

THE SECURITIZATION OF ROHINGYA REFUGEES IN MALAYSIA UNDER PM MUHYIDDIN DURING THE COVID-19 PANDEMIC

Gashka Rafawwaz Fredinata¹ Paramitaningrum²

¹⁻² Department of International Relations, Binus University Jakarta, Indonesia

ABSTRACT

This research will analyse the securitization concept, which will be applied to the Malaysian government's immigration policy during the pandemic. It mainly discusses the case study regarding the outbreak of the COVID-19 pandemic, which has influenced the Malaysian government to implement tougher immigration policy mechanisms towards the Rohingya refugees, specifically under the government of PM Muhyiddin Yassin. The paper utilizes the qualitative approach with case study and document analysis as a method to conduct the research. The study reveals that the issue of the entry of irregular migrants made the state government securitize the issue to protect the country's society against the severe impacts brought by the pandemic. Also, the importance of security and health among Malaysia's local citizens were the primary reasons why the government had to protect the country against the virus infections that were claimed to be brought by the entry of refugee groups, especially the Rohingyas.

Keywords: *Securitization, Rohingya, Malaysia, COVID-19 Pandemic*

1. INTRODUCTION

The issue of refugees is generally closely related to conflicts that have resulted in massive migration movements of certain groups in search of safer places—using challenging and dangerous routes. The presence in the place where they were displaced certainly received a different response from the host country. If their presence is perceived as a threat to national security, the state usually acts to carry out securitization of migrants or refugees. Securitization emphasizes the process of presenting a security issue as an existential threat and the ability to take decisive action or policy. States that usually act as securitization agents or actors can raise the issue and address it with an extreme approach and often break beyond the limits of existing political rules.

The situation is related to what is being experienced by the Rohingya people in seeking refuge in neighbouring countries, particularly Malaysia. The Rohingya are an ethnic minority in Myanmar who live in the northern part of Rakhine State. During past times, their presence in Burma was influenced by the large arrivals of Muslim settlers who were known to have strengthened economic and business resources in Arakan (Driss, 2016). However, their existence worsened when the Burmese Empire annexed the Arakan region in 1784 and the British formally colonized Burma in the 19th century (Mohajan, 2018; Faye, 2021).

Myanmar's Citizenship Law, which was passed in 1982, made the Rohingya ethnics vulnerable to violence, making them considered the most persecuted minority in the world. As a result, the Rohingyas had to risk their lives by crossing international borders through challenging routes to seek asylum in Bangladesh and Malaysia (Wahab, 2018). Malaysia as a destination country has reflected a common Islamic religious identity and a more stable political-economic situation for Rohingya refugees.

Although they can settle in Malaysia, the Rohingya refugees are officially recognized by the Malaysian government as illegal immigrants subjected to the Immigration Act 1959/63, as Malaysia is a non-signatory country of the 1951 Refugee Convention. The government's stance towards Rohingya refugees is also ambivalent because the Malaysian government has shown humanitarian concern for Rohingya refugees as a

reason to strengthen its political agenda and Malaysian Muslim identity. The government should also reject the presence of these refugees with the aim of maintaining the integrity and security of the nation and its state (Jeong, 2021). In previous years, the Malaysian government had conducted several coercive immigration policies that engaged boat pushbacks, arrests, detentions, as well as deportations of the Rohingya refugees (Cheung, 2011; Yesmin, 2016; Missbach & Stange, 2021).

During the outbreak of the COVID-19 pandemic, the Malaysian government, led by Muhyiddin Yassin, implemented stricter immigration policies against Rohingya refugees on the grounds of preventing the transmission of the coronavirus and strengthening security. This was done because the refugees were feared to carry the transmission of the coronavirus, which would worsen the health, security, and economic resources of the Malaysian state (Fernandez, 2020; Enzmann, 2020). To tackle this matter, Malaysia created a police operation known as the OP BENTENG, an initiative established by the National Task Force (NTF) with the aim of strengthening the country's borders as well as preventing the presence of illegal immigrants who could potentially carry the coronavirus transmission, including the Rohingya groups (The Sun Daily, 2020; Putera, 2021).

Malaysia, as a sovereign state, has the right to defend its territorial borders from the interruptions brought by foreigners. The country's rapid welfare and economic growth have attracted an influx of illegal immigrants, potentially negatively impacting the social, economic, and security status of the nation. Therefore, the rights and welfare of the Malaysian people must be protected and respected by the government with a patriotic spirit and a sense of responsibility to national security and sovereignty (National Security Council, 2019).

By looking at the problem statement above, this research seeks to analyze Malaysia's securitization actions under the leadership of Prime Minister Muhyiddin Yassin through the implementation of a restriction policy against the presence of Rohingya refugees at the time of the COVID-19 pandemic outbreak.

2. LITERATURE REVIEW

The rising influx of migration movements during the 2015 crisis emphasized the securitization of refugees by European countries such as Slovenia. This states that the arrivals of non-Slovenian migrants had been viewed as existential threats, while the Slovenians were the referent objects that must be protected. The occurrence of criminal activities committed by the migrants as an external factor influenced the Slovenian government to conduct securitization actions. Security measures involved government actors to protect Slovenia and its people, as well as the borders of Schengen and the European Union. The securitization actors used language expressly drawn from the idea of a defensive nature; therefore, the Slovenian government could carry out security techniques aimed at controlling the population in Slovenia as a whole to protect it from the threats brought by the refugees (Vezovnik, 2017).

