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Legal Protection for Rohingya Asylum Seekers: Human Rights Perspective and Non-Refoulement Principles in Indonesian Domestic Law

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ABSTRACT

Indonesia, with its strategic position as an archipelagic country, is often a transit destination for immigrants, including Rohingya asylum seekers. Increased cross-border access has led to greater human movement between countries so Indonesia is faced with the problem of asylum seekers who want to obtain Human Rights protection. Law Number 39 of 1999 concerning Human Rights regulates the rights of asylum seekers, especially in Article 28 which emphasizes that everyone has the right to seek asylum to obtain political protection from other countries. This study uses a normative research method with the legal sources used consisting of primary, secondary, and tertiary legal materials. This study explores two main legal issues: the scope of legal protection for Rohingya asylum seekers from a human rights perspective, and the intersection of the principle of non-refoulement with Indonesia's domestic principles. This study shows that the expansion of the doctrine of non-intervention in the ASEAN Charter referring to the UN Charter provides strong legitimacy to provide humanitarian assistance to asylum seekers without violating the sovereignty of the recipient country. Exceptions to the principle of non-refoulement are used so that the receiving state can continue to respect its sovereignty and maintain security and order while remaining committed to protecting human rights.

KEYWORDS

Human Rights; Rohingya; Asylum Seekers

INTRODUCTION

Indonesia is an archipelago with a strategic geographical location. This causes Indonesia to be often used as a stopover place by immigrants. Immigrants themselves are foreign nationals who come to Indonesia or vice versa. In the current era, the greater access to traffic between countries, the increase in human movement from one country to another. This then causes problems for each country, which is used as a stopover for immigrants or asylum seekers who want to get human rights protection. Law No. 39/1999 on Human Rights affirms that Human Rights are a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state, law, government, and every person for the sake of honor and protection of human dignity. As for the details, the rights of asylum seekers are regulated in Law Number 39 of 1999 concerning Human Rights, precisely Article 28, which emphasizes that everyone has the right to seek asylum to obtain political protection from other countries. The rights referred to do not apply to those who commit non-political crimes or acts that are contrary to the goals and principles of the United Nations.[1]

The President of Indonesia stated the need for a practical solution to the Rohingya refugees who arrived in 2009. At the national level, the Indonesian government has worked with IOM and UNHCR to verify and determine the refugee status of the Rohingya stranded in Aceh. The focus of the Indonesian government's efforts is to repatriate Rohingya refugees who have expressed their willingness to be voluntarily repatriated.[2] The case of Rohingya refugees stranded in Aceh in 2009 is one of the illegal immigration problems that occurred in Indonesia. Because it is a complex issue, it requires parallel handling at the domestic, bilateral, and regional levels. The Indonesian government has taken the necessary steps, both at the national level and through bilateral and regional cooperation.

Indonesia has considered the inability of the state to assist refugees, which is also the basis for not ratifying the 1951 Convention and 1967 Protocol. However, Indonesia issued a policy that is quite different from Malaysia, especially in an area that is often referred to as the Porch of Mecca/Aceh, even one of the Rohingya refugee camps in Indonesia was built by the Aksi Cepat Tanggap Foundation located in Blang Adoe, North Aceh. One form of religious sentiment that can be seen in Indonesia is the public call led by several Islamic religious groups, where thousands of protesters gathered in front of the Myanmar embassy in Central Jakarta, expressing rejection of Myanmar's treatment of the Rohingya. Regarding the impact of the Rohingya conflict, namely the cases of boat people who came to several countries, including Indonesia, there is no clear legal standard regarding the securitization of migration. In handling the Rohingya refugee case in Aceh, Indonesia is still using the previous legal regulations by adjusting the applicable legal

[1] Y W Pandapotan, "Juridical Review of the Government's Role towards Asylum Seekers in Indonesia in Implementing Human Rights Enforcement Based on Law Number 39 of 1999 concerning Human Rights" (2023) 3 Innov J Soc Sci Res 2600-2606.

[2] *Ibid*.

regulations to the refugee handling process while waiting for the making of new regulations regarding refugees more thoroughly.[3]

One of the regulations in Indonesia that can be used as a guideline in taking action on Rohingya refugees is the provision not to deport which has been stated in Law Number 5 of 1998 concerning the Ratification of the Convention against Torture or Cruel, Inhuman or Degrading Punishment (CAT), written in Article 3 that, "No state shall refuse, return, or extradite a person to a country where there is a strong belief or reason that he will be dangerous because he is subjected to torture".The provisions of International Human Rights or International Human Rights norms, which are also agreed by Indonesia that all people have basic rights that must be fulfilled and cannot be deprived by anyone. This international norm then became the basis for Indonesia's attitude to accepting Rohingya refugees, even though it did not ratify the 1951 Convention.

