

CHAPTER IV

The International Law and the Indonesian Law Regulations that Applicable to the Issue of the Rohingya

A. The Historical Background of the Rohingya Ethnic

Myanmar became independent on January 4, 1948 from the United Kingdom by a peace agreement between the British and Burmese Nationalists which led by Thakin Nu. On June 18, 1989 Burma was changed to Myanmar. This change was made by the military junta to show that the government is also protecting other ethnic groups in Myanmar, because Burma is the name of the largest ethnic groups in Myanmar.³²

Approximately one third of Myanmar's population consists of ethnic minority groups; the seven ethnic minority states take their names from the Shan, Kachin, Chin, Kayin, Kayah, Mon, and Rakhine nationalities. These states surround the central plains of Myanmar, where most of the majority Bama (Burman) people live in the seven Divisions. However every State and Division comprises a mixture of ethnic nationalities; for example thousands of Kayin people live in the Ayeyarwaddy Division.³³

The vast majority of Rohingyas live in the Rakhine State, a geographically isolated area in western Myanmar. The Rakhine State,

³² Aris Pramnono, 2010, *Peran UNHCR Terhadap Pengungsi Rohingya, Universitas Indonesia*, p.

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³³ Amnesty International, 2004, *The Rohingya Minority...*, *Loc.cit.*, p. 1-2

historically known as Arakan.³⁴ This region formerly known as Rohang and is now better known as the Rakhine. That is why the Muslims who inhabited the region Rohang called Rohingya, also known as Arakanese Muslims.³⁵ Hence, "Rohingya" is synonymous with "Arakanese" or "Rakhine".³⁶

The characteristics of the Rohingyas from the physical appearance, language, and culture that shows closeness with South Asian communities, particularly Chitagonian people.³⁷

The Rohingyas was inhabited in Rakhine since the 7th century.³⁸ Although the Rohingyas have for centuries lived in Myanmar, Myanmar's military junta government considers that the Rohingyas are Bengali ethnic which come from Bangladesh. So that the government does not recognize them as one of the ethnics in Myanmar. With the enactment of the Burman Citizenship Law in 1982, made the Rohingyas lost their citizenship in Myanmar.

By the statement of Myanmar's government that states that the Rohingyas have no citizenship status in Myanmar, so it is make the Rohingya face a persecution in their former habitual residence. They have no Myanmar citizenship status so they do not get any protection

³⁴ *Ibid.*, p. 2

³⁵ Heri Aryanto, *Kondisi Faktual Muslim Rohingya di Indonesia*, PIARA, <http://indonesia4rohingvadotorg.files.wordpress.com/2013/03/kondisi-faktual-muslim-rohingya-di-indonesia.pdf> downloaded July, 20, 2013 at 02.30 a.m.

³⁶ Irish Centre for Human Rights, *Op.cit.*, p. 21

³⁷ Atik Kustiyati, 2012, *Kebijakan Penanganan Pengungsi di Indonesia: Kajian dari Konvensi Pengungsi Tahun 1951 dan Protokol 1967*, p. 172

³⁸ Irma Rismayati, *Loc.cit.*, p. 21

by the state. There are so many human rights violation that experienced by them. This condition, the treatment of military junta of Myanmar, force them to choose to escape to another country to get an asylum. A countries that become a transit or destination to get an asylum by them such as Bangladesh, Malaysia, Pakistan, Saudi Arabia, Thailand, Indonesia, and Australia.

B. The Rohingyas Asylum-Seekers

The persecution that experienced by the Rohingyas who done by government of Myanmar, make them go to other countries to seek an asylum protection. There is no national security for them because they are not recognized as citizen in Myanmar.

The Rohingyas seek an asylum in near neighboring countries of Myanmar, such as Bangladesh, Thailand, Malaysia, etc.

The Rohingyas who reach Thailand by the end of November and December 2008, they detained by Internal Security Operations Command (ISOC) officers for a few days. They were then taken by military units to the Koh Sai Deng island. At December 18, 2008, around 400 Rohingyapeople were expelled by the navy of Thailand. They were given food supplies for two days only.³⁹

³⁹Anonymous, *Thailand Perlakuan Pengungsi Muslim Rohingya dengan Sadis*, <http://www.republika.co.id/berita/breaking-news/internasional/09/01/18/26747-thailand-perlakukan-pengungsi-muslim-rohingya-dengan-sadis>, accessed on February 24, 2013, at 3.00 a.m.

