Vol. 17 No. 1 | Desember 2024

P - ISSN : 1907 – 8463
E - ISSN : 2772 – 8568

# Indonesian Law Journal

## TOPIC OF THIS EDITION

ROLE OF INTERNATIONAL COURT OF JUSTICE AND ITS LEGALLY BINDING ADVISORY OPINIONS IN DEALING WITH ARMED CONFLICTS" AND "STATE RESPONSIBILITY IN THE PROCESS OF HANDLING FOREIGN REFUGEES

Handling of Rohingya Refugees in Indonesia as A Transit Country
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Refugees Handling in Indonesia: Between Sovereignty and Humanity
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NATIONAL LAW DEVELOPMENT AGENCY
MINISTRY OF LAW AND HUMAN RIGHTS OF RI

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# EDITORIAL BOARD

**Indonesian Law Journal**
Volume 17 No. 1 | Desember 2024

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# FROM EDITOR'S DESK

The Indonesian Law Journal is proud to present Volume 17, Number 1, with the theme: **The Role of the International Court of Justice (ICJ) and Its Legally Binding Advisory Opinions in Dealing with Armed Conflicts** and **State Responsibility in Handling Foreign Refugees**. This edition comes at a critical juncture when global challenges demand comprehensive legal responses to pressing peace, human security, and international cooperation issues.

The International Court of Justice (ICJ), as the principal judicial organ of the United Nations, plays a pivotal role in shaping the international legal order. Over the years, its legally binding judgments and advisory opinions have contributed significantly to resolving disputes between states, clarifying international law, and addressing complex issues arising from armed conflicts and humanitarian crises. As conflicts and displacement crises proliferate worldwide, the ICJ's role in offering legal clarity and guidance to states becomes even more vital.

The global refugee crisis has brought to the forefront the responsibilities of states under international law. Refugee movements often result from armed conflicts, placing immense pressure on host countries and testing the limits of international solidarity. However, the ICJ's advisory opinions could serve as a means to address gaps in these frameworks, especially concerning equitable burden-sharing and protection standards.

In ILJ Volume 17 No. 1 of 2024, 6 (six) writers with various backgrounds discuss this matter. Start with the article of Nofli and Rona Puspita with their article's tittle related to "Handling of Rohingya Refugees in Indonesia as a Transit Country". The aim of this article is to analyze the refugee phenomenon in Indonesia. The following article by Fitri Amalia Sari, "Marriage Rights of Rohingya Refugees in Indonesia: Legal Recognition and Challenges" by investigating the legal framework that regulate marriage rights for Rohingya refugees in Indonesia. The third article written by Khairunnisa Irianto with "Legal and Practical Implications of The ICJ on South Africa's Lawsuit Against Israel Regarding Palestine". The fourth article is "Refugee Crisis: Re-Thinking The Indonesia's Perspective" by Ayu Bulan Tisna, her article attempts to insvestigate he existing domestic policy and legal provision concerning refugees and asylum seekers in Indonesia. The fifth article is written by Juvellin Rezara, "Role of Internasional Court of Justice and Its Legally Binding Advisory Opninions in Dealing with Armed Conflicts". And the last article by Rafika Rizky Aulia Rahman and Rizka Iswara with their article's tittle "Refugees Handling in Indonesia: Between Sovereignty and Humanity".

The articles in this volume aim to deepen understanding and provoke critical discussions on how international legal mechanisms, particularly through the ICJ, can address the root causes and consequences of armed conflicts and refugee crises. We hope that the insights provided here will inspire policymakers, legal practitioners, scholars, and students to explore innovative solutions to these pressing global issues.

As always, the Indonesian Law Journal remains committed to advancing legal scholarship and fostering dialogue on national, regional, and international issues. We extend our gratitude to the contributors, peer reviewers, and editorial team whose dedication has made this edition possible.

We invite our readers to engage with the thought-provoking analyses presented in this volume and contribute to the ongoing discourse on strengthening the rule of law in addressing global challenges.

***Editor of Indonesian Law Journal***

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**Indonesian Law Journal**
P-ISSN: 1907–8463; O-ISSN: 2772–8568
DOI : 10.33331/ilj.v17i1.150
https://ejournal.bphn.go.id/index.php/ILJ
**Volume 17 No. 1 | Desember 2024**

# HANDLING OF ROHINGYA REFUGEES IN INDONESIA AS A TRANSIT COUNTRY

**Nofli, Rona Puspita**
Legal and Human Rights Policy Strategy Agency
National Legal Development Agency
JL. Rasuna Said Kav 6-7 Kuningan, Jakarta Selatan, DKI Jakarta - 12940
Author's e-mail: ronapuspita@gmail.com

## ABSTRACT

Indonesia has long been a transit location for many refugees, including those from the Second Indochina War, especially Vietnam and Cambodia, who began entering Indonesian territory in 1975. Currently, refugees from Myanmar, namely the Rohingya, are starting to enter Indonesia because their country is experiencing a civil war conflict in which prolonged. As a transit destination country, Indonesia cannot refuse them because of international conventions that the government complies with, but as time goes by Indonesia experiences overcapacity in refugee matters and the final destination country does not immediately make a decision regarding the fate of these refugees. So there is a need for assistance and solutions from the Indonesian government regarding this matter refugees. The aim of this research is to analyze in depth the refugee phenomenon in Indonesia and provide solutions related to this problem through an academic perspective. The research method is a sociolegal approach regarding legal policies regarding refugees in Indonesia. The results of the research are that there are several steps that need to be taken refugees, including reactivating islands in Indonesia as transit locations past experiences during the Vietnam war, efforts to ratify the convention on refugees because Indonesia is not a signatory country, then clarifying the presidential regulation on refugees so that its implementation is clearer.
**Keywords :** are terms of the underlying implementation research, containing the indexed.

## A. Introduction

Indonesia is a country with a very large area and is spread from East to West across the Indian Ocean and South China Sea. This vast territory makes Indonesia a transit area for many refugees before reaching their destination country. These destination countries include Australia, New Zealand and even America, which are countries with the highest average life expectancy and a stable economy and greater job opportunities. It is feared that the large number of refugees transiting before reaching their destination (final) country in Indonesia will cause many problems and quite a few social conflicts with the surrounding community due to differences in ethnicity, culture and language.

For a long time, Indonesia has been transit location for refugees compared to other countries because Indonesia still has high tolerance for refugees, but quite a few of these refugees do not have the right to immediately leave for their destination country because it is clear that they do not even have a document or visa. One of the refugees who have travelled to Indonesia in Vietnam. Come from Vietnam.At that time, Vietnam was being hit by the Second Indochina War in the 1960-1975s. It is also known through VOA Indonesia that refugees in Indonesia, specifically Vietnam, reached 250 thousand people and also around 5 thousand people from Cambodia between 1970 and 1996.[1] History records that at least 22 refugees from Vietnam arrived in Indonesia, precisely on Laut Island to the north of Natuna, in May 1975, then until 1979 a refugee shelter was created on Galang Island because it was considered more strategic compared to other islands which were close to each other. The development of Galang Island as a refugee shelter was also assisted by the UN High Commissioner for Refugees (UNHCR)[2]. History records that on this island, refugees lived side by side with local communities and also worked together with each other, thus becoming a model at that time for refugees who were more humane and humanitarian. This island began to be abandoned at the end of 1996 because some of the remaining refugees were returned to Vietnam considering that the country was starting to be safe from conflict.

Until now, in 2023, through the Directorate General of Immigration, at least 12,781 people will become Indonesian refugees, with details of 6,522 people living in official shelters, while the rest are independent refugees. The countries of origin of these refugees are 6,703 from Afghanistan, 1,359 from Myanmar, 1,260 from Somalia, 614 from Iraq, 489 from Sudan and the rest come from various countries.[3] One of the phenomenal cases recently was the Rohingya ethnic refugees who landed in Aceh for some time, as a result of internal conflict in their country, namely Myanmar, so this ethnic group fled their country.[4]

1 VOA Indonesia, "Menilik Eks Kamp Vietnam Bakal Lokasi Penampungan Pengungsi Rohingya," *Www.Voaindonesia.Com*, last modified 2023, accessed May 3, 2024, https://www.voaindonesia.com/a/menilik-eks-kamp-vietnam-bakal-lokasi-penampungan-pengungsi-rohingya/7414471.html.

2 detik.com, "Sejarah Pulau Galang, Penampungan Tentara Jepang Hingga Pengungsi Vietnam," *Www.Detik.Com*, last modified 2023, accessed May 3, 2024, https://www.detik.com/edu/detikpedia/d-7103111/sejarah-pulau-galang-penampungan-tentara-jepang-hingga-pengungsi-vietnam.

3 VOA Indonesia, "Membuka Kesempatan 'Bekerja' Bagi Ribuan Pengungsi Di Indonesia," *Voaindonesia.Com*, last modified 2023, accessed May 3, 2024, https://www.voaindonesia.com/a/membuka-kesempatan-bekerja-bagi-ribuan-pengungsi-di-indonesia-/7175597.html.

4 Aulia Aristawidya Apsarini et al., "Tindakan Indonesia Dalam Melindungi Pengungsi Rohingya Berdasarkan Perspektif Etika Utilitarianisme," Jurnal Kajian Kontemporer Hukum dan Masyarakat 02, no. 01 (2024): 1–25.

Referring to the bbc.com page for the end of 2023 in Aceh from the UNHCR report itself, the total number of refugees reached + 1,608 people, and 140 people have been detained for more than 1 year because no country wants to accept them as refugees.[5] However, as time went by it turned out that many refugees from the Rohingya ethnic group acted very intolerant where they did not behave politely in the community, did not maintain cleanliness and did not respect local community norms and some also fled to other places.[6] Until finally the people in Aceh felt very angry and could no longer accommodate refugees from the Rohingya ethnic group themselves. As well as reducing social and local economic tensions which are threatened by the presence of the Rohingya ethnic group.[7]


*Figure 1. Expulsion of Ethnic Rohingya December 2023*

The peak was in December when a number of community elements and also some student activists carried out forced evictions at the *Balee Meuseuraya Aceh* (BMA) temporary shelter. This action was marked by clashes between police officers on guard and several activists and there were also elements of violence against Rohingya refugees.[8] The UN agency, namely UNHCR, which handles a number of refugees, also regrets such anarchic actions, but they are unable to do much, and only hope that this action will not continue and ask the Indonesian government to immediately provide a solution for these ocean survivors to be immediately accommodated and given political asylum so that they

5 bbc.com, "Pengungsi Rohingya Tembus 1.600 Orang, Mengapa Nelayan Aceh Menolong Mereka?," *Bbc.Com*, last modified 2023, accessed May 3, 2024, https://www.bbc.com/indonesia/articles/c4nye1ewp2xo.

6 News.detik.com, "Mengapa Pengungsi Rohingya Ditolak Warga Aceh? Ini Penjelasannya," *News.Detik.Com*, last modified 2023, accessed May 3, 2024, https://news.detik.com/berita/d-7048044/mengapa-pengungsi-rohingya-ditolak-warga-aceh-ini-penjelasannya.

7 M. Angela Merici Siba and Anggi Nurul Qomari'ah, "Pelanggaran Hak Asasi Manusia Dalam Konflik Rohingya Human Right Violations on Rohingya Conflict," *Journal of Islamic World and Politics* 2, no. 2 (2018): 367–385.

8 CNN Indonesia, "Pecah Tangis Pengungsi Rohingya Diusir Paksa Mahasiswa Di Aceh," *CNN Indonesia*, last modified 2023, accessed May 4, 2024, https://www.cnnindonesia.com/nasional/20231228071848-20-1042484/pecah-tangis-pengungsi-rohingya-diusir-paksa-mahasiswa-di-aceh.

can entered Indonesia.[9]

This was also responded to by the *Majelis Permusyawaratan Ulama Aceh* (MPUA) which asked all people in Aceh to stop expelling Rohingya ethnic refugees and asked the government to immediately provide a decent and more humane place for this ethnic group so that it would be easy to monitor and also on humanitarian grounds. and brothers in faith can accept their presence.[10]

Due to this, the Indonesian government is of course asked to immediately provide protection and access to basic needs services for the Rohingya ethnic group and also provide a suitable place for the time being because the situation in Myanmar does not allow for repatriation. In line with that, UNHCR will also help them, especially with land protection as well as access to health, especially medicines for those in need and several other basic services that the Rohingya really need when they first arrive in Aceh.[11]

Reviewing this, of course we can see that in Indonesia's past history when accepting refugees from Vietnam, the government immediately acted quickly by providing basic services and placing them in an area on Galang Island, Batam City as a base for sheltering these refugees. Even at that time, Indonesia was considered a model country because it provided a decent, non-discriminatory and very humane place for refugees from Vietnam. Moreover, at that time, Vietnam was still in turmoil at the end of the 2nd Indochina War and it was not possible to carry out immediate reparation. However, currently Indonesia is facing the same situation where the Rohingya ethnic group is also experiencing political upheaval where the country of Myanmar is controlled by the Military Junta which always discriminates against the Rohingya ethnic group in their country. So, they fled to survive and sought asylum in other countries that were willing to accept them.

This research will analyze using qualitative methods with literature review which will refer to policies or regulations related to refugees, both on the scale of national policies and international regulations which have not yet been ratified. Thus, discussing the state's responsibility for handling Rohingya refugees in Indonesia will produce several important points that can be used as input to stakeholders. Several important points that will be conveyed in this research are several steps Indonesia has taken towards the Rohingya ethnic group and comparing them with Vietnamese refugees in the 1975-1996 era. So the results of this comparison will provide a different picture and important results that can be

9 Detik Sumut, "Aksi Mahasiswa Usir Pengungsi Rohingya Dari Penampungan Yang Disesali UNHCR," *Detik. News*, last modified 2023, accessed May 4, 2024, https://www.detik.com/sumut/berita/d-7113122/aksi-mahasiswa-usir-pengungsi-rohingya-dari-penampungan-yang-disesali-unhcr.

10 MPU, "Ulama Aceh Minta Pemerintah Segera Relokasi Rohingya Ke Tempat Layak," *Majelis Permusyawaratan Ulama*, last modified 2023, accessed May 4, 2024, https://mpu.acehprov.go.id/berita/kategori/berita/ulama-aceh-minta-pemerintah-segera-relokasi-rohingya-ke-tempat-layak.

11 Antaranews.com, "UNHCR Tegaskan Bantu Pemerintah Terkait Pengungsi Rohingya Di Aceh," *Antaranews. Com*, last modified 2024, accessed May 4, 2024, https://www.antaranews.com/berita/4024260/unhcr-tegaskan-bantu-pemerintah-terkait-pengungsi-rohingya-di-aceh.

used as a reference for subsequent research analysis.

## B. Research Method

The research method will lead to qualitative research using a sociolegal approach. The data sources used in this literature study are several valid sources relating to answering the problem formulation, namely how the state is responsible for handling Rohingya refugees in Indonesia, while valid sources are regulations related to handling refugees, scientific journals, and several other sources. The data analysis used is source data analysis which refers to Cresswell.[12] Meanwhile, for data analysis in this research, interactive data analysis will be presented which refers to Miles and Huberman 1994.[13]

## C. Discussions

This results and discussion in this research will be divided into several sub-discussions, including the following:

### 1. Regulation for Refugees in Indonesia

Indonesia, through standard rules, namely Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Abroad, accepts every refugee from abroad with open arms and never refuses because this refers to the Preamble to the Indonesian Constitution which rejects all forms of colonialism and discrimination. to its residents.[14] Based on the number of refugees in Indonesia, at least 73% are adults and the rest are children whose conditions are very worrying. Several countries have begun to tighten the entry of refugees from abroad due to conflict, civil war or whatever, which indirectly has a significant impact on Indonesia, which they chose because it has not implemented strict regulations like their destination countries.[15]

Indonesia has long been considered a transit country before they reach their destination country and they are starting to be overwhelmed by the large number of migrants from abroad who are directly requesting political asylum. Meanwhile, Australia has also begun to reduce its assistance to refugees in Indonesia since 2018 so that they cannot immediately enter Australia. Referring to Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Abroad, funding for refugees from abroad has triggered many parties that funding can be done from the APBN (State Revenue and Expenditure Budget) but the detailed rules and mechanisms from the APBN are not yet clear.

12 John W. Cresswell, *Research Design Pendekatan Kualitatif, Kuantitatif, Dan Mixed*, 3rd ed. (Yogyakarta: Pustaka Pelajar, 2010).

13 Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis: A Methods Sourcebook*, 3rd ed. (Arizona State University: SAGE Publications, 1994).

14 *Peraturan Presiden Nomor 125 Tahun 2016 Tentang Penanganan Pengungsi Dari Luar Negeri*, n.d.

15 Sekretariat Negara RI, "Upaya Penanganan Pengungsi Luar Negeri Di Indonesia," *Sektab.Go.Id*, last modified 2022, accessed May 9, 2024, https://setkab.go.id/upaya-penanganan-pengungsi-luar-negeri-di-indonesia/.

On the other hand, Indonesia has also not ratified the Convention Relating to the Status of Refugees (1951 Convention) and the Protocol Relating to the Status of Refugees (1967 Protocol) which clearly means that Indonesia has no obligation to accept refugees in its territory (there is no element of coercion). Referring to the Director of Supervision and Enforcement, the Indonesian Ministry of Law and Human Rights officially stated that refugees in Indonesia could be facilitated by initially placing them in Immigration Detention Centers (Rudenim), then being recorded and placed in clear government accommodation. Then, if they want to apply for work requirements, they must obtain a work visa and approval from the local Manpower Service (Disnaker).[16]

If you review the 1951 Convention, there were at least 26 countries that signed this convention in Geneva, Switzerland in 1951, including Australia, Austria, Italy, Canada, England, Turkey, Germany, Denmark, Venezuela, the United States, Sweden, the Netherlands, Norway, Egypt, Luxembourg, France, and others, including several countries in the Asian region, namely Iran, Iraq and Israel.[17] As a comparison, for the Southeast Asian region, Thailand and Malaysia have a large share of refugees from abroad and asylum seekers for Thailand in 2022 alone numbering ± 96,401, then Malaysia in December 2021 ± 180,440 with almost 155,400 being ethnic Rohingya from Myanmar who arrived in Malaysia.[18]

Some countries that indirectly reject refugees are Canada, where, through a spokesperson for Global Affairs Canada, stated that Canada is a country with conditions and a long history of refugee affairs, so that long-term protection is addressed through a multi-faceted approach to address the root causes of forced displacement. So, when several ethnic Rohingya were rejected in Canada, when they were in Aceh they immediately provided assistance of 50 thousand dollars through The Canada Fund for Local Initiatives (CFLI) to provide food and water for a while.[19]

Meanwhile, the United States through its Ambassador in Jakarta stated that since 2017 they have disbursed at least 34 trillion in funds for refugees in the Southeast Asia region, while Indonesia itself received 2 million dollars for these refugees or the equivalent of

16 VOA Indonesia, "Membuka Kesempatan 'Bekerja' Bagi Ribuan Pengungsi Di Indonesia," *Voaindonesia.Com*, last modified 2023, accessed May 9, 2024, https://www.voaindonesia.com/a/membuka-kesempatan-bekerja-bagi-ribuan-pengungsi-di-indonesia-/7175597.html.

17 UNHCR, *Konvensi Dan Protokol Mengenai Status Pengungsi* (Regional Representation Jakarta - Indonesia, 1951).

18 Heru Susetyo, "Urgensi Penanganan Pengungsi Dan Pencari Suaka Di Indonesia Oleh Heru Susetyo, S.H, L.L.M, M.Si, Ph.D." (Jakarta: Fakultas Hukum Universitas Indonesia, 2023), accessed May 9, 2024, https://law.ui.ac.id/urgensi-penanganan-pengungsi-dan-pencari-suaka-di-indonesia-oleh-heru-susetyo-s-h-l-l-m-m-si-ph-d/.

19 detik.News, "RI Tagih Negara Konvensi Pengungsi Urusi Rohingya, Ini Kata Pihak Kanada," *DetikNews.Com*, last modified 2024, accessed May 9, 2024, https://news.detik.com/berita/d-7136941/ri-tagih-negara-konvensi-pengungsi-urusi-rohingya-ini-kata-pihak-kanada.

31 billion rupiah.[20] Meanwhile, when compared with the handling of foreign refugees in Thailand itself by Muhtar, Abdussamad, and Hadju in 2022, it explains that Thailand itself is the same country as Indonesia so it is not obliged to accept refugees from abroad, so far foreigners have come to Thailand. The majority are for business purposes, investment, studying, medical care, traveling or working, while several ethnic Rohingya also took the initiative to open refugee camps but some were protested by the Thai people. However, this did not last long because in the end this action was permitted.[21]

Indonesia, through the Ministry of Foreign Affairs, is expected to be able to hold accountable several countries that have ratified the 1951 Convention or the 1967 Protocol, to provide freedom to foreign refugees and asylum seekers in their countries. Meanwhile, Indonesia itself is only a transit destination country and not a receiving country. They (receiving countries) must be able to make a broad commitment like Indonesia which is only a transit country and because of humanitarian grounds they (refugees) are accepted in Indonesia with various upheavals and rejection from the local community.

Krustiyati in her book "*Handling Refugees in Indonesia*" in 2010 stated that Indonesia had made many efforts to address the anarchic actions of this conflict-ridden country. So diplomatic negotiations must be put forward without involving excessive military elements because this is their internal problem and also help the refugees maximally on humanitarian grounds.[22] Thus, Indonesia, through the Ministry of Foreign Affairs, the Immigration Directorate of the Ministry of Law and Human Rights of the Republic of Indonesia has always been at the forefront of matters involving foreign refugees, assisted by the UNHCR. So, if Indonesia's readiness is appropriate then it needs to be considered to participate in ratifying the 1951 convention and the 1967 protocol. So, it will be more optimal in helping refugees who enter Indonesia without having transit and receiving countries through Indonesia.

## 2. Selection of Indonesia as a Transit Country

For a long time, Indonesia has been the main transit destination country before reaching third countries (refugee receiving countries). It is known that Indonesia is a very strategic middle country for foreign refugees before reaching Australia or New Zealand. In general, these refugees are the majority of countries in the Southwest Asia (Middle East) region or

20 detik.News, "RI Desak Negara Tujuan Pengungsi Terima Rohingya, Ini Respons Kedubes AS," *Detik.News*, last modified 2023, accessed May 9, 2024, https://news.detik.com/berita/d-7098146/ri-desak-negara-tujuan-pengungsi-terima-rohingya-ini-respons-kedubes-as.

21 Mohamad Hidayat Muhtar, Zamroni Abdussamad, and Zainal Abdul Aziz Hadju, "Studi Perbandingan Penanganan Pengungsi Luar Negeri Di Indonesia, Australia, Dan Thailand," Jurnal Hukum Ius Quia Iustum 30, no. 1 (2023): 26–48.

22 Atik Krustiyati, *Penanganan Pengungsi Di Indonesia*, 1st ed. (Surabaya: Brillan lnternasional, 2010), https://repository.ubaya.ac.id/3351/6/Atik Krustiyati_Penanganan Pengungsi di Indonesia_Rev.pdf.

most recently Myanmar with the majority being Muslim and Indonesia being the country which is friendly towards immigrants besides Malaysia.[23]

While waiting for the final relocation process in the destination country, they are indirectly in a transit country without clear time or reasons in Indonesia, which is managed by UNHCR including the Indonesian Government. research by Chandra in 2023 explains that Indonesia must be able to speak out to the international community regarding the hands off of the government which has agreed to accept refugees from abroad, [24] and if we refer to the data for the number of refugees globally, it shows an ever-increasing trend, in 2018 it reached 25.9 million people, then in 2019 it reached 79.5 million and in 2021 it reached 82.4 million people, with 40% being children who are still living. need attention and certainty of citizenship so that their rights continue to be granted.[25]

The results of the literature search clearly show data for 2021 by UNHCR in August, refugees in big cities in Indonesia, for example Medan reached ± 1,908 people, 908 in Pekanbaru, ±7,002 in Jakarta, 411 in Surabaya, ± 1,744 in Makassar and 93 people in other locations.[26] Not a few of these refugees have been stuck in Indonesia for the past 10 years without having clear and legal citizenship. Indonesia has diplomatically tried to ask Australia not to clamp down on these overseas refugees. It is also known that since 2009-2013 Australia has received at least quite a lot of refugees from only 2,726 to 20,587 people or an increase of 65%. The Australian Parliament considers that these refugees, the majority of whom come from Sri Lanka, Iraq, Iran and Afghanistan, pose a threat to the spectrum of national sovereignty and are also a change in social values and terrorism and are even considered to be eliminating indigenous culture from Australian society.[27]

Research by Wajidi and Syahrin in 2019 stated that Australia, with Operation Sovereign Borders Policy, had mobilized its military capabilities to repel and ask refugees not to transit its territory and was fully supported by the Australian federal government.[28] This also gives a signal that Australia only accepts them (overseas refugees) through official channels

23 Adrianus A V Ramon, "Demi Kemanusiaan: Pengalaman Indonesia Menangani Arus Pengunngsi Internasional," *Jurnal Hukum Humaniter & HAM* 1, no. 1 (2019): 28–53, https://www.unhcr.org/id/en/unhcr-in-indonesia,.

24 Wahyudi Chandra, Edy Ikhsan, and Chairul Bariah, "Penerapan Peraturan Penanganan Pengungsi Dari Luar Negeri Di Kota Medan," *Locus Journal of Academic Literature Review* 2, no. 6 (2023): 486–499, https://doi.org/10.56128/ljoalr.v2i6.172.

25 Okeri Ngutjinazo, "PBB: Ada Lebih 82 Juta Pengungsi Di Seluruh Dunia, Lebih 40 Persennya Anak-Anak," *Dw.Com*, last modified 2021, accessed May 9, 2024, https://www.dw.com/id/laporan-unhcrsebut-%0Alebih-82-juta-pengungsi-di-seluruh-dunia-akhir-2020/a-57948449.

26 Dyah Ayu Putri and Muhaimin Zulhair Achsin, "Peran United Nations High Commissioner for Refugees (UNHCR) Dalam Menangani Pengungsi Luar Negeri Di Indonesia Pada Tahun 2016-2022," *Hasanuddin Journal of International Affairs* 3, no. 2 (2023): 82–101.

27 Skolastika G. Maing and M. Elfan Kaukab, "Dilema Politik Luar Negeri Australia Dalam Penanganan Pengungsi Dan Pencari Suaka," *Jurnal Penelitian dan Pengabdian Kepada Masyarakat UNSIQ* 8, no. 1 (2021): 28–39.

28 Al Faridh Wajidi and Muhammad Alvi Syahrin, "Dampak Penanganan Orang Asing Yang Mencari Perlindungan Sesuai Dengan Kebijakan Australia Serta Pengaruhnya Terhadap Indonesia," *Journal of Law and Border Protection* 1, no. 2 (2019): 49–58, https://journal.poltekim.ac.id/jlbp/article/download/172/142/.

without any smuggling or illegal activities which could indirectly threaten Australia's national security.[29]


*Figure 2. Christmas Island in Australia for Handling Refugees*

However, this is slowly changing, Australia through the Ministry of Foreign Affairs and the Australian Prime Minister is thinking about providing humane treatment to foreign refugees on Cristmas Island which is close to Indonesia (figure 3) to be used as a base for refugees so that they do not enter the main territory of the Australian mainland.[30] This also cannot be separated from the new law passed by the Australian Parliament which allows doctors and health workers to come to this island which is ± 5,170 km from the Australian mainland. Apart from that, the Australian PM also asked the Republic of Nauru and Papua New Guinea to accommodate ± 1000 asylum seekers who have tried to reach mainland Australia since 2013 (figure 4), except for medical reasons that require intensive care however, when they recover these refugees will be returned to camp.[31]

However, through research by Rahayu in 2020, refugees have never been a threat within Indonesia.[32] Indonesia always places these refugees and asylum seekers in places

29 Oren Rianto, "Proses Pengambilan Kebijakan Australia Operation Sovereign Borders Serta Pelanggaran Prinsip Non-Refoulement Dalam Menanggulangi People Smuggling 2013-2016," *Jurnal Ilmu Hubungan Internasional* 1, no. 1 (2016): 465–492, https://jurmafis.untan.ac.id/index.php/Sovereign/article/download/3299/10001367.

30 VOA Indonesia, "Australia Akan Kirim Pengungsi Yang Butuh Perawatan Medis Ke Pulau Terpencil," *Voaindonesia.Com*, last modified 2019, accessed May 9, 2024, https://www.voaindonesia.com/a/australia-akan-kirim-pengungsi-yang-butuh-perawatan-medis-ke-pulau-terpencil/4815589.html.

31 VOA Indonesia, "Australia Izinkan Pengungsi Sakit Masuk Ke Australia Untuk Perawatan Medis," *Voaindonesia.Com*, last modified 2019, accessed May 9, 2024, https://www.voaindonesia.com/a/australia-izinkan-pengungsi-sakit-masuk-ke-australia-untuk-perawatan-medis/4785800.html.

