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Jurnal Syariah dan Hukum

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Teraju: Jurnal Syariah dan Hukum, hadir dengan edisi perdana pada Maret 2019. Dalam Kamus Besar Bahasa Indonesia (KBBI), kata "**Teraju**" memiliki beberapa makna yang satu diantaranya berarti "timbangan" atau "neraca". Kehadiran **Teraju** tak lain ingin membawa pesan sebagaimana nilai yang termuat dalam namanya, yakni timbangan yang menggunakan dua buah piringan yang digantungkan dengan rantai (tali) pada kedua ujung lengannya yang merupakan identitas syariah dan hukum di berbagai belahan dunia.

Keberadaan **Teraju:** Jurnal Syariah dan Hukum, sebagai jurnal ilmiah dan media komunikasi ilmiah dengan fokus kajian pada ilmu syariah dan ilmu hukum. Jurnal ini diterbitkan dua kali dalam setahun, yakni pada Maret dan September oleh **P3M dan Jurusan Syariah dan Ekonomi Bisnis Islam STAIN Sultan Abdurrahman Kepulauan Riau** dengan **ISSN Online 2715-386X** dan **ISSN Print 2715-3878**. Berdasarkan Surat Keputusan Direktur Jenderal Pendidikan Tinggi, Riset, dan Teknologi Nomor 204/E/KPT/2022, tanggal 03 Oktober 2022 tentang Tingkat Akreditasi Jurnal Ilmiah Periode II Tahun 2022, **Teraju: Jurnal Syariah dan Hukum terakreditasi SINTA 5**. **Teraju** mengundang para peminat, pengkaji, peneliti, dan akademisi untuk mempublikasikan hasil penelitian dan karyanya yang berhubungan dengan ilmu syariah dan hukum di jurnal ini.

Focus and Scope

TERAJU: Jurnal Syariah dan Hukum merupakan Jurnal Ilmiah yang memiliki **focus** pada kajian **Syariah dan Hukum**. Sedangkan **scope** dalam Jurnal ini meliputi:

- **Syariah:** Usul Fikih, Fikih, Hukum Ekonomi Syariah, Hukum Keluarga Islam, Perbandingan Mazhab, dan Ilmu Falaq.
- **Hukum:** Filsafat Hukum, Hukum Bisnis, Hukum Pidana, Hukum Perdata, Hukum Tata Negara, Hukum Adat, Hukum Internasional dan Studi Perbandingan Hukum.

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The Sovereignty of the Indonesian State in Addressing Rohingya Ethnic Refugees

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Abstrak:

Konflik kemanusiaan yang terjadi pada Etnis Rohingya Myanmar masih terus terjadi hingga hari ini. Konflik yang dimulai sejak kemerdekaan Myanmar tahun 1948 telah berdampak pada jutaan warga Rohingya mengungsi ke beberapa negara lain, termasuk negara-negara di wilayah Asia Tenggara yang berdekatan langsung dengan Myanmar. Indonesia juga menjadi salah satu negara tujuan pengungsi. Bahkan baru-baru ini berita tentang maraknya pengungsi Rohingya yang berada di Indonesia cukup membanjiri media masa dan media sosial. Lalu sejauh manakah kewenangan negara Indonesia menyelesaikan konflik pengungsi Etnis Rohingya? Studi ini melengkapi kekurangan dari studi yang ada, yang kurang fokus pada kedaulatan negara Indonesia dalam menangani kasus pengungsi Etnis Rohingya. Rumusan masalah ini terbagi dalam tiga pertanyaan, Pertama, bagaimana sejarah konflik Etnis Rohingya? Kedua, bagaimana respon dan atensi dunia internasional terhadap pengungsi Etnis Rohingya? Ketiga, sejauh mana kedaulatan negara Indonesia menyelesaikan pengungsi Etnis Rohingya? Studi ini merupakan studi pustaka yang dikerjakan dengan menggunakan jenis penelitian kualitatif. Adapun data yang digunakan berasal dari data sekunder, yakni buku, artikel, berita, dan literatur lainnya. Analisis dalam studi ini menggunakan teori analisis konten (content analysis). Hasilnya, Pertama, Etnis Rohingya yang telah lama menempati Myanmar yang berbatasan dengan Bangladesh didiskriminasi secara massif oleh etnis lain dan pemerintah

Myanmar. Kedua, organisasi-organisasi internasional yang turut serta dalam penanganan pengungsi Etnis Rohingya adalah ASEAN, UNHCR, OKI, IMO, dan PBB. Ketiga, negara Indonesia memiliki hak mutlak berdaulat menentukan kebijakan sendiri sesuai dengan asas pada sila kedua, Kemanusiaan yang Beradab.

Kata Kunci: Penanganan, Pengungsi Rohingya, Kedaulatan Indonesia

Abstract

The humanitarian conflict affecting the Rohingya ethnic group in Myanmar continues to this day. The conflict, which began after Myanmar's independence in 1948, has resulted in millions of Rohingya fleeing to other countries, including those in Southeast Asia that border Myanmar. Indonesia is also one of the destination countries for refugees. Recently, news about the influx of Rohingya refugees in Indonesia has flooded the mass media and social media. To what extent does Indonesia have the authority to resolve the Rohingya refugee conflict? This study complements existing studies, which lack focus on Indonesia's sovereignty in handling the Rohingya refugee case. This problem formulation is divided into three questions. First, what is the history of the Rohingya ethnic conflict? Second, what has been the response and attention of the international community to Rohingya ethnic refugees? Third, to what extent does Indonesia's sovereignty resolve the Rohingya ethnic refugee issue? This study is a literature study conducted using qualitative research. The data used is secondary data, namely books, articles, news, and other literature. The analysis in this study uses the content analysis theory (). The results are as follows. First, the Rohingya ethnic group, which has long occupied Myanmar, which borders Bangladesh, has been massively discriminated against by other ethnic groups and the Myanmar government. Second, the international organisations involved in handling Rohingya refugees are ASEAN, UNHCR, OIC, IMO, and the UN. Third, Indonesia has the absolute sovereign right to determine its own policies in accordance with the principles of the second principle, Civilised Humanity.

