

## ESCALATING ROHINGYA REFUGEE WAVE IN INDONESIA: HANDLING PRACTICES AND IMPLICATIONS

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**Abstract :** *The issue of Rohingya refugees has re-emerged, owing to the escalation of the refugee wave in Indonesia, which has so far reached 1,478 people. They came and spread to many parts of Indonesia. Their arrival is for refuge, for shelter and for food. The increasing escalation of refugees in Indonesia must draw attention to matters relating to the handling of the refugee. Although the Indonesian government has not actually ratified the 1951 Refugees Convention and the 1967 Protocol, the refugees are still given temporary shelter as a form of assistance and uphold the principles of humanity and concern of the Government of Indonesia. This article will give an overview of the government's treatment of ethnic Rohingya refugees and the implications of the escalation of the refugee wave. The research method used in this study is a normative jurisprudential approach whose data acquisition is mostly using comprehensive library studies.*

**Keywords:** *Refugees; Rohingya; National Stability; Humanitarian Principles*

### INTRODUCTION

Everyone has the right to enjoy a decent and prosperous livelihood. Live in their own country and get protection from the government of their country. However, under certain conditions, this desire is difficult to realize. These conditions can be in the form of threats originating from their own country that make it impossible for a person or group of people to continue to inhabit their country of origin as well as threats originating from armed conflict, threats due to natural disasters or threats of racial, ethnic, and religious discriminatory actions by state government organs. The existence of this threat then causes a person or a group of people to leave their country and seek neighboring countries that can be asked for help in accommodating them, either temporarily or permanently.

The same is true of what happened to the Rohingya ethnic group who fled their home

country of Myanmar in droves to nearby countries to seek protection. The Rohingya are known as the most oppressed ethnic group on earth, as the UN calls them, because they are people who are discriminated against and not granted citizenship recognition by the Myanmar government. The Myanmar government considers that the Rohingya are illegal immigrants from the neighboring country, Bangladesh. Another implication of not being given recognition of their citizenship as based on the Myanmar Citizenship Law 1982 is that the Rohingya do not have the right to education, get jobs, do not get health services and do not get the right to practice their religion and beliefs in the country. On this basis, many Rohingya were then found to have left Myanmar to nearby countries to flee to be given protection.

A refugee is defined as a person or group of people who, due to fear of persecution and discrimination against race, ethnicity, religion, nationality, membership in certain social groups and political parties, are outside their nationality and do not want protection from the country.<sup>1</sup> Practically based on this definition, it can be said that a refugee is a person or a group of people who are forced to leave their country of origin because of fear and persecution. Based on the definition description, it can be seen that to be said to be a refugee must meet several criteria including being outside the nationality of their country of origin, having a well-founded fear, experiencing persecution, discrimination based on ethnicity, race, religion, nationality, membership of certain social and political groups and not having the will and ability to return to their country of origin due to the absence of protection. The feeling of fear and the experience of persecution felt by the Rohingya ethnic group resulted in the Rohingya ethnic minority deciding to leave Myanmar. A person or a group of people has the right to be declared as a refugee only if the refugee status has been determined by the destination country if the destination country is a party to the 1951 Refugee Convention, while for non-party countries, a person's right to be declared as a refugee is given by the *United Nations High Commissioner for Refugees* (UNHCR).<sup>2</sup>

The Rohingya ethnic group was forced out of their home country to earn a living without discrimination, they fled in despair of treatment from the government of their home country. The only way they could do it was to get out of Myanmar to neighboring countries by sea, where a group of people consisting of

adults both men and women and children crossed the ocean for days on fishing boats in quite appalling conditions. They were so crowded with each other on the boat that the community referred to them as the Rohingya "boat man". One of the countries where the ethnic group is headed is Indonesia as one of the closest neighboring countries to Myanmar. Under international law, Indonesia actually does not have the obligation and authority to act in terms of receiving or providing rides to these refugees, this is because until now the government has not ratified the 1951 Refugee Convention and the 1967 Protocol on Refugees. However, the entry of Rohingya refugees is difficult to resist for humanitarian reasons, so the Indonesian government opens the entrance for them. It is known that the first time the refugees entered Indonesia in 2015 through the waters of Seunuddon, North Aceh, a total of 583 ethnic Rohingya people.<sup>3</sup> Even though previously the Indonesian government had rejected refugees where the TNI was asked to strengthen its alert in Acehese waters and try hard to prevent ships carrying refugees from entering Indonesia's sovereign territory, the TNI also prohibited Acehese fishermen from picking up and carrying refugees who were abandoned at sea to be brought up to the mainland. Even though Acehese fishermen had received a ban from the TNI, they still helped hundreds of Rohingya refugees to the mainland because at that time the refugees were found in a condition of fear of starvation. For this refusal, the Indonesian government had received criticism from within the country and also from the international community, making the Indonesian government at that time agree to accommodate its Rohingya ethnicity

<sup>1</sup> Unhkar, "Unhkar," Unhkar, n.d., [Htaps://vv.unhkar.org/id/pengungsi](https://vv.unhkar.org/id/pengungsi).

