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The Indonesian Government's Legal Policy on the Presence of Illegal Migrants: Modus Operandi of Rohingya Migration in Aceh

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Abstract: The prolonged conflict in Myanmar between the government and the Rohingya ethnic group has caused a flow of refugees and illegal migration out of Myanmar. The ASEAN region that serves as a transit point and destination country for these illegal immigrants is Thailand, Malaysia, and Indonesia. This study uses an empirical research method analyzed with a legislative approach. Data was obtained through in-depth interviews and studies of legal regulations or legislation. The study concluded that illegal migrants who entered Aceh under the guise of being political asylum seekers who were stranded in Indonesian waters or land in need of assistance, this was indicated by the damage to the illegal migrants' boats, either intentionally damaged or indeed damaged. In the context of constitutional law, the central government's policy regarding the presence of refugees, including illegal Rohingya migrants, is to amend Presidential Decree Number 125 of 2016 concerning the Handling of Foreign Refugees. It is hoped that the revised Presidential Regulation will provide detailed regulations, particularly regarding status determination, refugee residency period, refugee criteria, the roles and responsibilities of stakeholders, the establishment of the PPLN Task Force, the fulfillment of the rights of foreign refugees in Indonesia and the use of budgets by Regional Governments, the sharing of burdens and responsibilities with International Organizations (IOs), and other matters that can improve the quality of handling foreign refugees. Some of the Indonesian Government's efforts to address illegal Rohingya migrants include increasing sea patrols, implementing a turn-back boat policy, establishing a main Indonesian Navy base (Lantamal) in Aceh, and involving the community, particularly the *Panglima Laot* (the Indonesian Navy Commander).

Keywords: Modus operandi, illegal migrants, Rohingya, constitutional law, political policy

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Abstrak: Konflik berkepanjangan di Myanmar antara pemerintahan dan Etnis Rohingya menyebabkan arus pengungsi dan perpindahan penduduk secara Illegal keluar Myanmar. Wilayah ASEAN yang menjadi tempat transit maupun negara tujuan para imigran illegal tersebut yaitu Thailand, Malaysia dan Indonesia. Kajian ini menggunakan metode penelitian empiris dianalisis dengan pendekatan perundang-undangan. Data diperoleh dengan cara wawancara mendalam dan studi aturan hukum atau undang-undangan. Kajian menyimpulkan bahwa para Illegal migrant yang masuk ke Aceh dengan modus menjadi pencari suaka politik yang terdampar ke wilayah perairan maupun daratan Indonesia yang membutuhkan pertolongan, hal ini ditandai dengan kerusakan kapal para illegal migrant baik yang sengaja dirusak atau memang rusak. Dalam konteks hukum tata negara kebijakan pemerintah pusat terhadap keberadaan pengungsi termasuk illegal migrant Rohingya adalah dengan melakukan perubahan terhadap Perpres Nomor 125 Tahun 2016 tentang Penanganan Pengungsi Negara Asing. Diharapkan perubahan Perpres tersebut akan mengatur secara rinci terutama mengenai penentuan status, jangka waktu menetap bagi pengungsi, kriteria pengungsi, peran dan tanggung jawab pemangku kepentingan, pembentukan Satgas PPLN, pemenuhan hak-hak pengungsi luar negeri di Indonesia dan penggunaan anggaran oleh Pemerintah Daerah, hubungan pembagian beban dan tanggung jawab dengan Organisasi Internasional (OI), dan hal-hal lain yang dapat meningkatkan kualitas penanganan pengungsi luar negeri menjadi lebih baik. Beberapa upaya Pemerintah Indonesia untuk menanggulangi Illegal Migrants Rohingya diantaranya adalah meningkatkan patroli laut, membuat kebijakan turn back boats policy, membentuk pangkalan utama TNI Angkatan Laut (Lantamal) di Aceh, dan pelibatan masyarakat terutama lembaga Panglima Laot.

Kata Kunci: Modus operandi, illegal migrants, rohingya, hukum tata negara, kebijakan politik

Introduction

International conflict is a hot issue throughout the world. Even though sometimes the conflict that occurs is only internal or only involves 2 (two) countries or countries in the same region, but the impact of the conflict has a global impact. Prolonged conflict not only causes security and peace disturbances but also has implications for ideology, politics, socio-cultural and economic life. The impact of this conflict can cause a flow of refugees and also the illegal movement of a country's population to another country. One of the internal conflicts that occurred in Myanmar caused unrest not only nationally but also had regional and international impacts. The prolonged conflict in Myanmar between

the Myanmar government and the Rohingya ethnic group has caused a flow of refugees and illegal population movement out of Myanmar.¹

To secure a more decent and secure life, as well as personal security, the Rohingya ethnic group seeks a decent and safe place to live by immigrating to other countries as illegal immigrants. The Association of Southeast Asian Nations (ASEAN) region, which serves as a transit point and destination for illegal immigrants, includes Thailand, Malaysia, and Indonesia.² In their countries, oppression and killings continue, leaving them with two stark choices: remain in Myanmar or become refugees in another country. Those who choose to remain must be prepared to endure oppressive and inhumane treatment that threatens their lives, a situation exacerbated by the fact that the Rohingya ethnic group is not recognized as Myanmar citizens.³

From an immigration perspective, Illegal Immigration is the movement of a person who crosses the territorial boundaries of a country in violation of the law or illegally according to the law. In Indonesia, this process becomes invalid or unlawful if it violates the provisions relating to the process of entering/exiting Indonesian territory as regulated in immigration law.⁴ In Indonesia, the national legal framework governing illegal immigrants is contained in several laws and regulations, namely Law Number 6 of 2011 concerning Immigration, Law Number 12 of 2006 concerning Citizenship, Law Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized Crime, Law Number 14 of 2009 concerning Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing United Nations Convention Against Transnational Organized Crime, Law Number 15 of 2009 concerning Ratification Protocol Against The Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, and

¹ Antje Missbach and Gerhard Hoffstaedter, "Deadly Sea Passages: Navigating Risks and Uncertainties Aboard Rohingya Refugee Boats," *Journal of Ethnic and Migration Studies*, November (2025), p. 1-21. M. Yakub Aiyub Kadir, et.al., "The Interplay of Human Trafficking and the Rohingya Refugee Crisis in Aceh Province, Indonesia: Exploring the Complexities of Criminality and Humanitarian Concerns," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, No. 1 (2024), p. 122-145.

