

CHAPTER I

INTRODUCTION

A. Background

In 1962, Ne Win took over the authority of government of Myanmar by staging a coup of U Nu era. The reason for the coup was to resolve an insurgency by ethnic minorities against the government. Then Myanmar Military Junta headed the regime in Myanmar. Since the ruling of military junta, they pressed the Rohingya ethnic in many ways and did not recognize that the Rohingyas is the citizen of Myanmar. Ministry of Foreign Affairs of the Union of Myanmar said:

"In actual fact, although there are (135) national races living in Myanmar today, the so-called Rohingya people is 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 the Rakhine State. Since the First Anglo-Myanmar War in 1824, people of Muslim Faith from the adjacent country illegally entered Myanmar Ngain-Ngan, particularly Rakhine State. Being illegal immigrants they do not hold immigration papers like other nationals of the country."¹

The government of Myanmar recognized the ethnic of Rohingya as an illegal immigrants who come from Bangladesh. But the Rohingyas themselves state that they are an indigenous Burmese ethnic group descended

¹Alternative ASEAN Network on Burma, 2006, *Campaigns, Advocacy, and Capacity-Building for Human Rights & Democracy*, Bangkok, p. 2

from the first Muslim inhabitants of Arakan who arrived in or around the 9th century.²

Amnesty International notes the human rights violations committed on the Rohingya ethnic by military junta of Myanmar: in 1978 about 200,000 Rohingya people fled to Bangladesh due to the enactment of Nagamin operation by the Military Junta. This operation is done in an effort to examine every individual who is in Myanmar, documenting citizenship status, as well as lists of people who illegally entered Myanmar.³

According to Amnesty International, Myanmar is one of the countries with long records of human rights violation. The restrictions on freedom of expression, violations of international human rights against ethnic minorities still ongoing. In general periodic reports issued by the Human Rights Council on human rights in Myanmar in January 2011 stated that the government of Myanmar does not done any responses to poor situation in the country or commit to take comprehensive corrective action, including the government hasdeclared that the ethnic minorities, the Rohingyas, have no citizenship rights in Myanmar, so that they are an illegal immigrant status.⁴

² Irish Centre for Human Rights, 2010, *Crimes Against Humanity in Western Burma: The Situation of the Rohingyas*, National University of Ireland, Galway, p. 22

³ Amnesty International, 2004, *The Rohingya Minority: Fundamental Rights Denied*, p. 5

⁴ Amnesty International, *No international Compromise on Human Rights in Myanmar*, <http://www.amnesty.org/en/library/asset/ASA16/001/2011/en/db0f9fd0-de19-4f3d-baac-81d78cd04b66/asa160012011en.pdf>, downloaded on February 24, 2013, at 03.00 a.m.

The following points summarize abuse of 'rights of vulnerable people', including the Rohingyas:⁵ denial of the right of citizenship, restriction on freedom of movement, control of the economy through monopoly system, extortion and arbitrary taxation, forced labor, confiscation of land and property, limitations on access to education, torture and physical extermination, etc..

The treatment of military junta of Myanmar who do not consider the Rohingyas as one of the ethnic originally from Myanmar resulting in difficulty to obtain employment and other resources. This treatment led many Rohingya people fled to other countries by sea using boats.

Discriminatory treatment or persecution has forced them, the Rohingyas, to choose to become "boatpeople" and left Myanmar to seek safety in another country to get asylum. A countries that become a transit or destination by them such as Bangladesh, Malaysia, Pakistan, Saudi Arabia, Thailand, Indonesia, and Australia.⁶

The ongoing conflict in Myanmar if not treated properly can compromise the security as well as a burden for the countries as a destination or transit for the Rohingya refugees. They have become a regional issue because it involves many countries in the region around Myanmar,

⁵ Mohammed Ashraf Alam, 2011, *Marginalization of the Rohingya in Arakan State of Western Burma*, p. 5-11, http://www.burmacare.com/pdf_report/marginalization_rohingya.pdf, downloaded on February 24, 2013, at 2.15 a.m.

⁶ Irma Rismayati, 2009, *Manusia Perahu Rohingya: Tantangan Penegakan HAM di ASEAN*, *Opinio Juris* Vol. 1, Jakarta, p. 16

particularly in Southeast Asia. Therefore it should be a negotiation to find the best solution in order to stop violations of human rights against the Rohingyas. The problem settlement becomes more complicated because the Myanmar military junta refuses to recognize the Rohingyas as one of the original ethnic of Myanmar.

