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THE ROOT CAUSE OF TRAFFICKING IN PERSONS FOR THE PROTECTION STRATEGY IN THE ROHINGYA CRISIS

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Abstract

The statelessness of the Rohingya exacerbates the risk of trafficking in persons. Such risk gets bigger for the Rohingya to face during the coronavirus pandemic as safety restrictions and control are emboldened for health concerns. This paper is not to argue for the Rohingya to be or not to be nationally considered. It is due to that being nationally considered does not necessarily guarantee any persons free from trafficking in persons. Instead, this paper is to identify the root cause in order to construct the protection strategy. Thus, the international human rights are theoretically expressed in naturalistic views which are distinguished from positive rights that are inherently applied in Myanmar to bring out the identity conflict that has been the source of crisis between the minority and the majority. Also, a normative perspective of the research in this paper is expected of how international law should function, especially among the ASEAN member states. The ASEAN Convention Against Trafficking in Persons, Especially Women and Children are incorporated as legal instruments throughout the identification of the root cause and the construction of the protection strategy for the Rohingya to investigate the trafficking in persons in the Rohingya crisis. It shows that statelessness and trafficking in persons are inseparable under the migration in the form of irregular movement. Furthermore, it is found that the root cause of trafficking in persons in the Rohingya crisis is the inefficiency of legal systems, because the provision cannot quite defend them.

Keywords : *Rohingya, stateless persons, trafficking in persons*

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I. INTRODUCTION

Being an ethnic minority that is not nationally considered in Myanmar, the Rohingya have been suffering from the dearth of human rights. Internationally, there was a shift of human rights issues to be regional security issues marked with the Emergency ASEAN Ministerial Meeting on Transnational Crimes Concerning Irregular Movement of Persons in Southeast Asia (EAMMTC) in Kuala Lumpur, Malaysia in July 2015¹. The Kuala Lumpur Declaration on Irregular Movement of Persons in Southeast Asia was finally adopted in

¹ Irawan Jati, "Comparative Study of the Roles of ASEAN and the Organization of Islamic Cooperation in Responding to the Rohingya Crisis," *The Indonesian Journal of Southeast Asian Studies*, Vol. 1, No. 1, (2017): 24, doi: <https://doi.org/10.22146/ikat.v1i1.27466>.

September 2015 that trafficking in persons was strongly condemned by all Association of Southeast Asia Nations (ASEAN) member states².

One of the agreements made in the adopted declaration was to address the long-term impact of the irregular movement of persons in Southeast Asia and its connection with trafficking in persons and people smuggling as well as other forms of transnational crime³. When it comes to the long-term impact, the root cause of trafficking in persons occurring in the Rohingya crisis is essential to identify in the first place. Following the identification, the protection strategy is to construct for the persons being trafficked. In relation to these identification and construction, the purpose of this paper is to investigate trafficking in persons alone in the sense that trafficking in persons occurring in the Rohingya crisis violates human rights. This can be traced back to the Universal Declaration of Human Rights (UDHR) Article 4 explicitly stating that “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”⁴. This means that no matter how much all ASEAN member states attempt to put the issues to be about regional security, the core of the issues should be about human rights as reflected in the ASEAN Convention Against Trafficking in Persons, Especially Women and Children as their legal instrument⁵.

Due to the condition of statelessness of the Rohingya ethnic minority, human rights in this paper are expressed in naturalistic views that “human rights are distinct from positive rights” and “human rights belong to human beings”⁶. It is important to note that positive rights here refer to rights in the context of the existing laws and social practices in Myanmar. Hence, the UDHR is tailored for the Rohingya ethnic minority to claim human rights belonging to them. At first glance, this claim is not seemingly solid, however, all states adopting the UDHR shall not be proactively involved in slavery or servitude regardless of whether or not the victims are stateless. This way the Rohingya ethnic minority shall claim human rights as elaborated further in this paper.

The research in this paper focuses on the problem that trafficking in

² “Kuala Lumpur Declaration on Irregular Movement of Persons in Southeast Asia,” ASEAN, (2015), accessed 12 November 2019, <https://asean.org/storage/2012/05/Adopted-Kuala-Lumpur-Declaration-on-Irregular-Movement-of-Persons-in-Southeast-Asia.pdf>.

³ Ibid.

⁴ “Universal Declaration of Human Rights,” United Nations (UN), accessed 12 November 2019, <https://www.un.org/en/universal-declaration-human-rights/>.

⁵ ASEAN Convention Against Trafficking in Persons, Especially Women and Children, opened for signature 21 November 2015 (entered into force 8 March 2016), <http://agreement.asean.org/media/download/20160303122945.pdf>.

⁶ Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press, 2009), 49.

persons violates human rights. The fact that trafficking in persons was strongly condemned by all ASEAN member states, the regional security was threatened. In a way, irregular movement of persons in Southeast Asia are distorted from human right issues to be regional security issues. Nevertheless, these member states are also the states which adopted the UDHR in the context that trafficking in persons is against Article 4. So, the problem gives the path to human rights for the stance of ASEAN strongly condemning trafficking in persons regardless of whether or not the victims are stateless.

The purpose of this paper is to investigate trafficking in persons related to the Rohingya crisis. This particular purpose is encapsulated in the following research objectives.

1) What is the root cause of trafficking in persons?

The first research objective covers the identification of the root cause for the long-term impact of the irregular movement of persons in Southeast Asia and its connection with trafficking in persons. These persons are suggested to include stateless persons.

2) What is the protection strategy against trafficking in persons?

The second research objective covers the construction of the protection strategy for the stateless persons being trafficked. Such construction is necessary in favor of the long-term humanitarian policy to apply.

In other words, the identification of the root cause shall be the underlying idea for the construction of the protection strategy. Both of these identification and construction rely upon the problem statement that trafficking in persons occurring in the Rohingya crisis violates human rights.

Overall, the flow of the research in this paper consists of several sections. The first section explores the basic terminology about stateless person, trafficking in persons, and ethnic minority. The second section explores naturalistic views of human rights for ethnic minority survival. The third section explores a normative perspective as well as the function of international law. The last section explores statelessness and trafficking in persons in the Rohingya crisis, including the identification of the root cause and the construction of the protection strategy.

II. STATELESS PERSON, TRAFFICKING IN PERSONS, AND ETHNIC MINORITY

There are at least three important terms used in this paper which should be determined. The first term is *stateless person* defined as “a person who is not considered as a national by any State under the operation of its law”⁷. The second term is *trafficking in persons*, interchangeably used with human trafficking, which is defined as follows.