² Antje Missbach and Gunnar Stange, et.al., "Muslim Solidarity and The Lack of Effective Protection for Rohingya Refugees in Southeast Asia," *Social Sciences* 10, No. 5 (2021), p. 166. Firdaus M. Yunus, et.al., "Rejection of Rohingya in Aceh: The Role of Ulama and Tolerance in Acehese Society," *Jurnal Ilmiah Peuradeun* 13, No. 3 (2025).

³ Nafidah, 'Analisis Kebijakan Luar Negeri Indonesia Dalam Isu Kemanusiaan Rohingya'. FPCI Chapter UPN Veteran Jakarta, Februari (2021) <<https://www.fpciupnvj.com/analisis-kebijakan-luar-negeri-indonesia-terhaddalam-isu-kemanusiaan-rohingya/>>.

⁴ International Organization for Migrations (IOM), Guidelines for Handling Human Smuggling Crimes (Prevention, Prosecution and Coordination in Indonesia), Jakarta: IOM, 2012

Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011 concerning Immigration.

Indonesia is one of the transit countries for immigrants to migrate to their destination country, because Indonesia is a very strategic transit country and is on the crossing route to Australia. However, the reason Rohingya immigrants who have made Indonesia their destination country is because it is a country with a Muslim majority (similar religion). The reason why Indonesia becomes transit country is because Indonesian society has a permissive nature, so it accepts Rohingya immigrants even though they come illegally on humanitarian grounds.⁵

Geographically, the Aceh region is on shipping routes and is also an area directly connected to the Andaman Sea. The Andaman Sea is a shipping route for Rohingya immigrants who fled Myanmar using wooden boats. Many of the boats carrying the Rohingya immigrants were stranded and entered Aceh waters, this was used as an excuse for Rohingya immigrants to come to Aceh. Apart from geographical factors, Rohingya immigrants like Aceh as a destination because of the accepting attitude of Acehnese people.⁶

Based on data from the Immigration Division of the Aceh Ministry of Law and Human Rights, Rohingya immigrant groups to Aceh have surged since mid-March to November 2023. In March there were 277 Rohingya immigrants stranded in Padang Tiji District, Pidie Regency. They were temporarily accommodated in the Mina Raya Building. Then 174 Rohingya immigrants were also found stranded on Ujong Pie Laweung Beach, Muara Tiga District, Pidie Regency. In the near future, 179 Rohingya immigrants were found who landed in the waters of Kuala Matang Peulawi, Peureulak District, East Aceh Regency. Then another massive wave occurred again from 14 to 21 November 2023. It was recorded that 1,084 Rohingya immigrants came to Aceh, consisting of 278 adult men, 341 women and 465 children. A total of 511 immigrants were placed in the former Lhokseumawe Immigration Building, 341 people in the Mina Raya Padang Tiji Pidie camp, and 232 people in the Kulee area of Pidie Regency.⁷

Initially, Aceh was a region of Indonesia that received most of the Rohingya immigrants who were rejected from Malaysia. In 2009 and 2015, Rohingya immigrants came to Aceh and were well received, but as time went by, the many social and moral problems experienced by Rohingya people made Acehnese no longer sympathetic. Even now the people of Aceh reject the arrival of Rohingya immigrants.

⁵ Yunizar Adiputera and Antje Missbach, "Indonesia's foreign policy regarding the forced displacement of Rohingya refugees: Muslim solidarity, humanitarianism, and non-interventionism," *Asia-Pacific Journal on Human Rights and the Law* 22, No. 1 (2021), p. 69-95.

⁶ BBC, <<https://www.bbc.com/indonesia/articles/cyr2p6681kgo>>, accessed 22 January 2024

⁷Tirto.id, <https://tirto.id/kenapa-aceh-disukai-pengungsi-rohingya-baik-jadi-besar-akhir-gSP4#google_vignette>, accessed 22 January 2024.

Besides, there were also several incidents of Rohingya immigrants escaping from shelters throughout 2022-2023. In April 2022, 3 (three) men in Bireun were arrested for smuggling 4 (four) Rohingya immigrants to North Sumatra, then in December 2022 as many as 23 (twenty three) Rohingya immigrants escaped from the shelter located in Lhokseumawe to North Sumatra, then in early 2023 there were 29 (twenty nine) immigrants again running away from the shelter located in Lhokseumawe, then in February 2023 there were 24 (twenty four) immigrants running away from the shelter located in Padang Tiji, Pidie Regency, in March 2023 as many as 40 (forty) immigrants also escaped from the shelter located in Aceh Besar.⁸

Based on the issues mentioned above, the research topics for this project are as follows: the operational model of illegal Rohingya immigration, the attitude of the Indonesian government towards the presence of illegal Rohingya migrants and what steps the Indonesian government has implemented to combat the illegal movement of Rohingya individuals into its territory.

This study employs empirical research methods analyzed using legislative and constitutional law approaches.⁹ Data were obtained through in-depth interviews and a study of legal regulations or legislation. The laws examined are those related to refugees, the role of the Indonesian government, and its legal authority. This study focuses on the modus operandi of Rohingya refugees and the role of the Indonesian government's legal authority in dealing with them.

Illegal Modus Operandi of Rohingya Migrants in Aceh

Humanitarian polemics that occur throughout the world are still happening to this day, this causes discomfort for the people affected by these problems, because of this situation, they tried to seek protection from certain countries which were considered safe for them to fled to polemics from their home countries safe. Indonesia is one of the countries most refugees seek as a transit destination,¹⁰ as they then flee to Malaysia, Thailand, or other countries.

