

Playing with Words: The Securitization Construction of 'Refugee' in ASEAN Politics

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Abstrak

ASEAN memainkan kata-kata antara istilah migran, imigran, pencari suaka, orang-orang yang diperdagangkan dan orang-orang yang diselundupkan untuk mendeskripsikan dorongan perpindahan manusia yang luar biasa dari Myanmar. Istilah-istilah tersebut merupakan representasi sekuritisasi isu-isu kemanusiaan ASEAN. Namun sangat disayangkan ASEAN enggan menyebutnya dengan istilah pengungsi padahal semua aspek telah terpenuhi. Dalam hal ini, ASEAN mengambil langkah linguistik politik secara hati-hati dengan menghindari kata 'pengungsi' dalam kamus politik mereka. Artikel ini mempertanyakan: mengapa dan bagaimana ASEAN mensekuritisasi masalah pengungsi? Dan apa konsekuensi politik bagi ASEAN jika terus mempertahankan kebijakan sekuritisasi? Pembahasan dalam tulisan ini disajikan melalui pendekatan perspektif konstruktivis. Melalui pendekatan ini, dapat dilihat bahwa konstruksi pengungsi di ASEAN sangat dipengaruhi oleh nilai-nilai yang membangun keamanan kolektifnya. Dalam hal ini, ASEAN mengabaikan peran dan identitasnya sebagai penegak hak asasi manusia di kawasan. Penolakan untuk mematuhi rezim hak asasi manusia internasional ini akan mengakibatkan hilangnya kredibilitas dan integritas ASEAN.

Kata kunci: hak asasi manusia, imigran, Rohingya, pengungsi, sekuritisasi.

Abstract

ASEAN is playing with words among the terms of migrants, immigrants, asylum seekers, trafficked people and smuggled people to describe the enormous forced human movement from Myanmar. These terms are the representation of ASEAN's securitization of humanitarian issues. It is unfortunate to see ASEAN unwillingness to entitle the term refugee where all of the necessary aspects have been fulfilled. ASEAN has taken a very cautious political linguistic measure by evading the word 'refugee' in their political dictionary. This article would like to examine the questions: why and how ASEAN securitized the refugee issue? And what are the political consequences for ASEAN if it keeps standing on its securitization policy? The discussion of this paper will be presented in Constructivist perspective approach. It argues that the construction of refugee in ASEAN is greatly influenced by its values that construct its collective security. In this respect, ASEAN is neglecting its role and identity as the defender of human rights in the region. Consequently, ASEAN's refusal to comply with the international human rights regime will affect the organization in losing credibility and integrity.

Keywords: human rights, migrant, Rohingya, refugee, securitization.

INTRODUCTION

In the political world, a single word or term may have confounding meaning and serious consequences. The origin of the term can be found in the common language of world society or can be invented by a distinguished man, scientist or statesperson. In etymological perspective, the word

refugee emerged around 1675-1685 from the France word *refugie* which means to seek refuge. It was before the Westphalia that the term of refugee referred to any kind of reasons for the people to seek for refuge 'from political and religious persecution or conflict' (Betts & Loescher, 2011). During the Thirty Years War, the

great jurist, Hugo Grotius, devised a doctrine in his seminal book of *On the Law of War and Peace*. In his book, he stated that:

“To drive away refugees, says Strabo, from Eratosthenes, is acting like barbarians; and a conduct like this in the Spartans was also condemned. St. Ambrose passes the same sentence of condemnation upon those powers, who refuse all admission to strangers.” (Grotius, 2001, p. 84).

Grotius's doctrine on refugee has influenced the creation of modern international law regime. In modern international law, the refugee is ruled under the 1951 Convention relating to the Status of Refugees. Under the Convention, a state is obliged to host refugees who arrive at its borders. This principle is better known as non-refoulement principle and has been acknowledged by the world. Despite the 1951 Convention, the African and Latin American countries established their own refugee legal instrument. Both Conventions (the African and Latin American) have a widened definition of refugee compared to the UN Convention. The African Union Convention Governing Specific Aspects of Refugee Problems in Africa defines refugee in two distinctive aspects (Anon, 1969, p. 3):

1. Every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.
2. Every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of

habitual residence in order to seek refuge in another place outside his country of origin or nationality.

