

## Criticizing the Handling of Rohingya Refugees in Southeast Asia by ASEAN and Its Members

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### **Abstract:**

This article is a combination of scientific and policy papers. It will critically review how the Rohingya refugees were handled in Southeast Asia. The method used is qualitative policy analysis. The author will compare the statements contained in the ASEAN Charter, the Blueprint of the ASEAN Political-Security Community, and the ASEAN Declaration of Human Rights (AHRD) as legal umbrellas which guarantee the fulfilment of human rights in Southeast Asia with the policy responses of ASEAN and some of its members (Indonesia, Thailand, and Malaysia) toward the flow of Rohingya refugees. The policy analysis will target the substance and implications of the refugees. In general, there are two approaches to refugee policies, 'security' with an orientation toward state sovereignty and 'humanism (human security)' which is pro-refugee. The author uses the second approach as a framework and a standing position. Based on the results of the analysis, the security approach is far more dominant in the handling of Rohingya than humanism. The wave of Rohingya refugees is read as a security threat, economic burden, potential cultural issue, and other negative things that ultimately put the refugees in a worse position. The author criticizes this and suggests a number of recommendations to pursue a more humanistic approach.

### **Keywords:**

human security approach; refugees handling policy; Rohingya refugees

## **Introduction**

**T**ensions between the ethnic Rakine and Muslim communities with the Burmese government have been increasingly intense since 1950 when they demanded autonomy (Smith, 2010). Another important historical moment occurred in 1978 when the government ran "Operation King Dragon". The operation culminated in 1982 in the form of disarming the citizenship status of all ethnic Rakine-Muslims. Since then, the government let them live but by enforcing the forced labour. Moreover, the government also often perpetrates acts of violence and implements

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discriminatory policies against Rohingyas who are no longer recognized as citizens. This pattern of persecution continues until now and worsens as Myanmar undertakes democratic reforms. Later, the Rohingyas were massacred, the settlements were destroyed, and then forcibly evicted. This resulted in a massive exodus of Rohingya out of Myanmar (Singh, 2014).

The Rohingya refugee issue again attracted the attention of the international community. The United Nations (UN) estimates that thousands of ethnic minority refugees have left Myanmar to neighbouring countries by sea. The wave of refugees has caused problems for the countries in the region and raised the concern of the international community because there was a humanitarian crisis. On the other hand, this case of refugee flow can also be read from different perspectives as a security threat and economic burden for the host country. Therefore, the challenge is how to accommodate the dilemma between the impetus to engage in the handling of the humanitarian crisis on the one hand and to respond to security and economic issues as a further impact of refugee acceptance on the other. This paper will critically review how the handling of the Rohingya refugees in Southeast Asia by ASEAN in general and more specifically by the three host countries Indonesia, Thailand and Malaysia.

To carry out the critical analysis, this paper will use two theoretical frameworks. First, debate between security and humanity.

The end of the cold war created a new momentum which provided a window of opportunity for the reinterpretation of the meaning of security that is not solely national security or state security from military threats from other countries. The space is dedicated to other actors who had been forgotten during the Cold War. The number of victims has made them aware that there are other things besides the state security, the security of the population and the groups within the country, and from here onwards the concept of human security started. Mahbub ul Haq (Parr & Messineo, 2012) proposed human security as a new paradigm in security.

“...the world is entering a new era in which the very concept of security will change and change dramatically. Security will be interpreted as: security of people, not just territory. Security of individuals, not just nations. Security through development, not through arms. Security of all the people everywhere - in their homes, in their jobs, in their streets, in their communities, in their environment”

In addition, the concern for human security is also reinforced by a wave of globalization that generates a backlash because of its negative effects on certain weak countries, groups, and individuals. And most striking is that strengthening human security ideas and efforts is a reaction to the humanitarian problems that engulf the world today, from refugees to conflict and physical violence, the struggles of children and women, food

issues, terrorism, illegal arms trade, violations of human rights and so on. From the above information, Alkire Sabina has set the goal of human security (See Picture 17).