Keywords: Handling, Rohingya refugees, Indonesian sovereignty



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Introduction

The conflict involving the Rohingya ethnic group in Myanmar continues unabated. After Myanmar gained independence under the leadership of General Aung San, the Rohingya ethnic group was still recognised by the government. However, in 1962, General Ne Win staged a coup and made Myanmar's political system more

authoritarian. The Myanmar government then denied citizenship to the Rohingya ethnic group because it believed that this Muslim group was not an ethnic group that existed in Myanmar before independence. This was stated by Thein Sein (President of Myanmar), who said that granting citizenship to the Rohingya population was impossible. The Rohingya population is believed to be part of illegal immigrants

from Bangladesh. As a result, the status of the Rohingya ethnic group has become unclear, and since 2012, this conflict has been in the international spotlight.

So far, existing studies have not adequately addressed the issue of the absolute authority (sovereignty) of the Unitary State of the Republic of Indonesia over Rohingya refugees. Existing studies do not clearly identify solutions or assign responsibility. These studies tend to be mapped as follows: *First*, the conflict involving Rohingya refugees falls under international law and should be resolved jointly by the countries involved.¹² The resolution of international refugee issues should take into account several crucial principles based on the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, namely: *non-refoulement*, *non-expulsion*, *non-discrimination*, and *non-criminalisation* of refugees.

Second, the protection of the human rights of Rohingya refugees.³ A solution to the Rohingya refugee issue requires strong commitment, but the Myanmar government believes that it has not violated human rights, thus appearing indifferent to demands for a resolution and the enforcement of justice.⁴ The discrimination

that occurs is even worse with the revocation of the Rohingya people's citizenship. Other treatments are also carried out by the government (Myanmar) with structured efforts to eliminate the Rohingya ethnicity.

Thirdly, the international response to Rohingya refugees has been massive at the bilateral, regional and international levels. However, all efforts made so far have not been sufficient to resolve the issue. The responses tend to be more political in nature rather than realistic solutions, as seen in the efforts to deport Rohingya refugees who have lost their citizenship.⁵

The record of discrimination against the Rohingya ethnic group continues without any solution in sight. In fact, news about Rohingya refugees in Indonesia has heated up again. On Monday, 11 December 2023, BBC News reported that 1,600 Rohingya refugees were reported to have settled in the Aceh region.⁶ The news mentioned that a member of the House of Representatives proposed to first check the status of refugees entering Indonesian territory. However, this was refuted by a BRIN researcher who stated that the proposal

¹ Kyven Palilingan, Legal Review of Refugee Management According to International Law, *Lex et Societatis*, Vol. IV/No. 1/Jan/2016. Compare Primadasa, et al. Problems of Refugee Management in Indonesia from the Perspective of International Refugee Law. *Legal Proceedings*, 17 (1), 44–51.

² Vindy Septia Anggrainy, Protection of Cross-Border Refugees in Indonesia According to International Law, *Lex et Societatis*, Vol. IV, No. 1, 2016.

³ Dewa Gede Sudika Mangku. (2021). Fulfilment of Human Rights for the Rohingya Ethnic Group in Myanmar. *Legal Perspective*, 21(1), 1–15. <https://doi.org/10.30649/ph.v21i1.14>. Lihat Kurniawan, Nalom. 2018. "The Rohingya Case and State Responsibility in the Enforcement of Human Rights". *Constitutional Journal* 14 (4):880-905. <https://doi.org/10.31078/jk1449>.

⁴ Ketut Arianta, et al. Legal Protection for the Rohingya Ethnic Group from an

International Human Rights Perspective. *Jurnal Komunitas Yustisia*. Vol. 3, No. 2, 2020.

⁵ Yumitro, G. (2017). The International Community's Response to the Rohingya Humanitarian Tragedy. *Sospol: Journal of Social Politics*, 3(2), 81–100. <https://doi.org/10.22219/sospol.v3i2.4886> See M Hafiz Algifari, The Indonesian Government's Response to the Arrival of Ethnic Immigrants in Rohingya, *Journal of International Relations Analysis*, Vol. 7 No. 2, May 2018. See Setiawan, I. P., & Suryanti, M. S. D. (2021). ASEAN's Involvement in Handling the Myanmar Conflict (Case Study: The Rohingya Ethnic Conflict 2017–2019). *POLITICOS: Journal of Politics and Government*, 1(2), 83–97. <https://doi.org/10.22225/politicos.1.2.2021.83-97>.

⁶ <https://www.bbc.com/indonesia/articles/c4nye1ewp2xo>. Accessed on Monday, 18 December 2023 at 04:50 WIB.

was contrary to Presidential Regulation (Perpres) Number 125 of 2016. Human rights must take precedence over everything else. Therefore, through his regulation, the president is trying to bring about a sense of justice and fulfilment of human rights. The protection of human rights is reinforced by the customary law of the Acehese people, which essentially stipulates the obligation to help victims of maritime accidents. Failure to do so will result in sanctions.

Other news from Kompas TV Aceh reported allegations of the involvement of several parties in human smuggling to the Aceh region of Indonesia. The police have questioned eleven Rohingya refugees (as witnesses) in connection with the case of human smuggling to the Aceh region. The police managed to arrest nine other people after examining the contents of two *mobile phones* belonging to the refugees.

