

## Malaysian and Indonesian Law and Policy on Rohingya Refugees: A Comparative Review

**Siti Munirah binti Yusoff\*, Mohd Afandi bin Salleh, Md Mahbubul Haque**

*Faculty of Law & International Relations, University Sultan Zainal Abidin, Kuala Terengganu, Malaysia*

*\*Corresponding Author: s.munirahyusoff@gmail.com*

**DOI:** <http://dx.doi.org/10.18196/iclr.v4i2.15819>

### Abstract

Majority of ASEAN member countries consider themselves to be non-immigrant countries. As a result, the majority of ASEAN countries are not perfect locations for immigrants to settle. However, all states are bound by the non-refoulment principle laid down under Customary International Law in which, the states are prohibited to return the refugee to their original country where there was danger known around them. Hence, in the absence of a formal mechanism produce by the ASEAN region for the protection of refugees, Malaysia and Indonesia perform their efforts and experiences in terms of handling refugees. The paper explains the comparison of how the policy and law on refugees within Malaysia and Indonesia by referring to the case study on the Rohingya people crisis and also the Vietnamese boat people. The qualitative method has been chosen to explain the literature of the paper. This paper also discusses on how both countries respond to the right of a refugee within their sovereignty since they are non-signatory states to the 1951 Refugee Convention. As a result, the paper intends to elaborate on to what extent the laws and policies apply to the refugee according to the Malaysia and Indonesia experiences.

**Keywords:** ASEAN members; law and policy of refugee; protection of refugee

### 1. Introduction

Asia attained the maximum number of people falling under the status of refugees in the decade of the twenty century. According to UNHCR, people is considered refugee when they fulfill the requirement as a refugee in hosting countries. UNHCR in Malaysia had the highest number of a refugee seeking protection when fled from their original country while the state who hold the biggest amount of people claiming refugee status is Myanmar. Numerous people in the area were either ignorant that they could apply for refugee status or were afraid that their application would be denied because they did not meet the UNHCR's definition of a refugee and also there is a 'complicated' process when applying for it. Data from UNHCR in 2021 stated that over 30 percent of all refugees fall within the purview of UNHCR and one of them is from Myanmar. For now, developing countries including Malaysia and Indonesia host almost 85 percent of the world's refugee population.

To address the issue of asylum seekers, world society has chosen to use international legal standards from the League of Nations era. The 1951 Convention Relating to the Status of Refugees (1951 Convention) and the 1967 Protocol Relating to the Status of Refugees (1967

Protocol) are the "customary law" of international refugee law (Davies, 2006). These treaties have three main objectives. First, they are targeting to set standards of the state's response toward refugees and asylum seekers. Second, they aim to foster consistency in how nations respond to asylum seekers. And third, to create a basis for deciding who is eligible for refugee status. The Agreement and Guidelines are, however, ignored by most Asian states for the reason that it was Eurocentric thus it was inappropriate for the refugee's situation in Asia. Just a few Asian countries have signed up for international instruments governing refugees. When the 1951 Convention was adopted, most Asian countries had not yet achieved independence. As a result, an Asian perspective on the refugee crisis was excluded from the drafting process. The 1967 Protocol was then created to abolish the Convention's time and place restrictions. Through this point, there was a widespread consensus regarding "who" refugees were and the assistance that states ought to offer them. As a result, several Asian states have rejected the 1951 Convention and 1967 Protocol's essential principles, conceptions, and methods.

Before the 1967 Protocol was adopted as an addition to the 1951 Convention, India, Indonesia, Japan, Malaysia, Laos, Singapore, and the Philippines all declined to ratify the Convention because it did not address their particular refugee issues. Given the vague definition of a refugee and the burdensome financial obligations placed on host governments (most of which were now developing states), the UNHCR expected that the 1967 Protocol would overcome this reluctance. From the beginning until the late 1960s, the UNHCR attempted but was unsuccessful to convince Asian states to accept the instruments of international refugee law. The UNHCR's interaction with Malaysia from 1959 to 1969 demonstrates the challenges it faced. Malaysia was asked by the UNHCR in 1959 to consider joining the 1951 Convention.

International refugee rules and regional refugee protection frameworks are regularly ignored by ASEAN states. For instance, the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention) and the Protocol Relating to the Status of Refugees (1967 Protocol) were only formally adopted by six Asian countries: Cambodia in 1992, China in 1982, Japan in 1981, the Philippines in 1981, South Korea in 1992, and Timor-Leste in 2003 (UNHCR, 2012). There are some reasons provided by Asian countries for defending themselves by not ratifying the Refugee Convention. One of them is about economic costs are too great. Malaysia was one of the Asian nations that were most severely affected by the recent financial downturn. Rapid declines in GDP growth, the collapse of industries, currency devaluation, increased local jobless, and labor redundancies are all inevitably caused by crowds of migrant workers or refugees. (Wickramasekera, 2002). Whereas the UNHCR has informally urged Asian states to sign the 1951 Convention or 1967 Protocol, they declined, arguing financial responsibilities that would be too burdensome for developing countries to sustain. The 1951 Convention imposed an impossible level of economic for refugees that were bigger than developing countries might afford, as underlined by the governments of Singapore, Japan, Laos, Malaysia, and the Philippines.

