ASEAN ISSUES AND PRACTICE: AN HUMAN SECURITY IN SOUTHEAST ASIA CASES

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ABSTRACT

This study examines ASEAN as a community that has recently been plagued by events affecting member states. Rohingya's case has become and old polemic in Myanmar and their conflict with the Myanmar government has made them refugees in Bangladesh, Malaysia, Pakistan, saudi Arabia, Thailand, indonesia, and Australia. This conflict has also become an increasingly complex part of golobal politics. Understanding the political constellation and the ability to respond appropriately to such issues now and in the future is indispensable. In some cases, international politics in Southeast Asia is now shifting from issues not only related to war and violence but also to more complex economic, political, and human security issues. Therefore, the role of diplomacy in the settlement of conflicts that occur between countris becomes very important. So far there has been a barrier of relations between ASEAN member countries because of the principle of ASEAN non-intervention. The principle inhibits the flexibility of diplomacy of Southeast Asean countries. Many member countries are not capable of resolving conflicts within their own country, such as the Thai Government with a Muslim minority in the South, the Philippines with Maute and Abu Sayyaf guerillas, and the Government of Myanmar with Rohingyas. However, they reject the aid of other countries by reason of ASEAN's non-interventionist priciple. Whereas there is an international that obliges civilized countries to take unilateral action regardless of the principle of non-intervention in the event of violations of exceptional humanitarian principles such a expulsion, murder, rape, land and property raiding leading to ethnic cleansing as it occurs in the Rohingya ethnic case in Myanmar. The results of this research show that ASEAN needs to take comprehensive tactical and operational actions in accordance with the ASEAN Charter and the civilized principle of ASEAN to solve various problems such a Rohingyas.

Keywords: ASEAN Community, Human Security, Humanitarian Principles, Non-Intervention Principles, Rohingya Ethnic, ASEAN Charter.

1. INTRODUCTION

A. Background

Since its establishment on August 8. 1967, ASEAN has succeeded in increasing its diplomatic influence over various international political and economic issues, creating a stable strategic environment for economic and social development, reducing the risk of war and creating peace and stability in the region. Now, the ten ASEAN countries are determined to establish a single identity of the region, regardless of cultural differences in each member. Through a community, ASEAN strives to change its status from "nations' associations" to a single "community" of the nations (transforming itself from an "association of states" into a "real community of nations"). In the words. ASEAN begins the process of transfomation from a set of associated states into a more integrated regional community.[1]

However, lately some ASEAN member countries are still experiencing domestic problems that are in fact incapable of managing their own problems, such as the Thai government with the Muslim minority in the south. The Philippine government with Maute and Abu Sayyaf guerillas in Marawi, and between the government Myanmar with ethnic Rohingyas, all of which lead to threats to human security and a lack of human rights protection provided among the government.

The conflict between the Myanmar government and the Rohingyas, brings with it a tremendous catastrophe touching the conscience of mankind and civilized nations. This is a conflict based on discrimination because of ethnic and religious differences. Ethnic Rohingya who are Muslims are not recognized in Myanmar and are not recognized in Myanmar are not stateless person so that their status illegal immigrants. They have no legal protection from Myanmar, so violent acts are often perpetraded by pro-government and millitary junta (horizontally) as well as by the Myanmar government (vertically).

Due to such discriminatory treatment, Rohingya Muslims are forced to choose to be boat people and leave Myanmar to seek security in other countries. It is a very ironic, in modern times as it is today, human rights of Rohingyas is still not respected, includung their citizenship.

The case has has become a long-standing polemic in ASEAN that has affected transit and destiination countries, including Bangladesh, Malaysia, Thailand, and Indonesia. This Polemic also caused the flow of change in global politics has made international issues more complex.

Understanding of the political constellation and the ability to respond appropriately to such issues both now and in the future is indispensable. In some case, studies of international political issues are now experiencing a shift not only related to war and violence but have spread to more complex realms of economic, cultural, and even human security issues. Therefore, the role of diplomacy in the resolution of conflicts between ASEAN countries is very important.

Eguating the perception of human security at this time is very necessary for ASEAN because conceptually human security understanding has moved from mere threats in the economic, environmental and human rights and migration to the protection of individual,

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[1] Andrea Faustinus, (2006), "Indonesia and the ASEAN Community", Main Article, **Jurnal Hukum Internasional**, Vol.3, LPHI-FH-Universitas Indonesia, Jakarta., p.399.

human security or global security even towards security cooperation between countries.[2] It is very risky if ASEAN still ignore aspects of human security when talking about the integrated area security issues.