On the other hand, the Cartagena Declaration on Refugees states that refugee “includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order (Anon, 1984, p.n.a).” The two Conventions provide the supplement to the 1951 UN Convention and cover another refugee like situations. In particular, they firmly obligate any states to act in accordance with the non-refoulement principle. However, this does not mean that the state or group of states consistently comply with the principle. For instance, many dialogues on refugee discourse are held first to determine whether those people are considered as refugees or not. But, even if the people are undoubtedly refugees, most states still reconsider their decision to accept them on their soil.

This can be observed during the refugee crisis in Southeast Asia involving the people of Rohingya. In 2015, there were thousands of Rohingya who fled from Myanmar (Burma) to other countries in Southeast Asia but were ignored by its regional institution, ASEAN, and its member countries. It was reported that there were irrefutable facts of human rights violations piloted by the state apparatus and group of peoples inflicting the plight of Rohingya (Southwick, 2015; Kaewjullakarn & Kovudhikulrungsri, 2015; Graham, 2015). Regrettably, ASEAN did little in responding to the issue. The failure of ASEAN, in this case, has attracted an abundance of criticism from media and academic publications. Some series of articles in local and international media seriously questioned ASEAN's capacity during the crisis (Bowen, 2015; Gecker & Ng, 2015; Hunt, 2015b; Hunt, 2015a; Palatino, 2015). On the other hand, ASEAN insisted that the Rohingya are not categorized as the refugee as

stipulated under UN Convention on the Status of Refugee, but are merely a case of human trafficking. ASEAN's assertion was supported by the human trafficker's operations in the jungle of Thailand and Malaysian border (Anon, 2015c; Anon, 2015b). In the site of trafficker's camp, the Thailand and Malaysian authorities excavated mass graves of the trafficking victims (Stoakes, 2015; Ng, 2015). Following the findings, the Myanmar government actively defended its position as to consider Rohingyas (or Bengali in the government of Myanmar's term) exercising voluntary migration in search of economic opportunities in Thailand or Malaysia. This has been the leading assumption accepted by ASEAN as the basis for its ambiguous policy on Rohingya. Moreover, ASEAN sees refugees as a problem of security. Accordingly, the refugees are considered as threats to domestic security among the members of ASEAN (Kneebone, 2014; Kneebone, 2015). Hence, it is significant to uncover why ASEAN securitized the refugee issue? What role identity that ASEAN tries to perceive? And what are the political consequences of ASEAN if it keeps standing on its securitization policy? In uncovering these questions, this paper will employ discourse approach as suggested in Constructivist theory. The central argument put forward is that the construction of refugees by ASEAN is greatly influenced by its values that construct its collective security. ASEAN is neglecting its role and identity as the defender of human rights in the region. As the consequence, ASEAN will lose its credibility concerning its compliance with international human rights regime. The main part of this paper will discuss the construction of refugees in ASEAN politics. This will be divided into four subparts addressing the Rohingya as the refugee, the securitization construction, the failure of ASEAN's role identity, and the political consequences.

RESEARCH METHOD AND THEORETICAL FRAMEWORK

This research applies qualitative analysis in processing the data. The data retrieved mostly from

internet sources, which include the official public document of ASEAN and reports in online media. The analysis of the data focuses on text analysis to draw the interpretation. On the theoretical aspect, this research uses the securitization concept. Securitization represents a concept rather than a theory. In International Relations discipline, securitization refers to the process where the non-security issues transformed to security issues. The non-security issues will matter as relevant to security issues when the non-security issues are presented as the 'essential security threats.' The understanding of securitization is "constituted by the intersubjective establishment of essential threats with a saliency sufficient to have substantial political effects" (Buzan *et. al.*, 1998, p. 25).

ANALYSIS

THE CONSTRUCTION OF REFUGEE

Are Rohingya refugees?