In 2015 the Indonesian government was very actively involved in peace efforts in resolving the conflict in Myanmar, because the Indonesian territory also had a large number of refugees in May 2015. The government was forced to participate in solving this problem. To maintain the stability and security of Indonesia. Then in 2016, President Joko Widodo instructed the Minister of Foreign Affairs Retno LP Marsudi to hold diplomacy. This step received a warm welcome from the country of Myanmar, Myanmar State Counsellor Aung San Suu Kyi who directly met the Minister of Foreign Affairs. Indonesia's steps include proactive efforts in building peace because Indonesia has also succeeded in opening access to humanitarian assistance in the Rakhine region. Indonesia, which has historically had close relations with Myanmar, applies a different approach than other countries. If other countries use megaphone diplomacy or drum diplomacy. Indonesia instead applied what Jusuf Kalla, then Chairman of PMI, called sarong diplomacy. "Sarong diplomacy" reflects a cultural approach. It is an integral part of soft diplomacy based on the principle of mutual respect and non-interference in other countries' domestic affairs. At the same time, however, it is likely the most effective message regarding shared humanitarian interests. [4]

Referring to the previous discussion, it can be concluded that Indonesia does not yet have strong legitimacy in accepting refugees by seeing that so far, humanitarian assistance has only been based on "moral intentions" carried out by the Indonesian government towards the population of the Rohingya tribe of Myanmar. This is not enough considering that it will cause legal uncertainty in the future because the sentiments of each country are subjective and will change. Of course, it will be dangerous if it is returned to the subjectivity of the ruler. Therefore, Indonesia needs to improve the rule of law on a national scale as an objective basis of legitimacy in terms of protecting asylum seekers/refugees from any country in the future. In this case, it is important to first review the regulations owned by Indonesia that are closest to the policy towards asylum seekers/refugees. This is none other than Presidential Regulation No. 125/2016.

PR 125/2016 consists of 40 articles divided into 4 chapters. Chapter I includes Article 1(1), which includes the definition of a refugee as defined in the Refugee

[3] Maria Elsa Karina, "Comparative Analysis of Malaysia and Indonesia's Policies Towards Rohingya Refugees" (2020) 2:2 Padjadjaran J Int Relations 158.

[4] Azyumardi Azra, "RI's Foreign Policy: The Rohingya Case", *Kompas Daily Mail* (2017).

Convention: "A refugee from abroad, hereinafter referred to as a refugee, is a foreigner who is present in the territory of the Unitary State of the Republic of Indonesia owing to a well-founded fear of persecution on grounds of race, ethnicity, religion, nationality, membership of a particular social group, and dissenting political opinion and who does not seek the protection of his/her country of origin and/or has been granted asylum seeker status or refugee status by the United Nations through the High Commissioner for Refugees in Indonesia".

In Indonesia, this view downplays or ignores the international legal status of asylum seekers and refugees, and the mention of the right to asylum in the 1945 Constitution. Chapter II of PR 125/2016 is titled 'Discovery', Chapters III and IV set out provisions for 'Shelter' and 'Security'; but interestingly, Chapter V deals with 'Immigration Supervision'.[5] As Mahardhika Sjamsoe'oed Sadjad explained in her paper presented at the Workshop, the passive framing of refugees as people who are 'detected' or 'found', 'accommodated', and 'secured' suggests that PR 125/2016 treats refugees as people to be dealt with, or as irregular migrants. Sadjad analyzes at least six drafts of Perpres 125/2016 since November 2011 and shows that in the drafting process, the guarantees of refugee rights were further trimmed. While early drafts envisioned that refugees would be granted permanent status in Indonesia, these sections were later dropped in more recent drafts of the Perpres. Sadjad also noted the absence of references or provisions related to human rights (which were present in earlier drafts), although Article 3 eventually continued to state that: "The handling of refugees takes into account generally accepted international provisions and is by the provisions of laws and regulations".

In its final version, PR 125/2016 only provides 2 (two) long-term solutions for refugees: voluntary repatriation or 'return' (article 38), and resettlement in a third country (article 37(a)) or 'country of destination' (article 33(2)). Local integration is no longer one of the options. Voluntary repatriation is referred to in several articles as 'voluntary return or deportation by applicable laws and regulations' (Article 29(1), emphasis added). While clear procedures for voluntary repatriation are set out in Article 38, Article 43 states that repatriation may be involuntary for "asylum seekers whose [application]...is rejected as final". This provision raises questions as to whether PR 125/2016 upholds the principle of non-refoulement which also applies to Indonesia.[6]

One example is the refusal of Rohingya refugees to enter Indonesia in 2015 based on sovereignty and social factors. At that time the government and the TNI were worried that the entry of refugees would endanger the sovereignty of the Indonesian state in addition to social factors that would become a problem as well as refugees from Afghanistan who had committed several violations that made residents uncomfortable with foreign refugees. The principle of Local Integration in handling is based on the ability of a country to accept refugees when the state feels that refugees will endanger both in terms of economy, security, and culture, then the state has the right to refuse according to this principle. However, in its development, the Indonesian government continues to assist Rohingya refugees on the condition

[5] Novianti, "Implementation of Presidential Regulation No. 125/2016 on Handling Refugees from Abroad (The Implementation of Presidential Regulation)" (2019) 10:2 J Negara Huk 281-300, online: <https://jurnal.dpr.go.id/index.php/hukum/article/view/1343>.