The human security concept was first recognized in the UNDP Human Development Report in 1994. The main issue in human security is the individual right to safety and security that is considered a priority on the security agenda. Traditionally security policies have focused on the security of countries, called national security.

Human security is based on the idea of universal human rights. Hence, historical roots point to the 1860s when the International Committee of the Red Cross was established. Human security can be seen as a normative concept related to the obligation to promote human rights. It makes a difference compared to state-based security thinking although this view is only a complement. Countries should promote human security when ensuring national security, but unfortunately this is not always the case.[3]

The responsibility for protecting may stem from the principle of human security to ensure the safety of civilians is an obligation to the international community: it is a state's responsibility to ensure the protection of civilians.

If the state can not guarantee the protection of civilians, the international community has a secondary responsibility to ensure that if there is a risk of mass atrocity, the international community must take action to prevent such genocide or similar violence from emerging. In accordance with this principle every member state in the UN accepts its responsibility to protect its own population from genocide, war crimes, crimes against humanity, and ethnic cleansing.[4]

It is believed that the concept of security is being transformed. Security is increasingly 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, and in their environment.[5]

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[2] Ali Muhammad, (2004), "The Spread of Democracy and International Security", *Jurnal Hubungan Internasional,*
Labortorium Ilmu Hubungan Internasional., Universitas Muhammadiyah Yogyakarta, Yogyakarta, p.91.

[3] Ulla Mari Ainikki Anttila, (2014), "Human Security and Learning in Crisis Management", *Journal of Humanitarian Logistics and Supply Chain Management*, Vol. 4 Issue: 1, National Defence University, Helsinki, Finland, p.83, that explains, "*there are different interpretations of human security. The narrow interpretation refers to human security as described above in the context of conflict or similar circumstances under which protection is needed. The broad interpretation of human security includes different aspects of human development. In terms of promoting human rights, the narrow definition is more accurate because it provides opportunities for analyzing human rights violations in conflict and post-conflict zones in such ways that may give some valuable conceptual contextualization. On the other hand, the broad definition of human security lacks conceptual significance*"

[4] *Ibid*, p.83."The International Commission on Intervention and State Sovereignty" published a report entitled"Responsibility to protect" (International Development Research Centre). The principle of the responsibility to protect was adopted in the UN in 2005 and by the Security Council in 2006. According to this principle every member country of the UN accepts its responsibility to protect its own population from genocides, war crimes, crimes against humanity, and ethnic cleansing.

[5] Syed Hussain Shaheed Soherwordi, (2004) "Human Security in South Asian Paradigm", *Managerial Law*, Vol. 46 Issue: 6, Department of International Relations, University of Peshawar, Pakistan, p.104,for the same article, read opinion of Maria Ela L. Atienza in Maria Ela L. Atienza, (2015) "People's views about Human Security in Five Philippine Municipalities" *Disaster Prevention and Management*, Vol. 24 Issue: 4, p.449, that explains: "*....to protect the vital core of all human lives in ways that enhance human freedoms and human fulfillment. Human security means protecting fundamental freedoms — freedoms that are the essence of life. It means protecting people*

It is time to recognize that most conflicts are within nations, not between nations. Of the 82 conflicts in the last decade, 79 were within nations and 90 percent of the causalities were civilians, not soldiers. When most conflicts are between people, not between states, and when these conflicts are often over diminishing income and employment opportunities, not over territorial disputes, why didthe United Nations still send peacekeeping forces in these countries? Isn't development today better than troops tomorrow? Unfortunately, we are still fighting the battles of tomorrow with the concepts of yesterday.[6]

From the above description, the problem is how can ASEAN as a political community provide protection for human security in settling conflicts among its members?

B. Methodology

The object of research is the problems and political practice in ASEAN with the subject of research is the protection and security of human in cases of political violence in Southeast Asia.

As a consequence of the selection of topics of issues to be studied in a study of the objects of political issues and practice in ASEAN, the type of research used is sociolegal [7] research and in this case, deductive logic is used to draw conclusions from general to individual.[8] In this study we also proportionally use normative research, ie research that is focused to examine the application of rules or norms in positive law. In this connection, inductive logic is used. Inductive logic is used to draw conclusions from individual cases to general ones.[9]

In connection with sociolegal research here we used several approaches, namely the approach of live-case study. While in relation to normative research here used several approaches, namely the approach of legislation (statute approach). The approach undertakes a review of legislation relating to the central theme of the study. It also uses comparative approaches, and historical approaches necessary to clarify the scientific analysis reguired in normative research.