<sup>2</sup> Khairunnisa Simbolon, "Thai and Indonesian Attitudes towards Rohingya Refugees in a Constructivist Approach," *PIR*, 2017, 7.

<sup>3</sup> Raja Malo Sinaga, "Why the Rohingya Are Accepted in Indonesia," *Detik North Sumatra*, 2023,

<https://www.detik.com/sumut/berita/d-7081474/kenapa-rohingya-diterima-di-indonesia-ini-penjelasan#:~:text=Melansir%2C%20detikNews%2C%20Acceptance%20of%20the%20Rohingya%2C%20North%20Aceh%2C%20Aceh>.

for a while. The willingness of the Indonesian government to accommodate refugees at that time received appreciation from UNHCR.<sup>4</sup> Of course, it is not because of appreciation alone, with the consideration that everyone has the right to get proper treatment and based on the ideology of Pancasila precept 2, namely "Just and Civilized Humanity", the government voluntarily created shelters and provided temporary shelters for refugees.

Since the opening of the faucet for ethnic Rohingya refugees by the Indonesian government, their number has always increased, their existence is not only in Aceh, but in several other areas such as in Medan, Riau Islands, Banyuwangi, East Java,<sup>5</sup> recorded as of Tuesday, December 5, 2023 through the statement of Mahfud MD as the Coordinating Minister for Political, Legal and Legal Affairs, now the number of Rohingya refugees has reached 1,478 people.<sup>6</sup> Of course, this number is not small to be placed together with the Indonesian population. The increasing number of refugees will cause insecurity and have the potential to create domestic problems if not handled properly.

Based on the description mentioned above, the writing of this article seeks to analyze the efforts to challenge Rohingya refugees that have been carried out by the Government of Indonesia and analyze the impact of the escalation of the refugee wave in Indonesia. This research on Rohingya refugees is not new, because this event has occurred

since 2015, so there are several scientific articles that have similarities with this research, including: The first article with the title "Analysis of Indonesia's Role in Providing Humanitarian Assistance to the Rohingya Ethnic Group in the Jokowi Era" written by Nadia Tia Pramita and M. Syaprin Zahidi from the University of Muhammadiyah Malang published by the Journal Review of International Relations Volume 5 Number 1 of 2023. The second article is entitled "The Phenomenon of Asylum Seekers and Rohingya Ethnic Refugees in Indonesia" the author consists of Muhammad Arif Hamdi et al. from the Immigration Polytechnic published by the Scientific Journal of Immigration Studies Volume 6 Number 1 of 2023. Although it has the same research object as the previous two manuscripts, the research we conducted focuses on the problems of handling that can and have been carried out by the Indonesian government as well as the impact on the escalation of the refugee wave in Indonesia. This research is expected to increase the insight of readers, both academics and practitioners who have an interest in refugee issues.

## METHOD

Research on the Escalation of the Refugee Wave in Indonesia: Handling and Its Impact on the National Stability of Non-Ratifying Countries The 1951 Refugees Convention is a legal research with a normative juridical approach whose data are obtained mostly using

<sup>4</sup> Ardli Johan Kusuma Lay Yang Moy, "THE Background Of Indonesia Accepting Rohingya Refugees In 2015 (Constructivist Analysis)," *Global Insight Journal* 1, no. 1 (2016): 61.

<sup>5</sup> Hardi Alunaza S.D, "Indonesian Government Policy through the Securitization of Rohingya Refugee Migration in Aceh in 2012-2015," *Indonesia Perpektive* 2, no. 1 (2017): 3,

<https://ejournal.undip.ac.id/index.php/ip/article/view/15535>.

<sup>6</sup> Adi Ahdiyati, "Violence against the Rohingya Ethnicity, From Murder to Mutilation," said Media Network Data, 2023, <https://databoks.katadata.co.id/datapublish/2023/12/06/kekerasan-terhadap-etnis-rohingya-dari-pembunuhan-sampai-mutilasi#:~:text=Rombongan Rohingya refugees are already some,5%2F12%2F2023>).

comprehensive literature studies. Reading materials are obtained from books, scientific articles contained in relevant journals and web sites.

## ANALYSIS AND DISCUSSION

### **The Position of the State of Indonesia in the 1951 Refugee Convention**

Humanitarian issues are the responsibility of every country, this is based on the *United Declaration of Human Rights* or UDHR. It is the same when certain minority groups receive discriminatory treatment. The Rohingya ethnic group is one example whose existence continues to increase in Indonesian territory. Their existence is inevitable because Indonesia is one of the countries that is geographically adjacent to Myanmar. But of course, such a condition must be overcome immediately despite the fact that the Indonesian government itself does not have a special obligation to the Rohingya group who came as refugees. Considering that Indonesia is not a member state in the 1951 Refugee Convention and the 1967 protocol. The existence of refugees is present due to the conflicts that have occurred lately which continue to increase and last for a long time, so that many impacts are received on other countries. It can be seen in various news reports that are still happening, namely the conflict that occurred in the Myanmar region against the Rohingya ethnic group also produced a wave of refugee movements. Also other conflict areas. This of course has an impact on countries around conflict areas.

