

Rohingya-Myanmar Crisis: How Is ASEAN Intergovernmental Commission on Human Rights?

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Abstract

Violence and murder against Rohingya ethnic seem endless. It continues without a concrete solution to end their suffering, an ethnic minority called the UN in 2013 as the world's worst-hit group. European Rohingya Council based in Europe, counted about 3.000 Rohingyas massacred in three days. Another 18.000 fled from Myanmar, avoiding slaughter and seeking a better life in a place that is not necessarily unthinkable. According to the Council on Foreign Relations, Rohingya is an ethnic minority group living mainly in the state of Rakhine, western Myanmar. One third of Rakhine's population is estimated to be contributed by one million Rohingyas in Myanmar. Rohingya differs from Myanmar's dominant group ethnically, linguistically, and religiously. The status of thousands of Rohingyas in Myanmar today does not have stateless citizenship. The absence of AICHR's visible role by the public in addressing conflict-related issues in Rohingya-Myanmar is due to the limitation of legal personality, the strengthening of the reduction of the effectiveness of legal personality and the low politics of human rights enforcement in Southeast Asia.

Keywords: the crisis, Rohingya-Myanmar, AICHR.

I. Introduction

The issue of human rights is a fundamental issue in every aspect of human life, in the implementation of human rights values are highly demanded to be respected both nationally and internationally. Since human rights are very basic and broad in nature, almost every rule (national and international) regulates rights and obligations between the state and the citizen. Human rights issues in many parts of the world are very concerned, whether Boko Haram's actions in Africa, ISIS in the Middle East, the issue of racism in America, justification of terrorism against certain religions, trafficking in Asia and more specifically the alleged gross human rights violations in Myanmar against ethnic Rohingya.

The concept of human rights protection includes three main elements for human existence in the context of the state, namely the guarantee and legal protection of human integrity, freedom and equality.¹ Therefore, the concept of human rights protection is adopted almost in all international instruments and organizations at global, regional, to national level make it a guideline in carrying out its duties and functions. As an example of the UN Human Rights Council at the global level, the ASEAN Human Rights Commission at the regional level, and the National Commission on Human Rights of the Republic of Indonesia at the national level.

Human rights issues in Southeast Asia are of concern to a number of people and activists. The handling of human rights in Southeast Asia by AICHR is considered often closed and excessive. AICHR as a body devoted to human rights in ASEAN impressed very projecting as a closed institution. Working isolated and isolated and not easy to interact. AICHR is an ASEAN human rights body based on the ASEAN Charter Article 14. AICHR works in conformity with the Term of Reference (ToR) which regulates such matters as its objectives, mandate and functions, among them the promotion and protection of human rights and fundamental freedoms of the ASEAN community. AICHR also takes care of the increasing rights of the ASEAN people to live in peace, dignity and prosperity.² In the Opening of the ASEAN Charter it has been described that "adhering to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms". It is then outlined in Article 1 point 7 that regulates one of the ASEAN goals, namely "to strengthen democracy, enhance good governance and the rule of law, and promote and protect human rights and fundamental freedoms, with due regard to the right and responsibilities of the Member States of ASEAN". Respect for human rights is also stipulated in Article 2 paragraph 2 (i) namely: "respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice" and Article 14 which provides that "in conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body".

The problem of gross human rights violations in Southeast Asia again surfaced when the humanitarian tragedy struck Rohingya as a victim of the arbitrary behavior of the Government of Myanmar. The bad treatment

¹ Asbjørn Eide, *Economic, Social and Cultural Rights - A Textbook*, Martinus Nijhoff Publishers, 2001, p. 21.

² Marzuki Darusman (The United Nations Special Rapporteur on Human Rights), in Detik News, Lembaga HAM ASEAN Dinilai Overacting dan Tertutup, see <https://news.detik.com/berita/d-1911540/lembaga-ham-asean-dinilai-overacting-dan-tertutup>

of the Myanmar Government against the Rohingyas has been criticized for tens of times internationally, but Myanmar is unmoved and continues to abuse them without regard to criticism from other countries. The international world cheered as NLD Party leader Aung San Suu Kyi won historic elections¹ in Myanmar in November 2015, after his party won more than 80 per cent of seats in the lower house of the House of Representatives, and chaired the seats in the High Council and the Regional Council (states and territories of Hluttaws), elected Htin Kyaw replaces the general who has led Myanmar since the military junta handed over power to the semi-civilian government of Thein Shein, in 2011 and Aung San Suu Kyi can be said to be a shadow president. Unfortunately, bad treatment and discrimination persisted and were not much different before Htin Kyaw and Aung San Suu Kyi took the reins of the state in Myanmar.² At this point, in fact the Rohingyas have great hopes for Aung San Suu Kyi, they hope that Aung San Suu Kyi can change their fate by acknowledging all ethnic Rohingyas in Myanmar as citizens, because then the Rohingyas can feel the right basic rights as citizens, such as the right to education, access to health, the right to worship, the right to work in the formal sectors, the right to association, and the right to social security.