One of the internal conflicts that occurred in Myanmar caused unrest not only nationally but also had regional and international impacts. According to the Rohingya ethnic confession, they fled from Myanmar because the prolonged conflict in Myanmar between the Myanmar government and the Rohingya ethnic group caused a flow of refugees and illegal population movement out of

⁸ BBC, <https://www.bbc.com/indonesia/articles/cyr2p6681kgo>, accessed 22 January 2024

⁹ Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, Jakarta: Raja Grafindo Persada, 2013. Jimly Asshiddieqy, *Pengantar Ilmu Hukum Tata Negara*, Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006.

¹⁰Claire Q. Smith, and Susannah G. Williams. 'Why Indonesia Adopted "Quiet Diplomacy" over R2P in the Rohingya Crisis: The Roles of Islamic Humanitarianism, Civil-Military Relations, and ASEAN'. *Global Responsibility to Protect* 13, no. 2–3 (2021), p. 158–85.

Myanmar. The Rohingya ethnic group is not recognized as part of the Myanmar people because the Rohingya ethnic group are immigrants brought by the British colonialists to fight against the Burmese people (now Myanmar) and the Rohingya ethnic group is considered not to be descended from the Myanmar people. History also proves that the Rohingya ethnic group originates from Bengal. Because they were fought and expelled by the Myanmar Junta, they fled to Bangladesh, then they were placed in a number of refugee camps located in Cox's Bazar with fragile infrastructure, minimal access to education, full of conflict between groups after the military coup, and prone to natural disasters, one of which was in Kutapalong, which is located on the southern coast, Bangladesh.¹¹

Conditions of poverty, tension due to clashes between groups, and the threat of natural disasters lurking in refugee camps encourage the Rohingya to do something to get a better life. Smugglers are also said to be taking advantage of this situation by offering travel to third countries (Countries that have ratified the 1951 Convention and its 1967 Protocol on Refugees) with temporary transit in Indonesia, Malaysia, and Thailand.

Based on the confession of the Rohingya ethnic group, the human smugglers were Bangladeshi citizens who deliberately came to the refugee shelters through their agents in the camps by "selling dreams" to the refugees by telling stories about better life opportunities in overseas countries. After agreeing to pay around BDT 80,000 (eighty thousand Bangladesh Taka) to BDT 150,000 (one hundred and fifty thousand Bangladesh Taka) or the equivalent of IDR 11.000.000 (eleven thousand IDR) to IDR 20.000.000 (twenty thousand Rupiah) to the group of smuggling agents to sailed for days. The group smuggling agents sailed along with other passengers consisting of one captain and one person who during the trip was thought to be the captain's assistant. Due to the tight security of Thai and Malaysian waters, smugglers diverted the ship's destination to Indonesia as a transit route to Malaysia. Then at a distance of several miles from land, the captain and his assistant left the ship by being picked up by a fast motorboat which would return with fuel and a new engine as well as food, water and snacks. This is a strategy that is "played" by Ethnic smuggling agents.

The exodus of the Rohingya Muslim ethnic group from Myanmar is caused by political and security instability in Myanmar. The repressive actions carried out by the Myanmar government through its armed forces (the Myanmar military), including burning villages, executions, persecution, rape, and murder of the Rohingya ethnic group, are driving factors for the mass exodus of the Rohingya ethnic group from Myanmar to other countries, including Indonesia. The journey to other countries undertaken by the Rohingya Muslim ethnic group

¹¹ Muhammad Ahlam Rasyid and Muhammad Sufyan Abdurrahman, "Media Reality Construction of Refugees Rohingya," *Daengku: Journal of Humanities and Social Sciences Innovation* 4, No. 6 (2024), p. 920-927.

is generally done by land and sea. The land journey mostly ends in Bangladesh. The Rohingya Muslim ethnic group flees violence and persecution in Rakhine State, Myanmar, toward Cox's Bazar district on the Bangladesh border. This land route involves crossing the land border or crossing the Naf River that separates the two countries. Meanwhile, sea travel largely ends in Indonesia, Thailand, and Malaysia.

Something that can be witnessed from year to year until now is Asylum seekers from Myanmar, namely the Rohingya ethnic group, continue to arrive in Indonesian territory by sea, as is the case in Aceh Province. The journey by sea undertaken by Rohingya illegal migrants from Bangladesh to Indonesia (Aceh) carries risks due to overcrowding, unsafe sea travel caused by both the condition of the ship and the weather, intentional or unintentional engine damage, and inadequate logistics such as food and drink for the passengers. UNODC stated in its 2018 report that "The maritime journey risks are at times exacerbated by the fact that smugglers may encourage migration during the monsoon season and use unseaworthy vessels in response to immigration controls, such as increased border control of boats."

The overall concept of asylum seekers, refugees, and immigrants is related to the concept of migration. Migration is a form of movement of an individual or group of people from one geographical region outside the borders of their country with the aim of residing in a place other than their place of origin.¹² The element of changing residence is very important in the definition of migration. If someone has officially moved but had a prior intention to return to their original location, it should be considered circular mobility, not migration. People or groups of people who immigrate are known as 'immigrants'. David Coleman states that "The most commonly used definition of 'immigrant' is a person born outside a given country who has moved to live in that country".¹³

Based on data from local and national media, as well as the official website of the United Nations High Commissioner for Refugees (UNHCR), the Rohingya ethnic group has been arriving in Aceh since 2011. Aceh has become an emergency landing destination for Rohingya immigrants. It is recorded that they have reached the coast of Aceh approximately 25 (twenty-five) times, with the first landing on February 16, 2011. At that time, the people of Aceh sympathized with and defended the presence of the Rohingya ethnic group, especially with the issue of oppression against the Rohingya from their country of origin. Although there were instructions at the time not to accommodate the Rohingya ethnic group

¹² International Organization for Migration (IOM), *Migrasi Tenaga Kerja dari Indonesia*, Jakarta, 2010, p. 3. Accessed from https://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-Bahasa-Indonesia.pdf on 22 January 2024.

¹³ David Coleman, "*Immigration, Population and Ethnicity: The UK in International Perspective*", Migrant Observatory Briefing: University of Oxford, 2013, p. 3.

because it would cause problems, the people of Aceh stood tall and helped the Rohingya.