The presence of illegal immigrants in the US during Trump's era was considered s an existential threat that must be addressed to protect the welfare of American citizens, namely by carrying out extreme policies such as building a great wall of the Mexican-US border and establishing the Migration Protection Protocol. However, during the COVID-19 outbreak, the presence of asylum seekers into the U.S. territory had been prevented by the Trump administration through an order issued by the CDC (Centers for Disease Control and Prevention). This made the Mexican asylum seekers being held back longer and unable to escape the insecurity that often occurred in their country. CDC policies under Trump as extreme measures could endanger the lives of refugees and reinforce anti-immigrant sentiment in the U.S (İnalç1, 2021).

Malaysia has two internal migration control policies, namely, employer inspections and information, identification, and surveillance. The employer inspections policy is applied to someone who is found guilty of providing employment for illegal migrants entering Malaysia, while the information, identification, and surveillance policies develop control mechanisms and immigration database network systems as key to efficient enforcement strategies in averting waves of illegal migration. Instead of having to remove their presence from the state, the migrants can also carry out a self-deportation. This emphasizes that Malaysia should look at domestic factors related to their arrival by prioritizing internal policies or controls, rather than simply controlling the country's borders and imposing severe penalties on migrants (Low & Mokhtar, 2017).

The governments of Bangladesh and Malaysia showed different perspectives towards the 2017 Rohingya crisis. The Bangladesh has a more inclusive stance towards the Rohingya and low political competition due to the strong position of the main party, the Awami League, therefore, this encouraged the government to shape public opinion in forming empathy for the Rohingya crisis to achieve its political interests. While Malaysia has a stance that does not actively open its borders to Rohingya refugees, as it had a stronger domestic political competition due to the weakening coalition of the incumbent Barisan Nasional party, as well as the growing strength of the opposition led by the Pakatan Harapan party. This matter seemed to prevent the Malaysian government in voicing solidarity and implementing policies for the Rohingya refugees' protection (Jeong, 2021).

The majority of ASEAN member states view Rohingya refugees as illegal immigrants, so this reflects the consistency of the members to securitize refugee issues. The speech act in ASEAN clearly addresses the issue of Rohingya refugees as a matter of illegal immigration movements and human trafficking activities, and views them more as criminals rather than victims of violence. Some international media, such as ABC and NBC are known to act as intermediaries for the securitization of refugees by governments in ASEAN through some of their publications. The national immigration law system also plays an important role for ASEAN member states to carry out the security approach towards the refugees in enhancing a membership solidarity (Jati & Sunderland, 2018).

Even though Malaysia provides better protection for Rohingya refugees, the government only provides little humanitarian assistance to those who are registered by the UNHCR. Rohingya refugees living in Malaysia have very limited access to public facilities, as well as ownership of a UNHCR card which is actually ineffective for legal protection. The absence of recognition for the status of stateless Rohingya in Malaysia leaves them vulnerable to arrest, detention, and deportation. The security approach from Malaysia's immigration policy made the Rohingyas experience more negative conditions and treatment in their daily lives in Malaysia, besides being perceived as undocumented illegal migrants (Puapattanakajorn, 2021).

The Rohingya refugees who have fled are mostly illegally trafficked to Malaysia. Section 32(1) of the Immigration Act 1959/1963 (Act 155) of the Malaysian immigration law affirms that all individuals entering Malaysia without valid documents are recognized as illegal immigrants who are required to be expelled from the state. As the cases of the COVID-19 pandemic continued to increase in Malaysia, the operations of OP BENTENG were carried out to strengthen surveillance along the country's land and sea borders and prevent the arrival of boats transporting Rohingya refugees. In the midst of the COVID-19 pandemic, prioritizing the rights of domestic people is very crucial, but the Malaysian government must also pay attention to the Rohingya refugees who need help by implementing more rational immigration policies (Rusli et al., 2021).

However, Malaysia's UNHCR supports three permanent solutions for refugee groups in general, which are: voluntary repatriation, local integration, and resettlement. Refugees can choose to return to their home countries through safe voluntary repatriation and assistance from the UNHCR. Receiving countries allow refugees to settle and enjoy their rights legally in Malaysian society through local integration. Resettlement is when a refugee leaves an asylum state, is re-accommodated, and gains permanent refugee status in another country to get a more decent job and environment. Malaysia should also adopt international standards regarding the protection of refugees by granting them legal status to access public health facilities, formal education, and be recognized for their existence as human beings (Nordin et al., 2020).

3. THEORETICAL FRAMEWORK

The securitization theory defines a process of presenting an issue connected to security as an existential threat and the capability to make decision-making of assertive actions (Buzan & Hansen, 2009). Securitization happens when a problem is seen as something that will threaten the referent object so that state representatives who usually act as agents can formally raise the issue and address it with an extreme approach and go beyond the limits of political norms (Stritzel & Chang, 2015).

Securitization occurs when followed by three steps. The first is when an issue is still non-politicized, that is, when the state has not contributed to overcoming the problem to be part of public debate and policy action. The second is when an issue has become politicized, this happens when a problem has become part of public policy that requires action and decision from the government. And finally, when an issue is ready to be securitized, then the problem has been designated as an existential threat and requires an emergency policy justification to be carried out outside the limits of existing political norms (Buzan et al., 1998).