In the year 2012 ago, more than 300 homes burned in violence in Rakhine, a state in western Burma.³ Meanwhile, after the reign of Myanmar's government turned, violence continued, Myanmar government media on Thursday, June 22, 2017, reported that officers seized many weapons, ammunition and gunpowder in militant camps located in the Mayu Mountains, a remote area on the northwest border, which became the center of the Rohingya Muslim minority. More than 70,000 Rohingyas have fled from the area near the Bangladesh border since October 2016, and some have even crossed into the territory of the neighboring country. Rohingya survivors reported that security forces had killed their babies, burned alive the villagers, and committed rape.⁴ That fact illustrates how a humanitarian tragedy is taking place in the land of the military junta. A closed system of government⁵ like North Korea is also incessantly assume that the ethnic Rohingya is illegal immigrants from India and Bangladesh, itupula that makes the Government of Myanmar does not recognize the ethnic Rohingya as a citizen.⁶ Based on the exposure, then the issue to be discussed in this paper is how the conflict that occurred in Myanmar? and how is the role of the ASEAN Intergovernmental Commission on Human Rights on the ethnic Rohingyas who are victims of human rights violations?

II. Research Method

The type of research used is the type of normative legal research, using a legal and conceptual approach.⁷ Technique pengumpulan data is done through library research by studying and reviewing a number of national laws, textbooks, research papers, legal journals, legal dictionaries, then analyzed descriptively.

III. Results and Discussion

Rohingya-Myanmar Conflict

Myanmar is a country in Southeast Asia. The country of 680.000 km² has been ruled by the military government since the 1988 coup. Myanmar is a developing country and has a population of over 50 million. The capital of this country was previously located in Yangon before being transferred by the junta government to Naypyidaw on November 7, 2005. Pada In 1988, there was a big wave of protests against the junta's government. This wave of demonstrations ended in violent acts by soldiers against demonstrators. In elections in 1990 the pro-democracy party National League for Democracy (NLD) leader Aung San Suu Kyi won 82 percent of the vote but the election results are not recognized by the ruling military regime. The name change from "Burma" to "Myanmar" was carried out by the junta's government on June 18, 1989. The military junta changed Burma's name to Myanmar so that non-Burmese ethnic groups feel part of the country. However, this name change is not fully adopted by the international community. Some European countries such as Britain and Ireland do not recognize the legitimacy of the junta's military rule and continue to use "Burma" to refer to the country. However, the UN recognizes the right of a country to determine its country's name and recognizes the use of the name of Myanmar, as well as France and Germany. The junta government also moved the capital from Yangon

¹ It is said to be historic because this election is the first free election in Myanmar after 25 years, where previously every election was held under military rule.

² Kadarudin and Husni Thamrin, *Rohingya dan Tantangan Negosiasi UNHCR Terhadap Negara-Negara Utama Pemberi Suaka, Suatu Kajian Hukum Pengungsi Internasional*. Proceedings at the National Symposium of International Law Teachers Association (Asosiasi Pengajar Hukum Internasional/APHI), with the theme of International Law in Contemporary World Geopolitics: Perspectives and Experience of Indonesia, Bukittinggi on September 7-8, 2017, Faculty of Law, University of Andalas, p. 145.

³ Kompas, Ratusan Rumah Dibakar di Rakhine, Myanmar, see <http://lifestyle.kompas.com/read/2012/10/23/07425489/ratusan.rumah.dibakar.di.rakhine.myanmar>

⁴ Kompas, Myanmar Bunuh Tiga Terduga Militan Rohingya di Rakhine, see <https://internasional.kompas.com/read/2017/06/22/12071301/myanmar.bunuh.tiga.terduga.militan.rohingya.di.rakhine>

⁵ Compare with Atik Krustiyati, *Kebijakan Penanganan Pengungsi di Indonesia: Kajian Dari Konvensi Pengungsi Tahun 1951 dan Protokol Tahun 1967, UPH Law Review*, Volume XII No. 2, November 2012, p. 173

⁶ Kadarudin and Husni Thamrin, *Loc.Cit.*

⁷ Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Prenadamedia Group Jakarta, p. 35

to Naypyidaw.¹ The Myanmar Military Junta Government is an important part of official state policy making, the military junta also has a significant influence in determining the direction of diplomacy for Myanmar's partners. Especially when the military junta does not recognize ethnic Rohingya as a citizen, this is where the root of the problem began to emerge, and violations of human rights in Myanmar began and often happened.

