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# Indonesia's Response to Rohingya Refugees in the Perspective of International Law in 2023

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## ABSTRACT

The focus of this research aims to examine how Indonesia's response to Rohingya refugees in the perspective of International Law in 2023. This research uses a qualitative approach with a case study method, after obtaining and researching existing datasets, an evaluation is carried out using qualitative analysis methods. The findings of this research explain Indonesia's response to the Rohingya refugees that occurred in mid-November 2023 with a focus on the perspective of international law. Although Indonesia has not ratified the 1951 Refugee Convention and 1967 Protocol, it has demonstrated engagement that reflects a commitment to the relevant principles of international law. The Indonesian government has given a mandate to UNHCR to handle the protection of Rohingya refugees, Indonesia also seeks international cooperation in dealing with this Rohingya refugee problem, the Indonesian government accepts Rohingya refugees openly because the basis of humanity is stated in Pancasila and the 1945 Constitution as the basis of this country. In addition, Indonesian positive law which contains Article 3 of Presidential Regulation 125/2016 related to the handling of refugees from abroad, and Indonesian national law also contains policies for handling asylum and refugees stipulated in Article 26 of Law 37/1999 as well as the application of the principle of non-refoulement which is applied without exception as the basis for providing assistance and protection to Rohingya refugees.

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## 1. INTRODUCTION

Rohingya refugees are an ethnic minority group from Myanmar's Rakhine state. They are primarily Muslims who have lived in the region for centuries. The conflict first occurred in Rohingya due to a religious conflict between Islam and Buddhism. Although the conflict occurred internally in Myanmar, it has had an impact on the

international community, especially countries neighboring Myanmar such as Indonesia, Malaysia, and Bangladesh. In Rakhine State, Myanmar, there are more than 1 million Rohingya people who are mostly Muslim ethnic groups who have lived in the region for generations.

The initial trigger of the Rohingya violent conflict occurred in July 2012 and continues to be the talk of the international

community until now. The Rohingya revealed that they have been mistreated by the Myanmar government and military for years, while the Myanmar government stated that the Rohingya people are illegal immigrants from Bangladesh who have no place in Myanmar. Therefore, the government does not recognize the Rohingya as Myanmar citizens. They cannot get the same medical care, schools, and basic services. The United Nations ("UN") even describes the Rohingya as one of the most persecuted minorities in the world. Then, because the Rohingya were discriminated against by the Myanmar government, they fled and sought refuge in neighboring countries [1]–[3].

The international response to the Rohingya Refugee crisis has included a wide range of efforts from countries and regional and global organizations [4]–[6]. Some countries and institutions have provided humanitarian support, while others have played a role in facilitating dialogue for crisis resolution. Bangladesh has hosted millions of Rohingya refugees and played an important role in providing humanitarian assistance and shelter for them. Several other countries, including Malaysia and Indonesia, have also provided financial and humanitarian assistance to Rohingya refugees.

At the international level, the United Nations (UN) and humanitarian agencies such as UNHCR (United Nations Refugee Agency) are involved in providing humanitarian assistance and support. The problem of refugees and internally displaced persons is one of the most complicated issues facing the world community, today the United Nations has been trying to find effective ways to protect and assist this very vulnerable group, one of which is enacting the 1951 Refugee Convention and the 1967 Refugee Protocol regarding the status of international refugees. Many countries have called for increased co-operation and co-ordination between aid agencies in addressing the Rohingya refugee problem [7]–[9].

While in Indonesia there is a positive law that regulates the handling of refugees

from abroad. According to Article 3 of Presidential Regulation 125/2016, the handling of refugees pays attention to generally accepted international provisions and in accordance with the provisions of laws and regulations stipulated in the 1945 Constitution. Indonesia also has provisions governing the granting of asylum and refugees, in Article 26 of Law 37/1999 it is stated that the granting of asylum to foreigners is carried out in accordance with national laws and regulations and with due regard to international laws, customs and practices. Although Indonesia has positive laws on refugees, according to the UNHCR website, Indonesia is not yet a state party to the 1951 Convention and 1967 Protocol.

