



Indonesia's Responsibility Towards Rohingya Refugees: Analysis of the 1951 Refugee Convention

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Article	Abstract
<p>Keywords: Indonesia; Refugee Convention; UNHCR; Rohingya;</p> <p>Article History Received: Feb 1, 2024; Reviewed: Feb 16, 2024; Accepted: Apr 20, 2024; Published: Apr 25, 2024.</p>	<p><i>The Acehnese people refused the boat carrying more than 200 Rohingya migrants in early 2024; therefore, UNHCR is pleading with the Indonesian authorities to allow them to disembark. The UNHCR report states that there are currently 1,608 Aceh refugees, including 140 survivors from the previous year. People are increasingly worried about the impact of the significant influx of Rohingya individuals in Aceh. Indonesia's acceptance of those seeking safety for humanitarian reasons has significantly affected the Acehnese population. Indonesia is being pressured to provide assistance to Rohingya refugees despite not being a signatory to the Refugee Convention. The issue at hand is whether Indonesia is legally obligated to help Rohingya refugees under the Refugee Convention. This study utilized normative legal research, commonly known as document analysis involving a qualitative examination of secondary data sources. The investigation included sources such as books, papers, and treaties, specifically focusing on the Refugee Convention of 1951. Indonesia, as it is not a signatory to the Refugee Convention, does not have a legal duty to aid the Rohingya refugees in Aceh based on the Refugee Convention. This study employed normative legal research, analyzing documents qualitatively with secondary sources like books, articles, and treaties, notably the 1951 Refugee Convention. Consequently, since Indonesia has not ratified the Refugee Convention, it is not bound by legal obligations to assist the Rohingya refugees in Aceh. However, Indonesia still maintains a responsibility according to the Universal Declaration of Human Rights.</i></p>



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INTRODUCTION

The Rohingya population was perpetually subjected to pressure, oppression, marginalisation, torture, and even murder. Due to the death threats levelled against them, they escaped overseas, including to Aceh (Usman et al., 2023), which lies on the northern tip of Sumatra Island, Indonesia, and its west part is bordered by the Indian Ocean while the north part is bordered by the Strait of Malacca. Aceh authorities say that more than 180 Rohingya Muslims arrived in Aceh province, Indonesia, on March 27, 2023. They are hundreds of the latest group to leave Myanmar and Bangladesh by boat because of the terrible conditions in their homes and camps (Reuters, 2023). The media referred to them as "Asia's boat people" (S. Islam, 2020). After, the villages of Aceh welcomed the Rohingya with provisions of shelter, sustenance, proper sanitation, and consolation upon their arrival. Volunteers from throughout Aceh collected food, clothing, and trinket donations in mosques and the streets of their respective villages. Although the villages could not meet the Rohingya in every way, they made every effort to contribute as many resources as possible (Robbins, 2020).

These individuals seeking refuge arrived in Indonesia at various times between 2012 and 2023, travelling on bare fishing boats and having only a small amount of food. Sadly, some of them faced problems like hunger, and their boats sank because they were old and carrying too much weight. When they reached Indonesia, these Rohingya refugees got stuck in various places, like Aceh, Riau Islands, and Medan in East Java (Krisharyanto & Vinata, 2023). Concerns have grown about the effects of the large number of Rohingya people who have come to Aceh. Even though Indonesia is willing to take in people seeking safety for humanitarian reasons, their presence has greatly impacted the Acehnese community. People in the area are worried and uncomfortable because of things like a rise in crimes. Acehnese people are finding it hard to accept Rohingya refugees as a result (Tim detikSumut, 2023).

The Rohingya crisis has gotten much interest from scholars and people around the world (Ansar & Md. Khaled, 2021; Lee, 2019). Since the late 1970s, Myanmar's government has been practising discrimination. This situation has led to the compelled displacement of hundreds of thousands of Muslim Rohingya individuals from their residences in the predominantly Buddhist country. Most of them have crossed into Bangladesh via land routes, while others have arrived by sea. The majority of them have entered Bangladesh on land, while others have taken over by sea. Over the course of several decades, the Rohingya, a Muslim minority subgroup (Shahin & Hasan, 2023; Ty, 2019), have been subjected to institutionalised discrimination in Myanmar, a country that is primarily Buddhist. This discrimination has taken place (Rosyid, 2019a) in the form of discriminatory citizenship legislation (O'Brien, 2020). "Rohingya" refers to the Muslim minority group that used to live in the northwest of Myanmar's Rakhine State (Agung & Rwa, 2023; M. S. Hossain et al., 2020).