*“...the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”*⁸

In addition, *ethnic minority* is equally required to point out. Generally, *ethnic minority* refers to “ethnic or racial groups in a given country in which they are in a non-dominant position vis-à-vis the dominant ethnic population”⁹.

These three terms are beneficial to highlight that statelessness consequently leads the Rohingya ethnic minority to the exacerbated risk of trafficking. Again, this paper is not to argue that this ethnic minority shall or shall not be nationally considered. Being non-stateless or nationally considered is still, nonetheless, prone to the risk of trafficking.

Stateless person here is used solely in the context that any state shall not participate in *trafficking in persons* regardless of whether or not the victims are stateless. The word stateless, as opposed to non-stateless, is to determine which point of view taken pragmatically with regard to *trafficking in persons*. In fact, there is the word “States” to refer to all ASEAN members in The Kuala Lumpur Declaration on Irregular Movement of Persons in Southeast Asia¹⁰,

⁷ 1954 Convention Relating to The Status of Stateless Persons, opened for signature 28 September 1954, (entered into force 6 June 1960), https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf.

⁸ United Nations Convention Against Transnational Organized Crime and The Protocols There-to, opened for signature 12-15 December 2000, (entered into force 29 September 2003), <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

⁹ UN, “Indigenous peoples and ethnic minorities: marginalization is the norm” in *The Report on the World Social Situation 2018: Promoting Inclusion Through Social Protection*, UN, ed. (UN, 2018), 97, <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2018/07/Chapter-VIIIndigenous-peoples-and-ethnic-minorities.pdf>.

¹⁰ “Kuala Lumpur Declaration on Irregular Movement of Persons in Southeast Asia,” ASEAN, (2015), accessed 12 November 2019, <https://asean.org/storage/2012/05/Adopted-Kuala-Lum->

abandoning the dichotomy of stateless and non-stateless—using “Persons” instead.

Only then, the independent state should be uncovered in terms of human rights and naturalism particularly for *ethnic minority*. Thus, it is crucial to keep in mind that statelessness is not to be confused with the independent state. Both statelessness and the independent state seek to express actual condition differently. Statelessness has national characteristics of condition. On the other hand, the independent state has natural characteristics of condition. This paper theoretically leans more towards the later expression without disrespecting the pragmatic need of the former expression.

III. HUMAN RIGHTS AND NATURALISM FOR ETHNIC MINORITY SURVIVAL

In naturalistic views of human rights, the independent state of “any legal or political institution, recognition, or enforcement” is the state of the persons who can possess natural rights¹¹. Beitz theoretically interprets that there are two elements found in natural rights regarded as human rights out of the independent state: (1) “human rights are distinct from positive rights” and (2) “human rights belong to human beings ‘as such’ or ‘simply in virtue of their humanity’”¹².

This paper shall not discuss that the distinction of human rights from positive rights can be a room for criticism against “existing laws and social practices”¹³. Rather, the distinction is basically to underline that the Rohingya, who are in the independent state, can possess human rights despite the existing laws and social practices in Myanmar. As for the second element, the Rohingya belonging human rights are entitled to claim them with regards to the UDHR Article 4. These two particular elements are in pursuit of the mere survival of the Rohingya ethnic minority specifically against trafficking in persons.

Being in a non-dominant position, the Rohingya ethnic minority struggles for survival. The existing laws and social practices in Myanmar do not support the survival of the minority, because those are preoccupied by the majority in a dominant position.

pur-Declaration-on-Irregular-Movement-of-Persons-in-Southeast-Asia.pdf.

¹¹ A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations*, (Cambridge University Press, 2001), 185 as cited in Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press, 2009), 49.

¹² Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press, 2009), 49.

¹³ Ibid.

We might imagine that an alternate means of survival is to be cared for by another. But this is not an alternative because it is not something the individual in question can do. It is something someone else must do. There is no such action as ‘be cared for’.¹⁴

Nonetheless, the Rohingya are not obliged to give up their survival just because the majority does not choose to care for the minority through the absence of national consideration. The significance of survival is fundamental as ever to discuss for an individual in any position, because the subject of whether or not an individual will still be alive tomorrow is fundamental as ever¹⁵.

Now a conflict between human rights appears. The minority strives to survive despite the absence of national consideration by the majority. On the other side, the majority also strives to survive out of the choice of not caring for the minority. This is when human rights of each need to be taken into account under international law. Strictly speaking, each of them lives in the world where the framework within which international cooperation takes place is international law, given that international cooperation is necessary¹⁶. Moreover, the foundation of international human rights law is the UDHR¹⁷. So, there must be relevance to a certain extent that the UDHR can provide to solve this conflict.

The UDHR is unique, that it is in the middle between natural rights regarded as human rights of the minority and positive rights regarded as human rights of the majority. In this paper, the UDHR Article 4 is directed to be specifically against trafficking in persons occurring in the Rohingya crisis. It is worth reiterating that “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”¹⁸. For a better comprehension of the UDHR Article 4, the concept regarding slavery is as follows.

The concept of slavery and slavery-like practices can cover a range of practices, including forced labour (e.g., debt bondage, serfdom, and forced sex work), exploitative child labour (e.g., child soldiers), descent-based slavery, forced or servile marriage (e.g., exchanging a woman for payment),

¹⁴ Anthony Charles Ibbott, *The Rights You Possess* (The Anthony Charles Ibbott Foundation, 1993), 8.

¹⁵ *Ibid*, p. 9.

¹⁶ Vaughan Lowe, *International Law* (Oxford University Press: 2007), 1.

¹⁷ “Human Rights Law,” UN, accessed 14 November 2019, <https://www.un.org/en/sections/universal-declaration/human-rights-law/index.html>.

¹⁸ “Universal Declaration of Human Rights,” UN, accessed 12 November 2019, <https://www.un.org/en/universal-declaration-human-rights/>.

and human trafficking.¹⁹

The concept explicitly states human trafficking interchangeably used as *trafficking in persons*. Now it is more visible that *trafficking in person* as a slavery or slavery-like practice violates human rights. Since this paper focuses on the Rohingya crisis, human rights should be focused on the ones entitled by the Rohingya to claim. This is due to that the Rohingya are the ones suffering from the crisis at heart of trafficking in persons, precisely backed up with the fact that Myanmar is not state party to most international human right treaties so far for the Myanmar's government, the State Peace and Development Council (SPDC) in particular, to fully respect fundamental human rights²⁰.