International refugees are a separate issue for inter-state relations, as international refugees can occur in every country caused by conditions that make a person prefer to move from their home countries to other countries. The conditions in question are unsafe conditions for a person or group, if they remain in the territory of their country of origin, so for the sake of security and safety, the person or group chooses to move from the territory of the country of origin to the state territory which is safer for them.² Abdul Goni, one of the Rohingya ethnic people who fled to Bangladesh, told how the Government of Myanmar gradually starved his family. Myanmar troops stop Goni's livelihood as a seller of firewood. Then, the army also took the only cow he had. The cow was rented Goni to the farmers to plow the fields. Furthermore, his uncle was killed for trying to save his buffalo that the soldiers wanted to take. Since then, Goni began to see the bodies floating in the river. They are his friends who were murdered for illegal fishing.³ He knew his family would also die if they did not leave the village. The burlap is also forced to feed his family with banana tree trunks. Goni said that he felt very sorry for not feeding them enough, they (the Myanmar army) told us 'This is not your land. We will make you starve'. According to Goni, there are 500 families living near his house, but only 150 people managed to escape to Bangladesh. Many want to leave, but do not have enough money or are too old.⁴ Rohingya's ethnic suffering then attracted international attention and reaction, many opposed to Aung San Suu Kyi's silent action, many pouting that Aung San Suu Kyi is a Nobel peace laureate. But it has no influence, even violence for violence continues in the Rakhine region where the Rohingyas live.

Any form of gross violation of human rights, whether crimes against humanity, genocide or other crimes, which makes the embryo of refugees.⁵ Reports on the number of famine that hit the Rohingyas can not be independently confirmed because the Burmese government does not allow journalists into Rakhine state. Amnesty International has also warned of an increasing number of hungry Rohingya. The doctor who handles Rohingya ethnic in refugee, Ismail Mehr, said they have been starving since arriving at a camp in Bangladesh, especially children and women. Ismail Mehr explains that "we see children and adults deficient in vitamins. We examined many people with malnutrition, living skin and bones". Government restrictions on access to Rakhine are believed to make many people live without food. The Yangon-based Red Cross International Committee says there is already food aid to more than 180,000 people to Rakhine. The World Food Program (WFP) also said it had been given access in December 2017 and January 2018 to the Rohingya ethnic residence location, the first since August 2017. Rakhine's massacre, rape and destruction of the village forced nearly 700,000 Rohingyas to flee to Bangladesh. The military claimed the operation was retaliation for the Rohingya militant attack on August 25, 2017.⁶ In fact, the state is the main party in an effort to recognize, regulate, respect, promote and protect human rights in all the joints of state administration.⁷ The state also has responsibility for any incident that affects its citizens, even more so when the conflict in the country causes the flow of asylum seekers resulting from human rights violations, causing other countries to be affected by the conflict.

UN investigators say there has been an increase in violence against humanity in Rakhine by unpredictable Burmese officials, which of course is denied by the local government. Myanmar rejected the accusations and said that the army was conducting a legal cleansing operation to crush the gang of Rohingya rebellion. But strangely the Burmese government also rejected a UN fact-finding investigation team intending to visit conflict areas in Rakhine state.⁸ Rohingya's violence and murder are endless. It continues without a concrete solution to end their suffering, an ethnic minority called the UN in 2013 as the world's worst-hit group. European Rohingya Council (ERC) based in Europe, on Wednesday (30/8), counted about 3.000 Rohingyas massacred in three days. Another 18,000 fled from Myanmar, avoiding slaughter and seeking a better life in a place that is not necessarily unthinkable. According to the Council on Foreign Relations, Rohingya is an ethnic minority group living mainly in the state of Rakhine, western Myanmar. One third of Rakhine's population is estimated to be contributed by one million Rohingyas in Myanmar. Rohingya differs from Myanmar's dominant group ethnically, linguistically, and religiously. The status of thousands of Rohingyas in Myanmar today has no statelessness or citizenship. The

