

APPLICATION OF THE PRINCIPLE OF NON-REFOULMENT TO THE ROHINGYA REFUGEE INCOME WAVE FROM THE PERSPECTIVE OF INTERNATIONAL LAW

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Abstract

The application of the principle of non-refoulement is associated with the principle of sovereignty is the principle of non-refoulement is an international principle that prohibits countries from returning refugees to countries or regions where they may face threats to their security. emphasizes that every country also has the right to regulate its internal territory. The research method is normative legal research, based on secondary data. The results of the study show that Indonesia is not a country that has ratified the 1951 convention, as a result asylum seekers have difficulty in obtaining protection related to their certainty and given the ongoing security situation in Myanmar then of course, the only hope for asylum seekers to achieve a long-term solution is through resettlement in a third country and although Indonesia has not ratified the 1951 convention, this study recommends that the Indonesian Government seek solutions based on cooperation with neighboring countries, international organizations, and non-governmental organizations to ensure the protection and welfare of Rohingya refugees without neglecting national interests and security. Indonesia still needs to comply with the principle of non-refoulement even though no punishment is imposed on Indonesia if Indonesia violates the 1951 convention and forces refugees to leave Indonesia, considering that the convention does not explain in writing what consequences non-convention countries will face if they reject asylum seekers and refugees and force them to leave Indonesia.

Keywords: Indonesian Government, Principle of Non-Refugee, Refugees

INTRODUCTION

In a country's citizenship status is important things that can give impact on the realm of life socialize Good national and also international . This is supported in Article 1 of the 1933 Montevideo Convention states that characteristics one of the countries is own ability For do connection international with other countries.¹ Often times people minority or not is citizenship local get inappropriate

behavior indecent and become target discrimination in the country they are in stay or visit caused by the problem placement of his citizenship status which is not can associated by law international . Minority communities here is refugees or called with seeker asylum . They protect family and for safety with look for asylum in another country.² According to Romsan , a refugee can differentiated based on condition that is refugees disaster natural

¹Tri Utami , Mumpuni "The Implementation of Non-Refoulement Principle in the Case of Rohingya " Journal of Jurisprudence and Lagisprudence 1, (2), 2020. p.199.

²Kadarudin Kadarudin et al., "The Situation of International Refugee In Indonesia: A Legal Perspective," Veritas et Justitia 4, No. 1 (2018).

(*Natural Disaster*) and refugees political (*Manmade Disaster*) . Refugees Because disaster natural (*Natural Disaster*) usually happen Because existence disaster like flood , earthquake earth , tsunami, mountain eruptions and droughts , and so on . While refugees political (*Manmade Disaster*) happen Because action act man like war , conflict armed , oppression to a group certain , regime politics , and everything form robbery right asasi man other .³

In 2023 it was rocked with entry Rohingya ethnic group arriving to Indonesia, precisely in the province of Aceh. On November 19 , 2023, an estimated 490 Rohingya immigrants arrived to Aceh, precisely in the area Bireuen and Pidie .⁴ Rohingya refugees who are group minority Muslim without citizenship from Myanmar. Treatment discriminatory Myanmar government against Rohingya ethnicity causes the amount amount refugees fleeing self to the country of Indonesia. Rohingya are ethnicity minorities who experience exclusion politics and persecution based on ethnicity and religion, forced For live under threat detention and deportation , relocation forced action Keep going continuous and exist in uncertainty socio -legal.⁵ However to explain reported from BBC News reports that reason from Rohingya people leave Cox's Bazar camp (refugee camp located in Bangladesh) because the disappearance place stay for 15,000 Rohingya refugees due to fire in the vicinity month March until April 2023 which is suspected done by a group Bangladeshi militants .⁶ Taking

Action from statement said , it appears other related issues arrival Rohingya ethnic group to Indonesia, One of them is speculation about Allegation the occurrence syndicate enhanced people smuggling with existence statement a Rohingya refugees who pay agent worth Rp. 20 million For deliver his wife and children boarded the ship from camp refugees in Bangladesh to Aceh.⁷ However , there are 249 Rohingya refugees who have arrive in Bireuen rejected by the Acehese people and forced they return use boat the wood they use For return to their home country .⁸ Rejection Rohingya refugees are based with existence factors that become consideration among others, factors economy , tension social and capacity reception refugees in the Aceh region also became reason Acehese people refused .⁹In case rejection This cause Lots assumptions and questions about Right Basic Humans in Indonesia. Because , based on 1951 Convention and 1967 Protocol , rights and obligations refugees consists of on principles base such as non-discrimination on race , religion, or country of origin , prohibitions expulsion (*non-expulsion*), prohibition return refugees to the country of origin (*non-refoulement*), and the prohibition giving punishment . Then in Article 33 of the 1951 Convention covers 3 (three) things that need to be noticed For give protection to refugees , namely : (1) the 1951 Convention only tie to the countries that become participant in 1951 Convention and/ or Protocol 1967; (2) The 1951 Convention is of a humanity from problem refugees recognized by all

