

2023 Rohingya Asylum Seekers Crisis in Aceh: A Positive Refugee Law Perspective

Muhammad Hasan Izzurrahman¹, Ahsani Maulinardi², Kemal Abdur Rasyid³

¹. Universitas Negeri Medan, Indonesia

². Islamic and Middle East Research Center, Indonesia

³. Universitas Jakarta, Indonesia

Correspondent e-mail: hasanizzur@unimed.ac.id

Abstract: The arrival of Rohingya asylum seekers on the coast of Aceh in November 2023 presented significant legal and social challenges for Indonesia's refugee protection framework. Deteriorating conditions in the Cox's Bazar camps in Bangladesh and the lack of durable solutions prompted Rohingya refugees to undertake onward maritime movements toward Southeast Asia, including Indonesia. This article applies the concept of Positive Refugee Law, grounded in international human rights law and international refugee law, to examine the roles of the Indonesian government and international organizations in responding to these arrivals. Through a three-stage doctrinal analysis, the article first traces the historical trajectory of Rohingya displacement to Aceh. It then analyzes the relationship between Positive Refugee Law and international human rights law to demonstrate that human rights norms form the normative foundation of contemporary refugee protection. Finally, it assesses Indonesian domestic refugee regulation and administrative practice within this framework. The article contends that Indonesia's response, particularly the provision of temporary accommodation and cooperation with UNHCR, IOM, and other humanitarian actors, constitutes an implicit form of Positive Refugee Law that produces legally relevant protection effects despite Indonesia's non-ratification of the 1951 Convention and the 1967 Protocol.

Keywords: international human rights law; international refugee law; positive refugee law; Rohingya asylum seekers

1. Introduction

The arrival of Rohingya asylum seekers on the northern shores of Aceh in late 2023 has put Indonesia at the center of regional debates about refugee protection in Southeast Asia. In a short time, nearly one thousand Rohingya people arrived by sea from Cox's Bazar in Bangladesh, which is among the world's largest refugee camps. Many faced long journeys in unsafe conditions, and their arrival in Aceh brought mixed reactions. In North Aceh, local residents reportedly rejected a vessel carrying more than 240 people, showing growing social tensions and humanitarian fatigue at the local level.¹

This situation exists within wider regional patterns of forced displacement. Since the military crackdown in Myanmar in 2017, over 700,000 Rohingya have fled to

¹ Rahmat Mirza and Edna Tarigan, "Nearly 1,000 Rohingya Refugees Arrive by Boat in Indonesia's Aceh Region in One Week," AP News, 2023, <https://apnews.com/article/indonesia-aceh-rohingya-refugees-51a6b890e6411049ef0b70d93b70b2ab>.

Bangladesh. Conditions in Cox's Bazar have worsened across health, security, and livelihoods. These factors increasingly push refugees toward Malaysia and Indonesia. Meanwhile, stricter migration policies in transit and destination countries (such as maritime pushbacks and towing) redirect refugees toward Indonesian waters. Aceh has served as a frequent point of disembarkation.²

Since 2012, the western coast of Indonesia has served as an entry point for Rohingya refugees. Rohingya refugees have continued to arrive since then. Because there is no lex specialist in Indonesia's immigration arrangements for asylum seekers and refugees, the Indonesian government rejects a large number of Rohingya refugees. Historically, Indonesia has demonstrated commitment and experience in dealing with refugees; however, Indonesia has not signed the 1951 Convention or the 1967 Protocol.

Despite for not ratifying the Convention and the Protocol yet, in the late 1970s, the conflicts that brought Vietnam, Laos, and Cambodia to its lowest brought one of the largest refugee crises of the twentieth century. The victory of North against South Vietnam following the capture of Saigon (now Ho Chi Minh City), the seizure of Phnom Penh by Khmer Rouge, and the defeat of Royal Lao government against the Communist's Pathet Lao in Plain of Jars triggered a major exodus of their civilian towards outside region and island nations of Southeast Asia.³ These three conflicts in the region affected the lives of millions civilians whom fled their countries in search of safety in other nations, a number estimated around a million refugees seek haven in Western European countries, United States of which majorities are came from higher-income populations or in connection with US officials stationed in those three countries, others unfortunate whom categorized into middle-to-low families escaped by boats towards Malaysia, Thailand, and Indonesia, citing a global term known as Boat Peoples.⁴

Indonesia as a response to a major influx of refugees coming from those three countries were not prepared as a swarm of boats made their port towards several island in Kepulauan Riau province. Throughout 1975-1979, boat peoples arrived in the islands numbered around 50.000 of which majorities concentrated in Anambas and Bintan island. Naval Base Commander of Tanjung Pinang at that time, First Admiral Kunto Wibisono asked for urgent assistance from the central government to uplift the situation with logistics and medical aids.⁵ By June of 1979, through the Joint Communique of the Twelfth ASEAN Ministerial Meeting, it was agreed for the host countries to set up a Refugee Processing Centre with further administration and daily assistance provided by the United Nations High Commissioner for Refugees (UNCHR). President Suharto choose Galang Island as a Refugee Processing Center with boat peoples gradually transferred to the island, the camp was set and operated until the last of Vietnamese

² Sebastian Strangio, "Hundreds of Rohingya Refugees Disembark in Indonesia's Aceh Region," *The Diplomat*, 2023, <https://thediplomat.com/2023/11/hundreds-of-rohingya-refugees-disembark-in-indonesias-aceh-region/>.

³ Global Security, "Vietnam-Second Indochina War," *Global Security*, n.d., <https://www.globalsecurity.org/military/world/vietnam/hist-2nd-indochina.htm>.

⁴ Milton Osborne, "The Indochinese Refugees: Cause and Effects," *International Affairs* 56, no. 1 (1980): 37-53, <https://doi.org/https://doi.org/10.2307/2615718>.

