

# Examining ASEAN Charter of Human Rights: Study Case of Rohingya Crisis

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**Abstract**— Many analysts argue what Myanmar Government did towards Rohingya people who live in Rakhine State, Myanmar, actually a violation of human rights. Myanmar government policy under the former president Thein Sein did not consider ethnic of Rohingya as citizen of Myanmar, and as a consequence, they do not obtain the access to education, medical health and it makes Rohingya people become stateless. Myanmar is one of the ASEAN member countries which recognize the existence of ASEAN Charter; however, Myanmar is considered by some member ASEAN countries has violated the contents of the agreement set up in ASEAN Charter. On the other hand, one of the contents in ASEAN Charter itself mentions ASEAN member states must respect domestic policies of other member states, thus, making Myanmar government has power to determine the direction in order to manage policies in the level of domestic affairs. This paper aims to examine the ASEAN Charter and its implication towards ASEAN state members behavior to the humanitarian crisis in Rakhine state. This paper also discusses, whether the ASEAN Charter needs to be ratified, especially in ASEAN member states intervention against Myanmar humanitarian issue.

**Keywords**— ASEAN Charter, Human Rights, Rohingya people, State Behavior

## I. INTRODUCTION

**R**OHINGYA is an ethnic minority who inhabit Rakhine State (formerly called Arakan State), one of the areas that is under the Republic of the Union of Myanmar [1]. Since Burma (now called Myanmar) was taken over from the colonial government of the United Kingdom in 1948, the Moslem Rohingya were hunted by the Myanmar Government at that time, with the aim to control and marginalize ethnic groups that are not considered native to Myanmar[2]. Then, in 1982, the Government of Myanmar issued a policy on Citizenship Act which absolutely gave no favors to the Rohingya; they did not have access to health, education, employment, and freedom of religion because they are not considered citizens of Myanmar [3]. Later, in the year 2012, they were hunted again; their housings and farm areas were destroyed by Myanmar authorities, even Buddhist monks were reportedly to take part in mobilizing the masses with the aim of expelling Rohingya insurgents from Myanmar, so that hundred thousand of Rohingya people were forced to leave

Myanmar by boats. They soon put their fate and future to their neighboring countries which were thought to help them [4].

As one of member states of the Association of South East Asian Nation (ASEAN), Myanmar is certainly getting pressure from the other ASEAN member states [5]. The other ASEAN member states that in fact are the neighboring countries of Myanmar were flooded with boatmen, where more than hundred thousands of Rohingya are adrift at the sea for days; some of them enter the territory of Indonesia, Thailand and Malaysia as well, while the rest is unknown [4]. The term of boat people is addressed to Rohingya islamic people who left Myanmar because of ethnic cleansing done by the Government of Myanmar [2].

ASEAN member states intervene this case through Asean Way, namely having dialogue with Myanmar because the issue is categorized into violation of human rights, which is in fact already stated clearly in the ASEAN Charter [6]. However, Myanmar firmly refuses to bring Rohingya issue into high-level dialogue [7]. In my opinion, Myanmar has the rights to refuse it because the ASEAN Charter mentions that ASEAN member states are not allowed to intervene against the political situation in the other member states [6].

This article has a primary focus on the ASEAN Charter (ASEAN Charter), which in substance contains contradicting elements between one chapter to another, especially in the violation of human rights in the Rakhine State (Rohingya crisis). The "unique" approaches that are always put forward by ASEAN member states are namely dialogue and consensus; however, those apparently are not effective to apply in this humanitarian crisis. Under the umbrella of the ASEAN Charter, Myanmar could set their own position as well as other member states such as Indonesia, Malaysia or Thailand that makes the situation becomes increasingly complicated and hard to solve.