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from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity".

[6]Syed Hussain Shaheed Soherwordi, (2004) "Human Security in South Asian Paradigm", *Managerial Law*, Vol. 46 Issue: 6, Department of International Relations, University of Peshawar, Pakistan, p.104.

[7]AdriaanBedner, (2001), *Administrative Courts in Indonesia, A Socio-Legal Study*, Kluwer Law International, TheHague-Netherland, p.8-9, that explains, "*It will be clear that the different perspective from which I have studied the administrative courts reguire different research methods. As noted above, the problema for legal scholar who embarks on a conventional positivist legal analysis. .....and I had together my material from various sources. I obstained information on cases via observation, press report and interviews*".

[8]AnwarulYagin, (2007), *Legal Research and Writing*, Lexis Nexis Malaysia Sdn.Bhd, Selangor DE, p.10, that explains, in the doctrinal research" *justice, fairness, protection of rights, freedom and liberty are often used by the researcher as the criterion to evaluate the relevance or effectiveness of laws, concepts or legal institutions. The underlying aim of such research is to gain and present new knowledge and ideas or to suggesi change and reform".*

[9]Johnny Ibrahim, (2006), *Theory and Methodology of Normative Law Research*, Bayumedia Publishing, Malang,p.242.

To obtain the research material is done by collecting procedure through two ways, namely, literature study, literature study not only on the materials of the legislation, the author also looking for material on books, journals, papers, reports, research results , materials obtained from the internet and previous court decisions relating to the issues and political practices of ASEAN in providing protection for human security in Southeast Asia such as in cases of violence against humans in Southern Thailand, the Philippines and in Myanmar .

Type of materials used in this research, namely, types of primary materials and secondary materials. The type of primary material, ie the type of material that can be based on the results in the field by interview and its nature as complementary (complementary), while the type of secondary material is a type of material that can not be from the field and can be in the form of three research materials, the research material reviewed included the following;

The primary research materials, namely formal materials, such as International Regulations, the ASEAN Charter and the legislation relating to the protection and security of human beings and the recognition of the rights of citizens.

Secondary research materials, ie materials consisting of textbooks written by influential scholars, journals, scholars' opinions, political violence cases, jurisprudence, and recent symposium outcomes related to research topic.

Tertiary materials, which provide guidance and explanation of primary and secondary research materials, such as, dictionaries, encyclopedias and others.

After the procedure of collecting primary research materials, secondary research materials, and tertiary materials is carried out, then the research materials are inventoried and classified by adjusting to the issues discussed. Research materials related to the issues discussed are described, systematized, then analyzed to interpret the prevailing political issues and practices.

The processing and analysis of research materials that have been obtained in literature research, legislation rules, and articles referred authors will be followed by the process to describe and connect the data in such a way that can presented in a more systematic writing to answer the issues that have been formulated in the formulation of the problem. Whereas the way of processing the research material is done deductively, that is drawing the conclusion from a general problem to individual cases and the processing of research material is also done inductively that is drawing conclusion from a concrete problem faced to the problem which is general. Further research material is analyzed to look at ASEAN's political form and practice in the ASEAN Charter and existing international regulations so as to assist as a basis for reference and considerations useful for implementation in explaining the models of human protection and security as in cases in Southeast Asia.

II. ANALYSIS

A. Factors Affecting

Moral and ethics are in essence principles and values which, according to one's belief or society, are acceptable or practiced properly and appropriately. Thus the principles

and values are related to the right and wrong attitude that they believe. Ethics itself as part of the philosophy is a system and moral principles including rules to implement it.[10]

In international law such morals and ethics are attached to the obligations of international legal subjects such as states to implement with good terms the provisions of those international laws which are the instruments of principles and rules generally accepted and approved by the international community. In this regard, international law provides the legal basis for orderly management of international relations.

Although the rule of law serves to protect the particular interests of individuals in a certain way,[11] the scope of interests and the scope of the individual enjoying such protection varies greatly from one law to another. There are many examples of countries that treat most of their subjects as slaves. It means that these individuals are not at all protected by the rule of law, or are protected not in the same degree as the free ones. And many countries whose legal system does not recognize any personal freedom or personal property.