This study complements existing studies, which lack focus on the sovereignty of the Indonesian state in handling cases involving Rohingya refugees. Thus, the big question in this study is to what extent does the Indonesian state have the authority to resolve the Rohingya refugee conflict? This problem formulation is divided into three questions: *First*, what is the history of the Rohingya conflict? *Second*, what is the response and attention of the international community towards Rohingya refugees? *Third*, to what extent does the Indonesian state have the authority to resolve the Rohingya refugee issue?

This study is based on the argument that the Indonesian state has the sovereignty to act on its own behalf with its own considerations in the legal, political,

economic and other fields. As a state based on the rule of law, Indonesia positions regulations at the core and foundation of statehood. In practice, with regard to international refugees, Indonesia has legalised Presidential Regulation No. 125 of 2016 on the Handling of Refugees from Abroad. This regulation serves as a reference for the state in dealing with asylum seekers and refugees, including Rohingya refugees.

Discussion

Historical Notes on the Rohingya Ethnic Conflict

Myanmar (formerly known as Burma/United Burma) is an ASEAN member state that gained independence from the United Kingdom (Great Britain) in 1948. The first president of Myanmar was Sao Shwe Thaik, and Myanmar declared itself an independent republic.⁷ The country's name was changed, followed by changes to the flag and national anthem, on 21 October 2010.⁸ The name change to Myanmar was intended to emphasise that the country was independent from British colonial rule and to express the hope of uniting all the ethnic groups scattered throughout the country. Burma itself is the name of one of the ethnic groups, while Myanmar means "united" in the Myanmar language. The aim of unity is for all ethnic groups to unite within the state of Myanmar, given that there are around 135 ethnic groups and more than 100 different dialects.⁹ Some of these ethnic groups include the Shan, Kachin, Chin, Mon, Rakhine, Burmese Muslims, Indian Muslims, Chinese Muslims, and others. However, instead of promoting ethnic unity in Myanmar, the government has

⁷ Wasalmi Wasalmi. (2023). History of the Rohingya Muslim Conflict. *Ta'rim: Journal of Education and Early Childhood*, 4(2), 200–215. <https://doi.org/10.59059/tarim.v4i2.217>.

⁸ Nasruddin, Islam in Myanmar, In al-Hikmah Journal, Vol. XIX No. 2, 2017, p. 62.

⁹ The Roots, "Fruits and Dreams of All The Muslims in Myanmar" article accessed on 15 December 2023 from <http://www.rohingya.jp/pdf/muslims.pdf>, pp. 1-2.

rejected certain ethnic minorities, one of which is the Rohingya.

The Myanmar government does not recognise the citizenship of the Rohingya ethnic group because it believes that this Muslim group was not an ethnic group that existed in Myanmar before independence. This was stated by Thein Sein (President of Myanmar), who said that granting citizenship to the Rohingya population was impossible. The Rohingya people are believed to be illegal immigrants from Bangladesh. As a result, the status of the Rohingya ethnic group has become unclear, and since 2012, this conflict has been in the international spotlight. The ongoing chaos and suffering of the Rohingya ethnic group is a major consequence of the Myanmar government's refusal to recognise the Rohingya as part of the Myanmar nation. In November 2014, the United Nations urged Myanmar to recognise the Rohingya ethnic group and grant them citizenship. Then, in October 2016, there was an attack by Rohingya people on a Myanmar police post on the Bangladesh-Myanmar border. Nine people were reported dead. Then in December 2016, the Myanmar military carried out a military operation in retaliation for the previous attack, killing hundreds of Rohingya people.¹⁰

The conditions of discrimination were supported by the Rakhine ethnic group's jealousy of the Rohingya ethnic group because the Muslim community continued to experience massive growth and development. This was considered something that could be disruptive and dangerous. In the economic sector, the Rohingya ethnic group is said to have reduced their rights to land in the Arakan

region, which is in fact the economic centre of the Rohingya ethnic group. As a result, the Rakhine ethnic group has taken discriminatory action against the Rohingya ethnic group. To make matters worse, this violence and discriminatory action is supported and protected by the Myanmar government. The Myanmar government has also destroyed and converted Muslim places of worship into Buddhist places of worship and residences for monks in the region. As a result, the Rohingya people have been left without places of worship, homes and livelihoods.

The Rohingya ethnic group is predominantly located in the northern Rakhine State of Myanmar, which borders Bangladesh.¹¹ However, in reality, neither Myanmar nor Bangladesh considers the Rohingya ethnic group as part of their country. The Rohingya ethnic group is now the most vulnerable community or ethnic group in the world, facing discrimination, unfair treatment, exclusion, persecution, and even denial of citizenship status. Since around 1987, thousands of Rohingya have fled to neighbouring countries, particularly in Southeast Asia, posing a threat to the security and stability of other nations, including the *Association of Southeast Asian Nations (ASEAN)* and the *United Nations High Commissioner for Refugees (UNHCR)*.¹² Acts of rebellion and illegal entry into other countries have created new problems. These rebellions reinforced the fact that Myanmar was unable to resolve the Rohingya ethnic conflict. In 2003, the UNHCR, the agency that handles refugees worldwide, recorded that there were 235,000 Muslims from northern Arakan in southern Myanmar in Cox's Bazar, Bangladesh, namely Kutapalong and

¹⁰ Thomas K. Ragland. 1994. Burma's Rohingyas in Crisis: Protection of "Humanitarian" Refugees under International Law. *Boston College Third World Law Journal*, Vol. 14, No. 2.

¹¹ Rosyid, Mohammad. 2019. Indonesia's Role in Handling the Rohingya Muslim Ethnic

Group in Myanmar. *Journal of Law & Development*: Vol. 49: No. 3, Article 6.

