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A Case study of: Rakhine Buddhist and Rohingya Muslim Crisis in Myanmar.

I. INTRODUCTION

Rohingya issue is a hot topic and conflict that the world is considering and concern about, this is not just happened, nevertheless for since long period related with historical story behind it. This issue is emphasized to both religious and ethnic cleansing conflict and the world's longest running civil law, between Rakhine Buddhist and Muslim Rohingya which emerging since 1947 to the present due to Rohingya people was not recognized by Burma (Myanmar) government as an ethnic group, and they either had been no right to practice in Myanmar territory.

In 1982 Myanmar government declared as officially called Muslim group was stateless people, so they had no right to vote, less opportunity and welfares. Rohingya and Buddhist group are both located in Rakhine state, North Myanmar and throughout this violate and persecution, was mainly appeared to started to have most flee to another counties by cross land border or boats, then until 2015 generated the big refugees, and has called of UN that the current exodus of Rohingya is the most urgent refugee emergency in the world.²

From 2017 until now, its persecution getting worse due to lead of using military force against the Rohingya and even has burned its living place cause to gain majority of death within instability in local.³ It is relatively with human right law and major powers of states try to debate to settle any resolutions in term of using the Alternative Dispute and Resolution tools for rebuilding the relationship for both parties. Many third parties involve helping out falling down people including UNSC, UNHCR (UN High Commissioner for Refugees), EU donator, ASEAN members' supports, and United States.

Regarding to Rohingya case, Burma government and group of Muslim Rohingya have not been made negotiation up due to the closed right, thus, this case has been brought to the court of UN to resettle and build peace for Rohingya worthy. In order to analysis this case clearly in term of how third parties involve within taking the ADR to cover whole issue and overcome possibly, in this case they are going to choose the negotiation process for first step though lead to appear another third party to take mediation role. Then, if impossible, the solving in the Court will be selected.

In this paper, the study will focus on the role of ADR in response to religious conflict as the study will also examine the effectiveness of ADR in complying with the religious conflict. In this case, the scope of the study will exclusively determine on the Rohingya Conflict, Myanmar.

¹ "Who are the Rohingya?", *Alijazeera*, 2018. Accessed July 19, 2018. https://www.aljazeera.com/indepth/features/2017/08/rohingya-muslims-170831065142812.html

³ "Rohingya Crisis in Myanmar", Global Conflict Tracker, 2018. Accessed July 19, 2018. https://www.cfr.org/interactives/global-conflict-tracker#!/conflict/rohingya-crisis-in-myanmar

OBJECTIVES

- 1. Endeavor on the major role of ADR in response to religious conflict and its implementation and procedures based on the existing conflicts analysis.
- 2. The explanation on the possibility and credibility of ADR as a solution solver to the leading conflict in Myanmar as well as to appear the leading actions taken by the ADR and related stakeholders and also to aiming to look at some inputs of the consequences regardless non-ADR's tools.

METHODOLOGY

This study is conducted based on the secondary data mostly from the reports, books, and some journals and articles that have been publish as sources for further understanding and be informatics.

II. BODY

2.1. LITERATURE REVIEW

Alternative Dispute Resolution or ADR in abbreviation is a peacefully mean for dispute settlement procedure without litigation. ADR is also known as a conflict management, meaning that this process will provide with the assistance of facilitating the dispute from escalation. One of the most interesting things about ADR is to attempt to solve the conflict outside the court system, or before going to the court.

Technically, Alternative Dispute Resolution (ADR) is dedicated to the improvement of conflict through negotiation, conflict resolution, and cooperative decision-making as applies to public concerns. Politically, ADR is being applied in dealing with public affairs to replace ineffective means with the purpose of cost-effect reduction, social instability, the decreasing of investments, chronic underdevelopment, and loss of life⁴.

Literally, this term refers to everything to facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or ministerial that look and feel very much like a courtroom process. Processes designed to manage community tension or facilitate community development issues⁵.