³Charly Exzel , Natalia Lana, Stefan O. “ Implementation The Principle of Non-Refoulment Against Refugees In Indonesia According to Law International and Law National ” Article Thesis : Faculty Law Unsrat . Vol.14, (3), 2024. p.2.

⁴detikcom team , " Why?" Rohingya Refugees Rejected Acehese ? This The explanation ” detikNews , 2023. Accessed on November 30, 2024.

⁵Fenny Bintarawati , Arief Fahmi Lubis , Rai Iqsandri , and Andrew Shandy Utama, ' Challenges and Prospects' Protection Law and Rights Basic Man for Rohingya refugees in Indonesia from Community Perspective' (2023) 02 Journal Law and Human Rights of Wara Science . p.1170

⁶BBC News, “Rohingya: World’s Largest Camp Fire ‘ Planned and Deliberate ’ Investigators Say , ” BBC News Indonesia , March 13, 2023, <https://www.bbc.com/indonesia/dunia-64859303>.

⁷BBC News, “Rohingya: Police investigate syndicate trading humans in Aceh - 'I paid Rp. 20 million for my family I can take a boat ’ BBC News Indonesia, accessed on November 30, 2024

⁸BBC News Indonesia, ' Rohingya refugees in Aceh will returned to the country of origin - Is That the right solution ? ' (BBC News Indonesia, 2023)

⁹Chairunnisa Abbas, “ Rohingya Refugees and Potential Horizontal Conflict & Diversity in Aceh” Caraka King: Journal Knowledge Government . (7), 2023. p.107

countries ; and (3) a ban on expulsion refugees who are a obligations that are not can reduced (*non- derogable*).¹⁰

In matter This principle *non-refoulement* nature tie or is 'jus cogens' which means part from law mandatory international obeyed for every country including those that have not become participant Signature 1951 Convention and 1967 Protocol .¹¹ *Non-refoulement* is principles that include norm that No justified for authority government For do expulsion , expulsion , rejection entry refugees to in region its jurisdiction , both those that have been get recognition of official status as refugees from UNHCR or not get confession in a way official as refugees .¹²

In accordance Law Habit International , Indonesia accepts refugees from ethnicity Rohingya and must responsible in fulfil protection . Principle *non-foulement* This Actually No nature *absolute* . Article 33 paragraph (2) of the 1951 Convention states that implementation principle This No applicable If refugees its existence can threaten security national or disturbing order common cause danger in place evacuate . Regardless from a country that has not ratify The 1951 Convention and the 1967 Protocol , Indonesia has

regulation independently regulated about refugees who do not off from right fundamentals in get protection established in Regulation President Number 125 of 2016 concerning Handling Refugees From Abroad . Not only that , Indonesia must also make an effort For overcome problem Rohingya refugees according to with applicable principles in Law International .

RESEARCH METHODS

Type research used in writing This is study law normative .¹³ Examination deep to legislation positive , including laws , regulations , principles , norms , rules , decisions courts , treaties and doctrines that relevant , is the core of method this . With use primary and secondary sources , including books , journals , and internet sources methods This make an effort give answer to various problem law .¹⁴

Study This done For to know and study determination of Rohingya refugee status according to the 1951 Convention and the 1967 Protocol and review implementation the principle of no *refoulement* in Handling Rohingya refugees in Indonesia are linked with principle of sovereignty. Because the group material law in research This including in Category study normative , then studies literature functioning as method For obtain secondary data .¹⁵ Analysis of the data used in study This is analysis information based

¹⁰Supriadi , Nur Hafni , and Arni , “ Perspective Law In Protection Right Basic Man To Attitude Rejection People of Upper Aceh Refugees Rohigya in Indonesia” *Alsa Indonesia Law Journal* , Vol 5 (2), 2024, p.88

¹¹Clare Frances Moran. “Strengthening the Principle of Non-Refoulement” *International Journal of Human Rights*. (25) 2020, p.1041

¹² Rohmad Adi Yulianto , ' Integration The Principle of Non-Refoulement with The Principle of Jus Cogens on Policy Handling Refugees in Indonesia' *Journal Scientific Policy Law* (14) 2020, p.497

¹³Ronny Hanitijo Sumitro , *Methodology Study Law* , Jakarta: Ghalia Indonesia, 1994.