¹ Profile of Myanmar, see <https://id.wikipedia.org/wiki/Myanmar>

² Kadarudin, Hubungan Indonesia dengan Prinsip Non-Refoulement dalam Perspektif Hukum Internasional, *Jurnal "Amanna Gappa"*, Volume 20 Nomor 2 Juni 2012, p. 138; see also Kadarudin, Keterkaitan Antara Stateless Persons, Pencari Suaka dan Pengungsi, *Jurnal Pengembangan Ilmu Hukum "Gratia"*, Volume VIII Nomor 1 April 2012, p. 105

³ The Associated Press Report, 8 Februari 2018

⁴ Kompas, Pemerintah Myanmar Diduga Membiarkan Warga Rohingya Kelaparan, Kompas Online, February 8, 2018

⁵ Kadarudin, Penanganan Pemerintah Indonesia Terhadap Pengungsi Rohingya Menurut Konvensi 1951. *Jurnal Hukum Internasional "Jurisdictionary"*, Volume VI Nomor 1. Juni 2010, p. 114

⁶ Kompas, Pemerintah Myanmar Diduga Membiarkan Warga Rohingya Kelaparan, *Loc. Cit.*

⁷ M. Santos Pais, A Human Rights Conceptual Framework for Children's Rights, UNICEF Innovative Essay.

⁸ Atik Krustiyati, *Loc. Cit.*

Government of Myanmar refused to grant citizenship of Rohingyas, and consequently most Rohingyas had no legal documentation.¹

The Wall Street Journal noted, the Rohingya people are from South Asia. In the 8th century, they lived in an independent kingdom in Arakan, now known as the Rakhine state of Myanmar. Then in the 9th century until the 14th century, the Rohingyas established relationships with Arab traders. The relationship exists between Arakan and Bengal. It is probably from this connection that the Rohingyas embraced Islam. When the King of Burma conquered Arakan in 1784, hundreds of thousands of Rohingyas were forced to flee to Bengal, now part of India and Bangladesh. Since Britain took control of India, in 1824 Burma also subdued Britain and became one of India's provinces. Many Rohingyas residing in Bengal territory were later transferred to Burma to be employed to build infrastructure. In the waves of World War II, in 1942 the Japanese attacked Burma to overthrow British rule from the region. Burmese residents are then divided. People of the Rohingya ethnicity are mobilized to help England, while the Arakan ethnic is on the Japanese side. Japan's defeat in 1945 in World War loaded Burma with the release of Britain, with the help of Burmese nationalists and ethnic Rohingyas, from the Japanese occupation. But after the victory, the British promise to give autonomy in Arakan was not kept. Until finally in 1948, when Burma was newly independent, tensions broke out between the Burmese government and the Rohingyas. Many Rohingyas want the Arakan region to join the predominantly Muslim Pakistan. The Burmese government certainly disagrees and excludes ethnic Rohingyas, including depriving them of civil service. Since independence in 1948, the Burmese government has rejected Rohingya's historical claims and refused to recognize the group as one of 135 ethnic groups in the country. Rohingya is largely identified as illegal immigrants from Bengali, despite the fact that many Rohingyas have lived in Myanmar for generations for centuries. Two years later, there was an armed rebellion by a number of Rohingyas against the government. Nothing significant from the rebellion. But when the socialist party led by General Ne Win seized power, the Rohingyas faced harsher treatment.²

Both the Myanmar government and Buddhist groups that dominate Rakhine, known as the Rakhine ethnic, have rejected the use of the "Rohingya" label for the minority. A term of self-identification that emerged in the 1950s. Experts say that the title becomes a collective political identity. Although the etymological root of the word is debated, the most widely accepted origin is that "Rohang" is a derivative of the word "Arakan" in the Rohingya dialect. While "ga" or "gya" means "from". According to Arakan Project Director Chris Lewa, a Thailand-based advocacy group, identifying themselves as Rohingyas, the ethnic Muslim group affirms its relationship to the land that was once under the control of the Arakan Kingdom. Governments in predominantly Buddhist states have routinely persecuted and displaced Rohingyas by force, altering the ethnic profile of the Arakan state. In 1977, the junta government began Operation Nagamin or Dragon King, which aims to filter out the foreigners. More than 200.000 Rohingyas flee abroad, one of them Bangladesh, for the murder, rape, and arson horrors of the Burmese military. The new immigration law of 1982 redefined the people who migrated during British rule as illegal immigrants. The government applies this to all Rohingyas. Seven years later the junta's government changed Burma's name to Myanmar. The military repeated its anti-Rohingya campaign in 1991 with a wave of attacks that forced more than 250.000 Rohingyas to flee to Bangladesh. But in Bangladesh their presence was undesirable. The reason, the Bangladesh government has received so many Rohingya people who fled. Bangladeshi residents often harbor sentiments against Rohingyas for fear of their livelihood opportunities being occupied by the refugees. Many of the Rohingyas were eventually forced to return to Myanmar to the northern state of Arakan, where the government attempted to focus the Rohingya away from the Arakan dominated states. Their basic rights remain rejected, replaced by strict rules.³