The promotion and protection of human rights in ASEAN is an evolving process beginning with the Joint Communiqué of the 26th ASEAN Foreign Ministers Meeting in 1993 (Ahmad et al., 2018). It is the first time for ASEAN to commit to the issue of human rights either in ways to promote or to respect it. One of the initiatives was the Hanoi Plan of Action which implemented the new version of ASEAN 2020 and also reaffirmed the roles among ASEAN members in the protection of human rights.

In another way, human rights protection was linked with refugee protection as the refugee flee from their original country to find protection in the hosting country. Refugees in terms had been described in many ways by different countries. In essence, the only significant argument against the idea that persecution is a necessary qualification for refugee status is the definition of refugee approved by the Organization of African Unity (OAU). After embedding with the United Nations, that definition changed to include anyone who was forced to flee their country of origin or nationality due to external aggressive behavior, profession, foreign superiority, or events seriously upsetting public order in all or part of their country of origin or nationality. (Shacknove, 1985). The mandate given to the UNHCR was limited to refugee protection. The protection included only the bona fide refugee and manage the national resettlement of refugees. In other phrases, only those who are officially recognized as refugees will be offered temporary housing care. The UNHCR will provide them with assistance by verifying them, providing boarding passes, and aiding in the recognition of their different legal statuses, such as marriage and property.

The current refugee crisis handled by Southeast Asia Countries is about Rohingya refugees. Citizenship is one of the factors that lead to the fleeing of Rohingya into hosting countries. In short, Rohingya were in denial of their citizenship status by the Government of Myanmar. According to Aye Chan, the term Rohingya was first introduced on the 1950s. He asserts that educated Bengalis residing in Arakan were the ones to use it originally (Chan, 2005). And according to (Rogers, 2016), numerous citizens in Myanmar believe that the Rohingya started migrating from Bangladesh mostly in the 19th century. The Rohingya were among the most persecuted minorities in the universe and are one of the biggest populations of displaced persons, as per the United Nations. The Government of Myanmar's irresponsibility is to blame for the discriminatory treatment and subjugation of the Rohingya Muslims in Arakan. Tries to dehumanize the Rohingya also include expelling Muslims from their occupations and substituting them with Buddhists, closing Islamic institutions, education institutions, and other Islamic organizations, seizing their asset, and giving it to the Buddhists.

Approximately 140,000 people have been forcibly displaced by the unrest in Rakhine State from 2012 to 2016 and at least 1,000 people have died (Arnold, 2016). Also, on the Thai-Malaysian border, around 139 burials thought to be those of Rohingya people from Myanmar were identified in May 2015 (The Associated Press, 2015). A national army composed of police, soldiers, intelligence agents, immigration officers, and riot police known as Nay-Sat Kut-kwey ye (NaSaKa) functioned in Rakhine State until 2013 under the direction of the Ministry for Border Affairs (Selth, 2012). The Rohingya are confined to prison camps by force. The Rohingya were forced to perform forced labor by the NaSaKa organization and the Myanmar Military. They burned roughly 5,000 Rohingya dwellings as well as unregistered mosques. Public spaces and Islamic institutions were shut down and converted into government offices by the Government of Myanmar. They also restrict the Rohingyas' freedom of movement in severe ways. Women and girls from the Rohingya community have been molested and sexually harassed by the Military, NaSaKa, Myanmar Police, and Rakhine residents. According to UNHCR 2016, gang rapes have caused some women to pass away. In the period after the wave of violence, an estimated 6,700 Rohingyas were murdered, including at least 730 children under the age of 4.

One of the world's most oppressed minorities is the Rohingya, who reside in Myanmar. The bulk of them are not regarded as residents by the government of Myanmar and are undeclared. An estimated one million Rohingya, a Muslim ethnic minority, live mostly in western Myanmar's Rakhine State (Milton et al., 2017). To avoid facing conflict and violence,

Rohingya people are fleeing from Myanmar into other countries especially developing countries specifically Malaysia, Indonesia, and Bangladesh. According to data provided (UNHCR, 2017), To track the number of Rohingya refugees arriving in Bangladesh from Myanmar, the UNHCR and the Refugee Relief and Repatriation Commissioner (RRRC) of the Government of Bangladesh initiated the Rohingya refugee household monitoring operation. As they move from rescue center to shield, a task force of RRRC staff, UNHCR staff, and United nations enumerators gathers data on the entrants of refugees, recognizes their particular protection needs and requirements, geo-references each family, and distributes family counting tokens, which give each refugee family a distinct identification code. The family counts data is utilized for management and to support protection and assistance efforts both at the domestic spending levels. The overwhelming of Rohingya refugees have chosen Bangladesh as their ultimate destination resulting in major acknowledgment of their humanitarian relief, accessibility, and shared religious beliefs. The second wave of Rohingya refugees entered Bangladesh in the years 1991-1992, brought on by a government assault in Myanmar after the unsuccessful national vote in 1990. However, Rohingya absorption has always been difficult due to a lack of a clear refugee policy in Bangladesh and the politicization of the refugee issue. In 2014, the Government of Bangladesh imposed a new policy regarding the refugee where Rohingya life became miserable and complicated in getting access for living. Hence, Rohingya refugees had moved into Malaysia and Indonesia.