Ethnic Rohingya is an ethnic group originally from Bangladesh, but has settled in the state of Rakhine in Myanmar since the 7th century AD. Despite centuries of living in Myanmar, the Burmese government considers that Rohingyas belong to Bengali so they can not be recognized as one of the ethnic Burma. The loss of citizenship makes the Rohingyas lack national protection. Ethnic Rohingya experience various human rights violations, both in terms of citizenship in terms of religion. This human rights violation prompted the Rohingyas to leave Myanmar and seek refuge in other countries. This issue can then turn into internationalization of internal conflicts.

The culmination of all the ethnic issues of Rohingyas was when the ARSA guerrillas (Arakan Rohingya Salvation Army) made armed resistance against the Government of Myanmar in demanding their rights fairly, which was then blindly repaid by the Myanmar military assisted by armed civilian militia. The Myanmar military carried out extensive killings including women and children, raped, burned villages without borders, forced evictions and in that case the military of Myanmar deliberately provoked and increased the escalation of disproportionate damage to limit the damage inflicted in military operations. The Myanmar military does not distinguish between armed groups and civilians.

Citizenship is a human right. A stateless person means that he / she has no legal protection and is unable to enjoy the rights as appropriate, for example, can not participate in political processes because he / she has no right to vote, the right to education, the right to health care, the right for work; did not get travel documents. Hence, citizenship has a very important function for everyone to obtain other rights recognized before the law. In determining one's citizenship there are several principles that are commonly used as guidelines for a country.

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[10] Sumaryo Suryokusumo, (2003), "Moral Aspects and Ethics in International Law Enforcement*", Journal of International Law*, Vol.2, No.2, Jurnal Hukum Internasional Fakultas Hukum UNPAD, Bandung, p.93.

[11] Anak Agung Banyu Perwita, (2003),"Human Security in the Global Context and its Relevance for Indonesia", *Jurnal Analisis CSIS*, Tahun XXXII, No. 1, Jurnal Ilmiah Berkala CSIS — Jakarta., p.71, that explains, "*one of the approaches used in human interaction is the concept of human security, one of which is core values security, a concept of new values in both individual and global levels that need to be protected. These new values include respect for human rights, democratization, protection of the environment and efforts to combat Iransnational crime, such as narcotics, money laundering and terrorism. The protection of Ihese new values is the culmination of the global human security concept*".

Whereas according to Universal Declaration of Human Rights (UDHR) 1948 has arranged and provided guidance for the countries in the world to recognize the basic rights and importance that give protection to human rights which stated in UDHR include, the right to citizenship, Article 15 (1) of UDHR stated: "*Everyone has the right to anationality*" mean while, Article 29 (1) of UDHR stated: "*Everyone has duties to the community in which alone the free and full development of his personality is possible*".

Article 2 is the right to citizenship to be one of the human rights of personal freedom. Pursuant to Article 15 (1) of UDHR 1948, everyone has the right to citizenship. Furthermore in Paragraph (2) it is stated that no one may be arbitrarily deprived of his nationality, or denied the right to change his nationality. Convention Relating to the Stateless Persons 1954 and the Convention on the Reduction of Statelessness 1961 are international legal instruments that provide guarantees of protection against ethnic groups that have no citizenship and minimal treatment to be applied to such ethnic groups.

The right to the same position in the law, Article 7 UDHR stated:

"all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination."

In the ASEAN charter, the principles of democracy, human rights enforcement and legal protection issuesare governed by article 1 (7) which states:

"strengthen democracy, promote good governance and rule of law, and promote and protect human rights and fundamental freedoms, taking into account the rights and obligations of ASEAN member countries."

From the statement, ASEAN affirmed not only the political and economic organization but also the community with the unity of the jurisdiction itself. As such, Myanmar as an ASEAN member country has a legal responsibility to defend the interest of every human rights that exist in its country, not only to make the ASEAN charter as a guide for the regulation of the legal system in their respective countries, but also to contribute to the development of the region with the legal community integrated, especially in providing protection for the people of ASEAN in general.

After being criticized by international rights group, the Burmese government declared the Rohingya Muslim minority is entitled to register for citizenship. On November 18, 2012 in the ASEAN submit or ASEAN summit in Cambodia, the heads of ASEAN member countries signed the ASEAN Human Right Declaration, yet we still need time to see the commitment and follow-up of the implementation of the principle in practice consistenly from Myanmar.