32 Rahayu Rahayu, Kholis Roisah, and Peni Susetyorini, "Perlindungan Hak Asasi Manusia Pengungsi Dan Pencari Suaka Di Indonesia," *Masalah-Masalah Hukum* 49, no. 2 (2020): 202–212.

that can be monitored and easy to record, but this is different from the case in Aceh from the Rohingya ethnic group, Myanmar, where they often leave refugee camps to look for a comfortable and more private place.[33] However, in general, the Indonesian government has never expelled refugees from various countries. Indonesia already has many human rights protection regulations which are also under covenants and conventions as well as the UN Universal Declaration on Human Rights.[34]

## 3. Vietnam Refugess 1975-1996: History of Refugees in Indonesia

In general, refugees in Indonesia have been occurring for a long time and the most phenomenal were refugees from Vietnam in 1975-1996 (+ 21 years). This was because the fall of the United States and the fall of Saigon City (Ho Chi Min City) caused many residents of South Vietnam to flee from the North Vietnamese because they were worried that they would be pro-American and would be arrested and would experience torture from North Vietnam which had a Communist ideology. The war that had been raging for 30 years in Vietnam starting from Indochina War 1 and Indochina War 2 and ending gradually in 1975, made the North Vietnamese government (Hanoi) immediately carry out major integration throughout Vietnam, both ideologically, politically and financially which had to be the same as Vietnam. North. Starting in March 1978, there were many efforts from North Vietnam to nationalize foreign companies in the South so that they could integrate with a Northern-style government under the control of the North Vietnamese Communists.[35]

These refugees from Vietnam started to go to Indonesia, precisely on Natuna Island, on May 19 1975 by boarding a wooden boat with a total of 97 passengers. After that, the wave of refugee arrivals on Natuna Island continued to increase as the war in Vietnam ended and the overall fall of South Vietnam. UNHCR, as the UN agency in charge of handling refugees, held a large meeting in Bangkok, Thailand and designated one of the islands, namely Galang Island, to be used as a refugee camp.[36]

The data was then updated in 1979 and found that at least ± 43 thousand people from Vietnam came to seek refuge on Galang Island. This island was chosen because of its strategic location and also not far from Batam City, only 7 KM and an area of 80 square

33 M Nurhadi, "Pengungsi Rohingya Berulah, Bikin Warga Lokal Jengah," *Suara.Com*, last modified 2023, accessed May 9, 2024, https://www.suara.com/news/2023/11/17/171630/pengungsi-rohingya-berulah-bikin-warga-lokal-jengah.

34 Kompas.com, "Pemerintah Indonesia Dinilai Wajib Lindungi Pengungsi Rohingya Meski Tak Ratifikasi Konvensi 1951," *Kompas.Com*, last modified 2023, accessed May 9, 2024, https://nasional.kompas.com/read/2023/11/21/21380261/pemerintah-indonesia-dinilai-wajib-lindungi-pengungsi-rohingya-meski-tak?page=all.

35 Moh. Fandik, "Penampungan Orang Vietnam Di Pulau Galang 1975-1979," *Avatara* 1, no. 1 (2013): 164–172, https://core.ac.uk/download/pdf/230693507.pdf.

36 Wikipedia.com, "Pengungsian Rakyat Vietnam Di Indonesia," *Id.Wikipedia.Org*, last modified 2023, accessed May 9, 2024, https://id.wikipedia.org/wiki/Pengungsian_Rakyat_Vietnam_di_Indonesia.

km. However, for humanitarian reasons, this island has been used as a temporary shelter for refugees from Vietnam, apart from that while they are in Indonesia they will be under full UNHCR control.[37] Apart from that, after returning several refugees from Vietnam to their country (1977-1991) which ended in Vietnam's victory over Cambodia. This of course worsens the situation on Galang Island because they do not want to be returned to their country because there is still conflict and their fate is unclear.[38]

Initially the islands chosen were Galang Island and Rempang Island, through Decree of the President of the Republic of Indonesia Number 38 of 1979 concerning Coordination of Resolving the Problem of Vietnamese Refugees in Indonesia with support from 24 countries from the previous meeting in Bangkok. Until the Galang Island selection process involved the Department of Public Works, Department of Safety and Security and the Department of Home Affairs and Major General Moerdani was appointed as the Chief Executive. Until there are at least complete facilities including basic facilities and supporting facilities as well as living facilities totaling 140 barracks which can accommodate up to hundreds of thousands of refugees on Galang Island.[39]

Apart from the large capacity of Galang Island, up to 1996 there were at least 170 thousand refugees on Galang Island. Until 1994, Indonesia began to reduce the number of refugees on Galang Island because of plans to develop an industrial area on Batam Island and the conflict in Vietnam began to subside, so the Indonesian government began to repatriate refugees from Vietnam and some of them were accepted by refugee receiving countries. In a book written by the Indonesian Ministry of Education in 2012, pages 107-110, it clearly states that the start of the cessation of accepting refugees was due to development on Batam Island and the completion of the Balerang Bridge in 1995, so that the refugee area which was originally 700 hectares narrowed to 100 hectares, and began screening of these refugees was carried out. And accurate data is difficult to obtain until 1995, in December there were only 4,752 people on Galang Island and 439 people were former South Vietnamese soldiers. Until 1996, the return of refugees from Vietnam began to return to their country, escorted by the Indonesian National Army via air routes and there were 14 flights from May-September 1996, as well as sea routes involving 6 Republic of Indonesia Ships (KRI) until they arrived in Vietnam from June-September 1996 (figure 8).[40]

37 Rakhmad Hidayatulloh Permana, "Pulau Galang, Saksi Kebaikan RI Ke Pengungsi Luar Negeri Saat Orde Baru," *DetikNews.Com*, last modified 2019, accessed May 9, 2024, https://news.detik.com/berita/d-4620076/pulau-galang-saksi-kebaikan-ri-ke-pengungsi-luar-negeri-saat-orde-baru.

38 Zendri Hendri and Rahmad Dandi, "Tinjauan Historis Pengungsian Vietnam Di Pulau Galang 1979-1996," *Takuana: Jurnal Pendidikan, Sains, dan Humaniora* 1, no. 1 (2022): 59–70.

39 Kompas.com, "Mengenal Pulau Galang Yang Diusulkan Jadi Tempat Penampungan Pengungsi Rohingya," *Kompas.Com*, last modified 2023, accessed May 9, 2024, https://www.kompas.com/tren/read/2023/12/09/080000965/mengenal-pulau-galang-yang-diusulkan-jadi-tempat-penampungan-pengungsi?page=all.

40 Direktorat Jenderal Kebudayaan, *Pulau Galang Wajah Humanisme Indonesia Penanqanan Manusia Perahu*

Until September 8, 1996, Galang Island was officially closed to refugees and UNHCR handed this island back to the Indonesian Government. For this achievement, Indonesia received appreciation from the UN because it had acted on the basis of humanity and in 2022 through the Nation's Collective Memory (MKB) on the 51st archival anniversary, making Galang Island a memorial tourist island for the silent witness to the cruelty of war and humanity on the island that is currently has developed rapidly and advanced in the Batam area and its surroundings.[41]

Until now, Galang Island has become a tourist destination and also receives many guests from former Vietnamese refugees who have lived on this island for many years and currently the Indonesian Government together with the Regional Government of the Riau Islands and the Batam Authority continue to maintain several buildings which are considered cultural heritage. and history to commemorate the face of Indonesian humanism in the past which will always be a memory of Indonesia in international politics.

## 4. Discourse on Rohingya Refugees in Relocation

The discourse on relocating Rohingya refugees in Aceh has also received a response from the Vice President of the Republic of Indonesia, where he wants relocation to an island, namely Galang Island because it has been a place for refugee camps and there are still several other supporting facilities available that are well maintained and can be continued for became a camp for the Rohingya ethnic group in Indonesia[42]. Meanwhile, the Government of DI Aceh, which has so far been the largest recipient of Rohingya ethnic refugees in Indonesia, has asked for a firm stance from the Central Government regarding the actions of these Rohingya ethnic recipients, and for coordination, but there has been no firm stance from the Central Government at this time.[43]

*Vietnam 1979-1996*, ed. Asvi Warman Adam, 1st ed. (Jakarta: Kementerian Pendidikan Republik Indonesia, 2012).

41 Kepri.antaranews.com, "Camp Vietnam Batam Terima Anugerah Memori Kolektif Bangsa," *Kepri.Antaranews.Com*, last modified 2022, accessed May 9, 2024, https://kepri.antaranews.com/berita/118057/camp-vietnam-batam-terima-anugerah-memori-kolektif-bangsa.

42 Anugrah Andriansyah, "Sebagian Besar Warga Pulau Galang Tolak Tampung Pengungsi Rohingya," *Voaindonesia.Com*, last modified 2023, accessed May 9, 2024, https://www.voaindonesia.com/a/sebagian-besar-warga-galang-tolak-tampung-pengungsi-rohingya/7411433.html.

43 CNN Indonesia, "Update Gelombang Pengungsi Rohingya Di Aceh, Pemkab Tunggu Sikap Pusat," *Cnnindonesia.Com*, last modified 2023, accessed May 9, 2024, https://www.cnnindonesia.com/nasional/20231123112527-20-1027922/update-gelombang-pengungsi-rohingya-di-aceh-pemkab-tunggu-sikap-pusat.

Apart from that, through the Coordinating Minister for Political, Legal and Security Affairs, the Central government will consult in advance regarding the relocation of the Rohingya ethnic group, including the 3 closest provinces, namely Riau, Aceh and North Sumatra Provinces. This effort is only based on humanity which must be provided. to the Rohingya ethnic group, who are currently in conflict within their country, making it impossible for them to return quickly.[44] Even on Galang Island itself, according to information that is currently circulating, there has been some rejection from the local community regarding the presence of the Rohingya ethnic group arriving there, for various reasons.

*Figure 3. One of the 200 Villages Whose Conditions Changed (right) in 2014 and (left) in 2016*

A concrete example of the people in Sabang, Aceh rejects the Rohingya ethnic group on Pulau Weh on the grounds that the nature and behavior of the Rohingya ethnic group is impolite and cannot adapt to the surrounding community. Apart from that, they also have different portions from those provided so there is a bit of misunderstanding between the community and local residents in Sabang.[45] Apart from that, some of them are also involved in human trafficking which indirectly has a negative impact on society and also persuasive efforts towards the Rohingya ethnic group are always misused by them (Rohingya).

News like this has made many people from Galang Island reject relocation in their area and ask the government to look for other alternatives so that this problem can be resolved in a win-win solution and without ignoring humanitarian reasons. Apart from that, for the Aceh region itself there are at least 5 (five) landing points for the Rohingya ethnic group, including Pidie, Sabang, East Aceh, Aceh Besar and Lhokseumawe and these routes are often used as landing points for the Rohingya ethnic group without any coordination with refugees other.[46]

44 Kompas.com, "Kemenlu Tanggapi Soal Wacana Memindahkan Pengungsi Rohingya Ke Pulau Galang," *Kompas.Com*, last modified 2023, accessed May 9, 2024, https://nasional.kompas.com/read/2023/12/12/16074761/kemenlu-tanggapi-soal-wacana-memindahkan-pengungsi-rohingya-ke-pulau-galang.

45 VOA Indonesia, "Mengapa Warga Lokal Menolak Pengungsi Rohingya Di Pulau Weh?," *Voaindonesia.Com*, last modified 2023, accessed May 9, 2024, https://www.voaindonesia.com/a/mengapa-warga-lokal-menolak-pengungsi-rohingya-di-pulau-weh-/7400613.html.

46 Agus Setyadi, "TNI AU Deteksi 5 Titik Pendaratan Rohingya Di Aceh," *Detik.News*, last modified 2023, accessed May 9, 2024, https://www.detik.com/sumut/berita/d-7099709/tni-au-deteksi-5-titik-pendaratan-rohingya-di-aceh.

The need for relocation for Rohingya ethnic refugees is of course also highly anticipated by all parties, including the people of Aceh, who have started making various efforts to reject them. It is natural that every day there are people who see ships in the sea approaching them (Aceh) to anchor and containing various groups of people and if you look at satellite imagery, the majority of these refugees come from Rakhine State in Myanmar, which covers almost 100 km of territory. The country has changed and burned due to the current conflict with the Myanmar Military Junta Government.[47]

On this humanitarian basis, of course the Indonesian government continues to try various ways to continue to accept Rohingya refugees, regardless of their behavior which goes viral on social media. The government continues to provide a suitable place for these refugees, including through the Ministry of Foreign Affairs which is trying its best to attract international attention to be alert and accept these refugees, especially those who have declared themselves through the 1951 Convention or the 1967 Protocol.

## 5. Human Trafficking of Refugees

The results of the researcher's analysis also found that there were indications of human trafficking in refugee camps that occurred in Indonesia which was carried out by the Rohingya themselves. This case began when the Republic of Indonesia Police in the East Aceh region arrested a driver whose role was to transport Rohingya refugees and then rushed them to another region until they reached the border of the destination country (Australia). Based on the information gathered, the truck driver will get a salary of 15 million, and from the information of the refugees who are victims, there are at least 36 people who have been indicated as human traffickers, with an average of ± 20 million per person having to pay to reach their final destination country.[48]

According to Munawarah, several cases have been detected for a long time and in his research at least since 2020 there have been attempts by several individuals to escape with certain rewards to other areas, especially women of Rohinya ethnicity who are vulnerable to human trafficking.[49] Other information obtained was that they were from former camps in Bangladesh and from that area they then headed to transit countries that they could enter (Indonesia and Malaysia). The choice of Indonesia or Malaysia as transit countries cannot be separated because in Bangladesh there is no certainty and UNHCR does not enter the

47 Aqwam Fiazmi Hanifan, "Cerita Memilukan Pengungsi Rohingya Dari Buthidaung," *Tirto.Id*, last modified 2017, accessed May 9, 2024, https://tirto.id/cerita-memilukan-pengungsi-rohingya-dari-buthidaung-cv8n.

48 bbc.com, "Polisi Selidiki Sindikat Perdagangan Manusia Pengungsi Rohingya Di Aceh - 'Saya Bayar Rp20 Juta Agar Keluarga Saya Bisa Naik Perahu,'" *Bbc.Com*, last modified 2023, accessed May 10, 2024, https://www.bbc.com/indonesia/articles/cj5pne2n06do.

49 Cut Munawarah and Nurhafifah, "Tindak Pidana Percobaan Perdagangan Perempuan Pengungsi Etnis Rohingya (Suatu Penelitian Di Wilayah Hukum Pengadilan Negeri Lhokseumawe)," *Jurnal Ilmiah Mahasiswa* 7, no. 1 (2023): 111–119.

region, so they are looking for clear alternative transit countries and quite a few of them have been lured by individuals to go to transit countries that are comfortable and it is safe and there are complete facilities.[50]

In this case, at least the value of transactions successfully thwarted by the police reached 3.3 billion, so some of them were actually expelled from Myanmar due to internal conflicts in that country. However, several refugees who came from camps in Bangladesh were interested in going to Indonesia by sea to improve their lives and were trapped by several individuals so that they did not realize that they had fallen into the trap of criminal acts of human trafficking.[51]

Therefore, Indonesia must be able to involve many parties in this case, whether from the police, UNHCR, Immigration, the Ministry of Foreign Affairs or the local government where the Rohingya ethnic refugees are being held. However, the Indonesian government cannot immediately apply the same treatment, where for refugees from Bangladesh camps they must be screened strictly to prevent human trafficking and arrest perpetrators or those who deliberately help refugees to flee to other areas. this is the same as illegal. The government really hopes for the role of the community to work together to prevent this criminal act of human trafficking and ask the refugees to stay temporarily in the camps that have been provided because they will be monitored 24 hours by the UNHCR team and local security forces.

## 6. Diplomatic Routes: G to G

The complexity of the Rohingya ethnic case in Indonesia has made the Indonesian Ministry of Foreign Affairs try to take diplomatic channels so that the international world is sensitive to this case. Through Indonesia's diplomatic strength in the ASEAN region, more than 265 engagements have been carried out on all levels in Myanmar, apart from that Indonesia implemented a 5-point consensus which emphasized the Myanmar Government to stop hunting them (the Rohingya ethnic group).[52] It is clearer that the Ministry of Foreign Affairs always monitors human trafficking which can often occur from foreign refugees and will of course endanger them themselves.[53]

50 Kompas.com, "Rohingya Korban Penyelundupan Dan Perdagangan Manusia," *Kompas.Com*, last modified 2023, accessed May 10, 2024, https://nasional.kompas.com/read/2023/12/21/08264021/rohingya-korban-penyelundupan-dan-perdagangan-manusia?page=all.

51 Metrotvnews.com, "Ada Perdagangan Orang Di Balik Gelombang Pengungsi Rohingya," *Metrotvnews.Com*, last modified 2023, accessed May 10, 2024, https://www.metrotvnews.com/play/K5nCLDLx-ada-perdagangan-orang-di-balik-gelombang-pengungsi-rohingya.

52 Moh. Rosyid, "Peran Indonesia Dalam Menangani Etnis Muslim Rohingya Di Myanmar," *Jurnal Hukum & Pembangunan* 49, no. 3 (2019): 613–635.

53 Kementerian Luar Negeri Republik Indonesia, "Isu Myanmar Menjadi Perhatian Diplomasi Indonesia," *Kemenlu.Go.Id*, last modified 2024, accessed May 10, 2024, https://kemlu.go.id/portal/idQuestion 1. In/read/5660/berita/isu-myanmar-menjadi-perhatian-diplomasi-indonesia.

Apart from that regionally in the ASEAN region, the Ministry of Foreign Affairs also through the Global Refugee Forum (GRF) in Geneva, Switzerland gave a strong emphasis that the roots of the problems in Myanmar, especially the Rohingya ethnic group, must be immediately resolved wisely by stakeholders and all elements of the state, especially those who following the 1967 convention. Apart from that, Indonesia will be committed to helping on humanitarian grounds to the Rohingya ethnic group and within the framework of the Bali Process, to accommodate countries that are in line with the Rohingya ethnic group, especially cases of human trafficking and refugees because of the increasingly complex problems experienced by them. Rohingya ethnic group.[54]

Referring to Sundari's research in 2021, Indonesia's mission is based on the 1945 Constitution and it is a general rule that Indonesia must maintain world peace and the issue of Rohingya ethnic refugees will become a strategic issue for Indonesia and in addition to other issues which are no less important for Indonesia and This is a dangerous issue if Indonesia does not respond absolutely to it because of the complex roots of the problems in Myanmar that allow its citizens to go to other countries and be involved in trafficking in the people they are supposed to protect.[55]

In 2017, Indonesia visited Myanmar directly and was received by representatives from the Myanmar State Consulate and the Commander of the Myanmar Armed Forces to immediately stop violence and military conflict in Rakhine State, Indonesia while still prioritizing soft power diplomacy so as not to appear to be putting pressure on the Myanmar Military Junta Government.[56] This turned around when Malaysia made efforts to negotiate to end the violence in Myanmar and also a protest by Malaysian citizens in front of the Myanmar embassy in Kuala Lumpur made relations between the two countries deteriorate where Myanmar responded by prohibiting Myanmar citizens from working in Malaysia.[57]

Not only that, Indonesia also did not let go of the Rohingya ethnic group in the Bangladesh Camp, through the Indonesian Embassy in Dhaka, the capital of Bangladesh, Indonesia sent at least 54 tons of aid in the form of rice, blankets, food packages, medicines and so on. This also cannot be separated from the UNHCR regulations which do not have the

54 antaranews.com, "Menlu Retno: Akar Masalah Pengungsi Rohingya Harus Diselesaikan," *Antaranews.Com*, last modified 2023, accessed May 10, 2024, https://www.antaranews.com/berita/3870927/menlu-retno-akar-masalah-pengungsi-rohingya-harus-diselesaikan.

55 Rio Sundari, Rendi Prayuda, and Dian Venita Sary, "Upaya Diplomasi Pemerintah Indonesia Dalam Mediasi Konflik Kemanusiaan Di Myanmar," *Jurnal Niara* 14, no. 1 (2021): 177–187.

56 The Indonesian Institute, "Langkah Diplomasi Indonesia Dalam Konflik Rohingya," *Theindonesianinstitute.Com*, last modified 2017, accessed May 10, 2024, https://www.theindonesianinstitute.com/langkah-diplomasi-indonesia-dalam-konflik-rohingya/.

57 cnnindonesia.com, "Buntut Masalah Rohingya, Myanmar Larang Pekerja Ke Malaysia," *Cnnindonesia.Com*, last modified 2016, accessed May 10, 2024, https://www.cnnindonesia.com/internasional/20161207140732-106-177946/buntut-masalah-rohingya-myanmar-larang-pekerja-ke-malaysia.

authority to provide these supplies in this Bangladesh Camp and everything is under the authority of the Bangladeshi state, even though in the Camp there are at least ± 70,000 people living in it and not including those stranded outside the Camp.[58]

Therefore, Indonesia must make every effort to provide assistance and continue to seek official diplomatic channels without placing excessive pressure on the Myanmar government which could threaten the safety of the Rohingya ethnic group. Indonesia is making every effort to continue to encourage countries to commit to the 1951 Convention and the 1967 Protocol, while Indonesia is not a country involved in it. However, Indonesia's actions are only based on humanity which must be carried out and given to fellow oppressed humans and in line with the 1945 Constitution, Indonesia must eliminate all forms of oppression and colonialism in a world that is inhumane and just.

## D. Closing

The first is that regarding international refugee regulations in Indonesia, there are standard rules that must be obeyed by participants, namely the 1951 Convention and the 1967 Protocol, where Indonesia is not one of the countries that has ratified these two international refugee regulations. However, Indonesia has its own regulations, namely Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Abroad. However, the implementation and budgeting of these regulations do not yet have clear derivatives and do not clearly convey the direction and treatment of refugees. Then the sub-discussion regarding the choice of Indonesia as a transit country is because Indonesia is a strategic country and has never used its military power in history to deal with refugees from abroad. Apart from that, Indonesia's safe conditions and friendly people make Indonesia a safe transit country for refugees, including those from the Rohingya ethnic group, who do not land in another country (Bangladesh) whose fate in that country is unclear. Then Indonesia also had experience in helping refugees from Vietnam in 1975-1996 and made Indonesia a humanist country for overseas refugees and currently Indonesia is trying to apply the same thing to the Rohingya ethnic group for relocation but there is still resistance and complexity in the behavior of Rohingya ethnic refugees bad towards local people and reluctant to accept them to come to his place. Not all of the Rohingya are from Myanmar, but there are some from Bangladesh camps who were trapped by individuals who paid a certain amount, making them enter the human trafficking ring and the Indonesian government is facing new challenges in this case because it is not only a refugee problem but also preventing Human trafficking. Indonesia is also trying to use diplomatic channels to be able to provide assistance to the country of Myanmar, including refugees who are

58 bbc.com, "Bantuan Indonesia Untuk Rohingya Di Bangladesh 'Mulai Dibagikan Hari Ini,'" *Bbc.Com*, last modified 2017, accessed May 10, 2024, https://www.bbc.com/indonesia/indonesia-41302028.

in the Bangladesh Camp, only on humanitarian grounds. The limitation of this research is that it still relies on research based on literature sources found using sociological methods. Further research can lead to field research to produce several systematic field findings.

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## Curriculum Vitae of Author

Nofli is an alumnus of the Academy of Correctional Sciences, currently serving as Head of the Center for Evaluation and Information Strategy for Legal and Human Rights Policy, at the Legal and Human Rights Policy Strategy Agency. Apart from being a bureaucrat, he is also often a practitioner due to his experience and current strategic position. Until now, his activeness has made him a senior practitioner who is quite respected because of his expertise in the field of studies, especially in the correctional sector. Rona Puspita is a legal analyst who currently serves at the National Legal Development Agency who is quite considered because she has experience in the academic world, including in scientific work. Especially regarding legal issues and the regulations attached to it.

**Indonesian Law Journal**
P-ISSN: 1907–8463; O-ISSN: 2772–8568
DOI : 10.33331/ilj.v17i1.152
https://ejournal.bphn.go.id/index.php/ILJ
**Volume 17 No. 1 | Desember 2024**

# MARRIAGE RIGHTS OF ROHINGYA REFUGEES IN INDONESIA: LEGAL RECOGNITION AND CHALLENGES

**Fitri Amalia Sari**
sebelas Maret University
JL. Ir. Sutami, 36 A, Surakarta
Author's e-mail: fitriasari@gmail.com

## ABSTRACT

The UN Refugee Agency (UNHCR) reports that the number of Rohingya refugees who have come to Indonesia since November 2023 has reached 1,200 people. The arrival of Rohingya refugees to Indonesia is a serious problem that highlights humanitarian and international legal challenges. This often occurs as part of forced migration resulting from conflict, violence and human rights violations in their countries of origin, particularly in Myanmar. On May 17, 2024, two Rohingya ethnic refugee couples who were in the West Aceh Regent's Office Complex refugee camp, Meulaboh got married. However, there are no provisions in the Indonesian state that regulate the marriage of Rohingya immigrant couples. In detail, the right to marriage is a human right that cannot be separated from humans themselves, including when they are in refugee camps, but marriage registration and documents must be the main point when they get married in another country, especially in a transit country like Indonesia. The aim of this research is to investigate the legal framework that regulates marriage rights for Rohingya refugees in Indonesia. It covers existing laws and policies and evaluates the extent to which the legal framework recognizes their marriage rights and the factors that constitute the legal challenges faced by Rohingya refugees in obtaining legal recognition of their marriages in Indonesia.

**Keywords :** immigrants, refugees, Rohingya

## A. Introduction

The Rohingya are an ethnic minority group whose majority live in the state of Rakhine (formerly known as Arakan) in Myanmar.[1] They are an ethnic group that speaks the Rohingya language, a language originating from the Indo-Aryan language family, and is predominantly Sunni Muslim. The Rohingya have long lived in the region, but their citizenship status has been a source of conflict and oppression in Myanmar. The Myanmar government has refused to recognize them as citizens and considers them illegal immigrants from Bangladesh, even though many of them have lived in the region for centuries.[2]

1 M. Angela Merici Siba and Anggi Nurul Qomari'ah, "Human Rights Violations in the Rohingya Conflict Human Rights Violations on Rohingya Conflict," *Journal of Islamic World and Politics* 2, no. 2 (2018): 367–385.

2 David Fernando, Razico P Putra, and Satria Yulanda, "Collaboration between the Directorate General of

The Rohingya have faced systemic discrimination, restrictions on basic rights, and violence at the hands of the Myanmar military. [3]In recent years, a series of violence caused by the military and Buddhist extremist groups have forced thousands of Rohingya to flee to neighboring countries, especially Bangladesh, as well as other countries in Southeast Asia including Indonesia, Malaysia and Thailand.[4]

In June 2012, Thein Sein, who at that time served as president of Myanmar, chose to deport the Rohingya ethnic group and collect them in shelters. As a result of this incident, 140 thousand people were displaced and 800 people were stateless, 3 thousand buildings were damaged, and almost 60 thousand people were left homeless. The Rohingya ethnic group was forced to leave Myanmar and flee to various nearby countries such as Indonesia, Malaysia, etc.

The definition of a refugee according to experts, especially in the context of international law, refers to the definition given in the 1951 Refugee Convention and the 1967 Additional Protocol. According to the convention, a refugee is someone who "is outside their country of origin because of fear of being persecuted because of their race, religion or nationality.", a particular social group, or political opinion" and are unable or unwilling to return to their country of origin due to fear of such circumstances. Article 14 of the Universal Declaration of Human Rights of 1948, which recognizes a person's right to seek asylum from persecution in another country, the UN Convention Relating to the Status of Refugees, adopted in 1951, is at the heart of international refugee protection today. This Convention entered into force on 22 April 1954, and underwent only one amendment in the form of the 1967 Protocol, which removed the geographical and time limitations of the 1951 Convention (2) This Convention The 1951 Convention, as a post-Second World War instrument, was originally limited in scope to people fleeing events occurring before 1 January 1951 and in Europe The 1967 Protocol removed these limitations and thus gave universal scope to the Convention. Since then, this system has been complemented by refugee and subsidiary protection regimes in several regions, as well as by the progressive development of international human rights law.

The 1951 Convention consolidated previous international instruments relating to refugees and provided the most comprehensive codification of refugee rights at an international level. [5]Experts in law, policy, and human rights also often develop a broader

Immigration and UNHCR (United Nations High Commissioner for Refugees)," *Research Science Journal* 11, no. 1 (2021): 57–63.

3 cnnindonesia.com, "In the aftermath of the Rohingya Problem, Myanmar Bans Workers from Going to Malaysia," *Cnnindonesia.Com* , last modified 2016, accessed May 10, 2024, https://www.cnnindonesia.com/internasional/20161207140732-106-177946/buntut- Myanmar-Rohingya-problem-forbids-workers-to-Malaysia.

4 Rahayu Rahayu, Kholis Roisah, and Peni Susetyorini, "Protection of the Human Rights of Refugees and Asylum Seekers in Indonesia," *Legal Issues* 49, no. 2 (2020): 202–212.

5 M Nurhadi, "Rohingya Refugees Act Up, Making Local Residents Confused," *Suara.Com* , last modified 2023, accessed May 9, 2024, https://www. Suara.com/news/2023/11/17/171630/pengungsi- Rohingya-acting-

understanding of refugees, including people fleeing armed conflict, political violence, or conditions that threaten their lives and safety in their countries of origin. This definition includes people who have experienced war, natural disasters, ethnic discrimination, human rights violations, and similar situations that have made them refugees.

