

The Struggle to Accept Rohingya Refugees in The Perspective of Law and Human Rights

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Abstract : *This study delves deeper into the protection of Rohingya refugees' human rights as a humanitarian response with implications for societal injustice. The research employs normative legal research methods. The results of the study saw that from the absence of obligations as fulfillment of rights carried out by Rohingya refugees who received benefits without burden, or Rohingya refugees who received greater benefits from Indonesian society without burden. Furthermore, there are implications for the destruction of the socio-cultural order in the form of knowledge, norms, regulations, and skills inherited from Indonesian society. This can be seen from the behavior and actions of Rohingya refugees who do not maintain cleanliness, do not obey Islamic law and customs in society, do not follow local norms and customs, and commit crimes of rape against minors.*

Keywords : Law and Human Rights, Rohingya refugees, Struggles.

INTRODUCTION

Human rights are a set of rights that are inherent in the nature and existence of humans as God's creatures, and they are a gift that must be respected, upheld, and protected by the rule of law and everyone else in order to honor and protect human dignity.¹ It is frequently claimed that rights based on law (legal rights) are distinct from rights derived from other norms. Paton states legal rights as rights that are recognized and protected by law. Jeremy Bentham defined rights as the children of the law. Real rights emerge as a result of actual laws. Imaginary rights, on the other hand, stem from imaginary law, specifically natural law.² Therefore, he defines rights as interests that are protected by law. These

interests are not created by the state; they already exist in social life, and the state simply selects which ones to protect.³

Surprisingly, the spread of human rights values has sparked opposition from some government leaders. Human rights and democracy are associated with Western cultures. This new culture is known as "Americanization" because it closely resembles the American way of life. This new culture frequently clashes with the local culture,⁴ as is the case in Indonesia. Indonesia, a country that values human rights, does not fully embrace them, as human rights in Indonesia are still based on national and regional interests. This is done in order to prevent social conflicts in society. Human rights embraced by the Indonesian people keep paying attention to

¹ Pasal 1 angka 1 Undang- Undang No 39 Tahun 1999 tentang Hak Asasi Manusia

² Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana, Jakarta, 2016, hlm. 142

³ G.W Paton, *Textbook of Jurisprudence*, English language book Society, Oxford University Press,

London, 1972. di kutip dari Peter Mahmud Marzuki I, *Ibid.*, hlm. 151.

⁴ Robertua, V. (2015). *Globalisasi dan Hak Asasi Manusia (HAM): studi kasus pelanggaran HAM di Myanmar. Sociae Polites*, 16(1), 1-16. Hal 2

the national interests of the nation, where national interests, according to Hans J. Morgenthau, include, among others: first, protection of physical identity in the sense of being able to maintain its territorial integrity; second, protection of political identity in the sense of being able to maintain its economic and political regime; and third, protection of its culture in the sense of being able to maintain its linguistics and history. The national interest of a country is the result of policymakers' decisions, which can differ or even contradict one another. National interest can be defined as something beneficial to the nation.⁵ As a result, Indonesian positive law continues to function in accordance with the spirit of the law. In line with this, the ethnic humanitarian conflict in Myanmar has forced the Indonesian people to take new legal actions. Many Rohingya refugees come to Indonesia under the guise of seeking humanitarian protection.

Legal arrangements for dealing with refugees from other countries. In accordance with Article 3 of Presidential Regulation 125/2016, the treatment of refugees adheres to generally accepted international standards and is in accordance with applicable laws and regulations. It also means that it is still based on the provisions of laws and regulations that apply in Indonesia for the handling of Rohingya refugees, as coordinated by the Minister of Political, Legal, and Security Affairs⁶ and carried out within the framework of policy formulation, that include:⁷

- 1) discovery;
- 2) shelter;
- 3) security; and
- 4) immigration control.

The refugee regulation is also based on provisions relating to the grant of asylum to Rohingya. If you observe to the Article 26 of Law 37 of 1999 states that the granting of asylum to foreigners is done in accordance

with national laws and regulations, as well as international law, customs, and practices. It also means that the community's laws and customs continue to guide its acceptance of Rohingya refugees. Aside from that, despite having a positive refugee law, Indonesia has yet to become a state party to the 1951 Convention and 1967 Protocol. The Indonesian government's failure to ratify the 1951 Convention and 1967 Protocol is a strong indication that the country has no special obligations on a national and international level. If we look at the ratio of laws that have not ratified the 1951 Convention on Refugees, among others, according to the following:

1. Indonesia, as a developing country, is economically and socially incapable of implementing the 1951 Convention and the 1967 Protocol. Furthermore, this will be a new culture that may clash with the existing culture in the community. The current social issue is that local Acehnese people refusing Rohingya refugees because they are believed to be incompatible with existing customs and culture.
2. The consequences of ratifying the 1951 Convention and the 1967 Protocol include Indonesia's obligation to carry out the provisions of the 1967 Convention, for example:
 - a) Article 4 (freedom of religion);
 - b) Article 17 (right to work and receive wages);
 - c) Article 21 (right to own a home);
 - d) Article 22 (right to education); and others.