The handling of this rapid movement of migrants is handled by the ratifying countries of the United Nations Convention on Refugees in 1951 (the 1951 Refugee Convention) and *the Protocol Relating to the Status of Refugees* (hereinafter referred to as the 1967 Protocol). The provisions contained in the 1951 Refugee Convention and the 1967 Protocol are the basis for ratifying countries to be responsible for fulfilling the rights of refugees. The minimum

standards that refugees are entitled to receive include that they are entitled to the same treatment as foreign citizens in general and the same treatment as local citizens. In the convention, it is affirmed in the following articles:

1. Right to freedom of religion (Article 4)
2. Right to legal services (Article 16)
3. Right to work (Article 17)
4. Right to own a house (Article 21)
5. Right to education (Article 22)
6. Right to public assistance (Article 23)
7. Freedom of movement within the territory of the state (Article 26)
8. Right to obtain an identity card (Article 27)
9. Exemption from punishment for illegal intrusion into a State Party to this convention (Article 31)
10. The right not to be forcibly repatriated to a country where the refugees have reason to fear persecution (Article 33)

In order to realize the rights of refugees, member states are obliged to implement the content of these articles. Of course, it is not easy for countries to grant these rights as stipulated in the convention. Including if the Indonesian government one day decides to become part of the state party to the convention. However, for the time being, Indonesia as a country in the Southeast Asian region that is connected to the Australian region (as a member country/ratifier of the 1951 Refugee Convention) makes Indonesia's waters a crossing route for waves of refugees from conflict areas. Therefore, this gives Indonesia's position in the 1951 Refugee Convention, as follows:

### **1. Non-State Party**

Indonesia as a non-party country to the convention does not have an obligation to provide rights for refugees, the facilities provided at this time are temporary settlements until refugees are accepted by the destination country. The provision of protection and

temporary resettlement is a commitment of the Indonesian state to uphold humanitarian principles, despite the illegal entry of this refugee group into Indonesian territory.

The provisions regarding refugees are contained in the 1951 Refugee Convention. The 1951 Refugee Convention is an international instrument mutually agreed upon by countries that provide protection for refugees, regulate the rights and obligations of refugees, and regulate the obligations and responsibilities of the countries participating in the convention. The arrangements regarding refugees were expanded in the 1967 Protocol. The Convention and Protocol regulate the types of human rights protection that are specifically intended for migrants/migrants who come to seek asylum and eventually become refugees (outside of economic motives) on the grounds that their conditions are special or different from those of other citizens who live prosperously in the place where they live.<sup>7</sup>

International law recognizes the principle that states, "*treaties may neither impose obligations on, nor create legal entitlements for, third states (pacta tertiis nec nocent nec prosunt)*".<sup>8</sup> The meaning of the principle is that a third country in or outside an international treaty does not have any rights and obligations towards it. So that countries that do not bind the DIR to the convention do not have obligations to refugees. Therefore, Indonesia, as one of the countries that did not ratify the convention, does not have the obligation to comply with the 1951 Refugee Convention and the 1967 Protocol based on the

principle of *the Pacta Tertiis Nec Nocent Nec Prosunt*.

Indonesia, which until now was not a party to the 1951 Refugee Convention, continues to accept the Rohingya who are still arriving. However, the ongoing arrival of the Rohingya ethnic group is considered burdensome for Indonesia in the end. Considering that the obligations born are not only based on the 1952 Refugee Convention, but also on the basis of the law of international customary law that has determined *the principle of non-refoulment* must be obeyed by every international community. This principle is stated in Article 33 of the 1951 Refugee Convention regarding the prohibition of expulsion and forced repatriation of persons with refugee status. So in fact, Indonesia, which is not a state party to the convention, is still bound by this principle, not because the principle is in the convention, but because it is an international customary law.

The dilemma for the Indonesian government if it becomes a state party to the convention, on the one hand, it is obliged to provide facilities for the welfare of its own citizens which have not been fully fulfilled because Indonesia is one of the developing countries whose population is dense and still has a high unemployment rate, then there is the right of residence for refugees, then the government has an obligation to provide facilities in the form of houses for refugees. This is not in accordance with Indonesia's current condition considering that the poverty rate in Indonesia is also quite high and it is still

<sup>7</sup> Wenas Kenny Kevin, "Legal Protection for Refugees in Indonesia According to the 1951 UN Convention and the 1967 Protocol," *Journal of Lex Crimen* 6 (2017), <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/17937>.

<sup>8</sup> Fitria, "Legal Protection for Refugees in Third Countries: Indonesian Practice," *Padjadjaran Journal of Law* 2, no. 1 (2015): 111, <https://jurnal.unpad.ac.id/pjih/article/view/7286>.

necessary to develop proper infrastructure from the central government.<sup>9</sup>

For the refugees themselves, the absence of strong regulations effectively makes them stranded or stranded in Indonesia. There is no clear mechanism to end the uncertainty of their status. To return to the country of origin (repatriation) is impossible. To get resettlement back to a third country (*resettlement*) is unlikely. Then to survive forever in Indonesia (*reintegration*) is not a good choice. Considering that Indonesia is not a developed country and many of its people are still below the poverty line.