Securitization can also be interpreted as a speech act conducted by a certain securitization actor to justify to the public that the referent object is being faced with a threat that is considered dangerous and must be overcome by emergency measures that are beyond the limits of political rules (Hadiwinata, 2017). A successful securitization has three kinds of components or stages, that comprises of: 1.) a problem or an issue will create something that is existentially dangerous (existential threats), 2.) the obligation of emergency efforts to overcome a threat (emergency action); and 3.) the effect of relations between units or attempts to solve the problem are carried out by going beyond the limits of existing political rules (breaking free of rules) (Buzan et al., 1998; Estriani, 2019).

Existential threats require not only emergency or special measures but must be accepted by the presence of a significant audience approval. Speech acts in securitization theory include intrinsic factors in security language that are usually performed by securitizing actors who are in positions of authority – accompanied by conditions that facilitate such actions (Buzan et al., 1998). Meanwhile, the audience is an individual or group that is able to justify views on the issues displayed by securitization actors and legitimize the treatment of those issues through security practices (Côté, 2016).

There are three kinds of levels of analysis of the securitization concept, which consist of 1.) referent objects, things that are believed to be strongly threatened and have a legitimate recognition to survive against the specific threat that arises; 2.) securitization actors, are actors who act to securitize issues by stating that an object of reference is being threatened by something that is viewed as dangerous; and 3.) functional actors, are those actors who influence security-related policy decision-making, and call for the securitization mechanisms to protect the referent object from the emergence of existential threats (Balzacq, 2010). However,

functional actors are not always related to those actors who call security measures in the name of the referent object's survival (Buzan et al., 1998).

The author has decided to analyze Malaysia's policy under PM Muhyiddin towards Rohingya refugees during the COVID-19 pandemic, by using the conceptual approach of successful securitization initiated by Buzan, Wæver, and Wilde. As explained earlier, the stages of successful securitization consist of three variables consisting of: 1.) Existential Threats; 2.) Emergency Action; and 3.) Breaking Free of Rules. These three variables will be applied with a case study of Malaysian government policy which will be discussed in the analysis and discussion section of this paper.

Table 1. Theoretical Application of Successful Securitization with the Case Study of Malaysian Government Immigration Policy towards Rohingya during Pandemic

Variable	Indicator
1. Existential Threats	The Rohingya refugees who came to Malaysia during the COVID-19 pandemic are seen as an existential threat because they are feared to have a negative impact on national security and health for Malaysia's domestic communities.
2. Emergency Action	The Malaysian government repelled the boats that carried Rohingya refugees to the sea and established OP BENTENG operations as a policy that acts as an emergency measure. The operation involved the NTF (National Task Force) as the actor responsible for preventing the arrivals of irregular Rohingya refugees.
3. Breaking Free of Rules	The policy implemented by the Malaysian government was in contrast to the principle of non-refoulement. The principle of non-refoulement is absolute and has the power to bind the whole country (<i>jus cogens</i>) not to forcibly return the refugees to their home countries, including Malaysia, therefore, it cannot be opposed or violated by any state laws or actions.

4. RESEARCH METHODOLOGY

This paper utilizes qualitative research methods in obtaining the data the majority of which are displayed in this study. Qualitative research involves and is correlated to data gathering, analysis, and explanation of the social world, images, and human behavior within it (Anderson, 2010). The qualitative research approach primarily includes interpretation, theoretical discussion, or creating a sense of data by dividing it first into sections that can be classified and changed, after which, building a design for all managed data by connecting all categories simultaneously. It also examines reliability which is largely related to credibility, manageability, truth, as well as certainty (Jackson et al., 2007). In terms of data source, this research highly focuses on the usage of secondary data, as the sources are mostly obtained from existing and published data, such as book chapters, journals, official or academic reports, and also articles and news websites.

The method applied to conduct this research is through the utilization of case studies. Case studies are empirical questions that explore contemporary issues in their context in the real world using a wide variety of

sources and evidence. It has a correlation with how and why problems occur, thus providing research on contextual circumstances and the differences between what is happening and what is proposed. Case studies are also designed to be a unit of analysis to focus on and understand specific complex problems (Noor, 2008). This research is also using the method of document analysis. Document analysis is defined as a systematic mechanism for researching or assessing documents, which primarily includes printed and electronic sources. This approach requires data to be investigated and interpreted to gain meaning, gather understanding, and expand empirical knowledge. The information and understanding gained from the documents can be a useful addition to the knowledge base (Bowen, 2009).

5. ANALYSIS, FINDINGS, AND DISCUSSION

5.1. Existential Threats Analysis

The number of COVID-19 cases in Malaysia has reached its peak in March 2020, when a religious event was held at the Sri Petaling Mosque, Kuala Lumpur, with 16,000 participants and 1,500 of them coming from outside Malaysia (Elengoe, 2020). As a measure to prevent the transmission of the coronavirus, the Malaysian government decided to implement a restriction policy known as the Movement Control Order (MCO). During this period, many sectors and public facilities had to be closed and temporarily strengthened. Tourists from abroad or foreigners were also forbidden from going to Malaysia. However, the closure does not apply to shops that provide people's daily necessities (Elengoe, 2020; Rahman, 2021).