In practice, the definition of a refugee can also vary by country or context, depending on the national or regional legal framework governing the status and protection of refugees. However, the bottom line is that refugees are people who need international protection due to circumstances that force them to leave their country of origin and cannot return there for certain reasons recognized by international law. Refugees are individuals or groups of individuals who, due to genuine anxiety based on persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside their country of citizenship and cannot, or because of such anxiety, cannot want to avail himself of the protection of that country, or a person who is stateless and is outside the country where he previously had his habitual residence, as a result of the events included, is unable, or because of such concerns, is unwilling to return to that country.[6]

The poor conditions and human rights violations experienced by the Rohingya have attracted global attention and raised international concern, with humanitarian and human rights organizations, including the United Nations, condemning the treatment they have experienced and calling for their protection and a just resolution of the conflict . UNHCR is an abbreviation for United Nations High Commissioner for Refugees. It is the United Nations agency responsible for protecting and assisting refugees around the world. UNHCR was founded in 1950 and operates in more than 130 countries.

UNHCR's main tasks include protection with provide legal and physical protection to refugees, including preventing deportation or unlawful detention, and ensuring that their human rights are respected. Aid with providing basic assistance such as food, shelter, and clothing to refugees in need. Resolution with helping refugees to find a sustainable solution to their situation, which may include voluntary return to the country of origin, local integration in the host country, or resettlement in a third country. Advocacy with fighting for refugee rights at the national and international level, as well as increasing public awareness about the issues faced by refugees. Coordination work with governments, international agencies, NGOs and other organizations to provide an effective response to refugee situations.[7]

In the context of Rohingya refugees in Indonesia, UNHCR can play a role in providing direct assistance to refugees, fighting for their rights before the Indonesian government, and coordinating with other institutions to improve the response to the crisis. Legal Basis for

up-makes-local-residents-embarrassed.

6 Rahayu, Roisah, and Susetyorini, "Protection of the Human Rights of Refugees and Asylum Seekers in Indonesia."

7 Okeri Ngutjinazo, "UN: There are Over 82 Million Refugees Worldwide, Over 40 Percent of them are Children," *Dw.Com* , last modified 2021, accessed May 9, 2024, https://www.dw.com/id/report -unhcrmention-%0Aover-82-million-refugees-across-the-world-end-2020/a-57948449.

Refugees in Indonesia. Indonesia has positive law that regulates the handling of refugees from abroad. According to Article 3 of Presidential Decree 125/2016, handling refugees takes into account generally accepted international provisions and is in accordance with statutory provisions. Then, the handling of refugees is coordinated by the Minister of Political, Legal and Security Affairs, which is carried out in the framework of policy formulation, including discovery, accommodation, security and immigration control.[8]

Apart from that, Indonesia also has provisions governing the provision of asylum and refugees. Article 26 of Law 37/1999 states that granting asylum to foreigners is carried out in accordance with national laws and regulations and taking into account international laws, customs and practices. Even though Indonesia has positive law regarding refugees, based on the UNHCR website, Indonesia is not yet a party to the 1951 Convention and the 1967 Protocol.[9] Meanwhile, if we refer to policies in Indonesia with Law Number 1 of 1974 is a law known as the Law on Marriage in Indonesia. This law is a legal regulation that regulates all aspects related to marriage in Indonesia, including the terms of marriage, marriage procedures, rights and obligations of husband and wife, division of joint property, divorce, as well as matters related to the status of children resulting from marriage. [10]The Aceh Regional Office of the Ministry of Religion confirmed that there are a number of conditions that must be met by foreign citizens, including Rohingya refugees, who wish to get married. They are asked to obey the rules that apply in Indonesia.[11]

But with Article 56 paragraph (2) of Law Number 1 of 1974 concerning Marriage which reads, "Marriages outside the territory of the Republic of Indonesia are valid and recognized under Indonesian law, then the proof of marriage from abroad must be registered at the Population and Civil Service. Civil Registry where husband and wife live."

The next law that explains this is Article 37 paragraph (4) Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration which reads "*Registration of marriages as intended in paragraph (1) and paragraph (2) reported by the person concerned to the Implementing Agency at their place of residence no later than 30 (thirty) days after the person concerned returns to Indonesia*." As well as in Article 73 of Presidential Decree 25/2008 which reads "Indonesian citizens as intended in Article 70 and Article 71 after returning to Indonesia report to the Implementing Agency or UPTD Implementing Agency at their place of domicile by bringing proof of reporting/

8 Scholastica G. Maing and M. Elfan Kaukab, "Australia's Foreign Policy Dilemma in Handling Refugees and Asylum Seekers," *UNSIQ Journal of Research and Community Service* 8, no. 1 (2021): 28–39.

9 Sun Park, "The Ambivalence in the Ambiguity of UNESCO's Cultural Policy Remit: A Structural Description of the Common Heritage of Mankind in the Cultural Diversity Convention," *International Journal of Cultural Policy* 00, no. 00 (2022): 1–15, https://doi.org/10.1080/10286632.2022.2107637.

10 Dyah Ayu Putri and Muhaimin Zulhair Achsin, "The Role of the United Nations High Commissioner for Refugees (UNHCR) in Handling Overseas Refugees in Indonesia in 2016-2022," *Hasanuddin Journal of International Affairs* 3, no. 2 (2023): 82–101.

11 Fernando, Putra, and Yulanda, "Collaboration between the Directorate General of Immigration and UNHCR (United Nations High Commissioner for Refugees)."

registration of marriage abroad and a Deed Excerpt Marriage."

Therefore, this research will analyze the existence of marriage rights for refugees in Indonesia and their relation to the issue of citizens' rights to children born in Indonesia, including the challenges. The aim of this research is to obtain comprehensive recommendations on the issue of marriage rights for refugees in Indonesia, especially from an academic perspective.

## B. Research Method

This legal research uses a empirical-qualitative approach. The empirical-qualitative approach in legal research aims to analyze and evaluate law based on applicable legal principles, norms and regulations, including identification of legal problems, and also interview several informant Rohingya Refugees, [12]collection of legal material, legal analysis, evaluation and interpretation and drawing conclusions. [13]Legal analysis of legal regulations and principles is a systematic process for understanding, evaluating, and interpreting legal regulations and related legal principles in the context of certain problems or topics.[14]

Systematically, the rules used in this research are Law Number 1 of 1974 concerning Marriage, as secondary material in this research. As well as several relevant literature specifically in the field of marriage law in Indonesia. As well as other sources considered to support this research.

## C. Discussions

### 1. The laws and regulations in force in Indonesia regulate marriages

Article 28E paragraph (1) of the 1945 Constitution. Marriage is related to social order. "*Marriage must be of the same religion, because with that there is no coercion on one another to practice the other religion*,".

Explained Neng at the Plenary Session chaired by Chief Constitutional Justice Anwar Usman accompanied by eight constitutional judges. The Marriage Law is an embodiment of the Indonesian state as a legal state as stated in Article 1 paragraph (3) of the 1945 Constitution and a state based on the belief in One Almighty God as contained in Article 29 paragraph (1) of the 1945 Constitution. Therefore, in the lives of Indonesian people, it is mandatory to implement Islamic law for Muslims, Christian law for Christians, and Hindu

12 Rik B. Braams et al., "Legitimizing Transformative Government: Aligning Essential Government Tasks from Rik B. Braams et al., "Legitimizing Transformative Government: Aligning Essential Government Tasks from Transition Literature with Normative Arguments about Legitimacy from Public Administration Traditions," Environmental Innovation and Societal Transitions 39 (2021): 191–205, https://doi .org/10.1016/j.eist.2021.04.004.

13 uggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Origin and Approaches," *Audito Comparative Law Journal* 4, no. 1 (2023): 1–9.

14 Nasir Muhammad, *Qualitative Research Methods, Procedures and Techniques* , 2020.

law for Hindus. To implement the Shari'a, the mediation of state power is needed. So, in the Marriage Law the legal basis used is none other than Article 29 of the 1945 Constitution, so that every article contained in a norm must be taken into account and must not conflict with the provisions of Article 29 of the 1945 Constitution. This means that all provisions (including marriage) must be in accordance with Article 29 of the 1945 Constitution which is an absolute requirement.[15]

According to M. Yahya Harahap's view, several principles are quite principled in the law marriage is the first accommodating all the realities that live in Indonesian society today. Second, in accordance with the demands of the times. Third the aim of marriage is to form an eternally happy family. Law Number 1 of 1974 is a law known as the Law on Marriage in Indonesia. This law is a legal regulation that regulates all aspects related to marriage in Indonesia, including the terms of marriage, marriage procedures, rights and obligations of husband and wife, division of joint property, divorce, as well as matters related to the status of children resulting from marriage.

Several points regulated in Law Number 1 of 1974 concerning Marriage in Indonesia include marriage requirements. This law stipulates conditions that must be met by prospective brides and grooms, such as age limit, parental consent if necessary, and the absence of a valid previous marriage. Then marriage procedures, this law also regulates the procedures that must be followed in carrying out a marriage in Indonesia, including registering the marriage at the civil registry office. Rights and Obligations of Husband and Wife.This law determines the rights and obligations of both parties, both husband and wife, in a marriage. And divorce, this law also regulates divorce procedures in Indonesia, including the conditions for divorce and the rights of the divorcing parties. Status of Children, this law regulates the status of children born from marriage, including regarding the determination of father and mother and the rights of children in terms of inheritance and care.

The Law on Marriage has undergone several changes since its enactment, including adjustments to social and cultural developments, as well as compliance with human rights. The Compilation of Islamic Law (KHI) is a collection of legal regulations that regulate various aspects of Muslim life in Indonesia. KHI is an effort to compile and integrate various provisions of Islamic law that exist in various sources of traditional Islamic law, such as the *Al-Quran, Hadith, ijtihad ulama*, and *fatwas*, into one systematic and structured unit. KHI was first published in 1991 as an attempt to simplify, classify and reorganize Islamic law in Indonesia. The main objective of KHI is to create legal certainty in the religious and social life practices of Muslims in Indonesia, as well as to facilitate the application of Islamic law in accordance with the diverse context and conditions of Indonesian society.

KHI covers various aspects of Islamic law, including marriage, family, inheritance, waqf, zakat and sharia criminal law. This document also includes provisions regarding

15 *Law Number 39 of 1999 concerning Human Rights* , nd

Islamic institutions, such as mosques, Islamic educational institutions, and religious social institutions. KHI is not a single document, but is a series of legal regulations that are related to each other. This consists of various legal regulations issued by the Indonesian government, such as Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, Law Number 7 of 1989 concerning Sharia Crime, and various other statutory regulations relating to Islamic law.[16]

The Compilation of Islamic Law provides a clear legal framework for the practice of Muslim life in Indonesia, while taking into account the state legal principles of Pancasila and religious freedom guaranteed by the Indonesian constitution. In the legal sense, a compilation is nothing other than a legal book or collection of books containing descriptions or certain legal materials, legal opinions or legal rules. The meaning is indeed different from codification, but the compilation in this sense is also a legal book. The Compilation of Indonesian Islamic Law which was established in 1991 does not explicitly state what the meaning of compilation and compilation of Islamic law is. From the history of its compilation, there is no evidence of any controversial ideas regarding what was meant by the compilation. Thus, the compiler of the compilation does not strictly adhere to one understanding regarding what he is making, but this fact does not seem to invite reactions from any party.

The basics of marriage are in accordance with Chapter II "*Basics of Marriage*" of the Compilation of Islamic Law (KHI). Section 2 Marriage according to Islamic law is a marriage, namely a very strong contract or mitssaqan ghalidzan to obey God's commands and carry them out is worship. Article Marriage aims to realize life in a household that is sakinah, mawaddah, and rahmah. Article 4 Marriage is valid if it is carried out according to Islamic law in accordance with article 2 paragraph (1) of Law no. 1 of 1974 concerning Marriage. Article 5 (i) To ensure orderly marriage for Islamic society every marriage must be noted. (2) Registration of marriage is in paragraph (1), carried out by a Marriage Registrar Officer as regulated in the Law No. 22 of 1946 in conjunction with Law no. 32 1954. Article 6 (1) To fulfill the provisions in article 5, each The marriage must take place in the presence of under the supervision of Marriage Registrar Officers. (2) Marriages carried out outside supervision. There are no Marriage Registrar employees legal force. Article 7 (1) Marriage can only be proven by a Marriage Certificate made by the Registrar's Officer Marry. (2) In the event that the marriage cannot be proven with a Marriage Certificate, an itsbat can be submitted the marriage was at the Religious Court. (3) marriage certificate which can be submitted to the Court Religion is limited to matters relating to like as There is a marriage within the framework divorce settlement. Loss of Marriage Certificate. There is doubt about whether it is valid or not part of the conditions of marriage. There was a marriage that

16 *Law Number 1 of 1974 concerning Marriage* (Addition to the State Gazette of the Republic of Indonesia Number 3019, 1974).

occurred before the enactment of Law no. I Year 1974 and marriages entered into by those who do not have marriage obstacles according to Law no. I 1974 (4) Those who have the right to apply for its bat marriage means husband or wife, their children, marriage guardian and interested parties with that marriage.

Article 8 Dissolution of marriage other than divorce can only result in death proven by a divorce decree in the form of a decision Religious Courts either take the form of a decision divorce, vow of divorce, khuluk or decision of taklik divorce. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage: This law is the latest revision of Law Number 1 of 1974 and introduces several important changes in marriage regulations in Indonesia, including regulations regarding minimum age for marriage, protection of women's rights in marriage, and divorce procedures.

Law Number 1 of 1974 concerning Marriage is the law that regulates marriage in Indonesia. The history of the formation of this law can be understood in the context of political, social and legal changes in Indonesia at that time. This law was created during the New Order government under President Soeharto. At that time, the government had a very large role in regulating social life, including in matters of marriage. Law Number 1 of 1974 aims to unify various marriage rules and practices that differ throughout Indonesia. This is important considering that Indonesia is a country with great cultural and religious diversity.

One important aspect of this law is the regulation of interfaith marriages. This law requires couples who wish to marry to have the same religion. Law Number 1 of 1974 also regulates various other aspects of marriage, including requirements for the validity of a marriage, the rights and obligations of husband and wife, marriage annulment, divorce, and so on. Since its enactment in 1974, the Law on Marriage has undergone several changes and amendments to adapt to current developments and societal demands. One example of significant change is the Constitutional Court's decision to allow interfaith marriages in 2018, which changed several articles in this law. Thus, Law Number 1 of 1974 concerning Marriage has a long and important history in regulating the institution of marriage in Indonesia, and reflects the social, cultural and political dynamics of its time.

Several decisions of the Constitutional Court of the Republic of Indonesia (MKRI) also have a significant impact on marriage law in Indonesia. Representatives of the Constitutional Court of the Republic of Indonesia (*Perwakilan Mahkamah Konstitusi Republik Indonesia)* also have a significant impact on marriage law in Indonesia. Aceh, as a province with a majority Muslim population in Indonesia, has become a place of refuge for several Rohingya refugees. The government and people of Aceh have shown solidarity and concern for the fate of the Rohingya, providing humanitarian assistance and shelter for refugees.

Although many Acehnese show a friendly attitude towards the Rohingya, there is also the potential for tension between Rohingya groups and local communities. Factors such as competition over resources, fear of cultural and religious influences, and economic uncertainty can all fuel conflict between these groups. It is important for the Indonesian

government, especially at the provincial and local levels, to ensure that social integration between the Rohingya and the people of Aceh runs smoothly. This involves providing adequate humanitarian assistance, efforts to promote dialogue between groups, as well as creating economic opportunities for all parties to reduce tensions. A long-term solution to this conflict involves continued efforts to address its root causes in Myanmar, such as the need to recognize the rights of the Rohingya people and an inclusive political settlement in the country.

The conflict between Rohingya and local residents in Aceh reflects complex challenges involving social, economic, political and religious issues. Resolving this conflict requires joint efforts from the government, local communities and other relevant parties to ensure peace and justice for all parties involved.

The Constitutional Court of the Republic of Indonesia (MKRI) in 2017 issued an important decision regarding the minimum age limit for marriage. The decision is regarding a judicial review of Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage which regulates the minimum age for marriage.

Through this decision, the Constitutional Court stated that the minimum age for marriage is 19 years for both men and women. This decision was established to protect children's rights and provide better protection for children from early marriage. Prior to this decision, Law Number 1 of 1974 only stated that the minimum age for marriage was 16 years for men and 16 years for women, with parental or court approval. This MKRI decision changes this provision and confirms that the minimum age limit for marriage is 19 years for both men and women, without requiring parental or court approval.

The Constitutional Court (MK) confirmed the decision to review Article 43 paragraph (1) of the Marriage Law, which states that illegitimate children not only have a legal relationship with their mother, but also have a legal relationship with their biological father, only to protect the innocent status of illegitimate children. The position of illegitimate children is a problem that needs serious attention, considering that the impact of this problem is not only related to legal issues from the aspect that accompanies it, but also raises social problems that can disrupt the survival of children born from an illegitimate relationships. as an individual who has a great responsibility in shouldering the future of the nation. Government regulations governing the implementation of Law Number 1 of 1974, including regarding marriage administration, division of joint assets, and divorce procedures.

Several provinces or districts/cities in Indonesia also have regional regulations relating to marriage, especially those relating to the administration of marriage and the division of joint property. Regional regulations (Perda) in Aceh Province relating to marriage generally include provisions that regulate various aspects of marriage in accordance with Islamic sharia principles that apply in Aceh. However, because Aceh has special autonomy in the field of Islamic law, these regulations may differ from regulations in other provinces in Indonesia. Some Aceh regional regulations relating to marriage include:

Aceh Qanun Number 6 of 2014 concerning Marriage: This Qanun regulates various aspects of marriage according to Islamic sharia law that applies in Aceh. Included in this regulation are marriage conditions, marriage procedures, rights and obligations of husband and wife, division of joint property, and other provisions relating to the institution of marriage.

Aceh Qanun Number 8 of 2014 concerning the Implementation of Marriage Registration: This Qanun regulates marriage registration procedures in Aceh, including administrative requirements that must be fulfilled by couples getting married, registration procedures, and the division of authority between the district/city government and the religious affairs office. Aceh Qanun Number 10 of 2018 concerning Child Protection. Although not specifically about marriage, this qanun regulates the protection of children, including efforts to prohibit the marriage of underage children in accordance with sharia principles that apply in Aceh.

Apart from these qanuns, there are still other regional regulations in Aceh relating to marriage, especially those related to the implementation of Islamic law in the province. It is important to note that Aceh has special authority in regulating Islamic law in its territory, so regulations in Aceh may differ from regulations in other provinces in Indonesia.

Customary law and religious law, especially Islam, Christianity, Catholicism, Hinduism and Buddhism, are in accordance with the religion adhered to by each couple getting married. Because the Rohingya refugees are Muslims. Islamic religious law regarding marriage is regulated in the Al-Quran, Hadith, as well as the ijtihad (legal thinking) of ulama.

The Koran is the basic basis of Islamic law regarding marriage. The following verses are: Al-Quran Surah Annisa verse 1 Meaning:

"*O all humans, fear your Lord who created you from one person, and from him Allah created his wife, and from the two of them Allah created many men and women. . And, fear Allah, in whose name you ask each other, and (maintain) friendly relations Indeed, Allah always watches over you and watches over you*."

Al-Quran Surah An Nuur verse 31 means:

"*And, marry those who are alone among you, those who are worthy (to marry) from your male servants and your female servants. If they are poor, Allah will enable them with His grace, And, Allah is All-Encompassing (His Gifts) and All-Knowing*."

Al-Quran Surah Ar Ruum verse 21 means:

"*And, among the signs of His power is that He created for you wives of your own kind, so that you will be inclined and feel at ease with them and He will make among you a feelings of love and affection. Verily, In that there are indeed signs for a person who thinks.*"

Al-Quran Surah An Nahl verse 72 means:

"*Allah made for you wives from your own kind and made for you from your wives, children and grandchildren, and gave you sustenance from the good things. So, why do they believe in falsehood and deny the favors of Allah.*"

Hadith In the hadith or sunnah there are several things that form the basis of marriage law, namely

"*Women are married for four things, namely because of their wealth, their offspring, their beauty, and because of their religion. So, get a woman who is religious and you will be lucky*." (HR Bukhari and Muslim).

"*But I pray, sleep, fast, break the fast, and marry women. Whoever hates my sunnah, he is not among my ummah*." (HR Bukhari and Muslim).

"*If someone marries, then he has perfected half of his religion. Therefore, fear Allah for the other half*." (HR Baihaqi).

The following are some of the main principles in Islamic religious law regarding marriage: Marriage Requirements. Islamic law sets several requirements that must be met for a marriage to be valid. These requirements include agreement (*ijab qabul*) from both parties, the guardian (female representative) for the prospective bride, as well as witnesses present at the marriage contract. Agreement and Consent. Marriage in Islam is based on agreement and consent of both parties who are getting married. Both the groom and the bride must agree to the marriage voluntarily. Dowry is a right owned by the prospective bride which must be given by the prospective groom at the time of marriage. The dowry can be in the form of property, money, or something that has value.

Conditions for Validity of Marriage. Islamic law sets several conditions that must be met for a marriage to be considered valid. One of them is the provisions regarding the legal guardian for the prospective bride, as well as provisions regarding the absence of obstacles that prohibit marriage ('*ain, 'udl, terms* and *rukhshah*). Rights and Obligations of Husband and Wife Islamic law regulates the rights and obligations of husband and wife in marriage. This includes the husband's obligation to provide support and protection to his wife, as well as the wife's right to be provided for, cared for and treated fairly by her husband. Divorce Process. Islamic law also regulates divorce procedures (talak) and the rights that both parties have in the event of a divorce. This includes procedures for recording divorce and dividing joint assets after divorce. Marriages between Indonesian citizens (WNI) and foreigners are often referred to as mixed marriages, and the rules are regulated in article 57 of Law No.1 of 1974.

According to Jumhur Ulama, there are five pillars of marriage and each pillar has certain conditions. Namely: Prospective husband, provided that: Muslim religion, Man, Obviously the person, Can give consent, There are no obstacles to marriage. Prospective wife, provided that: Muslim religion, Woman, Obviously the person, Can be asked for approval. There are no obstacles to marriage. Marriage guardian, with the following conditions: Man, Mature, Has guardianship rights. There are no guardianship obstacles, Marriage witness, provided that: Minimum two men, Present at the wedding ceremony Can understand the meaning of the contract Islam Mature. Consent Qabul, with the following conditions: There is a statement of marriage from the guardian, There is a statement of acceptance from the prospective groom, Use the words marriage, tazwij, or translations of these two words, Between consent and qabul are continuous, The meaning between consent and qabul is

clear, People who are involved in ijab and qabul are not in ihram for *Hajj* or *Umrah*, The *Ijan* and *Qabul* assembly must be attended by a minimum of four people, namely candidates the bride or her representative, the bride's guardian and two witnesses.

Documents Required to Marry a Foreigner: To arrange a marriage with a foreigner, there are several documents that must be prepared, including: Documents for foreigners: Certificate of No Impediment (CNI), also known as a single letter, which states eligibility for marriage and intention to marry an Indonesian citizen. This letter is issued by the competent authority in the country of origin, such as the embassy. Photocopy of identity card from the country of origin of the prospective husband/wife. Photocopy of birth certificate. Passport photocopy. Certificate of freedom to marry. Divorce certificate if ever married. Death certificate of spouse if deceased. Current domicile certificate. 4 pieces of 2x3 size photos and 4 pieces of 4x6 size photos. If the wedding takes place at the KUA, you must attach a certificate of conversion to Islam if you were previously non-Muslim.

Requirements for Obtaining CNI from the Embassy:

1. Latest birth certificate. Photocopy of country of origin identity card. Passport photocopy. Proof of residence or domicile letter. If you don't have one, it could be a photocopy of a telephone or electricity bill. All documents must be translated into Indonesian by a sworn translator, and then legalized by the Foreigner's Embassy in Indonesia.
2. Documents for Indonesian citizens: Cover letter from RT/RW stating that there are no obstacles to holding the wedding. Forms N1, N2, and N4 from sub-districts and sub-districts. Form N3, specifically for those getting married at KUA or a bridal agreement letter signed by both bride and groom. Photocopy of KTP and birth certificate. Data of the prospective bride and groom's parents. Photocopy of Family Card. Parents' marriage certificate if you are the first child. Data of two wedding witnesses and photocopies of their identities. 4 pieces of 2x3 size photos and 4 pieces of 4x6 photos. Latest PBB payment proof book. Pre-nuptial agreement.

Apart from that, there are also document requirements for Indonesian citizens required by foreign embassies, such as: Photocopy of birth certificate and original. Photocopy of KTP. N1, N2 and N4 letters from the sub-district which need to be photocopied. Photocopy of prenuptial agreement if available.

Before posting all documents, it is recommended to make copies of all documents, as the Embassy will not return original documents. The requirements for marriage abroad that need to be completed are reporting of marriages, both within and outside the country, which is an obligation. The completeness files are as follows: Marriage Certificate or marriage certificate from the country of origin which has been translated into Indonesian, and has been superlegalized by the local Indonesian Representative. Marriage Certificate from the Indonesian Embassy in that country. Photocopy of birth certificate of husband and wife. Photocopy of KTP and Family Card. Photocopy of husband's passport. Side-by-side

photograph measuring 4×6 with a red background.[17]

## 1. Legal challenges faced and inhibiting factors faced by Rohingya refugees in complying with marriage regulations in Indonesia

The Aceh Regional Office of the Ministry of Religion confirmed that there are a number of conditions that must be met by foreign citizens, including Rohingya refugees, who wish to get married. They are asked to obey and obey the rules that apply in Indonesia. Includes passport, unmarried certificate from the country of origin and marriage registration from the religious affairs office for those who are Muslim. Head of the Religious Affairs Office (KUA) of Johan Pahlawan Subdistrict, West Aceh Regency, Marhaschedule described that the marriage of two ethnic Rohingya couples in a temporary shelter at the West Aceh Regent's was an illegal act and did not comply with the rules and applicable laws in Indonesia.

The marriage of two ethnic Rohingya couples, namely Zainal Tullah and Azizah, and Zahed Huseen and Rufias, was allegedly carried out not in accordance with the marriage procedures normally regulated in Islamic teachings, and the wedding was led by Jabir as a Muslim ustadz among the Rohingya. [18] Marriages between Rohingya ethnic residents in West Aceh have become a matter of public discussion because they are said to violate the Marriage Law. Muhammadiyah asked the government to coordinate with the United Nations High Commissioner for Refugees (UNHCR). Marriages carried out in the jurisdiction of the Republic of Indonesia must follow the laws in force in Indonesia. In Islam, a marriage is said to be valid if it fulfills 5 conditions, namely the bride and groom, the bride's guardian, witnesses of two men or four women, thanks (dowry), and consent.

Head of the West Aceh Regency Ministry of Religion Office, Abrar Zym in Meulaboh, said:

"*that so far the West Aceh Ministry of Religion has not known about the marriage*."

So, he said:

"*information about Rohingya ethnic marriages must be investigated further*."

Abu Ahmad is one of the Rohingya refugees who married an Indonesian citizen in Bandar Lampung in 2010. At least four of the 248 Rohingya refugees who are under the supervision of the Polonia Class I Immigration Office are married to Indonesian women. This practice is not prohibited, although the formal regulations are unclear.

Head of the West Aceh Ministry of Religion (Kemenag) Office, Abrar Zym, said that the marriage of a Rohingya couple in a refugee camp in the city of Meulaboh was not under the authority of the Religious Affairs Office (KUA).

Marriages of foreign citizens are clearly not within the purview of the Office of Religious

17 Karen Zivi, "Performing the Nation: Contesting Same-Sex Marriage Rights in the United States," *Journal of Human Rights* 13, no. 3 (2014): 290–306.Supreme Court decisions, and changes in federal and state law suggest that the United States is witnessing a support for lesbian, gay, bisexual, and transgender (LGBT

18 Rahayu Rahayu, Kholis Roisah, and Peni Susetyorini, "Protection of the Human Rights of Refugees and Asylum Seekers in Indonesia," *Legal Issues* 49, no. 2 (2020): 202–212.

Affairs (KUA) under the Indonesian Ministry of Religion. The Marriage Law clearly only applies to Indonesian citizens, when a Rohingya citizen gets married, then it returns to the Rohingya regulations. Even though the wedding was held in Indonesian territory. Religiously, we return to their religious beliefs and customs. In the future, there needs to be a synergy between the Ministry of Law and Human Rights, the Ministry of Foreign Affairs, the DPR and the Ministry of Home Affairs to provide certainty of citizenship status for foreigners living as refugees in the territory of the Republic of Indonesia (Ace Hasan Syadzily, Deputy Chair of Commission VIII DPR RI).

He also said that this marriage was not regulated in Law Number 1 of 1974 concerning Marriage. In the marriage law, the government has clearly regulated the rules for marriage between foreign citizens and Indonesian citizens (WNI). Meanwhile, there are no regulations regarding marriage between foreigners and foreigners.