⁴ Scott Brown, Christian Cervenak, and David Fairman. Alternative Disputes Resolution: Practitioner Guide. Retrieved from https://www.usaid.gov/sites/default/files/documents/1868/200sbe.pdf accessed date: 08/08/2018

⁵ Different Mode of ADR. Chapter 3. Retrieved from: http://shodhganga.inflibnet.ac.in/bitstream/10603/44117/9/09 chapter% 203.pdf accessed date: 08/08/2018

2.1.1. THE IMPORTANCE OF **ALTERNATIVE DISPUTES RESOLUTION (ADR)**

ADR is the tool that help to rebuild the communication once it breakdown. Communication is the most important system to avoid any misunderstanding between disputants, as the differences will be increased due to the communication breakdown. ADR consists of many different means that can also be included within the rubric of ADR. ADR systems may be generally categorized as negotiation, conciliation/mediation, or arbitration systems⁶.

In response to religious conflict, ADR traditionally the most common types of ADR that is usually being mobilized is "Mediation." It is a collective term for the ways that parties can settle dispute, with the help of a third. In ADR, who that was considered as ADR providers, was called third party⁷.

The process of arbitration or any kind of ADR can start only if there is valid arbitration or any kind of ADR agreement between the parties proceeding to the emergency of dispute. While the often points procedures and rules of evidence are not applied in ADR proceedings, the making it less raised and easier for those involved to adapt to their needs⁸. Furthermore, in case of arbitration or the parties have for more flexibility in choosing rules will be applies to their dispute.

Pros & Cons: The role of mediator and arbitrator have the authority only on compromise and just give formal advise to them though the parties of conflict keep attacking as personally, compromiser still stay in neutral and bring them back to focus on issue, to be exact, mediator and arbitrator have no right to enforce even give any suggestions to the parties to do anything.⁹

2.2. CASE-STUDY

2.2.1. SHORT HISTORY OF THE ROHINGYA CRISIS

Rohingya is Muslim minor group that being refused to recognize the term "Rohingya." and the Burmese government and Burmese historians argue that the Rohingya are actually Bengali Muslims. In the era 1824-1948 after the British colonial, the statement that Rohingya migrated to Rakhine state in Myanmar

Book

⁶ Law Reform Commission, Consultant Paper: Alternative Disputes Resolution, (LRC-50, 2008), Retrieved from: http://www.lawreform.ie/ fileupload/consultation%20papers/cpadr.pdf accessed date: 08/08/2018

[&]quot;What in the World is ADR?", Colorado Bar Association July, 1999. Retrieved from: http://www.cobar.org/For-the-Public/Legal-Brochures/What-is-ADR Accessed July 26, 2018.

⁸"Arbitration Rules and Procedures", Accessed July 26, 2018.Retrieved from: https://adr.findlaw.com/arbitration/arbitration-rules-and-procedures.html

from Bengal.¹⁰ However, most experts outside of Myanmar agree that the Rohingya have been living in Rakhine state since at least the 15th century, and possibly as early as the 7th century.

Rohingya is minor Muslim group that have been abused by Myanmar authorities for over decade. More than 100,000 of Rohingya live in Rakhine with no freedom of accessing food, water, healthcare and education. Rakhine Buddhists is the major population group residing in Rakhine state. A tension leading to violence between of these two groups is a regular incidence. This religious conflict got bigger in May 2012 after a Buddhist woman was raped and killed in Rakhine state and three of Rohingya men were accused of being responsible.

After that incident happened, these two groups started to fight against one another by used arms and leaving about 200 people dead and about 1,100 people got arrested and forced to flee to neighboring countries and mostly are Rohingya. A major actors in the religious conflict was a Buddhist nationalist group that was led by a group of monks, named 969. The group of monks known as anti-Muslim sentiments, which many consider genocidal in nature. On the other hand, A Burmese nationalist group which their object is to protect Myanmar's Buddhist society by directing the Muslim stateless group which is Rohingya. 12

2.2.2. RELATED STAKEHOLDERS 'INTERVENTION

While the international community has judged these activities, the government has done very little to restrain 969 and other anti-Muslim activities. The unti-Muslim violence is taking place in Rakhine state and also in a part of Myanmar. According to Human Right Watch has accused Burmese authorities of committing crimes against humanity in an ethnic cleansing campaign against the Rohingya. The nervousness between Buddhists and Muslims in Myanmar continue to be high, and any minor dispute could lead to another eruption of violence.