In early 2009, around a 1000 Rohingya boatpeople arrested when going into the area of Thailand. Thailand Navy arrested Rohingya boatpeople in Andaman Sea and then forcing them back to sea in boats without engines and with no water and food supplies for them. According to the UNHCR representative in Bangkok, although the exact number is not known, at least there are still about a 78 Rohingyas were detained in Ranong, in southern Thailand. The Thai government claimed that the Rohingya boat people as illegal border crossers and categorized as economic migrants, they are not the asylum seekers who could entitled to refugee status.⁴⁰

In Malaysia, the Rohingya people became an illegal migrant workers, while some others were given permanent asylum seekers. In early March 2010, Malaysia maritime authorities have arrested 93 Rohingya who had been floating on a boat for 30 days. Their boat was found off the northwest coast of the Langkawi island.⁴¹

In Bangladesh, about 1,160 Rohingya people have been detained since January 2010 and most of them have been deported to Myanmar. Most of those detained were subjected to torture, even the Rohingyas who are in refugees camps also do not get any protection.

⁴⁰ Irma Rismayati, *Loc.cit.*, p. 21-22

⁴¹ Anonymous, *Myanmar Didesak Untuk Lindungi Hak-hak Muslim Rohingya*, <http://www.voa-islam.com/news/south-east-asia/2010/03/19/4027/myanmar-didesak-untuk-lindungi-hakhak-muslim-rohingya/>, accessed on February 24, 2013, at 3.05 a.m.

They are starving because of Bangladesh's government refused to give permission to international aid agencies to help the refugees.⁴²

In Indonesia, the police handle as many as 129 people of ethnic Rohingya. They were found in a boat at sea near Krueng Port in Nanggroe Aceh Darussalam on February 15, 2011 around 23:00 p.m. after their boat adrift for 20 days. They reported adrift at sea after their wooden boat's engine was stalled. They, the Rohingyas, claimed to get away from persecution in their homelands, Burma.⁴³

The article 14 of the Universal Declaration of Human Rights, states that:

- 1) *Everyone has the right to seek and to enjoy in other countries asylum from persecution.*
- 2) *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.*

Universal Declaration of Human Rights is the root of all instruments that regulates the issue of refugees, especially in the Article 14 (1) UDHR which clearly states that everyone has the right to seek and enjoy in other countries asylum from persecution, in this case is the Rohingya people who seek an asylum to another countries.

Before someone or a group of people be given refugees status, they are an asylum-seekers. Asylum-seekers is general term for a

⁴²Anonymous, *1.160 Pengungsi Muslim Rohingya Ditahan di Bangladesh*, <http://www.voa-islam.com/news/south-east-asia/2010/03/11/3781/1160-pengungsi-muslim-rohingya-ditahan-di-bangladesh/>, accessed on February 24, 2013, at 3.08 a.m.

⁴³Achmad Marzuq, *Warga Rohingya Terdampar di Aceh*, http://www.bbc.co.uk/indonesia/multimedia/2011/02/110216_rohingyaboat.shtml, accessed on February 24, 2013, at 2.15 a.m.

person who has not yet received a decision on his/her claim for refugee status.⁴⁴

When internal disputes cause an international refugee problem, it is the responsibility of all nations, especially neighboring countries, to help restore peace and security within the troubled country.⁴⁵ In the Rohingya refugees case, it is the responsibility of neighboring countries to help them, such as give them an asylum. It is become an international refugee problem because it's cross boarder countries case.

C. The International Law Perspective on the Rohingya Refugees

In seeking to ensure humane treatment for a particularly vulnerable group of people, international refugee law is closely related to international human rights law, which focuses on preserving the dignity and well-being of every individual.

In terms of the entitlements that refugees and asylum-seekers have under international human rights law in the country of asylum.⁴⁶

In international law, to determine or identify a person's status as a refugee or not by use the Convention Relating to the Status of Refugees 1951 and Protocol Relating to the Status of Refugees 1967.

Article 1A (2) Convention Relating to the Status of Refugee 1951, defines a refugee as:

⁴⁴ Kate Jastram – Marilyn Achiron, 2001, *A Guide to International Refugee Law*, UNHCR, p. 48

⁴⁵ *Ibid.*, p. 33

⁴⁶ UNHCR, 2005, "An Introduction to International...", *Op.cit.*, p. 30

“... any person who: “As a result of events occurring before 1 January 1951 and owing to wellfounded fear of beingpersecuted for reasons of race, religion,nationality, membership of a particular social group orpolitical opinion, isoutside the country of his nationality and is unable or, owing to such fear, isunwilling to avail himself of the protection of that country; or who, not having anationality and being outside the country of his former habitual residence as aresult of such events, is unable or, owing to such fear, is unwilling to return to it.”