[6] *Ibid*.

that they do not enter Indonesia's sovereign territory. One of the problems in the principle of local integration carried out by Indonesia is that there is no single provision in Presidential Regulation No. 125 of 2016 that regulates the rejection of refugees fleeing from their country of origin. Perpres No. 125/2016 only regulates refugees who are rejected by the United Nations through the High Commissioner for Refugees in Indonesia. These refugees have settled in Indonesia but in the course of their journey, their refugee status is rejected by the High Commissioner for Refugees in Indonesia, not regulating refugees who are still in or are heading to Indonesia. The Voluntary Repatriation principle regulates voluntary repatriation, meaning refugees who request to be repatriated. One example of a case is the return of an Afghan refugee named Basit Ali Sarwari after living in Indonesia for approximately 2 years, especially in Pekanbaru, Basit's desire to return is based on his wishes.[7] The principle is regulated in Article 38 of Presidential Regulation No. 125/2016 which reads:

1) Immigration supervision of Refugees in the context of Voluntary Repatriation is carried out by: Receiving the application of Refugees who will return to their country of origin voluntarily; Completing departure administration by applying for a non-return exit permit on travel documents; and Escorting departure to the nearest immigration checkpoint.
2) Voluntary Repatriation as referred to in paragraph (1) shall be carried out under the provisions of laws and regulations.[8]

The above provisions regulate the voluntary return of the state in this case giving freedom for refugees to return to their home country by completing applicable documents and procedures by the provisions of Indonesian law. [9] In its history, Indonesia as a refugee transit country has become an international concern when handling refugees from Vietnam in the period 1975-1997. [10] At that time Indonesia succeeded in repatriating Vietnamese refugees to a third-party country, namely the United States in the period 1975-1979. Indonesia's handling of refugees is by the principle of Resettlement.[11]

Presidential Regulation No. 125/2016 has implemented several principles in its statutory provisions such as the principle of Voluntary Repatriation accommodated in Article 38 and the principle of Resettlement listed in Article 28, but one of the most important principles regarding the principle of Local Integration is not found in a single provision in the Perpres that regulates this principle, but as explained above this principle is carried out by the TNI against Rohingya refugees. Therefore, it is necessary to further regulate the principle of Local Integration related to mechanisms, SOPs, and handling, to avoid illegal and repressive actions against refugees.

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7 Mohamad Hidayat Muhtar, Zamroni Abdussamad & Zainal Abdul Aziz Hadju, "Comparative Study of the Handling of Overseas Refugees in Indonesia, Australia, and Thailand" (2023) 30:1 J Huk Ius Quia Iustum 26-48.

8 *Presidential Regulation of the Republic of Indonesia No. 125 of 2016 on "Handling Refugees from Abroad"*, 2016.

9 Fitria, *PADJAJARAN-Journal of Law Volume 2 Number 1 Year 2015.pdf*.

10 Wagiman, *International Refugee Law* (Jakarta: Sinar Grafika, 2012).

11 Muhtar, Abdussamad & Aziz Hadju, *supra* note 7.

METHOD

The type of research used in this writing is normative research, where this type of research is carried out by examining cases that violate existing laws and regulations. The legal sources obtained from this type of research are primary legal materials, secondary legal materials, and tertiary legal materials sourced from the literature.[12] The primary legal material itself is a study of the provisions arising from human rights, namely in the form of statutory regulations, conventions, and also declarations. Secondary legal sources are all sources related to the interpretation of laws, which are not official documents, such as newspapers, books, expert opinions, etc., to study the normative framework the relevant legal materials are used to formulate provisions.[13] In adjudicating cases involving the Rohingya ethnic group. This research is motivated by identifying and discussing legal protection for Rohingya asylum seekers from a human rights perspective and non-refoulement principles in Indonesian domestic law.