⁵ Isye Ismayawati, *Manusia Perahu* (Jakarta: Kompas, 2013).

refugees went home in 1996, by the end of 1996 Galang Island hosted 122.000–250.000 refugees consisted mainly of Vietnamese origins.⁶

Decades following the closure of Galang Island as a Refugee Processing Center, thousands of asylum-seekers still managed to land in Indonesian shores following the conflicts in Afghanistan, Bangladeshis fled the Cox's Bazar camps, and with the current Rohingyas influx in Indonesia. As a result, the government, aside from technical rules issued by the Minister of Law and Human Rights (now Minister of Immigration and Correction) issued Presidential Regulation No. 125/2016 on the Handling of Refugees from Abroad as a temporary legal standard for all forms of refugee protection in Indonesia. However, the regulation has not resolved the issue of Rohingya refugees in Indonesia completely.

The existing scholarship has predominantly analyzed the Rohingya situation in Aceh through humanitarian and normative perspectives. For example, Adwani, Rosmawati, and Aiyub Kadir (2021) emphasize Indonesia's moral responsibility and the principle of non-refoulement, ultimately advocating for ratification of the 1951 Convention as the primary solution. Although these arguments highlight significant humanitarian values, they often frame refugee protection almost exclusively in terms of treaty accession, thereby neglecting the legal significance of protection practices implemented by non-party states.⁷ An approach by employing a Positive Refugee Law perspective. Rather than assessing refugee protection solely through formal treaty obligations, this perspective focuses on law as it is applied in practice, namely, domestic legal instruments, administrative measures, and state conduct that provide protection to refugees notwithstanding the absence of treaty ratification. Drawing on Paul Tiedemann's analysis of the historical ambivalence of refugee law and its evolution from selective solidarity toward broader human-centered protection,⁸ as well as Vincent Chetail's argument that international human rights law has become the primary normative foundation of refugee protection,⁹ This article situates Indonesia's response to the Rohingya asylum seekers within a broader doctrinal framework linking international human rights law and international refugee law.

In this context, the central argument advanced is that Indonesia's handling of the Rohingya asylum seekers in Aceh exemplifies an implicit form of Positive Refugee Law. This is evidenced by presidential regulations, administrative discretion, cooperation with UNHCR, and localized humanitarian practices, which collectively produce legal effects equivalent to those of protection obligations, even without formal accession to the Refugee Convention. By analyzing these practices, the article demonstrates that

⁶ Jemma Purdey, "Seeking Refuge Amid Suffering in Indonesia's Galang Vietnamese Refugee Camp," in *Detention Camps in Asia*, ed. Robert Cribb, Christina Twomey, and Sandra Wilson (Online: brill.com, 2022), https://doi.org/https://doi.org/10.1163/9789004512573_016.

⁷ Adwani Adwani, Rosmawati Rosmawati, and Muhammad Ya'kub Aiyub Kadir, "The Responsibility in Protecting the Rohingya Refugees in Aceh Province, Indonesia: An International Refugees Law Perspective," *IJUM Law Journal* 29, no. 2 (2021): 1–21, [https://doi.org/10.31436/iiumlj.v29i\(S2\).677](https://doi.org/10.31436/iiumlj.v29i(S2).677).

⁸ Paul Tiedemann, "The Ambivalence of Current Refugee Law Between Solidarity with 'Friends' and Solidarity with 'Human Beings,'" *Journal of Human Rights and Social Work* 1 (2016): 175–83, <https://doi.org/10.1007/s41134-016-0020-1>.

⁹ Vincent Chetail, "Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law," in *Human Rights and Immigration*, ed. Ruth Rubio-Marín, Collected (Oxford: Oxford Academic, 2014), 19–72, <https://doi.org/https://doi.org/10.1093/acprof:oso/9780198701170.003.0002>.

refugee protection in Indonesia is determined less by the distinction between party and non-party status and more by the interaction between domestic positive law and international human rights norms.

2. Method

A qualitative legal research method using a normative–doctrinal approach is employed. The focus is on Indonesia’s response to the arrival of Rohingya asylum seekers in Aceh in 2023. The analysis examines relevant legal norms, state practice, and administrative measures at both national and local levels. Rather than empirically measuring policy effectiveness, the research assesses the legal character and implications of state conduct within the framework of international refugee protection.

The analysis adopts a case-oriented legal examination. It uses the 2023 Rohingya influx in Aceh as a specific example of refugee protection by a state not party to the 1951 Convention Relating to the Status of Refugees. Indonesia is examined as a subject of international law. Its actions in receiving, accommodating, or restricting asylum seekers are considered legally significant. This approach is based on general principles of public international law regarding statehood, state conduct, and international obligations, as described by Shaw (2017)¹⁰ and Crawford (2019).¹¹ These authors emphasize that the legal consequences of state behavior stem from treaty ratification, practice, and normative context.

The primary legal materials analyzed include Indonesian domestic legal instruments. Notably, these involve Presidential Regulation No. 125 of 2016 on the Handling of Refugees from Abroad, as well as official government statements and policy documents from relevant authorities. Secondary legal materials include academic books and journal articles on international refugee law and international human rights law. Emphasis is placed on doctrinal analyses of the relationship between refugee protection, human rights obligations, and state responsibility. Reports from international organizations, especially UNHCR, and reputable news sources provide supplementary context about the Rohingya arrivals and the governmental response. Although the research addresses political considerations around migration control and public order, the analysis remains rooted in legal reasoning. Political dynamics are examined only to the extent that they shape the formation, interpretation, and implementation of legal norms on refugee protection. Using a Positive Refugee Law perspective, this study evaluates Indonesia’s conduct not as a policy preference, but as a legally meaningful state practice within international refugee and human rights law.

3. Result and Discussion

Positive Refugee Law

This article employs the Positive Refugee Law approach to systematically analyze the policies and operational measures adopted by the Government of Indonesia in response

¹⁰ Malcolm N. Shaw, *International Law*, 8th ed. (Cambridge: Cambridge University Press, 2017), <https://doi.org/https://doi.org/10.1017/9781316979815>.