### 1.1. Why and How are the Refugee Moving

The Refugee Convention is neither ratified by Indonesia and Malaysia nor is their domestic legislation in place to safeguard refugees. Many refugees and asylum seekers used to plan on passing through Indonesia on their way to Australia; it is a transit country rather than a final destination. Indonesia does not perform refugee evaluations and provides no avenues for refugees to obtain permanent residency because it is non-signatory to the Convention. The data shown in UNHCR 2016, Indonesia hosts more than 13, 000 refugees and asylum seekers including those from Myanmar. Refugees and asylum seekers travel to Indonesia by boat or airplane, usually via Malaysia, if they have the necessary travel documents and valid passports. People smugglers take between USD5,000 and USD10,000 from asylum seekers in exchange for facilitating their perilous trek to Indonesia. A usual refugee journey involves traveling to Kuala Lumpur and taking small boats across the Strait of Malacca to North Sumatra in Indonesia. To ensure that their clients' travel across airports and other crossings is clean, the smugglers bribed the Malaysian and Indonesian authorities. When refugees arrived in Indonesia, the majority of them proceed to the nation's capital, Jakarta, to register with the United Nations High Commissioner for Refugees (UNHCR) (Ali et al., 2016). The UNHCR issues papers to refugees designating them as asylum seekers<sup>1</sup>, which provides them with immunity from potential deportation. The procedure of determining a refugee's status (RSD) also commences with registration.

Due to government persecution as well as local prejudice, Rohingya people were compelled to flee their homes. The Rohingya have a difficult time traveling as refugees and must risk their lives to get to new places like Malaysia. Even though the Rohingya refugees managed to travel to Malaysia to begin a new life, further issues have arisen as a result of the host government's policy that does not acknowledge their refugee status. Thus, the Rohingya refugees may be living in uncertainty in Malaysia, and this circumstance corresponds to the idea of prolonged refugee situations. Nevertheless, Rohingya refugees consider their situation

---

<sup>1</sup> An asylum seeker is someone whose request for sanctuary has yet to be processed

in Malaysia to be safer than it is in Myanmar, and Malaysia is working to find a long-term solution to the Rohingya refugee situation. Though it is difficult for them to become refugees, the Rohingyas take the opportunity to live better in their new country. Two forces – a pull and a push – are at play as a result of the Rohingyas' arrival in Malaysia (Khairi, 2016). Torture, harassment, humiliation, and denial of rights by both the government and communities are the main factors that lead Rohingyas to become refugees. The attraction of Malaysia for Rohingyas is the nation's success of economic progress and enjoyment of intercultural understanding in daily life (Khairi et al., 2018). In essence, there are various methods for Rohingya refugees to enter Malaysia. They first fly, which requires the Rohingyas to enter Bangladesh and meet with agents who can forge passports. Second, the Rohingyas travel by land from Myanmar to Malaysia via Thailand. The trip will often take two weeks or perhaps more depending on the agents and security issues. They can also leave their nation by boat, which is the third option. Recently, this has become a common approach for Rohingyas to do so. However, due to several reasons, including weather, time, and a shortage of food, boat navigation is the most difficult for Rohingyas. They must cross the Andaman Sea and the Bengal Sea to get to Malaysia, which takes more than two weeks. The Rohingyas are at risk because the food ration will run out or the boat would sink before they reach Malaysia because of this situation.

## 2. Method

The application of the proper methodology is essential to any academic research because it assures the reliability of the findings and demonstrates the researchers' proficiency in comprehending and interpreting their issues. This is especially true for how data is collected by researchers. As such, the study applied a qualitative method in examining the laws and policies related to Rohingya refugees in the case of Malaysia and Indonesia. The data collected for the study is derived from two groups. The first group is considered primary data in which the data has been collected through government documents such as the UNHCR reports, websites, and newspapers. The second group is considered secondary data in which the data has been collected from academic literature including journals, books, and magazines. The choice literature from the secondary data was selected carefully to explain the policies and laws of two different countries (Malaysia and Indonesia).

## 3. Discussion and Analysis

### 3.1. Non-Refoulement Principle (Exception)

Because of too many wars and persecution, vast numbers of people leave their land in search of safety in other countries where they can build a new life. The United Nations High Commissioner concurred that even more than 22 million people had left their nations. Since the right to seek and enjoy asylum seeker and refugee was established under the principle of international law, those refugees were eager to find protection outside their original country. However, the interpretation of protection against refugees has been interpreted and granted carefully without creating danger to the sovereignty of the state.

