend danger to their lives, safety, security and dignity can

also be found in the law relating to the prohibition of torture and cruel or inhuman treatment.¹³

The protection of refugees in the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees have several standards of rights and obligations for refugees and also obligations of the State of refuge to the refugee to guarantee the protection of refugee without any fear of persecution. The protection of refugees regulated in the 1951 Convention and the 1967 Protocol as Non-refoulement principle is the basis guidance of refugee protection. The state cannot expulse or return the refugees to their habitual residence where their lives and freedoms might be at risk or subjected to torture or dangerous situations, this is called as a non-refoulement principle.

The principle of non-refoulement is an important role for the refugee protection who finds the safe place to continue their life from conflicted area or well-founded fear of persecution endangering their life. This principle is also recognized in international legal instruments such as the 1933 Convention Relating to the International Status of Refugees, 1949 Geneva Convention on the Protection of Civilian Persons, 1984 Convention against Torture, Cruel Inhuman or Degrading Treatment or Punishment, also 1967

¹³ B.C. Nirmal, "Refugee and Human Rights", World II, taken from <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/6.html> accessed on December 30th 2015 at 2.22 PM

Declaration on Territorial Asylum.¹⁴ According to 1951 Convention, the criteria of consideration for refugee determination status are:¹⁵

1. Outside the country of nationality or habitual residence
2. Well-founded fear
3. Persecution
4. Convention grounds
5. Unable or unwilling to avail himself of State protection

Moreover, the protection afforded is not absolute, since Convention relating to the Status of Refugees, Article 33(2) permits the return of a refugee 'whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of a that country'. The exception under article 33(2) Convention relating to the Status of Refugees is without effect, however, where prohibition of refoulement under human rights law are applicable, since these provisions take precedence in cases where the Refugee Convention as such would permit refoulement. Article 33 of the Convention relating to the Status of Refugees is supplemented in the case of refugees who are lawfully in the territory of a contracting state by Article 32 of the Convention, which guarantees them the same due process rights as those enjoyed by foreigners

¹⁴ Sigit Riyanto, Prinsip Non-Refoulement dan Relevansinya dalam Sistem Hukum Internasional, *Mimbar Hukum*, Vol. 22, No. 3, 2010, Universitas Gajah Mada, Yogyakarta, p. 438-439.

¹⁵ UNHCR, 2005, *Penentuan Status Pengungsi: Mengenali Siapa itu Pengungsi*, UNHCR, p. 9-10

in general under the human rights treaties and furthermore limits the ground for expulsion to those of national security and public order.¹⁶

Article 1, Sections C to F, of the Convention list four cases where a person coming within the definition of refugee is nevertheless excluded from the protection of the Convention: he no longer needs protection (Section C); he is receiving protection and assistance from UN organs or agencies other than the UNHCR, for example the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) (Section D); although not a national of his new State of residence, its authorities treat him as if he were one (Section E). Section F is rather different in that it list, in the words of the UNHCR Handbook, ‘persons not to be deserving of international protection’. A State is required not to treat a person as a refugee if there are ‘serious reasons for considering’ that:¹⁷

1. He has committed a crime against peace (Aggression), a war crime or a crime against humanity;
2. He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
3. He has been guilty of acts contrary to the purposes and principles of the United Nations.

¹⁶ Walter Kälin, Jörg Künzli, 2010, *The Law of International Human Rights Protection*, OUP Oxford, p.512.

¹⁷ Aust Anthony, 2005, *Handbook of International Law*, Cambridge University Press, Cambridge, p.175.

The 1951 Refugee Convention considered important for ratification because the Convention is the first international treaty that covers a wide range of the most important aspects of the life of a refugee. The convention also establishes minimum rights standards to be acquired for refugees: that is the same rights as other foreigners in a certain country, and also equal treatment with local citizens.¹⁸ There are minimum rights standard of the refugees such as:

1. Rights to non-discrimination (Article 3)

The refugees have rights not to be discriminated as to race, religion or country of origin in their new habitual residence.