¹² Veronika Wulandari, The Myanmar Government's Treatment of the Rohingya Muslim Minority: A Historical and International Law Perspective, *Sui Generis Law Journal*, Vol. 2 No. 3, 2022, 53.

Nayapara. Furthermore, it is mentioned that the Muslim community has lived in this area since 2000. At the end of 2005, the UNHCR in Malaysia recorded that there were 11,277 Rohingya refugees from southern Arakan, Myanmar.¹³

The number of Rohingya refugees continued to increase until 2014, with *Human Rights Watch* reporting that there were 300,000 Rohingya people. The conflict peaked due to the murder, rape and robbery of Buddhist women from in Yanbye in 2012. Following this incident, a retaliatory killing of ten Rohingya people occurred on a bus in Taungup on 3 June 2012. Instead of resolving the conflict, the Myanmar government joined in attacking the Rohingya. This included Buddhist leader Venerable Ashin Wirathu, who actively spread terror and hatred with his militia group called the 969 Movement, especially after the destruction of the Buddha statues in Bamiyan (Afghanistan) by the Taliban.

The Myanmar government's policy towards the Rohingya ethnic minority has become an unresolved international issue. The fact that the Rohingya ethnic group is part of Myanmar, having lived there for hundreds of years before Myanmar gained independence, is historical evidence. However, the actions of the Myanmar government have now become a matter of law and human rights.¹⁴ The world seems to be turning a blind eye in responding to this humanitarian conflict. Or perhaps, it

prefers to remain silent and seek safety for its own country.¹⁵

International Attention to the Rohingya Ethnic Conflict

The international community seems to have been slow to respond to the suffering of the Rohingya ethnic group, who have endured years of violence and discrimination.¹⁶ Several countries that have responded include Pakistan with 200,000 refugees, the United Arab Emirates with 50,000 refugees, and Bangladesh with more than 200,000 Rohingya refugees.¹⁷ The refugees' conditions are not fully assisted and served to the maximum extent, and in fact, the majority are in a dire situation. This is because not all of them have strong economic conditions.

The Organisation of Islamic Cooperation (OIC) has responded to the Rohingya conflict through a resolution condemning the Myanmar military junta in 2000, and discusses the Rohingya issue every year. The Secretary General of the OIC, Prof. Ekmeleddin Ihsanoglu, has also stated the need for the Myanmar government to pay attention to the plight of the Muslim minority. However, this will be futile without real and organised efforts.¹⁸

ASEAN, as an association in the Southeast Asian region with territorial authority over various conflicts and human rights violations, participated in the

¹³ Hanifahturahmi. 2016. Discriminatory Policies Against the Rohingya Minority Group in Myanmar. *Journal of Public Policy*, Volume 7, Number 1, Pages 1-98.

¹⁴ Jawahir Thontowi. 2013. The Myanmar Government's Treatment of the Rohingya Muslim Minority: A Historical and International Law Perspective. *Pandecta*, Volume 8, Number 1, 51.

¹⁵ Wa Ode Rizka Fauzia Ali. (2022). *History of the Rohingya Muslim Conflict: History, Conflict, Rohingya Muslims*. *Indonesian Prosperous Community Service Journal*, 1(3), 43–62. <https://doi.org/10.59059/jpmis.v1i3.6>.

¹⁶ Yumitro, G. (2017). The International Community's Response to the Rohingya Humanitarian Tragedy. *Sospol: Journal of Social Politics*, 3(2), 81–100. <https://doi.org/10.22219/sospol.v3i2.4886>.

¹⁷ Kipgen, Nehginpao. (2014). Addressing the Rohingya Problem: *Journal of Asian and African Studies* 49, no. 2: 234–247.

¹⁸ Zarni, Maung. (2013). *Buddhist Nationalism in Burma*. Tricycle, Spring, http://www.academia.edu/download/30900393/burmese_buddhist_racism_final_print_version_from_tricycle_spring_2013_T.pdf.

resolution of the humanitarian conflict in Rohingya.¹⁹ Unfortunately, Myanmar refused to raise the Rohingya issue to the level of *high-level dialogue*, arguing that ASEAN had no right to intervene in the domestic affairs of a country.²⁰ In fact, ASEAN should not remain silent on procedural or domestic affairs of a country, because the Rohingya issue has become a humanitarian issue. In fact, the Myanmar military junta government is systematically trying to eliminate the Rohingya Muslim community. Even Buddhist leaders openly reject the Rohingya Muslims and insist that they must leave Myanmar.

Malaysia and Thailand, which share a border with Myanmar, have also failed to respond decisively to the conflict by providing protection to Rohingya refugees. 150,000 refugees in Thailand are facing deportation to their country of origin. Inhumane behaviour has also been observed in the form of removing boat engines and leaving refugees to sail on the open sea. Data shows that around 1,200 refugees were deported from Thailand to their home country.²¹ Meanwhile, in Malaysia, asylum requests from the Rohingya community have been ongoing since 1980. However, in reality, only a few are legally registered, because Malaysia itself does not adhere to the principle of *jus solis*, which states that children born in refugee areas have the same status as their parents.²²

The International Organisation for Migration (IOM), an international organisation that deals with migration, signed a cooperation agreement with the Indonesian government in 2000 to combat human trafficking and smuggling in Indonesia.²³ Some of the tasks carried out by the IOM are to ensure orderly and secure migration, campaign at the international level on immigration, open perspectives to find realistic and practical solutions to problems, and allocate humanitarian aid to migrants in need, both refugees and asylum seekers.