Violence against them continues. In 2001, Arakan's group attacked Rohingya in Sittwe, destroying mosques and schools. In the Human Rights Watch (HRW) report, the core of the persecution of Rohingyas was the Citizenship Act issued in 1982, effectively denying Myanmar citizenship to Rohingyas on an ethnic basis. The law does not regard Rohingya as one of the eight recognized "national races" (along with Burman, Arakan, Karen, and other ethnic groups), who will grant them the right of citizenship. Persons of the Rohingyas must provide "convincing evidence" that their ancestors had settled in Myanmar before independence in 1948. A difficult task if not impossible for most Rohingyas. Although the government and the wider community call them illegal Bengali immigrants, in fact many ethnic Rohingyas have settled in the country since birth. The Government of Myanmar has used this stateless status to deprive the various accesses of human rights of the Rohingyas. Rohingya faces restrictions on freedom of movement, education, marriage, and employment rights. Also citizens under international law. Other human rights violations have accompanied the persecution of Rohingyas for years. Including arbitrary detention, forced labor, rape, torture, forced transfer, and other offenses. Discrimination and human rights violations are thus systemic and institutionalized. Violence occurred in 2012,

¹ Kumparan 31 August 31, 2017, Jalan Panjang Penderitaan Rohingya, see <https://kumparan.com/@kumparannews/jalan-panjang-penderitaan-rohingya>

² *Ibid.*

³ *Ibid.*

when a group of Rohingyas were accused of raping and killing a Buddhist woman. The radical Buddhist group burned down the Rohingyas and killed more than 280 people, driving tens of thousands of others.¹

Human Rights Watch (HRW) describes its anti-Rohingya violence as a crime against humanity committed as part of an ethnic cleansing campaign. Since 2012, Rohingya refugees have been forced to take shelter in slum refugee camps. More than 120,000 Rohingya-dominated Muslims remain in more than 40 detention camps. Many Rohingyas have turned to smugglers, opting to pay for transportation out of Myanmar to avoid persecution. According to the International Organization for Migration (IOM), more than 88,000 Rohingyas escaped extreme repression and poverty. They sailed the sea from the Bay of Bengal between January 2014 and May 2015. Earlier the Rohingyas had been registered as temporary residents with identification cards, known as "white cards", in which the Burmese regime began issuing many Muslims (from Rohingya and non-Rohingya) in the 1990s. A white card gives some limited rights but is not recognized as a proof of citizenship. Although the temporary card has no legal value, Chris Lewa says that the identity card is a minimum temporary admission to Rohingya in Myanmar. However, under pressure from Buddhist nationalists who protested the Rohingya right to vote in a constitutional referendum in 2015, President Thein Sein canceled the temporary identity card in February 2015 effectively lifting the rights of those newly eligible to vote. White card holders were allowed to vote in Myanmar's constitutional referendum 2008 and the 2010 elections.²

In the 2015 election, which is widely called free and fair by international observers, there is no Muslim parliamentary candidate. According to the International Crisis Group "Anti-Muslim sentiments across the state make it politically difficult for governments to take measures that are considered to support Muslim rights". A series of attacks on security posts along the Myanmar-Bangladesh border in October 2016 revived ethnic violence in Rakhine state. Local authorities and authorities blamed Rohingya militants for the attacks, which prompted the inclusion of military and police forces to support the hunting of responsible people and to tighten security. Dozens of people were killed in the attack, tens of thousands of people fled to various regions, and at least 65 thousand people crossed into Bangladesh between October 2016 and early January 2017. HRW released satellite images showing the destruction of hundreds of Rohingya homes in October and November 2016, the most deadly violence since 2012. The report in November 2016 indicated that military officers locked in access to prevent much-needed food and medical entry from international agencies to villages.³ This has caused countries in Southeast Asia such as Malaysia, Thailand, Indonesia, Philippines and Singapore to be affected by Rohingya ethnic asylum seekers as a result of violations in their native region (Myanmar).