As a general rule, the ratified counties were obliged to protect the refugee coming into their country. Meanwhile, an exception is given by the principle of non-refoulement. This definition implies that people should have a right to avoid being forcefully sent back to nations in which they will suffer discrimination. (Weissbrodt & Hortreiter, 1999). According to Article

3 of the 1933 Convention Relating to the International Status of Refugees, the signatories to the agreement are obligated to refrain from sending the refugee back to their home country. The non-refoulement principle has been adopted in Article 33 of the Convention Relating to the Status of Refugees and today, almost every nation is a member of at least one international treaty that ties them to the non-refoulement principle.

In other situations, the precise amount of protection issued by various clauses has not been clearly defined, even though many scholars have considered the idea as a norm of customary international law and now it has been accepted in many international human rights treaties. The treaty to which the hosting nation is a signatory greatly influences an individual's application for safety against refoulement since some of the clauses are more protective on particular issues than others. Normally, the claim's grounds will be determined primarily by the risk the applicant would face in the country of return. The request from a refugee in this circumstance frequently hinges more upon what treaty the receiving country has ratified. For instance, even when two people applying from different nations faced the same level of danger in their own country, the results of their applications could vary.

Article 33(1) of the Convention of Refugees forbids state parties from removing or returning refugees to where they came from. The main distinction between the Convention on Refugees and the Convention Against Torture is that Article 33(1) of the former does not guarantee complete immunity from reprisal. It begins with the refugee will not be given the refugee's status unless had been satisfied the requirement and thus will be qualifying for the protection under Convention. Article 1F of the Convention provides the statute will not apply to those:

- 1) *Committed a crime against humanity, a war crime, or a crime against peace*
- 2) *Before being accepted as a refugee into the country that is hosting him, he committed a major non-political felony outside of his place of origin.*
- 3) *Has committed conduct that is antithetical to the goals of the United Nations*

### **3.2. Case Study in Malaysia (Vietnamese 'Boat People' Crisis)**

Malaysia, known as one of the countries holds a huge amount of number refugees coming to find protection, especially in the case of Rohingya refugees. Compared to many ASEAN members, Malaysia is a non-signatory state to the 1951 Convention on Refugees and its 1967 Protocol. Because Malaysia does not distinguish between undocumented or illegal labor and refugees, people who seek asylum or refuge here run the possibility of being deported as illegal aliens. Previous studies showed that they are living in urban and have no right to many rights such as the right to work, the right to health care, and to send their children to get an education. They are not living peacefully in Malaysia as they did not been recognized under Refugee Law and Malaysia has no obligation or responsibility toward them.

There are many different types of refugees entering Malaysia, such as the over 50,000 Filipino refugees from Mindanao who fled to Sabah in the late 1970s and early 1980s, the Cambodian and Vietnamese refugees who arrived in the 1980s and 1990s, the small number of Bosnian refugees who arrived in the early 1990s, and the Indonesian refugees from Aceh who arrived in the early 2000s ( Ahmad et al., 2012). By the late 1970s, the Vietnamese Government had begun to carry out the communist ethic including the seizure of enterprises and farms. Their target was ethnic Chinese business owners in Southern Vietnam. The government took this move because it believed that these ethnic Chinese-owned firms supported China, profited from the poverty of the Vietnamese people, and betrayed Vietnam



during the conflict with the US (Ngainon et al., 2021). The increasing violence and the political injustice pushed a wave of gees and displaced people to fly out of their country and scattered all around the world to find either temporary or permanent homes.

Including America, Singapore's beaches also received a lot of Vietnamese refugees. Meanwhile, Malaysia is a non-signatory state to the 1951 Convention on Refugees and has no obligation toward the refugee coming into Malaysia. Nevertheless, led to the fall of Saigon, Malaysia experienced its first substantial encounter with a large number of refugees and asylum seekers in 1975. Following the Vietnam War, particularly in 1978 and 1979, and continuing into the early 1990s, Vietnamese refugees evacuated Vietnam by boat and ship. Between 1975 and 1995, it is believed that about 2 million refugees fled Vietnam (Ahmad et al., 2012). It is believed that the majority of refugees did not survive the passage, were attacked by danger and hardship from pirates and were also overloaded with boats. The Southeast Asian nations of Hong Kong, Malaysia, the Philippines, Singapore, and Thailand were the refugees' first and most immediate destinations (McInnes & Rolls, 1994).

On August 8, 1978, Bidong Island was formally opened as a haven for Vietnamese refugees, forging Malaysian history. However, they are living on the island soon after Saigon fell into communist hands. As for Vietnamese refugees, the island mostly become their home, who had escaped Vietnam to flee the Communists. According to history, Malaysia Government together with UNHCR agreed to put in temporarily the Vietnamese refugees on Bidong Island instead of being scattered in another area. The refugees initially made do with living in tents, forests, or whatever they could obtain. After a long period, the Malaysian government, the Malaysian Red Crescent Society, UNHCR, and other relief organizations began to develop the island by adding accommodations like health care facilities, churches, coffee houses, technical education, and some refugee-owned businesses like bakeries and fruit stands.