Extracted from UNHCR Indonesia, although Indonesia is not yet a state party to the 1951 Convention and 1967 Protocol, and does not yet have a refugee status determination system, the government authorized UNHCR to carry out its refugee protection mandate and to address refugee issues in Indonesia. UNHCR's protection begins with ensuring that refugees and asylum seekers are protected from refoulement (protection from forcible return to their place of origin where their life or freedom is in danger or persecution). Refugee protection further includes the process of verifying the identity of asylum seekers and refugees so that they can be registered and individualized documentation can be issued [10]–[12].

In relation to the Rohingya refugee case in Indonesia, UNHCR Indonesia assists the government in addressing refugee issues and helps find solutions for refugees. During the Rohingya refugees' stay in Indonesia, UNHCR coordinates with the authorities to ensure the refugees' needs are met and they can live in dignity. Nonetheless, Indonesia, according to Atip Latipulhayat, Professor of International Law at Padjadjaran University, said that the Indonesian government must handle Rohingya refugees in accordance with humanitarian principles, international legal instruments, Indonesia also has the ideology of Pancasila which is based on the spirit of humanity.

In mid-November 2023, Indonesia saw the arrival of Rohingya refugee immigrants who first landed on a number of beaches in Aceh Province, which has increasingly become a polemic for the Government and people of Indonesia. The reason is, the number of Rohingya refugees who came to Indonesia was done gradually and continuously until it reached thousands of refugees who are still arriving. Many Indonesians strongly reject the arrival of refugees not only because Indonesia has not ratified the 1951 Convention and 1967 Protocol related to refugees, but also because their arrival will require shelter, food to survive and health support facilities.

At the same time, there are still many people in the country who need help similar to what refugees get, such as the many Indonesians who live without shelter, starve and live under poverty. So, it seems inappropriate to priorities people from other countries over local people. However, the Indonesian government stated that the basis for helping Rohingya refugees is the principle of humanity. So, this is interesting for researchers to study more deeply related to: "How Indonesia's Response to Rohingya Refugees in the Perspective of International Law in 2023".

## 2. LITERATURE REVIEW

### 2.1 *International Refugee Law*

A refugee is a person or group of people who are forced to separate themselves from their country of residence to settle in another country for a certain period of time due to the deep fear experienced as an act of oppression from their home country. In other words, a refugee is defined as a party who seeks protection from his destination country as a relief for the oppression experienced in his home country. However, in some conditions, refugees are not fully able to obtain protection from the destination country, so this is where a number of rules governing the provision of protection were

originally produced, which were prepared in such a way for the international community.

International refugee law comprises a set of rules and principles that manage the security and human rights of refugees around the world. Embedded in the 1951 Refugee Convention and its 1967 Protocol, this law affirms the right of refugees to seek protection in another country for fear of persecution on account of race, religion, nationality, social class, or political opinion. Furthermore, it establishes the obligation of states to provide refugees with protection, security, access to basic needs, and fundamental human rights without segregation. International refugee law also sets out the principles of international co-operation in addressing refugee issues, including the distribution of burdens and responsibilities between states.

International refugee law is relatively new in its dynamics. Therefore, many countries are not bound by international refugee law, such as Indonesia [13]. International refugee law contains all the written rules and legal mechanisms that support the protection of those seeking asylum; and refugees. According to the 1951 Refugee Convention, a refugee is defined as a person who is outside his or her country of origin for certain reasons and is unable or unwilling to return for fear of persecution on account of race, religion, nationality, social class, or political opinion. In addition, people who are unable or unwilling to obtain protection from their country of origin can also be considered refugees according to the convention. This definition has become the basis of international law in addressing the protection and treatment of refugees around the world [14].