There are many explanations why the people of Aceh consistently accept illegal migrants while others reject their arrival. First, the most common explanation is solidarity between Muslims, with 98% (ninety eight percent) of Acehnese identifying themselves as Muslims. The people of Aceh are generally considered to be Muslim, and the explanation that the people of Aceh are willing to help fellow Muslims seems a convincing explanation, but does not fully explain their generosity towards non-Muslim refugees. For example, in 2016, Acehnese helped Tamil Hindu asylum seekers from Sri Lanka. On the other hand, Aceh's strong cultural tradition of hospitality, also known as *Peumulia Jamee*, may explain the kindness shown by residents to the refugees once they reached land. Then, history and bad experiences such as conflict and natural disasters in Aceh also influence the way the Acehnese people view themselves and others. Apart from that, through the Coordinating minister for Political, Legal and Security Affairs, the Central government will consult in advance regarding the relocation of the Rohingya ethnic group, including the 3 closest provinces, namely Riau, Aceh and North Sumatra Provinces. This effort is only based on humanity which must be provided. to the Rohingya ethnic group, who are currently in conflict within their country, making it impossible for them to return quickly.¹⁴ According to information that is currently circulating, there has been some rejection from the local community regarding the presence of the Rohingya ethnic group arriving there, for various reasons.¹⁵

The rejection of the presence of illegal Rohingya migrants is further exacerbated by the perception and reality of the Acehnese community, who see their arrival waves continuing to increase with the condition of the boats being "deliberately holed and their engines damaged," the discovery of forged UNHCR refugee identity cards, and frequent problems when they reach land, such as committing criminal acts like (carrying drugs, sexual harassment, theft, damaging community garden land, and others). Additionally, illegal Rohingya migrants do not respect local wisdom and customs, are less concerned with cleanliness, complain when given food, and run away from shelters. That is the reason for the rejection by the people of Aceh.

Aceh is the most visited by Rohingya illegal migrants, this cannot be separated from the fact that the Aceh region is geographically the closest. In Aceh, it is spread across the districts of Aceh Besar, Pidie, Bireun, North Aceh,

¹⁴ Kompas.com, "Kemenlu Tanggapi Soal Wacana Memindahkan Pengungsi Rohingya Ke Pulau Galang," Kompas.Com, last modified 2023, accessed in January 22, 2024, <https://nasional.kompas.com/read/2023/12/12/16074761/kemenlu-tanggapi-soal-wacana-memindahkan-pengungsi-rohingya-ke-pulau-galang>.

¹⁵ Nofli, Rona Puspita, "Handling of Rohingya Refugees in Indonesia as a Transit Country", *Indonesian Law Journal*, Vol. 17, No. 1, Desember 2024, p. 13.

Lhokseumawe, East Aceh, West Aceh and Sabang City. Even though the distance between Aceh and Myanmar can be said to be very close, considering using traditional boats, on average it takes around 23 (twenty three) days to reach Aceh waters.

Based on data on the entry of Illegal Migrants into Aceh obtained from the Directorate of Water and Air Police, Aceh Regional Police for the period 2019 to March 2024, it can be seen that there will be an increase in the number of illegal migrants during 2023 in Aceh.

Table 1: Data on the Arrival of Illegal Migrants in Aceh Province 2019-2024

No	Period		Location		Total			Total
	Year	Month			Man	Women	Child	
1	2019	October	Waters of the Strait of Malacca		1	-	-	1
2	2020	June	Seunuddon,	Aceh Utara Regency	112	197	87	396
3	2021	June	Simpang Ulim	Aceh Timur Regency	17	53	11	81
4		December	Samalanga	Bireun Regency	10	90	-	100
5			Krueng Geukuh, Dewantara	Aceh Utara Regency	8	65	32	105
6	2022	January	Ujung Pie, Muara Tiga	Pidie Regency	72	66	36	174
7		March	Perairan Kuta Raja, Kuala	Bireun Regency	61	21	32	114
8		June	Seunudon	Aceh Utara Regency	15	49	30	94
9		November	Meunasah Lhok, Muara Batu	Aceh Utara Regency	65	27	18	110
10		December	Indra Patra, Mesjid Raya	Aceh Besar Regency	57	-	-	57

11	2023	January	Lamnga, Mesjid Raya	Aceh Besar Regency	69	75	40	184
12		February	Lampanah Leungah, Seulimum	Aceh Besar Regency	17	16	36	69
13		March	Pantai Padang Kawa, Tangan- tangan	Aceh Barat Daya Regency	14	10	1	25
14			Bangka Rimueng, Kec. Pereulak	Aceh Timur Regency	101	60	27	188
15		October	Matang, Peudada	Bireun Regency	14	12	10	36
16		November	Blang Raya, Muara Tiga	Pidie Regency	67	67	66	200
17			Pasi Brande, Muara Tiga	Pidie Regency	46	61	40	147
18			Madat	Aceh Timur Regency	19	17	8	44
19			Pantai Ujog Damai, Suka Jaya	Sabang City	71	94	57	222
20		December	Ie Meulee, Suka Jaya	Kota Sabang	57	82		139
21			Pantai Gp. Blang Raya, Muara Tiga	Kab. Pidie	53	74	53	180
22			Lamreh, Mesjid Raya	Kab. Aceh Besar	35	65	35	135
			Seuneubok Baro, Darul Aman	Aceh Timur	46	-	-	46

24	2024	February	Kuala Parek, Sungai Raya	Aceh Timur	32	46	53	131
25		March	Johan Pahlawan	Aceh Barat	42	18	9	69
TOTAL								3047

Source: Directorate of Water and Air Police, Aceh Police Headquarters

From the data above, it can be seen that the heavy flow of illegal Rohingya migrants arriving in the Aceh region is likely to cause instability within Indonesia itself. With the increasing uncontrollability of illegal Rohingya migrants in Aceh, as well as the lack of clarity regarding their status, if it is not immediately handled properly, it will gradually cause impacts or problems that will be detrimental to the Indonesian nation both in terms of social, economic, political, cultural and security aspects. In particular, the existence of illegal Rohingya migrants should be watched out for by the existence of a rebel group originating from Rakhine-Myanmar, namely ARSA (Arakan Rohingya Salvation Army).