### 3.3. Case Study in Indonesia (Rohingya People Crisis)

Among the refugees and asylum seekers who entered Indonesia without valid identity or papers were Rohingya. Most Rohingya arrived in Indonesia as a transit country before resettling in a third country. The same as Malaysia, Indonesia did not ratify the 1951 Convention on the Status of Refugees and does not formally recognize the right of refugees to permanent relocation. Facing the same situation as a refugee coming into Malaysia, they are fleeing because of several circumstances or factors like oppression or not enough money. Rohingyas typically enter Indonesia in one of two ways: either illegally through Malaysia (crossing the Malacca Strait or Singaporean seas) or straight over the Andaman Sea (from Bangladesh or Arakan State) (Susetyo & Chambers, 2020). Choosing Indonesia as a gateway nation is not the greatest choice for the Rohingya people. The remaining of them were accessible to travel to other nations. like Australia and New Zealand even without proper legal documentation or identification.

Therefore, Malaysia and Indonesia hold a significant number of refugees either from Myanmar, Vietnam, Pakistan, or Syria. International Law provided that the resettlement of asylum seekers in receiving countries like Indonesia is not compulsory. As a result, the Indonesian government has the authority to accept or reject asylum claims based on the circumstances. In the meantime, the Rohingya people living in Indonesia are still in the dark and without a place to go. But whenever it comes to matters of asylum applications, the Indonesian government offers reasonable support. The UNHCR will be referred to by

individuals who enter or access their country, and refugees were permitted to stay there temporarily while a more permanent solution was found (Sriprapha Petcharamesree, 2016).

As early as the first decade of the 2000s, people started to anticipate the arrival of the Rohingya in Indonesia. In 2009, there were two classifications of the Rohingya immigration movement. First, the majority of these 193 Rohingya people arrived from Sabang in January 2009, while second in February 2009, about 198 Rohingya refugees who had arrived from Myanmar directly were found on the high seas in Indirayo, East Aceh. The first wave was positioned in the Indonesia Navy's refugee camps, and the second wave was positioned in Idi Rayeuk's corporate headquarters. The Indonesian government is working along with the people of Aceh, the local authority there, the Indonesian central government, the UNHCR, and the International Organization for Migration in this circumstance (Sari et al., 2018).

Compared to its neighbors especially Malaysia and Thailand, the number of asylum seekers and refugees is small. Approximately 13 permanent immigration detention facilities and 20 temporary detention facilities, totaling 3000 beds, are located throughout Indonesia's 12 provinces. People in Indonesia itself are very kind and generous to the Rohingya people. Different races, ethnicities, and religions do not stop them from welcoming the refugees there. Many Indonesians gave their zakat while NGOs also helped in providing clothes and food. An earlier study demonstrated that there were fewer Rohingya in Indonesia, and that asylum seekers freedom of travel was similarly not much constrained there. Last but not least, the Indonesian government continues to advocate for UNHCR to process asylum petitions more quickly and securely.

### 3.4. Findings

In this paper, the researcher tried to relate the case study that happened in two different ASEAN countries, Malaysia, and Indonesia. Both countries are non-signatory to the 1951 Convention on Refugees, and they are not obliged to give protection to the refugees or asylum seekers. However, Article 3 of the 1933 Convention Relating to the International Status of Refugee stated that all states parties are bound by the non-refoulment principle laid down under Customary International Law in which any individual has the right to not forcibly returned to countries where their lives might be endangered or threatened.

According to the issue of refugees in Malaysia, Malaysia has consistently refused to ratify the international treaties of refugees as well as in promoting the right of asylum seekers and refugees. Most international instruments that promote, regulate, and protect the safety of refugees have not been ratified by Malaysia. Those instruments included the International Covenant on Civil and Political Rights 1966 (ICCPR), UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT), International Convention on Economic, and All Forms of Racial Discrimination 1965 (ICERD), International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990. In the issue of refugees, Malaysia was only obliged by the UN Convention on the Rights of the Child (CRC) in which Malaysia compels to provide and protect the right of refugee children as provided under Article 22 of the CRC.