A refugees, asylum, and those who do not have citizenship (stateless person) already regulated in many International legal instruments that originated from the UDHR,⁷ such as the Declarations on Territorial Asylum, the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees.

Refugees are vulnerable to get abuse treatment from the authorities in any countries they landed. As individuals, community groups, and as human beings they are entitled to humane treatment. The rights attached to the refugees are rights concerning civil rights, political, economic, social and cultural rights, which apply to all of the people in the world.

But the fact that these rights cannot be fully enjoyed by many people because some countries are not yet become the party to the international human rights instruments that guarantee the rights of refugees. Some countries have not yet ratified it. Indonesia as one of the favorite transit for the Rohingya refugees who aim Australia as their destination has not ratified

⁷ The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on 10 December 1948 at Palais de Chaillot, Paris. The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled.

yet the Convention Relating to the Status of Refugee on 1951 and its Protocol on 1967. But Indonesia has its own regulation to regulates the issue of refugees, such as the Prime Minister's Circular Letter No. 11/RI/1956 on Political Escape Protection, the People's Consultative Assembly Decree No. XVII/MPR/1998 on Human Rights, the Law No. 39 of 1999 on Human Rights, the Law No. 6 of 2011 on Immigration, and some part of the 1945 Indonesian Constitution relating to the human rights.

Sometimes the presence of refugees in the country of transit or destination countries were forcibly repatriated (send them back to their originally place). Such treatment is clearly contrary to the principles of international law recognized by civilized nations.

B. Research Questions

1. What is the regulation of international law relating to the issue of refugees applicable to the Rohingyas case?
2. What is the regulation of Indonesian law relating to the issue of refugees applicable to the Rohingyas case?

C. Research Objectives

1. To know the regulation of the International Law applicable in overcoming the Rohingya refugees case and also to know the role of UNHCR as one of international organization which mandated to overcome the issue of refugee in the world.

2. To know the applicable regulation in Indonesia pertaining to the issue of refugees and the role of Indonesian Law regulates the Rohingya refugees case, considering that Indonesia is one of transit and destination country by the Rohingya refugees.

D. The Advantages of Research

1. Theoretical Advantage

This research would increase the knowledge about the regulation of the International Law in overcoming the Rohingya refugees case, to know the role of UNHCR as one of the international organization which mandated to overcome the issue of refugee. This research also give the knowledge about the regulation in Indonesia pertaining to the issue of refugee and give the information about how the Indonesian Law regulates the Rohingya refugees case.

2. Practical Advantage

This research would develop the understanding on how International Law and Indonesian Law regulates pertaining Rohingya refugee issue. This research also would share and improve the knowledge regarding refugee issue, such as the refugee definition, standarts of treatments, and access to asylum.

E. Systematic of Paper

In the chapter I, the author would describe about the human right violation in Myanmar and the kinds of persecution that occurred to the Rohingya as the minority ethnic in Myanmar.

In the chapter II, the author would describe the background of asylum and the international instruments relating to asylum. This chapter also describe the definition and scope of refugee, international instruments and Indonesian law relating to the issue of refugee. Last but not least, this chapter would describe the role of UNHCR as one International Organization that handle the problem of refugee around the world.

In the chapter III, the author would explain the research method that used in completing this research. This chapter will consists of several sub topics, namely; research type, legal materials, and research data collection method.

In the chapter IV, the author would describe the historical background of ethnics in Myanmar, especially the Rohingya minority ethnic. The author would analysis the status and protection of the Rohingya people in International law. This chapter discuss the effort of UNHCR as international organization that handles the issue of refugees to address the Rohingya people who fled away from their country of origin, Myanmar. The author also would analysis the Indonesian Law regulates the issue of the Rohingya refugees, considering that Indonesia has not yet ratified the 1951 Convention Relating to the Status of Refugees and the

1967 Protocol. This analysis aims to give an clearly informations on such regulations relating to the issue of the Rohingyas case.

In the chapter V, it would be a conclusion. The author will make a summary of the research, and also review the analysis of the research that answers the problem research, which delivered in the first chapter of the research.