Another example of a case regarding mixed marriages carried out in Indonesia, marriages carried out by Indonesian citizens and foreigners from New Zealand were carried out under Islamic law. Previously, New Zealand foreigners had converted to the prospective bride's religion, namely Islam. Based on the provisions of Article 2 of the Marriage Law, this marriage is valid because it has been carried out according to the laws of each religion and belief which is then registered with the local Religious Affairs Office (KUA).

Mixed marriage is one aspect that is included in the scope of International Private Law. Private International Law is a branch of law that regulates the legal consequences of civil relations between individuals who have ties to more than one state jurisdiction. Mixed marriages occur when two individuals from different countries or having different nationalities marry. Questions about which laws should be applied to regulate marriage, including formal requirements for marriage, the rights and obligations of husband and wife, and separation of assets. International recognition of the status of mixed marriages, whether as valid or invalid, as well as termination or divorce.

Citizenship of spouses and children may be affected by the nationality laws in force in the country where they were born, the nationality laws of their parents, as well as other relevant provisions. If a couple has different nationalities, the citizenship status of their children may be determined by the nationality laws of the respective countries where the parents have citizenship. Some countries may use the jus soli principle (citizenship is determined by place of birth), while others use the *jus sanguinis* principle (citizenship is determined by the nationality of the parents).

If a international marriage occurs, where one partner has a different nationality to the country in which they are married, then the citizenship status of their children can become complex. Countries have different laws in this regard, and there may be specific regulations governing the citizenship status of children in the context of cross-border marriages. Some countries may grant automatic citizenship to children born to parents who are citizens of their country, regardless of the child's place of birth. However, there are also countries that

require special measures, such as registration or an application for citizenship, to grant citizenship status to children born to their citizen parents outside the territory of that country.

In some countries, children born to couples with different nationalities may be eligible to have dual citizenship, that is, the citizenship of both parents. However, there are countries that do not recognize dual citizenship and may require children to choose one citizenship when they reach a certain age.

It is important to note that citizenship rules can vary between countries, and citizenship can have significant implications regarding rights, obligations, and other entitlements. Therefore, if there is any question about citizenship status, it is important to consult a legal expert or competent authority in the relevant country. The principle of reciprocity in recognizing the validity of mixed marriages refers to the principle that a country will recognize the validity of a mixed marriage if the country of origin of one of the partners also recognizes the marriage. In other words, the state will give recognition to mixed marriages as long as the country also gives the same treatment to mixed marriages from other countries. This principle arises from the need for mutual respect for the legal sovereignty of states in cases of mixed marriages. If a country recognizes mixed marriages from country A, then country A is expected to provide the same recognition to mixed marriages from the country that provides such recognition. This creates a fair and balanced framework for the international recognition of mixed marriages.

However, it is important to remember that the principle of reciprocity is not always applied automatically or universally. There are various factors that can influence whether a country will apply the principle of reciprocity in recognizing mixed marriages, including domestic legal policies, diplomatic relations between the countries concerned, as well as broader international legal principles.

In practice, countries often enter into bilateral or multilateral agreements that regulate the issue of recognizing mixed marriages, including provisions regarding the principle of reciprocity. This aims to create a clear and reliable framework for the recognition of mixed marriages, which takes into account the interests and legal sovereignty of all parties involved. Issues related to citizenship for spouses and their children, including their rights to citizenship of different countries. In the event of a divorce, questions arise about the laws applicable to divorce, asset rights, and support obligations between spouses who come from different countries. Children's rights and parental obligations, including custody and determining where to live for children if the marriage ends.

Private International Law (HPI) regulates cross-border marriages, including marriages between WNA (Foreign Citizens) and WNI (Indonesian Citizens). Private International Law attempts to resolve legal conflicts arising from cross-border civil relations by providing rules to determine applicable law and regulate the recognition and enforcement of inter-state court decisions. This is important to ensure legal certainty and protection of individual rights in civil relations that cross national borders. Rohingya refugees may face serious economic

hardship, so complying with legal regulations could be an additional challenge for them, especially if it requires additional costs. The economic condition of Rohingya refugees in Indonesia is often fragile and unstable. Efforts are needed from governments, humanitarian organizations, and the international community to increase their access to employment, education, social services, and financial support, and to improve their legal status so that they can become economically more independent. Due to their refugee status and legal limitations in working in Indonesia, many Rohingya refugees are forced to work in the informal sector or even face difficulty finding work at all. This limits their income and hinders their ability to meet basic needs.

Language and culture are important factors in understanding and complying with legal regulations. Rohingya refugees may face communication and understanding barriers due to language and cultural differences with the local Indonesian community. Language and cultural differences between the Rohingya and Indonesian communities cover various aspects, which can affect social interaction, understanding and integration between the two groups.

The main language used by the Rohingya people is Rohingya, which is a language that comes from the Indo-Aryan language family and has influences from languages in the surrounding region. In Indonesia, the official language is Indonesian, which comes from the Austronesian language family and has characteristics that differ significantly from Rohingya.

The majority of the Rohingya people adhere to Islam, while in Indonesia, the majority of the population is Muslim too, but there are various other religious beliefs such as Christianity, Hinduism, Buddhism and traditional beliefs. The Rohingya people have distinctive traditions and customs, including weddings, religious rituals and cultural festivals. Indonesian culture is also rich with various traditions and customs from the various tribes and ethnicities within it.

Although there are differences in language and culture, it is important to remember that each individual and group has significant internal diversity, and there are also many similarities and common ground between the Rohingya people and Indonesian society. Open communication, mutual understanding, and respect for differences can help strengthen relations between the two groups.

International Convention on the Elimination of All Forms of Racial Discrimination. that the Universal Declaration of Human Rights states that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in it, without distinction of any kind, in particular race or color. or country of origin, Considering that all human beings are equal before the law and have the right to equal legal protection against all forms of discrimination and against all incitement to discrimination, Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination related to it, in whatever form and wherever they exist.

Article 1 International Convention on the Elimination of All Forms of Racial Discrimination. In this Convention, the term "racial discrimination" means any distinction, exclusion, limitation or preference based on race, color, descent or national or ethnic origin which has the aim or effect of eliminating or reducing the recognition, enjoyment or exercise, on an equal basis, of any human rights and fundamental freedoms in the political, economic, social, cultural or other areas of public life. This Convention does not apply to distinctions, exceptions, limitations or preferences made by a State Party to this Convention between citizens and non-citizens. No provisions of this Convention shall be construed to affect the legal provisions of States Parties concerning nationality, nationality or naturalization, provided that such provisions do not discriminate against any particular nationality.

The principle of non-refoulement is a principle that prohibits the expulsion or refusal to return a person to a country where he or she may be subjected to torture, inhuman or degrading treatment, or other serious harm. This principle is part of international human rights law, especially in relation to refugee protection. The principle of non-refoulement has a strong legal basis in various international instruments, including:

1. UN Convention on the Status of Refugees 1951 and Additional Protocol 1967: Article 33 of the Refugee Convention states that "No one shall be expelled or refused return, by any means whatever, to the borders of any State where he may face threats to his life or freedom because of race, religion, nationality, social group, or political opinion."
2. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 3 of the Convention prohibits the extradition, surrender or transfer of a person to a country where he or she may face the threat of torture.
3. UN Agreement on the Elimination of All Forms of Racial Discrimination: Article 3 of this Agreement prohibits member states from expelling or refusing to return their own citizens, as well as persons from certain ethnic groups, to countries where they may face torture or inhumane treatment.

The principle of non-refoulement is an important pillar in the protection of human rights, especially for those who experience threatening situations in their home countries and seek protection in other countries. States have an obligation to respect and implement this principle in accordance with their obligations under international law.

Uncertainty regarding the legal status of Rohingya refugees. As they do not have a clear legal status in Indonesia, they may find it difficult to comply with legal regulations with confidence. Many Rohingya refugees have experienced trauma and psychological difficulties as a result of their experiences in Myanmar and during their migration process. This can interfere with their ability to focus and comply with legal regulations. Overcoming these factors requires a holistic approach, which includes economic assistance, legal and cultural education, psychological support, as well as efforts to ensure clear legal status for Rohingya refugees in Indonesia.

"The Indonesian government must prioritize considerations of national interests. Apart from that, there must be a firm attitude regarding limiting the number of refugees accommodated and the period of temporary stay. "(Hikmahanto Juwana, Professor of International Law, University of Indonesia). Considerations of national interests regarding Rohingya refugees can involve various complex and sensitive factors. A country may have national security concerns regarding the presence of Rohingya refugees. This could include concerns about potential infiltration by extremist groups or cross-border crime involving refugees.

The presence of large numbers of Rohingya refugees can affect social and political stability in a country. This can include tensions between local communities and refugees, competition over resources, and political reactions from communities. Rohingya refugees can have an economic impact, both positively and negatively, depending on various factors such as their involvement in the labor market, consumption, and investments they may bring with them.

A country's decision regarding Rohingya refugees can also affect its diplomatic relations with other countries, especially with countries where the refugees come from or countries that provide international assistance. States have a responsibility to comply with their obligations under international law, including the 1951 Refugee Convention and the 1967 Additional Protocol. This includes providing protection to people who meet the criteria for refugees and ensuring that they are not arbitrarily expelled or persecuted.

The conflict between Rohingya and local residents in Aceh can be a very sensitive topic. This conflict may be related to social, economic, political and religious issues. The Rohingya are a Muslim ethnic minority group who predominantly live in Rakhine state, Myanmar. They have experienced systematic discrimination and violence by the Myanmar government and the Buddhist majority. As a result, many Rohingya fled Myanmar, seeking refuge in neighboring countries such as Bangladesh, Malaysia and Indonesia.

In dealing with the Rohingya refugee problem, a country often must weigh security, political, economic and humanitarian considerations simultaneously. A balanced approach based on the principles of human rights and justice can help countries address these challenges in a way that best suits their national interests. PAHAM FH Unpad itself gave four special appeals through a press release for handling Rohingya refugees in the future. First, academics are asked not to express opinions without a solid scientific basis. Erroneous opinions from academics can greatly influence public opinion. Second, the various government parties and international organizations involved must be more responsive in handling the arrival of Rohingya refugees. There needs to be an effort to bridge constructive dialogue with local residents to avoid rejection.

Third, PAHAM FH Unpad also demands that the Indonesian Government prioritize a humanitarian approach in maritime patrols against Rohingya boats. Emergency relief measures such as withdrawing them to Indonesian land areas must be taken if necessary.

Finally, PAHAM FH Unpad asked the Indonesian Government to immediately cooperate with related countries, especially Bangladesh and Malaysia for comprehensive joint handling.

## D. Closing

The applicable laws and regulations governing the marriage of foreign nationals in this discussion are Rohingya ethnic refugees depending on the provisions in these laws which may differ depending on the legal status of foreigners and Indonesian citizens, as well as applicable bilateral or multilateral agreements. between Indonesia and the foreigner's country of origin. The relevant laws in Myanmar are Family Law, Religious Law and Government Regulations. However, the political and social situation in Myanmar can influence the implementation and enforcement of the law, including in the context of marriage. In addition, the controversial human rights situation in the country, including in particular the treatment of the Rohingya minority, has raised international attention to the protection of their rights, including marriage rights.

The legal basis for the laws and regulations of the Republic of Indonesia (RI) regarding marriage between WNA (Foreign Citizens) and WNI (Indonesian Citizens) is Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments Law Number 1 of 1974 concerning Marriage. The legal basis also includes various derivative regulations, including government regulations and regional regulations which may regulate further administrative procedures. General procedures for registering marriages between foreigners and Indonesian citizens in Indonesia:

1. Document Requirements
2. Registration at the Religious Affairs Office (KUA)
3. Verification and Announcement Process
4. Marriage Registration

The marriage of Rohingya ethnic refugees as foreign citizens (WNA) with Indonesian citizens has faced several obstacles in complying with marriage regulations in Indonesia. The administrative process for marriage registration in Indonesia involves strict document requirements. Rohingya refugees as foreigners may face difficulties in fulfilling the necessary document requirements, especially if they do not have complete or valid identity documents. Rohingya refugees may not have clear legal status in Indonesia. They may be in refugee or immigrant status without a valid residence permit. This can complicate the marriage registration process because foreigners who marry Indonesian citizens must fulfill the legal requirements in force in Indonesia, including having a valid residence permit.

Legal protection of marriage rights for Rohingya refugees as foreigners could also be an issue. They may need to be guaranteed adequate legal protection, including property rights and other family rights, especially in the event of divorce or separation. Legal and Policy Uncertainty: Unstable political and legal conditions in Myanmar and Indonesia, as well as legal uncertainty regarding the status and rights of Rohingya refugees, may create

additional obstacles to complying with Indonesia's marriage regulations.

Legal uncertainty is a complex and challenging situation, but with a careful approach, accurate information, and assistance from relevant parties, individuals involved can better navigate these obstacles. There are several suggestions from the author as follows:

1. Communicating with relevant authorities, such as the Office of Religious Affairs (KUA), Immigration Department, or relevant legal aid institutions, can help in understanding the marriage registration process and obtaining more accurate information.
2. Consider Legal Alternatives: If there is significant legal uncertainty or obstacles that are difficult to overcome, consider other legal alternatives that may be available. This could include seeking alternative marriage pathways, applying for special protection for refugees, or seeking assistance from humanitarian or diplomatic organizations.

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## Curriculum Vitae of Author

Fitri Amalia Sari is a student at Sebelas Maret University class of 2018, active in media publications and also writing several scientific articles in terms of legal policy and her writings relating to refugees, poverty and matters relating to social life.

**Indonesian Law Journal**
P-ISSN: 1907–8463; O-ISSN: 2772–8568
DOI : 10.33331/ilj.v17i1.153
https://ejournal.bphn.go.id/index.php/ILJ
**Volume 17 No. 1 | Desember 2024**

# LEGAL AND PRACTICAL IMPLICATIONS OF THE ICJ ON SOUTH AFRICA'S LAWSUIT AGAINST ISRAEL REGARDING PALESTINE

**Khairunnisa Irianto**
Universitas Sebelas Maret
Jl. Ir. Sutami, 36A, Kentingan, Surakarta
Author's e-mail: nisairianto@gmail.com

**ABSTRACT**

The International Court of Justice's temporary ruling on South Africa's lawsuit against Israel has long been considered to be in conflict with Palestine. They asks Israel to take all steps to prevent genocide in the vast territory of the Gaza Strip. Israel must also prevent and punish those who publicly incite genocide in Gaza and increase the inflow of humanitarian aid to residents. The aim of this research is to examine the legal implications and impacts of the temporary decision of the International Court of Justice (ICJ). As well as its practical implications in efforts to achieve peace and justice in the region. The conclusions of this research provide in-depth insight into the relevance of international law in resolving the long-standing political and humanitarian tensions between Palestine and Israel.
**Keywords :** genocide, humanitarian, international court of justice

## A. Introduction

The International Court of Justice (ICJ), also known as the International Court of Justice, is the principal judicial organ of the United Nations (UN). The ICJ has an important role in maintaining international peace and security and enforcing international law. International Court Decisions must comply with the decisions of international courts, such as the ICJ, or face legal and diplomatic consequences. The ICJ also provides non-binding legal opinions at the request of the UN General Assembly, UN Security Council, or other specialized UN agencies. These legal opinions provide guidance on complex international legal issues and assist in decision-making by UN bodies.[1]

The Gaza Strip is an area inhabited by around 2 million Palestinians and controlled by Hamas since 2007. The conflict between Israel and Hamas often leads to escalation of violence which causes huge losses on both sides.[2] The conflict between Israel and Palestine has been going on since November 2, 1917. The official statement issued by the

1 Linda Hasibuan, "Ini Putusan Mahkamah Internasional Atas Israel & Respons Dunia," *Cnbcindonesia.Com*, last modified 2024, accessed May 31, 2024, https://www.cnbcindonesia.com/news/20240224083114-4-517256/ini-putusan-mahkamah-internasional-atas-israel-respons-dunia.

2 Dimitrios Machairas, "The Strategic and Political Consequences of the June 1967 War," Cogent Social Sciences 3, no. 1 (2017): 1–10, http://dx.doi.org/10.1080/23311886.2017.1299555.

British Foreign Minister, Arthur Balfour, to Lord Rothschild, a leader of the British Jewish community, is called the Balfour Declaration.[3]

In the Six Day War in 1967, the Israeli Occupation captured the Gaza Strip, West Bank, and East Jerusalem from Egypt, Jordan, and Syria. Israel then established military control over Gaza, built Jewish settlements, and faced resistance from the Palestinian population.[4] South Africa, a country that experienced racial violence during the apartheid era, accused Israel of violations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, or the "*Genocide Convention*".[5] The ICJ hears South Africa's accusations and Israel's defense in The Hague, Netherlands. The ICJ's legal examination has a "*provisional measure*" (provisional mesureas) stage, where the ICJ, among other things, can immediately order a cessation of hostilities and acts of violence and the "*careful examination of the evidence*" stage (merit stage), where in this stage the evidence is actually considered whether Israel has violated the Genocide Convention.

At the interim measures stage of the current ICJ hearing, South Africa is trying to argue Israel's "*genocidal acts*" in Gaza before evaluating its "*genocidal intent*", and that it is sufficient to demand control measures against Israel and stop the violence. The Israeli side tried to argue that any genocidal intent must be proven at this stage of interim measures for the resulting decision to be legal and enforceable.[6]

ICJ ruling on January 26, 2024. The Court considers that Israel must submit a report to the Court on all actions taken to enforce this Order within one month, from the date of this Order. The report provided will then be communicated to South Africa, which will be given the opportunity to submit its comments to the Court. Israel's attack on Rafah on May 6 2024 added a new chapter to the long-running conflict between Israel and Palestine, with far-reaching impacts both from a humanitarian and legal perspective. This event shows how complex and difficult it is to achieve peace in a region that is constantly plagued by violence and tension. This dangerous situation demands the immediate and effective implementation of the temporary measures indicated by the Court in its Order of 26 January 2024, which apply throughout the Gaza Strip, including in Rafah, and do not require the indication of additional temporary measures.[7]

3 Yossi Goldstein, "The Six Day War: The War That No One Wanted," *Israel Affairs* 24, no. 5 (2018): 767–784, https://doi.org/10.1080/13537121.2018.1505475.

4 Nayef R F Al-Rodhan, Graeme P Herd, and Lisa Watanabe, "The Six-Day War and Its Consequences," in Critical Turning Points in the Middle East, ed. Nayef R F Al-Rodhan, Graeme P Herd, and Lisa Watanabe (London: Palgrave Macmillan UK, 2011), 99–115, https://doi.org/10.1057/9780230306769_5.

5 kompas.id, "Indonesia Cannot Participate in Suing Israel Regarding Genocide," *Kompas.Id*, last modified 2024, accessed May 31, 2024, https://www.kompas.id/baca/english/2024/01/09/en-indonesia-tidak-bisa-ikut-gugat-israel-soal-genosida.

6 Indiatoday.in, "Muslim Nurse in US Fired for Calling Israel's War in Gaza 'Genocide,'" *Indiatoday.In*, last modified 2024, accessed May 31, 2024, https://www.indiatoday.in/world/story/israel-gaza-war-new-york-muslim-nurse-fired-genocide-2546066-2024-05-31.

7 Mersiha Gadzo and Brian Osgood, "Israel's War on Gaza Updates: Full Rafah Attack a 'Humanitarian Nightmare,'" *Www.Aljazeera.Com*, last modified 2024, accessed May 31, 2024, https://www.aljazeera.com/news/liveblog/2024/5/7/israels-war-on-gaza-live-israel-blasts-rafah-fate-of-ceasefire-uncertain.

Meanwhile, according to various views, the Palestinian territory is currently not in a period of peace, and will ultimately give rise to a prolonged conflict.[8] So there is a need for a mediator in the case of Israel and Palestine who accommodates various views both from a legal perspective and a more democratic international relations perspective.[9] Based on the things described above, the author is interested to conduct research question how to Legal and Practical Implications of the International Court of Justice between South Africa's lawsuit against Israel regarding Palestine. Aims this study is found a more comprehensive problem solving analysis in this research so that it would provide narratives of defense of Israel's actions against the Palestinians.

## B. Research Method

The research method uses Legal research. Legal research is a discipline that focuses on the systematic study of laws, regulations, and legal principles. This research uses the type of Normative Legal Research. Normative legal research focuses on the study and analysis of legal texts, including laws, regulations, and court decisions.[10] This research is theoretical and often aims to interpret or clarify existing legal rules. The approaches include analysis of legal texts (statutes, regulations, case law), interpretation of law and doctrine and compilation and systematization of law.[11]

The literature sources used are previous research and several relevant legal sources answering the Israeli and Palestinian conflict, which will be used as secondary sources in this research. Legal research methodology refers to the approach and techniques used to conduct legal research, including primary data sources, namely International Court Justice Decisions.[12] Mass media articles can be a valuable resource in legal journal writing, especially for providing context, case examples, and empirical data that support legal analysis. However, the use of mass media articles as a source must be done carefully, considering the characteristics and limitations of the source. In discussing current legal cases in this research, such as controversial court decisions, mass media articles will be used to outline the chronology of events, the views of legal experts interviewed, and responses from the general public.

8 Fadhila Inas Pratiwi, M. Aryo Rasil Syarafi, and Demas Nauvarian, "Israeli-Palestinian Conflict beyond Resolution: A Critical Assessment," *Jurnal Ilmu Sosial dan Ilmu Politik* 26, no. 2 (2022): 168–182.

9 Camilla Boisen, "Israel's Punitive War on Palestinians in Gaza Israel's Punitive War on Palestinians in Gaza," *Journal of Genocide Research* (2024): 1–22, https://doi.org/10.1080/14623528.2024.2406098.

10 William H. Putman and Jennifer Albright, *Legal Research*, 3rd ed. (Cengage Learning, 2014).

11 David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–2478.

12 Sharon Hanson, *Legal Method* (Taylor & Francis Group, 2000).

## C. Discussions

### 1. International Court of Justice ruling on South Africa's lawsuit against Israel regarding Palestine

The International Court of Justice is the main judicial body of the United Nations. It was founded on the basis of the UN Charter, signed in 1945 in San Francisco (United States), and began work in 1946 at the Peace Palace, The Hague (Netherlands).[13] The Court, consisting of 15 judges, has a dual role: first, to resolve, in accordance with international law, legal disputes between States submitted to it and, second, to provide advisory opinions on legal issues referred to it. UN agencies and special agencies that are given full authority.[14] Because the existence of international arbitration courts is the result of the wishes of the parties, then these parties have the greatest voting rights draw up procedural rules. Instead, the PCIJ was formed as a permanent court, and therefore its founders felt it appropriate to establish a predetermined set of rules, known in advance by all parties, to govern it process. They have been available to purpose in limited quantities precedents drawn from the practice of arbitration courts, but also on a large scale So far we have to make new breakthroughs. They must design procedures that are capable satisfying a sense of justice with the greatest potential litigants and placing them on a strict basis of equality. Therefore, the first Member of PCIJ voted for regulations that combine simplicity and the absence of formalism and which flexible in application. With successive adjustments, the Court managed to strike a rough balance between these requirements. This balance has been defended by the ICJ, which has been very careful about making changes rules set by his predecessor.

The ICJ acts as a forum for resolving legal disputes between countries. Countries involved in the dispute can take their cases to the ICJ for a binding decision. Examples of disputes handled by the ICJ include border issues, maritime rights, and violations of international treaties. The ICJ also provides non-binding legal opinions at the request of the UN General Assembly, UN Security Council, or other specialized UN agencies. These legal opinions provide guidance on complex international legal issues and assist in decision-making by UN bodies. Through its decisions, the ICJ contributes to the development and codification of international law. The ICJ's legal decisions and opinions often serve as important references in international legal practice and help clarify and develop international legal norms.[15]

By providing a peaceful dispute resolution mechanism, the ICJ helps prevent the

13 Brian Doyle, "Howling Like Dogs: Metaphorical Language in Psalm 59" (makalah disampaikan pada the Annual International Meeting for the Society of Biblical Literature, Berlin, Germany, 19-22 Juni 2002)

14 The Court. (n.d.). INTERNATIONAL COURT OF JUSTICE. Retrieved May 31, 2024, from https://www.icj-cij.org/court

15 Mary Ellen O'Connell, "The Just War Tradition and International Law against War: The Myth of Discordant Doctrines," *Journal of the Society of Christian Ethics* 35, no. 2 (2015): 33–51.

escalation of conflicts and promotes justice between states. This contributes to international stability and security. The ICJ plays a role in educating the international community about international law through the publication of its decisions and opinions. This increases global understanding of the principles of international law and the importance of complying with those laws. Examples of Cases Handled by the ICJ. Territorial Sea Case between Nigeria and Cameroon: ICJ decides the dispute regarding land and maritime borders between the two countries.Genocide Case in Bosnia: The ICJ examines allegations of genocide committed during the conflict in the former Yugoslavia.

The Genocide Convention is a Convention on the prevention and punishment of the crime of genocide, an international treaty adopted by the United Nations (UN) General Assembly. The Genocide Convention was officially adopted by the UN General Assembly on 9 December 1948 and came into force on 12 January 1951. The history of the Genocide Convention begins with resolution 96 (1) dated 11 December 1946 which was declared by the UN General Assembly. In that resolution, the UN General Assembly firmly stated that genocide is a crime under international law, contrary to the spirit and goals of the UN, and condemned by the civilized world.[16] The drafter of the Genocide Convention resolution was Raphael Lemkin, a lawyer of Polish-Jewish descent who had been a victim of genocide during World War II. Raphael Lemkin was also the first person to coin the term genocide. While living in Poland, Raphael Lemkin lost more than 40 members of his family to the Nazi genocide. Therefore, after moving to the United States and becoming a jurist, he sought to develop international legal instruments that could prevent further genocide. Lemkin then campaigned for the resolution of the Genocide Convention for many years. The Genocide Convention Resolution was voiced at the Paris Peace Conference in 1945, but was not successfully adopted into valid international legal force.[17]

This convention establishes genocide as a crime under international law, regardless of whether the act was committed in times of peace or war.[18] The main contents of the Convention are as follows:

Article I: The group that concluded this agreement strengthens that genocide committed in times of war or in times of peace is a crime according to the punishment between countries that they will prevent and punish. Article II: According to this convention, what constitutes genocide is acts committed with the intention of people of the same nation, race, race or religion, whether all of them or only some of them, will be destroyed, namely acts such as those involved:

a) Members of the group were killed.

16 Coase, H. Ronald, "The Problem of Social Cost", *The Journal of Law and Economics* (1960).

17 Library Board of Trustees, "Evanston Public Library Strategic Plan, 2000–2010: A Decade of Outreach," Evanston Public Library, http://www.epl.org/library/strategic-plan-00.html (diakses 1 Juni 2005).

18 Nations, U. (n.d.). United Nations Office on Genocide Prevention and the Responsibility to Protect. Retrieved May 31, 2024, from https://www.un.org/en/genocideprevention/genocide-convention.shtml#:~:text=The%20Convention%20on%20the%20Prevention,time%20the%20crime%20of%20genocide.

b) Members of the group are subject to serious bodily or mental harm.
c) The group is subjected to life with the intention of destroying all of them or only their part.
d) An action is taken with the intention that the birth of a child in that group will be prevented.
e) The group's children are kidnapped to be raised by another group.

Article III: Acts to be punished:

a) Genocide.
b) Abetting genocide.
c) Incited genocide clearly in front of the public.
d) Attempted genocide.
e) Followed by another person with the intention of committing genocide. main elements of the Genocide Convention: Main Contents of the Convention.

Definition of Genocide: According to Article II of the Convention, genocide is defined as acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, such as:

1. Killing group members.
2. Causing serious physical or mental injury to group members.
3. Introducing living conditions designed to physically destroy the group, either in whole or in part.
4. Imposing measures aimed at preventing births within the group.
5. Forcibly moving children from one group to another.
6. Punishable Actions:

Article III identifies punishable acts related to genocide:

1. Genocide.
2. Conspiracy to commit genocide.
3. Direct and public incitement to genocide.
4. Attempted genocide.
5. Involvement in genocide.
6. State Responsibility:

Article IV emphasizes that people who commit genocide or related acts must be punished, including government officials and private individuals. Article V requires participating states to enact the necessary domestic legislation to give effect to the provisions of this Convention, in particular to provide effective punishment against persons guilty of genocide or other acts listed in Article III. Article VI states that persons accused of genocide shall be tried by the competent courts of the country in which the act was committed, or by an international criminal tribunal having jurisdiction over the parties to which it was committed.

Article VII calls for international cooperation for the prosecution of persons accused of genocide. This argue International Criminal Court (ICC) under the Rome Statute, the ICC has jurisdiction to prosecute genocide, crimes against humanity, and war crimes. International

Court of Justice, several genocide cases have been referred to the International Court of Justice (ICJ) and ad hoc tribunals, such as the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY).

Domestic Laws many countries have adopted domestic laws criminalizing genocide in accordance with their obligations under the Genocide Convention. One of the biggest challenges is enforcing the law against genocide, especially when the perpetrators are state actors or have significant political power. Justice and Accountabilit despite international agreements, the process of bringing perpetrators to justice can be lengthy and complicated, often facing political and bureaucratic obstacles. The term "*Zionist forces*" is often used in the context of the Israeli-Palestinian conflict to refer to Israeli military forces, also known as the Israel Defense Forces (IDF). The term "*Zionist*" comes from the political movement of Zionism which fights for independence and the existence of the state of Israel as a home for the Jewish people in their land which is considered the Land of Israel in Jewish religious tradition.