Seven hundred thousand Rohingya were forcibly displaced from their homes in 2017 when the military campaign of the Myanmar government was initiated. Despite officials' denial, human rights organisations firmly assume that the government perpetrated genocide against the Rohingya. Military officials in the United States and other nations have implemented limitations while providing aid to Rohingya refugees who have sought sanctuary in nearby countries like Bangladesh. Numerous Rohingya individuals have gone on secondary travels within Southeast Asia. The destinations involve Thailand, Malaysia, and, notably, Indonesia (Nungsari et al., 2020).

In the condition where Indonesia is being forced to have and give help to the Rohingya refugees, and as a state that has not signed the convention that regulates refugees, the Refugee Convention, the problem raised and discussed in this case is whether the Refugee Convention legally binds Indonesia to be responsible towards Rohingya refugees?

RESEARCH METHODS

The study synthesized insights from a diverse array of resources, including books, scholarly journals, and international treaties. Specifically, normative legal research aims to construct justifications that align with existing legal norms (referred to as *lex lata*), with a particular focus on the Refugee Convention of 1951 (Boulanger, 2020). Normative legal analysis adopts a conceptual perspective, exploring social norms, rules, and legal principles. In contrast, doctrine-based legal research delves into the study of laws shaped and refined within specific doctrinal frameworks. The doctrinal approach forms the bedrock of common law and constitutes the primary methodology employed in legal study.

RESULTS AND DISCUSSION

Refugee Convention and Its History

Refugees would not need to risk their lives to obtain reliable protection, as they could access the same protection system and prospect whether they crossed a terrestrial boundary or journeyed across vast distances (Hathaway, 2019). The Refugee Convention of 1951, formally known as the Convention Relating to the Status of Refugees, is a pivotal legal tool in global refugee law (Janmyr, 2019). It was initially formulated as a response to the large European displacements after World War II. There have been many efforts made to protect human rights, including by making some international regulations to avoid violations of human rights (Gunawan et al., 2022). Refugees are individuals who are in a foreign country and cannot or do not wish to return to their homeland due to a profound fear of harm or persecution based on their religion, nationality, membership in a particular social group, or political opinions.

The Refugee Convention was made in line with the establishment of the United Nations High Commissioner for Refugees (UNHCR). The UNHCR, founded in 1951, was given the responsibility of continuing the operations of the IRO and addressing

the persistent issue of displacement (Dewi et al., 2022). The UNHCR was meant to offer refugees long-term options. It was intended to have a "humanitarian" and "non-political" persona. In order to safeguard refugees and provide them the freedom to apply for asylum (Christyanti, 2022) and exercise their rights, the Convention underscores the rights bestowed upon refugees, including the principle of non-refoulement and the right to stay. The convention (Bradley, 2023) also established the definition and procedures for determining refugee status. The determination of refugee status relies on the oversight function of the UNHCR (Thimm-Braun, 2020). A key provision of the 1951 Refugee Convention is the prohibition of refoulement, which stipulates that a state is prohibited from 'expelling or returning a refugee in any manner to the frontiers of territories where their life or freedom would be threatened on account of political opinion, race, nationality, and religion (Awan, 2021).

During its initial phase, the UNHCR was focused on discovering enduring solutions for the individuals residing in camps and persuading nations to join the United Nations Refugee Convention of 1951 (Khan & Ahmed, 2020; Yusoff et al., 2022). This convention narrowed the definition of a refugee to those who were compelled to abandon their homeland "due to events that took place before January 1, 1951," while also allowing states that signed the convention to acknowledge only European refugees. Twenty nations had ratified the treaty by the time the decade came to a close, and almost all of the camps in Europe had been shut down from operation (Crisp, 2020). The Refugee Convention grants significant power to UNHCR in terms of establishing regulations or interacting with authorities regarding refugee issues (Moretti, 2020).