If we look at Indonesia today, there is still a high rate of unemployment. In addition to the demographic advantage, today's workers continue to live in poverty and are far from prosperous, particularly in terms of home ownership. Furthermore, the illiteracy rate has not been reduced, necessitating

⁵ Yani, Bandung, (2017). Pengantar Ilmu. Hubungan Internasional, PT Remaja Rosdakarya. Hal 17

⁶ Pasal 4 ayat (1) Peraturan Presiden Nomor 125 Tahun 2016 tentang Penanganan Pengungsi Dari Luar Negeri ("Perpres 125/2016")

⁷ Pasal 4 ayat (2) Perpres 125/2016

a reconsideration of the 1951 Convention ratification policy. If viewed legally, Indonesia has several articles in the convention that are deemed difficult to implement. To give an example, Article 17 of the 1951 Convention requires state parties to provide jobs for refugees. On the other hand, Indonesia remains a developing country with a high unemployment rate. Then, despite the fact that poverty persists in Indonesia, Article 21 of the 1951 Convention provides for the provision of houses for refugees. Furthermore, there are areas in Indonesia that require adequate infrastructure from the central government. If various provisions are ratified by the Indonesian government at this time, it has the potential to create inequality among Indonesians.⁸ This means that the ratio legis of the Indonesian government has not ratified the 1951 Convention and 1967 Protocol due to national interests that will be difficult to achieve if the Indonesian government ratifies the 1951 Convention and 1967 Protocol.

3. Essentially, international law upholds the principles of nonintervention and consent (*kesepakatan negara*).⁹ This means that the Indonesian government has yet to reach an agreement with the international community, particularly the UN, on the shelter of Rohingya refugees. According to Malcolm N. Shaw, a state or international organization cannot intervene in matters that are fundamentally related to the affairs or problems of another country or state. This means that each country has the freedom to determine

its own affairs or problems without interference from any other party, based on the principle of sovereignty.¹⁰ According to Charles Loyseau's Kriegel, the state has sovereignty, which is defined as “sovereignty is the defining moment and culmination of power, the moment when the State must come into being”... Sovereignty is the form which gives being to the state; it is inseparable from the state; without it, the state vanishes.”¹¹ So, the sovereignty of the state is the decisive moment and the culmination of power at the time when the Indonesian State must be established. “...it is further explained that sovereignty is the form that gives life to the state; it is inextricably linked to the state; without it, the state ceases to exist.”¹² As a result, the supreme power that represents all people is referred to as the “*leges imperii*.” This sovereignty is a principle held by the Indonesian people, and no country or international organization can compel them to accept Rohingya refugees or ratify the 1951 Convention or 1967 Protocol. This is in alignment with Sefriani's opinion, which holds that there is no supranational body with the authority to create and enforce international rules under international law.¹³ As a result, no state has the authority to require Indonesia to ratify the 1951 Convention and the 1967 Protocol. According to Raustiala, the state, on the other hand, holds a very important and dominant position (*par excellence*) within the international legal system. “Unbundling the state and reconnecting its constituent parts across national borders results in a

⁸ Sultoni, Y. (2014). Alasan indonesia belum meratifikasi konvensi 1951 tentang pengungsi dan perlindungan hukum bagi pengungsi di indonesia (*Doctoral dissertation, Brawijaya University*). Hal. 8

⁹ Riyanto, S. (2012). Kedaulatan negara dalam kerangka hukum internasional kontemporer. *Yustisia*, 1(3). Hal. 8

¹⁰ Malcolm N. Shaw. (1991). *International Law*. UK: Cambridge University Press. Hal. 719