¹¹ James Crawford, *Brownlie’s Principles of Public International Law*, 9th ed. (Oxford: Oxford Law Pro, 2019), <https://doi.org/https://doi.org/10.1093/he/9780198737445.001.0001>.

to Rohingya asylum seekers stranded in Aceh since late 2023. Instead of viewing refugee protection exclusively through the lens of treaty ratification, this approach emphasizes how protection is expressed through positive legal acts and state practices, especially in contexts where a state has not acceded to the 1951 Refugee Convention.

The origins of Positive Refugee Law can be traced to the early development of domestic refugee regulation, particularly the British Aliens Act of 1905. According to Tiedemann, this legislation was enacted in response to the mass arrival of Eastern European Jews fleeing persecution in the Russian Empire since the late nineteenth century.¹² Although the Act established a legal basis for protecting certain persecuted individuals, it also embodied restrictive immigration controls and reflected growing xenophobic and antisemitic attitudes. This duality demonstrates that refugee protection initially emerged through selective domestic legal responses rather than universal humanitarian obligations.

This selective nature of early refugee protection, according to Tiedemann, reveals a fundamental ambivalence within refugee law: the tension between solidarity with groups perceived as politically or culturally sympathetic and solidarity with all human beings.¹³ European states primarily extended protection to those whose persecution aligned with prevailing political or moral sentiments, leaving broader categories of displaced persons excluded. This historical pattern accounts for the initial development of refugee law as a collection of domestic positive norms rather than a comprehensive international legal regime. The number increased dramatically as a result of events such as the 1915 Armenian genocide, the 1917 Russian Revolution, and widespread population movements across the continent. In response, the League of Nations began to address refugee protection at the international level, notably through the appointment of Fridtjof Nansen as High Commissioner for Refugees and the issuance of the Nansen Passport for stateless persons. Although these measures marked an important institutional development, they remained limited in scope and continued to reflect the selective logic identified by Tiedemann, insofar as protection was extended only to specific categories of refugees.¹⁴

The devastation caused by the Second World War and the resulting mass displacement across Europe, Asia, and Africa led to the creation of a more formalized international refugee regime. The adoption of the 1951 Convention Relating to the Status of Refugees, often referred to as the “Magna Carta of international refugee law,” and the establishment of the United Nations High Commissioner for Refugees marked significant normative progress. However, as Chetail notes, international refugee law was developed alongside broader advancements in international human rights law, and its normative foundations must be understood in relation to this parallel evolution.¹⁵

Before the 1951 Convention, the Universal Declaration of Human Rights recognized essential rights for everyone, including the right to seek asylum from persecution (Article 14(1)). Chetail argues that this human rights framework is now the main source

¹² Tiedemann, “The Ambivalence of Current Refugee Law Between Solidarity with ‘Friends’ and Solidarity with ‘Human Beings.’”, 176-177.

¹³ *Ibid*, 175-176.

¹⁴ *Ibid*, 179-180.

¹⁵ Chetail, “Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law.”, 20-21.

of refugee protection, with the Refugee Convention playing a complementary role.¹⁶ This shift shows that refugee protection is grounded in universal human rights obligations, not only in treaty-based status.

Within this doctrinal context, Positive Refugee Law represents the domestic expression of the convergence between international human rights law and international refugee law. Both Tiedemann¹⁷ and Chetail¹⁸ indicate that the implementation of refugee protection can be discerned from the good-faith actions of host states, particularly when these actions aim to safeguard life, dignity, and protection from refoulement. Protection is thus realized through positive legal measures such as admission, temporary shelter, and administrative coordination, even in the absence of comprehensive treaty obligations.

In Indonesia, Positive Refugee Law is a useful lens for examining the state's response to Rohingya asylum seekers in Aceh. Indonesia has not ratified the 1951 Convention or the 1967 Protocol, yet its actions show that refugee protection can be implemented through domestic law shaped by international human rights norms. The Aceh case underscores the relevance of Tiedemann's idea of historical ambivalence and supports Chetail's view that human rights law has become the primary foundation of current refugee protection.

History of Asylum Seekers and Refugees from Rohingya in Aceh

The contemporary displacement of the Rohingya population is rooted in the historical evolution of ethnic, political, and legal identities in Myanmar. Scholars frequently trace the origins of the Rohingya crisis to the colonial era, particularly the British administration's consolidation of the Rakhine and Burmese regions. During this period, British authorities facilitated the large-scale migration of laborers from other parts of the Empire into Rakhine State to support agricultural production and colonial administration. Many of these migrants were Muslim communities who would later be identified as Rohingya. Colonial governance practices, such as population censuses and ethnic classification, entrenched rigid identity categories and established the foundation for subsequent contestation over belonging and citizenship.¹⁹

The colonial restructuring of territory and population created enduring tensions between the Rohingya and the Buddhist majority in Myanmar. Literature indicates that post-independence Myanmar politicized colonial-era migration, reframing it as illegal migration and demographic encroachment. These narratives became embedded in state discourse, reinforcing perceptions of the Rohingya as a non-indigenous group and framing their presence as a threat to national identity and territorial integrity.²⁰

¹⁶ Chetail, "Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law." 21-22.

¹⁷ Tiedemann, "The Ambivalence of Current Refugee Law Between Solidarity with 'Friends' and Solidarity with 'Human Beings.'", 175-176.

¹⁸ Chetail, "Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law.", 28-29.

¹⁹ Md Ismail Hossain et al., "The Rohingya Refugee Crisis: A Threat to Peace and Security in South Asia," *International Journal of Community and Social Development* 3, no. 2 (2021): 1-19, <https://doi.org/DOI:10.1177/25166026211028365>.