2. Rights to get freedom of religion. (Article 4)

The refugees have the right without being treated discrimination as to race, religion or country of origin and respected to have freedom and practice their religion.

3. Rights to get wage-earning employment (Article 17)

The refugees who had been stationed permanently in any country and has been recognized by the law, then they have the right to get a job and set up a trading company and other activities, in which the free work must be in accordance with the provisions which is recognized, for the example is a certificate to get the right to engage in wage-earning employment.

¹⁸ UNHCR, 2007, *Penandatanganan Dapat Membuat Seluruh Perbedaan*, Geneva 2, UNHCR Divisi Perlindungan Internasional, p.7.

4. Rights to get house (Article 21)

The state has to give house for refugees who lawfully stay in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances.

5. Rights to get education (Article 22)

The refugees have rights to get the same treatment as is accorded to nationals with respect to elementary education also obtain the remission of fees and charges and the award of scholarships.

6. Rights to get public relief (Article 23)

The refugees have rights in their new residence to get the same treatment with respect to public relief and assistance as is accorded to their nationals.

7. Rights to not expelled. (Article 31)

A refugee lawfully in their territory is safe on grounds of national security or public order

8. Rights to not be expelled or returned (refouled) to their habitual residence where they might be subjected to torture and persecution (Article 33)

The state is prohibited to expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Besides, from the rights of refugees mentioned above, the Convention also regulated the obligations of refugees as stated in Article 2 of the 1951 Convention which stated “*Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for maintenance of public order.*” The article means that every refugee is obliged to comply with all applicable laws and regulations or provisions for creating public order in the country in which he is placed.

C. The Protection the Rohingya Refugees in Indonesia

1. The Obligations of Indonesia as a Transit State

Indonesia is one of the countries which have to deal with the problems of asylum seekers and refugees. Although not the destination country, with the consequence of the geographical location, the Indonesian state is the last destination of an asylum seekers and refugees to the country of their destination, namely Australia. For the first time, in 1979, Indonesia had to deal with issues concerning refugees and asylum seekers in huge scale. At that time, refugees from Vietnam arrived in Indonesia as a result of the Indo-China war between the Republic of China and Vietnam. About 170,000 refugees come to Indonesia to seek an asylum¹⁹. With this conditions, the population

¹⁹ Fadli Afriandi & Yusnarida Eka Nizmi, “Kepentingan Indonesia Belum Meratifikasi Konvensi 1951 dan Protokol 1967 Mengenai Pengungsi Internasional dan Pencari Suaka”, *Jurnal Transnasional*, Vol. 5, No. 2, February 2014, p. 1095-1096.

of refugees and asylum seekers increase from year to year. There are several factors that caused Indonesia was chosen as a transit state such as:²⁰

- a. Indonesia has a large sea territory and long coastline, but is not supported by the comprehensive legislations. With this conditions, the refugees and asylum seekers easily enter the territory of Indonesia.
- b. The position of Indonesia is lack to overcome the problem of the refugees from another country because Indonesia do not have any national legislations specifically that regulate about refugees
- c. The absence of infrastructure to supervise Indonesian territorial waters.
- d. The culture of Indonesian citizen known as sociability cause the impression that the Indonesian people easily accept the refugees who came to Indonesia.
- e. Until nowadays Indonesia has been living in harmony and peace with a variety of ethnic, religion and cultural diversity.

There was huge scale of boatloads of Rohingya people last year who fled their homeland came to Indonesia to get an asylum, and then they arrived in Aceh. The arrival of Rohingyas was due to the persecution and psychological pressure from the military junta of Myanmar. The Government of Myanmar did not give them nationality status and did not recognize them as the citizen of Myanmar. The Rohingyas did not have national protection because they are stateless people. This conditions forcing them to be boat people and fled from their homeland to get an asylum in Malaysia, Thailand

²⁰ Denny Ramdhany, 2015, *Konteks dan Perspektif Politik Terkait Hukum Humaniter Internasional Kontemporer*, Jakarta, Rajawali Press, p. 332

or Indonesia. Finally the boatloads of the Rohingyas come to Indonesian territorial waters and landed in Aceh.