Based on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified by United Nations General Assembly Resolution 45/158 on December 18, 1990, the term "Transit Country" refers to a country through which a migrant passes on their way to their country of employment or from their country of destination to their country of residence. A transit country can also be defined as a country where migration occurs, distinct from their country of origin, through which a migrant passes to enter their destination country. (Pangestu 2019). The following illustrates the flow of cross-border refugee migration, taken from the seminar materials by Dr. Irawati Handayani, S.H., M.H., entitled "Durable Solutions in Handling Refugees in Indonesia."

Based on the diagram of the cross-border refugee flow, when linked to Indonesia's status as a transit country, the presence of the Rohingya refugee group is not permanent.

Indonesia only provides temporary refugee accommodation until the refugee group is accepted by the destination country. Indonesia, as a country located between two oceans, namely the Pacific Ocean and the Indian Ocean, and between two continents, namely the Asian Continent and the Australian Continent, means that Indonesia is at a crossroads position which is important in relation to climate and economy. Some advantages obtained from Indonesia's geographical location include Indonesia being a crossroads of world traffic, both air and sea traffic. Indonesia as a point of intersection of world economic activities, between trade between industrialized countries and developing countries. One of the advantages of Indonesia's strategic geographical location, namely being a crossroads of world traffic, makes Indonesia participate in facing the problems that arise, namely dealing with refugees. The refugee problem is a problem faced by the international community, including the Unitary State of the Republic of Indonesia as a transit country because Indonesia is not a State Party to the 1951 Refugee Convention and the 1967 Protocol.

Based on data from the Directorate General of Immigration, the total number of refugees and asylum seekers in Indonesia is 11,995 people. The most refugees in Indonesia come from Afghanistan (55%), Somalia (10%) and Myanmar (6%).<sup>10</sup> UNHCR estimates that by mid-2023, there are around 1.29 million refugees from Myanmar spread across many countries.<sup>11</sup> The total number of Rohingya refugees who have landed in Aceh since mid-

<sup>9</sup> dkk Yahya Sultoni, "The Reason of Indonesia Not Ratified Refugee Convention 1951 and Legal Protection For Refugees In Indonesia," Media Neliti, 2017, <https://media.neliti.com/media/publications/34781-ID-alasan-indonesia-belum-meratifikasi-konvensi-1951-tentang-pengungsi-dan-perlindu.pdf>.

<sup>10</sup> Public Relations of the Directorate of Justice, "Press Release: 22 Refugees Departed from Jakarta," Directorate General of Immigration, Ministry of Law

and Human Rights of the Republic of Indonesia, 2023, <https://www.imigrasi.go.id/id/2023/10/24/siaran-pers-22-orang-pengungsi-diberangkatkan-dari-jakarta/>.

<sup>11</sup> ULIUS BRAHMANTYA PRIAMBADA, "Humanitarian Crisis from Rohingya Refugee Flows Can Be a Burden and Threat to National Security Stability.," *Kompas.com*, 2023, <https://www.kompas.id/baca/riset/2023/12/11/pengungsi>

November 2023 has reached 1,543 people.<sup>12</sup> So the number of Rohingya refugees continues to increase in Indonesia. The reason for the arrival of these international refugees is for safety reasons in their country, they do not feel safe and threatened, so they seek help and to get a better life.

The problem that occurs at this time in Indonesia as a transit country is that the number of refugees continues to increase while the number of refugees departed to the destination country is very few and takes a long time. The temporary period of stay in Indonesia is not determined so that refugees do not get certainty when they will be departed to the destination country. This is a challenge for the Indonesian government to prepare regulations related to the time limit allowed to grant residence permits and accommodate refugee groups. It is important for Indonesia as a transit country for Rohingya refugee groups to establish a temporary stay within the country's territory. Because along with the flow of refugees that continue to arrive, it is feared that it will pose a threat to a drastic increase in population or *overpopulation*, this will cause economic burdens, change the ethnic balance and the potential for increased crime.<sup>13</sup>

## Indonesia's obligations based on Humanitarian Principles

There are several international legal instruments that are referenced in refugee protection, including Article 14 of the *Universal Declaration of Human Rights*

(UDHR). It is stated in the first paragraph of the article that everyone has the right to seek and obtain asylum in another country to protect themselves from persecution. The second paragraph of this right does not apply to cases of persecution that actually arise because of crimes that are not related to politics, or because of acts that are contrary to the purposes and foundations of the United Nations.

The scope of the UDHR or the International Convention on Human Rights includes: *International Covenant on Civil and Political Right* (ICCPR), *Convention of Againsts Torture* (CAT) dan *International Convention On The Elimination Of All Form Of Racial Discrimination* (ICERD) 1965. In addition to the UDHR, there is also the *Convention of the Status of Refugees* 1951 including the 1967 Protocol. Against these three conventions, Indonesia only ratifies the UDHR into its national law. Therefore, there is no specific international obligation written to provide protection to refugees other than on the basis of the UDHR. So that the reception and provision of shelter for refugee groups in Indonesia is completely on humanitarian grounds. The protection of refugees will not be separated from the rules on Human Rights, both the rules of international law and the rules of national law. Some of the regulations that are referenced in providing assistance to refugees include; *First*, the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) which, although it does not explicitly regulate

i-rohingya-dan-visi-perdamaian-para-calon-pemimpin-negara.