IV. A NORMATIVE PERSPECTIVE AND THE FUNCTION OF INTERNATIONAL LAW

The fight against trafficking in persons on the Rohingya crisis should normatively be based on the function of international law. The ASEAN Convention Against Trafficking in Persons, Especially Women and Children is the suitable legal instrument, so it is further used for the sake of a normative perspective. Such legal instrument can be a start as the function of international law in the region, but not sufficient in addressing trafficking in persons for the Rohingya to straightforwardly claim their human rights.

In accordance with the convention as the legal instrument, the purpose and principles of the UDHR is incorporated²¹. Therefore, the fabrication of the term *trafficking in persons* along with slavery or practices similar to slavery and servitude or the removal of organs should not be surprising²². Additionally, it is worth mentioning that all ASEAN member states recognise that a combination of factors causes trafficking in persons which must be effectively addressed²³. These factors include “government corruption, poverty, economic instability, inefficient legal systems, organised crimes, and the demand that fosters all of forms of exploitation of persons, especially women and children, that leads to

¹⁹ Gordon Brown, “Implementation of Human Rights” in *The Universal Declaration of Human Rights in the 21st Century: A Living Document in A Changing World*, Gordon Brown, ed. (NY Global Institute for Advanced Study, 2016), 83, <https://www.equalrightstrust.org/ertdocumentbank/Brown-Universal-Declaration-Human-Rights-21C.pdf>.

²⁰ Amnesty International, “The Rohingya Minority: Fundamental Rights Denied,” (2004): 1, <https://www.amnesty.org/download/Documents/92000/asa160052004en.pdf>.

²¹ ASEAN Convention Against Trafficking in Persons, Especially Women and Children, opened for signature 21 November 2015 (entered into force 8 March 2016), <http://agreement.asean.org/media/download/20160303122945.pdf>.

²² Ibid, p. 4.

²³ Ibid, p. 2.

trafficking, which must be effectively addressed”²⁴.

The inefficient legal systems should be the significant factor for the identification of the root cause of trafficking in persons occurring in the Rohingya crisis. On the vivid linkage with the construction of protection strategy, such factor is the basis of scrutiny of Chapter IV Protection Article 14 about Protection of Victims of Trafficking in Persons. This is so, because the significant factor that causes trafficking in persons should be reflected in the provision which is not the case as discussed in the next section.

Upon the naturalistic contemplation in the previous section, the Rohingya ethnic minority indeed possesses human rights. It is just that their human rights are positively non-existent in the existing laws and social practices in Myanmar. Being in a non-dominant position should not be a barrier for the Rohingya to internationally claim human rights against trafficking in persons. Again, their human rights should be naturally viewed due to natural expression of their actual condition. So, all ASEAN member states should recognise such naturally expressed human rights belonging to the Rohingya. Unfortunately, the word “Persons” particularly referring to Women and Children in the convention apparently does not embrace the Rohingya to claim their human rights.

The degree of naturalism of the independent state should be recognised pragmatically through the term *stateless persons* in the region. It is not necessarily to point a finger towards Myanmar, because there is no need to add any other terms, such as Rohingya and ethnic minority, which mean the term should be applicable for any *stateless persons*. Statelessness here does not conflict with the independent state of the Rohingya. There is no need that their human rights out of their independent state are utilised as a room for criticism against the existing laws and social practices in Myanmar to be nationally considered. Hence, Myanmar is able to refer to the term *stateless persons* of ASEAN. This way Myanmar is able to disregard the Rohingya in the existing laws and social practices through the absence of national consideration. It is so, because Myanmar cannot refer the term *stateless persons* of its own to the Rohingya in terms of its national framework. If so, the consequence will be that human rights possessed by the Rohingya are utilised as a room for criticism despite that the term *stateless persons* will still mean they are not nationally considered. Still, the natural distinction of their human rights is utilised to criticise the positive rights of nationality to at least consider them as *stateless persons*.

²⁴ “*Ibid.*”

In regard to international cooperation on human rights, the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) is to be utilised as a place of fresh air in the region. Of course, statelessness was a matter circulating around the commission before the ASEAN Convention Against Trafficking in Persons, Especially Women and Children.

To date, there are several attempts regarding statelessness officially brought out to the public from 2011 to 2013²⁵. In early 2011, for example, the fourth meeting of the AICHR in Indonesia acknowledged the proposed AICHR Workshop on Statelessness and the Rights of Women and Children²⁶. The workshop was finally held later with the United Nations High Commissioner for Refugees (UNHCR) in the same year in Philippines²⁷. Another attempt by the AICHR was in 2012 which was the Round Table Discussion and the First Coordination Meeting of the AICHR Thematic Study on Migration and Human Rights in Indonesia²⁸. Trafficked persons along with stateless and near-stateless persons were two of the most vulnerable groups in the migration processes within ASEAN²⁹. One more attempt was a consultation on ‘the AICHR’s Thematic Study on Migration’ by the AICHR representative of Thailand for submitting a national report in Bangkok in 2013³⁰. It was agreed that one of challenges of migration encompasses “exclusion of some particular groups of migrants, especially those who are stateless”³¹. These three attempts shall be reasoned in identifying the root cause of trafficking in persons and constructing the protection strategy against trafficking in persons occurring in the Rohingya crisis in the next section.

As a method, the results of normative research are prescriptive, that “the norms provide a prescription as to how one should behave in accordance with the norms”³². Yet such normative perspective is partly true, because

²⁵ “stateless,” AICHR, accessed 20 November 2019, <https://aichr.org/?s=stateless>.

²⁶ “Press Release of the Fourth ASEAN Intergovernmental Commission on Human Rights,” *AICHR*, accessed 20 November 2019, <https://aichr.org/news/press-release-of-the-third-asean-intergovernmental-commission-on-human-rights/>.

²⁷ “AICHR with UNHCR,” AICHR, accessed 20 November 2019, <https://aichr.org/news/aichr-with-unhcr/>.

²⁸ “Press Release of the Round Table Discussion and the First Coordination Meeting of the AICHR Thematic Study on Migration and Human Rights in Indonesia,” AICHR, accessed 20 November 2019, <https://aichr.org/news/press-release-of-the-round-table-discussion-and-the-first-coordination-meeting-of-the-aichr-thematic-study-on-migration-and-human-rights/>.

²⁹ *Ibid.*

³⁰ “A Consultation on ‘the AICHR’s Thematic Study on Migration’,” AICHR, accessed 20 November 2019, <https://aichr.org/news/a-consultation-on-the-aichrs-thematic-study-on-migration/>.