Israel Defense Forces (IDF) where is IDF is Israel's armed forces responsible for the defense of the state of Israel and protecting the security of its citizens. The IDF was founded after the founding of the state of Israel in 1948 and has been involved in various military conflicts since then. Role in the Israeli-Palestinian Conflict. The IDF is involved in various military operations in the Palestinian territories, including the West Bank, Gaza Strip, and East Jerusalem, in response to terrorist attacks, unrest, and other security threats.[19]

Criticism and Controversy, the IDF has often been the target of criticism from various parties, including international human rights organizations, for alleged human rights violations, excessive use of force, and restrictions on Palestinian freedoms. Controversy also emerged regarding IDF military actions which were considered detrimental to Palestinian civilians. Policy and Strategy, the IDF operates based on Israel's defense policies and strategies designed to protect the security of the country and its citizens. The IDF has a military doctrine that focuses on defensive power, early warning, threat detection, and rapid response to security threats. International Contributions: Apart from protecting domestic security, the IDF is also involved in peace missions and humanitarian assistance in various parts of the world as part of Israel's efforts to support the international community.

Use of the term "*Zionist forces*" often reflects a particular political or ideological viewpoint towards the Israeli-Palestinian conflict, with use of the term may reflect criticism of Israeli military policies and actions.[20] Hamas became the sole ruler of Gaza after expelling its political opponents by force in 2007. Hamas has an armed wing and was estimated to have around 30,000 fighters before the start of the war. This group, called the Islamic Resistance Movement, wants to establish an Islamic state to replace Israel. Hamas rejects Israel's right

19 Nimer Sultany, "A Threshold Crossed: On Genocidal Intent and the Duty to Prevent Genocide in Palestine," *Journal of Genocide Research* (2024): 1–26, https://doi.org/10.1080/14623528.2024.2351261.

20 *Question of Palestine: Legal Aspects (Doc. 3)*. (2019, March 12). Question of Palestine. https://www.un.org/unispal/document/auto-insert-204960/

to exist and is committed to its destruction.[21]

Hamas justified its attacks as a response to what it called Israeli crimes against the Palestinian people. Hamas also wants thousands of Palestinian prisoners in Israel to be released and an end to the blockade of the Gaza Strip by Israel and Egypt something both countries say is in the interest of security.

Palestinian Islamic Jihad is an Islamist militant group in Palestine that has its own military wing and is involved in conflict with Israel. Although smaller than Hamas, PIJ is considered one of the militant groups active in the Gaza Strip.[22] The Israeli-Palestinian conflict continues, and the role of the Palestinian army is one of the key aspects in the dynamics of the conflict.

Israeli Army (Israel Defense Forces/IDF). The Israeli Army, officially known as the Israel Defense Forces (IDF), is the armed forces of the state of Israel. The IDF has a major role in maintaining the security of the state of Israel, protecting Israeli citizens, and maintaining the country's territorial integrity. The IDF spirit outlines our values and together with the practical rules derived from them constitutes our code of ethics, which guides our soldiers and commanders in daily operational activities.

Israel's attack on Gaza is one of the most complex and prolonged issues in the Israeli-Palestinian conflict. These attacks usually occur in the context of armed conflict between Israel and Palestinian armed groups based in the Gaza Strip, such as Hamas and Palestinian Islamic Jihad.

The Gaza Strip is an area inhabited by around 2 million Palestinians and controlled by Hamas since 2007. The conflict between Israel and Hamas often leads to escalation of violence which causes huge losses on both sides. This conflict has been going on for more than 100 years, to be precise since November 2 1917. At that time, the British Foreign Minister, Arthur Balfour, wrote a letter addressed to Lionel Walter Rothschild, a figure in the British Jewish community. The letter was only 67 words long, but its contents had an impact on Palestine that is still felt today.[23]

The letter committed the British government to "establish a national home for the Jewish people in Palestine" and facilitate "the achievement of this objective". This letter is known as the Balfour Declaration. In essence, the European powers promised the Zionist movement a state in a region where 90 percent of the population was native Palestinian Arabs. The British Mandate was established in 1923 and lasted until 1948. During this period, the British facilitated the mass migration of Jews. Where there was a fairly large wave of arrivals after the Nazi movement in Europe. In this wave of migration, they encountered resistance

21 (N.d.). Retrieved May 31, 2024, from https://www.bbc.com/news/world-middle-east-67039975

22 Quillen, S. (2024, May 31). Israel's war on Gaza live: Most of Jabalia refugee camp 'in ruins.' *Al Jazeera*. https://www.aljazeera.com/news/liveblog/2024/5/31/israels-war-on-gaza-live-unrelenting-nightmare-for-weary-palestinians

23 Rasha Khatib, Martin McKee, and Salim Yusuf, "Counting the Dead in Gaza: Difficult but Essential," *The Lancet* 404, no. 10449 (2024): 237–238, http://dx.doi.org/10.1016/S0140-6736(24)01169-3.

from Palestinians. Palestinians are concerned about the changing demographics of their country and the confiscation of their land by Britain to hand it over to Jewish settlers. Rising tensions eventually led to the Arab Revolt. This lasted from 1936 to 1939.

In April 1936, the newly formed Arab National Committee called on Palestinians to launch a general strike. It withheld tax payments and boycotted Jewish products to protest British colonialism and increasing Jewish immigration. The six-month strike was brutally suppressed by the British, who launched a campaign of mass arrests and carried out the destruction of homes. This is a practice that Israel continues to apply to Palestinians to this day.[24]

The second phase of the rebellion began in late 1937. It was led by the Palestinian peasant resistance movement, which targeted British power and colonialism. In the second half of 1939, Britain had deployed 30,000 troops in Palestine. Villages were bombed by air, curfews were imposed, homes were destroyed, and administrative detentions and mass killings were widespread. Simultaneously, the British collaborated with the Jewish settler community and formed an armed group and "counter-insurgency force" consisting of Jewish fighters called the British-led Special Night Squad. Within the Yishuv, the pre-state settler community, weapons were secretly imported and weapons factories were established to expand the Haganah, the Jewish paramilitary that later became the core of the Israeli army.

In the three years of the uprising, 5,000 Palestinians were killed. As many as 15,000 to 20,000 people were injured and 5,600 were imprisoned. The history of the United Nations (UN) relationship with the conflict between Israel and Palestine reflects a long and complex effort to find a just and peaceful resolution. The following is an outline of the history of the UN in the context of the Israeli-Palestinian conflict, including Israeli attacks on Palestinian territories: The Establishment of Israel and UN Resolutions Resolution 181 (1947):

On 29 November 1947, the UN General Assembly adopted Resolution 181, which recommended the division of Palestine, then under the British Mandate, into a Jewish state and an Arab state with Jerusalem as an international city. This resolution was accepted by the Jewish community but rejected by the Arab community.

Arab-Israeli War of 1948. After Israel's declaration of independence on May 14, 1948, a war broke out between the new state of Israel and neighboring Arab countries. This war caused many Palestinians to flee, which until now has become one of the core problems in the conflict.

UN Conflict and Resolution. The Armistice and Resolution of 1948. On 11 December 1948, the UN General Assembly adopted Resolution 194, which, among other things, outlined the right of Palestinian refugees to return to their homes and receive compensation. This resolution also established the UN Reconciliation Commission for Palestine (UNCCP).

24 Alsaafin, L. (2023, October 9). What's the Israel-Palestine conflict about? A simple guide. *Al Jazeera*. https://www.aljazeera.com/news/2023/10/9/whats-the-israel-palestine-conflict-about-a-simple-guide

The Six Day War (1967) and Resolution 242. After the Six Day War in June 1967, in which Israel occupied the West Bank, Gaza Strip, and East Jerusalem, the UN Security Council adopted Resolution 242 on 22 November 1967, calling for the withdrawal of Israeli troops from the territories occupied and respect for the right of every country in the region to live in peace.

The Intifada and the Peace Process. First Intifada in 1987-1993. The First Intifada was a Palestinian uprising against the Israeli occupation of the West Bank and Gaza Strip. The UN passed various resolutions condemning the violence and calling for a peaceful solution through negotiations. The Oslo Process and Resolution 338 of 1973. Resolution 338, adopted during the Yom Kippur War on October 22, 1973, reaffirmed Resolution 242 and called for a ceasefire and negotiations to achieve a just and durable peace. The Oslo Process, which began in the early 1990s, aimed to reach a settlement through direct negotiations between Israelis and Palestinians.

Second Intifada and UN Intervention. Second Intifada in 2000-2005. Violence escalated again with the Second Intifada, resulting in significant loss of life on both sides. The UN continues to call for restraint and dialogue. ICJ Advisory Opinion. On July 9, 2004, the International Court of Justice (ICJ) issued an opinion stating that Israel's construction of the wall in the occupied Palestinian territories was illegal under international law and must be stopped and destroyed.

Gaza War 2008 to date. The conflict in Gaza has frequently resulted in UN intervention, including calls for a ceasefire, fact-finding missions, and humanitarian assistance. Security Council resolutions frequently call for an end to violence and the protection of civilians.

Resolution 2334 On December 23, 2016, the UN Security Council adopted Resolution 2334 which confirmed that the establishment of Israeli settlements in the Palestinian territories occupied since 1967, including East Jerusalem, has no legal validity and is a flagrant violation of international law. The resolution also calls for an immediate and complete cessation of all settlement activities by Israel.

The UN's Role in Relief and Reconstruction, namely the UN Agency for Palestine Refugees (UNRWA) was founded in 1949 to provide assistance and protection for Palestinian refugees in Jordan, Lebanon, Syria, the West Bank and the Gaza Strip. UNRWA continues to be a key actor in providing humanitarian assistance.

Israel has launched four prolonged military attacks on Gaza, namely in 2008, 2012, 2014 and 2021. Thousands of Palestinians have been killed, including many children, and tens of thousands of homes, schools and office buildings have been destroyed. Rebuilding is nearly impossible because the siege prevents construction materials, such as steel and cement, from reaching Gaza. The 2008 attack involved the use of internationally banned weapons, such as phosphorus gas.

In 2014, over a period of 50 days, Israel killed more than 2,100 Palestinians, including 1,462 civilians and nearly 500 children. During the attacks, around 11,000 Palestinians

were injured, 20,000 homes were destroyed and half a million people were displaced.[25] On December 29, 2022, South Africa filed a legal complaint with the International Court of Justice (ICJ) accusing Israel of committing genocide against Palestinians in the Gaza Strip. This lawsuit is based on alleged actions aimed at destroying part or all of the Palestinian ethnic group.

Contents of the Accusation, accusations of genocide include claims that Israel systematically targets Palestinian civilians through military operations, restrictions on access to basic necessities such as food and medical supplies, and other actions intended to destroy the existence and identity of Palestinians.

The ICJ's legal examination has a "*provisional measure*" stage, where the ICJ, among other things, can immediately order a cessation of hostilities and acts of violence; and the 'careful examination of the evidence' stage (merit stage), where in this stage the evidence is actually considered whether Israel has violated the Genocide Convention.

The ICJ's decision is not legally binding and is only advisory in nature. Therefore, its implementation will purely depend on the Israeli government itself. Hamas' surprise attack last October (on October 7, 2023) seemed to hurt Israel's pride. The wounds caused by the Hamas attack are already deep. So Israel is really blind or has an extraordinary grudge against Hamas. This is very difficult to stop, even if there is an order from the International Court to carry out a ceasefire.[26]

The implementation of the ICJ's decision - especially regarding calls to Israel not to commit genocide - really depends on Israel's good faith. "Dr. Yon Machmudi, Middle East expert from the University of Indonesia". Countries that have provided assistance to Israel to date actually have a responsibility to ensure Israel's compliance with the decision International Court of Justice.[27] Furthermore, this also indicates that nation states need to do increased scrutiny in the approval of exports and military aid to Israel. The responses to the International Court's Decision from the countries involved are as follows.[28] The Palestinian Ministry of Foreign Affairs and Expatriates welcomed the ICJ's decision, and said in a statement that it was an "*important reminder*" that no country is above the law.

Riyadh's Foreign Minister Maliki noted that Israel failed to convince the court that it had not violated the 1948 Genocide Convention.[29]

25 Shannon M Culverwell, *Israel and Palestine-An Analysis of the 2014 Israel-Gaza War from a Genocidal Perspective*, *James Madison University* (Unpublished manuscript, 2017).

26 bbc.com, "What Is Hamas and Why Is It Fighting with Israel in Gaza?," *Bbc.Com*, last modified 2023, accessed November 15, 2024, https://www.bbc.com/news/world-middle-east-67039975.

27 Teddy Tri Setio Berty, "Pengamat: Zona Demiliterisasi Jadi Upaya Israel Kontrol Gaza, Tapi Hamas Masih Kuat," *Liputan6.Com*, last modified 2024, accessed November 15, 2024, https://www.liputan6.com/global/read/5492601/pengamat-zona-demiliterisasi-jadi-upaya-israel-kontrol-gaza-tapi-hamas-masih-kuat.

28 *How the Court Works*. (n.d.). INTERNATIONAL COURT OF JUSTICE. Retrieved May 31, 2024, from https://www.icj-cij.org/how-the-court-works

29 Palestine News & Info Agencies, "Foreign Ministry Warns of Occupation's Efforts to Widen Conflict to Distract Attention Away from Its Crimes against Palestinians," *English.Wafa.Ps*, last modified 2024, accessed November 15, 2024, https://english.wafa.ps/Pages/Details/149571.

"*ICJ judges saw Israeli politicization, deflection and lies. They assessed the facts and the law and ordered interim measures that recognized the gravity of the situation on the ground and the correctness of South Africa's implementation. Palestine calls on all countries to ensure respect for the orders of the International Court of Justice, including Israel*".

Israeli Prime Minister Benjamin Netanyahu condemned the decision as "outrageous". In a video message shortly after the court order, he said Israel was fighting a "just and unparalleled war." He added that Israel will continue to defend itself and its citizens while complying with international law.[30] Meanwhile, right-wing National Security Minister Itamar Ben-Gvir mocked the ICJ after the court issued an interim ruling."Den Hague shmague," wrote the minister on social media platform X.

South Africa.The South African government called the ICJ ruling a "decisive victory" for international law. In a statement, the government said it welcomed the temporary measures and said it sincerely hoped Israel would not act to thwart implementation of the court order. It was further said that the decision marked an important milestone in the search for justice for the Palestinian people and added that South Africa would continue to act within global institutions to protect the rights of Palestinians in Gaza.

Outside ICJ headquarters in The Hague, Naledi Pandor, South Africa's international relations minister, told reporters that Israel must stop fighting in Gaza if it wants to comply with the UN high court's order. "How do you provide aid and water without a ceasefire?" Pandor asked. "If you read the order, the implication is that a ceasefire must be called."

Hamas praised the court's "momentous" decision and said it "contributes to Israel's isolation." "The (International) Court's decision is an important development that contributes to Israel's isolation and exposes its crimes in Gaza," he said in a statement. Indonesia has been a member of the UN since 28 September 1950. Indonesia believes that the Court is in a position to determine that Israel has committed  series of systematic violations of international law in the OPT, including East Jerusalem.[31]

Saudi Arabia Pushes for a Two-State Solution to Resolve the Conflict in Gaza, which was conveyed by the Minister of Foreign Affairs of Saudi Arabia, Prince Faisal bin Farhan, encouraging the creation of a two-state solution to the conflict in Gaza. He assessed that this solution would guarantee the security of both Palestine and Israel.[32]

The Two-State Solution is one of the approaches that has long been proposed to resolve the conflict between Israel and Palestine, particularly regarding the Gaza region and the West Bank. This solution aims to create two peacefully coexisting states: the State

30 CORDER, M. (2024, May 24). ICJ orders Israel to halt Gaza offensive; Israel unlikely to comply. *AP News*. https://apnews.com/article/israel-gaza-palestinians-court-ceasefire-01d093d21a1eadaa31af5708cf1cbf38

31 Yuli Andriansyah, "Indonesia on Palestinian Destiny: Perspectives from the Government and Scholars," *Millah: Journal of Religious Studies* 23, no. 1 (2024): xii–xviii.

32 Khojji, Z. (2024, April 28). Saudi FM: Commitment to two-state solution only way to prevent Gaza war reoccurring. *Arabnews*. https://www.arabnews.com/node/2500801/saudi-arabia

of Israel and the independent State of Palestine. a Palestinian state would include Gaza, the West Bank, and possibly part of East Jerusalem as its capital. Israel will be recognized as an independent and sovereign state, with security guarantees from the Palestinian state and other countries in the region. The border between Israel and Palestine will be negotiated, possibly based on pre-1967 lines with adjustments and land swaps agreed. The Palestinian refugee issue will be resolved through negotiations, including the right of return or compensation. Jerusalem's status will be determined through negotiations, with possible solutions such as Jerusalem as the capital of both countries or special arrangements for holy sites. Precise border determination and the issue of Israeli settlements in the West Bank are major challenges. Many Israeli settlements are located in territory Palestinians want for their state. Jerusalem is a very sensitive city for both parties. Israel claims Jerusalem as its undivided capital, while the Palestinians want East Jerusalem as their capital. Ensuring security for both countries is a major challenge. Israel wants guarantees that a Palestinian state will not become a base for attacks against Israel. There are millions of Palestinian refugees who have the right of return to the land that is now part of Israel. Political leadership on both sides must support and be able to implement the agreement. Internal divisions in Palestine between Fatah and Hamas, as well as political dynamics within Israel, often hinder progress.

The ICJ stated that Israel must immediately ensure that its military forces do not kill Palestinians or cause serious physical and mental injuries, destroy lives and prevent the birth of Palestinians.

Judge Joan E. Donoghue, who read the verdict, said that Palestinians in Gaza remained "extremely vulnerable" and the suffering they were experiencing was "heartbreaking."

On January 11, South Africa took Israel to the International Court of Justice (ICJ), a United Nations (UN) judicial body.

South Africa issued an 84-page legal document declaring that Israel's actions in Gaza constitute genocide. It is said in the document that according to Article II of the Genocide Convention, Israel has committed acts of genocide including murder, which cause serious physical or mental harm to members of a national, ethnic, racial or religious group; intentionally causing living conditions calculated to result in the physical destruction of the group; and implementing measures intended to prevent births within the group in order to destroy it in whole or in part.

South Africa supports its allegations with evidence, among other things, of more than 20 thousand deaths and more than 7 thousand of them were children; bombing of 'safe areas' that Israel ordered Palestinians to evacuate to; and the forced relocation of Palestinians to camps that lack food, water, electricity, medicine or sanitation.

South Africa asked the Court to show steps while the following 9 By letter dated 29 December 2023, the Deputy Registrar informed the Parties that, based on Article 74

paragraph 3 of the Regulations, the Court has set January 11 and 12 2024 as the trial date verbally on request for indication of temporary action.[33]

Mr. Vaughan Lowe. (1) The State of Israel must immediately cease its military operations inside and outside the region. At the public hearing, oral observations on requests for indications of temporary measures are submitted by: Mr. Tal Becker, Gaza. On behalf of South Africa: His Excellency Mr Vusimuzi Madonsela, Mr Malcolm Shaw, (2) The State of Israel must guarantee that every military unit or armed unit is irregular who may be directed, supported or influenced by it, as well as any organizations and persons who may be under its control, direction or influence, do not take any action. continuation of military operations as intended in paragraph (1) above. Your Excellency Mr Ronald Lamola, Mrs. Galit Doubt, (3) The Republic of South Africa and the State of Israel, respectively, in accordance with their obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in connection with Palestinian people, take all reasonable measures within their authority to prevent genocide.

i. Mrs. Adila Hassim,
ii. Mr. Omri Sender,
iii. Mr Tembeka Ngcukaitobi,
iv. Mr Christopher Staker,
v. Mr. John Dugard,
vi. Mr. Gilad Noam.

(4) The State of Israel, in accordance with its obligations under the Convention on Prevention and Punishmen Crime of Genocide, in connection with (a) eviction and forced removal from their homes; The Palestinian people as a group are protected by the Preventive Convention and (b) deprivation: Punishment of the Crime of Genocide, desist from committing any and all acts within its scope. Article II of the Convention, in particular:

1. Access to sufficient food and water.
2. Killing group members.
3. Access to humanitarian assistance, including access to adequate fuel.
4. Causes serious physical or mental harm to members of the group; housing, clothing, cleanliness and sanitation.
5. Deliberately creating conditions for the group's life that are expected to be realized medical supplies and assistance; And physical destruction in whole or in part and the destruction of the lives of Palestinians in Gaza.
6. implement measures intended to prevent births within the group.

On January 12, at the International Court of Justice (ICJ), Israel rejected a request for indication of provisional measures submitted by South Africa and removed the case

33 Shany, Y. (2024, January 16). *South Africa vs. Israel at the International Court of Justice: A Battle Over Issue-Framing and the Request to Suspend the War*. Just Security. https://www.justsecurity.org/91262/south-africa-vs-israel-at-the-international-court-of-justice-a-battle-over-issue-framing-and-the-request-to-suspend-the-war/

from the General Register. Israel's defense in legal cases related to the Israeli-Palestinian conflict usually includes legal arguments concerning Israel's right to defend itself from the threat of terrorism and armed attacks launched by militant groups in the Palestinian territories. Israel may also use legal arguments about the jurisdiction and interpretation of the 1948 Genocide Convention to refute the genocide charges brought against it.

The Court concluded based on the considerations above that the conditions required by the Statute to determine whether provisional measures have been complied with. Therefore, while waiting for a decision. Finally, the Court needs to demonstrate specific steps to protect the rights claimed by South Africa which the Court found reasonable. In the Court's view, the above-mentioned facts and circumstances are sufficient to conclude that at least some of the rights claimed by South Africa and for which it seeks protection are incoming sense. This applies with respect to the rights of Palestinian citizens in Gaza to be protected from acts of genocide and the related prohibited acts mentioned in Article III, and South Africa's right to request Israeli compliance of Israel's obligations under the Convention.

The Court held that, in light of the situation described above, Israel should, accordingly with its obligations under the Genocide Convention, with respect to Palestinians in Gaza, taking all actions in accordance with its authority to prevent the carrying out of all actions within the Gaza area. Room the scope of Article II of this Convention, in particular:

1. The killing of members of a group
2. Causes physical or mental harm who is serious about group members.
3. Deliberately causing the expected conditions of life of the group will result in physical destruction in whole or in part; and
4. Implement the measures intended to prevent births within the group. The Court reminded that these actions were included within the scope of Article II of the Convention if the acts are committed with the intent to destroy all or part of the group (see paragraph 44 above). The court further considered that Israel must immediately ensure that its military forces do not commit acts that violate Article II of the Genocide Convention.

The Court also took the view that Israel should take all appropriate measures its authority to prevent and punish direct and public incitement to genocide against members of Palestinian groups in the Gaza Strip.

The Court further considered that Israel should take immediate and effective steps to enable the provision of basic services and urgently needed humanitarian assistance to address the poor living conditions facing Palestinians in the Gaza Strip.[34]

Israel must also take effective steps to prevent destruction and ensure preservation of evidence relating to alleged acts within the scope of Article II and III of the Genocide Convention against members of Palestinian groups in the Gaza Strip.[35] Regarding the

34 Goodrich and Simons,"The Security Council and Measures Not Involving the Use of Force" (1969).
35 M.I. (2024, May 24). *ICJ Order: Application of the Convention on the Prevention and Punishment of the Crime*

interim measures requested by South Africa that Israel must submit a report to the Court regarding all actions taken to enforce the Order, the Court reminds that Israel has the authority, reflected in Article 78 of the Rules of Court, to request the parties to provide information regarding all matters relating to the implementation of temporary measures which has been indicated. In view of the special temporary measures that have been decided to indicate, The Court considers that Israel must submit a report to the Court regarding all its actions taken to give effect to this Order within one month, from the date of this Order. Report provided it will then be communicated to South Africa, which will be given the opportunity to submit its comments to the Court.

The Court recalled that its Order concerns provisional measures under Article 41 of the Statute has a binding effect and thereby creates international legal obligations for any party who received the temporary measure.

## 2. Legal and practical implications of the international court's decision based on the current circumstances of Israel's attacks on Palestine.

On May 6, 2024, Israel launched a significant airstrike against the city of Rafah in the Gaza Strip, an action that increased tensions in the long-conflicted region. The attacks reportedly targeted several locations suspected to be militant group strongholds, but also caused casualties among civilians and damage to infrastructure.

Rafah, a city in the southern part of the Gaza Strip, has often been a point of conflict between Palestinian militants and the Israel Defense Forces (IDF). This attack occurred in the context of increasing violence in the region, sparked by a series of rocket attacks from Gaza into Israeli territory several weeks earlier. The Israeli government claims that this airstrike was a defensive measure aimed at stopping rocket attacks and destroying Hamas' military infrastructure.

Impact of Attack Casualties and Damage The attack on May 6, 2024 resulted in dozens of casualties, including civilians. Initial reports said at least 20 people were killed and many others injured. Critical infrastructure, including hospitals and schools, also suffered extensive damage, disrupting basic services for local residents. The aim of Israel's attack on Rafah was to destroy the military capabilities of the Hamas group. Meanwhile, Rafa is believed to be the last stronghold of the Hamas group in the Gaza Strip. Israel also estimates that four Hamas battalions are in Rafa so that the city will need to be destroyed by Israeli Western forces. Apart from that, lowering the expectations of a number of parties by controlling Rafa means that Israel can control routes in and out of Palestine.

The international community, including the UN and several European countries, immediately condemned the attack and called for an end to the violence and the protection of civilians. Human rights organizations such as Amnesty International and Human Rights

*of Genocide in the Gaza Strip (South Africa v. Israel)*. Question of Palestine. https://www.un.org/unispal/document/icj-order-24may24/

Watch condemned Israel's actions as an excessive use of force and demanded an independent investigation.

The Palestinian government and militant groups in Gaza, including Hamas, condemned the attack as a war crime and vowed retaliation. Demonstrations and protests took place in various cities in the West Bank and Gaza in reaction to this attack. The Israeli airstrike on Rafah on 6 May 2024 gave rise to various legal implications, both at the domestic and international levels.

Attacks on civilian areas and critical infrastructure raise questions about violations of the Geneva Conventions, which regulate the protection of civilians during armed conflict. International investigators can evaluate whether these attacks meet the criteria for war crimes under the Rome Statute of the International Criminal Court (ICC).

The International Criminal Court (ICC), is an international court institution established by the Rome Statute in 1998 and officially began operating in 2002.[36] The ICC is located in The Hague, Netherlands. Following are some important points about the International Criminal Court (ICC). The ICC's primary goal is to prosecute individuals responsible for crimes of genocide, crimes against humanity, war crimes, and crimes of aggression. This institution was established in response to the need for international justice and to end impunity for perpetrators of the most serious international crimes.

The ICC has jurisdiction to prosecute individuals who commit crimes that fall within the scope of the Rome Statute.[37] This includes crimes committed on the territory of countries that are members of the ICC, crimes committed by nationals of those countries anywhere in the world, as well as crimes referred to the ICC by the UN Security Council or member states.

The ICC consists of several organs, including the People's Assembly, the Panel of Judges, and the Prosecutor's Office. The People's Assembly is composed of representatives from ICC member states and is responsible for the administrative and managerial tasks of the ICC. The Panel of Judges is responsible for trials and decision-making, while the Prosecutor's Office investigates and prosecutes cases before the ICC.

Despite its noble aims, the ICC has also faced criticism. Some criticism has come from countries that are not members of the ICC, who refuse to recognize the agency's jurisdiction over concerns for their national sovereignty. Apart from that, there is also criticism regarding the effectiveness and efficiency of the ICC's legal processes, as well as political decisions that can influence the steps taken by this institution.

Contribution to International Justice. In the face of challenges, the ICC remains one of the leading institutions in efforts to ensure accountability for the most serious international

36 *About the Court.* (n.d.). International Criminal Court. Retrieved May 31, 2024, from https://www.icc-cpi.int/about/the-court

37 *Rome Statute of the International Criminal Court.* (n.d.). OHCHR. Retrieved May 31, 2024, from https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court

crimes. Its contribution to international justice cannot be understated, and continues to be the subject of debate and attention at the global level.

Thus, the International Criminal Court (ICC) is an important institution in global efforts to ensure accountability for the most serious international crimes and to promote the principles of international justice. Violations of the right to life, right to security, and right to health resulting from this attack highlight the importance of human rights protection mechanisms in conflict situations.

The use of military force that disproportionately affects civilians may be the subject of international legal investigation and prosecution. Israeli Prime Minister Benjamin Netanyahu once stated that Israel would not achieve total victory against Hamas without attacking Rafah. This statement was made by Netanyahu on the week of April 21 2024 before the Israeli military operation in Rafah finally took place on Monday May 6 2024. Netanyahu said that Israel's attacks on Palestine were to destroy the military capabilities of the Hamas group. Meanwhile, Rafah is believed to be the last stronghold of the Hamas group in the Gaza Strip. Israel also estimates that four Hamas battalions are in Rafa so that the city will need to be destroyed by Israeli Western forces. Israel can control routes in and out of Palestine. Meanwhile, if it succeeds in controlling Rafah, Israel is considered to be able to take control of providing traffic assistance and evacuation routes for residents. But not only that, the attack on Rafa was allegedly carried out to put more pressure on Hamas in the ceasefire negotiations.