²⁰ *Ibid.*

Following independence, Myanmar reinterpreted colonial legacies through nationalist and exclusionary state-building initiatives. The state increasingly defined citizenship and national identity in terms of ethnic and religious criteria, thereby marginalizing communities outside officially recognized categories. The Myanmar government has consistently asserted that the Rohingya are not an indigenous ethnic group but are descendants of migrants who entered Rakhine State illegally during the colonial period. Although historical narratives regarding Rohingya origins remain contested, scholars argue that the decisive factor was the institutionalization of exclusion through domestic law rather than historical fact alone.²¹

Myanmar's citizenship regime is central to the process of exclusion. The 1982 Citizenship Law created a hierarchical citizenship system that excluded the Rohingya from the list of recognized ethnic groups, effectively rendering them stateless. This legal framework deprived the Rohingya of nationality and systematically restricted their access to education, healthcare, employment, freedom of movement, and political participation. Research on the Rohingya refugee crisis in South Asia demonstrates that statelessness was not incidental but a deliberate legal condition that normalized discrimination and vulnerability over time.²²

Prolonged legal marginalization facilitated recurring cycles of persecution and displacement. While the Rohingya experienced violence and forced migration prior to 2017, the situation escalated significantly with the onset of large-scale military operations in Rakhine State that year. Human rights organizations and journalists documented widespread abuses, including extrajudicial killings, sexual violence, village burnings, and forced displacement. Smith and Smith (2017), based on extensive fieldwork along the Bangladesh–Myanmar border and in Rakhine State, identified consistent patterns of brutality that compelled hundreds of thousands of Rohingya to flee under life-threatening conditions, transforming an already marginalized population into one of the world's largest stateless refugee groups.²³

As a consequence of sustained persecution, most Rohingya refugees initially sought safety in neighboring Bangladesh, particularly in the Cox's Bazar region. However, displacement soon became protracted. Over time, deteriorating conditions in refugee camps, including overcrowding, limited livelihood opportunities, insecurity, and movement restrictions, compelled many Rohingya to pursue onward movement. Studies of the Rohingya crisis emphasize that this secondary displacement is driven not only by economic factors but also by the absence of durable solutions and persistent structural insecurity in host states.²⁴

This onward movement increasingly manifested as irregular maritime journeys across the Andaman Sea and the Bay of Bengal, frequently facilitated by smuggling networks. The Andaman Sea crisis of 2015 represented a pivotal moment in regional awareness of Rohingya maritime migration. Solomon (2017) documents that thousands of migrants and refugees were abandoned at sea after smugglers altered routes in response to

²¹ Hossain et al., "The Rohingya Refugee Crisis: A Threat to Peace and Security in South Asia."

²² *Ibid.*

²³ Matthew Smith and Amy Alex Smith, "The Refugee Crisis Ravaging Southeast Asia: On The Ground With The Rohingya," *Forbes*, 2017, <https://www.forbes.com/sites/insideasia/2017/10/17/the-refugee-crisis-ravaging-southeast-asia-on-the-ground-with-the-rohingya/>.

²⁴ Hossain et al., "The Rohingya Refugee Crisis: A Threat to Peace and Security in South Asia."

regional crackdowns on trafficking. Approximately 8,000 individuals were left stranded on overcrowded boats without adequate food or water, resulting in hundreds of deaths. The crisis revealed significant structural weaknesses in Southeast Asia's migration governance, where border securitization often took precedence over humanitarian protection. In these regional dynamics, Indonesia occupies a complex position within the Rohingya displacement trajectory. Although Indonesia is neither a primary destination country nor a party to the 1951 Convention Relating to the Status of Refugees, its geographic location places it along key maritime routes used by Rohingya asylum seekers. With extensive coastlines and multiple legal and informal entry points – particularly in western and northern regions – Indonesia has become a recurrent site of arrival for boats carrying Rohingya refugees. Among these regions, Aceh has emerged as the principal locus of Rohingya arrivals.²⁵

Aceh sits at the northwestern tip of Indonesia, next to the Andaman Sea, making it the most accessible landfall for boats from the Bay of Bengal. For Rohingya asylum seekers on dangerous sea journeys, Aceh is the closest route to safety and humanitarian aid. While arrivals are also recorded in Medan, Batam, Tanjung Pinang, and Riau, Aceh remains the main entry point, reinforcing its status as a temporary refuge for asylum seekers awaiting assistance or resettlement.²⁶

Data from regional immigration offices indicate some areas that are the camps for Rohingya asylum seekers are Sabang 123 peoples, Lhokseumawe 55 peoples, Idi Rayeuk 173 peoples. On June 25, 2020, Ship carrying 99 Rohingya asylum seekers docked on the coast of Lhokseumawe, Northern Aceh. Among the asylum seekers, there were 34 children, local communities of Aceh let the Rohingya asylum seekers rest in the Northern Aceh region.²⁷ This incident demonstrates the presence of community-based solidarity practices that function as an informal protection mechanism in the absence of comprehensive state-led refugee protection.²⁸

The actions of Acehnese communities in responding to Rohingya arrivals have frequently been framed as expressions of solidarity and humanitarian concern. Amnesty International and other civil society organizations have praised these responses, emphasizing the moral and legal imperative to rescue individuals in distress at sea and to provide them with basic necessities such as food, shelter, and medical care. From a human rights perspective, these actions underscore the role of non-state actors and local communities in shaping immediate protection outcomes for refugees, particularly when state-led responses are delayed or ambiguous.²⁹

Multiple interrelated factors contribute to the consistent willingness of Acehnese communities to assist Rohingya asylum seekers. A prominent factor is religious solidarity, as the vast majority of Aceh's population identifies as Muslim, fostering a

²⁵ Elisa Solomon, "Lessons from the Andaman Sea Crisis," Australian Institute of International Affairs, 2017, <https://www.internationalaffairs.org.au/australianoutlook/lessons-andaman-sea-crisis/>.