¹⁴I am big Pasek Eka Wisanjaya , “ Protection Right Privacy As Part Of Rights Basic Man In System

Law National , ” *Master of Law Journal Udayana (Udayana Master Law Journal)* 12, no. 4 (December 2023), <https://doi.org/https://doi.org/10.24843/JMHU.2023.v12.i04.p08>

¹⁵Yati Nurhayati , Ifrani Ifrani , and M. Yasir Said, “ Methodology Normative and Empirical In Perspective Knowledge Law ,” *Journal*

on deductive qualitative . Approach qualitative centered on the provisions area used as reference by the community general .¹⁶ Besides that , events which become subject study This will become focus study qualitative this , which involves inspection and collection related information with the issue being researched . Ingredients law obtained in study bibliography will described and connected such that appearance so that can served in a way written more systematic use reach desired target that is answer on problem related with the principle of non-refoulement.

RESEARCH RESULTS AND DISCUSSION

1.1 Implementation Principle *Non-Refoulment* to Wave Rohingya Refugees Reviewed From Perspective Law International

Law refugees international is part from law international discussing about protection to seeker asylum or refugees . On protection status international that , someone deep capacity as refugees , mandatory get protection on rights basically as human . Principle This known with principle *non-refoulement* and often matter This called with milestone from protection international to refugees .¹⁷

Article 33 of the 1951 Convention relating to the Status of Refugees to list Principle *non-refoulement* which symbolizes protection based on reason humanity . Article 33 This covers a number of matter important namely , First , the 1951 Convention only binding on countries that have

become parties to the Convention Based on that . Article I paragraph (2) of the 1967 Protocol , a country which does not become party to the 1951 Convention but become parties to the Protocol , are also bound by Articles 2 to Article 34 of the 1951 Convention . With Thus , Article 33 of the 1951 Convention binds the countries that are parties to it. party to the 1951 Convention or Protocol of 1967, or both of these instruments .

Second , the 1951 Convention is of a humanity . This is in a way clear listed in paragraph opening The 1951 Convention which put forward that the UN cares refugees and ensure refugees get rights basically as well as his freedom as stated in Universal Declaration of Rights Basic Humans . This is confession from all countries against aspect social and humanitarian from problem refugees .

Third , prohibition expulsion contain special thing . This thing supported by Article 42 paragraph (1) of the 1951 Convention which excludes Article 33 of action reservation . With thus prohibition expulsion in Article 33 of the 1951 Convention is a obligation *non - derogable* construct essence humanity in 1951 Convention . Nature nonderogable prohibition expulsion confirmed back by Article VII paragraph (1) of the 1967 Protocol .

However , in practice principle *non-refoulement* This No nature absolute . Based on Article

Enforcement Indonesian Law 2, no. 1 (January 17, 2021): 1–20, <https://doi.org/10.51749/jphi.v2i1.14>.

¹⁶Zaenal Arifin, Soegianto , and Diah Sulistyani, “ Protection Law Agreement Partnership Procurement Goods / Services Government in the Field Construction ,” USM Law Review Journal 3, no. 1 (2020): 59–76,

<https://doi.org/http://dx.doi.org/10.26623/julr.v3i1.2134>.

¹⁷Tri Utami , Mumpuni "The Implementation of Non-Refoulement Principle in the Case of Rohingya " Journal of Jurisprudence and Lagisprudence 1, (2), 2020. p.201

33 paragraph 2 of the 1951 Convention on the application of principle *non-refoulement* No applicable when refugees the its existence threaten security national or bother order common in local countries that provide protection . In accordance sound Article 33 Paragraph 2 1951: *"The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, has been convicted by a final judgment of a particularly serious crime, constituting a danger to the community of that country."*

¹⁸This matter can become runaway exceptions that can be done by the state to to put things in order refugees as part from state rights in operate its sovereignty . if exception the will applied , then must proven that there is connection direct between existence refugees in a country with security national of the country under threat . Exceptions implementation *non- refoulement* requires existence element threat to state security and disturbances to order common in local countries . For Indonesia, security No only in context the internal security of a country, but also in system security food , health , finance and trade .