Due to the virus handling policy, which prevented the people from outside Malaysia were prohibited from entering Malaysian territory, human mobility in the Southeast Asian region has become more limited, including migration movements or refugees. The preventive policy carried out certainly focused on the interests of the Malaysian people first and marginalized the interests of the refugees arriving in Malaysia. The presence of refugees in Malaysia during the pandemic, especially from the Rohingya group, caused the government to further strengthen its immigration policy for these refugees due to fears that it would spread the virus to the country and its population (Yazid & Jovita, 2020).

The MCO policy that was implemented during the COVID-19 pandemic had made public health concerns to be a main reason to halt the rescue of Rohingya refugees at sea and a display of political power in immigration surveillance in Malaysia. Therefore, Malaysia as a Muslim-majority country that initially accepted their arrival, strengthened its expression by viewing displaced people such as the Rohingya, as illegal immigrants that should be prevented from accessing the country (Kipgen & Shandilya, 2020).

Securitization of the problem of migration or refugees is an effort in which many people seek to defend their rights from the various influences or problems that foreigners bring, where their numbers and differences are seen as existential threats that can dispute the rights of domestic people (Estriani, 2019), including health and security. In this instance, we can explain that the Rohingya refugees who have been present in Malaysia during the COVID-19 pandemic were seen as existential threats that would worsen the security and health of the local Malaysian citizens. The securitization of the Rohingya refugees' presence also reflects the complexity of Malaysia's position on accommodating the number of refugees, moreover Malaysia considers that their territory is a destination for human smuggling which also targets vulnerable populations and is feared to carry out illegal activities that could threaten the security of its country.

Malaysia's dramatic political changes and the COVID-19 pandemic during the time of Muhyiddin Yassin had caused solidarity for the Rohingya refugees to no longer be the dominant paradigm of the new government. At this time, the interests, security, and health of the Malaysian people must be prioritized first,

while the Rohingya groups should not take advantage of the generosity of the Malaysian state itself. The Muhyiddin government's handling of Rohingya refugees clearly emphasized the value of nationalism and the interests of local communities (Sukhani, 2020).

As a securitizing actor, the Malaysian government led by Muhyiddin Yassin, in 2020, at the 36th ASEAN Summit, announced that his country could no longer afford to accept the arrivals of Rohingya refugees coming from Myanmar or Bangladesh. Given the decline in national resources and the country's economic problems caused by the pandemic, the Rohingya refugees were considered a socio-economic, security, and health threat to the Malaysian people (Sukhani, 2020). In this regard, we can state that the Malaysian government carried out a speech act on the issue of Rohingya refugees in Malaysia during the pandemic, because the announcement resulted in a preventive security grammar or linguistic towards the Rohingyas, and was accompanied by the impact of the pandemic as a condition that complemented the speech act.

The response and approval of the audience to the speech act and the actions of the securitization actor is among the conditions of a successful securitization. When Malaysia was hit by the COVID-19 pandemic, a lot of public opinion from local Malaysians launched negative sentiments towards the Rohingya who were feared to be foreigners that spread the virus which would endanger all Malaysian citizens as referent objects. In addition, some public opinion had also demanded so that the Malaysian government could carry out security policies at all cost to prevent the presence of illegal Rohingya in Malaysia (Auethavornpipat, 2021).

The status of Rohingya refugees as a threat before the pandemic was linked to Malaysia's border areas that are prone to human smuggling activities. The smuggling of Rohingya as illegal immigrants is considered oftentimes involving illegal business activities that include transnational organized crime, human and drug trafficking, and transnational terrorism, which could endanger Malaysia's own national security (Wahab & Khairi, 2020). Meanwhile, during the COVID-19 pandemic, the status of Rohingya refugees as illegal immigrants whose presence is not only seen as a threat to national security but is also feared to have a negative impact on domestic public health regarding the transmission of the virus which has had the potential to weaken the socio-economic conditions of the Malaysian state.

Apart from being an existential threat, based on the theory of securitization, the presence of Rohingya refugees in the midst of a pandemic in this case also acted as functional actors that influenced the Malaysian government to provide speech acts and make restrictive and preventive policies. Rohingya refugees in this case were declared as functional actors, because in addition to fears that it may bring transmission of the virus to the local population, their presence also officially violates national immigration laws and requires restrictive measures for the government to address them.

National security and health for the domestic population of Malaysia are the referent objects that must be protected and have rightful recognition to survive against the threat of coronavirus transmission that was feared to come from Rohingya refugees. In this regard, if during the pandemic the Rohingyas were allowed to refuge in Malaysia, then this could actually endanger the security and health of local Malaysians as referent objects that must be maintained by securitizing actors – moreover, they have unhygienic conditions so they are prone to developing diseases or viruses that can be transmitted to the local population.

5.2. Emergency Action Analysis

Malaysia's immigration policy to prevent the presence of Rohingya refugees during the pandemic highly emphasized the involvement of several security and military agents who acted as actors to conduct duties ordered by the Malaysian government. Policies such as the expulsion of boats and the detention of illegal immigrants by Malaysian security agencies were inevitable from the establishment of a security operation known as the OP BENTENG.