²⁶ *Ibid.*

²⁷ BBC, "Rohingya: 94 Pengungsi Yang Terombang-Ambing Di Laut Dibawa Ke Daratan Aceh 'Atas Dasar Kemanusiaan,'" BBC, 2020, <https://www.bbc.com/indonesia/indonesia-53160292>.

²⁸ Amnesty International, "Selamatkan Pengungsi Rohingya Di Perairan Aceh," Amnesty International, 2020, <https://www.amnesty.id/kabar-terbaru/siaran-pers/selamatkan-pengungsi-rohingya-di-perairan-aceh/06/2020/>.

²⁹ *Ibid.*

perceived connection with the predominantly Muslim Rohingya. Local leaders frequently cite this shared religious identity as a motivating factor in community support. Nevertheless, religious affinity alone does not entirely explain these practices. Aceh's long maritime culture and customary legal traditions are also important. Along the coast, fishermen follow strong norms to help anyone threatened at sea, regardless of nationality or status. This customary obligation is an informal rule woven into the fabric of coastal community life. In practice, fishermen who encounter boats in distress prioritize rescue, valuing human life over immigration rules.³⁰

These customary practices intersect with international maritime obligations, including the duty to rescue individuals in distress at sea as recognized by international maritime law. While local actors may not explicitly articulate their actions in legal terms, their conduct aligns with the principles established in international instruments, such as the United Nations Convention on the Law of the Sea and related search-and-rescue conventions. Thus, local practices in Aceh function at the intersection of customary norms, humanitarian imperatives, and international legal standards.

Simultaneously, the repeated arrival of Rohingya asylum seekers has exposed structural tensions in Indonesia's broader approach to refugee protection. Although community-based assistance offers immediate relief, it does not amount to formal legal protection by the state. The lack of a comprehensive national refugee law has produced a fragmented protection landscape in which local customs, humanitarian advocacy, and administrative discretion coexist without a coherent legal framework. This fragmentation is especially apparent during periods of increased arrivals, when local solidarity confronts the limitations of state capacity and political will. The case of Aceh exemplifies a layered and complex protection environment shaped by the interaction of state practice, local norms, and international human rights obligations. Historical patterns of persecution and displacement propel Rohingya asylum seekers toward Indonesia, while local responses rooted in customary practices and humanitarian values address gaps created by the absence of formal legal obligations. This historical and socio-legal context provides the foundation for analyzing Positive Refugee Law, illustrating how refugee protection in Indonesia arises from the interplay of state practice, local norms, and international human rights obligations rather than formal treaty commitments.

Between Positive Refugee Law and International Human Rights Law

The conceptual relationship between international refugee law and international human rights law is central to contemporary debates on international protection. Both legal regimes seek to safeguard individuals from serious harm, yet they are founded on distinct normative logics, institutional mechanisms, and scopes of application. Clarifying this relationship is crucial for evaluating state responses to large-scale displacement. Particularly where states have not acceded to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, protection frequently arises from the interplay of refugee law principles, human rights norms, and positive state practice rather than from formal treaty obligations alone.

³⁰ BBC, "Rohingya: 94 Pengungsi Yang Terombang-Ambing Di Laut Dibawa Ke Daratan Aceh 'Atas Dasar Kemanusiaan.'"

The primary distinction between refugee law and human rights law concerns their respective personal scopes. International human rights law is based on universality, applying to all individuals by virtue of their inherent human dignity, irrespective of nationality, legal status, or territorial presence. In contrast, refugee law is selective, with its protective framework activated only when an individual is recognized as belonging to a legally defined category, specifically refugees as described in Article 1A(2) of the 1951 Convention. According to Chetail, this categorical structure means that refugee law protects only those who meet a specific legal definition and successfully complete the status determination process.³¹

This selectivity makes refugee status determination a critical juncture in international protection. Determining refugee status is not solely an evidentiary process; it establishes a legal threshold that governs access to rights, assistance, and durable solutions. For individuals fleeing persecution whose status remains unrecognized, such as asylum seekers intercepted at sea, legal limbo often results. In these cases, human rights law serves a vital complementary function, ensuring that protection is not contingent solely on formal recognition under refugee law. According to Chetail, the protective aims of refugee law can only be realized when interpreted and applied in conjunction with broader human rights obligations.³²

Law did not originate as a universal system of protection grounded in human dignity. Paul Tiedemann's analysis of the evolution of refugee protection reveals a deep ambivalence at the heart of the regime. Early refugee law emerged from domestic responses to specific groups perceived as deserving of protection, rather than from a commitment to universal humanitarian principles. The British Aliens Act of 1905, often cited as a foundational moment in modern refugee law, was enacted in response to the arrival of Eastern European Jews fleeing persecution. While it introduced legal mechanisms for protection, it also reflected widespread xenophobia and antisemitism, resulting in a framework that distinguished between acceptable and unacceptable migrants. Tiedemann characterizes this as "solidarity with friends" rather than "solidarity with human beings".³³

This selective approach continued during the interwar period. Under the League of Nations, refugee protection was provided through ad hoc arrangements for specific groups, including Russian, Armenian, and later German refugees. These measures were driven by political expediency rather than universal entitlement. Tiedemann argues that this historical pattern reveals a persistent tension in refugee law between humanitarian concerns and state interests in border and population control. This tension was not resolved with the establishment of the United Nations or the adoption of the 1951 Convention; instead, it became institutionalized within the refugee regime itself.³⁴

The adoption of the Universal Declaration of Human Rights in 1948 represented a significant normative shift by establishing a comprehensive catalogue of rights for all individuals. It affirms the right of everyone to seek and enjoy asylum from persecution.

³¹ Chetail, "Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law."

³² *Ibid.*

³³ Tiedemann, "The Ambivalence of Current Refugee Law Between Solidarity with 'Friends' and Solidarity with 'Human Beings.'"