Picture 17: Table of the Purpose of Human Security (Alkire, 2003)

The Objective of Human Security is to Safeguard the Vital Core of All Human Lives from Critical Pervasive Threats, without Impeding Long-Term Human Fulfilment.	
Safeguard	Provide and Promote Human Security by: Identification (of critical pervasive threats); Prevention (so that the risks do not occur); Mitigation (so that if risks occur the damage is limited); Response (so that victims or chronic poor survive with dignity and maintain their livelihoods); Respect Human Security by Identification, Prevention; Mitigation of predictable side-effects that threaten human security, regardless of the primary objective
Vital Core	A rudimentary but multidimensional set of human rights and human freedoms based in practical reason Spans the freedom from fear and the freedom from want To be specified by appropriate procedures in context
All Human Lives	“People-centred”, focused on individuals and their communities Universal and non-discrimination
Critical Pervasive Threats	Critical threats cut into core activities and functions. Pervasive threats are large-scale, recurrent dangers. Threats may be direct, such as genocide or a civil war Threats may also be indirect, for example underinvestment or financial collapse.
Long-Term Human Fulfilment	Human security is not sufficient for human fulfilment. Human security processes should be consistent with ongoing human development by supporting participation, freedom, institutional appropriateness, and diversity.

Based on this discussion, the term freedom from fear is intended to be free from violence, freedom from want, and freedom from poverty.

Unfortunately, in the case of refugees, the concept of human security is likely to be applied inward looking. It means that the protection of human security is internally oriented. The state will only protect their citizens. Therefore, refugees are perceived as human security threats. They are not part of the protected subjects by the state due to not having citizenship status. These security threat issues are related to problems of cohesion

and integration. In addition to the security issues, refugee destination countries must also face high economic burden issues. They become the reasons behind the reluctance to ratify the convention on refugees and implement pro-displaced policies. The opposite of security is humanism or often called the human rights (HR) approach. This approach is pro refugees. In short, the HR approach seeks to protect and fulfil the basic human needs of anyone without exception including refugees [More about security read (Stritzel, 2014); about HR and refugee, read (Fiske, 2015); about the conceptualization of refugee issue, read: (ESPMI Network, 2015)].

Whereas for the Global Refugee Policy, the term global refugee presupposes that a globalised refugee policy can be made, has been available, and is effective (Loescher & Milner, 2005). However, the case is not always true. Kneebone clearly describes how GRP becomes a contest arena not only for value, interest, but also power (Kneebone, 2014). Such assumptions can be understood especially when considering the UNHCR formation after the Refugee Convention in 1951. The assumption itself begins with the thought of the need for the existence of a Global Government (GG) which rules the countries of the world. This GG has a number of agencies that work on specific issues including refugees. In formulating and implementing common programs, global government agencies collaborate with the states. Therefore, the movement and approach are formal and legalistic. The state becomes a very vital actor. This mechanism is often called "the international refugee regime". This kind of global regime, in fact, has a crucial critic that is built on unequal inter-state relations. The power relations between countries are not balanced and the character of the regime is determined by strong-powerful countries and dominated by their interests. Beyond that, GG does not always succeed to discipline the whole countries.

The other serious problem is that the state itself is also an arena contested by two large groups, refugee protection actors and state sovereignty guard actors. The first one represents the humanism approach and the other represents the security approach. Departing from the never-ending tension, the refugee protection actors, who has weaker bargaining-position, then seek new efforts. They no longer rely solely on the state but begin to build influences through other multi-actors. They believe that the state is no longer a dominant actor. The power of the market and society appears as a powerful counterweight. Relationships are no longer hierarchical but partnership and synergistic. From there, non-state initiatives in the handling of refugees emerged.

One example is a civil society organization platform, the Asia Pacific Refugee Rights Network (APRRN) and The Bali Process, as two different types of mechanisms and agenda-setting on GRP (Kneebone, 2014). The APRRN is a non-state network actor. As a transnational activist network (TAN), it works through non-hierarchical mechanisms and has a normative agenda. By contrast, The Bali Process has limited (and selected) actors. It also has a narrow discourse on refugees that reflects a hierarchical agenda-setting

process called "steering mode". The author will not elaborate further on both. The points to be addressed in this sub-section are, first, the global government/regime is no longer the only actor in refugee governance. Second, the discourse of refugee policies is influenced by the tension between the humanism approach in favour of refugees and the security approach siding with the sovereignty of the state. Third, refugee policy is not a neutral arena (Global Legal Research Center, 2016). The analysis stems from the three statements.

### **Rohingya Refugees Handling Policy in Southeast Asia**

ASEAN guarantees human rights through a number of documents. One of the stronger documents is the ASEAN Charter which contains the following points (ASEAN, 2008):

“strengthen democracy, good governance, and improve the rule of law ... (and) promote and protect human rights and fundamental freedoms”

“and to improve the welfare and livelihoods of the ASEAN people by providing them with equitable access to opportunities for human development, social welfare and justice”

While the guarantee of protection for refugees is specifically stated in the Blueprint of the ASEAN Political-Security Community and ASEAN Human Right Declaration (AHRD). They clearly state the right to move and the right to seek and receive asylum.