OP BENTENG is an immigration policy operation implemented throughout Malaysia, and has the main objective of none other than to overcome and eradicate the influx of illegal immigrants (PATI), so that the spread of the COVID-19 virus can be prevented in Malaysia. OP BENTENG was officially formed in May 2020 under the supervision of the National Task Force (NTF) (Bernama, 2020). Meanwhile, the NTF is a cooperative body consisting of 19 Malaysian government agencies that have the task of strengthening Malaysia's borders, especially to prevent the presence of illegal immigrants who were feared to transmit the coronavirus (Kementerian Luar Negeri, 2022).

However, in April 2020, precisely before the NTF and OP BENTENG were officially established, the Malaysian Maritime Enforcement Agency was reported to have intercepted and repelled a smuggling ship carrying about 200 Rohingya refugees coming from Bangladesh towards Langkawi Island, Malaysia. In addition, the Malaysian Air Force was also involved in these preventive measures, namely by conducting air patrols to monitor the presence of Rohingya who entered illegally into Malaysia and contacting the coast guard vessels to carry out interception actions (Bernama, 2020; PTI, 2020).

The establishment of the NTF and the OP BENTENG operation by the Malaysian government as a securitizing actor emphasized the second stage related to the three conditions of successful securitization by Buzan, Wæver, and Wilde, namely, the emergency action. This stage confirms that the security invocation had provided an opportunity for countries like Malaysia to address the presence of Rohingya refugees as existential threats and claim the right to utilize any means necessary to deter growing security and health threats (Buzan et al., 1998).

Apart from being an emergency action, the NTF in this regard could act as securitizing actors which include many Malaysian government agencies, because they will act to address and securitize various kinds of non-traditional problems, such as the presence of Rohingya illegal immigrants who will bring a bad influence on the security of the country and the health of the Malaysian domestic populations as referent objects that have the right to survive in the midst of the COVID-19 pandemic.

The main purpose of establishing the NTF was to develop plans and gather information in structuring security measures and addressing the influx of illegal immigrants throughout the border areas of the Malaysian state, including land, sea and air. OP BENTENG as a security measure will identify illegal routes along the West Coast of Peninsular Malaysia, the East Coast of Sabah, and the inland border of Sarawak. Maritime operations conducted along the Strait of Malacca and the Sulu Sea to prevent the entry of illegal activities through the mainland and the country's borders were also strengthened. The main national documents used as the main reference for the implementation of the policy are the Defence White Paper (DWP) and the Security and Public Order Policy (DKKA) (Krishnan et al., 2021).

The principles set out in the DWP document reflect all security measures carried out by the NTF through the OP BENTENG. That is, to defend the sovereignty of the Malaysian state from all forms of problems both from military and non-military aspects, including sea and land disturbances that are often

carried out by illegal immigrants in Malaysia. All security agencies carry out effective prevention and response through the implementation of specific tasks referred to as 6D (Deter, Detection, Deny, Detour, Detain and Deport). The application of the 6D is related to the achievement of the OP BENTENG's main objectives, which includes:

1. **Deter:** applying preventive techniques by using IO (input/output) methods and indicating the presence in the area of operation at any time.
2. **Detection:** optimizing surveillance, tracking systems, and information networks to address the influx of illegal immigrants.
3. **Deny:** coordinating operations with other security agencies to control the arrivals of illegal immigrants into the country.
4. **Detour:** detouring and securing the boats of illegal immigrants to withdraw from the Malaysian waters.
5. **Detain:** bringing the illegal immigrants to the Malaysian authorities for further actions regarding violations of national immigration laws.
6. **Deport:** assisting authorities and security agencies in their involvement in repatriating the illegal immigrants to their home countries.

The main points of the 6D concept emphasize the important purpose of the OP BENTENG which intended to address and follow up on illegal immigrants such as the Rohingyas as target objects, so that the spread and transmission of the coronavirus that is feared to come from their presence could be effectively prevented. The 6D principle relates to the second pillar of Malaysia's defence strategy, the Comprehensive Defence. It emphasizes the role and effective cooperative actions of Malaysian security enforcement agencies to address any non-traditional threats, such as land and sea disturbances done by the illegal immigrants (Krishnan et al., 2021).

Meanwhile, through the principles stated in the Security and Public Order Policy document, the establishment of the NTF adopts the third main objective of the document itself, that is 'to strengthen the security of national border controls'. This explains the enhanced cooperation between security agencies and law enforcement by including the establishment of direct communication channels. The main objectives of the Security and Public Order Policy consist of four strategies that need to be carried out by the NTF, namely:

1. **Continuous and Integrated Improvement of Border Control and Surveillance**

In this context, the NTF implements a strategy aimed at strengthening national border surveillance and coordinated inter-agency enforcement of security through improvised infrastructure, increased use of technology, as well as well-integrated patrols to address smuggling and border disruption.

2. **Strengthening Intelligence Gathering and Law Enforcement against Transnational Crime**

The NTF emphasizes national border controls to be strengthened through development capacity and intelligence cooperation, therefore, it can assist to strengthen monitoring, surveillance and enforcement effectively. Through the NTF, the security environment of the region and neighbouring countries should be monitored based on maritime and mainland borders, as it indirectly affects the entry of illegal immigrants into Malaysia.