The question of the status of Rohingya is problematic but possibly concluded. The complexity of the Rohingya question is related to many aspects such as the historical origin, the religious background, and the political oppression by Myanmar government (Chia, 2016; Leider, 2014). In many articles analyzing the Rohingya issue, there are paragraphs discussing the origin of Rohingya. Some believe that the Rohingya are originally Bengalis (people from Bangladesh) who are migrating to the Arakan state particularly during British occupation in South Asia (Saw, 1993; ICG, 2014; Singh, 2014). Other historians believe that the Rohingya are the descendants of Arab traders who inhabited Arakan area more than 1000 years ago (Tha, 2007). The fact that the Rohingyas are minority Muslim group in a country dominated by Buddhist has turned the problem into a more complex one. In a Listening Project conducted by Myanmar Media and Society, it is found that the majority of Buddhists in Myanmar perceived that the Muslim is the forcible threat in their society (Schissler *et. al.*, 2015). The research

revealed that the reasons for this threat are due to the misperception of Muslims as violent religious people. The imaginary of Muslim's violence is related to the ISIS' vicious actions in the Middle East. The systematic political oppression by the Myanmar government is another aspect of complexities. The UNHCR and NGO reports and many research papers have acknowledged that the Myanmar government has exercised systemic political oppression (Kiragu *et. al.*, 2011; Matthew & Taylor, 2014; Zarni & Cowley, 2014). However, wherever they come from, the fact that there are mass numbers of people forcefully migrating from Myanmar to other foreign lands is a troubling issue.

Under the second paragraph of the UN Convention on Refugees 1951, the refugee is defined as:

“... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it ...” (UNHCR, 2010).

In accordance with the mandate to protect the refugee, UNHCR sets three dimensions of refugees (Davies & Glanville, 2010). The first is the geographical dimension. If a person is forced to migrate outside the state borders, they are considered as a refugee or international migrant. This is to differentiate the group of people who flee their homes but still live in their country. These people are known as internally displaced persons (IDP). The second is the cause dimension. As in the 1951 Convention's refugee definition, the forced migration should be caused by profound persecution. In this sense,

UNHCR does not consider the natural disasters or other typical industrial or developmental disasters as the causes of refugee. The third is the time dimension. In this aspect, UNHCR imposes different operations for different periods of displacement. Mostly, the refugee migrates in a prolonged period of time can turn the camps to the settlement. Looking at the 1951 Convention definition and these three dimensions of a refugee, it is obvious to declare the Rohingya as the refugee. Therefore, they have the rights to be protected and not to refuse them on the sea. Nonetheless, ASEAN as the primary regional organization in Southeast Asia is not considering the Rohingya as refugees. ASEAN would prefer to use the term irregular movement of persons or irregular migrant (ASEAN, 2015a; ASEAN, 2015b; ASEAN, 2015c). This irregular movement of persons is then perceived as security matter where the act of irregular migration is considered as transnational security threats.

SECURITIZATION OF REFUGEE

ASEAN is constructing refugees (in this case is Rohingya) as a transnational security threat. By adopting this term, ASEAN is securitizing its policies on refugees. Securitization “refers more precisely to the process of presenting issues in security terms, in other words as an essential threats” (Buzan & Hansen, 2009). ASEAN's position in securitizing refugees has undermined the factual condition of those refugees, and thus, undermined their rights as refugees as stipulated under the 1951 Convention. All members of ASEAN irrefutably accept the usage of the irregular movement of person's term rather than refugee term. It argues that the construction process of the term is through three processes. The processes are the individual member states process or domestic construction process, the construction process in ASEAN or regional process, and the international construction process.

The domestic process is the internal construction of refugee in ASEAN's member states.

Of the ten ASEAN member states, only Cambodia and the Philippines are the signatories of 1951 Convention and its protocol. It is not surprising that the majority of ASEAN members are securitizing its refugee policy since they are not under the 1951 Convention's obligation in particular. Most of the member countries of ASEAN apply the term irregular migrant as the status of people who flee from Myanmar. This stance is expressed during the Special Meeting on Irregular Migration in the Indian Ocean in Bangkok. In this meeting, only two ASEAN's members, Singapore and Brunei Darussalam, are not present. As indicated in the summary released by Thailand's Foreign Ministry, there is no reference to the word refugee nor Rohingya, but irregular migrants (Anon, 2015a). The document also clearly shows the consistency of ASEAN members in securitizing the refugee issue (Kneebone, 2015). Following the first meeting in December, Thailand hosted the 2nd Special Meeting on Irregular Migration in the Indian Ocean. One of the objectives of this meeting was to address the root causes of the migration, particularly concerning poverty issues in Bangladesh and persecution in northern Myanmar (Boonyai, 2015). As in the 1st meeting, this 2nd meeting also ignored the refugee term.