³¹ *Ibid.*

³² Theresia Anita Christiani, “Normative and Empirical Research Methods: Their Usefulness

essentially a prescriptive theory is a theory “that says how people or things should function, as opposed to how they actually do”³³. Overall, the results of normative research in this paper suggests that the regional recognition in the convention provides a prescription as to how the provision should function. Such regional recognition is treated to derive from the declaration regarding the long-term impact of trafficking in persons. Hopefully, the results shall be in the light of the stance of all ASEAN member states which strongly condemn trafficking in persons as a violation of human rights occurring in the Rohingya crisis.

V. STATELESSNESS AND TRAFFICKING IN PERSONS IN THE ROHINGYA CRISIS

The struggle of the Rohingya ethnic minority already began a long time ago³⁴. Furthermore, it can be safely said that the struggle has reached its peak in 2015, the expiration year of temporary identity certificates of the Rohingya due to the Citizenship Law of 1982 in Myanmar³⁵. They are not legally recognised as a Myanmar’s ethnic group and named as Bengalis in false narratives as if they are illegal migrants, although they have been living in Myanmar for generations³⁶. It has been estimated that the number of the Rohingya is higher than one million according to the Myanmar census of 2014 in which they predominantly live in Maungdaw, Buthidaung, and Rathedaung situated along the border with Bangladesh with semi-legal and illegal identities in Bangladesh and the Middle East as refugees³⁷.

and Relevance in the Study of Law as an Object,” *Procedia – Social and Behavioral Science*, (2016): 201, doi: <https://doi.org/10.1016/j.sbspro.2016.05.006>.

³³ “Prescriptive,” Legal Information Institute (LLI), accessed 23 November 2019, <https://www.law.cornell.edu/wex/prescriptive>.

³⁴ “Human Rights Council opens special session on the situation of human rights of the Rohingya and other minorities in Rakhine State in Myanmar,” UN Human Rights Office of the High Commissioner, accessed 23 November 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22491&LangID=E>.

³⁵ UN, “Indigenous peoples and ethnic minorities: marginalization is the norm” in *The Report on the World Social Situation 2018: Promoting Inclusion Through Social Protection*, UN, ed. (UN, 2018), 97, <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2018/07/Chapter-VIIIIndigenous-peoples-and-ethnic-minorities.pdf>.

³⁶ The Standing Committee on Foreign Affairs and International Development of the House of Commons of Canada, “Sentenced to A Slow Demise: The Plight of Myanmar’s Rohingya Minority,” (2016): 7, <https://www.ourcommons.ca/Content/Committee/421/FAAE/Reports/RP8379732/faaerp01/faaerp01-e.pdf>.

³⁷ Jacques Leider, “Rohingya: The History of a Muslim Identity in Myanmar,” *Oxford Research Encyclopedia of Asian History*, (2018): 2, doi: <https://doi.org/10.1093/acrefore/9780190277727.013.115>.

It is shown that the crux of the human rights conflict between the Rohingya ethnic minority and the majority of Myanmar has always been about identity conflict in Rakhine state. The term Rohingya itself, that gradually becomes politically charged over time³⁸, originally derives from the term Rohang which used to be the name of Rakhine State in the past³⁹. Historically, there had been a doubling expansion of the Muslims in a span of 50 years under British rule whereas the Buddhists stood with the Japanese during World War II⁴⁰. Later on, the Muslim community demanded equal rights and autonomy since Myanmar won independence from British rule after the war in 1948⁴¹. The Rohingya whose ancestors originated from both India and Bangladesh⁴² were, of course, in the Muslim community, who are now dubbed as the most persecuted minority according to the UN⁴³. The identity conflict between the majority and the minority appear to be large-scale attacks built upon strong tensions in Myanmar in which tens of thousands of the Rohingya are in real danger to even survive in the very place they have believed to be their own homes for generations⁴⁴.

The persecution in Myanmar leads the Rohingya who are being subjected to restrictions on their freedom of movement, arbitrary taxation, and extortion and persist to be constrained to undertake forced labour by local officials⁴⁵ to flee their homes which entails the exacerbated risk of trafficking in persons. In fact, a plenty number of human abuses have been committed against the Rohingya in a way that the Rohingya are smuggled into Thailand, a global hub of trafficking in persons, and trafficked to other places all over the world⁴⁶.

³⁸ A. K. M. Ahsan Ullah, "Rohingya Crisis in Myanmar: Seeking Justice for the "Stateless"," *Journal of Contemporary Criminal Justice*, (2016): 286, doi: <https://doi.org/10.1177/1043986216660811>.

³⁹ M. W. Charney, "Buddhism in Arakan: Theories and historiography of the religious basis of ethnonym," *Kaladan Press*, July 8, 2007, <https://www.kaladanpress.org/index.php/scholar-column-mainmenu-36/58-arakan-historical-seminar/718-buddhism-in-arakan-theories-and-historiography-of-the-religious-basis-of-ethnonyms.html> as cited in *ibid*.

⁴⁰ "Rohingya refugee crisis: Quick facts," Mercy Corps, accessed 15 November 2019, <https://www.mercycorps.org/articles/bangladesh/rohingya-refugee-crisis-quick-facts>.

⁴¹ *Ibid*.

⁴² "Muslims and Rohingya," Minority Rights, accessed 24 August 2020, <https://minorityrights.org/minorities/muslims-and-rohingya/>.

⁴³ "Rohingya Refugee Crisis," USA for UNCHR, accessed 25 November 2019, <https://www.unrefugees.org/emergencies/rohingya/>.

⁴⁴ "Muslims and Rohingya," Minority Rights, accessed 24 August 2020, <https://minorityrights.org/minorities/muslims-and-rohingya/>.

⁴⁵ Human Rights Watch, "Burmese Refugees in Bangladesh: Still No Durable Solution," (2000): 2, <https://www.hrw.org/sites/default/files/reports/burm005.PDF>.

⁴⁶ Warzone Initiatives, "Rohingya Briefing Report," (2015): 11, <https://www.equalrightstrust.org/erdocumentbank/Rohingya%20Briefing%20Report.pdf>.

For the record, human abuses against the Rohingya by traffickers at sea and in Thailand consists of a variety of things such as “torture, deprivation of food, water, space and movement; killings; negligence that led to preventable deaths; and rape and sexual assaults”⁴⁷.