ASEAN has been urged to take immediate and decisive action and respond quickly to resolve the issue. This includes Malaysian Prime Minister Ahmad Badawi, who reminded ASEAN that the Rohingya conflict is not merely a domestic issue for Myanmar, but a problem that must be resolved regionally. If this issue is not resolved, it will affect ASEAN's image and credibility.²⁴ As a result, ASEAN has merely reminded Myanmar not to engage in sectarian violence and discrimination. ASEAN's difficulty in resolving the Rohingya conflict stems from its principle of non-interference in the affairs of member states. Sadly, ASEAN leaders also lack serious commitment to resolving the issue, or perhaps they are simply playing it safe. Since 2009, ASEAN has had the *ASEAN Intergovernmental Commission on Human Rights* (AICHR) as a commission

¹⁹ Zyck, S., Lilianne Fan, and Clare Price. ASEAN and Humanitarian Action: Progress and Potential. ASEAN and Humanitarian Action—Jakarta Expert Roundtable, Jakarta, 2014, 1–6. http://etd.lib.nsysu.edu.tw/ETD-db/ETD-search/view_etd?URN=etd-0715114-125135, 6.

²⁰ Riski Muhamad Baskoro. (2017). Examining ASEAN Charter of Human Rights: Study Case of Rohingya Crisis. Accessed 8 January <http://journalsweb.org/siteadmin/upload/7676ED716005.pdf>.

²¹ Lewa, Chris. (2009). North Arakan: An Open Prison for the Rohingya in Burma. *Forced Migration Review*, no. 32: 11.

²² Weissbrodt, David S., and Clay Collins. (2006). The Human Rights of Stateless Persons. *Human Rights Quarterly* 28, no. 1: 245–276

²³ E.N. Domlobo NST. 2017. The Role of the International Organisation for Migration (IOM) in Handling the Rohingya Refugee Issue in Indonesia. *PIR Journal*. Vol. 2 No. 1, 6.

²⁴ Sidhu, Jatswan S. Malaysia-Myanmar Relations Since 1958. <http://jis.uum.edu.my/images/pdf/4jis/5malaysiaia.pdf>.

for resolving human rights violations. In 2011, ASEAN also established *the ASEAN Humanitarian Assistance (AHA) Centre for Disaster Management*.²⁵

As a result, ASEAN has not contributed much to resolving the Rohingya ethnic issue. However, in various ASEAN forums, discussions about the violence in Myanmar are always avoided under the pretext of non-interference. ASEAN itself is also unable to force and pressure the Myanmar government to avoid violence and violations of human values.²⁶

Indonesia's Sovereignty in Addressing Rohingya Refugees

Rohingya refugees seem to be unwelcome everywhere. On the one hand, they are forced to flee their homeland, and on the other, other countries refuse to accept them. Returning to their home country, Myanmar, means they will be treated inhumanely, while fleeing to foreign countries means they will be ostracised and sent back, with some even having their boats confiscated, leaving them adrift in the middle of the sea and likely to die at sea. The Rohingya conflict is no longer a domestic issue for one country, but has reached a humanitarian level. The fate of the Rohingya people cannot be avoided. No child can choose to be born into any ethnicity other than the Rohingya.

Obtaining citizenship in a country is a right for everyone in the world, as stipulated in Article 2 of the 1948 *Universal Declaration of Human Rights*.²⁷ This means that, theoretically, all individuals in the world have citizenship status, as it is a recognition, appreciation and respect for human dignity.²⁸ Those who do not obtain citizenship status are referred to as *Stateless Persons*, because they are not recognised by any country.²⁹ This includes the case of the Rohingya ethnic conflict, which is in limbo and does not know where to seek recognition.

In Indonesia, particularly in Aceh, Rohingya refugees have been arriving since 2023 due to its geographical proximity to Myanmar, Thailand, and Malaysia. In responding to Rohingya refugees, the Indonesian government adheres to human rights standards and the International Refugee Law guidelines. The *Universal Declaration of Human Rights*, adopted by the United Nations General Assembly on 10 December 1948 through Resolution 217 A (III) in Article 14, states that:

- a. *Everyone has the right to seek and enjoy asylum from persecution in other countries.*
- b. *This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*

²⁵ Kaewjullakarn, Saovane and Lalin Kovudhikulrungsri. (2015). What Legal Measures Should ASEAN Apply to Help the Rohingya? http://klibel.com/wp-content/uploads/2015/04/KLIBEL6_Law__11_2f_fmN03Wuj.pdf

²⁶ Othman, Muhammad Fuad, Zaheruddin Othman, Kamarul Faizal Hashim, and Alias Azhar. Between Non-Interference and Responsibility to Protect: The Plight of the Rohingya People, https://www.researchgate.net/profile/Muhammad_Othman6/publication/304223271_Between_Non-interference_and_Responsibility_To_Protect_The

[_Plight of the Rohingya People/links/5769fc7e08ae7d2478cd8bfb.pdf](https://www.researchgate.net/publication/304223271_Between_Non-interference_and_Responsibility_To_Protect_The_Plight_of_the_Rohingya_People/links/5769fc7e08ae7d2478cd8bfb.pdf)

²⁷ Universal Declaration of Human Rights 1948, Convention relating to the Status of Stateless Persons 1954 and Convention on the Reduction of Statelessness 1961.

²⁸ Ifdhal Kasim and Johanes da Masenus Arus (editors), *Economic, Social and Cultural Rights: Selected Essays*, Book 2, (Jakarta: Elsam Press, 2001), 10.

²⁹ Darnela, L., & Nugroho, M. A. (2019). The Indonesian Government's Protection of Rohingya Immigrant Stateless Persons in Aceh. *Asy-Syir'ah: Journal of Sharia and Law*, 51(2), 473–495. <https://doi.org/10.14421/ajish.v51i2.299>.