The declaration is expected to equate perceptions and improve the protection of human rights standard in ASEAN member countries. ASEAN member states, namely brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, laos, Thailand, Vietnam, philipines, and Singapore, have different laws, governance systems and human rights conditions. With the declaration, the 10 member countries will inevitably comply with the ASEAN Declaration of Human Rights.

B. The role of ASEAN Political Diplomacy.

At the beginning of the twenty-first century, we have indeed to recognize the the world has become a dangerous place, with terrorism and bloody local conflicts. Social inequality, whitin and between countries, has increased dramatically and poverty is deepening. The resulting increased competition for scarce resources contributes to unstable political structures and favors the eruption of conflict.[12]

Fluctuations in world commodity price can trigger dangerous destitution and civil strife. Indeed, many of the apparently senseless violent conflicts and acts of terrorism in the world become markedly more transparent when such roots are explored.[13]

The International Law Commission in the process of drafting a treaty on the question of state responsibility. The draft provisions have been developed to the extent that it affirms that any international misconduct of a country raises international responsibility to the country. An internationally erroneous act is considered to exist if :[14]

1. Acs consisting of an act or omission are condemned to the state under international law, and
2. Such action constitutes a violation of the international obligations of that country.

Every country alleged to have committed wrongful acts internationally assumes international responsibility. The internationallu erroneous act arises from a violation by a state of international obligations essential to the protection of the fundamental interest of the internasional community. Recognized by the entire international community as a crime. Such international crimes can, among other things, arise from grave violations on a wide scale of international obligations that are essential to protecting humanity such as those that prohibit slavery, genocide and apartheid.[15]

At this point it has been firmly established that countries may be held liable for acts of civil and criminal misconduct. Responsibility is not only applicable in the case of the state itself as a perpetrator, but also in the circumstances of the acts of a person or body may be blamed on the state. The actions of the state body shall be regarded as acts of that state under international law, wheter they fall within the constituent, legislative, executive, judicial or other authority, either internationally or internally and in the position of superior or subordinate within the organization of the state.[16]

Understanding whether the crimes commited by the parties in Myanmar can be categorized as crimes against humanity and can be prosecutes internationallu ?, the world actually has experience with ever having an ad hoc court against Rwanda (ICTR, 1004) and Yugoslavia (ICTY, 1993) aimed at cases of crimes of genocide and crimes against humanity.

In addition to the ad hoc trials mentioned above, the world also has what is called the International Criminal Court (ICC-The International Ciriminal Court). The establishment of the ICC is a historic event of great importance for the development of the legal system

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[12] Cornelio Sommaruga, (2004) "The Global Challenge Of Human Security", Foresight, Vol. 6 Issue: 4, International Centre For Humanitarian Demining, Geneva, hlm. 208.
[13] *Ibid,* P. 208.
[14] C. De Rover, (2002), ***To Serve & To Protect, Universal Reference Of Human Rights Enforcement***, Pt Raja Grafindo Persada, Jakarta, 2000, P.22.
[15] *Ibid*, P. 23.
[16] *Ibid*, P. 23.

because subsequently individuals can be dragged to the criminal court if it is proven to commit a crime against humanity of war and crimes against humanity.[17]

This statue of the court shall come into force on 1 july 2002,[18] Article 5 (1) of the statue detailing any criminal offenses entered in the jurisdiction of the court. In this case the court limits itself only to the most serious crimes which concern the international community as a whole, namely; criminal acts of genocide,[19] crimes against humanity[20], war crimes or war crimes,[21] and aggression. Whereas parties who may file claims to prosecutors include, among other parties, the statue of the ICC, the security council of the united nasutions and the initiative of the prosecutor himself.[22]

In this case, although Myanmar has not ratified the Rome Statue and is not a member of the ICC, a treaty should not create obligations or rights to a third country without its consent.[23] However, in some cases a third country which is not a party may also be bound by an international agreement. These exceptions are reflected in Articles 35, 36 and Article 37 of the Vienna Convention 1969 concerning the Law of Treaties included in Article 2 (6) of the UN Charter.[24]

A multilateral agreement stating that customary international customary law may bind that to a state not party to the treaty. Multilateral agreements that create new rules in international law may also bind non-party countries.

It is also important to note that, in addition to the ad hoc tribunals and the international criminal court, within the UN framework, the security council may also establish a mixed tribunal for the resolution of conflicts in some areas. The tribunal mixed with the composition of international judges and local judges as it was intended for East Timor, Sierra Leone and Cambodia.