The Refugee Convention of 1951 was established in recognition of the threats faced by individuals who become homeless and stateless due to persecution. This convention is regarded as one of the foundational documents of the international human rights structure that developed post-World War II (Arumbinang et al., 2023). The Universal Declaration of Human Rights included articles relevant to the Convention (Benhabib, 2020; Gunawan et al., 2023).

The convention has been exposed to criticism for its inadequacies, particularly its Eurocentric roots and the absence of enforcement measures, despite the fact that it provides a thorough structure. Furthermore, it confronts issues in addressing contemporary forms of displacement, such as those related to climate change or generalised violence, which has prompted continuous debate and discussion among academics concerning the relevance and application of this concept in the present world (Abuya et al., 2021).

Indonesia and Jordan, non-signatories to the 1951 Refugee Convention, have distinct approaches to managing refugees. Indonesia relies on the UNHCR for refugee status determination and protection, with a Presidential Regulation outlining the processes for refugee handling. Conversely, Jordan, which hosts a large number of

refugees, implements a government-directed action plan in accordance with the objectives of sustainable development and the Global Refugee Agreement. The collaboration with UNHCR primarily focuses on registration, identity management, and documentation. Although Indonesia has not signed the Refugee Convention, it is still bound by the principle of non-refoulement. The principle of non-refoulement is regarded as the supreme principle in international law (Heriyanto et al., 2023). The principle of *jus ad bellum* establishes the criteria for determining whether or not war is justified in specific situations (Gunawan et al., 2020).

Indonesia's Responsibility Towards Rohingya Refugees

While not participating in the 1967 Protocol and the 1951 Conventions, Indonesia lacks specific legislation addressing refugee concerns. However, the Indonesian government is obligated to address the refugee situation within its territory. Moreover, being an active member of the United Nations (UN), Indonesia is obligated by international responsibilities and legal standards to uphold Human Rights values for its citizens and individuals from other nations (Gunawan & Arumbinang, 2021; Sutiarnoto et al., 2020).

The Presidential Decree about handling refugees does not clearly say that refugees cannot be expelled when they enter or stay in Indonesia. However, there are rules about managing refugees during search and rescue operations. From this, it seems like Indonesia will try to help and support refugees or those suspected of being refugees if they are found in Indonesian waters. The procedures for search and rescue, followed by providing shelter and ensuring security for asylum seekers or refugees, suggest that Indonesia is open to accepting people entering its territory and treating them according to international law (Lubis, 2020).

Prior to the adoption of the 1967 Protocol, countries such as Japan, Laos, India, the Philippines, Malaysia, Indonesia, and Singapore refrained from ratifying the 1951 Convention (Radhakrishnan & Wit, 2022). The 1967 Protocol, as an adjunct to the Convention, addressed their specific concerns related to refugees (Abuya et al., 2021). A crucial element of the agreement is the principle of non-refoulement, which prohibits the forced return of refugees to a country where they face severe threats to their safety or personal freedom. This principle is vital within the context of international law.

Indonesia has refrained from signing the 1951 Refugee Convention and its 1967 Protocol. The signatory governments of the 1951 Convention are responsible for assessing the legal standing and well-being of refugees, along with all associated consequences. (Cingir & Subramaniam, 2023). Consequently, UNHCR no longer holds jurisdiction over refugee matters in this context (Behrman, 2019). Indonesia's status as a non-signatory to the 1951 convention implies that the country is not legally obligated to address refugee issues. In this situation, Indonesia has not established lawfully binding regulations for refugees and asylum seekers. The government's role is

confined to that of a temporary transit nation, aiding in the identification of accommodations for refugees until they are either relocated to their intended destination or repatriated.

The crisis began when the majority of Rohingya people were rendered stateless overnight due to fresh citizenship legislation that was introduced in Myanmar in 1982 (McCaffrie, 2019). This legislation did not acknowledge the Rohingya as part of the 135 'ethnic groups.' The Myanmar military conducted Operations Clean and Beautiful Nation in the Rakhine region between the years 1991 and 1992 (M. S. Islam, 2019). These operations included the destruction of villages and mosques, as well as the killing of people and sexual violence. It led to what is known as "the second major wave," which consisted of around 250,000 Rohingya people migrating to Bangladesh (M. S. Hossain et al., 2020).