## 2.2 Principles of Refugee Protection in International Law in Indonesia

Based on Dwi's opinion, there are 3 main principles of refugee protection that have been guaranteed by international law in the form of customary law or international treaties. These principles include non-refoulement, non-penalization, and non-discrimination, as explained:

1. The principle of non-refoulement means that a person may not be forcibly returned to a territory where his or her life and/or freedom would be threatened. According to Rodenhauer, the principle of non-refoulement has been classified as customary international law. Not only that, [15] also asserts that the principle of non-refoulement is binding for parties not party to the 1951 Convention based on the principles of jus cogens and peremptory norm. As norms that must be adhered to, jus cogens and the principle of non-refoulement have become customary international law. Therefore, they also apply to countries that are not parties to the 1951 Refugee Convention.
2. The Non-Penalization Principle is that asylum seekers and refugees should not be sanctioned or punished for entering the territory of a country of asylum in order to seek protection even without proper documentation. This principle is enshrined in Article 31 of the 1951 Refugee Convention. This principle is based on the idea that in some situations, individuals or groups may engage in behavior that is in fact unlawful, but that, in the social, political or humanitarian interest, it is preferable to take an

alternative approach to direct criminal punishment.

3. The principle of Non-Discrimination is mentioned in Article 3 of the 1951 Refugee Convention. This principle is intended not to discriminate against refugees and asylum seekers on the basis of race, religion, nationality, membership of a particular social group, or political opinion. The provisions of this principle are set out in international law in the form of The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and the International Covenant on Civil and Political Rights (ICCPR) which Indonesia has also ratified.

## 3. METHODS

The approach used in this research is a qualitative approach with a case study method. The case study approach is used to carefully investigate and describe a particular social phenomenon. In this research, the case study method is applied to gain a more in-depth understanding of Indonesia's response to Indonesia's increasing refugees in 2023, making it possible to produce a detailed explanation. This research uses qualitative data sourced from agency reports, journals, articles, theses, books, and mass media [16], [17]. The main literature in this research are articles, journals, and publications conducted in accordance with the research problem. After obtaining and examining the existing dataset, an evaluation was conducted using a qualitative analysis method. This qualitative approach applies data processing techniques

that focus on elements related to the research issue.

#### 4. RESULTS AND DISCUSSION

The problem of Rohingya refugees in various countries is not a new issue, Rohingya refugees are categorized as a minority group by the United Nations (UN). Not only were they expelled from their country of residence, they also lost their right to live well in obtaining food, clothing and shelter. This incident was experienced by the people of Myanmar due to ethnic conflicts that have occurred for decades. In 1980, the Myanmar government declared that the Rohingya people were not part of its ethnicity and they also did not get recognition of citizenship from Myanmar. So that fleeing is the best choice for people who have lost the right to live, not infrequently this problem finally links international pressure, especially to countries that are geographically close to Myanmar such as Indonesia, Malaysia and Bangladesh to be used as destinations by Rohingya refugees. In the recent case of mid-November 2023, Indonesia was the destination country considered by Rohingya refugees, but the number of refugees increased gradually over time. Indonesia as a country that did not ratify the 1951 Convention and its additional 1967 Protocol related to refugees, certainly has no obligation to accept Rohingya refugees, nor can Indonesia refuse their arrival due to the absence of legally binding matters.

According to Lay Yang Moy and Johan Kusuma, the background of Indonesia's acceptance of the presence of Rohingya ethnic refugees is due to the similarity of identity factors, namely both Muslims and Indonesia as a country that strongly upholds human rights values so that it pays great attention to humanitarian cases including those being experienced by ethnic Rohingya in Myanmar. The form of concern is through the acceptance and services provided to Rohingya refugees. Although Indonesia is not a country that ratified the 1951 convention on the status of refugees, all

of them are based on humanitarian aspects [18]. However, now what has become a polemic is the public unrest because the Indonesian Government openly accepts Rohingya refugees on humanitarian grounds, even though on the one hand it invites anger for the Indonesian people because there are still many Indonesians who live vulnerable in poverty and need more compassion on this humanitarian basis.