The Role of ASEAN Intergovernmental Commission on Human Rights in Addressing Rohingya-Myanmar Conflict

The ASEAN Intergovernmental Commission on Human Rights (AICHR) is an organ of ASEAN established on 23 October 2009. Since its initiation, AICHR has received many negative responses from countries in Southeast Asia. Although at the beginning of its formation it was argued that the establishment of AICHR is a step forward from ASEAN to realize one of the objectives of strengthening democracy, improving good governance and rule of law, and promoting human rights and fundamental freedoms with due regard to the rights and obligations of countries who are members of ASEAN. But as AICHR avoids any conflicts that should have been resolved, this can be seen in the case of the Rohingya ethnic massacre by the Burmese state apparatus, AICHR seems silent and even its existence in the international question. Regional human rights issues that AICHR is supposed to solve but in fact the UN is more active than AICHR.

Since AICHR was founded in 2009, there has been no concrete vision that can bind all members to uphold human rights in their country. Indonesia's First Representative for AICHR, Rafendi Djamin, explained that Indonesia's efforts to encourage human rights enforcement in the region have always been hit on the main pillars of ASEAN. According to Rafendi "As is known, the ASEAN Charter stipulates that ASEAN has the main pillar, that is non-intervention and there must be consensus in every decision making so that the human rights body has only a narrow space to move". Based on that foundation, AICHR can not intervene if there are ASEAN members who commit human rights violations. One decision was difficult to achieve considering that for ratification one rule must reach consensus first. According to Rafendi "human rights is a sensitive issue for every country. When we started talking about human rights, we were thought to be offensive. Until now, there are still two ASEAN countries that are not comfortable with AICHR. Very few protection elements". Information about the situation in one country is very difficult to access so it is not easy to detect human rights violations in some ASEAN member countries. Although the ASEAN Declaration of Human Rights has been ratified in 2012, control and decision-making are still difficult. The reason, ASEAN has a pillar of consensus. In many human rights cases, Rafendi said, consensus is often unattainable. Nevertheless, human rights enforcement in Southeast Asia is not as easy as turning the palm of the hand. It takes a long time. According to Rafendi, a six-year term is not enough

¹ *Ibid.*

² *Ibid.*

³ *Ibid.*

to build AICHR integrity.¹

The most answer we can see in the writings of Heribertus Jaka Triyana,² which can at least explain the absence of AICHR's visible role by the public in addressing the conflicts that occurred in Rohingya-Myanmar, is none other than the limitation of legal personality, the strengthening of the reduction of the effectiveness of legal personality, and the low politics of enforcing protection Human Rights. These three trends are elaborated below:

First, the fundamental transformation undertaken by the ASEAN Charter is to provide legal personality to ASEAN and its organs of AICHR. Legal personality owned by AICHR is the legal authority to act guaranteed by international law. AICHR can move and make agreements on its behalf and may also prosecute and be prosecuted legally.³ The ASEAN Human Rights Council is in charge of formulating efforts to promote and protect human rights in the region through education, monitoring, dissemination of international human rights standards and standards as mandated by the Universal Declaration of Human Rights, the Vienna Declaration and other human rights instruments.⁴ AICHR's duties are similar to those of the UN's human rights commission, which has now been renamed the UN Human Rights Council. But so far the role of AICHR is still more in the form of promotion at the strategic level and not the protection of human rights protection at the operational and tactical level.⁵ The promotion of human rights protection that has not yet reached the authority of human rights protection in the territory of a member country is a fundamental difference between the Sollen das and the Sein das owned by the ASEAN Human Rights Board when compared to the authority of other human rights bodies. This is what is called limitation and reduction of the legal personality it possesses in the context of its acting authority.⁶ It does not have the authority to enforce human rights protection law in independent member countries but can only serve as an advisory body, coordination and consultation (low politics matters) in the protection of human rights in ASEAN itself and the authority does not reach the tactical level in the territory of ASEAN member countries in the form of advocacy and adjudication efforts.⁷ These efforts have not been seen when the humanitarian crisis took place in Myanmar where the Rohingyas were victimized and the surrounding countries, especially Bangladesh, became the country most affected by this incident.