¹¹ Kriegel, B. (1995). *The state and the rule of law*. Hal.15

¹² Ibid.,hal 16

¹³ Sefriani, S. (2011). Ketaatan masyarakat internasional terhadap hukum internasional dalam perspekti filsafat hukum. *Jurnal Fakultas Hukum UII*, 18(3), 405-427. Hal. 412

conceptual reconfiguration of state power that, while distinct, maintains the state as the central actor in the international system. According to this argument, the state continues to be the primary source of power and law in the international system, albeit in a disaggregated manner."¹⁴ It also means that, for information, all states, including those that have not ratified the 1951 Convention and 1967 Protocol, are required to uphold refugee protection standards that have become part of general international law because the convention has become *jus cogens* (a general international law norm accepted and recognized by the international community as a whole),¹⁵ and no refugee can be returned to a region where his life or freedom is in danger.¹⁶

Indonesia retains sovereignty and did not ratify the 1951 Convention or the 1967 Protocol, but it is still bound by general international law norms accepted and recognized by the international community as a whole. As a result, even though Indonesia did not ratify the convention and protocol, the country still has an international obligation to comply with these regulations, albeit not completely. However, this does not imply that the Indonesian government must prioritize national interest considerations in managing Rohingya refugees, who have been supported by the United Nations High Commissioner for Refugees ("UNHCR"), a global refugee agency mandated by the United Nations to protect refugees and

support refugees in finding solutions to the plight of international refugees.¹⁷ Although Indonesia is not yet a signatory to the 1951 Convention and 1967 Protocol, nor does it have a refugee status determination system, the government has authorized UNHCR to carry out its refugee protection mandate and deal with refugee issues in Indonesia.

The UNHCR's protection begins with making sure that refugees and asylum seekers are protected from refoulement (forcible return to their place of origin where their life or freedom is threatened or they face persecution). Refugee protection also includes the process of verifying the identities of asylum seekers and refugees in order for them to be registered and issued with individualized documentation. In the case of Rohingya refugees in Indonesia, UNHCR Indonesia assists the government with solving refugee issues and developing solutions for refugees. During the Rohingya refugees' stay in Indonesia, UNHCR works with the authorities to ensure that their needs are met and that they can live in dignity.¹⁸

The struggle for acceptance of Rohingya refugees is also present in the community. Atip Latipulhayat, who argues that the Indonesian government is responsible for handling Rohingya refugees in order to comply with humanitarian principles, international legal instruments, and Presidential Regulation 125 of 2016, sees both pros and cons to this approach. In addition, Indonesia follows the Pancasila ideology, which is based on the spirit of humanity.¹⁹ However, Hikmahanto Juwana disagrees, arguing that the Indonesian

¹⁴ Raustiala, K. (2002). The architecture of international cooperation: Transgovernmental networks and the future of international law. *Va. J. Int'l L.*, 43, 1. Hal. 11

¹⁵ Fattah, V. (2017). Hak asasi manusia sebagai jus cogens dan kaitannya dengan hak atas pendidikan. *Yuridika*, 32(2), 352. Hal. 355

¹⁶ Afriandi, F., and Nizmi, Y. E. (2014). Kepentingan indonesia belum meratifikasi konvensi 1951 dan protokol 1967 mengenai pengungsi internasional dan pencari suaka. *Transnasional: Jurnal Ilmu Hubungan Internasional Universitas Riau*, 5(2), 1-13

¹⁷ Setiyono, J. (2022). Kontribusi UNHCR dalam penanganan pengungsi internasional di Indonesia. *Jurnal Masalah - Masalah Hukum*, Vol. 46, No. 3. Hal. 280

¹⁸ 14 Fakta Mengenai Pengungsi Rohingya, [UNHCR Indonesia](#), yang diakses pada Kamis, 7 Desember 2023, pukul 01.24 WIB

¹⁹ Andistan, M. A. A. P., and Zulfikar, A. (2018). Indonesian government challenges in ratification of the international convention on refugees. *The Journal of Islamic Studies and International Relations*, 3(1), 31-44. Hal. 34

government should prioritize national interest considerations when dealing with Rohingya refugees. In addition, there must be a firm stance on limiting the number of refugees accommodated and the duration of their temporary stay.

METHOD

In this study, the author employs normative legal research, which focuses on literature and law study. According to **Philipus M. Hadjon** and **Tatiek Sri Djatmiati**, normative legal research always departs from the nature of legal science as practiced in legal science.²⁰ In accordance with that, **Peter Mahmud Marzuki** discovered that legal research, also known as legal research, is legal research that employs aspects of the approach, the statutory approach (the statutory approach), and aspects of the conceptual approach.²¹ The author of the statutory approach (Statute Approach) describes the hierarchy and principles of legislation, conventions, and protocols.²² Furthermore, in this study, the author employs aspects of a conceptual approach, in which the author attempts to describe legal concepts by departing from the legal views of experts and doctrines that emerge in science in the field of law, both national and international.²³