In contrast, Indonesia opened its borders to the Rohingya in May 2015 when Acehese fishermen pulled more than a thousand drowning seafarers to safety. The agreement entered by Malaysia and Indonesia stated that Indonesia agreed to grant temporary asylum to thousands of Rohingya (Smith & Landis, 2014). However, it had been clearly emphasized by



the Indonesian Government that the action from them only remain as transit countries, not more than that. Like the other ASEAN countries, because they are given them temporary place to live, it does not mean they wish or plan to invite more refugees to come. It had been confirmed by the statement given by Indonesia's vice president, Dewi Fortuna Anwar: "*We need to prevent or avert additional difficulty and burden if migrants begin to view Indonesia as a transit country or as having a higher possibility of being resettled.*"

Indonesia Government at first refused to accept the Rohingya refugee within Indonesia territory. In this situation, Indonesia saw Thailand had also refused Rohingya refugees and deliberately directed them into Indonesia. Malaysia also has the same situation in which they refused Rohingya refugees even though they kept supplying relief food and drinks to the Rohingya refugees floating on the sea. Because of humanity, the Indonesia Government did not any obligation to assist Rohingya refugees and the problems that occurred must be solved from its root, that is Myanmar. The concern about the humanitarian ground pushed Indonesia Government to pay a diplomatic visit to Myanmar, for having a meeting with Myanmar leader, Aung San Suu Kyi. Apart from that, Indonesia also realized that it is not enough if the only state put pressure on Myanmar to stop the violent acts, especially the pressure coming from the affected states of Rohingya migration like Indonesia and Malaysia. It must be coming from one voice of ASEAN Members.

In addition, both countries had applied different policies and guidelines in handling the refugee issues, especially for the recent refugee issue, Rohingya. Malaysia has been vociferous in its criticism of Myanmar about the Rohingya crisis, particularly in recent years. A long-standing priority of Malaysia's foreign policy is to promote Muslim unity worldwide. One such goal is to support the Rohingyas. Government Officers have expressed their opinions through a variety of venues, including the Organization of Islamic Cooperation and the Association of Southeast Asian Nations (ASEAN) (OIC). Not only has Kuala Lumpur revised its attitude, but also its approach and behavior toward the individuals it had defended. Kuala Lumpur has changed from being a vociferous opponent of violence against the Rohingya minority to a nation of defiance, as evidenced by its actions. The fact that Malaysia and the Rohingya hold similar views on Islamic teachings is a significant factor in Malaysia's support for the Rohingya cause. However, the reason Malaysia changed its attitude toward the Rohingya, whose fate is still extremely uncertain, is intriguing. Undoubtedly, one frequently mentioned factor is the concern over contracting Covid-19 from the immigrant community (Neghinpao Kipgen & Diksha Shandilya, 2020). During the administration of Prime Minister Mahathir Mohamad in 2018 condemned the action taken by Aung San Suu Kyi against Rohingya. They must be treated as nationals or be given the status of citizenship within Myanmar. Malaysia was against the genocide and of course, the unfair treatment of Rohingya must be stopped. Following the event, Malaysia's home minister Hamzah Zainudin claimed that the country did not recognize the Rohingya's claim to be refugees and that they were only being allowed to stay here for humanitarian reasons. While former Prime Minister Najib Razak proposed that rather than concentrating on hiring labor from other nations, Rohingya refugees should indeed be given the option to effectively improve the economy (Reporters, 2022). On June 9, 2020, Malaysian Defence Minister Ismail Sabri Yaakob (currently Prime Minister of Malaysia) stated that boats bringing Rohingya refugees weren't really permitted in Malaysia but rather are being driven back to Bangladesh. This was a stark contrast to Malaysia's typical professions of sympathy and concern. "The Rohingya should know, if they enter here, they cannot stay," the minister said in a statement.

Through the end of 2015, the Rohingya refugee surge in Aceh was uncontrollable. Earlier, Rohingya refugees had arrived in Indonesia because of the emergence of war in Rakhine, Myanmar, in 2009 and 2012. The 1982 Burmese Citizenship Act stripped the Rohingya ethnic group of its citizenship, property rights, access to a decent education, and work rights (Chan, 2005). Some Rohingya people's decision to migrate does not seem to be a wise one. They are trapped in human smuggling since they have the option to leave Rakhine. For instance, a Thai agent misled the Rohingya by promising them a pleasant vessel and escorting them to Malacca waters. Rohingyas were transferred to a bigger ship in the middle of the sea. However, there were Bangladeshis on board that ship. None of those Bangladeshis were refugees. Some of them wanted to look for work in other places and a more reliable source of income. Therefore, there were constant arguments between Bangladeshis and Rohingyas on the boat. Worse than that, there was a crime committed (Sari et al., 2018). The Indonesian government needs to decide whether to accept or reject the Rohingya refugees when they arrive after being saved by the people of Aceh. There should be a fundamental rule to determine the action when such attitudes are put into practice (Gunawan & Arumbinang, 2021). The Indonesian government should provide some technical guidelines for how to handle the Rohingya refugee issue on Indonesian soil at the government level. Hence, the Indonesian government released a foreign policy that addressed the Rohingya issue on a bilateral, regional, and global level while also developing a partnership with international organizations (Achmad et al, 2021). As a result of Indonesia's institutional approach to addressing Rohingya refugees at the state level, local authorities in Aceh were given the responsibility of serving as the task force's coordinator. This process was carried out by the Aceh local administration, which collaborates closely with the Aceh customs chairman, national and international non-governmental groups, and international organisations. In regional level, President Joko Widodo had sent Indonesia's Foreign Minister to discuss about Rohingya crisis through ASEAN as well as holding meeting with bilaterally with Malaysia and Thailand Government. Southeast Asia's migration problem was being caused by the floods of Rohingya leaving Myanmar because of violent crimes committed there. Even Bangladesh had to accommodate the enormous migratory influx, together with Thailand, Malaysia, Indonesia, and Bangladesh. Due to Indonesia's refusal to ratify the 1951 UNHCR Convention, the Indonesian government is essentially under no duty to accept refugees, despite continuing to support Rohingya refugees. It only seems sensible to address the issues affecting Rohingya refugees in Myanmar, where they originated.