The definitionof the refugee in the 1951 Convention was later expanded to in Article 1 (2) Protocol Relating to the Status of Refugees 1967:

“For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any personwithin the definition of article 1 of the Convention as if the words “As aresult of events occurring before 1 January 1951 and ...” and the words“... a result of such events”, in article 1 A (2) were omitted.”

Based on the definition of refugees under the provisions on 1951 Convention and its protocol, the Rohingya people have fulfilled a refugee criteria. Because the Rohingyas meet these following criterias:

1. Well Founded Fear⁴⁷

The person concerned must have good reason for fearing return to his/her home country. There are both a subjective element (the person’s fear) and an objective element (external evidence “justifying” this fear) to the well-founded fear.

⁴⁷ *Ibid.*, p. 56

In the case of the Rohingyas, it could be seen from the real risk of persecution if they return to their home country, Myanmar.

The fear to go back to their country is reasonable, because the Rohingyas are not recognized as one of the ethnic in Myanmar. The Myanmar's government denied their status of citizenship, so they do not get national protection and they suffered human rights violation.

2. Persecution⁴⁸

The Rohingyas clearly experienced persecution on their homelands, Myanmar. The denial of right for citizenship make their experience so many violation, such as torture, physical extermination, forced labor, etc.

3. Reasons of Race, Religion, Nationality, Membership of a Particular Social Group or Political Opinion⁴⁹

A person entitled to refugee status if he is afraid of being persecuted for one or more of the five grounds contained in Article 1A (2) of the 1951 Convention, namely race, religion, nationality, member of a particular social group, political opinion. In the case of the Rohingyas, they got a persecution for reasons of race and religion.

⁴⁸ *Ibid.*, p. 57

⁴⁹ *Ibid*

The ethnic Rohingya different from Burmese ethnic as majority ethnic in Myanmar, this difference can be seen from the language used by them.

Beside the reason of race, religion also be one reason for their persecution. Myanmar's other ethnic groups also suffered persecution, such as Karen and Mon ethnic, but the persecution that received by the Rohingyas more severe compare with Karen and Mon. This happens because Karen and Mon are Buddhist which are the major religion in Myanmar, while the Rohingyas are Muslims.

4. Outside the Country of Nationality/Former Habitual Residence⁵⁰

It is clearly identified that the Rohingyas are in outside of their former habitual residence. They are outside of their country of nationality because they citizenship are not recognized by the Myanmar's government.

The Rohingyas went from their former habitual residence, Arakan, which is the territory of Myanmar, using baot to another country to seek an asylum. Some of them use landline across the boarder of Bangladesh.

5. Unable or Unwilling to Avail Him- or Herself of that Country's Protection⁵¹

In the definition of a refugee under the 1951 Convention, one of the elements is someone cannot or do not want to ask for the

⁵⁰*Ibid*

⁵¹*Ibid*

protection of the country of origin or former habitual residence. The Rohingyas do not receive protection from their countries of origin because the state, Myanmar, does not grant citizenship status to them. In the absence of citizenship status, the Rohingyas have no national protection from any countries.

Based on the identifications above, the Rohingya people could be categorized as a refugee. So they should have the rights of refugees from the countries that have ratified the 1951 Convention and its protocol.

D. The Role of UNHCR to the Rohingya Refugees Case

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 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".⁵² These generally include refugees and asylum-seekers, returnees, stateless persons and internally displaced persons.

By the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, UNHCR as international organizations dealing

⁵² *Ibid.*, p. 12

with issue of refugees, has the authority to determine the status of a person or group of people and provides long-term solutions to address the problems of refugees, in this case is the Rohingyas.

Before a person or group is given the status of refugees, UNHCR would undertake verification process to them, whether they would entitled as refugees or not.

In Article 6 of the 1950 Statute of the UNHCR, the authority to provide international protection, include:

1. (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.*
2. *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.*

The definition of refugee in UNHCR Statute does not differ much with the definition of refugee in 1951 Convention and 1967 Protocol. Based on UNHCR Statute concluded that the Rohingyas could entitled as a refugees. The Rohingyas includes in person in needs a protection by UNHCR. Moreover, as we know that the Rohingyas have no citizenship status or stateless person, so they included in "person of concern to UNHCR".