In addition, in international law, also known as that is called humanitarian intervention. As it is known that the interference of a state against another country is absolutely prohibited, given its contradiction to international principles, but since 1992 when the Bosnian-Herzegovina war with Serbia took place, humanitarian intervention arose, although in principle intervention was forbidden by the UN, international enabling intervention on the condition that there should be massive threats to human rights and protection only limited to human rights.[25]

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[17] Boer Mauna, (2001), International Law: Definition, Roles And Functions In The Era Of Global Dynamics, Alumni, Bandung, p.291.

[18] Rome Statute of The International Criminal Court.

[19] Article 6 of The Statute of The Court.

[20] Article 7 of The Statute of The Court.

[21] Article 8 of The Statute of The Court.

[22] Article 13 of The Statute of The Court.

[23] Ko Swan Sik, (2006), "Some Aspects Of Relativity And Punishment Of The International Covenant" Main Article, **Jurnal Hukum International**, Vol. 3, No.4, LPHI-FH-Universitas Indonesia, Jakarta, p.488, that explains; the same things is said, in the field of the law of agreement is known the existences of the limitations of the applicability of inter-parties, namely the principle of tertiary pacta nec noc nec prosunt, namely the agreement does not result in profits or obligations for third parties, in this formula implied stipulation that anyone who did not participate in the agreement by itself is not bound to him. This principle seems quite feasible, if we view the agreement as a source of mutual rights and obligations between the parties. However, international agreements are not always mutual.

[24] Article 2 (6) of the UN Charter, *"The Organization shall ensure that states which are not members of the united nations act in accordance with these principles so far as may be necessary for the maintenance of nternational peace and security"*

[25] Jawahir Thontowi dan Iskandar Pranoto, (2006), **Contemporary International Law**, PT Refika Aditama, Bandung, p.260.

The issue that can be used as a basis for the enactment of a humanitarian intervention is a violation of the norm of cogen juice. An issue that is only calculated based on its influence has shaken the human conscience. In other words, an issue that threatens peace or a civil war can also serve as the reason for militaru intervention.[26]

In fact, there is one famous doctrine commonly called the martens clause which essentially dictates that if humanitarian law has not regulated a legal provision on certain matters, the the provisions used shall refer to the principles of international law which arise from the customs of the nations, civilized countries, from humanitarian law and from the conscience of society.[27]

However, the discussion on humanitarian intervention is still continuing as it is not yet a provision of international law. The problem is, when the intervention can be done, who can authorize or who can mandate humanitarian intervention. But in the international community there seems to be some sort of consensus that certain cases of the people need to be protected from zholim governments.[28]

In the case of ethnic Rohingya in Myanmar, ASEAN needs to take steps such as humanitarian intervention breakthrough by ignoring the limitations in the relationsip between ASEAN member countries that is the principle of nonintervention of ASEAN. This principle is a bit much inhibit the flexibility of diplomacy of southeast asian countries. Many member states are actually unable to manage their own problems, say like the Thai government with a Muslim minority in the south, the Philipine government with Maute and Abu Sayyaf guerrillas in Marawi. However, they refuse the help of other countries and take refuge in the principle of ASEAN non-intervention.

Nevertheless, indonesia's humanitarian diplomace step based on the principle of free and active foreign policy can be an example and it can penetrate the barriers. Of course, the success of Indonesia which made the government of Myanmar willing to open itself needs to follow up in the form of comprehensive tactical and operational measures. Myanmar, which is currently a young democracy still needs to be sustained to strengthen its democratic infrastructure.

C. Recommendation

During this time, the Myanmar government has always refused international involvement in handling Rohingya ethnic cases, and even Myanmar expressly refuses UN special envoy to handle the issue because it considers the matter as its internal affairs. The government of Myanmar has forgotten that the excesses of the problem also bring international implications.Supposesdly, when there is a dispute about the fact of a problem such as in Myanmar, the method of inquiry is considered the most appropriate, because this metod is used to achieve the settlement of a problem by establishing an international fac-finding commission to seek and hear all relevant evidence with problem later. On the basis of evidence and problems arising, this commission will issue a fact accompanied by its resolution.[29]

Finding a long-term solution for those who need international protection is one of ASEAN's most important tasks. ASEAN should provide substantial support in granting

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[26] *Ibid*, hlm. 261.