RESULTS AND DISCUSSION

A. Legal Protection of Rohingya Refugees in Human Rights Perspective

The Rohingya are an ethnic group in Myanmar. The Rohingya people originated in the northern townships of Rakhine State, which are also known as Arakan, in Myanmar's western region

since the seventh century AD. Today, approximately 600,000 Rohingya live in Myanmar. The Rohingya are a Muslim minority who have been living in western Myanmar for centuries. Despite having lived in Myanmar for centuries, the Myanmar government considers the Rohingya to be part of the Bengali ethnic group, which is why they are not recognized as one of Myanmar's ethnic groups, preventing them from obtaining Myanmar residency permits. Since 1978, the Rohingya community has faced a variety of human rights violations, including genocide.²⁴ The Rohingya's freedom of movement is severely restricted, and the majority of them are not recognized as Myanmar residents. Rohingya Muslims were also expelled from Myanmar and killed; their homes were burned down, resulting in a large number of deaths, including children and women.

The Myanmar government's gross human rights violations against the Rohingya constitute crimes against humanity and have resulted in forced evictions. Forced eviction here refers to the use of systematic actions. The Rohingya were subjected to ethnic cleansing both structurally and legally, which escalated into violence against the Rohingya ethnic group. Civil registration issues also arise for Rohingya children, which has administrative implications because they lack documents proving their identity. Undocumented Rohingya children become even more vulnerable as they are forced to flee Myanmar in search of refuge. Rohingya children face few options for crossing international borders because they are

²⁰ Hadjon, P. M., and Djatmiati, T. S. (2016). *Argumen Hukum*, Surabaya. Gadjah Mada University Press, Cetakan Ke 7, 2016, hal 3.

²¹ Ibrahim, J. (2010). *Teori dan Metode Penelitian Hukum Normatif*, cet ke-3. Malang: Bayumedia Publishing. Hal 93

²² Peter Mahmud Marzuki, (2005). *Penelitian hukum, Edisi Revisi*, Jakarta, Kencana. Hal 136.

²³ *Ibid*, hal 177.

²⁴ ani, D. (2013). Peran office of the high commissioner for human right dalam penyelesaian kasus genosida etnis rohingya di myanmar (1978-2012). *Jurnal Hubungan Internasional*, 1(2), 50. Hal 42

undocumented migrants or asylum seekers. Human trafficking by sea is one method for preventing refugee children from leaving Myanmar.²⁵

The legal protection of the Rohingya ethnic group under international law is frequently governed by international instruments like the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The 1966 International Covenant on Economic, Social, and Cultural Rights prohibits genocide, torture, and all forms of racial discrimination.²⁶

The protection of human rights is considered necessary by the Indonesian people against ethnic Rohingya who seek asylum in Indonesia as part of the Indonesian nation being a country that is consistent with the spirit of the constitution to show that human rights cannot be separated from the 1945 Constitution of the Republic of Indonesia, as stated by **Soedjono Dirdjosisworo** as follows:

- a. Human rights are rights that do not conflict with the 1945 Constitution and Pancasila; even the birth of the Republic of Indonesia is based on the recognition of human rights as stated in the preamble of the 1945 Constitution of the Republic of Indonesia.
- b. Human rights are rights that are inseparable from and are a protection of the values of dignity, so they therefore must be upheld by the nation and state of the Republic of Indonesia, which adheres to the philosophy of Pancasila.²⁷

The Indonesian government has sovereignty and has not ratified the 1951 Convention or the 1967 Protocol, however it is still subject to general international law standards that are accepted and recognized worldwide. As a result, even though Indonesia has not ratified the convention and protocol, it still has an international obligation to comply with these provisions, albeit not completely. However, this is not an absolute, which means that the Indonesian government must prioritize national interests; not ratifying implies not recognizing, so it is not required to submit. The acceptance of Rohingya refugees reflects the Indonesian nation's concern for human values, which is consistent with the spirit of Pancasila and the Republic of Indonesia's Constitution of 1945. and reaffirmed that, according to Telders, Van der Grinten, and Molengraff, a norm can be broken if an interest intended to be protected by the norm is violated. This theory becomes a powerful tool for rejecting a claim from the international community that feels harmed by an action that harms the Indonesian people.²⁸ This implies that international legal norms can be violated at any time when national interest considerations do not necessitate various reasons, such as community rejection, new implications for the potential for social conflict, a threat to national sovereignty, and uncertainty about the number of refugees accommodated and the duration of temporary stay.