## II. THE ROHINGYA SETTLEMENT

First, there will be brief discussion on ethnic Rohingya in Myanmar from the historical perspective to get a clear picture of this humanitarian crisis. The fundamental thing is that the ethnic Rohingya is one of the ethnic minorities who inhabit the Northern Rakhine State/Arakan state, one of the regions in western Myanmar [1]. In the 7th century, Arab traders came to this region, settled and lived in the western part of Myanmar; Rohingya are Arab descendants so physically and in terms of language and religion, they are similar to those of

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East Asia, particularly Bengalis [8]. The existing documents reported the Arakan Rohingya population have already settled there since 1799, and according to data in 1826, 30% residents in the region are moeslem [9]. The presence of ethnic Rohingya turns out to be difficult to accept by most of the people of Burma/Myanmar, although they have lived and settled in the western region of Myanmar for more than 200 years [1]. After the independence of Myanmar, the junta of Myanmar performed military operations gradually to remove this ethnic; the government does not intend to relocate them but rather to expulse them and revoke the rights of citizenship [4]. According to Walton [10], who tried to investigate the relationship between ethnic minorities and the spirit of Panglong, Panglong is an agreement which was formed by the people of Myanmar to provide status on the independent country of Myanmar in 1947 [10]. The famous figure at the Panglong Agreement was a General Aung San, who led the independence movement [10]. The Government of Myanmar would like to reconstruct the history of from the perspective of Panglong spirit.

From the social science study approach, Panglong spirit can be categorized into an ideological device and symbol that unites a community group. Panglong Agreement is a means to unite the people of Myanmar, because therein lies the ideological device and symbol that has been understood by them through the commonality of history and mythology. A sense of collective common ground eventually forms a nation building; in this case study, the nation building is encouraged by shared consciousness over the similarities of religion. The majority religion in the Myanmar, a country with a population of nearly 60 million people, is Buddha and many of the people of Myanmar are Buddhists who also believe in abstract and traditional things; however, Buddhism is actually the unifying symbol of the nation of Myanmar [11].

Many of the studies of social sciences emphasize the problems of humanitarian crisis in Myanmar, starting from the pre-colonial era, colonial era, until independence era [9]-[11]. However, this study prefers to investigate the Panglong spirit, which in the end constructs who deserve an identity to be called indigenous and who are the newcomers [11]. Based on Panglong Agreement, Rohingya people clearly are not one of the natives; they are considered illegal immigrants and newcomers whose status is not acknowledged [2]. Using the Panglong Agreement approach, primary categorizations that distinguish indigenous and non-indigenous inhabitants are religion and race.

### III. DEFINING HUMAN RIGHTS VIOLATION

With such an agreement, state actions have appeared to the surface. The operations are done using military power. Briefly, in the late 1970s, Myanmar's military junta had a systematic program in executing Rohingya citizens who were settled in Arakan/Rakhine state including: conducting a campaign of destruction of Muslim places of worship by doing murder and rape [2]. Furthermore, those who still survived were getting threats, given obligation to pay irrational taxes, houses destruction, confiscation of farm land,

expulsion and the burning of their residence [2]. Therefore, over 167,000 Rohingya fled to other countries by crossing the state border. In 1992, a systematic expulsion program of Myanmar Government was still enforced to the minority; the largest recorded was 250.000 people fled to Bangladesh. In the shelter, Rohingya were considered bringing a big issue to the local state; Rohingya women and children were particularly vulnerable in the refugee; they were vulnerable to human trafficking, malnutrition, rape, force to marriage, and most host countries did not pay much attention to them as they were not their citizens [2]. Then, in the early 2000s, was the beginning of anti-muslim movement in Rakhine State, causing 200 Rohingya islamic people were killed and hunted in the area of Rakhine State, followed by the burning of public facilities including the mosque [11].

The issue of expulsion against ethnic minorities then [10] shifted to a religious issue. Perhaps this is due to; first, the Rohingya are muslim, thus draw the attention of Muslims countries to take part to intervene against Myanmar as generally, the riots that occurred in Northern Arakan/Rakhine State destroyed religious symbols [11]. Second, some Buddhist leaders mobilized the people to perform discriminative and violent actions, the one was highlighted in a report by one of the leading magazines, Times, with the title "The Face of Buddhist Terror" in July 2013, coupled with the spread of religious issues [11]. In fact, all the movements either discrimination committed by civilians and the military junta are forms of policy issued by Myanmar Government through the Citizenship Act in 1982 [1] which originated from the spirit of Panglong about the indigenous people who have the absolute right to obtain the citizenship of Myanmar [10].