These hundreds of the Rohingya are globally known in media coverage as the boat people who endeavor to reach Thailand by boat⁴⁸ through the Andaman Sea which has traditionally seen high levels of human trafficking and migrant smuggling⁴⁹. Due to their lack of legal documentation in hand, the Rohingya rely upon smugglers to be able to travel outside Myanmar which leave them susceptible to trafficking in persons⁵⁰. While Thailand is a transit route for the Rohingya, at the same time it becomes a destination for them who do not make it to Malaysia and Australia and live there for over twenty years⁵¹. Certainly, Thailand is in need of serious action to fight against trafficking in persons in the Rohingya crisis or the boat crisis in 2015.

All of this corroborates that statelessness and trafficking in persons are inseparable in the Rohingya crisis. It also demonstrates that the matter of statelessness is prominent to be properly addressed against trafficking in persons in the region. However, most of ASEAN member states are not parties to any statelessness conventions—Philippines is the only ASEAN member state which is a party of the Convention relating to the Status of Stateless Persons in 1954⁵². Thailand along with Malaysia and Indonesia even initially pushed back the boats floating from Myanmar before agreeing to allow the Rohingya to temporarily stay for one year long in their countries⁵³. It has

⁴⁷ Fortify Rights, “Remarks of Ms. Puttanee Kangkun Thailand Human Rights Specialist at Fortify Rights,” (2016): 3, https://www.fortifyrights.org/downloads/Remarks_20160608.pdf.

⁴⁸ Irish Centre for Human Rights, “Crimes against Humanity in Western Burma: The Situation of the Rohingyas,” (2010): 9, http://burmaactionireland.org/images/uploads/ICHR_Rohingya_Report_2010.pdf.

⁴⁹ Van Doore, K. E., “Child migration and trafficking in South-East Asia” in *Protecting migrant children: In search of best practice*, M. Crock & L. Benson, ed. (Edward Elgar, 2018) as cited in Caitlin McCaffrie, “Displaced Rohingya Children and the Risk of Human Trafficking,” *Journal of Human Rights and Peace Studies*, Vol. 5, No. 1, (2019): 50, url: <https://so03.tci-thaijo.org/index.php/HRPS/article/view/195393/140236>.

⁵⁰ Equal Rights Trust and Institute of Human Rights and Peace Studies, “The Human Rights of Stateless Rohingya in Thailand,” (2014): 15 as cited in “The Stateless Rohingya in Thailand,” Nikki Ostrand, accessed 26 November 2019, <https://cmsny.org/the-stateless-rohingya-in-thailand/>.

⁵¹ Ibid.

⁵² Convention relating to the Status of Stateless Persons, opened for signature 28 September 1954 (entered into force 6 June 1960), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20V/V-3.en.pdf>.

⁵³ Ministerial Meeting, “Joint Statement on the Asian Migrant Crisis,” (2015) as cited in Caitlin Wake and Tania Cheung, “Livelihood strategies of Rohingya refugees in Malaysia ‘We want to

only recently happened that Indonesia provides humanitarian assistance for the Rohingya in Aceh without any direct instruction or supervision from ASEAN in the middle of the coronavirus pandemic⁵⁴. In fact, it is the central government and the local administration of Aceh along with the UNHCR and the International Organization for Migration (IOM) to assist the Rohingya rescued by local fishermen⁵⁵. In total, there are 99 people who are provided with shelter, food and nutrition to health, water, sanitation and hygiene⁵⁶. As for Thailand and Malaysia, the Rohingya need to receive disappointment as the authorities refuse any entry of them⁵⁷.

Indeed, one of the Indonesian locals protests towards the authorities to help the Rohingya, because there is no other place accepting the Rohingya with open hands after having been out at sea and prone to get drowned⁵⁸. The Rohingya, including children, women, and men are suspected to be out at sea for weeks, if not months, in which their basic needs, such as food, clothes, water, medicines, and shelter must be met⁵⁹. The smugglers were not seemingly inclined to disembark the Rohingya farther due to that not all of these Rohingya had successfully made their payment, that they were for the most part keeping these Rohingya hostage on the boat at sea, so that moving them to the evacuation center is one of concerns⁶⁰.

Moreover, it is urged for all countries in the region to protect and rescue people at risk of serious harm in order to ensure their overall wellbeing, especially in the time of coronavirus pandemic, which is the case happening

live in dignity’,” (2016): 1, <https://www.refworld.org/pdfid/57922bbb4.pdf>.

⁵⁴ Dian Septiari, “Indonesia draws praise for assisting Rohingya as ASEAN fails to mitigate crisis,” *The Jakarta Post*, June 29, 2020, <https://www.thejakartapost.com/news/2020/06/29/indonesia-draws-praise-for-assisting-rohingya-as-asean-fails-to-mitigate-crisis.html>.

⁵⁵ Ibid.

⁵⁶ “IOM Facilitates Movement of 99 Rescued to Long-Term Shelter in Aceh,” IOM, accessed 24 August 2020, <https://www.iom.int/news/iom-facilitates-movement-99-rescued-rohingya-long-term-shelter-aceh>.

⁵⁷ “ASEAN: Overhaul Regional Response to Rohingya Crisis,” Human Rights Watch, accessed 24 August 2020, <https://www.hrw.org/news/2020/06/26/asean-overhaul-regional-response-rohingya-crisis>.

⁵⁸ BBC News Indonesia, “Rohingya di Aceh: ‘Di mana-mana mereka ditolak, hanya Aceh yang terima’ – BBC News Indonesia,” produced by Lesthia Kertopati, shot by Muhammad Ilyas, June 26, 2020, news video, 3:27, <https://www.youtube.com/watch?v=ApExODTo354>.

⁵⁹ News Desk, “Amnesty urges Indonesia to protect Rohingya stranded in Aceh waters,” *The Jakarta Post*, June 25, 2020, <https://www.thejakartapost.com/news/2020/06/25/amnesty-urges-indonesia-to-protect-rohingya-stranded-in-aceh-waters.html>.

⁶⁰ Hidayatullah Tahjuddin and Poppy McPherson, “Almost 300 Rohingya refugees arrive in Indonesia’s Aceh province,” *The Jakarta Post*, September 7, 2020, <https://www.thejakartapost.com/news/2020/09/07/almost-300-rohingya-refugees-arrive-in-indonesias-aceh-province.html>.

to the Rohingya right now⁶¹. In other words, all countries in the region are urged not to push back the Rohingya stuck in perilous journeys at sea since the coronavirus pandemic makes them even harder to penetrate any national border in the region.