[27] Knut D. Asplund, Suparman Marzuki And Eko Riyadi (Editor), (2008), **Human Rights Law**, Pusham Universitas Islam Indonesia, Yogyakarta, p.345

[28] Boer Mauna, *Op.Cit*, p.651.

[29] Jawahir Thontowi and Iskandar Oranoto*, Op.Cit.*, p.228.

asylum by granting asylum by granting permission for asylum seekers to reside in its territory, obtaining UNHCR services and temporary residence permits as long as they await a suitable long-term solution for them.

Some of the efforts made by ASEAN related to Rohingya are among others the return of refugees to their home countries, refugees resettled in the first asylum or resettled in third countries.

This is where the role and responsibility of ASEAN as a civilized country within the scope of the region that requires steps;

1. Ensure that the Government of Myanmar remains open to accept the presence of volunteers from various countries and humanitarian aid to ease the burden of Rohingyaa in Rakhine. The destruction of homes and the deaths of relatives become an unspeakable pain for those who are still alive.

2. ASEAN should ensure that there are no more blind military operations launched by the Government of Myanmar in the Rakhine region. If undertaken, ASEAN should not hesitate to reprimand and isolate Myanmar in association within the scope of the ASEAN community, if necessary drag the perpetrators of such crimes to the International Criminal Court.

3. States affected by this case provide special and should make commitments and agreements with the Government of Myanmar on the handling of Rohingya immigrants in the region. The mechanism could be direct repatriation provided that they do not experience repressions back to their homeland, or gradual repatriation as the political situation in Myanmar in conflict resolution.

4. ASEAN should not hesitate to build a full commitment in strengthening the capacity of the government of Myanmar. As a young democracy, Myanmar is in dire need of full support from friendly countries. Myanmar needs help in strengthening security forces, implementing interfaith dialogue, and reconciliation processes.

In this context, Indonesia can send police or military personnel to provide on going training on how to maintain security and restore post-conflict stability. Indonesia can also send conflict mediators who have played a role in cooling the Republic of Indonesia conflict with Aceh Sumatra National Liberation Front (GAM=Gerakan Aceh Merdeka) in the past. Their experience is very important to be transmitted to interested parties in Myanmar. Indonesia as a role model of diversity should be able to provide input on how to manage diversity should be able to provide input on how to manage diversity and diversity as an adhesive, not divisive aspect.

Another effort provided by ASEAN is the mechanism of cooperation with UNHCR. This mechanism is a long-term solution consisting of local integration, voluntary repatriation, or placement in a third country, namely:

1. Local integration is not currently a viable option for most cases, given that almost all ASEAN member countries do not yet have local legislation to regulate and asylum seekers only obtaining permissions to stay temporarily.

2. Voluntary reparation becomes an option for a small number af asylum seekers and refugees from Rohingya. The role of UNHCR is to conduct counseling with each individual to ensure that they do not voluntary object to returning to their home country. All travel needs such as documents, flights, cash and receipts in the home country are handled by UNHCR's operational partner, International Organization for Migration (IOM).

3. Placement in a third country is not a right of refugees and the state has no international obligation to accept refugees temporarily living in the first country of asylum. Thus, placement in a third country is a long-term solution that depends on the willingness of the receiving country. In ASEAN, placement in a third country becomes the most viable option for the majority of refugees. In the prevailing context in Indonesia, placement in third countries perform strategic funcations especially in terms of the government-related relevance for newly arrived asylum seekers and refugees.

III. CONCLUSIONS

At this time, Ethnic Rohingya suffered various human rights violations, both in terms of citizenship and in religious matters. Citizenship is a human right, a person who has no nationality means no legal protection and can not enjoy the rights as appropriate. In this case the ethnic Rohingya status as sthnic citizens who do not have citizenship because the government of Myanmar as their birthplace has revoked these rights, where no human being is born without citizienship.

ASEAN's humanitarian diplomacy towards Myanmar is based on the principle of not adopting policies that threaten the safety, not oppressive, and can safeguard the security of every citizen's soul, especially for the Rohingyas. The on going humanitarian violence in Rakhine can force the governments of ASEAN countries to take firm action based on the princiole of humanitarian intervation justified under international law and the conscience of civilized nations.

The government of Myanmar must commit to providing ASEAN countries with extensive access to actively contribute to the settlement of Rohingya. The government of Myanmar, should also be given capacity building assistance in various foeld, especially policy capacity, security apparatus, facilitation of interfaith dialogue, and reconciliation efforts in Rakhine, ASEAN should not hesitate to build full commitment in strengthening democratic capacity of Myanmar government.