The legal protection that's provided by the Indonesian people cannot be divorced from the existence of its

²⁵ Tiekens, S. (2013). Ketiadaan kewarganegaraan pada anak-anak rohingya sebagai bentuk kekerasan struktural berbasis etnis (Studi kasus anak-anak pengungsi rohingya di community housing wisma YPAP Medan). *Jurnal Kriminologi Indonesia*, 9(1), 51-65.. Hal 58

²⁶ Arianta, K., Mangku, D. G. S., and Yuliantini, N. P. R. (2020). Perlindungan hukum bagi kaum etnis rohingya

dalam perspektif hak asasi manusia internasional. *Jurnal Komunitas Yustisia*, 3(2), 166-176. Hal 174

²⁷ Soedjono Dirdjosisworo, *Pengadilan Hak Asasi Manusia Indonesia*, Bandung, Citra Aditya Bakti, 2002, hlm 20

²⁸ Wilamarta, M. (2002). Hak pemegang saham minoritas dalam rangka good corporate governance. *Jakarta: FH UI*. Jakarta. Hlm.20.

acknowledgment in the preamble of the 1945 Constitution of the Republic of Indonesia with the Universal Declaration of Human Rights 1948, which takes on national law and international law applicable in Indonesia, among others:

- a. Article 28A of the 1945 Constitution (which guarantees the right to life and the right to defend life) is the same as Article 3 of the Universal Declaration of Human Rights.
- b. Article 28D paragraph (1) of the Republic of Indonesia's 1945 Constitution (which guarantees the right to recognition, guarantees, protection, and certainty of a just law, as well as equal treatment before the law), is identical to Article 7 of the Universal Declaration of Human Rights.
- c. Article 28G paragraph (1) of the 1945 Constitution (which guarantees the right to self-protection, family protection, honor, dignity, security, and freedom from fear of doing or not doing something) is identical to articles 1–6 of the Universal Declaration of Human Rights.
- d. Article 28G paragraph (2) of the 1945 Constitution (guarantees the right to be free from torture, which is consistent with Articles 5 and 6 of the Universal Declaration of Human Rights.)
- e. Article 29I paragraph (1) of the Republic of Indonesia's 1945 Constitution (which guarantees the right to life, the right not to be tortured, and the right not to be prosecuted under retroactive laws) is identical to Articles 1 through 7 of the Universal Declaration of Human Rights.
- f. Article 29 paragraph (2) of the Republic of Indonesia's 1945 Constitution (which guarantees the freedom to embrace religion and worship according to one's religion and beliefs) is identical to Article 18 of the Universal Declaration of Human Rights.
- g. Article 30 paragraph (1) of the Republic of Indonesia's 1945 Constitution (Every citizen has the right and obligation to participate in the defense and security of the country) is identical to Article 21 paragraph 1 of the Universal Declaration of Human Rights, which states that everyone has the right to participate in the government of this country.
- h. Article 31 paragraph (1) of the Republic of Indonesia's 1945 Constitution (the right of citizens to education) is identical to Article 26 paragraph 1 of the Universal Declaration of Human Rights regarding the right to education.
- i. Article 32 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (the government promotes Indonesian national culture) contains the rights of citizens as stated in Article 27 paragraph 1 of the Universal Declaration of Human Rights, which are:

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- j. Social welfare, as defined in Article 33 of the Republic of Indonesia's 1945 Constitution, particularly paragraph (3), guarantees citizens the right to the greatest possible social prosperity or welfare. This is the same as the Universal Declaration of Human Rights, among others:
 - 1) Article 22 addresses the right to social security.

2) Article 25: The right to a decent standard of living and security.

Human rights in Indonesia are legally regulated and guaranteed. The legal regulations and guarantees can be seen in the various positive legal regulations of the Republic of Indonesia. These rules are relevant to human rights regulations in international mechanisms.²⁹ In line with the above, **John P. Humphrey** states that the Universal Declaration of Human Rights has permeated world constitutional law, so that in many countries, the Bill of Rights has been embedded in their constitutions. Thus, the Universal Declaration has become the world's Magna Charta.³⁰ The guarantee of protection for Rohingya refugees in Indonesia is stronger than in other modern countries because the Indonesian legal structure based on Pancasila, which is contained in the preamble of the 1945 Constitution of the Republic of Indonesia, is itself eternal and perpetual.