<sup>12</sup> CNN Indonesia, "Update on the Total Number of Rohingya Refugees and Shelter Distribution in Aceh," *CNN Indonesia*, 2023, <https://www.cnnindonesia.com/nasional/20231213141254-20-1036757/update-jumlah-total-pengungsi-rohingya-dan-sebaran-penampungan-di->

aceh#:~:text=Aceh%2C CNN Indonesia %2D%2D,UNHCR) as of December 10, 2023.

<sup>13</sup> Shafira Nindaya in Devin Catur Pangestu, "Juridical Study of the Time Limit of Residence of Refugees in Transit Countries Based on Refugee Law," *JOM Faculty of Law, University of Riau* 6, no. 2 (2019), <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/download/25995/25176>.



the state's obligations in fulfilling the acceptance of foreign refugees entering Indonesia. However, based on Article 28 G paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states "Everyone has the right to be free from torture or treatment that degrades the dignity of human dignity and has the right to obtain political asylum from other countries.", Indonesia can participate in the implementation of guaranteed refugee rights in accordance with the said article. *Second*, Law Number 39 of 1999 concerning Human Rights, Law Number 1 of 1979 concerning Extradition and the ratification of international legal instruments on Human Rights. So as a form of the Indonesian government's commitment to implementing the content of these legal instruments to the protection of human rights, providing assistance to refugee groups in the name of humanity is an important point.

### **Practices of Handling Rohingya Refugees in Indonesia**

Indonesia in handling the refugee problem has collaborated with *the United Nations High Commissioner of Refugees* (UNHCR). The implementation of this cooperation has been carried out since 1979 in the form of a *Memorandum of Understanding* (MoU) signed between UNHCR and the Ministry of Foreign Affairs (Kemlu) which authorizes UNHCR to handle refugees in Indonesia. In 2008, UNHCR prepared and submitted to the government a draft '10 main Action Plan on Providing Refugee Protection and Addressing Mixed Migration in Indonesia', which includes a step-by-step process, providing support for governments in developing mechanisms to effectively address problems in the handling and protection of refugees and mixed migration issues, in order to move towards accession to the 1951 Refugee

Convention. The ten main action plans include appropriate ways to build capacity in government, so that it can further carry out its refugee response function with the support of UNHCR.<sup>14</sup>

In practice, apart from assistance from UNHCR institutions, the Indonesian government basically adheres to the principle of *sustainable solution* or handling and finding sustainable solutions by prioritizing three approaches in terms of handling refugees, including asylum seekers, including:<sup>15</sup>

1. *Voluntary Repatriation* or voluntary repatriation to the asylum seeker's country of origin or to refugees,
2. *Resettlement in Third Country* or the placement of refugees and asylum seekers in third countries
3. *Local settlement* or placement in Indonesia by the government will issue temporary residence permits to refugees and asylum seekers. This permit will then be reviewed when it has expired.

Regarding the handling of Rohingya refugees, the approach chosen must be based on rational and wise thinking, because if the chosen approach is *voluntary repatriation*, namely by voluntarily returning the refugees to their countries of origin, of course this is not possible due to the discriminatory attitude of the Myanmar government that is still ongoing. Indonesia as a non-member country plays an important role in facilitating Rohingya refugees to relocate them to a third country through cooperation with UNHCR in Indonesia. In addition to facilitating the placement of refugees to third countries, the practice of providing assistance that has been carried out by the Indonesian government is with the third approach of *local settlement*. Regarding the granting of temporary residence permits by the Indonesian government for Rohingya refugees, it can be evidenced by the

<sup>14</sup> UNHCR Indonesia, "UNHCR Indonesia," UNHCR, 2020, <https://www.unhcr.org/id/unhcr-di-indonesia>.

<sup>15</sup> IOM, *Handbook for Handling Human Smuggling Crimes* (Jakarta, 2012).



existence of a Rohingya refugee shelter complex in North Aceh which was established in 2015, the locations are located in Aceh Besar, Pidie Lhoksemawe and East Aceh.<sup>16</sup> In addition to Aceh, the Indonesian government through the Pekanbaru City Government has prepared eight *community houses* including Wisma Indah Sari as a temporary shelter for Rohingya refugees who have families, Hotel Satria for refugees who come with their families, Wisma D'Cops for single refugees, Wisma Siak Resort for refugees with families, Wisma Fanel for refugees who have families, Tasqya Boarding House for refugees who are single and family, Wisma Orchid for refugees with families, Kost Devada is specifically for refugees with families. A total of eight *community houses* with a total of 109 rooms.<sup>17</sup>