The legal consequence is that the legal authority will only be effective in running at the strategic level in the context of making or formulating the policy of human rights protection but the authority will not be effective in its implementation. Implementation of human rights protection will not arrive at the operational and tactical levels in the form of law enforcement efforts in the form of advocacy and adjudication in ASEAN member countries due to the application of Article 2 ASEAN Charter. This Article prohibits the interference of internal affairs of any ASEAN Member.⁸ Compared with the provisions of the UN Charter, the provisions of non-intervention may be disrupted when Chapter VII of the UN Charter is used by the UN Security Council to take the necessary legal actions against gross violations of human rights falling into the category of threatening security and peace international activities taking place in the territory of UN member states.⁹ If we observe the provisions of the ASEAN Charter especially Article 2, this provision does not provide for the interpretation of the possibility of exceptions to the application of this principle particularly in relation to the protection of human rights in ASEAN Member States. The assumption is that when gross human rights violations occur such as the occurrence of torture, crimes against humanity, forced labor and the destruction of the population on the basis of racial, religious, ethnic, gender and other differences, ASEAN Human Rights Council may not be able to take legal measures to prevent and / or perform certain legal actions as a result of the implementation of the provisions of this Article.¹⁰ This is the legal consequence of the reduction and limitation of the legal personality provisions of the ASEAN Human Rights Board against human rights protection efforts in the member states by the ASEAN Human Rights Board so that Sollen and Sein will be very different in their future implementation.¹¹ Moreover, when tactical and technical efforts are needed to resolve the Rohingya ethnic humanitarian crisis, AICHR is only able to run at strategic level in the context of making or formulating human rights protection policy, it becomes meaningless.

¹ Hanna Azarya Samosir, CNN Indonesia, Berdiri 6 Tahun, Komisi HAM ASEAN Belum Punya Visi Konkret, CNN January 26, 2016, see <https://www.cnnindonesia.com/internasional/20160126195535-106-106892/berdiri-6-tahun-komisi-ham-asean-belum-punya-visi-konkret>

² Heribertus Jaka Triyana, Tinjauan Yuridis tentang Badan HAM ASEAN dalam Sistem Hukum Nasional Indonesia, *Mimbar Hukum*, Volume 23 Number 3, October 2011, p. 616-619

³ Malcolm N. Shaw, 1997, *International Law*, Cambridge University Press, New York, p. 175-179 in Heribertus Jaka Triyana

⁴ Terms and References of the ASEAN Intergovernmental Commission on Human Rights, in Heribertus Jaka Triyana

⁵ Heppy Ratna, 2009, AICHR dan Penguatan Perlindungan HAM di ASEAN, see <http://news.antara.co.id/berita/1256362459/aichr-dan-penguatan-perlindungan-ham-di-asean>

⁶ Malcolm N. Shaw, *Op.Cit.*, p. 175-179, in Heribertus Jaka Triyana

⁷ Kelsall, Michelle Staggs, 2009, The New ASEAN Intergovernmental Commission on Human Rights: Toothless Tiger or Tentative First Step?, East-West Center, p. 2, in Heribertus Jaka Triyana

⁸ See ASEAN Charter

⁹ Diane Orenlichter, Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime, *Yale Law Journal*, 1991, p. 2537-2542, in Heribertus Jaka Triyana

¹⁰ Kelsall, Michelle Staggs, *Op.Cit.*, East-West Center, p. 3, in Heribertus Jaka Triyana

¹¹ Heribertus Jaka Triyana, *Loc.Cit.*

Secondly, the motivation for the establishment of ASEAN is based on the desire to increase economic cooperation and increase prosperity for all members.¹ This motivation is based more on a need-based approach than a human rights fulfillment motivation that should be the basis of regional cooperation based on a human rights-based approach. The approach of regional cooperation that upholds human rights, democracy and good governance is not the main motivation in ASEAN regional cooperation. Thus, the authority to act in the protection of human rights by the ASEAN Human Rights Board has virtually no basic legal, sociological and legal grounds as a "common shared-governance values" because of the above.² The authority possessed by the ASEAN Human Rights Board may be placed only on the basis of secondary or even tertiary derivation of the increased motivation of development based on economic and welfare motivation.³ This is what makes the low politics commitment to the authority to act in the protection of the law by the ASEAN Human Rights Body in the future. To address the imbalance between normative provisions and their implementation, the ASEAN Human Rights Board should follow up the Terms of Reference in a dialogue guide and constructive engagement in terms of coordination, communication and supervision. Determining the agenda for human rights protection should be established and consolidated as a joint proposal for human rights protection at strategic, operational and tactical levels.⁴ The progressive steps of ASEAN member countries to improve the system at AICHR is absolutely necessary, because if this is not done AICHR seems to be running on the spot, and its existence can only be regarded as a mere formality owned by ASEAN as a regional organization in Southeast Asia.