3. **Strengthening Law Enforcement for Border Security**

The security border law in the NTF mechanism should be constantly reviewed and improved, such as re-evaluating infrastructure, assets, and personnel needs based on specific situations to control all activities at the country's entrances and borders.

4. Comprehensive Non-Citizen Management System

A comprehensive and latest technology-based integrity system in the NTF mechanism is considered essential in ensuring a foreigner management system to become more efficient, transparent, and effective.

Based on the third objective of the Security and Public Order Policy in the fourth strategy, the Rohingya refugees are not mentioned textually in the official document itself. Contextually, however, the fourth strategy of the document mentions the word 'foreigner' which often refers to the presence of illegal immigrants in Malaysia. In this regard, we can argue that the Rohingya refugees who are officially recognized as illegal immigrants/foreigners based on the Immigration Act 1959/63 fall under the targets of an integrated and comprehensive non-citizen management system according to the Security and Public Order Policy document – through the role of the NTF and its OP BENTENG operations.

One of the OP BENTENG's preventive measures through NTF against the presence of Rohingya refugees could be traced back in June 2020. That was, when hundreds of Rohingya refugees arriving from Bangladesh had reached Langkawi Island illegally, the Malaysian Maritime Enforcement Agency as securitizing actors who had been standing guard in Malaysian waters made arrests of these refugees and detained them at a training center in Langkawi through an assistance from Malaysian authorities (Lee & David, 2020).

The establishment of the NTF amid the COVID-19 pandemic was a timely and comprehensive effort to strengthen governance and existing law enforcement agencies to ensure the security of land and sea borders. Good governance can be interpreted as a responsibility for the overall operation of the organization. Better integration in terms of co-operation, cohesion and careful planning between law enforcement agencies under the NTF government has had succeeded in suppressing various illegal activities and overcoming the spread of COVID-19 (Krishnan et al., 2021).

Through the OP BENTENG operations, the NTF has had demonstrated its effectiveness in integrating various law enforcement agencies for integrated patrols, border surveillance, and checkpoints. Other law enforcement agencies, including the military and police, will be allocated in designated sectors along the border. With collaboration and cooperation between these agencies, NTF was able to identify checkpoints and priority lines used by illegal immigrants to enter the country's borders. The development and improvisation of new technological aspects and assets are also important for the NTF in carrying out its activities to strengthen security borders and address PATI's presence in Malaysia through OP BENTENG (Krishnan et al., 2021).

5.3. Breaking Free of Rules Analysis

The establishment of the NTF through its OP BENTENG policy which has the main objective of turning back illegal immigrant boats out of Malaysian waters and deporting them to their home countries – indirectly violates an international principle that binds Malaysia and other countries absolutely. This principle is referred to as the non-refoulement. Rohingya refugees are considered as illegal immigrants, which basically means their arrival from Myanmar or Bangladesh should be rejected by security enforcement agencies; and subject to the NTFs deportation policy through OP BENTENG operations during the pandemic. Deportation means these refugees will be returned to their home countries or places of origin by Malaysian authorities, where they are likely to experience persecution and cruelty again in Myanmar's Rakhine State.

Under international human rights law, the principle of non-refoulement asserts that a country is prohibited from returning a person to a country where they will face torture, cruelty, inhumane and degrading treatment or punishment, as well as various other human rights violations. This principle applies to all people, regardless of their, nationality, statelessness, or migration status. This also applies wherever a country exercises jurisdictional control, even if it does so outside the territory of that country (OHCHR, 2018).

The principle of non-refoulement reflects a foundation for the protection of international refugees. This is enshrined in Article 33 Paragraph 1 of the 1951 Convention, which clearly affirms that all contracting states are forbidden to deport or repatriate a refugee in any circumstances to the borders of territories where their safety or liberty would be endangered due to their race, religion, nationality, participation in a specific social group, or political viewpoint. The principle of non-refoulement has the authority to bind all states, whether they ratified the 1951 Convention or not. If the state is not ready to allow asylum for people seeking international protection within their place of territory, then it must adopt an action that does not result in them moving to a place where their freedom will be threatened for reasons mentioned previously, either directly or indirectly. In order to provide for their obligations under the 1951 Convention and the 1967 Protocol, states are required to provide individuals seeking access to international protection to territories with fair and efficient asylum mechanisms (UNHCR, 2007).

The refoulement policy deals with *non-entrée* politics, which is a commitment to ensure that refugees are not allowed to come to other countries. Several countries have worked diligently in designing and implementing non-entrée policies, aimed at preventing refugees who wish to access their jurisdiction and assert their right to benefit from refugee international law. In general, *non-entrée* actions are carried out when the movements of refugees are intercepted and controlled by state security agencies acting outside their national borders (Gammeltoft-Hansen & Hathaway, 2015).

The host country has an obligation to accommodate refugees, at least for a while. Refugee transport ships cannot be deterred when they have arrived at the territorial sea border, nor can they be returned to the high seas and areas where the risk occurred in the country of origin or previous residence. Therefore, the state should respect the principle of non-refoulement of asylum seekers and refugees when carrying out their duties to save lives at sea. This principle applies not only to considerations in terms of access to territorial waters and denials on the borders of the sea, but also to the consequences of rescue operations or intercepting programs (Trevisanut, 2008).