The fundamental question in this paper is, are the destructive actions performed by the Government of Myanmar considered violations of human rights, considering the citizenship status of the Rohingya that is illegal? Even, Myanmar refuses to call them Rohingya; they tend to describe them as Bengalis or illegal immigrants [12].

The report of Human Rights Watch towards the humanitarian crisis in Myanmar has actually answered the question; the substances of that report have systematically mentioned violent actions committed by the people of Myanmar in details [4]. Strong evidence can be seen in 2012, in which political parties, leaders of Buddhism as well as the civilian community of Arakan issued a statement in front of public by using posters and pamphlet that implied Rohingya people are not allowed to stay in their territory and they have to leave Arakan/Rakhine State [4]. This action triggers ethnic cleansing, and when there are riots, arson, assassination of civilians against Rohingya ethnic, the local authorities do not perform any prevention efforts [4]. In addition, leaders of Buddhism (Monks) and the ruling party of RNDP (Rakhine Nationalities Development Party) encourage the entire Rakhine people to not make any relation or do business with them [4]. This is an extraordinary incident, in which the ruling party, the leaders of Buddhism as well as community leaders are united to construct terror and distortion towards

the Rohingya people.

In addition to economic isolation, hundreds of Rohingya civilians were arrested and imprisoned by the authorities; they were beaten and some died in the middle of 2012 [4]. It is estimated over 1.1 million Rohingya Muslims in Rakhine/Arakan State [13] have become the victims of such terror and there will be more victims of Muslim people in the future because they are powerless. Furthermore, at the end of 2013, mass slaughter took place in the village of Yan Thei, where all the people of Arakan armed by Molotov bombs, knives, spears, machetes, and assembled weapons stormed the village occupied by the Muslim Rohingya. They destroyed homes, places of worship, and food storage, and also killed the villagers. In the same report, it shows that the local police did not make any preventive effort and let the massacre happen [4]. Moreover, the citizenship of Rohingya was not recognized by the Government of Myanmar, adding to their sufferings [4].

Dappermann's writing proves what happened in Myanmar regarding the Rohingya case is totally human rights violation, as it breaks the principles of international law, and the case is to be submitted into the International Justice Court [14]. The statement is also in line with the Human Rights Watch report in Myanmar that mentions what goes in Rakhine State is a brutal and criminal act against humanity [4]. Referring to the ASEAN Charter on Human Rights, it seems that the case can be categorized into humanity violation [6]. Especially, when ASEAN member states have declared "people oriented" with reference to community solidarity of ASEAN [15].

ASEAN has a special body that manages human rights called the ASEAN Intergovernmental Commission on Human Rights (AICHR) [16] which is in compliance with the principle stated in the ASEAN Charter [6]. AICHR, has at least six goals; to protect, implement, respect, promote fundamental human rights, including to live free, peaceful, dignified, prosperous and to be free in choosing a religion or belief without discrimination [16]. Myanmar as one of ASEAN member states and also a member of the AICHR [16] apparently has broken the principles of AICHR and violated the ASEAN principles Article Two (2) point (e), namely to respect fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice [16]. As an international organization, ASEAN region contains 10 member states, including Myanmar [6]. From the aforementioned evidence namely arrests, rape, beatings, murders, economic and social isolation, removal of the status of citizens as well as restricted access to education and health care by the government of Myanmar against the Rohingya Muslims, Myanmar has committed a violation of the basic principles in the ASEAN Charter, whereas as a member state, ASEAN already duly protects the rights of humanity. However, from the Myanmar's point of view, the case would be differently perceived.