Although in some countries the Rohingya people recognized as an economic migrants, not an asylum-seekers, such as Thailand that entitled the Rohingyas as an economic migrants, a Handbook on Procedures and Criteria for Determining Refugee Status paragraph 63, states:

"Behind economic measures affecting a person's livelihood there may be racial, religious or political aims or intentions directed against a particular group. Where economic measures destroy the economic existence of a particular section of the population where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Although an economic reasons puts to the Rohingyas who fled to other countries, they are still able to obtain refugee status, they seek a better life because basically they suffered from the persecution that they experinced in Myanmar. Therefore, they are entitled to get an international protection as a refugee as well as stated in the 1951 Convention and its protocol.

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

1. Repatriation

Repatriation is the solution taken by UNHCR to restore refugees to their home country or their former habitual residence. Repatriation consist of two, repatriation by UNHCR and voluntary repatriation.

In practice, UNHCR promotes and facilitates voluntary repatriation through various means, including organizing "go-and-see" visits for refugees; compiling updated information on their country and region of origin; engaging in peace and reconciliation activities; promoting housing and property restitution; and providing return assistance and legal aid to returnees.⁵³

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 thread of persecution could happen to them because the Rohingya have no citizenship status in Myanmar, so they would not get any protection from the state. Moreover, the state/government itself who do persecution to them, the Rohingyas.

2. Local Integration

⁵³UNHCR, *Going Back Home*, <http://www.unhcr.org/pages/49c3646cfe.html>, accessed on February 24, 2013, at 0.01 a.m.

Local integration is an attempt to integrate the refugees become citizens of the country of asylum.

Local integration is a complex and gradual process which comprises distinct but related legal, economic, social and cultural dimensions and imposes considerable demands on both the individual and the receiving society. In many cases, acquiring the nationality of the country of asylum is the culmination of this process.⁵⁴

It is not easy to integrate the Rohingyas with the local people, because in some countries they are marginalized in some places, detention place.

3. Resettlement

Some refugees cannot go home or are unwilling to do so because they will face continued persecution. Many are also living in perilous situations or have specific needs that cannot be addressed in the country where they have sought protection. In such circumstances, UNHCR helps resettle refugees in a third country as the only safe and viable durable solution.⁵⁵

Resettlement is a solution by UNHCR that involve another country as a third party on refugee case settlement. Nine

⁵⁴ UNHCR, *Accepted by a Generous Host*, <http://www.unhcr.org/pages/49c3646c101.html>, accessed on February 24, 2013, at 0.04 a.m.

⁵⁵ UNHCR, *A New Beginning in a Third Country*, <http://www.unhcr.org/pages/4a16b1676.html>, accessed on February 24, 2013, at 0.05 a.m.

governments,⁵⁶ such as; United States, Canada, Australia, Sweden, Norway, Finland, New Zealand, Denmark, The Netherlands, currently host the bulk of the refugees who are annually resettled in new countries.

E. The Indonesian Law Perspective on Regulates the Rohingya Refugees Case

A persecution that experienced by the Rohingyas in Myanmar make them escaped to other countries to get an asylum. Almost of them choose Australia as the destination country to get an asylum, because Australia has ratified the 1951 Convention and its protocol, so the Rohingyas feel that they could get a protection there.

But on their way to Australia, some of them stranded in Indonesian territory. The latest update, there are 68 Rohingya people stranded in Lueng Gayo village, Teunom district, Aceh Jaya.⁵⁷ In 2013, it is the fourth event the Rohingyas stranded in Aceh. It is the one of many cases of the Rohingyas who stranded in Indonesian territory.

Recently, the estimated number of the Rohingya refugees who are in Indonesia is about 600 people.⁵⁸ The head of the Public

⁵⁶ UNHCR, *New Doors Open*, <http://www.unhcr.org/pages/4a2ced836.html>, accessed on February 24, 2013, at 0.05 a.m.

⁵⁷ Anonymous, *68 Pengungsi Rohingya Terdampar di Aceh Jaya*, <http://id.berita.yahoo.com/68-pengungsi-rohingya-terdampar-di-acch-jaya-052647090.html>, accessed on July 31, 2013, at 10:11 a.m.