Juridically, there are not many regulations that Indonesia has to regulate foreign refugees, including the Rohingya, that are currently being used in accordance with Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad, without an adequate legal umbrella, it is a difficulty for the government because there are no provisions that regulate the issue of refugees specifically. The other regulation that regulates the handling of foreign refugees is Law Number 37 of 1999 concerning Foreign Relations (Foreign Relations Law). Article 27 of the Foreign Relations Law states that the President sets policies on the issue of refugees from abroad by taking into account the consideration of the Minister. Because of this, in 2016, Presidential Regulation Number 125

of 2016 was issued concerning the Handling of Refugees from Abroad (Presidential Regulation 125/2016). Presidential Decree 125/2016 is Indonesia's current political choice not to ratify the 1951 Refugee Convention and its Protocol. In addition, Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad, normatively fills the legal void related to the regulation of refugees in Indonesia which is affirmed in Article 28 letter G of the 1945 Constitution of the Republic of Indonesia and Articles 25 to 27 of the Foreign Relations Law.

The detention of refugees in accordance with Presidential Decree 125/2016 is carried out based on cooperation between the central government and UNHCR by taking into account generally applicable international provisions in accordance with the provisions of national laws. The handling of refugees is also coordinated with the Ministry of Foreign Affairs.

In relation to the handling of refugees, especially for Rohingya refugees who are in an emergency, in accordance with Article 5 of Presidential Decree 125/2016, the discovery of Rohingya refugees is coordinated and implemented by the institution that organizes the affairs of the Search and Rescue. Search and rescue operations involve related agencies, namely the Indonesian National Army, the National Police of the Republic of Indonesia, ministries that carry out government affairs in the field of transportation, institutions that organize government affairs in the field of maritime security and safety or what is called

<sup>16</sup> Arfin Sudirman Joseph Rizki Prabowo, Akim, "The Role of the Indonesian National Army in Dealing with Refugees from Abroad: A Case Study of Rohingya Refugees (2015-2020)," *Alliance : Journal of Politics, Security and International Relations* 1, no. 2 (2020): 6, <https://jurnal.unpad.ac.id/aliansi/article/viewFile/38863/17316>.

<sup>17</sup> Prokopim, "No Title," Official Website of the Prokopim Section of the Pekanbaru City Regional Secretariat, 2023, <https://setdako.pekanbaru.go.id/web/detailberita/969/8-tempat-penampungan-pengungsi-rohingya-telah-disiapkan-pemko-pekanbaru>.

the Maritime Security Agency, or other related non-ministerial ministries/government agencies that carry out duties in the waters of Indonesia. After coordination with several related agencies, actions are taken immediately in the form of: (Article 9 of Presidential Decree 125/2016)

1. Transferring Refugees to a rescue ship if the ship is about to sink;
2. Bring to the nearest port or mainland if the safety aspect of the Refugee's life is threatened;
3. Identifying Refugees in need of emergency medical assistance;
4. Hand over a foreigner suspected of being a refugee to an Immigration Detention House at the nearest port or mainland.

The process mentioned above also requires identification and examination of the personal data of refugees who enter Indonesian territory by the relevant agencies. Based on Presidential Decree 125/2016, the handling of refugees is coordinated by the Minister, who is in charge of government affairs in the political, legal, and security fields. One of the coordinates in question is in terms of immigration supervision. Supervision authority is carried out by Immigration Detention House officers. In the previous practice, the authority of immigration supervision was carried out by the Immigration Office based on Law Number 6 of 2011 concerning Immigration, so that the transfer of this authority will have an impact on the capacity and capabilities of the Immigration Detention House institution in the management and supervision of refugees from abroad.

In the context of immigration supervision, both in and outside shelters, as regulated in Article 35 and Article 36 of Presidential Decree 125/2016, it can certainly be assumed that immigration supervision is administrative in nature and has not touched on the aspect of respecting refugee rights as human beings, especially in terms of respecting

the economic, social and cultural rights of refugees which are technical in nature (Syahrin and Pangestu 2019). It cannot be denied that the regulations available in the implementation of refugee supervision, especially the supervision carried out by Immigration based on Law Number 6 of 2011 concerning Immigration, are very weak because the main focus of what is conveyed in the regulations is not on refugees in large numbers. Because of this, after the issuance of Presidential Decree 125/2016, there has been no change in the organizational structure. Therefore, it can affect various elements in the implementation of authority such as the implementation of the duties of the Immigration Detention Center where there are limitations in staff, facilities and infrastructure.

The provision of temporary shelter is supervised by both immigration authorities and international organizations, namely the UNHCR, the United Nations Office on Drugs and Crime (UNODC), the International Organization for Migration (IOM), and other international organizations. In this case, Indonesia, as a transit country, can send refugees to their destination country by receiving a notification of UN approval through the UNHCR in Indonesia, containing the names of the approved refugees who will be placed in the destination country. Indonesia, in this case, is not a destination country, but only a transit country. However, the practical implementation of refugee departures to destination countries is not easy because destination countries already have significant refugee populations. This has led to delays in refugee departures to destination countries, resulting in a growing number of refugees in Indonesia.

The increasing number of refugees in Indonesia without a clear timeline for their transfer to their destination countries has the potential to destabilize the shelter areas. Meanwhile, Acehese residents have begun to become disturbed and have refused to allow

hundreds of Rohingya refugees to land on the Aceh coast. The residents asked the refugees to return to their boat after first giving them a package containing food and suitable clothing.