The impact of the escape of these illegal migrants made the public and law enforcement officials smell indications of "people smuggling". Based on UNHCR data, in Indonesia from 2015 to February 2022, of the 1,545 Rohingya refugees, only 282 remained, the rest had left Indonesia for various reasons. In fact, this case of people smuggling arose from the arrival of the Rohingya ethnic group in 2015. Since 2015, the Aceh Regional Police and staff have handled more than 20 cases of smuggling (ethnic Rohingya) with a total of 24 suspects.¹⁶

After news emerged of illegal migrants fleeing refugee camps, the Aceh Regional Police and staff investigated the incident. So, a number of human smuggling cases were discovered involving the Rohingya ethnic group. The illegal migrants who managed to escape then hid to wait for a signal from the pick-up person who would then take them to Medan. The departure route for the illegal migrants who will be taken to Malaysia crosses several regions and involves several different smugglers, all of which is coordinated by the main coordinator at Cox's Bazar Bangladesh.

Indonesian waters border directly with 10 (ten) neighboring countries, namely: India, Singapore, Malaysia, Thailand, Vietnam, the Philippines, Palau, Australia, Timor Leste and Papua New Guinea. Indonesia's geographical location

¹⁶ BBC, <<https://www.bbc.com/indonesia/articles/cj5pne2n06do>>, accessed 22 January 2024.

is very strategic, causing Indonesia to become the most popular transit country for illegal migrants to stop by before they continue to their destination country.

The Indonesian Government's Legal Policy Regarding the Presence of Illegal Rohingya Migrants in Aceh

Indonesia is often a destination for human traffickers because of its geographical location, which borders many other countries, and the lack of knowledge among coastal communities in Indonesia about human trafficking. This lack of awareness contributes to the continued prevalence of human trafficking in coastal areas. Economic demands are also a reason for coastal communities to accept the arrival of asylum seekers who are actually human traffickers, as they will be paid if they can help the immigrants cross from one country to another.¹⁷

Indonesia has been one of the 17 (seventeen) observer countries in the International Organization for Migration (IOM) council since 1999.¹⁸ Despite not being an IOM member country, Indonesia has made significant contributions to handling the Rohingya migration in Indonesia. One of these is by creating immigration detention houses (Rudenim) or temporary camps to accommodate refugees. Currently, the number of Detention Centers (Rudenim) in Indonesia is still limited. There are currently only 13 (thirteen) Detention Centers spread across various cities, namely: Medan, Tanjung Pinang, Pekanbaru, Jakarta, Semarang, Surabaya, Pontianak, Balikpapan, Manado, Makassar, Denpasar, Kupang, and Jayapura. Additionally, Indonesia also has many volunteers from various regions who are tasked with assisting and providing basic necessities for the refugees.

The influx of Rohingya ethnic cases into Indonesia is due to the massacres and discrimination resulting from conflicts with other ethnic groups in Myanmar. In fact, they were not granted citizenship by the Myanmar government because they were considered illegal immigrants in the region. Indonesia should have the right to refuse them because Indonesia is not a party to and has never ratified the 1951 International Convention and the 1967 Protocol on Refugees. 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.¹⁹

¹⁷ Junef and Muhar, "A Study of Human Smuggling Practices in Indonesia," *De Jure Journal of Legal Research*, Vol. 20, No. 1 (2020), p. 85

¹⁸ International Organization for Migrations (IOM), Jakarta, 2014.

¹⁹ Yordan Gunawan, et. al., "Indonesia's Responsibility Towards Rohingya Refugees: Analysis of the 1951 Refugee Convention", *Legality: Jurnal Ilmiah Hukum* 32 No. 2 (2024), p.

UNHCR, as an international organization whose primary mandate is to provide protection and basic needs assistance to asylum seekers and refugees, collaborates with IOM. This includes cases of foreign refugees/illegal migrants entering Indonesia. UNHCR and IOM are obligated to finance, facilitate, and find long-term solutions for refugees in temporary host countries until they are resettled in a third country/refugee-receiving country. Under international law, asylum seekers who have been granted refugee status will be resettled in a third country/refugee-receiving country, such as Australia, Canada, and the United States. The problem is that the Rohingya ethnic group currently entering Indonesia are refugees who have already been placed in refugee camps in Bangladesh. Although the conceptual definitions of asylum seeker and refugee differ, based on field observations, the Indonesian government does not differentiate in its treatment of the two.

Indonesia is a sovereign nation; every citizen and foreigner is obliged to submit to and obey the laws in force in Indonesia. Article 8, paragraph (2) of Law Number 6 of 2011 concerning Immigration states that: "Every foreigner entering Indonesian territory is required to have a valid and current visa, unless otherwise stipulated by this Law and international agreements." The Rohingya ethnic issue entering Indonesia, if not handled well immediately, will have an impact on the Indonesian nation in terms of social, economic, political, cultural, and security aspects.

1. Mapping the Problems in Handling the Rohingya Ethnic Groups Entering Aceh

The increasingly strict requirements and quotas for accepting foreign refugees by host countries have led to a growing number of illegal Rohingya migrants entering Indonesia. This number is also expected to continue increasing, particularly given the current political and governmental situation in Bangladesh. The increasing number of illegal Rohingya migrants will lead to a further increase in the accompanying problems.

The issue of handling illegal Rohingya migrants is not only faced by the Central Government, but also by Local Governments, where the illegal Rohingya migrants are temporarily housed. Some of the problems in handling Rohingya illegal migrants in Indonesia can be mapped as follows:

1) Status

- a. There are no clear regulations on who has the authority to determine the status of Rohingya illegal migrants as refugees. The existence of regulations regarding refugees has not yet been determined by the special team authorized to determine the status of refugees or asylum seekers

186-187. Suraiya Ismail Thaib, et.al., "Sharia Law and Community Response to Rohingya Refugees in Aceh, *Petita* 9, No. 2 (2024).