The principle of non-refoulement is known to have the concept of *jus cogens*. *Jus cogens* is known as the peremptory norm, which is an absolute norm in international law where a constitution provision has been agreed upon and recognized by the international community, in the sense that the law provision cannot be opposed and modified by other laws. Malaysia, in this context, cannot oppose and violate the norms of international law of the nature of *jus cogens* for any reason or action – including those discussed earlier. As a norm crucial to the international legal system, violation of the principle of non-refoulement of refugee rights is an act that can undermine the international protection system for refugees and asylum seekers (Riyanto, 2010).

Although as a non-signatory country to the 1951 Refugee Convention, Malaysia is bound by the principle of non-refoulement. It asserts that Malaysia, which already hosts a large number of refugees, is forbidden to: repatriate the refugees to a place where their lives and freedoms will be threatened by various insecurities; prevent refugees seeking safety in a country – even if they come through smuggling or human

trafficking; and deny or block access to people seeking to flee the persecution elsewhere from their native territory (UNODC, 2008). This principle could be an important lesson for Malaysia which has had intercepted and turned back the arrival of boats carrying hundreds of Rohingya refugees as an excuse for the coronavirus transmission prevention.

5.4. Policy Recommendations to Address the Presence of Rohingya Refugees in the midst of the COVID-19 Pandemic

The presence of Rohingya refugees during the coronavirus pandemic is feared to endanger the security and health of Malaysia's domestic community. Malaysia adheres to the idea of national sovereignty and has the right to have the ability to exercise power within its territory and be able to guard its borders from outside interference that fall within the scope of national sovereign rights. Malaysia's national security policy does not recognize the status of asylum seekers, therefore, the denial of protection of their basic rights is justified by policymakers (Sulaiman & Basir, 2021).

If Malaysia agrees to accept the Rohingya refugees to settle temporarily in Malaysia, then this may worsen the health of local communities. This is because Rohingya refugees have limited access to public health, so their unhygienic conditions are particularly vulnerable to diseases or viruses that are feared to be contagious to other populations in Malaysia. Article 8 verse 3b of the Immigration Act 1959/63 also confirms that illegal immigrants such as the Rohingyas are forbidden from entering Malaysia, for those who are known to suffer from infectious diseases which would make their presence in Malaysia very dangerous for local communities (Federal Constitution, 2006).

Malaysia's willingness to accept the arrival of the Rohingya may also reduce the government's credibility in the eyes of the local people. The public will continue to criticize their government for being incompetent in addressing the influx of illegal immigrants who are feared to transmit the virus to Malaysia's local population. Perceiving this matter, Malaysia has no other choice but to prevent the entry of the Rohingya refugees into the country's borders.

In order to solve this problem, Malaysia should prevent the human smugglers who are responsible for bringing illegal immigrants into the Malaysian border. Apart from prolonged conflicts or wars in the country of origin, this is one of the major factors regarding the presence of illegal immigrants in the hosting countries. Under the Section 26c Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 265), smugglers who have been known to bring illegal immigrants by land or sea must be given imprisonment for not exceeding 15 years and subjected to fines (Federal Constitution, 2014).

The borders of the state must be protected and maintained in order to increase the economic assets, strategic values, and political stability of the country. Therefore, the Malaysian government should strengthen the national security border from the emergence of threats both land, sea, and air through strengthening assistance and cooperation from various responsible security enforcement agencies, such as the Royal Malaysian Police; Malaysian Customs Department; Malaysian Immigration Department; Malaysian Maritime Enforcement Agency; and the Malaysian Armed Forces.

Vital interests become very important to protect the survival of the country because it includes the physical security of the country's territory, security, economic well-being, and health for the entire society, which must be protected at all costs. In this regard, Malaysia is recommended to apply the Briggs Plan method in tackling human smuggling and the presence of illegal immigrants, where the government will enhance the

capabilities and effectiveness of all security enforcement agencies through cooperation. This cooperation includes the exchange of information and data between law enforcement agencies with more advanced monitoring systems, border surveillance, and security equipment (Zainol et al., 2019).

Increasing the involvement and volunteering of local Malaysian communities to strengthen public security can provide better relations among Malaysians, namely through government support of the Malaysia Volunteers Corps Department (RELA) and the Malaysian Civil Defence Department (APM). The prevention of crime by security forces should also be intensified through the redeployment of special task forces and the involvement of holistic strategies by prioritizing the hearts and minds of the people first (Zainol et al., 2019).

The country's security against the threat of an influx of human smugglers and illegal immigrants entering Malaysia's land and sea borders must be addressed through the authority and power of the Ministry of Home Affairs (MOHA). The MOHA could strengthen stricter immigration laws to control the influx of illegal immigrants and the activities of smugglers and human trafficking in Malaysia. The Immigration Department can also increase cooperation further with government agencies in an open manner. The MOHA should also enhance Malaysia's border security through coordination and cooperation by sharing intelligence information among security enforcement agencies to address transnational crime as a key focus (Zainol et al., 2019).

The Malaysian Armed Forces has an important role in protecting the Malaysian people from internal and external threats – as well as defending areas that comprise land, sea and air. It is critical for the armed forces in developing and modernizing its military capabilities to address non-traditional threats that could dispute and affect the sovereignty, independence and integrity of the Malaysian state. Non-traditional security issues such as the influx of illegal immigrants into the country can have a negative impact on Malaysia's internal security, as their presence is considered to have created many social problems such as crime, the spread of infectious diseases, and cultural dispute (Prime Minister's Office, 2019).