Since this violence happened, Rohingya was living in the very bad situation which is being banned from government of accessing jobs and running office and living in the very challenge conditions in

WARZONE INITIATIVES: Rohingya Briefing Report", 2015. Accessed October, 2015.
file:///C:/Users/USER/AppData/Local/Packages/Microsoft.MicrosoftEdge 8wekyb3d8bbwe/TempState/Downloads/Rohingy
a-Briefing-Report.pdf

¹¹ "European Commission: The Rohingya Crisis", *ECHO Factsheet*, 2018. Accessed July 22, 2018. http://ec.europa.eu/echo/files/aid/countries/factsheets/rohingya en.pdf

¹² ibd

neighboring countries.¹³ While the rest of Myanmar begins to open up and has undertaken reforms, life for the Rohingya still resembles the rule of an oppressive military government.

In 2014, after the government conducted a research about population in 30 years, Rohingya is allowed to be registered as a termporary citizens of Myanmar and got a white card which means their right is limited and this right is effective in February 2015 that means Rohingya has no right to vote in the election that will hold in November, but international group has called the government to give the right to Rohingya for voting but it is failed to do. 14

The Rohingya got dislike and even hatred from Myanmar. The Burmese government has ingrained this disdain into its citizens, using dislike for the Rohingya as a way to mobilize support. The Rohingya are a stateless people, hated in their own country and forced to live in appalling living conditions. The following paper will solely focus on three level of intervention:

ASEAN INTVERENTION

ASEAN was an important organism and a third party to involve such issue, ASEAN is thus to neutral stance over human right within other countries to non-interfering norms and seems to fit with foreign policies. ¹⁵ On the other hand, diplomatic ASEAN roles in 2008 as to humanitarian response that it is successfully on convincing to Myanmar's military junta to accept international humanitarian assistance as to accept Muslim Rohingya back to Myanmar and which was one of ASEAN's pivotal roles in humanitarian action. Even though, it is difficult to claim for social right for protection to Rohingya from Myanmar government due they denied so strictly. And due to afraid of Myanmar government do not follow even keeping violate on Rohingya people ASEAN should be in mediatory role meanwhile rely on other international organizations approach to this crisis.¹⁶

Necessarily, there has generated of ADR process tension to negotiate between Bangladesh and Myanmar government on Rohingya's refugees for several times, but it seems like not convenient for both states to let these refugees to stay a long in their each local. This focus on whether Bangladesh open to accept Rohingya to repatriate back to their country and treat them well matter, thus this crisis will be ended up since 1978 or 1992. Eventually, these both parties could not make the agreement be

¹³ "WARZONE INITIATIVES: Rohingya Briefing Report", 2015. Accessed October, 2015. file:///C:/Users/USER/AppData/Local/Packages/Microsoft.MicrosoftEdge 8wekyb3d8bbwe/TempState/Downloads/Rohingy a-Briefing-Report.pdf

¹⁴ Ibd

¹⁵ Yulies Puspitaningtyas, "Resolving the Rohingya Crisis the Asean Way", The Jakarta Post columnist, 2017. Accessed July 22, 2018. https://www.straitstimes.com/asia/se-asia/resolving-the-rohingya-crisis-the-asean-way-the-jakarta-postcolumnist

16 Ibid.

successfully because they never shred a strong equation plus the contention regarding the Rohingya issue had further worsened it.¹⁷

SUPERPOWER TAKEN ROLE OF MATTER

US in 2012, Obama went to visit Myanmar and met Aung San Suu Kyi in term of discussion on Rohingya issue and encouraged to implement human rights reform, but there will has pressure and sanction on Myanmar if she still violate on Rohingya people and do not take action as promised. During that time, Obama tensioned show his purpose that there will be officially came to power in April 2016, and the move dismayed activists who saw sanctions as crucial leverage against the military's actions in places like Rakhine and other conflict zones. Another enforce settlement of the United Nation during HRC session, it strongly demanded to Myanmar government to respond to violence in a manner that respects human rights of all and to investigate abuses by impartial courts and fair trial guarantees and give humanitarian and media access. 19

US requested to SC public briefing, and the US delegate has stated many statements about Rohingya and release a specific point that Myanmar do not afraid of violence even would to successful clean the country of an ethnic minority, and called the Security Council to "consider actions against Burmese security forces who were implicated in abuses and stoking hatred" as "the time of well-meaning diplomatic words in the Council has passed".²⁰