Before the Rohingyas get refugee status, they were asylum seekers. Until nowadays, Indonesia has not ratified 1951 Convention and its protocol. With this condition, the Indonesian Government does not have any authority to give Refugee Status Determination. The international organizations which have the authority to determine the status of a person is UNHCR. The refugees have rights to get an asylum as listed in the Article 14 of the Universal Declaration of Human Rights as stated:

- a. Everyone has the right to seek and to enjoy in other countries asylum from persecution.*
- b. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*

Until nowadays, there are no regulations which regulate the refugees who came to Indonesia. From the legal perspective, Indonesia does not have any obligations to give protection for refugees because Indonesia has not ratified the 1951 Convention and 1967 Protocol. However, as one of the countries who ratified the Universal Declaration of Human Rights and Convention against Torture, Indonesia respects and recognizes the rights to seek in other countries asylum without any fear of persecution. Indonesia has also already adopted a set of international principles as well as national regulation governing human rights. With this condition, the Government has the obligation to not ignore the basic rights of the Rohingyas to protect them as refugees.

According to the 1951 Convention there are three Articles which regulated the international protection for the refugees: those are Article 31 (Refugees unlawfully in the country of refuge), Article 32 (Expulsion), and Article 33 (Prohibition of expulsion or return). This principle prohibited any state to return or expel a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.²¹

The right to get an asylum is already regulated in Article 28G (2) of 1945 Constitution stated “*Everyone has the right to freedom from torture or degrading treatment of human dignity and the right to obtain political asylum from another country.*” This becomes the basis of protection for the refugees in Indonesia. The guarantee to get an asylum and protection in Indonesia regulated on the People’s Consultative Assembly Decree No. XVII/MPR/1998 as stated “*Every person has the right to seek asylum to gain political protection from other countries.*”

In their habitual residence, the majority of ethnic in Myanmar is Buddhist, while the Rohingyas is minority ethnic. By reason of race, the military junta of Myanmar forbids them to practice their religion. When the Rohingyas arrived in Indonesia, they are able to worship without fear or subjected to torture like in their habitual residence. For the example, the Rohingyas were allowed to fast and do Eid prayers in Aceh. The right to get

²¹ Article 33(A) of Convention Relating to the Status of Refugees 1951.

freedom of religion in Indonesia is regulated in Article 22 of Law no. 39 of 1999 concerning Human Rights which stated that:

- a. *Everyone has the right to freedom to choose his religion and to worship according to the teachings of his religion and beliefs.*
- b. *The state guarantees everyone the freedom to choose and practice his religion and to worship according to his religion and beliefs.*

The Rohingyas also get the rights of non-discrimination in Indonesia which is regulated in Article 3 (3) Law no. 39 of 1999 concerning Human Rights which stated “*Everyone has the right without any discrimination, to protection of human rights and obligations.*” Even though Indonesia has not ratified 1951 Convention, Indonesia prohibited to force boatloads people of the Rohingyas back out to sea. Indonesia respects non-refoulement principle which is not returning the Rohingyas back to their homeland where they might get persecution, inhumane treatment by their own government. This principle has become customary international law which means that all of states are obliged to respect this principle.

Indonesia recognizes this principle because Indonesia has already ratified the Convention against Torture, and Geneva Convention which contain of non-refoulement principle. It means that this principle becomes the legal basis of protection for the refugees in Indonesia. The article 3 of Law no. 5 of 1998 concerning ratification the Convention against Torture stated: “*No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*”

Unfortunately Indonesia cannot fulfill all of the rights of refugees such as Article 17 which explains about the right to work for refugees and Article 21 about, the right to get house. In article 17, it is stated that "*The Contracting State shall accord to refugees lawfully ..., as regards the right to engage in wage-earning employment*", the article requires the state parties of the Convention to provide jobs for the refugees which is considered to be too heavy for the Indonesian government, considering that Indonesia is a developing country and has a fairly high unemployment rate, and income of the Indonesian people itself is also considered not quite feasible.²²

