

Rights of the Rohingya: Effect of The Gambia v. Myanmar on ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN's Policy and Action

Khairil Azmin Mokhtar*
Rachminawati**

Abstract

The plight of the Muslim Rohingya in Rakhine State, Myanmar has received worldwide attention. The mass atrocities of the Rohingya have been condemned by the world whereby the United Nation (UN) has identified them as the most persecuted people in the world. Much support of the Rohingya comes from member states of the OIC. The OIC has repeatedly condemned the ill-treatment of the Rohingya by the Myanmar authority. Although Myanmar is a member of ASEAN, not much has been done by ASEAN in protecting the Rohingya. The ASEAN Intergovernmental Commission on Human Rights, which suppose to play significant role in protecting human rights among member states of ASEAN, has not done anything concrete in fulfilling its responsibility. In fact, the significant action to protect the Rohingya was done upon the initiative of the OIC, not ASEAN. In November 2019, The OIC adopted a unanimous resolution to bring the case to ICJ and the Gambia voluntarily represented to initiate proceedings. This is the very first formal effort to hold Myanmar legally accountable for international crimes committed against the persecuted Rohingya. It has been alleged that Myanmar violated the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). Despite the issue of standing and jurisdiction, the Court, on 23 January 2020 unanimously delivered its Order on the Request for the indication of provisional measures to prevent more destruction and atrocities. Despite its shortcomings it is believed that this case has some positive effect on the effort to help the Rohingya. This paper will investigate whether the ICJ's proceeding on the Gambia v. Myanmar opens any opportunity for the future human rights protection for Rohingya people. It will also determine whether the proceeding has any positive influence on ASEAN in relation to human rights protection within the legal framework of ASEAN. The study adopted in this paper is qualitative legal research. The paper focuses on human rights atrocities against Rohingya which were revealed by the Court, and its update in the field. ASEAN's policy and action relating to the issue are also examined. The findings serve as an analytical basis for building future ASEAN human rights protection framework. Furthermore, it contributes to the reform of both ASEAN and AICHR toward the implementation of human rights in the Southeast Asian region.

Keywords: AICHR, ASEAN, Human Rights, Myanmar, Rohingya

*Associate Professor, Department of Civil Law, Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM), Kuala Lumpur, Malaysia; ka_mokhtar@iium.edu.my

**PhD candidate, International Islamic University Malaysia, Kuala Lumpur, Malaysia, and Lecturer & Researcher at International Law Department, Faculty of Law, Universitas Padjadjaran (UNPAD), Bandung, Indonesia ; rachminawati@gmail.com and rachminawati@iium.ac.my