RESULT & DISCUSSION

I. The Scope of Legal Protection of Rohingya Asylum Seekers in Human Rights Perspective

The protection of human rights for the Rohingya is a very important and complex issue. Myanmar as a sovereign state must provide legal protection to its citizens, including the Rohingya. The settlement of cases of alleged human rights violations against Rohingya people must be taken immediately by the Myanmar government to respect and protect human rights. If there are no effective steps taken by the Myanmar government to protect the Rohingya tribe, then the international legal mechanism is an alternative that must be taken to provide protection of human rights for the Rohingya tribe. The Rohingya's right to freedom of movement has been severely restricted and the enactment of the Citizenship Law obliges Myanmar to freely discriminate against people who do not have human rights. All people are entitled to the protection of their person, family, honor, dignity, and rights, to legal recognition where they exist as human beings, to a sense of security and safety, and protection against threats.

In the case of the Rohingya case, initially, it was due to the rejection of the State of Myanmar against the Rohingya ethnic population. The legal and political policies of the Myanmar government towards the Rohingya ethnic minority are relevant international legal issues. First, the Rohingya Muslim minority has lived for centuries in Myanmar, meaning that there are already historical facts. Second, this factor has become an international issue due to the government's treatment of not recognizing them as citizens and barriers to accessibility in terms of providing humanitarian assistance that is strictly guarded by the Myanmar military, which has

[12] R Alauddin, "Environmental Legal Aspects In Protection Of Natural Resource Management" (2022) 11:4 Leg Br 2426-2435, online: <http://www.legal.isha.or.id/index.php/legal/article/view/493%0Ahttp://www.legal.isha.or.id/index.php/legal/article/download/493/399>.

[13] Happy Yulia Anggraeni & Yuyut Prayuti, "Building a Copyright Legal Culture Through Awards to Book Authors Building a Culture of Copyright Law Through the Giving of Appreciation to Authors" (2022) 11:4 2466-2477.

resulted in legal issues and violations of human rights. This is because political policies that discriminate against other ethnic groups and tribes contradict anti-discrimination agreements as well as citizenship agreements.[14] The two main problems of this case then boil down to obstacles to the existence of the principle of non-intervention that has been agreed upon by ASEAN countries, although indeed this principle should not then legitimize not allowing countries in ASEAN to provide humanitarian assistance as long as it is not related to sovereignty.

Referring to Article 2 of the Treaty of Amity and Cooperation in Southeast Asia, it is explained that, "in establishing relations between members, it is based on the fundamental principles of: (a) respect for freedom, sovereignty, equality, territorial unity and national identity of each nation; (b) each state has the right to organize the administration of its country free from external intervention; (c) the principle of non-intervention in internal relations among members". The existence of this article strengthens the existence of the principle of non-intervention in the ASEAN cooperation framework.[15]

The principle of non-intervention has been upheld by ASEAN members in their regional policies. This is because there is a legal basis, namely in the ASEAN Charter so that member states do not have sufficient legitimacy and authority to intervene in conflict issues and internal human rights violations of member states. Article 2 of the ASEAN Charter states that (e) non-interference in the internal affairs of ASEAN member states, (f) respect the right of every member state to lead its national existence free from external interference, subversion and coercion. The principle of non-intervention has now become a fundamental basis for relations between ASEAN members. The positive value of this principle is to prevent and minimize conflicts between ASEAN member states. Diplomacy based on this principle has at least succeeded in reducing the potential for conflict in the region.

Apart from the positive side, this principle in reality becomes an obstacle for ASEAN to play a significant role in resolving domestic conflicts in each member state. This principle ultimately limits ASEAN and its member states to playing an active role in Southeast Asian regional dynamics. Along with the development of the global political constellation, it seems that this principle has begun to be abandoned by ASEAN. The ASEAN Charter states that ASEAN's future goals are to maintain and enhance peace, security, and stability and further strengthen peace-oriented values in the region, as well as to enhance regional resilience by promoting greater political, security, economic, and socio-cultural cooperation. This statement shows that ASEAN in the future is one entity, this is also reinforced by the ASEAN jargon, One Vision, One Identity, One Community.

From this, it can be seen that even though Indonesia is also one of the ASEAN member states, the principle of non-intervention should also be extended to a broader meaning as in the UN Charter. In this case, it becomes urgent because the expansion of the meaning of the principle of non-intervention is needed to provide strong legitimacy for ASEAN member states to protect refugees from other countries even though they do not ratify certain conventions. For example, in the UN Charter, the principle of state sovereignty and the principle of non-intervention are regulated

[14] Hanifahturahnmi, "Discrimination Policies Against Rohingya Minority Groups in Myanmar" (2016) 7 J Public Policy.

[15] *Treaty of Amity and Cooperation in Southeast Asia (TAC)*, 1976.

in the UN Charter Article 2 paragraph (1) which states, "The organization is based on the principle of the sovereign equality of all the members".[16] In Article 2 paragraph (4) All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations. And Article 2 paragraph (7) Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present charter, but the principle shall not prejudice the application of enforcement measures under Chapter VII.