- from foreigners coming to Indonesia. The team that can act as assessors is selected from various professional backgrounds. From the Indonesian Armed Forces (TNI), the Indonesian National Police (POLRI), the Ministry of Law and Human Rights, and other stakeholders.
- b. There are no criteria that can be considered as a refugee. From several regulations governing refugees, the criteria for a refugee are not clearly stated. The absence of such regulations requires policymakers to determine the criteria for a refugee.
 - c. The refugee data held by UNHCR or IOM is not automatically shared/reported to the Local Government.
 - d. The citizenship status of Rohingya children born in Indonesia is Indonesian citizenship, as stipulated in Article 4, paragraph i of Law Number 12 of 2006 concerning Indonesian Citizenship. Article 4, paragraph i of the Citizenship Law states that: "a child born in the territory of the Republic of Indonesia whose citizenship status of the father and mother is unclear at the time of birth is an Indonesian citizen".
- 2) Placement in refugee-receiving countries
- a. The duration of placement in a third country/destination country for illegal Rohingya migrants is unclear/uncertain. This resulted in legal uncertainty for those staying. Yet, even other foreign nationals entering thru immigration checkpoints have a time limit for staying in Indonesia. Some refugees have been in Indonesia for over ten years. The COVID-19 pandemic further slowed down the placement process;
 - b. Standard Operating Procedures for Refugee Admission/Entry Pathways. For refugees, the entry point is not clearly defined in the legislation, leading to legal uncertainty and the possibility of foreign nationals falsely claiming to be refugees and entering thru sea routes.
 - c. Procedures for Returning Illegal Migrants/Refugees/Asylum Seekers to Their Country of Origin and the Refugee-Receiving Country. Clear policies regarding the repatriation of refugees to their country of origin or the place where refugee status was obtained need to be established.
 - d. Third countries receiving refugees, such as Australia, Canada, and the United States, are increasingly tightening and reducing the refugee quotas entering their countries.
- 3) Social Problems
- a. Some shelters are less habitable and are over capacity;
 - b. The emergence of mental and physical health problems experienced by illegal Rohingya migrants;
 - c. Limited access to healthcare and education; and
 - d. Various other social issues between illegal Rohingya migrants and local communities and authorities.

e. The presence of illegal migrants smuggled into the country is also accompanied by various other criminal acts such as human trafficking, narcotics, and corruption. People smuggling is a crime that could potentially lead to other types of crimes, such as human trafficking, corruption, money laundering, violence, sexual harassment, drug trafficking, and other types of crimes.²⁰

4) Budget

- a. Australia has stopped funding thru IOM for new refugees entering Indonesia after 2018. The Indonesian government needs to anticipate funding for illegal migrants entering Indonesia after that year, whose numbers are predicted to continue to increase, especially from Cox's Bazar, Bangladesh; and
- b. Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad mandates that the state budget can be used as a source of funding for refugees. However, there are no more detailed regulations governing the mechanism for using the state budget for this purpose.

5) Inter-agency coordination

- a. Coordination and communication between the Central Government, Regional Governments, IOM, and UNHCR in handling foreign refugees in Indonesia are not yet optimal.
- b. Not all areas have refugee shelters yet.

2. The Indonesian Government's Policy toward the Presence of Illegal Rohingya Migrants in Aceh Province

Indonesia is a sovereign nation; every citizen and foreigner is obliged to submit to and obey the laws in force in Indonesia. Article 9 paragraph (1) of the Immigration Law states that: "every person entering or leaving the Territory of Indonesia is required to undergo examination by Immigration Officers at Immigration Checkpoints." Then, Article 113 of the Immigration Law states that: "If any person intentionally enters/exits the territory of Indonesia without being examined by immigration officers at immigration checkpoints, they may be sentenced to imprisonment for a maximum of 1 (one) year and/or a fine of a maximum of IDR. 100,000,000.00 (one hundred million rupiah)."

With the large number of Rohingya entering Indonesia thru Aceh, the Director General of Immigration issued Regulation Number IMI-0352.GR.02.07 of 2016 concerning the Handling of Illegal Immigrants Who Declare Themselves as Asylum Seekers and Refugees. These provisions allow foreign refugees to enter Indonesia easily without going thru immigration checkpoints or completing

²⁰ Herbin Marulak Siahaan, "Law Enforcement in The Handling of People Smuggling Crime in Indonesia", *Law Reform: Jurnal Pembaharuan Hukum*, Vol. 16 (2), 2020, p. 173-174.

travel documents for entry and exit from the country. The provisions of the Director General of Immigration have the potential to encourage human trafficking. This must be guarded against as mandated in the Smuggling Protocol. Article 7 of the Smuggling Protocol²¹ which states that: "States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea." The above article shows that states must cooperate to prevent and stop the smuggling of humans by sea. Although such actions must still comply with applicable international law, what if in practice the ship turns out to be carrying asylum seekers who paid a sum of money to someone in the hope that they could be taken to a country that would grant asylum.²² If this is done, the country could potentially violate the principle of non-refoulement.²³ Thus, the implementation of this Article must also take into account Article 9 paragraph (1) letter (a) of the Smuggling Protocol, which states that:

“Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall: (a) Ensure the safety and humane treatment of the persons on board...”

Then the government also issued Presidential Regulation (Perpres) Number 125 of 2016 concerning the Handling of Foreign Country Refugees. This Perpres provides a legal basis for the protection of foreign refugees in Indonesia. It appears that after the issuance of the Presidential Regulation, asylum seekers who were initially placed in Immigration Detention Centers (Rudenim) were transferred to shelters, allowing them to be facilitated and funded by IOM. It is known that the Director General of Immigration Regulation and the Presidential Regulation are highly contradictory to the purpose of immigration supervision, which is to ensure the realization of the nation's existence and avoid practices that threaten national disintegration.