The UN even further reports that there has been an increase of the number of the Rohingya towards Malaysia and other countries in Southeast Asia from Bangladesh and Myanmar since the pandemic began⁶². Such global health crisis undoubtedly exacerbates the situation the Rohingya face to a higher level, because safety restriction and control must be emboldened at any national border to at least prevent the number of coronavirus case from getting higher in the region.

The UNHCR, which has been operating for more than four decades in Thailand, then, had to face obstacles cooperating with the Thai Provincial Admissions Board at the beginning in providing protection under the UN Convention of the Rights of the Child Article 22 about refugees in which Thailand is one of the parties⁶³. Finally, the UNCHR succeeded to assist the Rohingya who had been smuggled by boat through immediate relief of hygiene kits, sanitary kits, clothing items, sleeping mats and blankets along with other material in 18 different locations⁶⁴. Besides that, the UNHCR “conducted interviews, helped reunite 30 families who were split during the journey, provided counseling support and identified possibilities of resettlement to third countries for the most vulnerable people”⁶⁵. Still, without turning a blind eye to the hard work, classifying the Rohingya as refugees could miss the matter of statelessness.

VI. THE IDENTIFICATION OF THE ROOT CAUSE OF TRAFFICKING IN PERSONS

Bluntly speaking, the inefficiency of legal systems causes trafficking in persons in the Rohingya crisis indeed. Yet there is no space at all to interfere Myanmar’s national framework by making its legal systems more efficient

⁶¹ Ibid.

⁶² “Rohingya crisis needs lasting solutions, renewed commitment amid COVID-19 pandemic, UN refugee agency,” UN, accessed 24 August 2020, <https://news.un.org/en/story/2020/08/1070792>.

⁶³ The Equal Rights Trust, “The Human Rights of the Stateless Rohingya in Thailand,” (2014): 8, <https://www.equalrightstrust.org/ertdocumentbank/The%20Human%20Rights%20of%20Stateless%20Rohingya%20in%20Thailand%28small%29.pdf>.

⁶⁴ “Our Success,” UNHCR Thailand, accessed 26 November 2019, <https://www.unhcr.or.th/en/our-success>.

⁶⁵ Ibid.

to nationally consider the Rohingya. So, to blindly put pressure on Myanmar for the violent attack in the hope of nationally considering the Rohingya is basically to throw away the spirit of non-interference principle of ASEAN.

To sum up, regionalism in Southeast Asia can plainly be argued as “an integral part of the decolonisation process”⁶⁶. Against the backdrop of the Cold War, the urge of enforcing national sovereignty was intense to protect “the small and the weak from domination by the powerful”⁶⁷. The acts taken by ASEAN to promote and maintain peaceful relations are not by providing security, but “through active cooperation and by drawing on international law and norms”⁶⁸.

Historically, Myanmar itself joined ASEAN as the ninth member state⁶⁹ after having declined the membership invitation previously⁷⁰. Following several decades of being isolated from the world, Myanmar eventually decided to be open to international community by stepping into ASEAN in 1997⁷¹ with a set of principles to embrace in the region as follows.

Article 2 of Treaty of Amity and Cooperation in Southeast Asia Indonesia on 24 February 1976 states:

- a. Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations;*
- b. The right of every State to lead its national existence free from external interference, subversion or coercion;*
- c. Non-interference in the internal affairs of one another;*
- d. Settlement of differences or disputes by peaceful means;*
- e. Renunciation of the threat or use of force;*
- f. Effective cooperation among themselves.”*⁷²

⁶⁶ Sharon Siddique, “Introduction” in *The ASEAN Reader*, K.S. Sandhu et al., eds. (Institute of Southeast Asian Studies, 1992), 3.

⁶⁷ Rodolfo C. Severino, Jr., “Sovereignty, Intervention and the ASEAN Way” in *ASEAN Today and Tomorrow*, Rodolfo C. Severino, Jr., ed. (ASEAN Secretariat, 2002), 60.

⁶⁸ M. C. Abad Jr., *The Philippines in ASEAN* (Anvil Publishing Inc., 2011), 60.

⁶⁹ “Overview,” ASEAN, accessed 29 November 2019, <https://asean.org/asean/about-asean/overview/>.

⁷⁰ Zhai Kun and Song Qingrun, “The Motivations and Game in Myanmar’s Transition” in *Myanmar: Reintegrating into the International Community*, Li Chenyang, Chaw Chaw Sein, and Zhu Xianghui, eds. (World Scientific Publishing Co. Pte. Ltd., 2015), 208.

⁷¹ Ibid.

⁷² Treaty of Amity and Cooperation in Southeast Asia Indonesia, opened for signature 24 February 1976 (entered into force 24 February 1976), <https://asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/>.

The non-interference principle might explain the third rejection from Philippines against the UN resolution in relation to the Rohingya crisis during the UN Human Rights Council's 42nd regular session⁷³. Aligned with this, earlier in the same year, Indonesia highlighted the role of ASEAN deserving the support of international community in the UN Security Council Meeting⁷⁴. Also, early this year Bangladesh, which has the largest camps for more than one million Rohingya, informs that it will no longer accept any arrivals of the Rohingya to accommodate⁷⁵. It rings true that Bangladesh has indeed offered its shoulders to carry a heavy burden all this time⁷⁶ out of the identity conflict between the majority and the minority happening in Myanmar since years ago compared to any other countries. Acting as a regional association, ASEAN is inevitably in need of a much bolder action in managing migration of the Rohingya who are getting more prone to trafficking in persons around the world.

In accordance with the non-interference principle, the efficiency of legal systems should be better directed towards managing trafficking in persons under managing migration⁷⁷ in the form of irregular movement. Say, there is a number of trafficked persons who are non-stateless, then, they can be returned to their receiving countries. Yet that is totally not the case with the trafficked Rohingya as Myanmar dismisses them in absoluteness of its national framework.

It is vital to keep in mind that this does not automatically make the Rohingya the same as migrants. Calling the Rohingya as migrants is far worse than calling them as refugees. Unlike refugees who flee their homes due to persecution and even death, migrants are not even directly threatened and can still receive the protection from their governments once they safely return

⁷³ Eimor Santos, "Philippines again rejects UN resolution on Rohingya's rights," *CNN Philippines*, September 27, 2019, <https://cnnphilippines.com/news/2019/9/27/united-nations-resolution-myanmar-rohingya-crisis.html>.