In addition, Article 21, provides "*As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances*". In the article, there is a provision to provide house for the refugees are also considered troublesome to be carried out by the Indonesian government. The poverty rate in Indonesia is also quite high, and many underdeveloped regions in Indonesia are still in need of infrastructure worthy of the central government. Therefore, if the government makes a policy in terms of providing facilities such as homes for the refugees, it can be considered inappropriate considering that Indonesia is still a developing country.²³

²² Yahya Sultoni, *Op.Cit.*

²³ *Ibid.*

Although not all the rights of refugees could be fulfilled by Indonesia, the Indonesian government gave financial support to the refugee camps in Aceh by issuing funds as much as \$174.000 (Rp. 23 Million) to help the refugees of Rohingya.²⁴ The Government of North Aceh District and the Central Government also gave shelter which is called as Integrated Community Shelter for the Rohingyas, in Aceh. This shelter has external functions to educate the world about how the community of Indonesian civil society has willingness to help our fellow human beings. In this context, the state through the District Government has provided space for the Indonesian people to express the values of humanity.²⁵

2. The Cooperation of UNHCR to Resolve the Rohingya Refugees Case

Until nowadays Indonesia is not a State Parties of the 1951 Convention and the 1967 Protocol, and Indonesia also does not have any legislation to handle the refugees. So, as a legitimate process requested by UNHCR as the license for the influx of refugees, then, in 2002, the Directorate General of Immigration under the Ministry of Justice and Human Rights give an announcement which stated that the Indonesian government accepts the person or groups to enter Indonesia who are

²⁴ Ron Corben, "Peran Penting Aceh dalam Menampung Pengungsi Rohingya", National Geographic Indonesia, taken from <http://nationalgeographic.co.id/berita/2015/06/peran-penting-aceh-dalam-menampung-pengungsi-rohingya/3> accessed on 22 December 2015 at 9.05 AM

²⁵ Anonymous, "Makna Integrated Community Shelter ACT Rohingya untuk Indonesia", Aksi Cepat Tanggap, taken from <http://blog.act.id/makna-integrated-community-shelter-act-rohingya-untuk-indonesia/> accessed on 19 January 2015 at 2.01 PM

considered as Refugees.²⁶ Indonesia cooperate with UNHCR to deal with issue of refugees, in this case is the Rohingyas.

UNHCR continues to provide mandate protection to refugees and asylum-seekers in a number of urban locations through registration, documentation and processing for resettlement and repatriation, where possible. The detention of refugees and asylum-seekers and the widespread location of people of concern remain key protection challenges in Indonesia, particularly for a growing number of children and detainees with specific needs.²⁷

Indonesia was chosen to be a regional base of UNHCR because Indonesia is considered relatively safe compared to other countries and the geographic of Indonesia very strategic because it is close to a third country, Australia. When there's refugee's request cases in Indonesia, the government will bring it to the UNHCR. Furthermore, the agency conducted a series of fixed procedures for refugee status applicants. The applicant by UNHCR is identified in accordance with international protection needs.

The UNHCR has a responsibility to provide international protection to refugees. Indeed, it remains the only international organization with a specific mandate to protect refugees at the global level. Under its Statute and subsequent General Assembly and ECOSOC resolutions, and in

²⁶ *Ibid.*

²⁷ Anonymous, "2015 UNHCR subregional operations profile - South-East Asia", UNHCR, taken from <http://www.unhcr.org/pages/49e488116.html> accessed on January 29th 2016 at 10.01 p.m

conjunction with the 1951 Convention, the High Commissioner's responsibilities relate primarily to several groups of people known collectively as "persons of concern to UNHCR". These generally include refugees and asylum-seekers, returnees, stateless persons and internally displaced persons. In Article 6 of the 1950 Statute of the UNHCR, the authority to provide international protection, include:²⁸