#### 4. Conclusion

In a conclusion, the issue of a refugee cannot only be settled by one state's opinion or action. Though Malaysia and Indonesia were not signatory states to Convention Relating to the Status of Refugees, they are still bound by the international instruments. The conflict of a refugee does not only affect the receiving country but also affecting to the refugee's livelihood itself, especially women and children. They are supposedly getting protection instead of fleeing to get themselves protected from any harm. ASEAN's understanding of the refugee problem did not draft under the Refugee Convention or any other international instruments. As a result, they keep blaming each other regarding the protection of refugees. Someone must speak and quick action must be taken to avoid more problems. The meeting among ASEAN members showed a good start to preventing the refugee problem but close monitoring is needed. The refugee and asylum policies of states must be agreed upon by all ASEAN member states and must include instructions on what steps to take when internal problems in a

member state force individuals to flee to adjacent states. Based on the discussion and findings of this paper, it was founded that Malaysia and Indonesia already acted at either in-state or regional levels. Hence, ASEAN needs to be quicker as the issue already happened a long time ago and it continues to create a burden to host countries, especially Malaysia and Indonesia. The sovereignty of the state also needs to be taken into consideration when discussing this issue as every state has its policies. However, the principle of non-refoulment binds, and they were obliged to that, to not return the refugee to their original country where their life was in threat. All parties must sit together to find a very rational solution so that it will not harm everyone including the refugee.

### Acknowledgement

We would like to express our gratitude and thank you to the University Sultan Zainal Abidin, Terengganu, Malaysia for providing a good facility including the library as a place to collect enough information either via journals, books, reports, and good Wi-Fi for us to complete the paper.

### References

- Achmad, Y., Prasetyoningsih, N., & Al Fath, M. R. (2021). ASEAN Non-Intervention Principles: An Alternative Settlement towards Human Rights Violation in Rohingya. *Jurnal Media Hukum*, 28(1), 118-135.
- Ahmad, A. A., Daoud, B. A., & Yusuf, A. S. (2018). ASEAN Attitudes toward Implementation of Human Rights Protection Law at the National Level. *Journal of Research in Humanities and Social Science*, 6(12), 37-46. Downloaded from <https://www.questjournals.org/jrhss/papers/vol6-issue12/p2/I06123746.pdf>
- Ahmad, A., Zulkanain Abdul Rahim, A., & Abd Mohamed, M.H. (2012). The Refugee Crisis in Southeast Asia: The Malaysian Experience. *International Journal of Novel Research in Humanity and Social Sciences*, 3(6), 80-90. Retrieved from [https://www.researchgate.net/publication/318653060\\_The\\_Refugee\\_Crisis\\_in\\_Southeast\\_Asia\\_The\\_Malaysian\\_Experience](https://www.researchgate.net/publication/318653060_The_Refugee_Crisis_in_Southeast_Asia_The_Malaysian_Experience)
- Ali, M., Briskman, L., & Fiske, L. (2016). Asylum Seekers and Refugees in Indonesia: Problems and Potentials. *Cosmopolitan Civil Societies Journal*, 8(2).
- Arnold, K. (2016). *Myanmar's Shame: Living inside Rohingya Ghettos*. CNN. Retrieved from <http://www.cnn.com/2016/03/31/asia/myanmar-rohingya-camp/>
- Burke, A., Lee-koo, K., & McDonald, M. (2014). *Humanitarianism (1<sup>st</sup> ed.)*. Routledge. <http://doi.org/doi:10.4324/9780203071304-7>
- Chan, A. (2005). The Development of a Muslim Enclave in Arakan (Rakhine) State of Burma (Myanmar). *SOAS Bulletin of Burma Research*, 3(2), 396-420. Downloaded from <https://www.soas.ac.uk/sbbr/editions/file64388.pdf>
- Davies, S. E. (2006). The Asian Rejection?: International Refugee Law in Asia. *Australian Journal of Politics and History*, 52(4), 562-575. <https://doi.org/10.1111/j.1467-8497.2006.00433a.x>