³⁴ *Ibid.*

However, as Chetail observes, this provision is intentionally permissive and does not obligate states to grant asylum. The drafters of the UDHR deliberately avoided creating an enforceable individual right to asylum, reflecting ongoing concerns about state sovereignty and migration control. Consequently, the right to seek asylum exists without a corresponding guarantee of being granted asylum.³⁵

It influenced the subsequent development of refugee law. The preamble to the 1951 Convention explicitly recalls the UDHR and the UN Charter, reaffirming that the enjoyment of fundamental rights and freedoms without discrimination constitutes the normative foundation of refugee protection. In this sense, refugee law can be understood as a specialized response to situations where human rights protection fails at the national level. Refugees are individuals whose state of origin is unwilling or unable to secure their fundamental rights, thereby necessitating surrogate protection by the international community. Chetail argues that this surrogate function explains why refugee law must be interpreted consistently with human rights law rather than as a self-contained regime.³⁶

The principle of non-refoulement is the most prominent point of convergence between refugee law and human rights law. Enshrined in Article 33 of the 1951 Convention, non-refoulement prohibits states from expelling or returning refugees to territories where their life or freedom would be at risk. This principle has expanded beyond refugee law and is now embedded in key human rights instruments. The Convention against Torture forbids returning individuals to states where they face a real risk of torture, and the International Convention for the Protection of All Persons from Enforced Disappearance provides similar safeguards against enforced disappearance. These protections apply irrespective of an individual's formal refugee status.³⁷

The OHCHR Fact Sheet No. 20 emphasizes that non-refoulement has become a cornerstone of international protection precisely because it bridges refugee law and human rights law. Importantly, the Fact Sheet clarifies that non-refoulement applies not only to recognized refugees but also to asylum seekers whose claims have not yet been adjudicated. This broader application ensures that individuals are protected from irreversible harm during the often-lengthy status-determination process. In this sense, human rights law compensates for the categorical limitations of refugee law by providing immediate protection based on risk rather than legal status.³⁸

Beyond non-refoulement, international human rights law guarantees a range of substantive and procedural rights to asylum seekers and refugees alike. These include the right to life, freedom from torture and cruel, inhuman, or degrading treatment, protection from arbitrary detention, and access to basic necessities such as food, shelter, and healthcare. According to OHCHR Fact Sheet No. 20, international protection encompasses a spectrum of obligations, including access to fair asylum procedures, legal assistance, physical security, and the pursuit of durable solutions. This expanded

³⁵ Chetail, "Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law."

³⁶ *Ibid.*

³⁷ United Nations, "Fact Sheet No.20, Human Rights and Refugees," n.d., <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet20en.pdf>.

³⁸ *Ibid.*

understanding reflects the reality that displacement is often protracted and cannot be addressed solely through temporary humanitarian measures.³⁹

The Rohingya crisis illustrates the operational significance of The Rohingya crisis exemplifies the practical importance of an integrated protection framework. The displacement of the Rohingya population stems from persistent and severe human rights violations, such as denial of nationality, movement restrictions, widespread violence, and crimes against humanity. These circumstances are precisely those that international refugee and human rights law aim to address. However, the Rohingya case also reveals the limitations of a protection regime that ties access to rights to formal legal status. Millions of Rohingya remain stateless and unrecognized, confined to camps or forced into perilous secondary movements across borders and seas. This situation reflects the enduring ambivalence inherent in international refugee law. Protection is extended inconsistently, often influenced by political considerations, public sentiment, and resource constraints. This ambivalence is evident in regional responses to Rohingya maritime movements, where states have alternated between humanitarian rescue and pushback practices. Such responses echo the historical pattern identified by Tiedemann, in which refugee protection oscillates between moral commitment and political expediency.⁴⁰

Recent reports on Rohingya arrivals in Aceh illustrate the practical manifestation of this normative ambivalence. Media reports indicate that boats arriving in 2023 encountered resistance, including instances where asylum seekers were prevented from disembarking despite clear indicators of vulnerability. Restrictions on disembarkation demonstrate the limitations of protection mechanisms that rely primarily on discretionary humanitarian responses. This condition places asylum seekers in a situation of legal limbo, where protection depends on discretionary state responses rather than on clearly enforceable legal entitlements.⁴¹

From the perspective of international human rights law, such pushback practices raise serious legal and ethical concerns. The OHCHR Fact Sheet underscores that states cannot evade their human rights responsibilities by invoking domestic opposition, resource limitations, or the absence of treaty ratification. Returning individuals to situations of serious risk – whether directly to their country of origin or indirectly by forcing them back to sea – undermines the fundamental protective purpose shared by both refugee law and human rights law. These practices illustrate the gap between normative commitments and on-the-ground protection.⁴²

Scholarly assessments of Indonesia's response to the Rohingya crisis highlight this ongoing tension. Adwani, Rosmawati, and Aiyub Kadir (2021) contend that Indonesia's actions reflect partial compliance with international refugee and human rights principles, particularly the principle of non-refoulement, despite not formally ratifying the Refugee Convention. They further argue that reliance on humanitarian discretion,

³⁹ United Nations, "Fact Sheet No.20, Human Rights and Refugees."

⁴⁰ Tiedemann, "The Ambivalence of Current Refugee Law Between Solidarity with 'Friends' and Solidarity with 'Human Beings.'"

⁴¹ Aisyah Llewellyn, "Indonesia Faces New Refugee Crisis as Rohingya Boat Pushed Back to Sea," Al Jazeera, 2023, <https://www.aljazeera.com/news/2023/11/17/indonesia-faces-new-refugee-crisis-as-rohingya-boat-pushed-back-to-sea>.