The international court's order or permission to stop attacks on Palestine was ignored by Israel on Saturday, May 25 2024. Israel again attacked Rafah, including the mainland, indicating that it would change the direction of its operations and the city center area. This will occur between the Israeli Army and groups of Palestinian residents, hoping that the ICJ's decision will provide The pressure on Israel to end the war, even though they are not completely sure, on Friday 24 May 2024, was an order to open the gates of the city of Rafah to distribute aid, as well as ordering the immediate and unconditional release of hostages or mandates in the attack on October 7 2023.

If we analysis abaout The international court (ICJ) on Friday 24 May 2024 evening Dutch time ordered Israel to stop attacks on Rafah and keep the Rafah gate open to maintain humanitarian routes. This order is not binding, but the pressure on Israel is getting stronger. Israeli Prime Minister Benjamin Netanyahu also held a meeting to determine the next steps in response to the ICJ's decision. However, in reality there is no obligation for Israel to carry out the ICJ's order because the decision is not binding. Israel was submitted to ASCII by South Africa from late 2023 on genocide charges. This was due to Israel's military operations in the Gaza Strip to respond to the Absa storm attack by Hamas on October 7 2002.

Saturday, May 25 2024, stated that the Israeli government was collaborating with the IC instead of delegitimizing it on orders from the world court. This will increase its reputation

as a responsible and trustworthy country so that conflicts can be resolved quickly. The leader of Israel's National Education Council opposition or parliament criticized Netanyahu's decision to invade Gaza because it killed more and more civilians but failed to win over the hostages, preferring Israel to fight with Hamas at the negotiating table. The ceasefire plan mediated by Egypt and Qatar has not been accepted by Israel because Hamas is asking for the release of all Palestinians imprisoned by Israel, including political parties which according to Israel are very dangerous. Meanwhile, on Saturday 25 May 2024, the Israeli war entered its 231st day, Egyptian President Abdel Fattah el-Sisi. together agreed to send social aid to Gaza. According to the plan, the aid will be distributed through the gates on the border of Israel and Gaza. Meanwhile, Rafah, which is on the border of Egypt and Gaza, is still closed by the Israeli military. This operation must be stopped. There are no safe areas in Rafah for Palestinian civilians. I call for full respect for international law and an immediate ceasefire. "Emmanuela Macron, President of France".

The Israel Defense Forces (IDF) said it had launched an investigation into the military strike in Rafah, which it said was launched based on "precise intelligence information" and killed two senior Hamas officials.[38] The attack did not occur in the humanitarian area of al-Mawasi, where the IDF has been encouraging civilians to flee" since the Israeli ground operation began in Rafah. Images of charred and mutilated children angered global leaders and endangered ceasefire talks. The bombing on Monday (27/5/2024) which the Israel Defense Forces (IDF) said targeted Hamas seniors in a precise attack appears to have sparked a fire that spread quickly through tents and emergency accommodation. Nearby field hospitals operated by the International Committee of the Red Cross and hospitals were also affected. The Health Ministry in the Hamas-controlled region said about half of the dead were women, children and the elderly. Israeli Prime Minister Benjamin Netanyahu called the deadly Israeli military airstrike on the Rafah refugee camp, southern Gaza, Palestine, a tragic mistake. "Despite our best efforts to do no harm to those not involved, unfortunately a tragic error occurred. We are currently investigating this case."

## D. Closing

Based on the description and analysis in the above. The author draws conclusions as an answer to the problems in this research, namely: 1. Interim ruling of the International Court of Justice on South Africa's lawsuit regarding the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip on January 26 which contains in relation to the situation described above, Israel must, in accordance with its obligations under the Genocide Convention, with respect to Palestinian residents of Gaza, take all appropriate measures within their authority to prevent the commission of all

38 Reuters & Jerusalem/Cairo. (2024, May 27). *The Daily Star*. The Daily Star. https://www.thedailystar.net/news/world/israels-attack-on-palestine/news/netanyahu-says-rafah-strike-tragic-accident-vows-defeat-hamas-3620476

acts within the territory of Gaza within the scope of article II of the Genocide Convention. The court is of the view that Israel must prevent genocidal attacks from occurring. The Court recalled that its Order concerns provisional measures under Article 41 of the Statute has a binding effect and thereby creates international legal obligations for any party to whom the provisional measure applies. 2. Israel carried out an attack on the city of Rafah on May 6 2024 after the temporary decision of the International Court of Justice (ICJ). The court pressured Israel again to comply with the ruling. As a result, Israel is investigating the Israeli Army's mistake in the attack on Rafah City because there were casualties among civilians in Rafah City. The limitation of this research is that it only looks at a legal perspective, while future research can carry out in-depth analysis using an international relations perspective.

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## Curriculum Vitae of Author

Khairunnisa Irianto is a student at one of the best universities in Indonesia, working in the academic world making her an outstanding student on campus. Actively writing in various media, making him rich in knowledge. His broad insight and current strategic issues have made him active several times in voicing movements and changes, especially in terms of gender.

**Indonesian Law Journal**
P-ISSN: 1907–8463; O-ISSN: 2772–8568
DOI : 10.33331/ilj.v17i1.165
https://ejournal.bphn.go.id/index.php/ILJ
**Volume 17 No. 1 | Desember 2024**

# "REFUGEE CRISIS": RE-THINKING THE INDONESIA'S PERSPECTIVE

**Ayu Bulan Tisna**
Indonesia Maritime Security Agency
(Badan Keamanan Laut Republik Indonesia / BAKAMLA RI)
BAKAMLA HQ, Jl. Proklamasi No. 56, Jakarta
e-mail: abtisna@bakamla.go.id / abtisna@gmail.com

**ABSTRACT**

Initiated by latest critical circumstances with Rohingyas, this study attempts to investigate the existing domestic policy and legal provision concerning refugees and asylum seekers in Indonesia. In this regard, qualitative and literature study has conducted, as well certain observation from empirical cases which also be adopted during this research. Whilst this research has found disadvantages over the refugee management in Indonesia and suggested the need for a better policy, rational decision-making model in this study offers a problem-solving focusing on objectivity and logic instead of subjectivity and intuition to achieve an intended and more appropriate arrangement to deal with the refugee crisis.
Looking into the discursive refugee management of crises in Indonesia is important to understand their effects, at present and in the future. More than that, when it comes to policy, it is about capacity of the official policy on addressing issues to gain fruitful advantages for the country without violating human rights principles. Insight from maritime security is also being added to enrich the discussion on account that maritime is considered as crucial theatre regarding law enforcement at sea related to the main issue.
**Keywords**: refugee, maritime security, regulation, policy

## A. Introduction

Since the beginning of 2000, Indonesia have been experienced considerable number of people from South Asia and Middle Eastern and African countries (MENA) region fleeing from humanitarian crisis such as armed or political conflict, repression regime, persecution, genocide, and poverty — traversing the border – mostly through sea - for mere transiting in Indonesia and/or for their journey to the actual destination. Asylum seekers transit to Indonesia to gain supplies and boats, arranged by people smugglers, to take them across the Timor Sea down to Australia which made people smuggling become a perennial issue in Indonesia and Australia relations (Supriyanto, 2014). In this regard, this study argue that Australia is most likely to be the final scene of the trip for those fleeing from these regions.

In fact, the crisis has turned refugees, asylum seekers and irregular migrants intertwined with immigration, border control and state sovereignty, making them not only political and security issue but also state responsibility to deal with. For instance, Indonesia's laws often

restrict refugees' social and economic rights causing them are not allowed to legally work and/or attend school and university (UNHCR, 2024). More than that, numerous cases of irregular migrants from MENA countries which committed sea journey through Indonesia jurisdiction in their route to Australia have also contributed to affecting the diplomatic relations between two countries and mainly have an impact on the national stability for both transit and destination countries as well (Tisna, 2022).

As a result, the government of Indonesia has put into place policy, regulatory, administrative, and material changes that will put the country to better managing and governing refugees. However, enabling such changes with long-term, sustained action, and resources for progress remains a key challenge for Indonesian policymakers. For example, the Immigration Law was not created to deal with refugees and asylum seekers related matters. Hence, immigration authorities should not involve into and apply immigration law and policies to them. Within the Indonesian immigration framework, most refugees and asylum seekers could be regarded as victims of people smuggling or human trafficking in some cases, meaning they should be protected and excluded from any punitive measures under the Law (Yonesta, 2019).

Upon writing this study sets a question on how should the Government of Indonesia be approaching challenging circumstances regarding refugee in Indonesia? Particularly for Indonesia that the condition is more problematic due to the length of the coastal line and massive territorial, aside from issue such as political and legal constrains that so far have been hindered implementation of appropriate policy. This study identifies the weakness of the implementing policy and regulation on refugee as an initial step in an overall assessment of capability requirements and gaps.

Therefore, we need to consider the role of state and governmental actors in the policy-making process to emphasise how their strategies and endeavours to frame events are key to develop understanding on handling the issue. The mobility of people intensifies the elasticity of crimes with transnational character, mainly people smuggling and trafficking in persons which, indeed, exposing human as their commodity of business (Tisna, 2012). Amongst transnational organised crime's (TOC) activity is irregular migrants, as declared by scholar from Council for Security Cooperation in the Asia Pacific (CSAP) Study Group on Transnational.

For these reasons, geo-politic and geostrategic awareness of Indonesia maritime security shall also be a crucial requirement to manifesting national policy and its implemented regulation concerning refugee and asylum seeker issue. Maritime security is one of the latest additions to the vocabulary of international security. Initially coined in the 1990s, the concept has received growing attention due to the intensification of concerns over maritime terrorism since 2000, the rise of modern piracy off the coast of Somalia and elsewhere, maritime crimes such as human trafficking, and the increasing significance in recent years of the so-called 'blue economy' and issues relating to maritime environmental

protection and resource management (Edmunds & Bueger, 2017). Hence, for maritime stakeholders, particularly those responsible for maritime security and maritime safety, both comprehensions are critical, in which it can construct through the improvement of national awareness towards the issue (Tisna, 2022).

## B. Research Methodology

This research article discusses the effectual result of existing policy and legal provision concerning refugees and asylum seekers in Indonesia, primarily related to the increasing negative acceptance towards Rohingyas. To this regard, this study seeks to define the conditions under which crisis events are transformed into a strategy that actors develop to frame legitimate, salient, and executable solutions. During the analysist, qualitative method conducted by examining primary documents consists of regulations and policy papers related to the issue of refugee related matters, both international and national. This also included academic sources and media reports in both Indonesian language and English. This methodology was used to gather information and knowledge on the context of refugee issue, as well on the wider effect.

In this part, literature review and analysist based on empirical studies has developed as an enrichment to the exploration. In addition, rational decision-making model have been selected based on examination that this method offers to taking emotion out of *making decisions and applying logical steps to work towards* a solution. According to (Russ et al., 1996), this rational style explained as deliberate, analytical, and logical in which rational decision actor assess the long-term effects of their decisions and have a vigorous ground-based task orientation to decision making. The main objective of this agenda is to transparently evaluate the existing policy and regulation, then deregulate them with the constructive legal standing according to the new initiative. As studied from (EU Commission, 2018; Meek, 2010) this agenda should cover and affect towards total policy areas, and it should be intended for addressing legal arrangement in order to achieve policy objectives, as well as to bring benefits at minimum cost. Through this model, the objective of this article is to draw understanding over changing circumstance and provide insight as alternative initiative.

## C. Discussion

### C.1 Understanding International Framework

To begin with, there are distinct understanding to define identity of those involved in refugee and irregular migrations. In the title, I put quotation marks to ease and in accordance with common term generally being used. Notwithstanding, there are classification according to international law which being applied to equitably provide treatment to whether refugee, asylum seeker and irregular migrant. Taken from legal scholars, it is assumed that tightly

specified criteria increase legal certainty. Nevertheless, this study will focus on the common ground instead of disputes the distinction. Afterward, this study will use "refugee" and "asylum seeker" over the discussion.

The 1951 Convention of United Nations High Commissioner for Refugees (UNHCR) defines a refugee as a person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themself] of the protection of that country.

While according to the Refugees Convention, asylum seeker is defined as is a person who has left their country and is seeking protection from persecution and serious human rights violations in another country, but who hasn't yet been legally recognized as a refugee and is waiting to receive a decision on their asylum claim. United Nations Office on Drugs and Crime (UNODC) have also emphasised that asylum seekers must allow to stay in such country while waiting approval or acceptance toward their refugee status application under relevant international and/or national law (UNODC, 2010). In sum, it can be said that seeking asylum is a human right of people. This means everyone should be allowed to enter another country to seek asylum, for which they can obtain assurance towards their human rights.

In fact, the length of the status application is never clear as it is UNHCR's internal policy. Thus, how long applicant could stay in transit countries is uncertainty. Certainly, they are allowed to stay during the application process. However, if the application is rejected by UNHCR, then there is option provided for them to return to their country of origin through assistance of voluntary repatriation (AVR). This option will carefully conduct since studies on refugee cannot be inseparable to the principle of *non-refoulement* which is the core principle of the Refugees Convention. According to this principle, countries are forbidden from returning refugees or asylum seekers to a country where they would be in persecution or dangerous to the extent of threatening their life.

Subsequently, during the dynamic of world migration discourse, there is irregular migrants appeared within. First thought to bear in mind, there is no universally accepted definition for "migrant". Even though it is not defined under international law, the term is reflecting common lay understanding about people who moves away from their place of usual residence, whether within country or across an international border, for temporarily or permanently, and for a variety of reasons or purposes. Further explanation stated that the term has including several well-defined legal categories of people, such as migrant workers; people whose types of movements are legally defined, such as smuggled migrants; as well as persons whose status or means of movement are not specifically defined under international law, such as international students. These described definitions were developed by International Organisation for Migrations (IOM) for its internal purposes, and it is not meant to imply or create any new legal category.

In Indonesia's context, "refugee" is often dubbed as "irregular migrant", for which this is to described foreigner who stays in Indonesia without official identity, such as passport and visa (Suyadi, 2010).

The movement of people seeking better lives - whether with purpose of escaping from threatening circumstance or attempting to find better economic situation – has created opportunity for criminals. The mentioned movement is being exploited to gain financial advantages for organised crime. Reasoning for facilitating their journey to destination countries – in illicit method – the syndicate would make profitable financial sourced by those crossing the border. In her study, (Crock-Saul, 2002) explained that people smuggling is exploitative, criminal behaviour, it exists because of desperate demand of among asylum seekers who do not have access to legal channels for fleeing persecution and seeking safety abroad.

Within criminal discourse, UNODC issued Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against Transnational Organized Crime (UNTOC), which obliged parties to this treaty must ensure that migrant smuggling is criminalised. Along with the other 190 parties, Indonesia have ratified UNTOC and issued Law Number 15 of 2009 concerning Ratification on United Nations Convention Against Transnational Organized Crime[1], as the implementing regulation within domestic scale. Notwithstanding, UNTOC acknowledge that even though migrants were compelled to enter a country irregularly or without proper documentation, they should not be detained or penalised. Migrant related to this crime must not be detained with criminals, and the opportunity to seek asylum and to access asylum procedures must be given to them.

## C.2 Depicting the Crisis in Indonesia

Back in 1979, Indonesia have experienced of locating Vietnamese refugees – generally mentioned as boat people – in confined shelter in Galang Island, in Province of Riau. Up to 1996, it took seventeen years to eventually given solution to them. Thousands of them were repatriated to their countries when the situation allows them to be safely returned. Whilst the last of the 250,000 documented Vietnamese boat people who arrived in Indonesia passed UNHCR assessment and resettled to countries where they applied to and/or accepted them (www.refugeecamps.net).

Entering the initial phase of 2000, trend changed to those originally from Middle East with Iraqis and Afghani produced the largest number of uprooted people in that period. Compare to refugee wave caused by Arab Spring which made their way to Europe, in this term destination were more varied. Thousands of refugees and asylum seekers are fleeing from their origin with expectation to move to the Australia and New Zealand. Unfortunately,

1 Undang-undang (UU) Nomor 15 Tahun 2009 tentang Pengesahan United Nations Convention Against Transnational Organized Crime (Konvensi Perserikatan Bangsa-Bangsa Menentang Tindak Pidana Transnasional yang TerorganisasI).

they became stuck where they transited, often with uncleared length of stay. As result of this situation, problem appeared for Indonesia due to the strategic position that made an ideal transit point during their journey to those countries.

Midway through 2015, conflict in Myanmar made thousands Rohingya refugees were forced to flee the country. They made their sea journey from Rakhine heading to Malaysia and/or Indonesia. Previously, the people of Aceh have warmly welcomed Rohingya who are stranded in several coastal areas. They are taken to temporary shelter in before they relocated to certain parts of Indonesia which transport and accommodation, as well as emergency basic needs are provided by IOM Indonesia.

Several years later tensions have been escalating as recent surge in violent crackdown by armed forces in *Myanmar* is causing upheaval and displacement among *Rohingya* once again causing more and more Rohingyas arrival in Aceh. This time situation is distinct. There were occurrences formed in refusal of disembarkation from boat added with harsh treatment by locals towards Rohingyas. All due to rejection of locals. It has been recorded that the existence of Rohingyas in Aceh produced many social issues that made locals furious and lost their temper. It is anomaly for community which have tradition of welcoming anyone in need of help, especially for those with same belief.

Nonetheless, not mere Rohingyas, the entire refugees and asylum seekers who remain in Indonesia are problem that must deal with. Currently, there are 7,650 refugees and asylum seekers under IOM care and assistance. Reviewing past years, even though hundreds of them appeared to opt for AVR or reintegration with support from international donors, the sustainability of maintaining the rest who stay was calling into question.

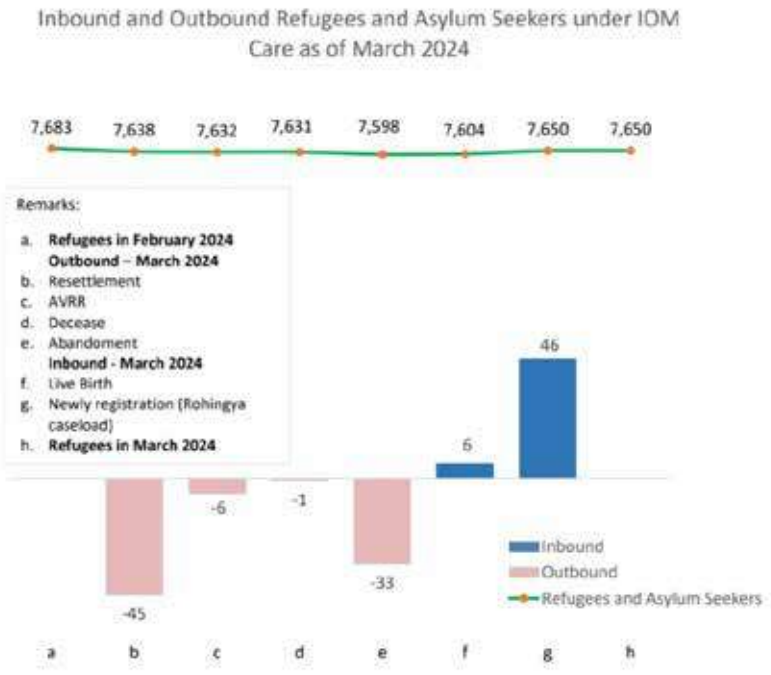


*Figure 1. Graphic of Refugees and Assylum seekers under IOM care as per March 2024*

One must take into attention, beyond human rights issue, refugees and asylum seekers in Indonesia have also created concern to the Government of Indonesia and law enforcement actors considering its implication which might potentially threatening civil order, and national security in wider spectrum. Nonetheless, the suggestion that the nation-state has its core responsibility for the provisioning of security for the resilience of the nation is continuously applicable upon security in any context (Fjäder, 2014)whilst simultaneously the capability of the nation-states to manage it is being challenged. In this regard, the statement was related to what this study tried to offer.

### C.3 A Review towards Existing Policy and Legal Provisions

In managing migration within its territory, Indonesia stipulated Law Number 6 of 2011 concerning Immigration. Despite the fact Indonesia have had extensive experience on refugee and asylum seeker, there were not specific regulation over the issues. Until its first encounter of Indonesia with significant numbers of Rohingya in 2015 which stressed the Government of Indonesia to invent thought as respond toward the emergency crisis. Even though it was questioning on why waiting for more than forty years to create the regulations, this endeavour must be appreciated.

Stimulated by the situation in Aceh, the Government of Indonesia established desk of Managing Foreign Refugees and People Smuggling[2], which directed by Deputy for National Security of Coordinating Ministry of Politic, Legal and Human Rights[3]. During its implemented actions, to certain extent, the desk had regularly included UNHCR and IOM, as well as discussion with representatives of related embassies to figure out the solutions. As it has explained by (McCay & Jentoft, 1996), the basic principle of co-management is self-governance, but (it lies) within a legal framework established by government, and power is shared between user groups and government. In this context, Indonesia has demonstrated collaboration between stakeholders, particularly between community and government, as well as other relevant stakeholders, and foreign organisations included.

Later in 2016, there is issuance of Presidential Regulation Number 125 of 2016 concerning the Handling towards Foreign Refugees (Penanganan Pengungsi Luar Negeri or PPLN). Led by Coordinating Minister for Politic, Legal and Human Rights, this regulation has been administered ministries, agencies and local governments which related to refugees and irregular migration issues in its cycle. In doing so, it has brought certain issues to the fore, from international relations, legal, financial, security, socio-cultural, and indeed, human rights. It was obviously cleared that determination to assign this Coordinating Ministry is to ease the comprehensive arrangement related matters on account the issues appeared within the crisis.

2 Penanganan Pengungsi Luar Negeri dan Penyelundupan Manusia (P2MP2S)

3 Author participated in managing the Rohingya crisis during first phase of the crisis in January – May 2015, as well as member of the desk and preparation of the initial draft of the Presidential Directive

Nevertheless, having reach its eight years implementations, it has been scrutinised that PPLN regulation has not sufficient or robust enough to cover the dynamic development of the crisis. We must admit that this regulation is hastily processed due to wave of those stranded in Aceh coastlines from Myanmar. In which, that was first time to Indonesia to cope with such thousands irregular migrants entering the country at the same time, unlike those originated from MENA who came gradually, both time and number of people. Consequently, much to Indonesia disadvantage, there are gaps emerges from the regulation.

To underline the flaws, among its aspect written in Article 24 to Article 30 of this regulation is shelter, in which it does not provide specific requirement on the length of time refugees and irregular migrants could stay. Thus, seemingly they can be sheltered in Indonesia without time limit as result of the uncertainty. Meanwhile, let alone asylum seekers, when countries like Australia remain pausing their acceptance towards those with Refugee-status, their policy causing negative impact to temporary shelter-countries such as Indonesia and Malaysia[4]. Mainly for Rohingyas, it can be said that they have small to zero opportunity to be accepted by third countries which prioritised high skills people to be resettled in their countries.

The longer those people staying in Indonesia, the more problem arises.

Financially, Indonesia can obtain support from UNHCR dan IOM regarding refugee and asylum seeker's basic needs, such as food, clothes, shelter, and medical assistances, as it is interpreted in Article 40. The most prominent problem is shelter that considered strictly localised have not currently existed in Indonesia. Thusly, even if security procedure has applied, potential penetration toward locals remains high. Then, social conflict will occur.

As result of situation, another potential gap to discuss is this Regulation is lack of enforcement materials to enact towards refugees and asylum seekers. If they were committed criminal, then they will be processed by Indonesian penal code. However, when the breach is related to their status as refugee or asylum seekers, then this Regulation is failed to maintain. As simply as example about those leaving the shelter, which considered as wrongdoing since people sheltered inside are not allowed to leave the area. Another prominent case which just taken place in the administrative area of Aceh Barat was a marriage between two Rohingyas. According to Indonesian legal norms, that marriage was an infringement of Law Number 1 of 1974 concerning Marriage[5]. Moreover, they were not reported the wedlock to local Office of Religious Affairs as an official which in charge of marriage related matters.

Not only in Aceh, lack of regulation concerning sheltering period has also been taking

4 Based on UNHCR statistics, as of end April 2024, the data recorded 188,210 refugees and asylum-seekers registered with UNHCR in Malaysia. There are 164,130 are from Myanmar, comprising some 108,860 Rohingyas, 25,930 Chins, and 30,570 other ethnic groups from conflict-affected areas or fleeing persecution in Myanmar.

5 From this Law's perspective, marriage is only administered and acknowledged for Indonesian, with minimum of age is 19 years old.

attention even before Rohingyas arrival in Indonesia. This study examined what happened in Puncak, Bogor where refugees and asylum seekers are freely interacted with locals to the extent of marriage under Islamic law (*siri*) and bearing children. Unlike Rohingyas, they – mostly MENA people from earlier period - are not sheltered in confined area. Most of them are those who waiting further process of their Refugee status or resettlement. Once they accept the status and/or depart to resettle, it is common that they straightly leave their local spouse and children in Indonesia due to strict requirements the destination countries. Thus, this situation produces additional issue for the Government of Indonesia.

Based on above occurrences, there is endeavour from the Government of Indonesia to review and renew the PPLN regulation. Remain under the lead of the Coordinating Ministry, this effort is to adjust the regulation towards contemporary situation. In regards with the actors, even though Directorate General of Immigration playing critical role – as in Article 33 to Article 38 - this study scrutinised that this Regulation has administer who is playing what, in which tasks has fully distributed to all related official entities. To account problem that have been mentioned on the above discussion, it would be best to suggest that the Government of Indonesia must assertively stipulate sheltering period for refugee and asylum seekers for being able to temporarily stay in Indonesia, mainly for Refugee status holder. Further option to consider is AVR, which the process can organised with IOM assistance. Another optional idea is reintegration. Overall, the objective of these alternative insights is basically to reduce numbers of refugees and asylum seekers in Indonesia.

The most difficulties to apply is to those with asylum seeker status, such as Rohingyas which can also be accounted as stateless. Hence, among suggestive action to offer is locating them in shelter with ultimate security, far from the locals. This study has scrutinised that sheltering them in buildings under administration of local government was not an exquisite idea to re-experiencing indistinguishable situation as in Bogor.

The above suggested ideas are correlate with President Joko Widodo's statement concerning response to current Rohingyas cases. It is clearly emphasised that Indonesia will provide (merely) temporary shelter, on the humanitarian grounds. Learning from European experience, refugees and asylum seekers localised in Moria on the Island of Lesbos, Greece. Before it burned down in 2020 in incident, it was accommodated roughly 20,000 people (www.globalcompactrefugee.org), made it the biggest refugee camp on earth. Another reasonable insight to support the idea, is that Australia once imposed the extraterritorial processing policy, for which Australia automatically sent those arriving by boat to Island of Manus, Nauru, where they funded and operated processing facility[6]. Therefore, decision to sheltered refugees and asylum seekers in confined and restricted area is logic and is not impossible to issue.

6 In June 2023, the last refugee left the facility to continue the resettlement process held by Australia.

More than that, aside from assertive policy and regulation for the benefit of Indonesia's national interest, diplomacy and relations with international entities are playing crucial role. For instance, following the 2015 Rohingyas crisis, Indonesia was able to have direct discussion with Myanmar, which conducted by a face-to-face meeting between Retno Marsudi and her colleague, high official from Myanmar[7]. Prior to this meeting, Indonesia had communication with Koffi Anan, former UN Secretary General, which at that time assumed duty to lead consulting committee for managing human rights circumstances in Rakhine. Certainly, among important effort to resolute refugee and asylum seeker crisis is figuring out the root of the problem. In this context, this study argues that if the circumstance is manageable in the origin country, it will reduce of even halt asylum seeker flow to other countries. If the humanitarian situation is under control, then AVR is relevant and appropriate to offer.

To summarise, to execute the ideas, as state actor Indonesia can rely on protective principle as in state jurisdiction, for which a country is given jurisdiction over crimes that considered threatening national security and interests. This exclusive jurisdiction is being acknowledged by international community as form of reserved domain or domestic jurisdiction of state. Relies upon state sovereignty, this jurisdiction provide state to authorise, enact and impose national law within its territorial over each citizen, as well as non-citizen (foreigner) (Atmasasmita, 2003).

### C.4 Insight from Maritime Security Outlook

Refugees and asylum seekers are closely related to sea journey. This is to account that this journey is low budget for them, even though the risk is high. It can be said, their option of transporting themselves to other countries is deadly choice. According to FRONTEX - the EU border agency – in 2023 more than 150,000 people crossed the Mediterranean passage in precarious boats. Whilst Rohingyas risk dangerous Indian Ocean which described as such sea journey as among the deadliest route in the world. In the latest tragedy in March this year, boat carrying 145 Rohingyas was capsized off the coast of Aceh, when more than 70 people among them are presumed dead of missing.