⁷⁴ UN Security Council, "The situation in Myanmar," (2019): 7, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_8477.pdf.

⁷⁵ Hannah Ellis-Petersen, "Rohingya crisis: Bangladesh says it will not accept any more Myanmar refugees," *The Guardian*, March 1, 2019, <https://www.theguardian.com/world/2019/mar/01/rohingya-crisis-bangladesh-says-it-will-not-accept-any-more-myanmar-refugees>.

⁷⁶ Dian Septiari, "Rohingya refugees rejected everywhere as countries grapple with COVID-19 concerns," *The Jakarta Post*, April 26, 2020, <https://www.thejakartapost.com/news/2020/04/26/rohingya-refugees-rejected-everywhere-as-countries-grapple-with-covid-19-concerns.html>.

⁷⁷ "Press Release of the Round Table Discussion and the First Coordination Meeting of the AICHR Thematic Study on Migration and Human Rights in Indonesia," AICHR, accessed 20 November 2019, <https://aichr.org/news/press-release-of-the-round-table-discussion-and-the-first-coordination-meeting-of-the-aichr-thematic-study-on-migration-and-human-rights/>.

to their homes⁷⁸. However, it is noteworthy that calling them as refugees could miss the matter of statelessness. Therefore, the term *stateless persons* should be firmly secured under *trafficking in persons* to manage migration in the form of irregular movement in order to improve legal systems to be efficient. This improvement would hopefully be in line with the improvement of the livelihood of the Rohingya in which their claim of human rights is internationally considered in the region. The crux of human rights conflict, that is identity conflict in Myanmar, then, would hopefully be solved without interfering its national framework.

At the end of the day, denying the heavy presence of diversity in the Southeast Asia region is, if not impossible, a very daunting task⁷⁹. The Rohingya are very well there adding the substance of diversity despite their statelessness which should be explicitly considered against trafficking in persons. If such diverse region is indeed primarily an imagined community in a quest of regional identity⁸⁰, it is time for ASEAN to take a look at how the concept of region here is not based on “geographic contiguity” anymore, but rather “purposeful social, political, cultural, and economic interaction among states which often (not always) inhabit the same geographic space”⁸¹.

In a quest of regional identity which has mostly been elite-driven in the Southeast Asia, ASEAN should not despise regionalism involving non-state actors, such as non-governmental organizations⁸². Dealing with trafficking in persons to promote and maintain peaceful relations in the region, then, takes *stateless persons* under *trafficking in persons* to be the identity of the Rohingya for NGOs to interact when it comes to humanitarian action in the region. Such interaction has been said to be on demand as global health crisis due to coronavirus also threatens the region, that ASEAN leaders should make a dramatic change in approaching the Rohingya crisis for they have done almost nothing for years⁸³.

⁷⁸ “UNHCR viewpoint: ‘Refugee’ or ‘migrant’ – Which is right?,” UNHCR, accessed 27 November 2019, <https://www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html>.

⁷⁹ Hans-Dieter Evers, *Sociology of South-East Asia*, (Oxford University Press, 1980), 2 as cited in Amitav Acharya, *The Making of Southeast Asia* (Institute of Southeast Asian Studies, 2012), 5.

⁸⁰ Amitav Acharya, *The Making of Southeast Asia* (Institute of Southeast Asian Studies, 2012), 12.

⁸¹ *Ibid*, p. 22.

⁸² *Ibid*, p. 258.

⁸³ “ASEAN: Overhaul Regional Response to Rohingya Crisis,” Human Rights Watch, accessed 24 August 2020, <https://www.hrw.org/news/2020/06/26/asean-overhaul-regional-response-rohingya-crisis>.

VII. THE CONSTRUCTION OF THE PROTECTION STRATEGY AGAINST TRAFFICKING IN PERSONS

As discussed, this paper shall not argue for Myanmar to nationally consider the Rohingya for the legal systems to be efficient. Deemed as significant for the identification of the root cause, the inefficiency of legal systems is not sufficiently reflected in the provision of Chapter IV Protection Article 14. Rather, managing trafficking in persons is intertwined with managing migration in the form of irregular movement, that both trafficked persons along with stateless and near-stateless persons were two of the most vulnerable groups in the migration processes within ASEAN⁸⁴.

In general, migration is actually not a new thing in ASEAN. In less than a decade since the establishment of ASEAN, all of the five ASEAN member states agreed to initiate a project entitled the ASEAN Population Project on Migration in Relation to Rural Development under the ASEAN Population Programme⁸⁵. Later in 1980s, ASEAN member states, except Singapore and Brunei Darussalam, were known to have the majority of their population inhabiting rural areas only to encounter many side effects of rapid urbanization⁸⁶. At the regional level, Singapore depended on most of ASEAN member states for labour supply while Malaysia was both the sender and the receiver of labour supply⁸⁷.

The economic integration of ASEAN is recently getting closer that there is a growing flow and migrant labour in the region⁸⁸. Such economic integration is, however, marred by abuse and discrimination of women and children in which failure of their birth registration exposes the undocumented or stateless children to the risk of child labour, child trafficking, sex work, and

⁸⁴ “Press Release of the Round Table Discussion and the First Coordination Meeting of the AICHR Thematic Study on Migration and Human Rights in Indonesia,” AICHR, accessed 20 November 2019, <https://aichr.org/news/press-release-of-the-round-table-discussion-and-the-first-coordination-meeting-of-the-aichr-thematic-study-on-migration-and-human-rights/>.

⁸⁵ Institute of Population Studies Chulalongkorn University, *Migration in Relation to Rural Development: ASEAN – Level Report* (Institute of Population Studies Chulalongkorn University, 1981), xiii.

⁸⁶ Naohiro Ogawa, “Urbanization and Internal Migration in Selected ASEAN Countries: Trends and Prospects” in *Urbanization and Migration in ASEAN Development*, Philip M. Hauser, Daniel B. Suits, and Naohiro Ogawa, eds. (National Institute for Research Advancement, 1985), 83.

⁸⁷ Charles W. Stahl, “Labour Migration amongst the ASEAN Countries” in *Urbanization and Migration in ASEAN Development*, Philip M. Hauser, Daniel B. Suits, and Naohiro Ogawa, eds. (National Institute for Research Advancement, 1985), 109.