⁴² United Nations, "Fact Sheet No.20, Human Rights and Refugees."

rather than legal entitlement, generates uncertainty and subjects' refugees to inconsistent treatment. This analysis aligns with Tiedemann's critique of the structural ambivalence in refugee law and Chetail's call for a human-rights-centered approach to refugee protection.⁴³

Positive Refugee Law offers a distinct analytical framework: it illuminates how protection emerges from positive state practice inspired by human rights norms. Instead of limiting its focus to formal treaty obligations, Positive Refugee Law spotlights how states enact protection through practices such as rescue at sea, temporary admission, cooperation with international actors, and avoidance of refoulement. These actions demonstrate an implicit adherence to human rights obligations, even in the absence of formal legal commitments. Refugee law and international human rights law together form a dynamic, often contested, field. Human rights law sets fundamental norms and minimum protections, while refugee law provides a narrower, specialized scope. Positive Refugee Law bridges these regimes by capturing real-world protective practices that transcend formal legal status. This is particularly evident in mass displacement at sea, where urgent humanitarian needs challenge the inflexibility of conventional refugee law.

Ultimately, the relationship between refugee law and human rights law is not hierarchical; neither regime supersedes the other. Instead, their interaction is defined by ongoing negotiation between universality and selectivity, and between moral obligation and sovereign discretion. The Rohingya crisis illustrates that when the categorical thresholds of refugee law fail to provide timely protection, human rights law and the practices it informs become the principal means of safeguarding human dignity. In this regard, Positive Refugee Law embodies both the potential and the limitations of contemporary international protection, highlighting the intersection of law, morality, and politics in addressing the needs of displaced persons.

Domestic Refugee Law in Accordance with International Refugee Law

The development of international refugee law is closely connected to post-World War II ethical and legal analyses of state failures to protect individuals from mass persecution, forced expulsion, and the systematic erosion of human dignity. Although refugee protection is often described as humanitarian solidarity, current international legal discourse increasingly frames it as a legal obligation derived from the prohibition of grave human rights violations.⁴⁴ Within this framework, international and domestic refugee law operate as an integrated normative system, with domestic implementation serving as the primary means of fulfilling international obligations.

Paul Tiedemann contends that refugee protection should be situated within the framework of legal ethics, rather than as a matter of social policy or discretionary humanitarian aid.⁴⁵ From a deontological perspective, the state's principal obligation

⁴³ Adwani, Rosmawati, and Kadir, "The Responsibility in Protecting the Rohingya Refugees in Aceh Province, Indonesia: An International Refugees Law Perspective."

⁴⁴ UNHCR, "The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol" (Geneva, 2011), <https://www.unhcr.org/sites/default/files/legacy-pdf/4ec262df9.pdf>.

⁴⁵ Paul Tiedemann, "Are There Moral Duties toward Refugees? Considerations in Legal Ethics," *Laws* 10, no. 1 (2021), <https://doi.org/https://doi.org/10.3390/laws10010004>, 2-4.

toward refugees is not benevolent assistance, but the avoidance of causing or contributing to serious harm, particularly violations of fundamental human rights. Refugees are therefore recognized as rights-bearing individuals whose protection is grounded in binding legal prohibitions. This is the relationship between refugee law and international human rights law. Tiedemann asserts that the prohibition of refoulement is not a subsidiary aspect of the right to asylum, but constitutes the normative core of all fundamental human rights.⁴⁶ Returning individuals to territories where they face a real risk of torture, inhuman treatment, or other severe human rights violations renders the returning state an indirect perpetrator of such harm. Consequently, the legitimacy of refugee protection is primarily derived from international human rights law rather than from an isolated refugee law regime.

Vincent Chetail reinforces this perspective by asserting that international refugee law is structurally dependent on and complementary to international human rights law. Chetail observes that “international refugee law is rooted in, and ultimately dependent upon, the broader framework of international human rights law”.⁴⁷ Refugee law does not create independent protection obligations; rather, it operationalizes existing human rights duties, particularly in situations of forced displacement and exposure to serious harm. The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, often referred to as the Magna Carta of International Refugee Law, establish the definition of a refugee, enumerate the rights associated with refugee status, and set forth state obligations, most notably the principle of non-refoulement under Article 33.⁴⁸ However, these instruments were never intended to function independently. From their inception, they anticipated implementation through domestic legal systems.

UNHCR itself consistently affirms that the primary responsibility for refugee protection lies with states, regardless of the degree of international institutional involvement.⁴⁹ Consequently, the effectiveness of international refugee law depends not only on treaty texts but also on how states adopt, interpret, and apply protection standards within their domestic legal frameworks. This includes states that are not formal parties to the 1951 Convention and the 1967 Protocol. Indonesia represents a particularly instructive case in this regard. Although it is not a party to the 1951 Convention or the 1967 Protocol, Indonesia has long been confronted with the practical realities of forced migration, beginning with the arrival of Vietnamese “boat people” in the late 1970s and continuing through the more recent influx of Rohingya refugees. In the absence of a comprehensive refugee law, Indonesia has adopted a pragmatic, administrative approach to refugee management.⁵⁰

In practice, Indonesia employs a delegative model in which UNHCR assumes a central role in Refugee Status Determination (RSD). According to Ismayawati, this approach reflects a conscious policy decision by the Indonesian government to avoid fully integrating refugee status determination into its national legal system, while still

⁴⁶ Tiedemann, 2021, 14-16.

⁴⁷ Chetail, “Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law.”, 22.

⁴⁸ UNHCR, “The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol.”, 13-15.

⁴⁹ UNHCR, “Perkembangan Terbaru Mengenai Pengungsi Rohingya Di Aceh, Indonesia,” UNHCR Indonesia, 2023, <https://www.unhcr.org/id/berita/perkembangan-terbaru-mengenai-pengungsi-rohingya-di-aceh-indonesia>.