Based on the statement of Mr Mahfud MD as Coordinating Minister for Political, Legal and Security Affairs, who was instructed by President Joko Widodo to address the issue of the increase in the number of Rohingya refugees so that it can be dealt with in accordance with the applicable corridors and priorities humanitarian principles of course. He said that the increase in the number of Rohingya refugees in Indonesia was based on Indonesia's attitude which was so open to accepting refugees. Although initially Indonesia was only used as a transit country not a destination country, but seeing from several other countries that actually firmly rejected the existence of Rohingya refugees including Australia, Singapore and Malaysia which also closed the entrance for Rohingya refugees made Indonesia need to take further action. Malaysia, since 1991, has been a popular destination for Rohingya refugees entering through sea routes. However, due to tightening measures from 2012 to 2015 and its peak before the Covid-19 pandemic in 2020, Malaysia also rejected the arrival of Rohingya refugees.

Basically, if seen from the reason why Indonesia has not ratified the 1951 Convention and 1967 Protocol, namely if a country ratifies the 1951 convention and 1967 protocol, there are several rules that Indonesia must follow, for example in the 1967 Convention, containing: a. Article 4 (freedom of religion); b. Article 17 (right to work and receive wages); c. Article 21 (right to own a house); d. Article 22 (right to education). Article 22 (right to education); and others. All the articles contained therein cannot be fully realized by Indonesia, due to the reasons put forward by the general

public, where their conditions are still many who live in vulnerable poverty, difficulty getting a job and the high number of unemployment, so giving work to refugees is not the right and easy thing to do, not to mention that Article 21 of the Convention is loaded to provide shelter in the form of a house to refugees, while many Indonesians still live in a state of not having a place to live. In International Law, there is no authority for even supranational bodies to compel international rules, so Indonesia is under no obligation to be pressured to ratify the 1951 Convention and 1967 Protocol. It is clear that there are many consequences that will be borne by the Indonesian state if it has to ratify the Convention so it decided not to ratify it. This indicates that Indonesia's national interest is still the main consideration that should not be at odds with the interests of the Indonesian people themselves.

Currently, Indonesia's response to the Rohingya refugees is based on the country's commitment to Pancasila as a state ideology that is based on the principle of humanity, in which the 2nd principle states "just and civilized humanity". In this case, Indonesia, which is a majority country with a Muslim population and this is in common with Rohingya refugees who are also Muslims, thus encouraging the emergence of concern for the Indonesian Government to provide humanitarian assistance to Rohingya refugees. Indonesia strongly upholds humanitarian values because this is part of everyone's human rights. In addition, the ideological basis and idealism about humanity as mandated in the Preamble of the 1945 Constitution which talks about world peace and just and civilized humanity including humanity for people who are not Indonesian citizens.

Likewise, Indonesian positive law contained in Article 3 of Presidential Regulation 125/2016 regarding the handling of refugees from abroad in this case considers international provisions. As stated in the content of the Law that Indonesia will handle issues related to discovery, shelter, security, and immigration control. This

indicates that Rohingya refugees are also included in the people who need to be handled in accordance with the relevant laws. Furthermore, Indonesia's national law also contains a policy of handling asylum and refugees as stipulated in Article 26 of Law 37/1999. Rohingya refugees being well received by Indonesia is not a new thing because since 2015, Indonesia has stated that it is willing to accept refugees openly, at which time the number of refugees reached 583 people from the Rohingya ethnicity, while now reported through CNN Indonesia the number of Rohingya refugees in Indonesia has reached 1,478 people since their arrival in mid-November 2023. The acceptance of Rohingya refugees on humanitarian grounds also refers to the application of the principle of non-Refoulement which can be applied without exception.