Considering the increasing trend of illegal Rohingya migrants in Aceh and the problems arising from it, changes are needed to Presidential Regulation Number 125 of 2016 concerning the Handling of Foreign Refugees. This aligns with Bilal Dewansyah's opinion, who stated that "Other works address the problem of the absence of operational rules in the context of Presidential Regulation (PR) 125/2016 on the Treatment of Refugees, an implementing

²¹ Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, Chapter II.

²² Canadian Refugee Council, "Migrant Smuggling and Trafficking in Persons", <http://ccrweb.ca/sites/ccrweb.ca/files/static-files/traffick.html>, accessed on 22 January 2024.

²³ Diajeng Wulan Christianti, "Analisa Kejahatan Penyelundupan Manusia Berdasarkan Smuggling of Migrants Protocol Ditinjau dari Perspektif Perlindungan Pencari Suaka: Studi Kasus Pengungsi Rohingnya", *Padjadjaran: Jurnal Ilmu Hukum* 3 No. 3 (2016), p. 505.

regulation of the 1999 Foreign Relations Law.”²⁴, It is hoped that the changes to the Presidential Regulation will detail the determination of status, the duration of stay for refugees, refugee criteria, the roles and responsibilities of stakeholders, the establishment of the Foreign Refugee Task Force, the fulfillment of foreign refugee rights in Indonesia, the use of the budget by Regional Governments, the relationship between burden and responsibility sharing with International Organizations (IOs), and other matters that can improve the quality of foreign refugee management.

In order to better manage refugees and revise Presidential Regulation Number 125 of 2016, there are several points that need attention for strengthening foreign refugee management policies in Indonesia, including:

- 1) The existence of a mapping of the number of refugees and their distribution in Indonesia, the treatment of asylum seekers who have not yet been granted refugee status because they are not yet funded by IOM, and the treatment of refugees who decide to leave the shelter and become independent refugees.
- 2) Enhanced coordination and clarification of the division of authority between the Central Government, Regional Governments, and International Organizations including UNHCR and IOM.
- 3) Additional regulations regarding the mechanism for allocating/using the state budget, especially for Regional Governments (Provincial Governments and District/City Governments).

Better handling and more coordinated and integrated management of foreign refugees allow Indonesia to better demonstrate its commitment to playing a role in international humanitarian missions and the protection of human rights without compromising national sovereignty. Regarding regulations regarding Rohingya refugees, local governments lack authority, as that authority rests with the central government. Therefore, preventative regulations cannot be created. However, several local governments, such as Aceh Besar, East Aceh, Bireun, and Sabang, have taken steps to report to the provincial government and initiate initial response out of humanitarian concerns. The local government has continued to assist the Rohingya refugees throughout their stay in Aceh Besar, providing food and healthcare, as limited as is permitted and within the region's capabilities.²⁵

So it is emphasized that the Indonesian government has made regulations regarding foreign refugees through Presidential Regulation No. 125 of 2016. In this regulation it is emphasized that the authority regarding foreign refugees is predominantly the central government, including the Aceh provincial government, the Chief of Police, the Regional Office of Law and Human

²⁴ Bilal Dewansyah, “From Australian Influence to Rohingya Refugees: A Systematic Literature Review of Asylum Seekers and Refugees in Indonesia”, *The Indonesian Journal of Socio – Legal Studies* 4, No. 2 (2025), p. 14

²⁵ Interview with Rafzan, SH, MH., Head of the Legal Section of Aceh Besar, January 2026.

Rights/Immigration, and the Regional Military Command (TNI). Regarding preventive and handling measures, let's take the example of the Rohingya case in Sabang, they have coordinated with related parties such as the police, immigration, including UNHCR, and we have also coordinated with UNHR.²⁶

The Indonesian Government's Legal Efforts to Address Illegal Rohingya Migration

The case of Rohingya refugees entering Indonesia is a form of illegal migrant issue that must be addressed seriously and promptly. The Rohingya refugee problem is a complex issue. Therefore, addressing this issue must involve interconnected methods, ranging from the domestic/national level to international cooperation. Currently, Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad does not yet detail the procedures for handling cross-border refugee issues. On the other hand, to date, Indonesia has also not ratified the 1951 Vienna Convention and its 1967 protocol on Refugees. Therefore, the Indonesian government has no obligation or authority to take further international action regarding these refugees. Indonesia can only accommodate and provide the necessary facilities for Rohingya refugees on humanitarian grounds while awaiting follow-up and processing by United Nations High Commissioner for Refugees (UNHCR), with the caveat that a strict deadline be set for UNHCR, given Indonesia's principle of being a sovereign nation.

Indonesia's concern for illegal Rohingya migrants is also demonstrated by various concrete efforts it has already undertaken. One of these is thru cooperation between the Indonesian government and international organizations to provide assistance related to the Rohingya illegal migrant crisis in Aceh. This shows that the Indonesian government has firmly implemented the values of the country's constitution in accordance with the 1945 Constitution of the Republic of Indonesia. And also shows that Indonesia has a strong commitment to maintaining the country's security stability based on world peace.

Indonesia, as one of the countries hosting Rohingya illegal migrants, has a series of legal regulations governing refugees. However, the existing legal framework in Indonesia is not yet fully equipped to address these refugee issues. In addition to revising Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad, the government must make several efforts to address the entry of Rohingya illegal migrants into Indonesia, such as:

²⁶ Interview with Bahrul Ulum, Assistant 1 of Banda Aceh City, January 2026. Interview with Heru Triwijanarko, Head of the National Welfare and Politics Section of Banda Aceh City, January 2026.

1. Increasing Maritime Patrols

The Indonesian Maritime Security Agency (Bakamla) is a non-ministerial government agency responsible for conducting security, safety, and law enforcement patrols in Indonesian waters and Indonesian jurisdictional areas. To prevent the arrival of more Rohingya illegal migrants into Indonesia's sovereign territory, it is hoped that Bakamla will continue to coordinate with the Indonesian Navy (AL) to increase patrols at several border points. Closely monitor the presence of foreign nationals so they do not pose a threat to the sovereignty of the Republic of Indonesia.