The provisions of the UN Charter clearly state that no intervention is allowed in relations between states. This arrangement was further strengthened by UN General Assembly Resolution Number 2625 (XXV) issued on October 24, 1970, which was later accepted as the General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation between States about the UN Charter. In the practice of states today, these principles are often violated for humanitarian reasons. Humanitarian interventions in Iraq in 1991, Somalia in 1992, and Kosovo in 1999 can be used as evidence that the doctrine has been carried out by states in their international relations. Humanitarian intervention gains its legitimacy according to its supporters based on the interpretation of Article 2 paragraph (4) of the UN Charter. Article 2 paragraph (4) of the UN Charter can be seen that the article relating to the principle of non-intervention is not an absolute prohibition, but rather a limitation so that an intervention does not violate territorial integrity, or political independence and is not in any other manner inconsistent with the Purposes of the United Nations. Territorial integrity means if a country permanently loses its territory whereas in humanitarian intervention the intervening party does not take the country's territory permanently, the action is only to restore human rights. [17]

Compared to Thailand, which is also an ASEAN country and one of the countries that did not ratify the 1951 refugee convention like Indonesia, Thailand has no obligations in handling refugees, so there is no specific legislation governing refugees in Thailand. However, the relevant regulations can be seen in the Immigration Act B.E. 2522 (1979), or Immigration Act B.E. 2522 (1979). [18] Where in the regulation emphasizes the term "Aliens" which means any person who is not from Thailand or not a Thai citizen. It also recognizes the term "Immigrant" which means any foreigner entering Thailand.

In the Immigration Act B.E 2522 specifically in section 7 point (3) it is explained that the Immigration Commission has the power and duty to grant permission for foreigners to enter and stay in Thailand by the provisions mentioned in Section 41 point 1 with the approval of the Minister.[19] Then according to the

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16 *Charter of the United Nations*, 1945.

17 Anthony D'Amato, "There is No Norm of Intervention or Non-Intervention in International Law" (2010) 7:10-49 Int Leg Theory 33.

18 Hnin Hnin Pyne Therese M Caouette, Krittayā ʻĀtchawanitčhakun, *Sexuality, Reproductive Health, and Violence: Experiences of Migrants from Burma in Thailand* (Michigan: Institute for Population and Social Research, Mahidol University at Salay, 2009).

19 *Immigration Law on Deportation of Foreigners*.

provisions stipulated in Section 11, every person entering or exiting shall be subject to inspection at the designated immigration direction, station, or area and as prescribed and published in the Government Gazette by the Minister. It is further explained in Section 17 namely: "In certain special cases, the Minister, by the Cabinet approval, may permit any alien or any group of aliens to stay in the Kingdom under certain conditions, or may conditions, or may consider exemption from conforming with this Act".

Regarding the Rohingya refugees, initially, Thailand's policy of refusing to open refugee camps in Thai territory was counterproductive to the wishes of the Thai people as evidenced by the constant protests given by the Burmese Rohingya Association, The Arakan Project and the Refugee and Immigrant Protection Association to the Thai government. [20]Eventually, some camps at the Immigration Detention Center (IDC) were accepted and opened, but this was followed by a long controversy that continues to this day.

The Thai government initially adopted a Cabinet resolution from 1992 to 1999 that focused on registering illegal migrants. However, the policy did not last long. Thailand attempted to deport illegal immigrants (Rohingya) after facing an economic crisis in 1997. According to Human Rights Watch, since 1992 Thailand has adopted several policies. First, the Thai government rejected refugees who had a history of human rights violations. Second, the Thai authorities severely restricted the UNHCR's operational space. Third, to help solve the refugee problem, Thailand is trying to push for a ceasefire agreement between ethnic rebels and the Myanmar Government.

The Thai government is firm in dealing with refugees as evidenced by the Thai Ministry of Foreign Affairs taking a new policy called 'help on' in 2012 which allows temporary shelter for Rohingya for a maximum of six months.[21] And as many as 2,000 Rohingya immigrants were given temporary protection in Thailand's immigration detention center.[22] Through the minister, Rohingya immigrants were initially allowed temporary shelter in Thailand for six months until they were safely repatriated to their home country or a third country. By its policy, Thai authorities provided humanitarian services including food, water, and other supplies to push the Rohingya boats toward Malaysia or Indonesia without allowing them to land on Thai shores. [23] Finally, Thailand cooperated with Malaysia and Indonesia. The following are the R2P measures practiced by Thailand together with Malaysia and Indonesia regarding the Rohingya issue. The first is to jointly conduct Search and Rescue (SAR) operations for Rohingya asylum seekers who are still adrift at sea, the second is to conduct coordinated sea patrols and facilitate evacuations at sea when boats containing Rohingya migrants are stranded in three countries, the fourth is to increase cooperation and coordination with UNHCR and IOM in identifying and verifying immigrants, including looking for third countries for the resettlement

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[21] Jason Szep & Stuart Grudgings, "Preying on the Rohingya" (2013) Reuters 1-10.