The Rohingya people in Rakhine State are currently facing a humanitarian crisis that has turned into a political issue, which has prompted responses from the mostly Muslim Indonesian populace. It is being asked that the government of Indonesia, which is the country with the largest Muslim population, deal with the matter as quickly as possible and play a part in fostering peace for the Rohingya people who come to Indonesia (Rasyid et al., 2022). The Indonesian government has devised a thorough two-pronged strategy to handle the complicated humanitarian crisis. Accompanied by the Regional Government of Aceh, the International Organisation for Migration (IOM), the National Disaster Management Agency (BNPB), the UNHCR, and several non-governmental organisations (NGOs), this momentous assembly assembled important players (Akuansyah & Surwandono, 2022). The Indonesian government has the right to control the state, which is contained in Article 33 Paragraph (3) of the 1945 Constitution.

It was on purpose that the government and Buddhist monks exploited and marginalised the Rohingya economically. The state took over their privately owned companies and violently dismantled their political and social groups. A systematic campaign was initiated against them, leading to the institutionalisation of torture. Consequently, the Rohingya community experienced a significant reduction in their sources of income and livelihood (Sarmin, 2020). The Rohingya encounter citizenship refusal from the government, leading to the majority lacking legal documentation and being deemed stateless (Sultana et al., 2023). Myanmar's citizenship law, established in 1948, was initially exclusive. Twenty years subsequent to the military junta's assumption of power in 1962, additional legislation was enacted, which revoked the Rohingya's eligibility for full citizenship (S. Hossain & Hosain, 2019). Hence, citizenship plays a crucial role in enabling individuals to access other rights acknowledged by the legal system. Individuals without citizenship can be identified in nearly every part of the world (Itasari, 2020).

The outcomes of this collaborative meeting were both strategic and pragmatic. First, a total of 720 refugees from Bangladesh who were identified as job seekers were repatriated (M. M. Rahman et al., 2021). The cost of this repatriation was borne by the UNHCR and IOM. Within this refugee population, distinctions were drawn, highlighting the diversity of the group. Specifically, of the 1,062 Rohingya refugees, the composition comprised 565 men, 235 women, and 225 children. This multifaceted strategy underscores Indonesia's commitment to addressing the complexities of the refugee crisis through collaboration with international agencies and active engagement at the regional level (Rosyid, 2019b).

Furthermore, it is essential to highlight the significance of Indonesia's national process within this framework. When asked about Indonesia's potential to join the Convention in 1999, the country's then-serving foreign minister said it would happen "In the foreseeable future." Concurrently, a task force was formed by Indonesia's Department of Justice and Human Rights to scrutinise the various facets and implications of potential acceptance. "In the foreseeable future, in 2000, the working group suggested that Indonesia should accept the Convention, though with a few reservations. As a component of its "Human Rights National Action Plan 2004-2009," the government ratified the Convention in 2004." Concurrently, a task force was formed by Indonesia's Department of Justice and Human Rights to scrutinise the various facets and implications of potential acceptance. The Indonesian government has delayed ratification of the Convention. Maybe we might learn a lot about the 1951 Convention's (non-)workings if we looked closely at cases like Indonesia, Mongolia, and Lebanon (Janmyr, 2019).

Considering the absence of Indonesia as a signatory to the 1951 Refugee Convention, it is not obligated to adhere to its stipulations concerning refugees who have arrived in Indonesia. It is likely that Indonesia has restricted its legal responsibilities for refugees because it was not a signatory of the 1951 Convention on Refugees. When compared to other signatory governments, Indonesia may be able to meet the basic requirements of refugees, including food and shelter.

Despite Indonesia not being a signatory to the 1951 UN Convention, upholding the standards of refugee protection as defined in international legal agreements remains essential. As an example of such a tool, consider the widely accepted principle of non-refoulement. It is challenging to establish *jus cogens* on account of the absence of exact standards to determine whether rules meet this requirement. Fair and reasonable standards are recognized and embraced by the international community. Such standards are acknowledged and accepted by worldwide civilization. Some nations are worried that they may exploit this to establish their own standards for what constitutes *jus cogens* in cases involving competing legal systems (Dewi et al., 2022).