Maritime police patrols have been implemented to maintain maritime security, in relation to Rohingya refugees entering and crossing borders under the guise of seeking asylum due to conflict and war or unsafe conditions in their home countries. So far, when Rohingya refugees enter below 12 nautical miles, the Air and Air Police's task is limited to maintaining their security to prevent undesirable things from happening, such as incidents against individuals and surrounding communities who do not welcome their presence when entering within 12 nautical miles. However, behind this, it was revealed that there was another *modus operandi*, and the one who is more knowledgeable is the Police. This means that the Rohingya problem was returned to the Police, not the Regional Police. And the latest results of the Police's handling revealed a *modus operandi* of Human Trafficking (TPPO). After the perpetrators of TPPO were arrested, there were no more Rohingya entering Indonesian territory, especially in Aceh.²⁷

2. Making the Turn Back Boats Policy

The government can implement a Turn Back Boats Policy, similar to what Australia has already done, which involves closing borders and refusing entry to anyone, including asylum seekers and refugees, who arrive by boat without official documents. Considering that Indonesia is not a signatory to the 1951 Convention and its 1967 Protocol on Refugees. This is considered quite effective in tackling the illegal migration of Rohingya to Indonesian territory. Of course, this must be strengthened with complete and firm regulations for its implementation.

In line with this, based on Presidential Regulation 125 of 2016,²⁸ the Banda Aceh city government has no authority to manage foreign refugees. However, if they are stranded, in the name of humanity, we must do everything we can to save lives, in the name of humanitarian values. Therefore, whenever there are refugees, regardless of whether they are Rohingya, they are not just talking about them today, but tomorrow, or so on, others could be stranded in our

²⁷Interview with Police Commissioner July, SH.MH, Section Head at the Aceh Water and Air Police Directorate, Banda Aceh, January 2026.

²⁸Presidential Regulation 125 of 2016 concerning the Handling of Overseas Refugees.

region. The city and provincial governments, along with the community, are actually limited to facilitating them, such as providing food, medicine, and shelter, and then coordinating with the International Organization for Migration (IOM) and UNHCR regarding refugees originating from outside Indonesia. So, the principle we uphold is the principle of humanity.²⁹

3. Establishing the Main Naval Base of the Indonesian Navy in Aceh

From a defence perspective, its presence also needs to be increased, namely by establishing a Main Naval Base (Lantamal) in Aceh Province. Based on history, Aceh once had a strong naval fleet during the time of Admiral Malahayati. The formation of this Lamtamal aims to enhance maritime security in the western region of Indonesia. Beside preventing illegal migrants from entering Indonesian territory, the presence of the Naval Marine Corps can also prevent the entry of mafia and anticipate warfare.

4. Involving Community, Especially the *Panglima Laot* Institution

One of the parties that will contribute significantly to efforts to maintain the sovereignty of the Unitary Republic of Indonesia is the community living in coastal areas. Beside ordinary people, there is also a customary institution involved, namely the *Panglima Laot*. The *Panglima Laot* exists as a customary institution that leads the community in maritime affairs. Maximum collaboration between the government, coastal communities, and the *panglima laot* will result in maximum defence strength.

According to the Secretary of the Aceh Sea Commander (*Panglima Laot*), one of the functions of the customary law institution of the sea is to help anyone in need at sea. We help not only humans but also animals. In the context of the Rohingya refugees, we initially saw why coastal communities and fishing communities were the ones who provided the most help and acceptance, as they were at the forefront of handling the refugees. However, over time, many factors led the community to reject the Rohingya ethnic group. There were political and socioeconomic factors as well. The Sea Commander noted that this changing dynamic was influenced by various increasingly complex factors, ranging from socioeconomic factors to political ones, which were considered increasingly dominant.³⁰

Therefore, it can be emphasized that regarding the handling of Rohingya refugees, within the context of constitutional law, the Indonesian government has implemented legal and political measures in the name of the state and humanity.

²⁹Interview with Bahrul Ulum, Assistant 1 of Banda Aceh City, January 2026. Interview with Heru Triwijanarko, Head of the National Welfare and Politics Section of Banda Aceh City, January 2026.

³⁰Interview with Azwir Nazar, Secretary of Panglima Laot Aceh, Banda Aceh, 2025.

On the other hand, the Acehese people have also contributed to their welfare by providing assistance in the form of food, drink, and clothing.³¹ Besides the humanitarian aspect, a religious one also emerged, as Rohingya refugees are a Muslim minority and were expelled from their country, Myanmar.³² Acehese people are very easily moved when it comes to humanitarian aid, especially religious issues.

Conclusion

The modus operandi employed by illegal Rohingya migrants involves entering Aceh as a transit point on route to their destination countries, such as Malaysia. This is substantiated by the presence of illegal migrants escaping refugee camps and the discovery of several human trafficking instances involving the Rohingya ethnic group. The undocumented migrants who successfully evaded capture subsequently concealed themselves to await a signal from the individual designated to transport them to Medan. The route for illegal migrants heading to Malaysia through multiple places and involves various traffickers, all orchestrated by a primary coordinator based in Cox's Bazar, Bangladesh. In the context of constitutional law, the Government is advised to amend Presidential Regulation Number 125 of 2016 concerning the Management of Foreign Refugees. The anticipated amendments to the Presidential Regulation are expected to elucidate various aspects, particularly concerning the determination of status, duration of stay for refugees, criteria for refugee status, roles and responsibilities of stakeholders, establishment of the Foreign Refugee Task Force, fulfilment of the rights of foreign refugees in Indonesia, budget utilisation by Regional Governments, the correlation between burden-sharing and responsibilities with International Organisations (IOs), and other pertinent issues that may enhance the quality of foreign refugee management.

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³¹Interview with Mahfud, Keuchik Lamprit, Banda Aceh City, 2025.

³²Nurul Husna, et.al., "Children Citizenship Status of Acehese-Rohingya Mixed Marriage in Aceh: Maqāṣid Shari'ah Perspective," *al-Ahkam* 34, No. 1 (2023).

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