The second process is at the ASEAN level. In this phase, the decision-making process is deliberated in the Ministerial Meeting level. In the making of its policy, ASEAN relies on the notorious consensus principle. In its early usage, consensus did not include an absolute acceptance of the whole ASEAN members. According to the former Singaporean Prime Minister, Lee Kwan Yew, a consensus is achieved even if there is one party hesitating or disagreeing with a certain proposal (Acharya, 2009). However, this might be not the case in ASEAN politics today. A general and free definition of consensus means that every decision should be made according to the agreement of all members of ASEAN. Myanmar's political stance on the Rohingya case is one actual point to be considered. In fact, Myanmar insists not to join any

ASEAN meetings or forums if they explicitly use the term Rohingya. Myanmar would prefer to call Rohingya as Bengalis or irregular migrant. Unfortunately, the Nobel Prize laureate and the future leader of Myanmar, Aung San Suu Kyi, made the same notion. During a meeting with the new US Ambassador to Myanmar, she suggested the Ambassador not to use the term Rohingya because Myanmar is not recognizing Rohingya as its official ethnicity (Paddock, 2016). Myanmar's denial on the Rohingya issue is a strong influence on ASEAN policy. It can be observed through ASEAN statements and documents.

The third construction process is at the international theatre. As refugees are a complex issue, it needs to involve multilateral parties. In the Asia Pacific region, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime or Bali Process, in short, is a prominent intergovernmental forum to discuss the refugee-like issue. The Bali Process was initiated in 2002 as an international forum to find the strategy in managing the irregular migration issue. However, the Bali Process, which is co-chaired by Indonesia and Australia, received public criticisms as it failed to find a durable solution for the Rohingya case. This forum also has the same political stance with ASEAN, as it perceives refugees as a security concern, and therefore should be approached in security manner.

Complementing the securitization process, it needs agents to raise the issues to be securitized. These securitization agents are mainly played by the political actors (Buzan *et. al.*, 1998). In the ASEAN realm, the political actors are the government representatives, which widely include the head of state, ministers, and senior officials. These high profile political actors are the eminent persons in bringing the issues to the public. It can be described as a top-down process, where the issues are spread by the 'speech act' of the elites. In this scenario, the securitizing issue does not have to be dominantly acknowledged by the public.

According to Buzan (1998), a successful speech act is facilitated by three conditions:

1. The demand of internal to the speech act of following the grammar of security,
2. The social conditions regarding the position of authority for the securitizing actor-that is, the relationship between speaker and audience accepting the claims made in securitizing attempt,
3. Feature if the alleged threats that either facilitate or impede securitization.

The speech act process in ASEAN concerning the securitization of refugee issue is delivered through ASEAN's prominent forums, especially the ASEAN Ministerial Meeting on Transnational Crimes (AMMTC) and the Summit Meeting. The deliberation processes in these forums have resulted in the securitization of refugees in ASEAN politics. It clearly shows in the documents released by ASEAN since July until November 2015, namely: Chairman's Statement on Emergency ASEAN Ministerial Meeting on Transnational Crime Concerning Irregular Movement of Persons in Southeast Asia, Press Statement for the 10th ASEAN Ministerial Meeting on Transnational Crime and Special ASEAN Ministerial Meeting on the Rise of Radicalization and Violent Extremism, and Chairman's Statement of the 27th ASEAN Summit. These documents explicitly express the security concern of the refugee issue, especially on the Rohingya as an irregular movement of persons and as part of people smuggling activities. Since the refugees are described as using the service of people smugglers, consequently they also considered as committing illegal activities. This security construction has turned the refugees from victims to criminals. By naming these refugees as irregular migrants, each ASEAN member state has the authority to exercise its judicial power under its borders. Therefore, it was not too difficult to predict ASEAN member state policy towards these refugees, as has been shown by Indonesia, Malaysia, and Thailand. These three founding fathers of ASEAN have rejected boats

carrying the Rohingya who were drifting at their territorial water.

