

## CHAPTER I

### INTRODUCTION

#### A. Research Background

More than 43 million people worldwide are now forcibly displaced as a result of conflict and persecution, the highest number since the mid-1990s. Several million people remain displaced because of natural disasters, although updated statistics are not available. More than 15 million of the uprooted are refugees who fled their home countries, while another 27 million are people who remain displaced by conflict within their own homelands -- so-called 'internally displaced people.'<sup>1</sup>

Hundreds of millions of people around the world are unable to meet their needs on their own, and do not receive adequate protection or support from their home states. These people, if they are to be provided for, need assistance from the international community. If we are to meet our duties to these people, we must have ways of knowing who should be eligible for different forms of relief. One prominent proposal from scholars and activists has been to classify all who are unable to meet their basic needs on their own as "refugees," and to extend to them the sorts of protections established under the United Nations Refugee Convention. Such an approach would expand the traditional refugee definition significantly<sup>2</sup>

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<sup>1</sup> Anonymous, "The Numbers", United Nations Global Issues, taken from <http://www.un.org/en/globalissues/briefingpapers/refugees/> accessed on November 30<sup>th</sup> 2015 at 12.30 p.m

<sup>2</sup> Matthew Lister, Who are Refugees?, *Law and Philosophy*, Volume 32, No. 12-40, 2013, U Dnver Legal Studies Research Paper.

Two United Nations agencies, the UN High Commissioner for Refugees (UNHCR) and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), are responsible for safeguarding the rights and well-being of the world's refugees. Major refugee populations include Palestinians (4.8 million), Afghans (2.9 million), Iraqis (1.8 million), Somalis (700,000), Congolese (456,000), Myanmarese (407,000), Colombians (390,000), Sudanese (370,000).<sup>3</sup>

Based on geographical location, Indonesia is located between the continent of Asia and Australia, and also between the Indian Ocean and the Pacific Ocean. Thus, the area of Indonesia is at the intersection, which is of significant importance in relation to the summer climate and the economy. The position of Indonesia which is located between two oceans and two continents, make Indonesia a strategic place for the movement and also a refugee transit, mostly toward the Australian continent. Since 1999, Indonesia has become a transit point especially to the refugees from the Middle East, mostly heading to Australia's Christmas Island.<sup>4</sup>

There are around 10,000 refugees and asylum seekers in Indonesia. Indonesia is not a party to the 1951 Convention relating to the Status of Refugees (Refugees Convention) or the 1967 Protocol. Asylum seekers and refugees (and stateless people) here face difficulties staying in the country. Asylum seekers and refugees in Indonesia are not permitted to work and to

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<sup>3</sup> United Nations Global Issues, *Op.Cit.*

<sup>4</sup> Yahya Sultoni, 2014, *Alasan Indonesia Belum Meratifikasi Konvensi 1951 Tentang Pengungsi dan Perlindungan Hukum Bagi Pengungsi Di Indoneisa*, Malang, Fakultas Hukum Universitas Brawijaya, p. 3-4

receive social benefits from the Government of Indonesia. The Government of Indonesia allows them to stay here while they have current registration documents from the Office of the United Nations High Commissioner for Refugees (UNHCR).<sup>5</sup> Indonesia as non-state parties of the 1951 Convention and 1967 Protocol, does not have authority to grant Refugee Status Determination, thus the regulation of the refugees established by UNHCR (United Nations High Commissioner for Refugees) in accordance to the mandate received by UNHCR Statute of 1950.<sup>6</sup>

Myanmar is one of the countries in ASEAN that makes the citizens feels danger to stay in their own country, Myanmar is one of the worst violators of human rights. The Government of Myanmar did not recognize that the Rohingyas as citizen in Myanmar and didn't give nationality status to them. With this conditions they become stateless person and they don't have nationality protection.

Inhumane treatment by the government of Myanmar to the Rohingyas is long enough to happen. With the majority of the people of Myanmar are Buddhist religion, they did discrimination against the Rohingyas. The differences of religion in Myanmar against ethnics Rohingya are very obvious. They are ostracized, even they are killed in open places such as highways.

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<sup>5</sup> Anonymous, "Para Pengungsi dan Pencari Suaka di Indonesia", Indonesian Civil Society Network for Refugee Rights Protection, taken from <http://suaka.or.id/public-awareness/refugees-and-asylum-seekers-in-indonesia/> accessed on December 17<sup>th</sup> 2015 at 2.13 p.m.

<sup>6</sup> Atik Krustiyati, 2012, Kebijakan Penanganan Pengungsi di Indonesia: Kajian Dari Konvensi Pengungsi tahun 1951, *Law Review*, Volume XII, No.2 Surabaya: Fakultas Hukum Universitas Surabaya, hlm 174.

That's why makes the Rohingyas chose to leave Myanmar and sought a new and better life than to risk their life in Myanmar.<sup>7</sup> The Rohingya ethnic left Myanmar secretly, because it was too risky for them if they are caught by the military junta of Myanmar, they will be end up in the jail.