Russia's responding is to take over territory group action in Rakhine state and during HRC session, the Russian delegate involve as a third party and going to role as a conciliator to prevent this escalate issue and refugee crisis. At the SC solution, the Russian delegate possible "leadership and sponsorship with the goal to expand humanitarian crisis and blame the Myanmar government" and warned against using definitions as ethnic cleansing and genocide.²¹

Whereas, China supports to stand on neutral of non-interfering with national borders and sovereignty of member states and tension on Rohingya crisis. At the HRC session, the Chinese delegate noted that the resolution of the crisis needs time due to the complexity and sensitivity of the situation. At

¹⁷ "Rohingya Crisis: Policy Options and Analysis", Bangladesh Institution of Peace and Security Studies: Bipss Sepecial Report, 2017. Accessed July 22, 2018. http://bipss.org.bd/pdf/Rohingya-Policy%20Brief.pdf

¹⁸ Joe Freeman, "Burma's Rohingya Muslims mourn the end of the Obama era", *The Washington Post*, 2017. Accessed July 23, 2018. https://www.washingtonpost.com/news/worldviews/wp/2017/01/12/burmas-rohingya-muslims-mourn-the-end-of-the-obama-era-and-worry-about-trump/?utm_term=.21468ca5419b

¹⁹ "Save Rohingya From Genocide", *Geneva International Centre for Justice, 2018. Accessed July 23, 2018.* http://www.gicj.org/gicj-reports/1298-save-rohingya-from-genocide
²⁰ Ibid.

²¹ Ibid.

the SC meeting, the Chinese delegate expressed "support and understanding of Myanmar's efforts to protect its security in Rakhine" and proposed to facilitate talks between Myanmar and Bangladesh.²²

INTERNATIONAL COMMUNITIES

For another third party, EU is regional organization and work such a global for maintaining peace for the world, and it helped a lot on Rohingya issue that act as the mediator in participating with domestic local community in Myanmar and neighboring Bangladesh. EU has also messaged to Rohingya crisis that is a human right crisis with serious humanitarian consequences and indicated as a wider regional dimension which look further of genocide on Muslim group people. There was generated of intervention of EU again to protect humanitarian throughout the EU Commission's humanitarian aid department into both state, Myanmar and Bangladesh in 1994, whereas, in 2018 EU is working via sending their security of aid workers collaborate with its humanitarian partner organization to create a new funded projects throughout Myanmar's Rakhine State of Myanmar Red Cross to address the urgent needs. 4

In 2017, it was very hard for the UN Security Council to intervene in this issue because Myanmar government block any aids from that organization till it attempted to be deadlock at Security Council. Without an enforcement action through according to respecting the rule of law of Myanmar which apply traditional law in their state more than international law, thus, the UN could not establish any base or safe zone inside the Rakhine state and even for aid delivery and civilian shelter. The UN High Commissioner for Human Rights and the UN Secretary General have been limited in their scope to only making statements condemning the Myanmar army and pledging to stop the "ethnic cleansing".²⁵

That time, occurred the debate and vote to in General Assembly to solve this issue of 122 to 10 with 24 abstentions on December 23, 2017, however, there was still inefficiency. Later on, UNGA decided to open discussion with Bangladesh which is the last hope to concentrate and support on Rohingya people. Then, in April 30, 2018, the meeting happens between Myanmar government and UNSC delegation who went to Burma to meet Aung San Suu Kyi, and military commander-in-chief Senior General Min Aung Hlaing after visiting vast displacement camps in Bangladesh where the Rohingya refugees live. The support of the support of

²² Ibid.

²³ "European Commission: The Rohingya Crisis", *ECHO Factsheet*, 2018. Accessed July 22, 2018. http://ec.europa.eu/echo/files/aid/countries/factsheets/rohingya_en.pdf

²⁴ Ibid.

²⁵ Mohammad Tanzimuddin Khan and Saima Ahmed, "Rohingya Refugee Crisis: UN General Assembly and Bangladesh Diplomacy", *The Daily Star Opinion*, 2018. Accessed July 22, 2018.

https://www.thedailystar.net/opinion/perspective/rohingya-refugee-crisis-un-general-assembly-and-bangladesh-diplomacy-1551688

²⁶ Ibid.