More than that, this journey is correlate with people smuggling syndicate, who exploits the conflict by sending hundreds to thousands of people on treacherous journey across the sea to reach the destinations. They cram people into unsafe boats with hardly any navigational preparedness such as life vests, food, water, and fuel. All with little concern for their safety. This is why this study stresses that to spot people in distress at sea before it is too late is crucial.

The duty to rescue person in distress at sea is a fundamental rule which widely recognised as a customary norm under international law. According to Article 33 of the

7 In December 2016, Mrs. Marsudi met Aung San Suu Kyi (then, State Counsellor of Myanmar) as part of series of diplomatic endeavours to seek solution toward conflict in Rakhine.

Safety of life at Sea (SOLAS), Chapter V, all ships upon receiving a valid distress signal, are legally obligated and must always respond to them. Hence, in accordance with international law, coastal state which conduct search and rescue operations at sea must have good coordination among its maritime stakeholders.

In Indonesia, search and rescue (SAR) is the main domain of National Search and rescue Agency (Badan National Pencarian dan Pertolongan), publicly known as BASARNAS. Due to its objective of saving life at sea, they conducted non-discriminative principle. Meaning, they will respond to whoever – regardless they are refugee, asylum seeker or stateless person – in need of help. Thus, BASARNAS made up important task in the PPLN regulation, as it is stated in Article 5, along with some other maritime stakeholders such as Marine Police of Indonesia National Police, Badan Keamanan laut (BAKAMLA), and directorate which conducting sea operation of the Ministry of Transportation. Moreover, for a coastal state which located on the route of refugee and asylum seeker's sea journey, occurrences involving them, and people smuggling crime are most likely to happen. Therefore, this study emphasises that plan scheme to frequently encounter illicit overcrowded boats with peril is essential.

To cover the discussion, with the issuance of Presidential Regulation Number 13 of 2022 concerning the Implementation of Security, Safety, and Law Enforcement at Sea (Keamanan, Keselamatan dan Penegakan Hukum di Laut or KKPH), the Government of Indonesia reaffirm those agenda in order to maintain state sovereignty, legal certainty, and to improve law enforcement over Indonesian territorial waters and Indonesia jurisdictions, for which BAKAMLA has delegated to manage coordination towards these three aspects. One fine step forward as it was ever noted by the General Secretary of the Ministry of Marine and Fisheries with statement that fighting transnational crime - including people smuggling and human trafficking - is key to Indonesia's maritime security and integral to the government's design to establish Indonesia as a World Maritime Axis (Chapsos & Malcolm, 2016).

Therefore, it has raised two critical issues to the surface: national security and moral imperatives at sea. In this regard, even though these two substances are seemingly contradictive, this study examined that maritime patrol is sufficient to cover these two demands. In accordance with its characteristic and objective, maritime patrol is released to maintain security over the area. While objectify the task, maritime patrol is certainly in the right path to implement what considered moral imperatives regarding life at sea, as probability to intercept migrant boat is high.

In other words, I would argue that maritime patrol is shaping up to play vital role within the refugees and asylum seekers crisis in Indonesia. It is saving life at sea, while at the same time conducting law enforcement towards people smuggling.

### C.5 Never to Ratify the Refugees Convention

Lastly, up to these days, Indonesia has not ratified the Refugees Convention. Meaning, Indonesia is not bound to the convention and its derived protocols. Nonetheless, Indonesia remains abide towards human rights principle within the Refugee Convention by not returning asylum seekers and irregular migrants to places where they are facing life threatening circumstances.

In seeing the issue, numerous problems exist due to dissimilarity of perception between Indonesia and UNHCR. Although they are actively encouraging Indonesia to ratify and become the party to the Refugees Convention, this study has strongly suggested to never ratify the Refugees Convention due its potential disadvantages for Indonesia. Firstly, as a party to the Refugees Convention, Indonesia will be obliged to sheltering refugees, asylum seekers and irregular migrants. That will include providing access to basic needs to the extent of education related matters. Secondly, status of a party to the Refugees Convention will create such a pull-factor for those seeking asylum to come to Indonesia, expecting to process the application from Indonesia. Therefore, it must be prevented to not create "second chapter of Galang Island".

Briefly, notion to joining the Refugees Convention is contra productive for Indonesia since considering its geographical situation, Indonesia will never be experiencing shortage of refuges, asylum seekers, and/or irregular migrants (Tisna, 2002). This study is also believed that international demand upon human rights that is being implemented by UNHCR and IOM mission will resulting negative to Indonesia. The existence of both international entities will create protection cover for them, which eventually causing complexities for Indonesia in terms of law enforcement.

## D. Conclusion

Refugees and asylum seekers are a wide array of problem obstacles that are likely putting Indonesia into dilemma. Hence, assertive policy to review regulation concerning the issue must be constructed. Particularly targeting those with Refugee-status holder issued by other countries, as well as those which their application being rejected. In the sphere of international relations, it seeks to resolute the crisis by finding solution upon root of the conflict in the country of origin. Considering its key area, increasing security by effectively deploying maritime patrol is highly recommended. This suggestion is proposed due to covering two critical issues over smuggled migrants: saving life and law enforcement at sea. Lastly, rejection to the insistence to join the Refugees Convention is consistently being recommended. Since ratifying the Refugees Convention will create bigger and never-ending problem for Indonesia.

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## Curriculum Vitae

Mayor Bakamla (Coast Guard Lieutenant Commander) Ayu Bulan Tisna is a graduate of the School of Law (International) from University of Islamic Indonesia, Yogyakarta, and master's degree in strategic studies (National Security) from University of Indonesia, Jakarta. Tisna earned her Ph.D in International Relations of Security Studies (Maritime Security) from University of Aberdeen, Scotland, UK. She also graduated from Batch 67 of the U.S. Coast Guard International Maritime Officer Course, Yorktown, Virginia.

She is now servicing in Directorate of Legal, Badan Keamanan Laut Republik Indonesia. Her area of expertise is covering geopolitical and security studies, as well as maritime law enforcement (MLE) and transnational organised crimes (ToC).

**Indonesian Law Journal**
P-ISSN: 1907–8463; O-ISSN: 2772–8568
DOI : 10.33331/ilj.v17i1.166
https://ejournal.bphn.go.id/index.php/ILJ
**Volume 17 No. 1 | Desember 2024**

# ROLE OF INTERNATIONAL COURT OF JUSTICE AND ITS LEGALLY BINDING ADVISORY OPINIONS IN DEALING WITH ARMED CONFLICTS

**Juvelin Rezara**
Lecturer at the department of Law, domain of Social Sciences of the University of Toliara
jruvelin10@gmail.com

## ABSTRACT

Advisory opinion is an alternative resolution of conflict in the international court of justice (hereinafter ICJ). The opinion is commonly requested in armed conflict issue; It consists of an advice by interpreting the international principles based on the concept of the “Jus ad bellum” and “Jus in bello”. Nevertheless, the ICJ statute does not determine conspicuously the legal binding of the opinion. This research ostensibly sought to highlight the legal force of the opinion. Hence, what is exactly the value of ICJ`s opinion in armed conflict? This question demands evidently a doctrinal approach and analysis of cases. This study mainly pointed out the conditions for requesting the advisory opinion, and the analogy of its legal binding effect. Certainly, this resolution might have legal effect but it depends on the circumstances. As a result, it might be crucial for resolving the contemporary armed conflict over the world.
**Keywords**: ICJ, Advisory opinion and armed conflict

## A. Introduction

States are the fundamental subject of international disputes that lead to armed conflict.[1] Historically, the armed conflict has been proactively the trend of the third world since the first world war that had occasioned several human deaths and destruction of infrastructures. As a result, the international community has established the jurisdiction within the creation of United Nations (hereinafter UN), in order to settle judicial issues among State members;[2] and this system of jurisdiction attracted myriad countries neither members nor non-members, apply and recognize the ICJ proceedings to resolve universally the conflict. The objective of the framework is absolutely to get rid of the war which escalates to massive destruction of materials and humans, precisely to protect human being and preserve the

1 Anne Dienelt and Imdah Ullah, Law of armed conflict, Chapter 14
2 Hubbard, C., A Critique of the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons : The Nuclear Weapons Case, Edith Cowan University, 8 July 1996. https://ro.ecu.edu.au/theses_hons/685

welfare of the future generations.[3]

The UN ascribes full power to ICJ to resolve all international conflicts inter alia armed conflict among states whether members or not, through impartial resolution with accord to the process of jurisdiction required by the parties. Before the court, the disputing parties have choice of resolution whether contentious or advisory opinion. Talking specifically about the advisory opinion, the disputing parties have to proceed through the request of the UN organs or the Specialized Agencies in accordance with the criterion determined by the statute of the court. The statute underlines clearly the competences and legal questions which has to be fulfilled while requesting the opinion, otherwise the request would be rejected.[4] For the armed conflict issue, the court would accept for the cases related only to armed issues, such as the misuse of nuclear weapons and threats to civilian during the war time.[5] Armed conflict exists whenever the conflicting States recourse to the use of army force to resolve the dispute;[6] however, none of the international conventions have defined it ostensibly, they stipulate the circumstance embedded as an armed conflict neither a clear definition.[7] The Armed conflict might be classified into two categories, international and non-international but commonly it relates to war through the utilization of arms and military.[8]

In addition , the advisory opinion is apparently known as an advice to guide disputing parties in the ambit of interpreting the international rules, neither like the judgement through which the court takes solely decision on the matter.[9] However, neither the UN charter nor the ICJ statute provide the legal effect of the opinion; It risks the court to lose its legitimacy while disputing parties do not comply with the opinion.[10] This system implies a contradictory into the perspectives of lawyers; because some of them perceive that all decisions rendered by the ICJ have legal binding, whereas some stick on the idea that the statute is literally lack of provision which determining legal binding of the opinion unless the parties consent to be bound. Actually, it is a matter of compliance with the obligation under the international law rather than compulsory decision. So far, the ICJ has rendered no lesser than 20 cases through advisory opinions; most of the issues concern the sovereignty related to armed conflicts, for example the first advisory opinion for the independence of Namibia from South

3 United Nations Human rights office of the high commissioner "International Legal Protection of human rights in armed conflict" New York and Geneva, 2011.

4 Esse Cameron Glickenhaus, "Potential ICJ Advisory opinion: Duties to prevent transboundary harm from GHG Emissions",

5 Amit Kumar Meena, advisory jurisdiction of the ICJ, the WHO case: implication for specialized Agencies, 4th year National law school of India University Bangalore, India

6 See prosecutor v. Dusko Todic, case No. IT-94-1-A, decision on the defense motion for the interlocutory Appel on jurisdiction, 2 October 1995, para 70.

7 See for example article 2 of the Geneva convention

8 Anne Dienelt and Imdah Ullah, "Chapter 14, Law of armed conflict"

9 Terasa F. Mayer and Jelka Mayer-Singer, keep the wheels spinning: the contribution of Advisory Opinions of the international court of justice to the development of international law.

10 Jesse Cameron Glickenhaus, "Potential ICJ Advisory opinion: Duties to prevent transboundary harm from GHG Emissions",

Africa in 1956.[11]

The present research is set limitedly to evoke the role of the court and the effect of the opinion in the resolution of armed conflict; meanwhile it seeks to make clear the legal effect of the decision through advisory proceedings. It aimed to enhance the value of the advisory opinion proceedings to disputing parties, because it is become a pseudo resolution for the interest of the developed countries. Thus, the silent of the international law-makers on the obscurity of the international principles disvalues the UN objectives, and would exasperate the weakness of the UN organs in facing the current trend of the world where the powerful States disobey the application of the international law.[12] Furtherly, the research seeks to point out improvement of the international rules on its legal force, unless such principle remains regressively meaningless.

So far, it remains controversial to affirm that the advisory opinion has or no legal effect to disputing parties; whereas, all decision rendered by the court shall wear legal binding effect no matter contentious or opinion. In order to make clear the main objective of the study, it comes in mind, does the advisory opinion contain legal effect which is supposed to binding the disputing parties? Is it necessary to request an advisory opinion if it would not have a legal binding effect?

Subsequently, this research talked in the first part, the conditions for requesting the opinion of the court with its roles; the statute makes clearly that only legal question is a reason for demanding the opinion, and the requesting party must be competent on the issue. For an armed conflict, it is expressed hereinafter the threats to civilians and misuse of nuclear weapons. And the second part of the study apparently analyzed and criticized the legal force of the advisory opinion based on its characteristics determined by the statute and the possible way of concretizing the legal effect of the decision.

## B. Research Method

This research was conducted through a doctrinal approach in which the author exhibited the importance of analyzing the previous cases of the ICJ concerning advisory opinions since 1945 and critical analysis of the force of advisory opinion as a legal binding decision.[13] All Data utilized in this research are primary and secondary sources, which were collected from online official website of the UN,[14] journal, books and articles and cases.

11 *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),* Advisory Opinion, 1971 ICJ Rep 16

12 Unfished war between Israel and Palestine, and Russia with Ukraine…etc. These trends showing that the UN organs have no longer power to rule out the international community.

13 Philip Langbroek, Kees van den Bos, Marc Simon Thomas, Michael Milo, Wibo van Rossum, "methodology of legal research: Challenges and opportunities, Utrecht Law review, Vol.13, Issue 3, 2017 http://doi.org/10.18352/ulr.411

14 https://www.un.org/en/

In doing so, the collection of primary data was deemed vital as it contained the main point of the critical analysis such as the collection of following international statute, charter, convention, cases filed before the court, and personal observation over the current trend of international law in facing the resolution of ubiquity armed conflict between some countries cross the world. In addition, other relevant data related to resolution of armed conflict were analyzed in the objective to assert the effectiveness of the proceedings of the court through an advisory opinion and its legal effect.[15]

On the other hand, analysis of secondary data was also helpful in this research, likewise the analysis of other authors` perspectives on the mechanism of the advisory opinion, which some empirical data defined that all decision rendered by the court through judgement or advisory opinion contain legal binding effect; whereas some authors said that only judgement has legal binding force to the requesting parties.[16] So through this latter, there is a controversial part that evokes the sensitivity of the statute of the court; because the legal force of the opinion is interpretated differently.

## C. Discussion

### 1. Advisory Opinion in the resolution of armed conflict

In the view of the statute of the ICJ, the jurisdiction can be requested through its internal bodies inter-alia General Assembly and security council, and as well the other specialized agencies such as WHO and environmental protections institutions, for legal questions raised and in the war time for unlawful use of nuclear Weapons and threat to civilians.[17] The jurisdiction has only competence on these grounds in the armed conflict, it does not rule out the punishment of individuals or any other that is beyond the UN charter. The advisory procedure is open to five United Nations organs and 15 UN specialized agencies. Before acceding to a request, the ICJ has to decide that it has jurisdiction and, if it has so, whether it should exercise its discretion to give an Advisory Opinion. A part from Armed conflict, myriad international issues are submitted to the UN bodies[18] for requesting the advisory opinion likewise the entrance of Israel i the occupied Palestinian Territory. "*Public sitting held on Thursday 22 February 2024, at 3 p.m., at the Peace Palace, President Salam presiding, on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for advisory opinion submitted by the General Assembly of the United Nations)"*

15 On 8 July 1996 the International Court of Justice delivered its Advisory Opinion, General List No. 95, Legality of the threat or use of nuclear weapons.
16 A john Wiley and Sons, "Legal research" University of Slaford, February 2007
17 https://www.icj-cij.org/advisory-jurisdiction
18 https://www.icj-cij.org/case/186

### a. Requesting parties and Legal Question

The States have right to request for advisory opinion of the court through the compromise deposed to the General Assembly of the United Nations or through the Specialized Agencies but respectively for legal questions related to the international law,[19] Under the article 96 of the United Nation Charter, the court has competence to give its opinion on legal questions.[20] It is underlined also in article 65 of the ICJ statute that the court shall give an advisory opinion to the legal questions at the request of the UN body and agency which are authorized in accordance with the UN Charter.[21] Meanwhile, the legal question must be written while requesting the court, and importantly which opinion is requested and accompanied by all documents highlights the question.[22]

The UN organs and specialized bodies have competence to request the jurisdiction for its advisory opinion but depends on the case; meanwhile the court is not like the domestic jurisdiction, because its proceeding refers on the bodies or the specialized agency request for the jurisdiction. The court may refuse the request while the requesting parties demand an advice or interpretation for a legal question which does not belong to its competence.[23] For example: In 1993, the Director-General of the WHO filed a request for the legality of the use of nuclear weapons to the registry of the court for the breach of its obligations by the States, the use of nuclear weapons during the war time. The court denied this request since the WHO has no competence to ask for the legality of the use of nuclear weapons, while its competence remains on the legal question related to health or threat to health. The question of legality of the use of weapons corresponds to competence of the UN organs.

A request filed in the Registry on 6 January 1995 by the General Assembly of the UN for the following legal question "is the threat or use of nuclear weapons in any circumstance permitted under international law?"[24] The court has acquiesced this request and rendered its opinion on the issue that legality and illegality of the use of armed conflict belongs to the relevant law of armed conflict, as well the proportionality of the attack in armed conflicts indefinite since the army may use nuclear weapons for self-defense.

It comes to mind that the acceptance and refusal of the request depends not only the legal question but as well who are qualified to file request before the court. While the court perceives the legal question targeted by the parties does not fulfill the criterion or the legal

19 Heribert Golsong "The role and the functioning of the international Court of Justice", http://www.zaoerve.de

20 Hubbard, C. (1997). A Critique of the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of nuclear weapons, 8 July 1996: The Nuclear Weapons Case. Edith Cowan University. https://ro.ecu.edu.au/theses_hons/685

21 See Article 65 of the Statute International Court of Justice

22 Ibid para.2

23 See WHO request for legality of the use of the nuclear weapons https://www.icj-cij.org/case/93

24 In 1995, General Assembly requested for Advisory Opinion on " Is the threat or use of nuclear Weapons in any circumstance permitted under international law?"

questions is beyond their competences, the court may refuse the request. It accepts only while the request fulfills the criterion for demand of the jurisdiction on the issue. Mind in this part, all form of international political issues shall not be confined as a grounds or legal questions of requesting the court for an advisory opinion.[25]

### b. Unlawful war: Threats and the use of Nuclear Weapons

The use of nuclear weapon is generally conducted during the armed conflict, this practice is accorded in the international community,[26] yet under the respect of applicable laws such as international law governing states in the use of army (jus ad bellum) and international law applicable in armed conflict (jus in bello).[27]The existing problem on the determination of unlawful use of force, in fact, there is no clear international norms provide the types of arms forbidden, it is just a matter of conventional rules; however the International Humanitarian Law determines the extent to which the lawful use of the weapons.[28] Further, there is always a high risk of threatening the international humanitarian law regardless the strict use of the international rules on armed conflict. However, the IHL and the other international norms have their concepts of legality of the use of force during armed conflict; meanwhile the use of nuclear weapon is conceptualized as legal when it is used on the territory of state where occurs the attack for a self-defense reason. More precisely, the concept of "Jus ad Bellum" allows the use of threats or nuclear weapon for a self-defense.

Thus the court bases on the said concept to manage its advisory opinion while the use of nuclear weapons and threat are illegal in the view of international law.[29] Looking at the opinion of the court on the issue "legality of Nuclear weapons Advisory Opinion 1996, paragraph 13", declared that while there is no customary or conventional international law that allows or prohibits the States using the nuclear weapons, the threat or use of nuclear weapons would generally be contrary to the principles of the international humanitarian law. But in the self-defense circumstance, the jurisprudence has not yet considered whether the use of nuclear weapons would be lawful or unlawful.[30] Notwithstanding, it is difficult to determine the self-defense circumstance in some case, likewise the case filed by RDC for

25 Amit Kumar Meena, "advisory jurisdiction of the ICJ, the WHO case: implication for specialized Agencies" 4th year National law school of India University Bangalore, India

26 William Bothby,"Weapons and the law of armed conflict», oxford University press, 2009.Pp.464

27 Charles Garraway CBE, nuclear weapon under International Law: Overview, International law and policy institute, October 2014, https://www.geneva-academy.ch/joomlatools-files/docman-files/Nuclear%20Weapons%20Under%20International%20Law.pdf

28 See, Ibid.

29 Christopher Hubbard B.A, A critique of the advisory opinion of the international court of justice on the legally of the threat or use of nuclear weapons, 8 July 196, the nuclear weapon case

30 Myrto Stavridi, The advisory function of the international court of justice: Are States resorting to advisory proceedings as a "soft" litigation strategy? journal of public and international law affairs, April, 22, 2024. The Advisory Function of the International Court of Justice: Are States Resorting to Advisory Proceedings as a "Soft" Litigation Strategy?

its armed conflict with Uganda that the use of force has targeted by Uganda was unlawful,[31] the Uganda army entered in the territory of the Congo with the consent that is an act prohibited by the UN charter in its article 2.[32] Meanwhile, all form of irregular use of the force to the territory of the other State constitutes violation of the international norms in the armed conflict which was stressed by the ICJ jurisdiction in the said case.[33]

The threats and excessive use of nuclear weapons to civilians during the armed conflict is measured by the provisions of the human rights and international humanitarian principle;[34] by all means the states are always bound by its obligation under these rules in the spite of the armed conflict. In addition, it is also required to observe arbitrary deprivation like the maneuver targeted by Israel on construction of the barrier in the occupied territories without regarding the content of the fundamental rights determined by the international covenant on Civil and Political Rights (liberty on movement article 12 and arbitrary deprivation).[35] In the other hand, unlawful acts to war inter-alia act of aggression and genocide victimizing criminally civilians are framed under the principles of the Roma statute.[36]

To sum up, in the armed conflict resolution through advisory opinion, the parties are required to fulfill the conditions determined by the statute which says that the request for the opinion shall lay down on the legal questions, and importantly the requesting must be competent, otherwise the procedure would be vain. There were not a smaller number of requests, which were lack of legal question and competence conditions, rejected by the court.

## 2. The effect of the advisory opinion

The legal effect of the opinion of the court is relatively recognized, but it depends on the bodies or the specialized agencies under which conditions the opinion was requested to the concerned parties. These organs can deal with the parties to accept legal force of the advisory opinion rendered on the issue.

### a. Characteristics of the advisory opinion

The UN bodies or the specialized agency can request the advisory opinion by submitting the questions before the court which is in form of written request containing the exact question with document enlightens the issues. Once the registrar of the court has received the request, it shall notify all the states concerned to present before the court, and notice

31 Armed activities on the territory of the RDC, https://www.icj-cij.org/case/116
32 See article 02 of the UN charter
33 The irregular use of force violates myriad international rules such as humanitarian law and the principle of human rights, therefore it is logical either the UN organs underlined rigorously the circumstance of using the force against other state during the war.
34 Claus Cref, International court of Justice and armed conflicts, 23 August 2023
35 See article 6 and 12 of the International Covenant on Civil and Political Rights
36 See Roma Statute

them to prepare for the information on the question with time limit to hear at the public sitting.[37] The state and the organization have presented its oral or written statements, both shall comment the statement of other state; and moreover, the decision of the court shall be in open court with the regard respectively the provisions of the Statute.[38]

Despite the advisory opinion has neither the UN charter nor the Statute of the ICJ legal support on the opinion;[39] It remains on its natural character which is a legal advice to interpret the principle of international law in the international community. It is perceived as more influential than judgement because it interprets the international rules for general information rather than for only the concerned states.[40] In light of this, the dispute concerning the delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean, submitted to Special Chamber of the International Tribunal for the Law of the Sea, which Mauritius claimed the boundary resolution under the advisory opinion contributed by ICJ, which is interpreted progressively has a legal effect. Maldives did not recognize the interpretation of the ICJ opinion as legal binding, it asserted that the decision wears authoritative but not legal impact to the parties.[41] As a result, some States do not consider the opinion as a legal decision since it perceived as simple advice or interpretation of the international law.

### b. Effect of the agreement of Consent

Systematically the opinion shall not have legal effect to parties since it is considered as simple advice to present issues, therefore the parties shall not be legally affected by the decision rendered, the requesting parties remain free to decide what effect they should give for the opinion;[42] however it is commonly occurred the certain circumstances which the opinion has legal binding force to parties.

Firstly, it may contain legal effect in the case there is any clauses consented by the requesting parties, provide for a legal binding of decision to the concerned states.[43] Additionally, it is also possible the existence of the "special agreement" between the parties to accept the opinion as a decisive; meanwhile the parties consent the legal effect

37 See article 66 of the ICJ statute
38 See article 68 of the ICJ statute
39 Bacot, Réflexions sur les clauses qui rendent obligatoires les avis consultatifs de la C.P.J.I. et de la C.I.J., 84 Revue Générale de Droit International Public 1027 (1980).
40 Mahasen M. Aljaghoub, The Advisory Function of the International Court of Justice, 1946-2005, https://www.google.cd/books/edition/The_Advisory_Function_of_the_Internation/-zUWKIPIgjYC?hl=fr&gbpv=1&dq=Advisory+opinion+in+the+international+court+of+Justice&printsec=frontcov
41 Fabien Simon Eichberger, The legal effect of ICJ Advisory Opinions Redefined? The Mauritius/Maldives Delimitation case-Judgement on preliminary objections, Melbourne Journal of International Law 1, 17. 22 February 2021
42 https://www.icj-cij.org/advisory-jurisdiction
43 Anthony Aust , *Journal of International Dispute Settlement*, Volume 1, Issue 1, February 2010, Pages 123–151, *https://doi.org/10.1093/jnlids/idp005*

of decision.[44] As a result, the court cannot go beyond this consent, its decision binds the parties in virtue of the existing agreement of consent or instrument.

Secondly, some international organization recognize the advisory opinion wear the legal binding effect; this broadly concerns the matter of interpretation or the constituent of the treaty associated with ICJ statute.[45] If a dispute arises between one of the specialized agencies and a member, a request shall be made for an Advisory Opinion on any legal question involved, and this would be done in accordance with article 96 of the UN Charter and article 65 of the Statute of the ICJ, and the relevant provisions of the agreements concluded between the United Nations and the specialized agency concerned. The parties to the dispute accept the Advisory Opinion as decisive.

Thirdly, some states accept the binding force of the advisory opinion; because they may have treaties contain provisions under which the requesting parties shall bound by the decision rendered by the court.[46] For example, United States evoked compromise clauses of several treaties as the basis for the ICJ `s jurisdiction when it brought a successful case against Iran for the holding of the US hostages.[47] Those States who have treaties attributing the legal effect of the advisory opinion rendered by the court in the case of requesting the opinion, thus the conflicting States have legal engagement to enforce the decision.[48]

Although these circumstances affirm that the opinion of the court covers legal effect, but it remains ambiguous because it has not expressly legal back up from the ICJ statute itself. Consequently, it remains vulnerable in the event that the parties refuse to accept the enforcement.

## D. Conclusion and Suggestion

To conclude with, the doctrinal approach showed up that the opinion is commonly requested to resolve an armed conflict issue, because it is an authoritative jurisdiction which broadly elaborates the principles of international, rather than contentious methods. Requesting the opinion of the court is different from other common jurisdiction, it is available only for certain UN organs and specialized agencies, and in the armed conflict, it is requested for legal questions to threats and unlawful war affecting civilians.

The advisory opinion is definitely contrary to the contentious resolution, because the decision has no significant force. It depends particularly to the UN bodies or the specialized agencies to attribute the value of the opinion.[49] Nevertheless, in armed conflict resolution,

44 Christian Dominice, "Chapiter 5 request of the advisory opinion, Brill, P.91-92, 01 Jan 2022
45 See Ibid.
46 Joan E. Donoghue, The role of the World Court today, 108th Sibley lecture School of Law University of Georgia, Athens, on April 3,2012
47 United States diplomatic and Consular Staffs in Teheran (US vs Iran), 1980 ICJ, 3.24, available at http://www.icj.org/docket/files/64/6291.pdf
48 Heribert Golsong, The role and the functioning of the international Court of Justice, http://www.zaoerve.de
49 https://www.icj-cij.org/advisory-jurisdiction

the opinion plays vital role in the international community since it has a preventive characteristic to avoid convulsion and interpret misunderstanding within the international law. For example, the perspective of Judge Higgins concerning the impediment of Israel on the territory of Palestine, affirmed desperately that the advisory opinion might be expected to contain detailed analysis; it might be an opportunity to elaborate and develop international law.[50]

Taking into account the contemporary trend of resolution of the armed conflict that the request for the opinion plays mammoth roles in settling issues; as a result, the enhancement of its value and legal effect should be elaborated and developed. All States, organizations and superposed jurisdictions should adopt an instrument to attribute the legal effect of the advisory opinion, such as the settlement of the boundary disputes between Maldives and Mauritius, through the Special chamber confirmed the Mauritius stated that advisory opinion has legal effect on the parties.[51] A part from armed conflict issues, the recognition of the legal effect of the opinion should prevail in the resolution of other international issues. Meanwhile, before requesting the opinion of the court, the concerned parties should handle an instrument illustrating the consent of the decision, unless the advisory proceeding will remain vain and exhaustive.