Recently, the Government of Myanmar withdraw a "white card" which is the only official identity card of the Rohingyas. The white card belonging to the Rohingya people was declared invalid since March 31, 2015. The white card is an identification card that is given to people who live in Myanmar, but did not get official status as a resident, resident association, and resident's neutral, or foreign nationals. White card holder's means they are not Myanmar citizens or foreign citizens. Along with the white card withdrawal, the Rohingya people also lose the right to participate in elections (elections). In accordance with the referendum held in 2008, the white card holders get the right to vote in elections. Cancellation of President Thein Sein has closed the opportunity to participate in Myanmar Elections, 2015 for the Rohingya people.<sup>8</sup>

Last year, hundreds of the Rohingyas fled from their homeland because of human right abuses and psychological pressures. They used boats to flee to safe places to live. They stayed in the boat without food and water. Even some people jumped into the sea because they're live jostle in the boat. Finally, they

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<sup>7</sup> Anonymous, May 2015, "Jumlah Pengungsi Rohingya di Indonesia Capai 11.941 Orang", Aceh Tribun News, taken from <http://aceh.tribunnews.com/2015/05/19/jumlah-pengungsi-rohingya-di-indonesia-capai-11941-orang>, accessed on October 27<sup>th</sup> 2015, at 6.41 p.m.

<sup>8</sup> Antonius Purwanto, June 2015 "Menelisik Akar Persoalan Rohingya", Kompas Print, taken from <http://print.kompas.com/baca/2015/06/03/Menelisik-Akar-Persoalan-Rohingya> accessed on December 19<sup>th</sup> 2015 at 9.23 a.m.

were found by fishermen in Aceh in deplorable conditions. Until nowadays there are displaced Rohingya Muslims in Indonesia as many as 11.941 people, it is based on the data received by the Foreign Minister of Indonesia since 2005. For the Rohingyas who arrived in Indonesia recently, the number was around 1,346 people. The first group of as many as 558 people, second until the third group of as many as 664, followed by 47 and 96.<sup>9</sup> The problem arises when Indonesia until nowadays has not ratified the 1951 Convention and its protocol, and Indonesia also does not have any regulations to protect the refugees.

Hence, the significance of this proposed research needs to be studied further on the protection of refugee in Indonesia and analyze the way of protection of refugee based on International Refugee Law especially in this case is the Rohingyas. It will focus on the implementation of the International Refugee Law to protect the right of the Rohingyas in Indonesia.

## **B. Research Questions**

Based on the background that has been explained by the author above, there are two legal problems as the guidance to do the legal research those are:

1. How is the protection of refugee according to the international refugee law?
2. How does the protection of the Rohingya refugees in Indonesia?

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<sup>9</sup> Yudha Manggala P Putra, June 2015, "Pengungsi Rohingya Harap Myanmar Seperti Indonesia", *Republika*, taken from <http://www.republika.co.id/berita/nasional/daerah/15/06/01/np8cp4-pengungsi-rohingya-harap-myanmar-seperti-indonesia>, accessed on October 27<sup>th</sup> 2015, at 6.20 p.m.

### **C. Research Objective**

There are two purposes of conducting this legal research, which are the objective and subjective purposes:

#### 1. Objective Research

- a) Based on the research questions, this research is to know deeply about the protection of refugees according to international refugee law.
- b) To understand the implementation and obligation of Indonesia towards refugee protection such as in the case of Rohingya people.

#### 2. Subjective Research

The subjective purpose of conducting this legal research is to fulfill the requirement from the International Program of Law and Sharia, Faculty of Law Universitas Muhammadiyah Yogyakarta to obtaining a Bachelor of Law degree (*Sarjana Hukum*).

### **D. Research Advantages**

This research is also expected to bring benefit both theoretical and practical:

#### 1. Theoretical Advantages

In a theoretical perspective, this legal research is expected to give benefit function as a legal contribution to develop the science especially on the international law on the issue of protection of refugees.

## 2. Practical Advantages

The Results of this research would give better understanding and provide scientific reference regarding the refugee law which concern about the protection of refugees according to International Refugee Law in the case of the Rohingya refugees in Indonesia.

### **E. Systematic of Writing**

This research consists of five chapters, namely Chapter I: Introduction. Chapter II: Theoretical Framework. Chapter III: Research Methodology. Chapter IV: Analysis and Discussion, and lastly, Chapter V: Conclusion and Suggestion.

The purposes of this research are to learn deeply about the perspective of international refugee law towards the protection of the Rohingyas in Indonesia. Besides, this research will elaborate the topic systematically by dividing it into five chapters.

In Chapter I, consisting of Introduction, the author will elaborate general matters, such as background, research questions, research objective, research advantages, and overview of the chapter. The background contains about the protection of refugees according to international refugee law. Here, the author uses the case of the Rohingyas, and focuses on the protection of international refugee law.

Furthermore, Chapter II, Literature Review, the author will elaborate each variable on this undergraduate thesis. The author will explain about the

definition of refugee, types of refugee, non-refoulement principle, international refugee law such as the 1951 Convention on Relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, historical background of UNHCR, duties of UNHCR, and activity of UNHCR. Moreover, it will elaborate more about the International Refugee Law and the way to protect the refugee of the Rohingyas.

In Chapter III researcher will discuss the research method used for conducting this undergraduate thesis. This research methodology consists of the type of research, data collection, method of collecting data and method of data analysis. The characteristic of research is a normative legal research. The type of research will use statute approach and analytical approach. This research will use material legal research taken from literatures consist of primary legal material, secondary legal material and tertiary legal material. Also the data finding method taken form literature research such as library research. Then the method of data analysis in this research used systematical analysis through juridical qualitative.

The fourth is Chapter IV, Research and Analysis. The author will analyze the case with the normative legal research, with case approach. The focus of this research is on the protection of refugees based on international refugee law and the protection of the Rohingyas in Indonesia as non-state parties of 1951 Convention also explain the principle of non-refoulement as the basis of protection of refugee and the role of UNHCR to resolve the case of the Rohingyas.

Finally, Chapter V, Closing, the author will conclude what has been discovered in previous chapter about the protection of the refugee and the rights of the Rohingyas in Indonesia according to International Refugee Law, the author also will give the suggestion from the author toward the result of the research.