[22] UNHCR, "Six Months on, Rohingya in Thailand Struggle to Keep Hope Afloat", (2013), online: <https://www.unhcr.org/news/stories/six-months-rohingya-thailand-struggle-keep-hope-afloat>.

[23] Human Rights Watch, "Thailand: Don't Deport Rohingya Boat People", (2013), online: *January 02*<https://www.hrw.org/news/2013/01/02/thailand-dont-deport-rohingya-boat-people>.

process, and the fifth is to activate the resources of the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) to resolve the crisis.[24]

When compared to Indonesia in terms of demographics, Indonesia shares similar characteristics with Thailand. Thailand is a country with a multiethnic society. With such characteristics, Thailand has successfully formulated a policy of accepting Rohingya refugees with a help-on policy. This means that Thailand's help-on policy of accepting Rohingya refugees with a six-month time limit is compatible with Thailand's multiethnic social base. Indonesia is a country with a multiethnic social base, so there is potential for success if a legal transplant from Thailand's help on policy into the Indonesian legal system is carried out regarding the handling of ethnic Rohingya. But in reality, the people of Indonesia, especially Aceh, rejected the arrival of the Rohingyas. This can happen because the people of Aceh feel that Rohingya refugees are only a "burden" and make Aceh more rundown. If the help Thailand policy was adopted by Indonesia, where Rohingya refugees were given a time limit to be in Indonesia, the rejection would not have happened. Because the problem is not about racial differences, but about overcapacity in Aceh if Rohingya refugees continue to be accepted.

Of course, the rejection is because the attitude in accepting refugees or asylum seekers is based on the sentiments of each country which results in the subjectivity of each country as a recipient. Of course, with the expansion of the meaning of the principle of non-intervention by providing an extension that is only limited to humanitarian intervention, it will become a reference for ASEAN countries including Indonesia in terms of accepting asylum seekers/refugees even though the country does not ratify conventions relating to refugee acceptance. Of course, this also aims to provide legal certainty both for the benefit of the state sovereignty of each receiving country and also to fight for the human rights of asylum seekers/refugees who are rejected from their country.

II. The Intersection of the non-refoulement Principle with Indonesia's Domestic Principles

The term "non-refoulement" comes from the French word refouler which means to return or send back (to drive back).[25] The principle of non-refoulment is related to the principle of protection in human rights law, especially about the protection of individuals from acts that can be categorized as torture and or cruel, inhuman, or degrading treatment or punishment (human rights concerning the prohibition of torture or cruel, inhuman, or degrading treatment or punishment).[26] The international community's awareness to provide protection and assistance in solving the refugee problem began long ago. Particularly during the revolution in Russia and the collapse of the Ottoman Empire which resulted in massive

[24] Sella Augita, "THE ROLE OF THE THAILAND GOVERNMENT IN CALCULATING ROHINGYA SEEKERS IN THAILAND" (2017) 3 J Int Relations 30-38.
[25] Harun Ur Rashid, "Refugees and the Legal Principle of Non-Refoulement (Rejection)" (2005) 197 Law Our Rights.
[26] Global Consultations & International Protection, "Refugee Protection in International Law" (2003) 11:1 Tilbg Law Rev 504-504.

displacement. No less than 1.5 million Russians at that time fled to other countries in Europe.[27]

Then in December 1950, the UN established a non-political humanitarian organization, the UNHCR. UNHCR began its operations on January 1, 1951, with a mandate to provide international protection to refugees and seek long-term solutions to their problems. International protection of refugees emphasizes the importance of protecting human rights. Because refugees are also individuals or groups of people who have the same human rights as other individuals or groups of people. So in dealing with refugees, respect and protection of their human rights must still be guaranteed. Especially because refugees are individuals or groups who are very vulnerable to human rights violations, both in the form of violence, exploitation, and discrimination.[28] The conditions referred to above then gave birth to a principle called non-refoulement, which is a basic aspect of refugee law and has been developed into customary international law. This means that the principle creates a moral responsibility for every state to provide protection for refugees or asylum seekers even though they have not become a signatory to the 1951 Convention, including Indonesia.