#### IV. MUSLIM ROHINGYA AS ILLEGAL IMMIGRANTS

Myanmar never acknowledges Muslim Rohingya as the citizens; they consider this Muslim group as the Bengalis

crossing from Bangladesh to Myanmar to meet their basic needs [17]. Muslim Rohingya are illegal immigrants who stay in other country, so that Myanmar as the host country, has the right to conduct deportation against the Rohingya people [4]. Therefore, Myanmar authorities always refuse to address them as Myanmar/Burmese, as they are supposedly Bengalis, who come from Bangladesh, intend to find new land for settlement, have a piece of land and trade in Rakhine State, Myanmar [4]. Living temporarily in Myanmar, the Rohingya (called Bengalis by Myanmar) have been exposed to so many issues, namely ethnic cleansing and destruction of villages where they settle down. The cause for such an issue was the rape committed by three muslim Rohingnya [11]. In 2013, various media or Human Rights Watch reported that Myanmar authorities, rejected all accusations addressed to them [4].

Myanmar's military has been trying to prevent the riots, ethnic cleansing without discrimination to the other ethnic group or religion. Myanmar also refuses if the violence is triggered by religious issues; all of which happen purely because of the misunderstanding and over exaggerated news, starting from a case of a small number of Rohingya who raped an Arakan girl [4]. The issue is getting more serious when touching into a religious issue [11] and the expulsion of ethnic minorities from Myanmar [1]. Myanmar wants them back to their home country, Bangladesh. Bangladesh, however, rejects the Muslim Rohingya because Bangladesh also considers they are not their citizens, thus making the Rohingya became stateless, and none of the countries claim their existence [13]. The former President of Myanmar, Thein Sein provides a solution to this humanitarian crisis; i.e. to send them to third parties or to refugee camps under the auspices of the United Nations High Commissioner for Refugees (UNHCR) [4]. At this point, there have been two contradicting ideas; the one which considers Myanmar to do crime against humanity, while the other states that Myanmar does not do any violation of human right since the evidence is unclear [4] and assumes that the Rohingya are illegal immigrants from Bangladesh [17]. If referring to the ASEAN Charter, the issue seems to be more complicated and the role of ASEAN member states in the chaotic humanity tragedy in Rakhine state appears to be weak. However, the history of Rohingya occupation since more than 200 years ago in Northern Arakan still can be seen in the region [1].

#### V. EXAMINING THE CHARTER

In the regional level, ASEAN is an international organization which has 10 member states, where Myanmar is one of the members [6]. Myanmar has approved the ASEAN Charter and is subject to the orders in force in ASEAN region and, the primary goal is to create unification in the economic sectors [15]. Nevertheless, in this study, it appears that Myanmar is not always positioning themselves in accordance with the ASEAN Charter particularly in terms of human rights.

Some goals of the ASEAN Charter can be used to describe the relationship with the conduct of ASEAN member states

against Rohingya crisis. First, Article 1 Paragraph 4 mentions “to ensure that the peoples and member states of ASEAN live in peace with the world in a just, democratic and harmonious environment” [6]. Furthermore, Paragraph 7 mentions “to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the member states of ASEAN”. Paragraph 11 states to enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice [6].

From the ASEAN Charter, in particular Article 1 Paragraph 4, 7 and 11, ASEAN explicitly is designed to protect human rights by providing ease of access to welfare, justice and the protection of human rights. This primary goal becomes the responsibility of the member states. In the crisis involving Rohingya, Myanmar has closed the access of Rohingya Muslims to provide facilities, the ones that should be the responsibility of Myanmar as a member state of ASEAN. ASEAN respects the diversity of culture, religion or race [6], while Myanmar could not comply with it.

Second, Article 2 of the Charter specifically mentions the principles of ASEAN. Point (i) of the Article reads as follows: respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice; while Point (ii) states respect of different cultures, languages and religions of the peoples of ASEAN, while emphasizing their common values in the spirit of unity in diversity [6]. In order Southeast Asia can create protection and conduct promotion against human rights, based on the ASEAN Charter Article 14, a special body called ASEAN Intergovernmental Commission on Human Rights (AICHR) is established [16].