²⁷ "UN Security Council Delegate in Myanmar to Discuss Rohingya Crisis", *Radio Free Asia*, 2018. Accessed July 23, 2018. https://www.rfa.org/english/news/myanmar/un-security-council-delegation-probes-rohingya-crisis-in-myanmar-04302018171556.html

On the discussion which lead by SC president role as an arbitrator, Myanmar president's speech that she is already accept Rohingya people and provides of humanitarian assistance to people, also would to work with Bangladesh government on this issue. Meanwhile, Min Aung Hlaing responded to SC about the security in Maungdaw and Buithdaung and hope they can work with UN agency in Rakhine and the military's willingness to act in accordance with the law in the state. Furthermore, Min Aung Hlaing responded that the army is the only institution that can protect the country, and it will take action against anyone who violates rules and laws.

Based upon reaching out the negotiation to accept the Rohingya back to Rakhine state due to Myanmar president made agreement with Bangladesh last November, and the army is ready to work with other institutions according to the government's directions.

DISCUSSIONS AND RECOMMENDATIONS

Based upon on this study research of how ADR role in religious conflict, it seeks to be more successful at the end although it was failed a few times. Because this conflict happens inside state only between Myanmar government and group of people is emphasize Muslim Rohingya cause to be a serious issue indicates to refugee issue in Rakhine state. Due there is no power to govern negotiation with Myanmar government, so Muslim group started to escape from this area to other different places which is nearer, especially the Bangladesh state because this was to be their homeland since after WWII either the border is linked together. Obviously, it also occur an issue between Bangladesh and Myanmar because there are a lot of this group refuge to Bangladesh state to make their state be instable, so this first negotiate between these two parties was happened, but it was unsuccessful and based on the observation, because that two states did not share the interest with each other within raise up the proposal what each party want beside this issue. Generally, both states would to control peace as well, seem like Bangladesh they afraid to be unfair to their citizen to divide job and any opportunities and also be insecure. Whereas, for Myanmar can indicate that kind of hatred to Muslim group until cruelly violated and intend to kill Rohingya people for all. On the other hand, when the power and international societies involve, they seek to be more flexible to solve this problem although they first impose to choose the outside court process then. This case they most role as to open negotiate as the discussion with Myanmar government to concern human right then set out the implementation directly, however, they can either propose enforcement through arbitration system if Myanmar do not accept agreement

with Bangladesh to get Rohingya back. This is showing to Myanmar government afraid of losing common interest in international environment, especially, this issue will be escalated more also avoid from putting sanctions on their state because they are violating on HR law.

On this point of view, according to the situation of Myanmar state seems like a small state and less power to compete with those intervened communities, so they can only follow in order to protect peace and security as well. Importantly, Mrs. Aung San Suu Kyi should more respect on humanitarian and provide equal right to be more concentrated as other groups to Rohingya people who is resident since long time ago. Personally, enforcement the solution on implementation reforming human right is necessary for living life that every people must be adapted, so if Myanmar still keep doing this action or abuse on people right, they should get warning or intervene by any images from international societies throughout rolling as arbitrator or conciliator in case of mediator be inefficiency. Significantly, after doing acception Rohingya back to Rakhine sate, Myanmar should open right for each group commander representative for their people for issue the negotiation clause that brings of easier process when occurring the relatively issue such as humanitarian crisis. On the other hand, they should work more with HCHR to protect and promote human right, exactly defense from other states threating or accusing. Regarding to happening of negotiation between Myanmar and Bangladesh that UNSC was a mediator, so the clause ought to be binding to prevent each party get wrong for new situations.

III. CONCLUSION

In this case, ADR might not capable enough in preventing the crisis from escalating since it is now become more and more well-known issues. But with some of the peaceful interventions from related stakeholders were at least compromising and calm down the situation remaining silent a lot, but it is still yet 100% effective. Imagine when this issue was submitted to solve in the court through the power states and discuss for a lot times. Nevertheless, it has convinced Myanmar leader to agree what proposal from the court and of course the main party, Bangladesh was also called to have a negotiation with Myanmar on this crisis. Throughout both parties shared their necessary issue and seek for further interest lead them to accept what was going on within the needing probably. Furthermore, this is the benefits of using ADR process for preventing emerging the serious issue and faster, especially maintaining relationship looking for the cooperation of economic or commercial trade be well-known. And when these powerful third parties emphasize involved, the solution was really efficiency aim to reach the negotiation and agreement outside court.

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