⁸⁸ Economic & Social Commission for Asia & the Pacific (ESCAP), *Striving Together: ASEAN and the UN* (UN, 2009), 41 as cited in Human Rights Resource Centre, *Violation, Exploitation, and Abuse & Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study* (Human Rights Resource Centre, 2012), 95.

exploitation⁸⁹. Now it insinuates that being a stateless person to start with is a shortcut to abuse and discrimination which is the case in the Rohingya crisis. What is more is that the matter of statelessness is not sufficiently reflected in the provision. Therefore, *stateless persons* should be made crystal clear under *Trafficking in Persons*, because the word “Persons” tends to put more weight on the non-stateless persons as reflected in the provision. One particular example for this regarding migration is in the point 4 as follows.

ASEAN Convention Against Trafficking in Persons, Especially Women and Children, Chapter IV Protection Article 14.4 about Protection of Victims of Trafficking in Persons states that:

*“Each Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. Each Party shall give appropriate consideration to humanitarian and compassionate factors to this end.”*⁹⁰

Such particular example could falsely bolster the exclusion of stateless persons who are not able to expect legislative measure for their protection. On the other hand, other appropriate measure is not specifically guided towards stateless persons. Hence, it sounds likely that most of national guidelines or procedures constructed, as advised in Article 14.1⁹¹, to be the strategies for protecting victims cannot quite defend stateless persons. All of this is so coupled with the fact that Philippines is the only ASEAN member state which is a party of the Convention relating to the Status of Stateless Persons in 1954⁹².

In late 2011, ASEAN made an attempt through Regional Workshop on Statelessness and the Rights of Women and Children between AICHR and UNHCR⁹³. It was found that experts in the region were sharing information on the good practices in preventing and reducing statelessness as follows.

⁸⁹ Human Rights Resource Centre, *Violation, Exploitation, and Abuse & Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study* (Human Rights Resource Centre, 2012), 97.

⁹⁰ ASEAN Convention Against Trafficking in Persons, Especially Women and Children, opened for signature 21 November 2015 (entered into force 8 March 2016), <http://agreement.asean.org/media/download/20160303122945.pdf>.

⁹¹ Ibid.

⁹² Convention relating to the Status of Stateless Persons, opened for signature 28 September 1954 (entered into force 6 June 1960), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20V/V-3.en.pdf>.

⁹³ “AICHR with UNHCR,” AICHR, accessed 20 November 2019, <https://aichr.org/news/aichr-with-unhcr/>.

Summary Report of AICHR-UNHCR Regional Workshop on Statelessness and the Rights of Women and Children in Manila, Philippines on 18-19 November 2011 stated that:

- “1) strategies to establish the universal registration of all children at birth;*
- 2) legal reforms to protect the rights of women and children to acquire and retain a nationality;*
- 3) legal reforms to prevent the loss of nationality due to residence abroad; and*
- 4) leading initiatives to prevent and reduce statelessness in the context of labour migration, people smuggling, and human trafficking.”⁹⁴*

At least, it looks like the most feasible action would be the establishment of the universal registration of all children at birth regardless of whether or not the victims are stateless. Such action is to do through what is called as other appropriate measure once all of ASEAN member states are seriously willing to give permission for the victims to remain in its territory.

VIII. CONCLUSION

Natural rights regarded as human rights in this paper are rights which are innate and cannot be lost⁹⁵. In other words, these rights cannot be given away, forfeited, or taken away which belong to all human beings⁹⁶, including the Rohingya, to claim for their survival.

Furthermore, statelessness mixed with trafficking in persons in the Rohingya crisis invites a series of complexities for regional stakeholders to manage migration in the form of irregular movement. This is when international law is supposed to take part, because there is no such thing as a single state acting alone can achieve its aims⁹⁷. Unluckily, the ASEAN Convention Against Trafficking in Persons, Especially Women and Children misses the matter of statelessness to address. As discussed in a normative perspective, the inefficiency of legal systems agreed at the beginning of the convention is the root cause of trafficking in persons in the Rohingya crisis. This inefficiency is not sufficiently reflected to be further tackled, because the provision is rather for non-stateless persons. This can be seen in Chapter IV Protection Article

⁹⁴ “Summary Report,” AICHR, accessed 28 November 2019 <https://aichr.org/wp-content/uploads/2019/01/Doc-4-StatelessnessManila-SummaryFINAL22Nov12.pdf>.

⁹⁵ A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations*, (Cambridge University Press, 2001), 185 as cited in Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press, 2009), 49.

⁹⁶ Ibid.

⁹⁷ Vaughan Lowe, *International Law* (Oxford University Press: 2007), 1.

14 about Protection of Victims of Trafficking in Persons, particularly point 4 which is related to migration.

In connection with the identification of the root cause, it is found that there should be *stateless persons* as a term to construct the protection strategy for the victims against trafficking in persons. Such construction is crucial sooner or later given the fact that one ASEAN member state is obliged not to interfere another ASEAN member state in the case of the Rohingya crisis. If Myanmar sticks to its decision not to care by not nationally considering the Rohingya, at the very least, there should be a sounder construction of the protection strategy in the region for the long run. It would ease up the regional association in managing migration as well as the non-state actors in providing humanitarian action even if it takes the term to be the identity of the Rohingya. Recently, it has even been admitted that ASEAN does not have the compassion necessary for assisting the Rohingya only, but talks about a caring and sharing society for others⁹⁸. This means that there is still a lack of internal cooperation when it comes to the statelessness and the trafficking in persons in the Rohingya crisis in which the non-interference principle of ASEAN is none to be compromised to the international community outside the region however much the pressure is put upon the ASEAN leaders. Therefore, it seems to make sense to some degree that Rohingya are still possibly the most friendless people all over the world, because no one stands with them to advocate them at all cost⁹⁹.

At last, in order to thoroughly investigate trafficking in persons in the Rohingya crisis, it is recommended to investigate the long-term impact. Inarguably, the investigation shall still be mindful of statelessness that is inseparable with trafficking in persons in the Rohingya crisis. The inseparability is also for a broader scope of a better improvement in managing migration in the region, specifically Southeast Asia.

⁹⁸ Dian Septiari, “‘Totally shameful’: Outrage as ASEAN nations abandon Rohingya boat people,” *The Jakarta Post*, June 26, 2020, <https://www.thejakartapost.com/news/2020/06/26/totally-shameful-outrage-as-asean-nations-abandon-rohingya-boat-people.html>.

⁹⁹ Grant Peck, “What’s behind persecution of Myanmar’s Rohingya,” *The Jakarta Post*, December 1, 2016, <https://www.thejakartapost.com/seasia/2016/12/01/whats-behind-persecution-of-myanmars-rohingya.html>.

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