AICHR is a body established under the coordination of ASEAN that has a function to ensure the ASEAN Charter which manages human rights to run properly [16]. The objectives written in the Terms of Reference (TOR) of AICHR that focus on ensuring humanitarian rights protection in the region are in compliance with the ASEAN Charter [6] [16]. Referring to the humanitarian crisis in Rakhine State, Myanmar, has already violated the Statute agreed upon. However, the very complicated problem in northern Rakhine State makes this AICHR blunt, because the body does not have enough authority to intervene its member states [18]. In addition, there is already an understanding that Rohingya ethnic is the illegal immigrants from Bangladesh who are seeking a better life in Myanmar [7]. Moreover, the authoritative institutions in Myanmar call them as the Bengalis, and refuse to identify them as Rohingya ethnic. The authorities of Myanmar argue that their conduct certainly does not constitute a violation of human rights [17]. Myanmar also rejects all forms that discredit the Myanmar Government's efforts in tackling the illegal residents [7].

Myanmar holds the idea that what happens in the country is not a violation of human rights; though the international community understands this as ethnic cleansing, while, this is

just an effort to discipline and regulate illegal residents, and Myanmar also has the right to deport them [12]. The issue becomes more complicated when ASEAN as an international organization in Southeast Asia is unable to resolve problems that occur in the Rakhine State. It seems that each of its members does not have the same view towards this humanitarian crisis. Apparently, this happens because ASEAN is politically weak in terms of human rights. What weakens the position of ASEAN are actually the ASEAN Charter and ToR of the AICHR as a body that supervises the issue of the human rights.

First, referring to the ASEAN Charter, Article 1 Paragraph 4, 7, and 11 state the goals of ASEAN in respect of human rights, while Article 2 specifically describes the principles ASEAN in points (i) and (l) that increasingly clarify ASEAN's existence; one of which is to protect the fundamental human rights [6]. On the other hand, the Article 2 point (e) reads ‘non-interference in the internal affairs of ASEAN member states’ [6]. The principle certainly weakens the position of ASEAN where ASEAN would like to protect the fundamental rights of humanity [6]. The existence of the non-interference principle, by referring to the crimes against humanity, that occur in Myanmar will resist the effort of member states to intervene, because Myanmar could use the Article 2 point (e) to support their argument.

Second, in regards to ToR of AICHR, the subtitle of Purposes of AICHR in general, in points 1.1 to 1.6 mentions to protect, promote, respect human rights. Nonetheless, referring to the principle stated in the ToR of AICHR number 1.3 points (a), (b) and (c), it appears that ASEAN still upholds the principle of free from pressure of the other member states [16]. With reference to the non-interference principle [4], in the Rohingya crisis, when member states desire to stop the violence in the Myanmar, the other member states which do the intervene appear to be violating the rights of Myanmar [16]. That is why, in tackling the humanitarian crisis in Myanmar, ASEAN seems to be difficult to reach consensus, as in the ASEAN Charter there are points which are contradictory to each other. Moreover, there has been understanding from Myanmar which perceives Rohingya as Bengalis, the illegal immigrants [12]. It gives the impression that what the people of Myanmar have done has been appropriate. The existence of the non-interference principle is increasingly making the issue more difficult to solve [19], since the AICHR as the body expected to resolve the problem is unable to do much because of a lack of authority [18]. If analyzing the ASEAN Charter (ASEAN charter) [6] and ToR of AICHR [16], it is possible for Myanmar to tell to the member states not to intervene the country's political situation.

The other ASEAN member states have been playing their role appropriately, because Myanmar as one of ASEAN member states has committed a violation of the agreement which has been formed through the ASEAN Charter [6]. From the viewpoint of ASEAN, it is difficult to reach a consensus in this humanitarian conflict because the two different and contradicting views between Myanmar and

other ASEAN members. They should examine the content of ASEAN Charter that has dualism of interests, making ASEAN turns to be a large organization with no authority over its member states.