50 Iain Scobie, "Unchart(er)ed Waters?: Consequences of the Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* for the Responsibility of the UN for Palestine" *European Journal of International Law,* Volume 16, Issue 5, November 2005, Pages 941–961,

51 Fabien Simon Eichberger, The legal effect of ICJ Advisory Opinions Redefined? The Mauritius/Maldives Delimitation case-Judgement on preliminary objections, Melbourne Journal of International Law 1, 17. 22 February 2021

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http://www.icj.org/docket/files/64/6291.pdf

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Charter of United Nations signed in San Francisco on 24 June 1945

Geneva Convention 1949

International Covenant on Civil and Political Rights 16 December 1967

Roma Statute of the International Criminal Court 17 July 1998

## Curriculum Vitae

JUVELIN Rezara, PhD in Law graduated from SWUPL, and currently works as an Assistant Professor at the department of Law, domain of Social Science of the university of Toliara. His doctoral research concerned “effective implementation of foreign Investment legal protection in Madagascar”, and he also published some articles Legal Aspects and Policies for Indonesian SMES after The Omnibus Law-Challenges in The Regional Free Trade and Developing Economic Bond of Indonesia-Madagascar Based on Bilateral Investment Treaty.

**Indonesian Law Journal**
P-ISSN: 1907–8463; O-ISSN: 2772–8568
DOI : 10.33331/ilj.v17i1.160
https://ejournal.bphn.go.id/index.php/ILJ
**Volume 17 No. 1 | Desember 2024**

# REFUGEES HANDLING IN INDONESIA: BETWEEN SOVEREIGNTY AND HUMANITY

**Rafika Rizky Aulia Rahman*, Rizka Iswara****
*University of Lampung **Directorate General of
Legal Administrative Affairs Ministry of Law and Human Rights
*rafikarzkyar@gmail.com **iswara.rizka@gmail.com

**ABSTRACT**

The influx of Rohingya refugees from Myanmar has significantly impacted Indonesia, posing challenges in balancing state sovereignty and humanitarian obligations. Despite Indonesia's non-ratification of the 1951 Refugee Convention, refugees are accepted on humanitarian grounds, often resulting in tensions with local communities. This article examines these issues through a normative legal approach, analyzing primary and secondary materials to explore the implications for Indonesia's legal and policy frameworks. Findings underscore the urgent need for robust legal mechanisms, improved refugee integration strategies, and enhanced international cooperation to address community conflicts. Practical recommendations include ratifying relevant international conventions, fostering regional partnerships, and initiating programs to reduce tensions between refugees and host communities. The study provides a foundation for policy reforms and contributes to broader discourse on managing refugee crises in Southeast Asia.
**Keywords:** Rohingya, Refugees, Indonesia, Sovereignty.

## A. Introduction

The paradigm surrounding the issue of "asylum seekers and refugees" has evolved significantly, becoming a topic of broad international concern and frequent debate. This issue transcends national boundaries and requires cooperative efforts between states. While the phenomenon of asylum seekers and refugees is not new, Indonesia has yet to ratify the 1951 Convention Relating to the Status of Refugees (commonly referred to as the 1951 Refugee Convention) and its 1967 Additional Protocol. Upon arrival in Indonesia, these individuals are initially classified as asylum seekers, as Indonesia serves as a transit state rather than a destination. Their status may later be upgraded to "refugees" if their applications are approved by the United Nations High Commissioner for Refugees (UNHCR).

As a result of not ratifying the 1951 Refugee Status Convention and the 1967 Additional Protocol, asylum seekers generally only use Indonesia and Southeast Asian countries

as transit countries,[1] not as destination countries, to arrive in Australia or New Zealand.[2] Indonesia's strategic position and its location on international shipping routes between the two continents of Asia and the Australian Continent, as well as between the Indian Ocean and the Pacific Ocean, serve as a stopover point for countries seeking to traverse the Australian Continent. However, asylum seekers must first obtain "refugee" status from the United Nations High Commissioner for Refugees (UNHCR) to enter the destination country. This body has significant duties and functions in determining refugee status and placing them in their final destination country. Nevertheless, the process of granting status from UNHCR takes a relatively long time due to the involvement of numerous external factors, including the domestic political factors of the destination country. These factors frequently restrict refugee acceptance[3], resulting in a backlog of asylum seekers in transit countries who must "wait" in various holding locations, either provided by UNHCR and IOM (International Organization for Migration) or under the supervision of the transit country government.[4]

Historically, Indonesia has had experience handling refugee flows, as in the case of Vietnamese refugees who came to save themselves from the communist regime during the defeat of South Vietnam in the Vietnam War[5], gradually entering Indonesia using boats (the boat people case) from 1975 to 1996 and temporarily residing on Galang Island, Riau Islands.[6] The arrival of these boat people ultimately encouraged the establishment of a UNHCR representative office in Indonesia. Led by its experience handling refugees, the Indonesian government is encouraged to formulate a policy framework and domestic legal instruments to handle the flow of refugees originating from abroad, namely by issuing Presidential Regulation Number 125 of 2016 concerning Handling Refugees from Abroad (from now on referred to as Presidential Decree Number 125/16).

The discovery of Rohingya ethnic asylum seekers who entered Indonesia as a result of the horizontal conflict in Rakhine State in 2015[7] also led to the creation of Presidential Decree Number 125/16. Moreover, there were recorded at least three waves in which ethnic Rohingya asylum seekers reached Indonesian shores, namely in 2009, 2019, and

1 Muzafar Ali, Linda Briskman, Lucy Fiske, "Asylum Seekers and Refugee in Indonesia", Cosmopolitan Civil Societies Journal 8, No. 2 (2016): 25-26.

2 The 1951 Status of Refugees Convention, which Australia and New Zealand ratified, implies that these nations must accept refugees who have received status from the UNHCR.

3 Cipta Primadasa, Mahendra Putra Kurnia and Rika Erawaty, "Problematics of Handling Refugees in Indonesia from the Perspective of International Refugee Law", *Risalah Hukum Volume 17 Number 1* (2021): 49.

4 Arie Afriansyah dan Eva Achjani Zulfa, "Refugee Resettlement: A Review of Indonesia Law and Practices", *Indonesian Law Review Volume 8 Number. 2* (2018): 211-215.

5 Zendri Hendri, Rahmad Dadi, "Historical Overview of Vietnamese Refugees on Galang Island 1979-1996", *Takuana: Jurnal Penidikan, Sains dan Humaniora Volume 01 Number 01,* (2022): 59-70.

6 Vindy Septia, "Protection of Refugees Across Borders in Indonesia according to International Law", *Lex et Societatis Volume 2 Number 1* (2014): 55.

7 BBC News Indonesia, "Hundreds of people stranded in Aceh", 10 May 2015, https://www.bbc.com/indonesia/berita_indonesia/2015/05/150510_aceh_rohingya_kapal accessed 24 May 2024.

2015. In 2009, it was estimated that around 400 Rohingya people landed in the East Aceh region; in 2012, the wave was triggered by violence. sectarianism targeting Rohingya people in the Rakhine region; and in 2015, as many as 1,300 people mixed with Rohingya and Bangladeshi refugees were stranded in Aceh waters.[8] When there was a massive influx of Rohingya refugees in 2015, there was massive resistance by the Indonesian government and the Indonesian National Armed Forces Commander General Moeldoko said that Indonesia would not allow Rohingya boat people to move ashore on Indonesian land but would continue to provide humanitarian assistance to boat people, which would be provided in the middle of the sea so that the people in Rohingya boats do not need to pull over.[9] Notwithstanding, a boat containing refugees was rescued by Acehnese fishermen on the coast of North Aceh on May 10, 2015.[10] Indonesia welcomed their arrival as a form of concern for the humanitarian problems that were occurring at that time.

At the end of 2023, the influx of asylum seekers due to the conflict in Myanmar will become a problem that Indonesia must face again. The total number of asylum seekers who entered reached 1,699 people spread across several refugee camps in Aceh.[11] This latest wave has caused friction between local Acehnese and Rohingya asylum seekers. As a result, from December 8, 2023, to January 5, 2024, the community and students committed 21 acts of rejection against their presence.[12] Various criticisms and opinions were expressed by the international community regarding this act of rejection, but the majority of Indonesian people supported this action.

Despite varying opinions supporting or rejecting the Rohingya's presence in Indonesia, this article aims to analyze the impact of the Rohingya ethnic group's presence on Indonesian society, the obligations of the Indonesian government toward managing foreign refugees, and the role of the state in maintaining its sovereignty. The author adopts the position that Indonesia's response to the Rohingya crisis reflects a critical dilemma between upholding

8 Rizka Argadianti Rachman and Zico Efraindio. "A Neglected Life: Research Report on the Fate of Rohingya Refugees in Indonesia", *LBH Jakarta,* (2016):13. See more in SHEEP Indonesia Foundation, "Drama of Rohingya Refugees in Aceh", March. (2016):19; Annual report of the United Nations High Commissioner for Human Rights and report of the Office of the High Commissioner and the Secretary-General, "situation of human rights of Rohingya Muslims and other minorities in Myanmar", (2016); and UNHCR, "After long ordeal at sea, Rohingya find humanity in Indonesia", (2015). http://www.unhcr.org/news/latest/2015/5/5559efb36/long-ordeal-sea-rohingya-find-humanity-indonesia.html.

9 Kompas.com. "TNI Commander Refuses Rohingya Refugee Ships to Enter Indonesia, but Willing to Provide Assistance". 15 May 2015 https://nasional.kompas.com/read/2015/05/15/20213301/Panglima.TNI.Tolak.Kapal.pengungsi.Rohingya.Masuk.RI.tapi.Bersedia.Beri.Bantuan, accessed 24 May 2024.

10 Hendra Pasuhuk. "Aceh Fishermen Save Rohingya and Bangladeshi Refugees", 15 May 2015, https://www.dw.com/id/nelayan-aceh-salatkan-800-pengungsi-rohingya-dan-bangladesh/a-18451487 accessed on 25 May 2024.

11 NU Online, "Kaleidoscope 2023: Waves of Rohingya Refugees Coming to Indonesia", 28 December 2023, https://www.nu.or.id/nasional/kaleidoskop-2023-gelombang-pengungsi-rohingya-bercamatan-ke-aceh-IqHpg , accessed 24 May 2024.

12 Public Info. "Police: There are 21 Community Rejection Actions against Rohingya Refugees". 8 January 2024, https://infopublik.id/cepat/nusantara/814779/polisi-terdapat-21-aksi-penolakan-community-terhadap-pengungsi-rohingya accessed 24 May 2024.

humanitarian obligations and safeguarding state sovereignty. This research seeks to understand Indonesia's responsibilities in managing the Rohingya, who are foreign refugees within its territory, while proposing practical solutions to address tensions, enhance legal frameworks, and mitigate conflicts with local populations. This dual challenge highlights the pressing need for sustainable approaches to balancing these competing priorities.

## B. Research Method

This normative research employs a methodology that incorporates legal principles, utilizing library materials and data pertinent to the primary issue under investigation.[13] Data was obtained from primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are those that have official authority, namely the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the 1948 Universal Declaration of Human Rights and national legal regulations, namely Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Abroad. Secondary legal materials include scientific articles, books and other relevant research. Meanwhile, tertiary materials include dictionaries, encyclopedias and credible internet materials.

This research is descriptive and analytical which aims to provide an overview and explain the research object based on systematic data[14] and focuses on the concepts of sovereignty and humanity in the context of handling the Rohingya refugee problem. The author employs a qualitative data analysis method in this research to analyse collected and processed data, facilitating the formulation of hypotheses and conclusions in line with descriptive research.

## C. Discussions

### 1. International Law's Perspective on Foreign Refugees and Asylum Seekers

The migration of groups of people to other countries has become a multidimensional phenomenon, along with developments in world politics. Elites initially carried out-migration as a means of expanding their territorial power, but it eventually evolved into a response to conflict and war.[15] The migration of citizens to other countries during wartime is important and has an impact on many continents. They're looking for a way out of conflict areas to find a safer place to live.[16] This group then becomes refugees and asylum seekers. The

13 Soerjono Soekanto and Sri Mamudji, *Normative Legal Research (A Short Review*), Cet. 8th, (Jakarta: PT. Raja Grafindo, 2004): 29.

14 Ronny Hannitijo Soemitro, *Introduction to Legal Studies*. (Jakarta: Ghalia Indonesia, 1981): 97.

15 Wahyuni Kartikasari, "Modern Migration Pattern in Indonesia: Dilemmas of Transit Country", *Revista UNISCI Journal 53* (2020): 24.

16 Anindito Rizki Wiraputra, "Definition of Refugees and Its Implications for Indonesian Immigration Law", *Scientific Journal of Immigration Studies*, Volume 1, Number 1 (2018): 64.

term “refugee” first appeared during World War I, which was considered the culmination of a nation-building process.[17]

International law has provided a single definition of the word “refugee,” as stated the 1951 Status of Refugees Convention. A refugee is defined as someone unable or unwilling to return to their country of origin because they fear persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion.[18] This Convention is an instrument regarding status that is based on human rights: non-discrimination, prohibition of the imposition of punishment, prohibition of torture, and prohibition of forced evictions. Article 14 of the 1948 Universal Declaration of Human Rights (now referred to as the 1948 UDHR) became one of the foundations for the birth of the 1951 Refugee Convention because it recognizes that seeking asylum in another country from persecution occurring in one’s country is the right of every human being. According to Alexander Betts and Gil Loescher, “refugees” are people who cross international borders to escape human rights violations and conflicts.[19] Based on their backgrounds, we can divide refugees into two groups: those displaced by natural disasters and those who fled their country to avoid demands from their home country (usually for political reasons).[20] This group is usually forced to leave their country and no longer gets protection from the government where they come from. Referring to Presidential Decree Number 125/16, the definition of a refugee has the same meaning and elements as those outlined in the 1951 Refugee Convention. However, it is further clarified that a refugee is a person who has received “refugee status” from the United Nations through the High Commissioner for Refugees in Indonesia.[21]

Meanwhile, the term “asylum seeker” has a slightly different context of understanding. The term “asylum seeker” refers to an individual seeking international protection who is either in the process of applying for refugee status or complementary protection status, or they may not have requested asylum yet, but they intend to.[22] When someone crosses an international border in search of safety, they must apply to receive legal recognition as a refugee. They are known as asylum seekers and require protection while they seek asylum and await the outcome of their application. Therefore, we can conclude that while not all asylum seekers identify as refugees, they have all been asylum seekers.

17 Peter J. Taylor, *Political Geography World Economy, Nation State and Locality*, London: Routledge:1993): 37.
18 Article 1 of the 1951 Status of Refugees Convention.
19 Alexander Betts and Gil Loescher (Ed.), *Refugee in International Relations,* (New York: Oxford University Press, 2011): 1.
20 Wahyuni Kartikasari, “Modern Migration Pattern in Indonesia: Dilemmas of Transit Country”, *Revista UNISCI Journal 53* (2020): 25.
21 Article 1 of Presidential Decree Number 125/16 pertains to the management of refugees. “Refugees from Abroad, hereinafter referred to as Refugees, are foreigners who are in the territory of the Unitary State of the Republic of Indonesia due to a well-founded fear of persecution for reasons of race, ethnicity, religion, nationality, membership in certain social groups, and different political opinions and do not want protection from their country of origin and/or have obtained asylum seeker status or refugee status from the United Nations through the High Commissioner for Refugees in Indonesia.”
22 UNHCR. “Who we protect: asylum-seekers”. https://www.unhcr.org/asylum-seekers accessed 20 May 2024.

The "refugee" status sought by asylum seekers is addressed to the United Nations High Commissioner for Refugees (UNHCR). The United Nations General Assembly established the UNHCR on December 14, 1950, to address refugee issues following World War II's outbreak. Initially, the United Nations gave this organization a three-year mandate to assist millions of Europeans who had lost their homes.[23] On July 28, 1951, the UNHCR declared the 1951 Status of Refugee Convention to be its basic statute. The UNHCR has a leading role in providing international protection, finding long-term solutions to refugee problems, and promoting international refugee law. The UNHCR's role as an initiator, facilitator, and determinant of refugee status, as well as assisting refugees, is very important.[24]

The influx of Rohingya refugees and asylum seekers caused by the conflict in Myanmar is a problem that Indonesia must face again. The arrival of the Rohingya ethnic group and Indonesia's response to the wave of Rohingya refugees stranded in Aceh sparked an intriguing discourse. The political and policy agenda of a country, including Indonesia, cannot deny the social reality of international refugees and the problems they face.[25] Despite not ratifying the 1951 Refugee Convention, Indonesia accepted their arrival as a response to the humanitarian issues that had arisen. However, this actually exacerbates tensions between Indonesian citizens and the Rohingya, necessitating the state's intervention to resolve them.

## 2. Indonesia Goverment's Role in Responding to the Arrival of the Rohingya Refugees

Indonesia is currently the only country in ASEAN that is a destination for Rohingya refugees. In recent years, Indonesia has often been a destination for ethnic Rohingya seeking asylum who come by boat. Indonesia cannot refuse the arrival of Rohingya refugees, even though it is not a ratifying country of the 1951 Status of Refugees Convention and the 1967 Additional Protocol. Despite not ratifying it, Indonesia has implemented Presidential Decree Number 125/16 to address the issue of foreigners seeking to enter and remain in Indonesia before relocating to a third country. This regulation affirms Indonesia's obligation to safeguard foreign refugees. The 1945 Indonesia Constitution recognises all people's right to protection from threats and political asylum from other countries.[26]

International law also recognises and protects the right to obtain asylum for refugees, as affirmed in Article 14 of the Universal Declaration of Human Rights, which affirms that

23 United Nations, "History of UNHCR", https://www.unhcr.org/about-unhcr/overview/history-unhcr accessed 22 May 2024.

24 Dewi Rahmawati, Hemmalika Alyanti, Hanifah Putri, Annisyaniawati, and Muhammad Alrifqi. "Human Rights Protection and the Role of Legal Institutions for Refugees in the Context of International Law", *Pediaqu: Journal of Social and Humanity Education Volume 2 Number 3,* (2023): 10071.

25 Zulkarnain and Indra Kusumawardhana, "Together for Humanity: Cross-Sector Collaborative Handling of Rohingya Refugees In Aceh", *HAM Journal Volume 11 Number 1,* (2020): 67.

26 Article 28 of the 1945 Indonesia Constitution.

"*everyone has the right to seek and to enjoy asylum in other countries from persecution*." This provision grants ethnic Rohingya the individual right to seek asylum and the protection of the Universal Declaration of Human Rights. Prof. Grahl Madsen asserts that the state, not individuals, possesses the right to grant asylum, among other rights.[27] International legal recognition of a state's right to grant asylum is acknowledged in Article 1 of the 1967 Territorial Asylum Declaration, which states that "*Asylum granted by a state, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other states*." According to this article, granting asylum to a country is a form of recognition of that country's sovereignty.

The principle of sovereignty is a general principle of international law. International agreements cannot directly regulate the doctrine of sovereignty, as it is a general principle of international law.[28] Nevertheless, this principle is a universally recognized source of international law.[29] Etymologically, the word sovereignty comes from French souveraineté, which means supreme. In Latin, this word refers to the concept of supremacy.[30] The sovereignty principle recognizes a country's territorial sovereignty. Under the principle of sovereignty, each sovereign state is considered to have exclusive control over its territory and over the people present in it.[31] Regional organizations in Southeast Asia adhere to this principle of sovereignty, also known as the principle of non-intervention and known as the ASEAN Way.[32] Therefore, countries possess the freedom to engage in any activity within their territory, provided they do not infringe upon the rights of other countries, and they have the authority to either accept or select foreigners for their territory. Recognizing this principle means that every sovereign state has the right to grant or refuse asylum to people within its territorial boundaries.[33]

The Indonesian legal system regulates that every person entering or leaving the country's territory is required to have valid travel documents, unless otherwise determined based on international law and agreements.[34] We can say that the Rohingya ethnic group's entry into Indonesia violates this rule. This is because the Rohingya do not have any valid travel documents. In addition, the UNHCR has not yet recognized the Rohingya as refugees

27 Islam Rafiqul, and Jahid Hossain Bhuiyan, *An Introduction to International Refugee Law*, (Leiden: Martinus Nijhoff Publisher, 2013): 134.
28 Boer Mauna, *International Law: Definition, Role and Function in the Era of Global Dynamics* (Bandung: PT. Alumni, 2005): 23–26.
29 James Crawford, Brownlie's, *Principles of Public International Law*, (Oxford: Oxford University Press, 2019): 31–34.
30 Daniel Lee, *The Right of Sovereignty*, (Oxford: Oxford University Press, 2021): 3–4.
31 Roman Boed, "The State of the Right of Asylum in International Law*", Duke Journal of Comparative & International Law Volume 5, Number. 1* (1994): 1–33.
32 Tony Yuri Rahmanto, "The Principle of Non-Intervention for ASEAN Viewed from a Human Rights Perspective," *Human Rights Journal Volume 8, Number 2* (2017): 145–159.
33 Sinha, S. Prakash. *Asylum and International Law.* (The Hague: Martinus Nijhoff Publishers, 1971): 155-156.
34 Article 8 Law Number 6 of 2011 concerning Immigration.

or is still in the process of granting them refugee status, a lengthy process that delays their status as illegal immigrants in Indonesia.

As a country that has not ratified the 1951 Status of Refugees Convention and the 1967 Additional Protocol, Indonesia has issued Presidential Decree Number 125/16 to address the issue of foreigners seeking to enter and reside in Indonesia before relocating to a third country. This presidential decree aims to address the issues faced by asylum-seeking immigrants and refugees in Indonesia. However, the existing handling mechanism creates obstacles to its implementation. The Indonesian legal system, especially in the immigration sector, regulates the entry and exit of people into and out of the sovereign territory of the Republic of Indonesia, focusing only on individuals who enter legally or illegally. In Presidential Decree Number 125/16, the definitions of "Overseas Refugees" align with the 1951 Convention, distinguishing refugees from asylum seekers. Refugees, once recognized, receive protection and assistance, while asylum seekers are in a waiting period, often facing uncertainty. This distinction affects the lives of asylum seekers in Indonesia, as they are not granted the same rights and protections as refugees, and their status may remain unresolved for extended periods, leading to difficulties such as limited access to employment, healthcare, and education while they await UNHCR's decision on their status.

Refugees in international law occupy a legal space characterized on the one hand by the principle of state sovereignty and the related principles of territorial supremacy and self-preservation; and, on the other hand, by conflicting humanitarian principles derived from international law generally (including the aims and principles of the United Nations) and treaties.[35] State sovereignty and equality between countries are recognized concepts that form the basis of the international legal system's workings. State sovereignty is an attribute that an independent state has as a subject of international law, where international law recognizes that the state is an independent and sovereign entity that is not subject to other authorities.[36] In the international legal system, state personality is based on recognition of state sovereignty and equality. Sovereignty underlies several rights recognized by international law, such as the right to equality, territorial jurisdiction, the right to determine nationality for residents in its territory, the right to allow, refuse, or prohibit people from entering and leaving its territory, and the right to nationalization.

The conflict between humanity and state sovereignty is the dilemma facing the current conception of modern society. We must uphold human dignity, which is a fundamental aspect of humanity. On the other hand, the concept of sovereignty represents the highest position within a country. Countries are free to determine the rules for their country, including regulating which citizens and parties can enter the country's territory. A country's power

35 Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law*. (Oxford Press, 2021): 1.

36 Sigit Riyanto, "State Sovereignty Framework for Contemporary International Law", *Justisia Journal Volume 1 Number 3* (2012): 7

limitations do not hinder humanity, which is defined as universally recognized international values, principles, and norms. Modern society must uphold the human aspect, as it pertains to the dignity and worth of human life. However, this aspect does not automatically elevate human values to a position of unquestionable dominance. Humanity should set limits on the scope of its application. Indonesia, as a transit country, has limitations in helping Rohingya for humanitarian reasons. This limitation requires considering Indonesia's capacity as a developing country, which must also pay attention to the rights of its citizens.

The state, as an important part of the international community, has the authority to be responsible for improving the quality of life of its people, increasing prosperity and freedom, handling conflicts, and collaborating with other countries to improve the quality of life of its people. This is a way of redefining sovereignty as a responsibility that the state bears for its citizens.[37] This means that the state plays a crucial role in managing the country, providing protection, and must hold itself accountable for this mandate both internally and externally to the international community. Therefore, sovereignty is closely linked to the concept of responsibility to protect, ensuring full protection for the people and a decent standard of living.

## D. Closing

Indonesia's strategic geographical position makes it a transit country rather than a destination country for refugees. The UNHCR's process of granting refugee status is lengthy, often leaving refugees in limbo in transit countries like Indonesia. Historical precedents, such as the handling of Vietnamese refugees, have informed Indonesia's current policies. International law supports the right to seek asylum, and Indonesia's Constitution acknowledges the right to protection from threats and political asylum. However, the principle of state sovereignty allows countries to control their borders and determine foreigners' admission. This duality creates a dilemma: upholding human dignity and rights while maintaining national sovereignty and order.

Indonesia's response to the Rohingya crisis reflects its commitment to humanitarian principles amidst geopolitical and domestic challenges. The state must navigate the delicate balance between providing refuge and maintaining its sovereignty, ensuring both the protection of refugees and the welfare of its citizens. The evolving nature of global migration and asylum-seeking requires continuous adaptation of policies and practices to address emerging challenges effectively. As discussed in this article, to effectively manage the crisis, Indonesia must adopt a more comprehensive framework that includes practical solutions such as enhancing legal protections, improving community integration efforts, and fostering international collaboration.

37 DellaPula, Alynne Hermyn, and Stevi Ngingare, "Indonesia's Role in the Rohingya Ethnic Case Based on the Concept of Responsibility to Protect (R2P), *Journal of Social Sciences and Humanities (JSSH) Volume 2 Number 1*, (2022): 132.

The Indonesian government can consider further refining its approach to address ongoing challenges related to refugees:

1. Strengthen the legal framework and policies: While Indonesia has made strides in handling refugees, it could consider formalizing its legal commitment by ratifying the 1951 Refugee Convention and the 1967 Protocol. This would align the legal framework with international standards, providing clearer guidelines for managing refugees and asylum seekers and ensuring better protection while respecting national sovereignty. Additionally, a more comprehensive national refugee policy could be created, outlining long-term goals, clear protocols for refugee status determination, and addressing social, economic, and legal integration.
2. Establish Refugee Employment Programs: Indonesia could develop specific employment programs tailored to refugees. These programs would help refugees become self-sufficient, reduce the economic strain on local communities, and foster better integration and social cohesion. Engaging refugees in formal work or community service programs could help them contribute to the local economy and integrate more effectively.
3. Expand Refugee Data and Monitoring Systems: An effective refugee management system requires comprehensive data collection and monitoring. Indonesia could invest in a national registry for refugees and asylum seekers, allowing authorities to track their status, movements, and needs more efficiently. This system could also help mitigate security concerns and prevent exploitation by human traffickers or criminal organizations.
4. Strengthen Domestic Legal Protections for Refugees: While Indonesia has humanitarian provisions for refugees, specific domestic legal protections could be enhanced. These might include legal rights related to work, housing, education, and healthcare for refugees, helping to reduce uncertainty and improve their living conditions.
5. Foster Public-Private Partnerships (PPPs): Indonesia could engage the private sector through Public-Private Partnerships (PPPs) to support refugee integration. Collaborating with businesses to create job opportunities for refugees and working with NGOs to provide services and programs tailored to refugee needs could enhance refugees' self-reliance and integration.
6. Provide Education for Refugee Children: While there have been efforts to support refugee education, expanding programs specifically for refugee children is essential to ensure they have access to quality education. This could include integrating refugee children into public schools or creating specialized programs to help them build a future in Indonesia or wherever they may resettle.
7. Develop Resettlement Pathways and Strengthen Diplomatic Relations: Indonesia could work on establishing formal agreements with other countries (especially through ASEAN or UNHCR) to create resettlement pathways for refugees. Strengthening diplomatic relations with countries that accept refugees would ease the burden on Indonesia, ensuring a smoother transition for refugees to third countries.

8. Encourage Regional Responsibility-Sharing: While Indonesia has advocated for regional solutions, a more formalized approach within ASEAN could ensure refugee responsibility is shared. Encouraging other ASEAN members to take on a more active role in managing the refugee crisis would create a collective response and alleviate some of the burden on Indonesia.
9. Improve Community Relations and Reduce Xenophobia: To address local tensions, Indonesia could establish community engagement initiatives aimed at educating the local population about refugees' rights and the benefits of refugee integration. Programs promoting intercultural dialogue and community-based conflict resolution can help prevent xenophobia and foster understanding between local citizens and refugees.

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## Curriculum Vitae of Authors

**Rafika Rizky Aulia Rahman** holds a bachelor's degree in International Law from Sebelas Maret University and a master's degree in Transnational Law from the University of Indonesia. She is currently a lecturer at the University of Lampung. Rafika has published research in international law, particularly in air law, and has experience as an assistant lecturer in the International Law Department at Sebelas Maret University.

**Rizka Iswara** graduated with a bachelor's degree in Criminal Law from the University of Muhammadiyah North Sumatera and a master's degree in Transnational Law from the University of Indonesia. Since 2019, she has worked as a legal analyst at the Directorate General of Legal Administrative Affairs, Ministry of Law and Human Rights, Republic of Indonesia. Her research focuses on international law and humanitarian law.

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P-ISSN: 1907–8463
E-ISSN: 2772–8568