- Gunawan, Y., & Arumbinang, M. H. (2021). Indonesian forced-labour crew in chinese vessel: a human rights perspective. *Sociology and Technoscience*, 11(2), 115-133.
- Khairi, A. (2016). The Dilemma of Rohingya Refugees “Boat People”: The Role of Malaysia, its Neighbors, and ASEAN. *International Journal of Academic Research in Business and Social Sciences*, 6(12). <https://doi.org/10.6007/ijarbss/v6-i12/2512>
- Khairi, A., Askandar, K., & Wahab, A. A. (2018). From Myanmar to Malaysia: Protracted Refugee Situations of Rohingya People. *International Journal of Engineering and Technology (UAE)*, 7(3), 192–196. <https://doi.org/10.14419/ijet.v7i3.25.17545>
- Kipgen, N., & Shandilya, D. (11 July 2020). *Malaysia's Changing Policy on Rohingya Refugees*. Bangkok Post. <https://www.bangkokpost.com/thailand/politics/1949548/malaysias-changing-policy-on-rohingya-refugees>
- McInnes, C., & Rolls, M. (Eds.). (1994). *Post-Cold War Security Issues in the Asia-Pacific Region (1st ed.)*. Routledge. <https://doi.org/10.4324/9781315037394>
- Milton, A. H., Rahman, M., Hussain, S., Jindal, C., Choudhury, S., Akter, S., Ferdousi, S., Mouly, T. A., Hall, J., & Efird, J. T. (2017). Trapped in Statelessness: Rohingya Refugees in Bangladesh. *International Journal of Environmental Research and Public Health*, 14(8), 1–8. <https://doi.org/10.3390/ijerph14080942>
- Ngainon, A., Redzuan, A., Khamis, M. F., & Jamaluddin, M. F. (2021). Review of Media Coverage on Refugee Crises : The Case of Vietnamese Boat People ( VBP ) in Bidong Island. *Journal of Media and Information Warfare*, 14(2), 129–138.
- Petcharamesree, S. (2016). ASEAN and its approach to forced migration issues. *The International Journal of Human Rights*, 173-190. <https://doi.org/10.1080/13642987.2015.1079021>
- Reporters, FMT. (22 April 2022). *End ‘Unfair and Unreasonable’ Treatment of Rohingya*. FreeMalaysiaToday. <https://www.freemalaysiatoday.com/category/nation/2022/04/22/end-unfair-and-unreasonable-treatment-of-rohingya-says-najib/>
- Rogers, B. (2016). *Burma: A Nation at the Crossroads*. London, UK: Rider. Revised Edition (February 1, 2016).
- Sari, D. S., Hidayat, T., & Pratisti, A. (2018). Indonesian Government Policy on Rohingya Refugees. *Andalas Journal of International Studies (AJIS)*, 7(1), 1. <https://doi.org/10.25077/ajis.7.1.1-13.2018>
- Selth, A. (2012). Myanmar's Police Forces: Coercion, Continuity, and Change. *Contemporary Southeast Asia*, 34(1), 53–79. Retrieved from <https://www.jstor.org/stable/41446244>
- Selvakumaran, K. S., Hee, T. F., & Yusoff, J. Z. M. (2022). The Need for A Legal Definition of Stateless Children in Malaysian National Law and Policy: The Perspective from International Human Rights Law. *UUM Journal of Legal Studies*, 13(1), 345-380.
- Shacknove, A. E. (1985). Who Is a Refugee? *International Refugee Law*, 95(2), 274–284. <https://doi.org/10.4324/9781315092478-7>

- Smith, M., & Landis, T. (2014). *Policies of Persecution Ending Abusive State Policies Against Rohingya Muslims in Myanmar (Issue February)*. Fortify Rights. Retrieved from <https://www.fortifyrights.org/mya-inv-rep-2014-02-25/>
- Susetyo, H., & Chambers, P. (2020). Repatriation for Rohingya asylum seekers in Indonesia: a durable but almost impossible solution. *Asian Affairs(UK)*, 48(1), 63–84. <https://doi.org/10.1080/00927678.2020.1833414>
- The Associated Press. (25 May 2015). *Malaysia Finds 139 Suspected Graves in Traffickers Camps*. Retrieved from *Maclean's*: <https://www.macleans.ca/politics/worldpolitics/malaysia-says-jungle-camps-used-by-traffickers-contained-139-suspected-graves/>
- UNHCR, The UN Refugee Agency 2021. Retrieved at <https://www.unhcr.org/refugee-statistics/>
- UNHCR. (2012). Global Trends 2012 IN REVIEW.
- UNHCR. (4 October 2017). UNHCR Refugee Population Factsheet. The UN Refugee Agency. Retrieved 2 June 2022, from *The UN Refugee Agency*: [https://data.unhcr.org/en/situations/myanmar\\_refugees](https://data.unhcr.org/en/situations/myanmar_refugees)
- Weissbrodt, D., & Hortreiter, I. (1999). The Principle of Non-Refoulement: Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human Rights Treaties. *Buffalo Human Rights Law Review*, 5, 1–74. <https://digitalcommons.law.buffalo.edu/bhrlr/vol5/iss1/1>
- Wickramasekera, P. (2002). Asian Labour Migration: Issues and Challenges in an Era of Globalization. *International Migration Papers*, 1–53.