#### VI. MEMBER STATES BEHAVIOR TOWARDS THE CRISIS

The principle of without intervention or better known as the 'ASEAN Way' is a unique approach that may not be applied by other international organizations [19]. This method is one realization of the ASEAN Charter which states that one of ASEAN principles is free from foreign intervention [19] and this is used collectively to achieve consensus without war with emphasis on non-intervention and respecting the sovereignty of other countries, namely through dialogue among members [20]. For example, under President Susilo Bambang Yudhoyono presidency, through his Foreign Minister, Indonesia continued to conduct dialogue to military authorities of Myanmar to search for solution, but it failed because Indonesia as an ASEAN member state did not have legitimacy from ASEAN to give pressure on Myanmar [20]. Apparently, the same approach needs to be reconsidered to use, to cope with the humanitarian problem in the region. In this section, the relationship of the ASEAN Charter and the behaviour of the state against the humanitarian crisis in Myanmar will be revealed, to figure out the impact of such an agreement relating to the state behavior.

The behavior of the member states is dependent on ASEAN Charter. Nonetheless, the dialogue among countries has not reached any consensus yet. Since the beginning, Malaysia as one of the ASEAN member states is committed to bringing this case not only on regional and domestic level, but in high-level of ASEAN [21]. Before Myanmar became a member of ASEAN, Malaysia was one of the countries which made much intervention against Myanmar, but when Myanmar joined the ASEAN, Malaysia seems to obey the ASEAN Charter in order not to intervene Myanmar [21]. By 2015, the riots in Rakhine state reoccurred, causing the Rohingya people to leave Myanmar using boats and were adrift in the sea for weeks. Malaysia initially refused to accept those to enter their territory [22], but in the end, along with Indonesia, they accepted the Rohingya immigrants for a certain period [23]. Meanwhile, Thailand still appears to not convinced of whether to give a hand to those Rohingya immigrants who come to their territorial waters [23].

At the ASEAN level, Indonesia, Malaysia, the Philippines and Thailand are the countries that continue to fight for democracy in the region, and continue to force Myanmar to have dialogue [9]. However, Myanmar always argues that the Rohingya population is illegal and Myanmar has the right to deport them, and also Myanmar authorities have explained that they are not doing any violation against human rights [4]. A study by Arendshorst [21] shows that ASEAN is "a toothless tiger"; ASEAN founding countries have no power when confronted with the principle of non-interference stipulated by the ASEAN [19]. In the ASEAN Charter Paragraph 2, point (e), it is stated non-interference in the

internal affairs of ASEAN member states [6], making the pro-democracy member states have no power either to intervene or to do any action that is "punishing" to the other members in committing humanitarian rights violation. The agency formed by ASEAN, AICHR, almost has no significant role in the face of Rohingya crisis due to the principle of non-interference [21].

#### VII. CONCLUSION

It appears that the humanitarian crisis in Rakhine State has provided a complete picture for its members in order to reconsider the ASEAN to ratify the ASEAN Charter and also AICHR to resolve conflicts. To invite for dialogue is not enough, even since Myanmar has become an ASEAN member in 1997, the conflict with the ethnic Rohingya keeps rolling. In this regard, ASEAN is unable to find a way out because the conflict restricts the member states to intervene the domestic politics of Myanmar.

Since the era of Rohingya settlement in Arakan (which is now called Rakhine state) after Myanmar declared its independence, through the agreement of Panglong, the Government of Myanmar at that time separate the Rohingya population from the other ethnic in the countries, so that they and their descendants did not get a certificate as well as legality as citizens; in other word, they were stateless. After that, more conflicts appeared to the surface, most were driven by radical Buddhist monks to oppose the existence of the Rohingya in Myanmar. Eventually, the threats of these monks seemed to "be allowed" by the government; in other words, their violating actions seemed to be legalized because the government intended to deport illegal immigrants.

Referring to the ASEAN Agreement, the crisis appears to be nearly impossible to overcome by ASEAN. ASEAN is an international organization that, in fact, has no absolute authority to do interventions, even for tackling human rights issues. ASEAN should ratify the chapter about non-interference and try to learn from what the European Union or the African Union have done to tackle the similar issues, to become an integrated society and people-oriented. Though Malaysia, Indonesia or Thailand as member states are paying much attention to this crisis, it appears that they do not have much authority to be involved because the contradicting points in the content of the ASEAN Charter restricts them to do so.

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