This means that granting asylum to refugees in Indonesia is crucial in the context of international law.³⁰ The protection referred to is protection in accordance with human rights. It is clear that refugees are vulnerable to discriminatory treatment by any country where they seek asylum. Therefore, refugees must be protected on an international scale. This international legal protection is intended to provide equal access and equal rights as human beings, both men and women, as well as children who are not overlooked by the UNHCR.³¹

Another regulation governing international refugees is the 1951 Convention. This convention was established by *the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*. This Convention was also reinforced by the results of United Nations General Assembly Resolution No. 429. The principle in the of this regulation is the principle of *non-refoulement*, which means that a country is prohibited from expelling refugees or returning refugees who are threatened with persecution on the basis of race, religion, or politics.³² This principle is known as a source of water in the middle of the desert for refugees who highly uphold human rights so that fellow human beings, refugees must be accepted and treated as *ius cogens* in the international world.³³ The process of recognising refugees does involve quite a few stages and takes a long time. During this period,

countries are prohibited from expelling or forcing refugees to return to their country of origin.³⁴ The principle of *ius cogens* not only prohibits the expulsion of refugees, but also prohibits the expulsion of asylum seekers who have not yet obtained their status.

Indeed, theoretically, a person is considered an asylum seeker before being recognised as a refugee.³⁵ Regulations on asylum seekers in Indonesia were first issued through the Prime Minister's Circular Letter No. 11/RI/1956 on the Protection of Political Refugees.³⁶ Article 1 states that political refugees entering Indonesian territory shall receive protection based on human rights and freedoms in accordance with international customs. Consequently, refugees in Indonesia must have their human rights protected, including Rohingya refugees. In its development, the existence of this asylum institution was strengthened by MPR Decree No. XVII/MPR/1998 on Human Rights. Article 24 states that every individual has the right to seek asylum in order to obtain protection from other countries. Then, in 1999, Law Number 39 of 1999 on Human Rights, which recognises the right to seek asylum, was passed. Article 28 clearly states that (1) all individuals have the right to seek asylum and protection from other countries; (2) this right does not include crimes that are not political in nature or contrary to the principles and objectives of the United

³⁰ Romsan, Introduction to International Refugee Law: International Law and Principles of International Protection, (Jakarta: UNHCR, 2003), pp. 138-139.

³¹ UNHCR, "Introduction to International Protection: Protecting People of Concern to UNHCR", Self-Learning Module, United Nations, p. 7.

³² Seline Trevisanut, "International Law and Practice: The Principle of Non-Refoulement and the De-Territorialisation of Border Control at Sea", *Leiden Journal of International Law*, September 2014, Vol. 27, No. 3, p. 66.

³³ Jean Allain, "Ius cogens Nature of Non-refoulement", *International Journal of Refugee Law*, Vol. 13, No. 4, p. 241.

³⁴ Darnela, L., & Nugroho, M. A. (2019). The Indonesian Government's Protection of Stateless Rohingya Immigrants in Aceh. *Asy-Syir'ah: Journal of Sharia and Law*, 51(2), 473–495. <https://doi.org/10.14421/ajish.v51i2.299>.

³⁵ Sulaiman Hamid, *Asylum Institutions in International Law*, (Jakarta: PT Raja Grafindo Persada, 2002), p. 39.

³⁶ Prime Ministerial Circular Letter Number: 11/RI/1956 concerning the Protection of Political Refugees, Article 3.

Nations.³⁷ Furthermore, asylum institutions are also included in the Second Amendment to the 1945 Constitution, Article 28G paragraph (2), which states that every person has the right to freedom and freedom from inhumane treatment.

In 2010, the Director General of Immigration ratified Regulation of the Director General of Immigration Number IMI-1489.UM.08.05 concerning the Handling of Illegal Immigrants. This regulation stipulates that anyone who is in the territory of Indonesia without any documents cannot be deported. This can be seen in Article 2, which states that: (1) immigrants who do not have documents or are illegal in Indonesia shall be subject to immigration procedures. (2) immigrants who declare their intention to seek asylum for their reasons shall not be deported, and coordination with international organisations to address refugee cases (UNHCR) shall be carried out.

In addition to the above regulations, the settlement of asylum seekers is also regulated in Law Number 6 of 2011 concerning Immigration. Every refugee or person seeking asylum who enters the territory of Indonesia is treated in the same way as foreigners who enter Indonesia, such as foreign tourists, foreign students, and people who enter legally or illegally, including smuggling.³⁸ Article 83 paragraph (1) of Law 6/2011 stipulates that immigration officials have the authority to place foreigners in shelters (immigration detention centres) if they enter Indonesian territory even without official travel documents. The documents referred to are valid documents from officials with

authority in a country, the United Nations, or other international organisations that state the identity of the document holder.³⁹

The handling of and response to Rohingya refugees must be based on humanitarian principles. Several concrete steps can be taken, such as securing and registering refugees, coordinating with representatives of the foreign nationals' countries, requesting shelter assistance from the IOM, and coordinating with the UNHCR to determine refugee status.⁴⁰

Indonesia's attention to this issue is clearly demonstrated in Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad (Perpres 125/2016). This presidential regulation comprises 40 articles in four main sections, namely Chapter on Discovery, Chapter on Shelter, Chapter on Security, and Chapter on Immigration Supervision. In the general provisions of Perpres 125/2016, foreign refugees are defined as foreign persons or individuals who occupy or are present in the territory of the Republic of Indonesia due to concerns about unequal treatment based on race, religion, ethnicity, nationality, or socio-political status. This treatment is also supported by the fact that they do not want to be protected by their country of origin or have asylum seeker status (refugees from the UN through the High Commissioner for Refugees in Indonesia).