As a country that has not yet become participant signing or ratify 1951 Convention and 1967 Protocol p. the result in the Indonesian government does not have authority in give refugee status determination

or called as *Refugee Status Determination* (RSD). So from that , the Indonesian government provides permission operational to UNHCR for carry out responsibility protection refugees and solutions settlement refugees in Indonesia. Because that , the rules on refugees implemented by UNHCR, which is the UN agency that deals with related refugees in accordance with mandate in UNHCR Statute 1950.¹⁹

UNHCR has the authority in give solution to refugees in nature permanent , such as third country resettlement , repatriation voluntary repatriation, and integration local . With This is how UNHCR works The same with the International Organization for Migration (IOM). UNHCR and IOM are responsible for For finance , facilitate , and seek solution term long for refugees in transit countries until refugees the placed in the recipient country . In addition Work The same with The Indonesian government , UNHCR and IOM also established cooperation with party private sector and Non-Governmental Organizations (NGOs) in Indonesia for give handling and financing for refugees abroad in Indonesia.²⁰

Law international linked to obligations law international , namely the country implementing in accordance with ethics on the provisions in Law international which contains principles and rules that are generally Already accepted and approved by the community international like as it is principle

¹⁸Convention 1951 Convention Relating to the Status of Refugees . Number 02 (33).

¹⁹Supriadi , Nur Hafni , and Arni , “ Perspective Law In Protection Right Basic Man To Attitude Rejection People of Upper Aceh Refugees Rohingya in Indonesia” *Alsa Indonesia Law Journal* , Vol 5 (2), 2024 p.93

²⁰ Public Relations Secretariat Cabinet Republic of Indonesia, ' Efforts Handling Refugees Overseas in Indonesia' (Secretariat Cabinet Republic of Indonesia, 2022) <https://setkab.go.id/upaya-penanganan-pengungsi-luar-negeri-di-indonesia/> . Accessed on November 30, 2024

prohibition return return to the country of origin or expulsion of the seekers asylum entry into the region a country (the principle of non-refoulement). In connection with matter that , law international give base law for management in a way orderly in connection international .²¹

Non-refoulement different with deportation or transfer in a way forced . Deportation or expulsion happen when foreign nationals stated guilty Because do contrary action with local state interests or He become suspect action criminal in a country and run away self from the judicial process .²²For that , the State as subject law international and as member public international obliged For respect and implement No only rule law habit international (*rules of customary international law*), but also the principles law internationally structured in instruments international in which the country become figure important .. Rules law in habit international the is practices general that has been accepted by all countries as the law that almost everything consists of from elements that are characteristic constitutive .

CONCLUSION

As a country that has not yet including into the participant 1951 Convention and 1967 Protocol , Indonesia is also obliged honor principle *non- reflux* although No have authority in give determination of refugee status . However , in order to uphold tall unity and oneness with other countries as policy in protect rights refugees . In matter In this regard , Indonesia is cooperating with UNCR handling related protection

refugees and give responsibility give solution on problem about refugees . Because that , the rules on refugees implemented by UNHCR, which is the UN agency that deals with related refugees in accordance with mandate in UNHCR Statute 1950. With with the existence of UNCR, Indonesia also participates committed For ensure that refugees enforced in accordance with standard law International , as well as ensure that refugees get good protection by authorities government and not necessarily returned to the country of origin place they run self in accordance with Contents Article 33 of the 1951 Convention and regulation applicable legislation and has been adjusted with implementation principle *non -refoulement* . In its implementation principle *non-refoulement* No nature *absolute* . Based on Article 33 paragraph 2 of the 1951 Convention on the application of principle *non-refoulement* No enforced if refugees the its existence threaten security national or bother order common in local countries that provide protection . This is can applied if the country can prove that refugees do a detrimental thing as well as threaten safety order general and state.

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²¹CST Kansil and Christine ST “ Kansil , Law Module international ” (Jakarta: Djambatan , 2002). p.105.

²² Sigit Riyanto, “ The Principle of Non-Refoulement and Its Relevance in System Law international ”, Pulpit Law , Vol 22, No. 3, October 2010, p . 435.

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