

Human Rights and Voluntary Repatriation in International Law: Legal Challenges in Addressing Rohingya Refugees in Indonesia

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Abstract

The existence of Rohingya refugees in Indonesia today has caused various polemics, especially Indonesia's position as a transit country that has not ratified related conventions so that there is no obligation to accept refugees in Indonesia. The presence of refugees in Indonesia that causes conflict makes Indonesia's position at a crossroads to fulfill international obligations or fulfill obligations to its citizens so that they do not experience anxiety about their safety of life. This research aims to first explain the arrangements and conditions of repatriation for refugees in international law. Second, analyze Indonesia's obligations under international law as a transit country for Rohingya refugees. Third, analyze the relationship between Indonesia's international obligations and domestic policies in the repatriation of its Rohingya refugees. This research applies a type of qualitative legal research with a juridical-normative approach. This research uses primary, secondary and tertiary



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legal materials as study materials. This research produced several findings, namely first, the practice of repatriation is the process of returning refugees to their country of origin after moving to a transit country or a third country. UNHCR as an extension of the United Nations has been operating in Indonesia since 1979. Second, Indonesia has tried to maintain the lives of refugees who choose Indonesia as a transit country. According to UNHCR, at the end of 2023, there were 12,295 refugees registered with UNHCR in Indonesia. As a transit country, refugee reception in Indonesia is based only on humanity. Third, the application of the concept of dualism makes Indonesia position itself that international law and national law are separate legal systems, and do not have a relationship of superiority or subordination to each other.

KEYWORDS *International Law, Refugees, Repatriation Practices, Rohingya*

Introduction

Polemics of problems in every country are inevitable, today wars are a crucial issue that hits various countries in the world. According to records, there are many conflicts that lead to war as a solution to resolve conflicts or disputes that occur.¹ According to Ronan², war is defined as an armed conflict between two or more states in which organized armed forces are involved and whose conduct is regulated by the principles of International Law. Such conflicts generally occur within the territory of states that are recognized as subjects of international law and that form part of the international system.³ In certain interpretations, conflicts occurring in states with relatively small populations may be categorized as marginal cases, particularly when the conflict takes the form of a civil war rather than an interstate war. Armed conflict frequently produces severe

¹ Qrei Poluakan, "Perlindungan HAM Bagi Warga Sipil Dalam Konflik Bersenjata Non-Internasional Menurut Perspektif Hukum Humaniter Internasional (Studi Kasus Perang Saudara Suriah Tahun 2011)." *Lex Administratum* 10, no. 3 (2022). <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/41990>

² William J. Ronan, "English and American courts and the definition of war." *American Journal of International Law* 31, no. 4 (1937): 642-658. <https://doi.org/10.2307/2190674>

³ Stanley Hoffmann, "International systems and international law." *World Politics* 14, no. 1 (1961): 205-237, <https://doi.org/10.2307/2009562>; Robert Yewdall Jennings, "The acquisition of territory in international law: With a new introduction by Marcelo G. Kohen." *The Acquisition of Territory in International Law*. Manchester University Press, 2024.

humanitarian consequences, including the displacement of civilian populations.⁴ Faced with threats to their safety and livelihoods, individuals and communities often undertake self-preservation measures by fleeing to areas perceived to be safer. This movement of people across borders commonly results in the emergence of refugees and asylum seekers who seek protection in other states.

The phenomenon of forced displacement arising from armed conflict cannot be understood from a single perspective; rather, it requires a multidimensional approach involving legal, humanitarian, and political considerations.⁵ The arrival of displaced populations in host or transit countries may generate new social, economic, and legal challenges for the receiving state. Consequently, addressing refugee movements caused by war requires comprehensive policies and international cooperation in order to balance humanitarian protection with the interests and capacities of host states.⁶

As a result of this war, the term refugee has emerged, namely individuals who are forced to leave their country due to fear of persecution, caused by reasons of race, religion, nationality, membership of certain social groups and political parties, and are outside their country of nationality and do not want protection from their country of origin.⁷ At the end of November 2021, there were 13,175 refugees registered in Indonesia with 9,973 refugees and 3,202 asylum seekers. According to data

⁴ Robert Muggah, and Eric Berman. *Humanitarianism under threat: The humanitarian impacts of small arms and light weapons*. Small Arms Survey, 2001. For further context, see also Nayaka Zivano Putra, Ayla Zivanna Putri, and Kirana Elsha Maharani. "The Indonesian Government and Palestinian Refugees: Policy Responses and Humanitarian Support". *Palestine Issues on Indonesian Society* 1, no. 2 (2024). <https://doi.org/10.65815/3r32mc88>.