What ASEAN can do is to ensure that the Myanmar government remains open to accepting the presence of volunteers from various countries and humanitarian aid to ease the Rohingyas burden on RAkhine. Secondly,ASEAN must ensure that there are ni more blind military operations launced by the government of Myanmar in the Rakhine region. Thirdly, as a country affected by the Rohingya exodus, the ASEAN region make strong commitments and agreements with the government of Myanmar on the handling of the return of Rohingya immigratnts to Myanmar, and to protect and impart ethnic Rohingyas based on the principle of civilized humanity.

    With this article, it is expected that readers can understand and understand about the model of ASEAN political diplomacy on the violation of Rohingya ethnicity that happened. In addition, as a civilized community in Southeast Asia, ASEAN is expected to contribute to the protection of ethnic Rohingya and can solve cases of gross human right violations.

REFERENCES

Asplund, Knut D, Marzuki, Suparman dan Riyadi, Eko (Editor), (2008), *Human Rights Law,* PUSHAM Universitas Islam Indonesia, Yogyakarta.

Ainikki Anttila, Ulla Mari, (2014), "Human Security and Learning in Crisis Managemment," *Journal of Humanitari Logistics and Supply Chain Management,* Vol. 4 Issue: 1, National Defence University, Helsinki, Finland.

Atienza, Maria Ela L, (2005), "People's View about Human Security in Five Philippine Municipalities *"Disaster Prevention and Management,* Vol. 24 Issue: 4, Departement of Political Science, University of the Philippines, Diliman, Quezon City, Philippines.

Bedner, Adriaan, (2001), *Administrative Courts in Indonesia, A Socio-Legal Study,* Kluwer Law International, The Hague-Netherland.

Banyu Perwita, Anak Agung, (2003), "Human Security in the Global Context and its Relevance for Indonesia", *Jurnal Analisi CSIS*, Tahun XXXII, No. 1, Jurnal Ilmiah Berkala CSIS-Jakarta, Jakarta.

C. de Rover, (2000), *To Serve & To Protect, Universal Reference of Human Rights Enforcement,* PT Raja Grafindo Persada, Jakarta.

Faustinus, Andrea, (2006), "Indonesia and the ASEAN Community", Main Article, Jurnal *Hukum Internasional,* Vol.3, No.3, LPHI-FH-Universitas Indonesia, Jakarta.

Ibrahim, Johny, (2006), *Theory and Methodology of Normative Law Research,* Bayumedia Publishing , Malang.

Muhammad Ali, (2004), "The Spread of Democracy and International Security", *Jurnal Hubungan Internasional,* Edisi 1, Labortorium Ilmu Hubungan Internasional, Universitas Muhammadiyah Yogyakarta, Yogyakarta.

Mauna, Boer, (2001), *International Law: Definition, Roles and Functions in the Era of Global Dynamics,* Alumni, Bandung.

Shaheed Soherwordi, Syed Hussain, (2004) "Human Security in South Asian Paradigm", *Managerial Law,* Vol. 46 Issue:6, Departement of Internasional Relations, University of Peshawar, Pakistan.

Sommaruga, Cornelio (2004) "The Global Challenge of Human Security", *Foresight,* Vol. 6 Issue:4, International Centre for Humanitarian Demining, Geneva.

Swan Sik, Ko, (2006), "Some Aspects of Relativity and Punishment of the International Covenant" Main Article, *Jurnal Hukum Internasional,* Vol.3, No.4, LPHI-FH-Universitas Indonesia, Jakarta.

Suryokusumo, Sumaryo, (2003), "Moral Aspects and Ethics in International Law Enforcement", Journal of International Law, Vol. 2, No. 2, Jurnal Hokum Internasional Fakultas Hokum UNPAD, Bandung.

Thontowi, Jawahir dan Pranoto, Iskandar, (2006), Contemporary International Law, PT Refika Aditama, Bandung.

Yaqin, Anwarul, (2007), Legal Research and Writing, Lexis Nexis Malaysia Sdn.Bhd, Selangor DE.

Universal Declaration of Human Rights 1948.

UN Charter

UN Convention Relating To The Stateless Persons 1954

UN Convention on The Reduction Of Stateleeness 1961

Vienna Convention 1969 of Internationan Agreement

Rome Statute of The International Criminal Law

ASEAN Charter