Besides the political actors, there are other significant players in securitization; they are the media, political opposition, and judiciary (Watson, 2009). In this digital information era, the media has a paramount place in communicating government information to the public. Some prominent media such as Australian Broadcasting Corporation (ABC) and National Broadcasting Company (NBC) routinely use the securitizing term in their publications concerning refugees in Southeast Asia. The terms of migrants, people smuggling, and boat people are often labeled in their articles. This news media has been actively mediating the securitization of refugee of governments in ASEAN. However, unlike the ABC and NBC, the Diplomat boldly uses the term refugee in their publication. In fact, they have a special series of exclusive articles on refugees under the title *Southeast Asia: Refugee in Crisis* (Diplomat, 2015). Media has been an effective tool for any party in addressing their political interest. This also works for political opposition in a government. According to Watson (2009), opposition parties have the role as the challenger or supporter of government in securitizing issue and as the securitizing actor. However, domestic opposition groups in each ASEAN member states also do not play strong challenger character. Since in ASEAN there is no such opposition party/group, there is no 'check and balance' mechanism in its decision. In addition, ASEAN also has no people's assembly-like body which thwarts the people's voice in ASEAN decisions. Similar to the absence of an opposition party, ASEAN lacks a judiciary legal system. The ASEAN Summit as the highest forum functioned as the legislative body which creates agreements, declaration, and stipulations. With the adoption of non-interference principles, all of those stipulations are made on a loosely based framework. In the domestic political level, ASEAN member states use their immigration law as part of the legal system in realizing the securitization of the refugee issue. In this

case, the domestic judiciary system plays an important role in the securitizing process.

THE MOTIVE OF SECURITIZATION AND THE POLITICAL CONSEQUENCES

Internal forces motivate ASEAN's securitization policy on refugees. The 'perpetual' motive of ASEAN securitizing policy is mainly to stronghold its collective identity. The collective identity of ASEAN is built upon the local tradition of *musyawarah*, or consultation, and *mufakat*, or consensus principles. This has led ASEAN to stay united and formulate policies based on consensus. At this point, ASEAN accommodates Myanmar's viewpoint on irregular migrant's movement from their territory. Myanmar is even able to influence ASEAN not to use the term Rohingya or refugee in any ASEAN meetings. This stance overshadows the very reasons for Rohingya migration. According to the consensus principle, all ASEAN member states should meet an agreement so that ASEAN can formulate the policy. More importantly, if ASEAN does not accommodate Myanmar's stance, it would imply that ASEAN admits the persecution politics of Myanmar against Rohingya in their home affairs. This would not be acceptable for Myanmar and counterproductive to the collective identity building. ASEAN's accommodation on Myanmar political stance has been consistent with its previous 'constructive approach' before Myanmar joined ASEAN. A second possible motive is the reluctance of ASEAN member states to discuss the human rights violations in their domestic affairs. No state member in ASEAN would like to be accused as the violator of human rights by other members.

In relation to the motive, ASEAN faces dilemmatic political consequences on this refugee issue. ASEAN will probably face disintegration if it gives no response to Myanmar's proposal on securitizing the refugee issue. However, ASEAN also faces international pressure if it gives no response to the refugee crisis in its territory. That is why the three most affected countries in the refugee crisis,

Indonesia, Malaysia and Thailand, finally agree to shelter some refugees into their homeland for certain period of time and ask the international community to take part in solving this issue.

CONCLUSION

This paper has so far discussed the construction of refugees in ASEAN politics. The fundamental position for ASEAN is constructing the refugee (Rohingya) as irregular migrants. This stance is a policy of securitization adopted by ASEAN in order to compromise with ASEAN member's own domestic politics. The securitization construction of refugees follows three phases, the first is the domestics or internal ASEAN member states phase, the second is at ASEAN level, the third is at the international level, especially through the Bali Process. In ASEAN, the most influential securitizing actors are the political elites (head of states, ministers, and senior officials).

This research opens for further investigation on ASEAN member states domestic decision-making process on the refugee issue. It also opens to apply constitutive theory to suggest what ASEAN should do in dealing with the crisis. It is strongly encouraged that future research on this matter should be supported by field research, as this is the weakness of this study. The field research will give a broader perspective from the 'first hand' sources that are involved in the decision-making process and the refugee themselves.

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