This is why it is not surprising that ASEAN has received criticism from various parties in terms of how it handled the Rohingya case. ASEAN is considered powerless by failing to force countries in its territory, particularly those directly related to the Rohingya issue, namely Myanmar, Indonesia, Thailand and Malaysia, to carry out effective handling efforts, such as stopping the violence perpetrated by the Government of Myanmar and urging affected countries to accept refugees and grant them citizenship status. Some moderate parties tend to appreciate ASEAN's move to position itself as a facilitator by promoting the principle of non-intervention to all countries.

If we trace the steps undertaken by ASEAN, they are as follows. At the 2009 ASEAN Summit, ASEAN leaders expressed mutual concerns and urged the Myanmar government to cooperate. Unfortunately, one thing to note is that in the statement by the Chairman of the ASEAN Summit, the Rohingyas were considered "illegal migrants" (ASEAN, 2009a, 2009b). It was then agreed that the Rohingya issue should be referred to the Bali Process (News, 2009). However, the Bali Process itself was ineffective because its recommendations were normative and rhetorical, which were not considered important references for the four countries in responding to Rohingya issues. Even now the conditions have not undergone many changes (Fortify Rights and BROUK, 2016; JRS Asia Pasific, 2012; Mathew & Harley, 2016). The following will further elaborate on

the handling of Rohingya refugees in three ASEAN member countries, Indonesia, Thailand and Malaysia.

### **Indonesia and Its Half-Hearted Refugee Policy**

Despite being a co-chair of the Bali Process, which campaigned against human trafficking in Southeast Asia, Indonesia has not ratified the 1951 Refugee Convention as well as the 1967 Protocol. Indonesia uses the same reasons as Thailand and Malaysia for non-ratification, which are threats to social cohesion, national security, and economic costs of hosting refugees. The connection with national security comes due to the perception that asylum seekers and refugees are linked with the drug trade. In addition, Indonesia's concerns over the Rohingya refugee situation are also linked to Rohingyas and other Muslims' potential radicalization. Beyond such concerns, Indonesia leans towards the 1951 Convention and 1967 Protocol ratification. It is indicated in its last Action Plans of Human Rights (Mathew & Harley, 2014). An approximate total of 13800 refugees and asylum seekers are being hosted by Indonesia (UNHCR, 2016).

Different with Thailand, which tend to push boats towards a third country, and Malaysia, which is hugely a Rohingya refugee destination, Indonesia has been categorised as a transit country. In 2010, Indonesia issued a directive allowing illegal migrants to live in Indonesia temporarily. It would only be possible if they either have recognition of refugee status from UNHCR or an attestation letter that they are seeking asylum with UNHCR (Crock, 20014). Moreover, Indonesia showed its commitment to the Rohingya Muslim protection through international channels in 2012. This commitment manifested in the form of discussing the Rohingya issue at many international forums. An example was the Organisation of Islamic Conference United Nations (BBC, 2012). In 2015, in response to Rohingya refugees being stranded in Indonesian seas, the Indonesian House of Representatives (DPR-RI) called on the government that as a civilised country, Indonesia has to accept them (The Jakarta Post, 2015). Unfortunately, it did not successfully work out. In contrast, as in other regional countries, Indonesia was also complicit in the boat-push back policy (Rachmah & Pestalozzi, 2016; Yayasan Gutanyoe, 2016).

### **The Huge Economic Burden of Refugee as Thailand's Crucial Challenge**

Like Indonesia, Thailand also does not ratify the refugee covenants and protocols. In addition to having the same reasons, they are also worried that signing of the convention would impact the emergence of massive and intense waves of displaced people. The Thailand policy, which differs with the Indonesian and Malaysian policies, is generally not returning refugees or asylum seekers. Over the years, more than a million refugees have sought refuge in Thailand. It then caused Thailand to have the largest refugee (economic) burden in Southeast Asian countries (Loescher & Milner, 2005).

Moreover, Thailand recently hosts approximately 1,800,000 new Myanmar refugees verified by UNHCR in 2015 (UNHCR, 2016). Thailand is now beginning to face the concerns about refugee acceptance from many years ago. The refugees become significant competitors for jobs and resources of the local people (Loescher & Milner, 2005). Although further investigations have found the fact that the refugees are working with much lower wages for the same job than the Thai (Rukumnuaykit, 2009; Voice of America, 2009). To sum up, Thailand's response to the Rohingya crisis are growing stricter. They are tightening procedures often accompanied by violence. In addition, the national security disturbance caused by the wave of refugees became a fertile public discourse. It also drove sentiment from the citizens toward the refugees.