The practice of applying the principle of non-refoulement in Indonesia is based on the Director General of Immigration Letter No. F-IL.01.10-1297 addressed to the Head of the Regional Office of the Ministry of Law and Human Rights and the Head of Immigration Offices throughout Indonesia, which provides instructions regarding the handling of foreigners who declare themselves as refugees or asylum seekers. The Director General's letter emphasizes that if a foreigner claims to be seeking asylum upon arrival in Indonesia, he/she is not subject to immigration action in the form of deportation to a country that threatens his/her life and freedom. The content of this letter is very much in line with the principle of non-refoulement. Furthermore, the letter reminds us that if the foreigner is believed to be an asylum seeker or refugee, the local officer should immediately contact UNHCR to determine their status.[29]

However, the letter contains exceptions in addition to the principle of non-refoulement. The exception to the application of non-refoulement requires an element of threat to state security and disturbance to public order in the local country. This is also clearly stated in that the principle of non-refoulment is not only absolute as stated in Article 33, but Article 33 (2) of the 1951 Refugee Convention states an exception that the principle of non-refoulment does not apply to a person who is reasonably suspected on clear and sufficient evidence of having committed an offense against peace, war crimes, crimes against humanity and non-political criminal crimes.

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

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[27] Mada Apriandi Romsan, Achmad and Usmawadi, Usmawadi and Usamy, M Djamil and Zuhir, *Introduction to International Refugee Law: International Law and Principles of International Protection* (Bandung: Sabic Offset, 2003).

[28] Iin Karita Sakharina, "State Protection for Refugees during the COVID-19 Global Pandemic" (2020) 2 Al-Azhar Islam Law Rev.

[29] Malahayati Malahayati, *Getting to Know More about the Non-Refoulement Principle: Between Theory and Practice in Indonesia* (2017).

country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country. Because Article 33 paragraphs 1 and 2 are inseparable. So it can be concluded that the principle of non-refoulment is an absolute rule, but it also does not apply to a person who is reasonably suspected on clear and sufficient evidence, of having committed an offense against peace, war crimes, For Indonesia, security is not only in the context of a country's internal security but also in the food, health, financial and trade security systems. Threats include obstacles, challenges, and disruptions.[30] It needs to be emphasized again, that this exception is applied when it has gone through various screening stages in immigration. In this case, it is the state that will carry out certain validations of the asylum seeker as to whether he can be declared a refugee or not, so that rejection cannot be done unilaterally without an official statement first from the receiving country.

As a subject of international law that is often used as a destination country by asylum seekers, Indonesia should ratify the 1951 Convention and 1967 Protocol, because it has such an important meaning to achieve equality of humanity that must always be maintained as part of the international community. However, the ratification of the 1951 Convention and 1967 Protocol must be followed up through the establishment of implementing regulations such as government regulations on the handling of refugees or asylum seekers from abroad as regulated in Presidential Regulation No. 125 of 2016, namely by making updates related to what aspects must be taken into consideration, such as elements of threats to state security and disturbances to public order in Indonesia.

On the other hand, in terms of state sovereignty, it should be noted that the meaning of state sovereignty has experienced a shift in meaning that makes it relative. First, there are certain limitations given based on international agreements that are made and bind a state. When a state declares that it is subject to the provisions of the treaty, the actions of a state are limited, namely based on the treaty it is bound by; the emergence of international and supranational organizations; and the respect and enforcement of human rights. Secondly, based on the previous explanation, it is stated that the principle of non-refoulement can be denied for reasons of national security or public order revealed by due process of law. Third, sovereignty owned by a state can be interpreted in two ways, namely state sovereignty which supports refugee protection, and state sovereignty which supports the protection of its citizens and territory. When referring to the subject matter of this research, namely which one takes precedence between state sovereignty and the principle of non-refoulement, the answer is that state sovereignty takes precedence.

Efforts in terms of providing certain limitations related to the principle of non-refoulement can be seen from the State of Australia, which although it has ratified the convention, Australia still seeks to strengthen its sovereignty by not intending to eliminate its intensity in accepting refugees or asylum seekers which is realized by becoming a state party to the 1951 Convention on the Status of Refugees. In 2010-2012 under the leadership of Prime Minister Julia Gilliard, Australia implemented several policies related to refugees and asylum seekers. Some of the policies made

[30] Saafroedin Bahar, *Preliminary Education for State Defense at the Advanced Stage* (Jakarta: Intermedia, 1989).

by the Australian government related to the problem of Irregular Maritime Arrivals include The Pacific Solution, Mandatory Detention, the implementation of Bridging Visas, returning asylum seekers to their countries of origin, and the Malaysia Solution. All policies issued by the Australian government during the leadership of Julia Gillard tend to be punitive or punish asylum seekers who come by boat and do not carry official documents to Australia. The policies produced by the Australian government above are policy products that are influenced by a political process. In other words, these policies are influenced by political inputs in a country. The groups that influence the policy are then referred to as policy influencers, which consist of 1) Bureaucratic influencers, 2) Partisan influencers, 3) Interest influencers, and 4) Mass influencers. Operation Sovereign Borders (OSB) is a border security guard operation led by the military and supported and assisted by various federal government agencies. Launched on 18 September 2013 the coalition government established the military as a response to combat human smuggling protect Australia's borders prevent people from putting their lives at risk at sea and maintain the integrity of Australia's migration program. Within OSB a Joint Agency Task Force (JATF) has been established to ensure a whole-of-government effort to combat people smuggling and protect Australia's borders.[31]