According to Kneebone, the interpretation of the terms refugee and asylum seeker tends to be equated with the

³⁷ Law on Human Rights, Law No. 39 of 1999, explanation of Article 28 paragraph (2).

³⁸ Boer Mauna. 2005. *International Law: Definition, Role and Function in an Era of Global Dynamics*. Alumni, Bandung, 9.

³⁹ Kneebone, Susan (2020) "Presidential Regulation No. 125/2016 as a Catalyst for Change in the Policy on the Rescue of Rohingya Refugee Boats," *Journal of Law & Development*: Vol. 50: No. 3, Article 15. DOI:

10.21143/jhp.vol50.no3.2770. Available at: <https://scholarhub.ui.ac.id/jhp/vol50/iss3/15>.

⁴⁰ M. Alvi Syahrin and Yusa Shabri Utomo, *Implementation of Law Enforcement on Asylum Seekers and Refugees in Indonesia After the Enactment of Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad*, *Scientific Journal of Immigration Studies*, Immigration Polytechnic, Volume 2 Number 2 Year 2019, 85.

meaning of refugee.⁴¹ This definition has an impact on how the UNHCR handles asylum seekers. This means that both asylum seekers and refugees are entitled to a UNHCR identity card. Previously, there was a difference, with only asylum seekers receiving a UNHCR identity card. However, this Presidential Regulation appears to be relevant and coherent with immigration regulations in Indonesia.

Furthermore, Presidential Regulation 125/2016 describes the term "discovery" as meaning the discovery of refugees in an emergency situation within the territorial waters of Indonesia. In the discovery process, coordination and implementation are carried out by the Search and Rescue Agency (SAR Team). This agency involves the Indonesian National Armed Forces, the Indonesian National Police, the Ministry responsible for government affairs in the field of transportation, the agency responsible for government affairs in the field of maritime security and safety, also known as the Maritime Agency, and other relevant non-ministerial government agencies that carry out tasks in Indonesian waters. These agencies are assisted by the community, which plays an active role in finding and reporting refugees in emergency situations.

In an emergency, refugees must receive immediate assistance, in the form of rescue from ships in danger of sinking, evacuation to safe ports, identification of refugees requiring medical assistance, and transfer of refugees to temporary shelters (Immigration Detention Centres). Immigration Detention Centres are agencies within the Ministry that are responsible for administering government affairs in the field of law and human rights. However, if a particular region does not yet have a detention centre, refugees are

handed over to the Immigration Office in that region. Refugees are then checked for travel documents, immigration status, and identity. If a refugee is deceased, coordination with the Indonesian National Police, particularly *the disaster victim identification* team, is required for identification purposes and coordination with the Ministry of Law and Human Rights through the Immigration Detention Centre for data collection. Coordination with the Ministry of Political, Legal and Human Rights, which oversees the Directorate General of Immigration, is also a new feature of Presidential Regulation No. 125 of 2016.⁴²

In the chapter on shelter, Presidential Regulation 125/2016 explains the process of shelter for refugees who are found and registered, which is carried out in coordination between the Detention Centre and the local government. If accommodation is not yet available, refugees can stay in temporary accommodation and the local government has the authority to use local government inventory as refugee accommodation in the form of a loan between the local government and the central government. Meanwhile, the accommodation must at least have access to health services and places of worship, be located in the same area as the Immigration Detention Centre, and be relatively safe.

The security provisions in Presidential Regulation No. 125/2016 are contained in Articles 31 and 32. Security for refugees is provided by the Indonesian National Police. These security duties include: (1) ensuring that refugees remain and stay in the shelter; (2) creating a sense of security in the shelter environment; and (3) drafting and disseminating regulations

⁴¹ Kneebone, Susan (2020) "Presidential Regulation No. 125/2016 as a Catalyst for Change in the Policy on the Rescue of Rohingya Refugee Boats," *Journal of Law & Development*: Vol. 50: No. 3, Article 15.

⁴² Kadarudin et al., 'The Situation of International Refugees in Indonesia: A Legal Perspective'. *Veritas et Justitia*. (2018) 4 (1), 1-29.

containing obligations and prohibitions for refugees.

The fourth part is immigration supervision carried out by Immigration Detention Centre officers. This supervision covers supervision when refugees are found, supervision while they are in the shelter area, departure to their destination country, voluntary repatriation, and deportation. In the case of refugees who are transported to their destination country, the following must be done: (1) receive notification of approval from the United Nations through the High Commissioner for Refugees in Indonesia, which contains information on the refugee's name and destination country; (2) complete departure administration with an exit permit and no return permit; (3) be escorted from the shelter to the nearest immigration checkpoint. Supervision for refugees who are voluntarily repatriated includes: (1) receiving requests from refugees who wish to return to their country of origin; (2) completing departure administration for travel documents and non-return permits; and (3) escorting refugees to the nearest immigration checkpoint.