### **The Fluctuate Refugee Policy in Malaysia**

Rohingya refugees are not the first refugees who entered Malaysia. Between 1970 and 2000, Malaysia has received refugee flows from various countries, namely Vietnam, Cambodia, Philippines, Indonesia and Bosnia. Aside from that, there are also smaller numbers of refugee and asylum seekers from Africa and the Middle East. The UNHCR shows a registration record of 150,700 refugees and asylum seekers. Ninety percent of them originate from Myanmar (UNHCR Malaysia, 2015). Although there are far more refugees in terms of numbers compared to Indonesia and Thailand, Malaysia has also failed to ratify the 1967 Protocol. The Malaysian government claims the refusal to sign the agreement is due to economic costs and security precautions (Mathew & Harley, 2014). On the other hand, Malaysia has questioned the need to ratify the Convention. In practice, based on their observations, many ratifying countries do not meet their obligation to the refugee. Although it has not yet ratified the treaty, Malaysia claims to have done more for the refugees (Mathew & Harley, 2014). Therefore, they think that the international demand for them is not relevant enough.

A leading factor for the large number of refugees residing in Malaysia is geographical proximity. Malaysia is considered to be the best escape location because it is an Islamic state and relatively close. In the early 1990s, Rohingyas arrived in Malaysia with a security and approval letter by UNHCR. This allowed them to integrate, enter the informal labour market, and gain limited access to education and health services (Cheung, 2011). In general, between 2000-2015, the government's response to the refugee policy is fluctuating or changing depending on the political will of the serving leaders. In 2002, Malaysia introduced an anti-refugee immigration law. Then based on a compromise with UNHCR, the government had given permission to stay to 10000 refugees. However, the program ended in 2004 due to alleged corruption. Fluctuating conditions have lasted until now. The government's general position is not pro-refugee. The best responses which can be given are to grant a temporary stay permit before finally returning refugees or channelling them to a third country. Another noteworthy point is that during the Boeing

Boot Crisis in 2015, Malaysia was complicit in the boat-push back policy. For the boats that have been anchored, Malaysia responded to these refugees and asylum seekers with punitive action. For the sake of action, Malaysia had a dispute with various international actors, especially human rights defenders. Malaysia defends itself firmly on the premise that unregistered refugees fall into the category of illegal immigrants who become national threats.

## Conclusion

Based on the above description, the author concludes that the ASEAN and some of its members, especially Myanmar, Indonesia, Thailand, and Malaysia, related to refugees handling have violated the ASEAN Charter with various degrees. This means that they have not fulfilled the objectives of the 2008 ASEAN Charter, primarily promoting and protecting human rights and fundamental freedoms, including improving the welfare and livelihoods of ASEAN people by giving them equitable access to opportunities for human development, social welfare and justice. Moreover, their responses are largely incompatible with the official documents such as the Blueprint of the ASEAN Political-Security Community and the ASEAN Declaration of Human Rights (AHRD) which clearly state the right to move and the right to seek and receive asylum for all ASEAN citizens. This is certainly worth criticizing.

The other findings are, firstly, the ASEAN Community, as a whole, has not yet put significant pressure toward Myanmar. The tendency is permissive. What the Rohingyas face has not been seriously regarded as an extraordinary crime against human rights. Myanmar has not received any significant sanctions. There is no strong resistance to the use of the term 'unofficial migrants' by the Government of Myanmar. The use of this term increases the vulnerability of Rohingyas as victims of smuggling and trafficking. Secondly, there are no coordinated regional responses to the Rohingya problem. There is no common platform among the four related countries and ASEAN. Each ASEAN country can share roles and burdens to face this refugees problem together. Therefore, the responsibility is not only on countries receiving refugees but also all ASEAN members. Thirdly, the security approach is far more dominant in the handling of Rohingya than humanism. The wave of Rohingya refugees is read as a security threat, economic burden, potential cultural issue, and other negative things which ultimately put the refugees in a worse position. This approach needs prompt transformation.

The number of recommendation points offered by the authors to the ASEAN countries, especially Indonesia, Malaysia, and Thailand, are as follows: 1) Shift the approach of securitization to humanism in the handling of refugees; 2) Ratify international law related to refugees; 3) Establish a clear national legal framework as guidance; 4) Be active in international diplomacy to push the factors which lead to the emergence of refugees; 5) Establish institutions at the national level which specifically



address refugee issues; 6) Design a comprehensive program for refugee handling; 7) Use a mix of security approaches with cultural and persuasive approaches to minimize security and national cohesion threats (Read: Scottish Refugee Council, 2008). Canada's approach to deal with refugee issues can be a valuable reference; 8) In particular, take initiatives within the ASEAN region to draft refugee handling policies collectively as a regional solution.

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