Legal protection for Rohingya refugees is very important because of the elements that must exist in a country that upholds human values in the Constitution and UUD NRI 1945. Legal protection of Rohingya refugees is all efforts that can guarantee the attitude and response of the Indonesian people to human values.³¹ In line with this, Satijipto Raharjo argues that legal protection of human rights (HAM) that are harmed by others and that

protection is given to the people who are harmed in order to enjoy all the rights that should be protected.³²

Protection under the law for Rohingya refugees is not always freely implemented, but it must meet the social values of the local community, which means that legal protection must understand the moral and ethical aspects of the Indonesian nation. This is consistent with the point of view from Moh. Koesnoe,³³ who argues about the terms of legal protection that are required to be given to Rohingya refugees, where the conditions for fulfilling the protection are divided into two elements when providing legal protection, namely:

1. When understanding the law, it is necessary to pay attention to the nature of the content of the legal provisions, as seen in terms of national morals and values.
2. It is necessary to consider and give attention to the implementation of the law as seen through the noble morals and morals of the people when understanding the law. In a nutshell, the moral and ethical qualities of the legal executor who makes or enforces the law.

One of the reasons for the rejection is that Rohingya immigrants are acting or behaving badly and even do not follow local community norms.³⁴ From throwing people's aid into the sea to fleeing the refugee camp, failing to maintain cleanliness and ignoring

²⁹ Alamsyah, W. (2004). *Perlindungan Hak Asasi Manusia Dalam Penangkapan dan Penahanan Dalam Proses Penyidikan. Disertasi, Makasar, Program Pascasarjana, Unhas*. Hlm 77

³⁰ John P. Humphrey, (1994) *magna charta umat manusia*, Peter Davies, HAM, terjemahan, Jakarta, *yayasan oboe indonesia*. Hal 59

³¹ Setiono, *Rule of Law (Supremasi Hukum)*, (Surakarta: Magister Ilmu Hukum Program Pasca Sarjana Universitas Sebelas Maret, 2004), hlm. 3, dikutip dalam (<http://digilib.unila.ac.id/6225/13/BAB%20II.pdf>). Diakses 5 oktober 2015.

³² Salim, H. S. (2013). Penerapan teori hukum pada penelitian tesis dan disertasi. John Rawls, *A Theory of Justice – Teori Keadilan* (Terj. Uzair Fausan), Pustaka Pelajar, Yogyakarta, 2006, cet 3. Hlm 262.

³³ Moh. Koesnoe, (1997). *Nilai-nilai dasar tata hukum dan identitas nasional*, Yogyakarta, Fakultas Hukum Universitas Islam Indonesia. Hlm 34

³⁴ artikel detiksumut, "4 Kelakuan Buruk Pengungsi Rohingya Aceh, Buang Bantuan-Kabur dari Kamp" selengkapnya <https://www.detik.com/sumut/berita/d-7074619/4-kelakuan-buruk-pengungsi-rohingya-aceh-buang-bantuan-kabur-dari-kamp>, diakses pada hari Sabtu 10 Februari 2024, pukul 08:30 wib.

Islamic law and customs within the community, disobeying local norms and customs, and committing criminal acts of rape against minors. The rejection of Rohingya immigrants is not unreasonable in light of the numerous violations of norms, whether legal norms, decency norms, or other social norms. As a result, the non-fulfillment of legal protection requirements for Indonesian citizens, both ethically and morally, must be of greater concern, implying that the Indonesian government is not trapped by international regulations because Indonesia is not a party to the 1951 Refugee Convention. Therefore, the Indonesian government has no obligation to accommodate refugees, let alone to provide permanent solutions for refugees. Ironically, when we look in the mirror, the numerous nations that are signatories to this convention close their doors and even implement a pushback policy against refugees. As a result, the Indonesian government must prioritize the ethical and moral values of the Indonesian people in the face of real threats that threaten the noble values of Indonesian territory, such as the threat of Rohingya immigration. If the countries that have ratified the refugee convention and protocol have the option of locking the door or push back today, the Indonesian people should do the same in order to protect their national interests.

Vice President of the Republic of Indonesia, Ma'ruf Amin, responded to the issue of rejection of Rohingya refugees by providing alternative placement on Galang Island, Batam City,

Riau Islands Province,³⁵ giving this island will actually create new problems considering that it will provide a new threat of sovereignty by Rohingya Refugees who will later ask for the island as they did in Malaysia, where the Malaysian government acted decisively by deporting Rohingya Refugees back to their region, this was done as a form of protection against national threats to their country, threats can occur starting from Rohingya refugees not maintaining cleanliness and not heeding Islamic law and customs in the community, not obeying the Norms and Customs of the Local Community, committing criminal acts, to maintaining the sovereignty of their country.³⁶ For this reason, seeing this phenomenon, the Indonesian government should be able to reflect on neighboring countries that deport Rohingya refugees in order to maintain state sovereignty. This is done to continue to protect national interests, maintain norms and values in society, and most importantly, maintain state sovereignty from the threat of division.