⁵⁸ Ramadhan Shodiq, *Kedubes Myanmar Berjanji akan Pulangkan Pengungsi Rohingya*, <http://www.voa-islam.com/lintasberita/suaraislam/2013/05/24/24770/kedubes-myanmar-berjanji-akan-pulangkan-pengungsi-rohingya/>, accessed on July 31, 2013, at 10:20 a.m.

Relations Directorate General of Immigration, Maryoto stated that the amount of refugees wave from Myanmar to Indonesia would increase depend on the situation there.⁵⁹ This time the Rohingyas spread in several regions in Indonesia. They are divided into two parts, the refugees who are accommodated in the detention center (immigration detention center) and outside the detention center. The Rohingyas who are outside of the detention center have been determined as a refugee by the UNHCR, while the Rohingyas who are still in the detention center still maintained its status by UNHCR.

The Rohingyas fled from their former habitual residence, Myanmar, to seek an asylum. They want their status from asylum-seekers become a refugee. Although Indonesia has not ratified the 1951 Convention Relating to the Status of Refugee and 1967 Protocol, Indonesia has its own regulation relating to the issue of refugees.

The Institution of asylum in Indonesia was first recognized through the Prime Minister's Circular Letter No. 11/RI/1956 Protection on Political Escaped. Article 1 states that:

"To political escape, who enters and exists in Indonesia will be given protection under human rights and fundamental freedoms, in accordance with customary international law."

The Rohingyas escape from their former habitual residence because of political situation happened in Myanmar. Based on this

⁵⁹ Firman Qusnul Yakin, *Inilah Jumlah Pengungsi Rohingya di Indonesia*, <http://nasional.inilah.com/read/detail/1889302/URLTEENAGE#UfiCb-epqSo>, accessed on July 31, 2013, at 10:28 a.m.

regulation, the Indonesian government should give a protection under human rights and fundamental freedoms in accordance with customary international law.

The customary international law pertaining to the issue of refugees and asylum is the principle of non-refoulement, a core principle of refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. The principle of non-refoulement is a part of customary international law and is therefore binding on all States, whether or not they are parties to the 1951 Convention.⁶⁰ Indonesia has not ratified it yet, the 1951 Convention, but it is binding for Indonesia because this principle is a part of customary international law.

Furthermore, the recognition of the institution of asylum in Indonesia was strengthened by the People's Consultative Assembly Decree No. XVII/MPR/1998 on the Human Rights. Article 24 states that:

"Everyone has the right to seek asylum for political protection from other countries."

In 1999, the Government issued the Law Number 39 of 1999 on Human Rights which recognizes the right to seek asylum. Article 28 (1) states that:

⁶⁰ Kate Jastram, *Op.cit.*, p.130

1. *Everyone has the right to seek asylum for political protection from other countries.*
2. *Rights referred to in paragraph (1) do not apply to those who commit non-political crimes or acts contrary to the purposes and principles of the United Nations.*

In explanation of the article said that a decisive action, including political or non-political crime, is defined by country that accepts the asylum seekers.⁶¹

Indonesia officially became the 60th member of the United Nations, on September 28, 1950. Indonesia had come out of the United Nations membership on January 20, 1965 when President Sukarno withdrew from the membership. But it did not last long as on 19 September 1966, Indonesia had volunteered again as a member of the United Nations. The petition received by the General Assembly of the United Nations, so as from 28 September 1966 Indonesia became a member of the United Nations again, to this day.⁶²

As its membership of Indonesia to the United Nations, then Indonesia should respect the purpose and principle of the United Nations. Everyone has the right to seek asylum for political protection to Indonesia, the right to to get an asylum do not apply to those who commit non-political crimes or acts contrary to the purposes and principles of the United Nations.

⁶¹ Indonesia, the Law on Human Rights, Law no. 39 of 1999, the explanation of Article 28 paragraph (2)

⁶² Nenden Novianti, *Indonesia Menjadi Anggota PBB ke-60: Indonesia resmi menjadi anggota PBB ke-60, pada tanggal 28 September 1950*, <http://dunia.news.viva.co.id/news/read/1119-indonesia-menjadi-anggota-pbb-ke-60>, accessed on August 1, 2013, at 8.46 a.m.

Then in the second amendment of the Constitution of 1945, the provisions regarding asylum institutions were included in Section 28G (2), which states that:

“Every person has the right to be free from tortured or degrading treatment of human dignity and the right to obtain political asylum from another country.”