The Royal Malaysian Police can be a useful body to tackle the smuggling of people and illegal immigrants in the mainland. The police should perform its functions as a security enforcer under the Malaysian Border Security Agency Bill 2017, especially in carrying out border controls for Malaysia's mainland. The main focus will be accompanied by several important actions on Malaysia's land border, such as: preventing a violation related to smuggling and other illegal activities; adjusting the implementation of performance by other institutions; monitoring all smuggling and other illegal activities; establishing policies and programs to address smuggling and other illegal activities; and carrying out other functions to ensure the security of land borders and welfare in Malaysia (Parliament of Malaysia, 2017). The Malaysian Maritime Enforcement Agency can also conduct strategies by defending national maritime borders in dealing with the smuggling of illegal immigrants that often occurs in Malaysian waters.

Dealing with the Rohingya refugees during the pandemic using a security approach requires strengthening national laws related to immigration, especially the Immigration Act 1959/63 and the Passport Act 1966. The Director General of Immigration has the right and authority to return illegal immigrants or refugees to their home country or place of departure. However, this action may violate the principle of non-refoulement by which each country is prohibited from returning someone to their place of origin so that they will be subjected again to several unfair treatments.

To address this matter, Malaysia can strengthen a cooperation with ASEAN member states to address the issue of illegal immigration movements occurring in the Southeast Asian region under the Kuala Lumpur Declaration on Irregular Movement of Persons in Southeast Asia. Such efforts can be made by strengthening law enforcement efforts in tackling human smuggling of illegal immigrants at the national and regional levels, inter alia through the exchange of information and intelligence, the establishment of a special task force; and strengthening cooperation with ASEAN Dialogue Partners and International Organizations to prevent human smuggling, including through law enforcement cooperation, information and expertise sharing, intelligence exchange and capacity building (Kuala Lumpur Declaration on Irregular Movement of Persons in Southeast Asia, 2015).

Malaysia should increase solidarity with ASEAN member states to analyze the root causes of the human smuggling of illegal immigrants in the Southeast Asian region, such as organized crime, government corruption, poverty, inefficient enforcement of state laws and regulations, and security and economic instability. Capacity building of frontline officers is highly required to detect and prevent the victims of human smuggling from their home countries through transit countries by conducting early measures (ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children, 2015).

6. CONCLUSION

The Rohingya ethnics are very vulnerable to the ongoing atrocities in Rakhine State, that without any choice they must flee and seek refuge by using the very challenging sea route to Bangladesh. However, due to the seriously inadequate environmental conditions of the refugee camps in Cox's Bazar, they had to go to Malaysia as a country that could guarantee their security and safety. However, despite their accepted presence in Malaysia, Rohingya refugees are officially classified as illegal immigrants by the Malaysian government where they will be subjected to the penalties stipulated in Malaysia's national immigration law, which are the Immigration Act 1959/63 and the Passport Act 1966.

Malaysia prioritizes a security approach and stricter policy mechanisms in responding to Rohingya refugees who are declared as illegal immigrants – in order to defend the country's national integrity and sovereignty from impending threats, such as transnational organized crime, human trafficking, drug trafficking, and transnational terrorism, which are often accompanied by human smuggling activities against vulnerable people such as the Rohingyas.

As the COVID-19 pandemic began to hit Malaysia, Rohingya refugees are increasingly being securitized by the Malaysian government and other security agencies. It is argued that the presence of Rohingya refugees in Malaysia is seen as an existential threat that would endanger national security and health among Malaysia's domestic people. Prime Minister Muhyiddin Yassin also asserted that Malaysia could no longer to accept the Rohingya refugees coming from Myanmar, as the pandemic has prompted the government to prioritize the interests of local communities first.

As an emergency measure, the Malaysian government officially established the NTF (National Task Force) as a joint unit of several Malaysian security enforcement agencies to design security measures and address the influx of illegal immigrants throughout the border areas of the Malaysian state. OP BENTENG as an operation formed by the NTF was expected to effectively prevent the transmission of the coronavirus by taking restrictive measures, namely through interception, detention and deportation of the presence of illegal immigrants in Malaysia, including the Rohingya refugees.

However, the immigration policy that was implemented violated the international law that absolutely binds Malaysia, namely the non-refoulement. The principle of non-refoulement asserts that Malaysia is prohibited from forcibly returning the Rohingya refugees to their previous homes or residences where they are likely to return and get subjected to brutal and cruel treatment in Rakhine State, Myanmar. But however, Malaysia has the right to defend its borders from outside threats that fall within the scope of national sovereign rights and protect security, economic well-being and health for the entire community.

Malaysia could use a security approach in dealing with the influx of Rohingya refugees who are feared to transmit the virus or disease to Malaysia's local population. Most essentially, Malaysia should further strengthen national border security to deter human smugglers from bringing in large numbers of illegal immigrants by land and sea. Such preventions include enhancing the capability and effectiveness to address and monitor all illegal immigrant smuggling activities through the cooperation and responsibility of security enforcement agencies and launching security operations on land and sea areas to eradicate their presence.

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