B. Implications of Accepting Rohingya Refugees from a Legal Perspective

In recent years, Indonesia has been visited by Rohingya refugees seeking asylum due to the cold war in Myanmar. This arrival has sparked controversy among Indonesians, especially since it was recently revealed that Rohingya refugees living in Indonesia were given Rp1.2 million in financial aid. Rohingya refugees who have been in Indonesia for a long time appear to be provided with facilities in the form of rusunawa in Sidoarjo, East Java. The flats occupied

³⁵ Pernyataan tersebut dilontarkan oleh Ma'ruf Amin setelah menghadiri acara Peluncuran Indonesia Sharia Economic Outlook (ISEO) 2024 dan Peresmian Universitas Indonesia Industrial Government (I-GOV) Ke-3 Tahun 2023 di Universitas Indonesia, Depok, Jawa Barat, <https://www.jagosatu.com/nasional/303442178/wapres-maruf-amin-pulau-galang-pilihan-alternatif-untuk->

[penempatan-pengungsi-rohingya](#), diakses pada hari sabtu 10 februari 2024, pikul 08:00 wib.

³⁶ Jonathan Head, Koresponden BBC di Asia Tenggara, Malaysia mendeportasi pencari suaka dari Myanmar, mengapa demikian? <https://www.bbc.com/indonesia/dunia-63385288>, diakses pada hari sabtu 10 februari 2024, pikul 09:00 wib.

by Rohingya refugees in refugee camps throughout Indonesia are very decent, even with televisions. The bedrooms are also furnished with mattresses. Another benefit is that Rohingya refugees receive free meals while in the refugee camp, and the various services provided by Rohingya refugees have new implications for Indonesian society. If we look into it, Indonesia is a developing country with a large population and plenty of natural resources. However, Indonesia today cannot be separated from the social problems that plague its people, particularly socioeconomic issues. According to the Central Bureau of Statistics or Badan Pusat Statistik (BPS), Indonesia's unemployment rate stood at 7.86 million people in August 2023, out of a total workforce of 147.71 million. In August 2023, there were 7.86 million unemployed people, equivalent to an open unemployment rate or Tingkat Pengangguran Terbuka (TPT) of 5.32 percent. The adverse effect of unemployment is to reduce people's income, which in turn reduces the level of prosperity that a person has achieved. The decline in people's welfare due to unemployment will certainly increase their chances of being trapped in poverty because they have no income. When unemployment in a country is very bad, political and social turmoil always prevails and has adverse effects on people's welfare and long-term economic development prospects. Furthermore, the Central Statistics Agency (BPS) reported that the percentage of poor people in Indonesia in March 2023 was 9.36%, with a total of 25.90 million poor people. This also has an impact on the lack of access to education, as shown by the Central Statistics Agency (BPS) in 2022, which reports that the illiteracy rate in Indonesia aged 15 to 59 years is only 1.50 percent, or approximately 2,666,859 people. Not only that, but

according to data released by the Ministry of National Health in 2023, the percentage of stunted children has reached 21.6%. The issue of child malnutrition in Indonesia encourages all parties to play a more active role.

If you look at the current condition of the Indonesian nation, the acceptance of Rohingya refugees will actually have new implications for society, especially in terms of special treatment such as being given financial assistance of IDR 1.2 million per month. then getting comfortable flat facilities and getting free food every time makes social jealousy occur in the community. Public opinion regarding special treatment is the state's effort to build a paradigm of injustice. If you look at the data above, it shows a lot of poverty, unemployment, and malnutrition. Many Indonesians do not have houses and land, but on the one hand, the government provides very adequate facilities for Rohingya refugees.

The implication of injustice was voiced in the community considering the absence of obligations carried out by Rohingya refugees, who always get rights. This is different from the Indonesian people, who must carry out their obligations to be able to get their rights. The paradigm or opinion built by the community is in line with the opinion of Aristotle, who argues that justice is an action that is not biased or impartial, in favor of the right, not arbitrary. Aristotle defined justice as the distribution of something in accordance with its portion and rights. According to the principles of justice, Rohingya refugees seeking justice have an obligation to carry out what is required by law, such as complying with the provisions of national law itself; however, the obligation to comply with the law has been infringed upon, for example, by failing to comply with the norms and customs of the local community in order to commit the

crime of rape against minors, so their eligibility to receive their rights is questioned.