Until now, what the relevant stakeholders have done is to formulate regulations in dealing with refugees to find shelters for them to live in. In line with this, the refugees are also given food to survive. However, there are many other things that Indonesia has done in dealing with this problem, for example, despite many reports from the community who feel that the attitude of Rohingya refugees is very indifferent, even after being given shelter and food they do not utilize these facilities properly. As evidenced in the Tribunnews news report, around 30 Rohingya refugees stoned and damaged the shelter facilities, resulting in the breaking of a number of glass windows. This triggered the Indonesian people's objection to accepting Rohingya refugees, and Indonesia's concern is growing as the number of refugees continues to arrive from time to time.

So, the firm stance taken by Indonesia is to seek cooperation with the parties that ratified the 1951 convention as a country that has international legal entanglement in handling refugees including the United Nations, so far the organizations involved in handling Rohingya refugees are UNHCR and IOM. In dealing with Rohingya refugees, Indonesia cannot only respond by

forcibly expelling them back to Myanmar, their home country, because this has been done many times by local communities in Indonesia who feel disturbed by the presence of Rohingya refugees who continue to grow. So, in overcoming this, the Indonesian Government is well aware of the best solutions that can be done are: Firstly, the root of the problem in Myanmar must be resolved first. Although this has been done for a long time and has not shown any success, Indonesia is now trying to maximize cooperation from many parties to ensure the willingness of the Myanmar regime itself to recognize the Rohingya people as its citizens.

The settlement of the dispute between the Rohingya and the Myanmar regime must priorities the principles of international law by using peaceful means to resolve the conflict, this is the first step that needs to be done before proceeding to the legal realm. Methods that can be used include conciliation, which is a combination of inquiry and mediation. Secondly, Indonesia can provide shelters for refugees that fulfil the most basic access to health, shelter and food for Rohingya refugees, but the facilities provided are only valid for the short term. Furthermore, Indonesia also actively voiced and requested the UNHCR and UN member states that ratified the refugee convention in order to overcome this problem. As the role of the UN itself is to provide protection, fulfilment, and respect for the human rights of the international community. Article 42 of the UN Charter states that the UN is responsible for carrying out enforcement measures and peace keeping operations.

## REFERENCES

- [1] M. Faye, "A forced migration from Myanmar to Bangladesh and beyond: humanitarian response to Rohingya refugee crisis," *J. Int. Humanit. Action*, vol. 6, no. 1, p. 13, 2021, doi: 10.1186/s41018-021-00098-4.
- [2] M. O'Brien, "The Rohingya crisis," *Genocide Vict.*, pp. 51–68, 2020, doi: 10.4324/9780429458675-5.
- [3] A. H. Milton *et al.*, "Trapped in statelessness: Rohingya refugees in Bangladesh," *Int. J. Environ. Res. Public Health*, vol. 14, no. 8, pp. 1–8, 2017, doi: 10.3390/ijerph14080942.
- [4] S. Moretti, "Between refugee protection and migration management: the quest for coordination between UNHCR and IOM in the Asia-Pacific region," *Third World Q.*, vol. 42, no. 1, pp. 1–18, 2020, doi: 10.1080/01436597.2020.1780910.

## 5. CONCLUSION

Based on the presentation of the results and discussion above, it can be concluded that in mid-November 2023 Indonesia was visited by thousands of Rohingya refugees due to conflicts that occurred in their home country, Indonesia responded to Rohingya refugees by openly accepting their arrival. Although it has not ratified the 1951 Refugee Convention and 1967 Protocol, Indonesia has given attention and actions that reflect a commitment to the relevant principles of international law. This is evident from its non-refoulement policy that avoids forcibly returning refugees to their home countries where they are at risk of threats or torture. Indonesia, as a country based on Pancasila and the 1945 Constitution, prioritizes the principle of humanity as the basis for accepting Rohingya refugees. By providing shelter, food and health facilities. Currently, many Indonesians are protesting that due to the fact that many Indonesians are living in poverty, they are asking the government to priorities local people over refugees. However, the government has responded by prioritizing Indonesia's national interests while seeking to resolve the root causes of Myanmar's conflicts that have caused its people to flee to other countries, including Indonesia.