## **Implications of the Escalation of the Refugee Wave in Indonesia**

### **1. Against the Social Environment**

The Rohingya ethnic group is one of the 135 ethnic minorities in Myanmar. The Myanmar government's treatment of the Rohingya ethnic group is discrimination that has been carried out since 1948. The discriminatory treatment received by the Rohingya in Myanmar is considered a form of human rights violation. After a long period of discriminatory treatment from the Myanmar government, the Rohingya finally decided to seek a more decent life, namely by traveling as refugees to several neighboring countries, especially in the Southeast Asian region, including Bangladesh, Thailand, Malaysia, and Indonesia. Principal Expert Researcher of the National Research and Innovation Agency (BRIN) focusing on the Issue of Forced Migration, Tri Nuke Pudji Astuti, said that for decades the Rohingya ethnic group has suffered extreme suffering, not getting their citizenship in Myanmar, and losing all their livelihoods in the country.<sup>18</sup> Thus, the Rohingya ethnic group does not only have refugee status, they are classified as *stateless* people .

The wave of Rohingya arrivals to Indonesia through Aceh began in 2015.<sup>19</sup> Moreover, the arrival of Rohingya is increasing in the Covid-19 situation where neighboring countries such as Malaysia have rejected the

arrival of Rohingya refugees, while Indonesia has chosen to accommodate Rohingya refugees. The Rohingya are provided with shelter by the local government. However, in 2015, as many as 182 ethnic Rohingya residents fled the shelters and mingled with the people of Aceh. This is a new problem for the surrounding community.

### **1. Towards National Stability**

The large number of refugees that causes problems for local residents, also causes problems for the Indonesian government. This is due to the increasing number of refugees and is inversely proportional to the *resettlement* process by UNHCR. In addition, the arrival of Rohingya refugees to Indonesia using inadequate sea routes raises the possibility of transnational crimes. Based on *the Transnational Organized Crime at Sea Manual 2016* which has been published based on the development of international crime in Indonesia.

In 2012-2014 there was an increase in migration from the Bay of Bengal/Andaman, this is related to the increase in sectarian conflict in Myanmar. An estimated 180,000 have fled to Bangladesh, 87,000 migrated to the Andamans with the main destination of Malaysia (a developed Islamic country). This increase in migration provides space for individuals to commit transnational crimes. This is evidenced by the forced steps of the Thai Junta Government after finding a refuge with appalling conditions, the hostage victims were finally ransom by the Thai Government. Malaysia, Indonesia, and Thailand held a tripartite meeting on May 20, 2015 which

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<sup>18</sup> BRIN Public Relations, "Escalation of Problems and the Search for the Best Solutions for Rohingya Refugees in Indonesia," BRIN, 2023, [https://www.brin.go.id/news/117083/eskalasi-](https://www.brin.go.id/news/117083/eskalasi-persoalan-dan-pencarian-solusi-terbaik-untuk-pengungsi-rohingya-di-indonesia-1)

[persoalan-dan-pencarian-solusi-terbaik-untuk-pengungsi-rohingya-di-indonesia-1](https://www.brin.go.id/news/117083/eskalasi-persoalan-dan-pencarian-solusi-terbaik-untuk-pengungsi-rohingya-di-indonesia-1).

<sup>19</sup> Hikmahanto Juwana, "Responding to the Wave of Rohingya Ethnic Refugees," *Kompas.id*, 2023, Responding to the Wave of Rohingya Ethnic Refugees.

resulted in the decision of Malaysia and Indonesia to accept them due to humanitarian considerations that the Rohingya would be temporarily accommodated until the realization of resettlement and repatriation.

The results of the meeting by three countries, namely Malaysia, Indonesia and Thailand as outlined in the *Joint Statement*, are as follows:<sup>20</sup>

1. The efforts of Indonesia, Malaysia and Thailand as countries that did not ratify the 1951 Refugee Convention have gone beyond the efforts that should be in accordance with the 1951 Refugee Convention
2. For humanitarian reasons, Indonesia and Malaysia are willing to temporarily accommodate the *boat people* on the condition that the repatriation and resettlement process can be carried out by the international community and a time limit of 1 year
3. The three countries agreed to find the main problem of this problem
4. Increasing cooperation in eradicating *Human Trafficking*
5. Thailand cannot accept these irregular *migrants*, given the large number of refugees currently still in Thailand and the social and security impact that these refugees have caused.

The number 5 above of course also has an impact on Indonesia as one of the transit countries.

The enactment of Presidential Regulation 125/2016, in which there are several circumstances in which refugees are given temporary places to live does not include how long refugees must stay. So that this has an impact on the government because the temporary shelters are getting full. Refugees are also not allowed to work or earn a living

while awaiting the settlement process in a third country. This also has an impact, namely the existence of illegal work carried out by refugees.