In John Rawls' Theory of Justice, Rawls argues that justice is a way of distributing rights, duties, benefits, and burdens among individuals in society. Furthermore, he argues that "justice rejects the argument that the loss of liberty of some can be justified on the basis of the greater benefits enjoyed by others. In a just society, therefore, the liberty of equal citizens remains unchanged; the rights guaranteed by justice are subject neither to political bargaining nor to considerations of social interest."

In accordance with John Rawls' opinion above, where justice for Rohingya refugees is a way to distribute rights and obligations, benefits and burdens, justice rejects or does not allow justice to obtain benefits without burden, or Rohingya refugees to obtain greater benefits from actions in Myanmar that are greater than Indonesian society, justice is subject to political bargaining by the government. The existence of rights and obligations, in the present situation owned by humans as legal subjects, was additionally related to the protection provided by law in their interactions with other humans and their environment. As legal subjects, humans have the right and obligation to take legal action because they are legal subjects. This means that, as Rohingya refugees or legal subjects, they have rights and obligations, as opposed to what we've seen so far, in which Rohingya refugees have rights but fail to fulfill obligations. Prajudi Atmosudirjo agrees, stating that the goal of legal protection is to achieve justice. The function of law is not only to achieve legal certainty, but also to achieve adaptable and flexible guarantees and balances, as well as to create a balance

between entrepreneurs and consumers, the government and the people. The law is required to protect those who are weak or not yet strong socially, economically, and politically in order to achieve social justice.

Furthermore, the consequences of destroying local cultural values in areas where there are Rohingya refugees who can commit arbitrary acts begin with a lack of cleanliness and a disregard for Islamic law and customs within the community. The rejection of Rohingya immigrants is not unreasonable given the numerous violations of norms, whether legal, decency, or other social norms.

The implications of the destruction of the socio-cultural order in the form of knowledge, norms, regulations, and community skills in the Indonesian region that have been passed down from generation to generation have implications for local wisdom, which is the social capital developed by the community to create order and balance between the socio-cultural life of the community and the preservation of the surrounding natural resources.

The potential negative side implications include the unstoppable flow of Rohingya refugees entering Indonesia, which allows the entry of ideas or values that are not in accordance with the personality and identity of a nation. This is an undeniable reality; if we do not have a filter or are unable to filter it, then we are on the verge of multi-complex degradation. It is not only the values of society that are threatened, not only the destruction of human morals that will be faced; even the national identity and integrity of a nation can be disrupted, including the wealth of a nation that can be "peeped" or even stolen. Looking at the reality phenomenon above does feel "horrifying," especially when the government does not feel anxious about

the bad events that occur due to the negative influence of the Rohingya refugee' habits, but that does not mean the government must give up in its dilemma. If the government is to maintain the value of local wisdom and state sovereignty, it must be willing to do what neighboring Malaysia does. Ethically and morally, it should be more concerned, which means that the Indonesian government is not bound by international regulations because it was not a party to the 1951 Refugee Convention and has never been ratified refugee conventions and protocols; thus, the Indonesian government has no obligation to accommodate refugees, let alone provide a permanent solution for Rohingya refugees.

CONCLUSION

1. The legal protection of Rohingya ethnic groups under international law is frequently governed by international instruments such as the Universal Declaration of Human Rights and International Covenants. The Indonesian people consider it necessary to ensure the protection of human rights against ethnic Rohingya who seek asylum in Indonesia as part of the Indonesian people's efforts to become a country that is consistent with the spirit of the constitution, demonstrating that human rights cannot be separated from the Republic of Indonesia Constitution of 1945. Despite the fact that Indonesia has sovereignty and has not ratified the 1951 Convention or the 1967 Protocol, it is subject to generally accepted as well as acknowledged international legal standards. As a result, even though Indonesia has not ratified the convention and protocol, it has an international obligation to comply with
2. The implications of injustice were discussed in the community, with the absence of obligations as the fulfillment of rights carried out by Rohingya refugees obtaining benefits without burden or Rohingya refugees receiving greater benefits from the Indonesian people without burden. Justice is not subject to political bargaining by the government; rather, justice is realized through the attitude of distributing rights by following through with obligations. Other than that, there are implications for the destruction of the socio-cultural order in the form of understanding, norms, regulations, and skills passed down from generation to generation in the Indonesian region, as well as implications that extend for local wisdom, which is the social capital developed by the community to create order and balance between the community's socio-cultural life. This can be harmed by observing Rohingya refugees' behavior and actions, such as failing to maintain cleanliness, failing to adhere to Islamic law and customs within the community, failing to follow local norms and customs, and committing criminal acts of rape against minors.

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