Indonesia is not a country that ratified the 1951 Convention and 1967 Protocol, but in practice, Indonesia continues to accept and accommodate refugees based on humanitarian reasons and customary international law. Talking about the policy of handling refugees from abroad, Indonesia has promulgated Presidential Regulation No. 125 of 2016, as the ratio legis of the birth of the regulation is the mandate of the opening of the 1945 Constitution. With the existence of Presidential Regulation No. 125 of 2016, Indonesia has voluntarily opened opportunities for refugees to come to Indonesia, for example, the Rohingya refugees in Aceh. The central government as the highest authority in terms of handling foreign refugees must be extra careful, namely in placing refugees in the Aceh region, considering that Aceh has special autonomy as stipulated in Law (UU) Number 18 of 2001 concerning Special Autonomy for the Special Province of Aceh as the Province of Nanggroe Aceh Darussalam. With its special nature, the central government must be able to guarantee the Rohingya refugees to respect the customs prevailing in the local community, and the provisions of laws and regulations. Therefore, do not let Indonesia's good intentions to help the handling of Rohingya refugees, actually harm the Indonesian people. In addition, for the sake of creating legal certainty and order, the Indonesian government must provide a time limit (limitation) for refugees who are in shelters. With the hope that if there is a limitation, the United Nations through the High Commissioner for Refugees in Indonesia can take further policies quickly and precisely. In the absence of legal rules regarding the limit of stay permits for refugees, the Indonesian government is required to add ideas to Indonesian regulations to provide permission for refugees to stay in Indonesia. The policies for time limitation for refugees are as follows:

1) First, the central government through the Chairperson of the Task Force for Handling Overseas Refugees, Coordinating Ministry for Political, Legal and Security Affairs (Kemenko Polhukam) communicated and coordinated with

[31] Prihandono Wibowo & Ahmad Zamzamy, "Key Knowledge Generation Failed State and Threats to Human Security" (2015).

UNHCR regarding the issue of asylum seekers and refugees. The communication encourages UNHCR to increase the resettlement quota to third countries or refugee-receiving countries. This communication is also carried out so that resettlement is not too long in Indonesia because Indonesia is not a refugee-receiving country and a ratifier of the Convention.

2) Second, voluntary repatriation to the country of origin of asylum seekers and refugees. However, this step is taken if the country of origin is conducive, safe, and comfortable to live in. In this process, they are free of charge. All costs will be borne by the International Organization for Migration (IOM). In its implementation, the government will appeal to asylum seekers and refugees if the country is conducive and there are no worrying problems, especially in terms of security.
3) Third, deportation. This action is taken against asylum seekers whose status is rejected by UNHCR and third countries, meaning that they can no longer be transferred to other recipient countries because there are conditions that cannot be met. Deportation is also carried out if the asylum seeker or refugee violates the law in Indonesian territory.

CONCLUSION

The extension of the principle of non-intervention in the ASEAN charter by referring to the UN charter was enacted to provide strong legitimacy in terms of providing humanitarian assistance while still not touching the realm of sovereign intervention of the country concerned to asylum seekers/refugees regardless of the country's ratification of the 1951 Convention and 1967 Protocol. This avoids the subjectivity of the government of the receiving country. Moreover, the acceptance of asylum seekers is sometimes faced with the "sentimental" state which leads to different perspectives on the acceptance of asylum seekers/refugees from other countries. For example, Thailand and Indonesia, both of which have not ratified the Convention on Refugees, have different perspectives on accepting asylum seekers. In this case, Thailand has a strict legal mechanism with a persuasive approach by providing opportunities for foreign refugees to stay in Thailand as stipulated in the Immigration Act B.E. 2522 especially Section 7 point (3) which is different from Indonesia by continuing to return foreign refugees to their country of origin. While Indonesia, despite having Presidential Regulation No. 125/2016, Indonesia adheres to the principle of Voluntary Repatriation and Resettlement which in principle avoids repressive and punitive actions against foreign refugees.

This exception to the principle of non-refoulement is used so that even though the receiving country aims to uphold human rights, the reception still takes into account the sovereignty of the receiving country as long as it does not interfere with the security and order of the receiving country. In terms of determining whether it disrupts security and order, screening is first done in reaching out and validating whether the asylum seeker deserves to be accepted or not. It should also be emphasized that this determination is only made by the state as the highest authority, and not unilaterally determined by citizens. For example, Australia has implemented an OSB policy by establishing a Joint Agency Task Force (JATF) to ensure government-wide efforts to combat human smuggling and protect

Australia's borders. Therefore, this exception to the principle of non-refoulement needs to be applied by providing a clear time limitation either in Indonesia or any country that becomes a receiving country.

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