- a) *(i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization.*
- (ii) Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.*
- b) *Any other 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 reason 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, or, if he has no nationality, to return to the country of his former habitual residence.*

In the case of the Rohingya refugees, UNHCR has a function to perform long-term (durable solution) settlement to them. These solutions were divided into three, such as:

²⁸ Yordan Gunawan & Gatot Priambodo, *Op.Cit*, p. 173.

a. Repatriation

The UNHCR and other international agencies take responsibility for assisting refugee people with the process of return, and for helping them to rebuild their lives in their homelands. It is important that conditions are safe in the areas that people are returning to. A peace agreement should be in place before any return or repatriation, and armed conflict should have ceased in the areas of return. Voluntary repatriation is the return of refugees to their home country, of their own free will, once conditions have become safe. Refugees are often asked to return voluntarily when conditions have improved in their country of origin. People must be able to have had a guarantee of protection from their government.²⁹

Repatriation solutions have a requirement that the country of origin of refugees must be in a safe condition. This is not good solution to applied to the Rohingyas, considering that there are a threat of persecution could happen to them because the Rohingya have no citizenship status in Myanmar, so they would get any protection from the state. Moreover, the government itself who do persecution to them, the Rohingyas.³⁰

b. Local Integration

Local integration as a durable solution combines three dimensions. Firstly, it is a legal process, whereby refugees attain a wider range of rights

²⁹ NSW Government, "Refugee Settlement", Roads to Refugee, taken from <http://www.roads-to-refuge.com.au/settlement/settlement-global-response.html> accessed on February 20th 2016 at 10.01 p.m

³⁰ *Ibid*, p, 174.

in the host state. Secondly, it is an economic process of establishing sustainable livelihoods and a standard of living comparable to the host community. Thirdly, it is a social and cultural process of adaptation and acceptance that enables the refugees to contribute to the social life of the host country and live without fear of discrimination. Using a narrow conception of local integration, it could be argued that the process becomes a durable solution only at the point when a refugee becomes a naturalized citizen of his or her asylum country³¹. Local integration will also benefit the countries that receive them, if the refugees have the expertise or skills to help the country of asylum. The example of refugees who had local integration is Rwanda refugee in Uganda.

c. Resettlement

Resettlement is the organized movement of refugees from refugee camps, urban areas or other temporary situations to a third country where they can live permanently. Resettlement in a third country may be the only way to guarantee protection of a refugee who is at risk of forcible return or who faces other serious problems in the country they have sought asylum. Many countries assist refugees to make a new home outside of their own country. All countries that have signed and ratified the UN Refugee Convention, including Australia, are obliged to grant the same human rights and assistance to refugees that they grant to their citizens and other legal

³¹ Alexandra Fielden, 2008, "Local integration: an under-reported solution to protracted refugee situations" taken from <http://www.unhcr.org/486cc99f2.pdf> downloaded on February 21th 2016 at 8.30 a.m.

residents.³² UNHCR helps refugees to make arrangements for cooperation with third countries to provide shelter for them.

When voluntary Repatriation or local integration is not an option for an ethnic due to the risk of persecution, the collective settlement of the group may not be appropriate. Resettlement not only address the need for long-term protection of the individual concerned, but also improve the prospects for the integration of those who are allowed to settle permanently in the country of asylum, so as to help create sustainable solutions for all of the displaced community.³³

To be eligible to a resettlement, a person must meet the criteria established by UNHCR and the country of destination. UNHCR criteria reflect the function of resettlement as a protection instrument. To improve its performance, UNHCR works with resettlement destination countries to enhance and harmonize the criteria and the process of resettlement. Because resettlement is an option that is highly coveted by refugees, it is important to ensure that management is done in a transparent manner to prevent corruption and reduce the risk of resettlement becoming towing factor for the arrival of new refugees.³⁴ Australia, Canada, Denmark, Norway and United States are third countries which is to provide a resettlement place.

³² NSW Government, *Op.Cit.*.

³³ UNHCR, *Op. Cit.*, p. 137.

³⁴ *Ibid.*