With the ongoing arrival of Rohingya refugees from Myanmar into Aceh, Indonesia has taken the lead in providing food, shelter, and other necessities to these

refugees. The country is also expressing its concern about the issue of human trafficking and has urged the UNHCR to encourage ratifying nations to be willing to host Rohingya (Idrus, 2023). This shows that Indonesia does not have any legal responsibilities toward the Rohingya refugees but still makes an effort to provide for the refugee's needs.

There are a number of temporary housing options available to refugees in Indonesia, including the construction of tents in a variety of locations for Rohingya refugees in Aceh. Within the city of Makassar, the refugees are housed in a variety of facilities, including communal houses, shelters, and immigration detention stations. In the meantime, there are independent shelters in Jakarta that are providing refuge to Rohingya refugees (Asmara & Syahrin, 2021).

A comparison between the Universal Declaration of Human Rights (UDHR) and the 1951 Refugee Convention is essential when examining Indonesia's obligations towards Rohingya refugees. UDHR lays out more general human rights concepts that are applicable to all individuals, in contrast to the Refugee Convention, which is primarily concerned with protecting the rights of refugees. In addition, Indonesia, as a member of the United Nations, is legally obligated to apply UDHR (Sutiarnoto et al., 2020).

UDHR does not hold legal authority on its own, and all United Nations human rights conventions aim to enforce the rights outlined within it (Dahlin et al., n.d.). After the Holocaust, the execution of the Universal Declaration of Human Rights has been acknowledged as a central concern for the global community under the umbrella of the International Bill of Human Rights (M. H. Rahman, 2021). When the UDHR was issued, 58 countries were members of the UN, and 48 of them endorsed its release. Of the remaining, eight decided to abstain, while two did not vote. Notably, no country opposed the declaration. The eight countries that abstained included the Republic of South Africa, the USSR, Belarus, Poland, Czechoslovakia, Saudi Arabia, Ukraine, and Yugoslavia, each with their own reasons for abstention.

Indonesia's obligations towards Rohingya refugees can be examined through the protective measures outlined in the UDHR (Achmad et al., 2021). As stated in Article 14(1) of the UDHR, individuals possess the right to seek refuge from persecution in foreign nations. This applies to Rohingya refugees who have fled Myanmar due to violence and persecution. These refugees possess the right to seek refuge in Indonesia and other countries where they can find safety and protection. Consequently, it is incumbent upon Indonesia to respect the rights of Rohingya refugees to seek asylum and provide them with necessary support and protection. In addition, Article 2 of the UDHR underscores the principle of non-discrimination towards all individuals. The declaration affirms that every person is entitled to the rights and freedoms outlined therein, without any kind of discrimination based on factors such as ethnic background, gender, language, political or other views, nationality, social standing,

possessions, birth, or other status. This article highlights the importance of ensuring that no one is treated differently due to their race or religion, especially Rohingya refugees, who may differ in race or language from Indonesians. Hence, it is necessary for Indonesia, as a signatory of the UDHR, to uphold this principle and ensure that Rohingya refugees are not subjected to discrimination.

From the preceding discussion, it becomes apparent that refugees, like any other individual, have rights and basic freedoms outlined in human rights agreements, covenants, and declarations. When viewed through this lens, the restrictive measures taken by countries towards asylum seekers lack legal justification, are morally condemnable, and are strategically detrimental. Consequently, the international community should proactively tackle the human rights issues faced by refugees in a constructive manner. It is imperative to adopt an approach focused on assisting victims (M. Islam, 2020).

CONCLUSION

Indonesia is a state that has not signed and ratified the Refugee Convention. However, this does not imply that Indonesia has no legal responsibilities towards the Rohingya refugees, as Indonesia is a party to the UDHR. Given that Indonesia's regulations on refugees are not clear and sufficient, there is a need for more transparent and stronger regulations. Therefore, it is necessary for Indonesia to clarify its stance on whether it will become a party to the Refugee Convention. If Indonesia decides to join, there might be concerns about the impact on domestic policies and sovereignty. Additionally, the actions taken by Indonesia, which include providing food and supplies to Rohingya refugees and urging signatories to the Refugee Convention to welcome refugees, are justified because Indonesia has already fulfilled its responsibilities according to the UDHR.

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