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- [5] K. Md Shahin and M. Hasan, "The Rohingya refugee crisis: political and humanitarian perspectives," *Southeast Asia A Multidiscip. J.*, vol. 23, no. 3, pp. 151–161, Jan. 2023, doi: 10.1108/SEAMJ-05-2023-0041.
- [6] B. Barbour, L. Fan, and C. Lewa, "A whole-of-society approach to the Rohingya refugee crisis: Strengthening local protection capacity in south and south-east Asia," *Asia Pacific J. Hum. Rights Law*, vol. 22, no. 1, pp. 28–48, 2021, doi: 10.1163/15718158-22010003.
- [7] C. M. Smith, "The exploitation of refugees in areas of conflict: the Rohingya in Bangladesh," no. November, 2019.
- [8] H. Ruaudel and S. Morrison-Métois, "Responding to Refugee Crises in Developing Countries What Can We Learn From Evaluations? Working Paper," no. September, p. 104, 2017, [Online]. Available: <https://www.oecd-ilibrary.org/docserver/ae4362bd-en.pdf?expires=1558384154&id=id&accname=guest&checksum=4DEDD7D18D02615E66587413A2A5C15>
- [9] P. Kamruzzaman, "A Critical Analysis of the Conference on Sustaining Support for the Rohingya Refugees," *J. Dev. Soc.*, vol. 38, no. 2, pp. 198–223, 2022, doi: 10.1177/0169796X221088339.
- [10] M. Cheesman, "Self-Sovereignty for Refugees? The Contested Horizons of Digital Identity," *Geopolitics*, vol. 27, no. 1, pp. 134–159, 2022, doi: 10.1080/14650045.2020.1823836.
- [11] C. Giametta, "New asylum protection categories and elusive filtering devices: the case of 'Queer asylum' in France and the UK," *J. Ethn. Migr. Stud.*, vol. 46, no. 1, pp. 142–157, 2020, doi: 10.1080/1369183X.2018.1500172.
- [12] S. Madon and E. Schoemaker, "Digital identity as a platform for improving refugee management," *Inf. Syst. J.*, vol. 31, no. 6, pp. 929–953, 2021, doi: 10.1111/isj.12353.
- [13] A. Permanasari, A. Wibowo, F. Agus, A. Romsan, S. Mansyur, and M. . Nainggolan, "Pengantar hukum humaniter," Jakarta: ICRC, 1999.
- [14] S. T. Jovano and C. A. Gea, "Penanganan Pengungsi yang Bunuh Diri di Indonesia Berdasarkan Perspektif Hukum Keimigrasian," *J. Ilm. Kebijak. Huk.*, vol. 15, no. 3, pp. 361–372, 2021, [Online]. Available: <http://dx.doi.org/10.30641/kebijakan.2021.V15.361-372>
- [15] M. A. Syahrin, "The implementation of non-refoulement principle to the Asylum seekers and refugees in Indonesia," *Sriwij. Law Rev.*, vol. 1, no. 2, pp. 168–178, 2017, doi: 10.28946/slrev.Vol1.Iss2.41.pp168-178.
- [16] D. Bakotić and T. Babić, "Relationship between working conditions and job satisfaction: The case of Croatian shipbuilding company," *Int. J. Bus. Soc. Sci.*, vol. 4, pp. 206–213, Jan. 2013.
- [17] W. L. Neuman, "Social Research Methods, Qualitative and Quantitative Approaches," Boston: Pearson Education, 2003.
- [18] L. Y. Moy and A. J. Kusuma, "Latar Belakang Indonesia Menerima Pengungsi Rohingya Pada Tahun 2015 (Analisa Konstruktivis)," *Glob. Insight J.*, vol. 1, no. 1, pp. 60–75, 2016, doi: 10.52447/gij.v1i1.755.