In budget allocation, it also has an impact on national stability, refugees registered with UNHCR generally have a monthly income of Rp. 1,250,000 per head. The budget was provided by IOM and UNHCR. The value that has been given is considered not in accordance with the needs of refugees. So they are trying to obtain additional income illegally. The limited budget for government work units to carry out direct supervision is also a problem for illegal workers by refugees.

## CONCLUSION

Based on the discussion as described above, it can be concluded first, the position of the State of Indonesia in the 1951 Refugee Convention is not a state party and only as a transit state that is not subject to the 1951 Refugee Convention, but an obligation to the implementation of human rights or humanitarian principles related to refugees in Indonesia which is based on Article 28 G paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Second, the handling of Rohingya refugees based on the legal umbrella of Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad has not been able to accommodate the needs of regulations according to the circumstances because there are no rules that are definitively related to the period of time refugees can settle temporarily and also immigration supervision contained in Law Number 6 of 2016 concerning Immigration does not directly regulate related to refugees in Indonesia. Third, the impact of the escalation of the wave of refugees in Indonesia has an impact on the social

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<sup>20</sup> Irawatywati Handayani, "Exposure to Refugee Handling" (ikapoltekim.or.id, 2020), [https://ikapoltekim.or.id/wp-](https://ikapoltekim.or.id/wp-content/uploads/2020/02/Dr.Ira-Paparan-Penanganan-Pengungsi-FGD-Kumham-21Jan2020.pdf)

[content/uploads/2020/02/Dr.Ira-Paparan-Penanganan-Pengungsi-FGD-Kumham-21Jan2020.pdf](https://ikapoltekim.or.id/wp-content/uploads/2020/02/Dr.Ira-Paparan-Penanganan-Pengungsi-FGD-Kumham-21Jan2020.pdf).



- Lay Yang Moy, Ardli Johan Kusuma. "LATAR BELAKANG INDONESIA MENERIMA PENGUNGSI ROHINGYA PADA TAHUN 2015 (ANALISA KONSTRUKTIVIS)." *Global Insight Journal* 1, no. 1 (2016): 61.
- News, BBC Indonesia. "Bara Di Balik Penolakan Pengungsi Rohingya Di Aceh, 'Saya Sebelas Hari Di Laut, Makan Sehari Sekali.'" *BBC News Indonesia*, 2013. <https://www.bbc.com/indonesia/articles/ce1j526e6vo>.
- Nur Sultan. "Geografi." <https://kemlu.go.id/>, 2020. <https://kemlu.go.id/nur-sultan/id/pages/geografi/41/etc-menu>.
- Pangestu, Shafira Nindaya dalam Devin Catur. "Kajian Yuridis Batas Waktu Tinggal Pengungsi Di Negara Transit Berdasarkan Hukum Pengungsi." *JOM Fakultas Hukum Universitas Riau* 6, no. 2 (2019). <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/download/25995/25176>.
- Prokopim. "No Title." Website Resmi Bagian Prokopim Sekretariat Daerah Kota Pekanbaru, 2023. <https://setdako.pekanbaru.go.id/web/detailberita/969/8-tempat-penampungan-pengungsi-rohingya-telah-disiapkan-pemko-pekanbaru>.
- Raja Malo Sinaga. "Kenapa Rohingya Di Terima Di Indonesia." *Detik Sumut*, 2023. <https://www.detik.com/sumut/berita/d-7081474/kenapa-rohingya-diterima-di-indonesia-ini-penjelasan#:~:text=Melansir detikNews%2C penerimaan terhadap Rohingya,Seunuddon%2C Aceh Utara%2C Aceh>.
- S.D, Hardi Alunaza. "Kebijakan Pemerintah Indonesia Melalui Sekuritisasi Migrasi Pengungsi Rohingya Di Aceh Tahun 2012-2015." *Indonesia Perpektive* 2, no. 1 (2017): 3. <https://ejournal.undip.ac.id/index.php/ip/article/view/15535>.
- ULIUS BRAHMANTYA PRIAMBADA. "Krisis Kemanusiaan Dari Arus Pengungsi Etnis Rohingya Dapat Menjadi Beban Dan Ancaman Bagi Stabilitas Keamanan Nasional." *Kompas.com*, 2023. <https://www.kompas.id/baca/riset/2023/12/11/pengungsi-rohingya-dan-visi-perdamaian-para-calon-pemimpin-negara>.
- UNHCR. "UNHCR." UNHCR, n.d. <https://www.unhcr.org/id/pengungsi>.
- UNHCR Indonesia. "UNHCR Indonesia." UNHCR, 2020. <https://www.unhcr.org/id/unhcr-di-indonesia>.
- Wenas Kenny Kevin. "Perlindungan Hukum Bagi Pengungsi Di Indonesia Menurut Konvensi PBB 1951 Dan Protokol 1967." *Jurnal Lex Crimen* 6 (2017). <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/17937>.
- Yahya Sultoni, dkk. "The Reason of Indonesia Not Ratified Refugee Convention 1951 and Legal Protection For Refugees In Indonesia." *Media Neliti*, 2017. <https://media.neliti.com/media/publications/34781-ID-alasan-indonesia-belum-meratifikasi-konvensi-1951-tentang-pengungsi-dan-perlindu.pdf>.