⁵⁰ Ismayawati, *Manusia Perahu*.

recognizing refugees and asylum seekers as distinct legal categories.⁵¹ Consequently, domestic refugee law in Indonesia has developed through administrative regulations and structured collaboration with international organizations, rather than through substantive legislation. The domestic framework is primarily anchored in Presidential Regulation No. 125 of 2016⁵² and the Regulation of the Director General of Immigration No. IMI-0352.GR.02.07.⁵³ Although these instruments do not expressly incorporate the refugee definition contained in the 1951 Convention, they formally recognize refugees and asylum seekers as subjects requiring specific handling mechanisms.⁵⁴ From an international law perspective, this approach constitutes indirect norm internalization, whereby states set minimum protection standards to avoid breaching international human rights obligations, particularly the prohibition on refoulement.

In Aceh, this responsibility is particularly evident, as the state not only acknowledges the presence of Rohingya refugees but also actively regulates their shelter locations, aid distribution, and movement restrictions. Such direct involvement positions Indonesia unequivocally as a duty bearer under international human rights law, regardless of its non-ratification of the Refugee Convention.

The long-standing operational presence of UNHCR in Indonesia further substantiates this conclusion. Since the period of Vietnamese refugees, UNHCR has assisted the Indonesian government in protecting asylum seekers and determining their legal status during temporary accommodation in immigration facilities across the country. Indonesia's domestic regulatory framework explicitly acknowledges the roles of UNHCR and other international organizations. Under these arrangements, UNHCR is tasked with conducting Refugee Status Determination and providing the government with identity and protection-related information about asylum seekers. The International Organization for Migration (IOM) serves a complementary role by providing temporary accommodation and assisting local governments in meeting the basic needs of asylum seekers, including food, medical services, and humanitarian personnel in temporary camps.⁵⁵ Despite delegating operational tasks to international organizations, overall authority and coordination remain under the Indonesian state's control. The Aceh Immigration Office illustrates the extent of this control. A total of 1,084 asylum seekers were detected in several locations, including Lhokseumawe, Pidie, Bireuen, East Aceh, and Sabang. Of these, 511 individuals were accommodated in temporary shelters in Lhokseumawe, while the remaining 573 were distributed across temporary camps in Pidie, Bireuen, East Aceh, and Sabang.⁵⁶ Local governments assumed responsibility for their temporary accommodation pending the outcome of the UNHCR RSD process.⁵⁷

⁵¹ *Ibid*, 87-89.

⁵² Republik Indonesia, "Peraturan Presiden (Perpres) Nomor 125 Tahun 2016 Tentang Penanganan Pengungsi Dari Luar Negeri" (2016), <https://peraturan.bpk.go.id/Details/41029/perpres-no-125-tahun-2016>.

⁵³ Direktur Jenderal Imigrasi, "Peraturan Direktur Jenderal Imigrasi Nomor IMI-0352.GR.02.07" (2016), <https://suaka.or.id/wp-content/uploads/2023/05/Perdirjenim-2016.pdf>.

⁵⁴ Novianti Novianti, "Implementasi Perpres No. 125 Tahun 2016 Tentang Penanganan Pengungsi Dari Luar Negeri," *Negara Hukum* 10, no. 2 (2019): 281-300, <https://doi.org/https://doi.org/10.22212/jnh.v10i2.1343>.

⁵⁵ Direktur Jenderal Imigrasi, Peraturan Direktur Jenderal Imigrasi Nomor IMI-0352.GR.02.07.

⁵⁶ Llewellyn, "Indonesia Faces New Refugee Crisis as Rohingya Boat Pushed Back to Sea."

⁵⁷ UNHCR, "Perkembangan Terbaru Mengenai Pengungsi Rohingya Di Aceh, Indonesia."

The Indonesian Ministry of Foreign Affairs has stated that, for humanitarian reasons, temporary shelter is currently the only viable option, pending resettlement to third countries or the identification of other durable solutions.⁵⁸ From a deontological and human rights-based perspective, this practice should not be regarded as discretionary generosity. Rather, when the state exercises ongoing and effective control over the presence, movement, and living conditions of asylum seekers, it incurs binding legal and ethical obligations. Consistent with Tiedemann's damage-oriented framework, Indonesia's regulation of the lives of Rohingya refugees entails a responsibility to prevent any action or omission that could expose them to serious human rights violations.⁵⁹ Chetail likewise observes that international refugee law does not create new or exceptional duties, but instead operationalizes existing human rights obligations in specific displacement contexts.⁶⁰ Consequently, Indonesian domestic refugee law, despite its administrative and temporary character, must be interpreted and assessed in accordance with international human rights standards, particularly the prohibition of refoulement and the obligation to respect human dignity.

4. Conclusion

This article argues that Indonesia's handling of Rohingya asylum seekers in Aceh illustrates a form of implicit Positive Refugee Law: legal protection emerges through domestic administrative measures, cooperation with international organizations, and humane local practices, even in the absence of accession to the 1951 Refugee Convention or 1967 Protocol. State actions are shaped and evaluated in light of international human rights obligations. Thus, Indonesia shows that non-party states can, through domestic law and engagement with international norms, achieve refugee protection equivalent to international standards. More broadly, this study challenges the assumption that refugee protection depends mainly on treaty status, contributing to debates on international protection. Using Tiedemann's damage-oriented legal ethics and Chetail's human rights-centered approach, the analysis shows that refugee law and international human rights law together form an integrated normative framework. Within this, states exercising control over displaced persons must prohibit refoulement and protect human dignity as binding obligations. The Rohingya case in Aceh illustrates both the potential and the limits of Positive Refugee Law: it can enable protection in the absence of formal treaties, but it also exposes the weaknesses of relying on administrative discretion. Indonesia's experience highlights the need to rethink refugee protection beyond ratification, focusing on actual state practice, core human rights duties, and the ethical basis of international law.

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⁵⁸ UNHCR, 2023.

⁵⁹ Tiedemann, "Are There Moral Duties toward Refugees? Considerations in Legal Ethics.", 11-12.

⁶⁰ Chetail, "Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law.", 24.

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