Advocacy in the form of dialogue formation and involvement of civil society in terms of coordination, communication and supervision can be done in the ASEAN Secretariat located in Jakarta. The elaboration of the agenda, recommendations and action plans for human rights protection, rules and procedures of decision-making by the ASEAN Human Rights Council which lead to the establishment of a framework of the protection of human rights in the forms of the ASEAN Human Rights Convention and the human rights instruments that contain norms and the mechanism needs to be immediately initiated.⁵ The agenda on the protection of human rights in situations of internal armed confrontation and the promotion of the protection of children's rights under the 1989 Convention on the Rights of Child (CRC) ratified by all ASEAN member countries may be a unifying issue in the protection of human rights in ASEAN member states that can serve as "a shared-common governmental value" in the effort to protect human rights in the future by the ASEAN Human Rights Board.⁶ Thus the rules and procedures of decision-making by AICHR need to be realized immediately.

The principle and commitment of ASEAN member countries in defending their citizens' human rights is questionable, if viewed on the principle of non-interference it is clear that ASEAN leaders should ignore the actions of Myanmar to ethnic Rohingya. However, concerns arise when the enforcement and protection of human rights in Southeast Asia through AICHR is not effective as expected by the people, due to Article 2 paragraph (2) letter e and f of the ASEAN Charter. Because the terminology occurred contradiction and conflict between Non-Interference Principle with the obligation to intervene from outsiders, such as NGOs and other Human rights Observer Institution. This is what causes AICHR to focus more on negotiation than to go directly to solve the problem.⁷ This commitment is needed and very awaited realization due to see the political and security conditions in Southeast Asia potentially re-disturbed.

IV. Conclusion

Human rights issues in Southeast Asia are of concern to a number of people and activists. The handling of human rights in Southeast Asia by AICHR is considered often closed and excessive. AICHR as a body devoted to human rights in ASEAN impressed very projecting as a closed institution. Working isolated and isolated and not easy to interact. Violence and murder against Rohingya ethnic seem endless. It continues without a concrete solution to end their suffering, an ethnic minority called the UN in 2013 as the world's worst-hit group. European Rohingya Council based in Europe, counted about 3.000 Rohingyas massacred in three days. Another 18.000 fled from Myanmar, avoiding slaughter and seeking a better life in a place that is not necessarily unthinkable. According to the Council on Foreign Relations, Rohingya is an ethnic minority group living mainly in the state of Rakhine, western Myanmar. One third of Rakhine's population is estimated to be contributed by one million Rohingyas in Myanmar. Rohingya differs from Myanmar's dominant group ethnically, linguistically, and

¹ Phillip J Eldridge, 2002, *The Politics of Human Rights in Southeast Asia*, Routledge, London, p. 32-33.

² Maria-Gabriela Manea, *Human Rights and the Inter Regional Dialogue Between Asia and Europe: ASEAN- EU Relations and the ASEM, The Pacific Review*, Volume 21, Issue 3, 2008, p. 376, in Heribertus Jaka Triyana

³ Termsak Chalermpananupap, *Promoting and Protecting Human Rights in ASEAN*, *The Nations*, December 18, 2008, p. 2-5, in Heribertus Jaka Triyana

⁴ Luningning G Camoying, *Establishing an ASEAN Human Rights Mechanism: Development and Prospects*, *Insights*, Issue No. 1, March 2005, p. 2-6, in Heribertus Jaka Triyana

⁵ See Terms of Reference of ASEAN Intergovernmental Commission on Human Rights.

⁶ Heribertus Jaka Triyana, *Op.Cit.*

⁷ Ahmat Reza Fahlefi Pattihua, *ASEAN Intergovernmental Commission on Human Rights/AICHR dalam Mengatasi HAM di Asia Tenggara*, *Proceedings the 6th University Research Colloquium 2017, Muhammadiyah Magelang Universitas*, p. 523

religiously. The status of thousands of Rohingyas in Myanmar today does not have stateless citizenship. The absence of AICHR's visible role by the public in addressing conflict-related issues in Rohingya-Myanmar is due to the limitation of legal personality, the strengthening of the reduction of the effectiveness of legal personality and the low politics of human rights enforcement in Southeast Asia. The principle and commitment of ASEAN member countries in defending their citizens' human rights is questionable, if viewed on the principle of non-interference it is clear that ASEAN leaders should ignore the actions of Myanmar to ethnic Rohingya. However, concerns arise when the enforcement and protection of human rights in Southeast Asia through AICHR is not effective as expected by the people, because of Article 2 paragraph (2) letter e and f of the ASEAN Charter.

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