In general, Presidential Regulation No. 125/2016 demonstrates protection for refugees and asylum seekers in Indonesia. This Presidential Regulation is relevant to Article 28 (G) of the 1945 Constitution, which protects human rights by granting the right to asylum.⁴³ The Indonesian government affirms its sovereignty as a

state by handing over asylum to the UNHCR and ultimately issuing Presidential Regulation 125/2016.⁴⁴

In fact, Presidential Regulation No. 125/2016 is highly consistent with the character of the Indonesian people. Indonesia itself has the principle of promoting humanity without distinguishing between religion, race, and ethnicity.⁴⁵ This is also in accordance with the Qur'an, which explains the value of humanity without distinguishing between race, ethnicity, and nationality; Meaning: "O mankind, indeed We have created you from a male and a female and made you into nations and tribes, that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous." (Q.S. al-Hujurat:13)⁴⁶

The second principle of Pancasila has the meaning of humanity. This value of humanity is consistent with the protection of human rights that uphold the dignity of human beings as a whole. The value of humanity does not discriminate against ethnicity, religion, race, or even skin colour. The value of humanity appreciates and respects human beings as equal to other human beings. This humanistic value is also emphasised in the Preamble to the 1945 Constitution, which embodies humanity as manifested in positive regulations or laws in Indonesia.⁴⁷ This is also supported by the 1949 Draft Declaration on the Rights and Duties of States prepared by the *International Law Commission*, which ensures that states have basic obligations and rights. These basic

⁴³ Bilal Dewansyah, Wicaksana Dramanda and Imam Mulyana, 'Asylum Seekers in a Non-Immigrant State and the Absence of Regional Asylum Seekers Mechanism: A Case Study of Rohingya Asylum-Seekers in Aceh-Indonesia and ASEAN Response' (2017) 3 *Indonesian Law Review* 341-366.

⁴⁴ Oly Viana Augustine, 'The Constitutional Will in Human Rights Protection for Refugees' (2016) 3(1) *Constitutional Review* 119-140).

⁴⁵ Safrudin, M., Nasaruddin, N., & Ihwan, I. (2023, 20 April). Interpretation of Social

Verses: Implementation of Humanitarian Values in Modern Life. *TAJDID: Journal of Islamic and Humanitarian Thought*, 7 (1), 135. <https://doi.org/https://doi.org/10.52266/tajdid.v7i1.1851>

⁴⁶ Al-Qur'an, Surah Al-Hujurat, verse (13).

⁴⁷ Yudi Latif, *The Perfect State: The Historicity, Rationality, and Actuality of Pancasila*, Jakarta: Kompas Gramedia, 2011, p. 125.

obligations are: *not resorting to war*, not inciting *civil* strife in a country, respecting *human* rights, resolving disputes peacefully, performing obligations in *good faith*, and non-interference in the affairs of other countries. Meanwhile, the basic rights of a state include *independence and equality of states*, *territorial* jurisdiction, and *self-defence* or *self-preservation*.⁴⁸

Human rights conflicts are often the main cause of refugees and mass migration. Countries often claim their sovereignty in regulating immigration issues, while human rights organisations and the international community often emphasise the right of refugees to flee conflict or persecution.⁴⁹ The movement of a person from one country to another can have legal jurisdictional consequences. When people or objects leave a country, the state's jurisdiction over them is also relinquished.⁵⁰

During the implementation of Presidential Regulation No. 125 of 2016 on Foreign Refugees, many obstacles and challenges were encountered. Some local governments did not fully understand this Presidential Regulation, so that in dealing with refugees, they actually did things that were contrary to the presidential regulation.⁵¹ The lack of coordination between agencies had an impact on the handling process, which never yielded results. Even the problem of funding became an obstacle in handling refugees. This is compounded by the local community's outright rejection of refugees because they feel disturbed and annoyed by the refugees' different attitudes and behaviours cultural background. In fact,

⁴⁸ Joseph Gabriel Stark and Translator Bambang Iriana Djajatmadja, Introduction to International Law, 10th ed. (Jakarta: Sinar Grafika, 2008), p. 202.

⁴⁹ Harwita Sari. (2023). Human Rights Conflicts and State Sovereignty: A Review of Contemporary Issues. *Jurnal Perspektif - Jayabaya Journal of Public Administration*, 22(1), 98–108. Retrieved from <https://ejournal-jayabaya.id/Perspektif/article/view/59>.

Presidential Regulation 125/2016 is very much in line with the Indonesian people's personality, which prioritises humanity. From the process of discovery, shelter, security, to supervision by immigration.

Ultimately, Presidential Regulation No. 125/2016 requires support from all levels of government and society to promote and uphold humanitarian values in accordance with Pancasila, which is the foundation of the state. Several things that need to be evaluated are coordination between relevant institutions or agencies, funding for refugee management, and a shared commitment to upholding human dignity in its entirety.

Conclusion

The conclusions of this study are threefold:

First, the history of persecution of the Rohingya ethnic group in Myanmar cannot be separated from the cruelty of President Thein Sein, who led the Myanmar government to deny citizenship to the Rohingya ethnic group because he believed that this Muslim group was not an ethnic group that existed in Myanmar before independence. According to President Thein, granting citizenship to the Rohingya population was impossible. The Rohingya population is believed to be part of illegal immigrants from Bangladesh. Thus, the status of the Rohingya ethnic group has become unclear and since 2012 this conflict has been in the international spotlight.

Secondly, international organisations are involved in handling Rohingya refugees, including ASEAN, UNHCR,

⁵⁰ M. Iman Santoso. (2023). State Sovereignty and Jurisdiction from an Immigration Perspective. *Binamulia Hukum*, 7(1), 1–16. <https://doi.org/10.37893/jbh.v7i1.310>

⁵¹ Penny Naluria Utami. 2019. Implementation of Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad in the Riau Islands. *Indonesian Legislation Journal*. Volume 16 Number 3, 312.

OIC, IMO, and the UN. However, ASEAN, as an association in the Southeast Asian region of which Myanmar is a member, has the territorial authority to resolve various conflicts and human rights violations.

Thirdly, in general, Indonesia has absolute authority to resolve the Rohingya refugee issue. This is because, broadly speaking, Presidential Regulation 125/2016 is very much in line with the Indonesian national character, which prioritises humanity in the process of discovery, shelter, security, and supervision by immigration. This Presidential Regulation reflects and embodies the principles of Pancasila, particularly the second principle, " " which emphasises humanity that is just and civilised.

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