The initial handling of the issues relating to asylum seekers and refugees in Indonesia, referring to the Law Number 6 of 2011 on Immigration.⁶³ This is due to both asylum seekers and refugees are foreigners entering Indonesian territory, so that its provisions are equated with other foreigners entering Indonesia. In Article 83 paragraph (1) letter b of the Law Number 6 of 2011 stated that:

“The immigration officer authority put foreigners in immigration detention or immigration detention space if the foreign person located in the territory of Indonesia without a valid travel document.”

It's also applies to the Rohingya people who enter Indonesian territory by illegally, without any valid travel document. The Rohingyas stranded in several regions in Indonesia either due to arrested or deliberately surrendered to the Indonesian Immigration, these regions such as Aceh, Medan, Tanjung Pinang, and Batam.⁶⁴

The Indonesian government in handling the issue of refugees could be said quite good, considering in 1979, the Indonesian

⁶³ Indonesia, the Law on Immigration, Law no. 6 of 2011

⁶⁴ Heri Aryanto, *Loc.cit.*, p. 6

government gave authorization for the establishment of a refugee camp on Galang Island, which accommodates more than 170,000 refugees,⁶⁵ the Vietnam refugees who given an asylum by Indonesia in Galang island in the eyes of the world are considered as good handling of refugee.

The human right protection in the issue of refugees in Indonesia running well. Although Indonesia has not ratified the UDHR yet, which is the declaration on the issue on human rights protection. However, because the UDHR is non-judicial instruments that are believed to be the standart and parameter in the enforcement of human rights law, the members of United Nations, including Indonesia, should received the points contained in the UDHR.

UDHR became the consideration on the letter "d" in preamble to the Law No. 39 of 1999 on Human Rights. Moreover, Indonesia has also ratified many international conventions of which is derived from the UDHR into Indonesian law.

The internatonal law relating to the issue of human rights which has been ratified in Indonesian law, such as:

⁶⁵ UNHCR, *UNHCR di Indonesia*, <http://www.unhcr.or.id/id/unhcr-ambassador-id>, accessed on August 1, 2013, at 9.12 a.m

No.	International Instrument	Ratified in Indonesian Law
1.	International Convention on the Political Rights of Women	The Law No.68 /1958, ratified on July 17, 1958
2.	International Convention on the Elimination all Forms Discrimination Against Women	The Law No.7/1984, ratified on July 24, 1984
3.	International Convention on the Rights of Child	The Presiden Decree No.36/1990
4.	International Convention against Apartheid in Sports	The Presiden Decree No.48/1993, on May 22, 1993
5.	International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	The Law No.5 /1998, ratified on September 28, 1998
6.	International Convention on The Elimination of All Forms of Racial Discrimination	The Law No.29/1999, ratified on May 25, 1999
7.	International Covenant on Economic, Social and Cultural Rights	The Law No.11/2005, ratified on October 28, 2005
8.	International Covenant on Civil and Political Rights	The Law No.12/2005, ratified on October 28, 2005

Although Indonesia has not ratified the 1951 Convention Relating to the Status of Refugees and 1967 Protocol, in facts, Indonesian government could manage quite well the issue of refugee, especially on the Rohingyas case. It is because Indonesia respected the principle of non-refoulement which is customary interantional law that should be recognized by all civilized nations. It has been stated in Indoensian regulation to the Prime Minister's Circular Letter No. 11/RI/1956 on a Protection to Political Escaped. It is in line with Oppenheim's theory, which states:

"The international law as a set of custom rules and international agreements that are considered legally binding by the states in their relations with one another."

The principle of non-refoulement is not only contained in the 1951 Convention, but also implicitly or explicitly contained in the Convention against Torture (Convention Against Torture) Article 3 of Geneva Convention IV (Fourth Geneva Convention) of 1949 in article 45 paragraph 4, the International Covenant Civil and Political Rights (International Covenant on Civil and Political Rights) article 13 in 1966, and other human rights instruments. So that the countries that have not been ratified the 1951 Convention and its protocol should respect the principle of non-refoulement. The country cannot force repatriated the refugees, in this case is the Rohingya refugees, to their country of origin or former habitual residence where they security is threatened.

The urgency of Indonesian government to ratify the 1951 Convention Relating to the Status of Refugee and its protocol is needed. By ratifying these convention relating to the issue of refugees, Indonesian government could determine the status of refugee to the asylum-seekers who entered Indonesian territory by themselves. There is no need assistance to determine the status of refugee by UNHCR. According to Ifdhal Kasim, the Head of National Commission on Human Rights, the determination of refugee status or asylum seekers-against immigrants is important to prevent the