⁵ Sarah Kenyon Lischer, "Causes and consequences of conflict-induced displacement." *Civil Wars* 9, no. 2 (2007): 142-155. <https://doi.org/10.1080/13698240701207302>

⁶ Mélanie Jacques, *Armed conflict and displacement: The protection of refugees and displaced persons under international humanitarian law*. Vol. 95. Cambridge University Press, 2012; Ridwan Arifin, Mellisa Towadi, and Ngboawaji Daniel Nte. "The Treatment of Refugees in Indonesia: Legal Protections and Human Rights Challenges". *Contemporary Issues on Indonesian Human Rights Law and Policy* 1, no. 4 (2024). <https://doi.org/10.65815/7mkync05>

⁷ Cipta Primadasa Primadasa, Mahendra Putra Kurnia, and Rika Erawaty. "Problematika Penanganan Pengungsi di Indonesia dari Perspektif Hukum Pengungsi Internasional." *Risalah Hukum* (2021): 44-51; Noah Gabriel Stevens, "Legal Frameworks and the Protection of Refugees and Migrants in Indonesia: Challenges and Opportunities". *Indonesian Minority Justice Review* 1, no. 2 (2024). <https://doi.org/10.65815/fgxqft05>.

from UNHCR, there are around 12,295 refugees recorded at UNHCR offices in Indonesia in 2023. Where the child category reaches 29% of the total number of refugees recorded at UNHCR Indonesia. It is also known that as many as 227 children came alone or separated from their families. Until the end of December 2023, the distribution of refugees in Indonesia came from Afghanistan (48%), Myanmar (16%) and Somalia (9%). Although Indonesia has not ratified the Convention Relating to the Status of Refugees 1951, Indonesia has become a host country for refugees, this is done on a high humanitarian basis.

Indonesia as a transit country and not a party to the Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1967. This makes Indonesia have no basis to continue to be held accountable both in international regulations and in national regulations, Indonesia has relatively little contribution in handling the refugee problem and is handed over to UNHCR.⁸ However, Indonesia cannot necessarily return refugees to their countries of origin due to the principle of non-refoulement. Meanwhile, the process of returning refugees is called repatriation which is implicitly contained in Article 13 paragraph 2 of the Universal Declaration of Human Rights 1948, which states that: *Everyone has the right to leave their country and return to their country of origin.*

The concept of repatriation in the Convention Relating to the Status of Refugees 1951 is not directly regulated in the convention. However, this convention contains the principle of non-refoulement, which is very relevant to the concept of repatriation. Article 33 of the Convention Relating to the Status of Refugees 1951 explicitly states that states may not expel or repatriate refugees to their countries of origin if the refugee is at risk of suffering violations or other harm because of his or her race, religion, nationality, involvement of a particular social group, or political opinion. The presence of non-refoulement aims to protect individuals from expulsion or rejection at the border; it remains the right not to be returned to a particular death.⁹

⁸ M. Riadussyah, "Tanggung Jawab Indonesia sebagai Negara Transit bagi Pengungsi Anak Berdasarkan Hukum Internasional." *Jurnal Hukum Ius Quia Iustum* 23, no. 2 (2016): 330-250. <https://doi.org/10.20885/iustum.vol23.iss2.art4>

⁹ Clare Frances Moran, "Strengthening the principle of non-refoulement." *The International Journal of Human Rights* 25, no. 6 (2021): 1032-1052. <https://doi.org/10.1080/13642987.2020.1811690>. See also Indah Sri Utari, Ridwan Arifin, and Sergi Fernandez Alejandro. "Gender-Based Violence and the Implementation of the Sexual Violence Crime Law in Indonesia". *The Indonesian Journal of Feminist Legal*

The presence of Rohingya refugees in Indonesia often faces various conflicts, both internally among themselves and with local communities.¹⁰ The pressures of living in the camps are limited, with minimal access to basic necessities such as food, clean water and health services, and also fuel disputes among refugees. On the other hand, conflicts between Rohingya refugees and locals in Indonesia arise for various reasons, one of which is the problem of limited competition for resources, especially in areas with weak economies. In addition, cultural and linguistic differences also add to the difficulties in establishing harmonious relations between refugees and local communities.¹¹ This creates friction and triggers prejudice, which sometimes develops into open conflict.

Addressing the Rohingya refugee problem in Indonesia is urgent due to the growing social, economic, and security impacts. For refugees, the uncertain living conditions trigger psychological stress and exacerbate the trauma they bring with them from Myanmar.¹² Rohingya refugees in Indonesia disturb the sense of security of the local community with improper attitudes such as stealing local coconuts, harassing local women, and other bad attitudes.¹³ Studied according to the concept of human security, this action has disturbed personal security because the Indonesian people, especially Aceh, feel worried and afraid of the existence of Rohingya refugees.¹⁴ In the concept of personal security, it is believed that every human being has the right to protection from actions that cause harm and to be free from feelings of anxiety or fear. Personal security is a representation of freedom from physical violence caused by humans and (other) crimes, the existence of which has long been a widely accepted concept.¹⁵ On the other hand, local communities are also feeling the impact of the increasing number of refugees, especially in areas with limited resources. If left unaddressed, tensions between refugees and

Studies 1, no. 1 (2026): 1-30.
<https://inleads.id/publications/index.php/IJFLS/article/view/1>.

¹⁰ Chairussani Abbas Sopamena, "Pengungsi rohingya dan potensi konflik & kemajemukan horizontal di Aceh." *Caraka Prabhu: Jurnal Ilmu Pemerintahan* 7, no. 2 (2023): 85-115. <https://doi.org/10.36859/jcp.v7i2.1927>

¹¹ Sopamena.

¹² Sopamena.

¹³ Fitri Awaliyah, Muhammad Saddam Fahrezi, Ridho Salyo, and Gunawan Santoso. "Telaah Implementasi: Global Citizen dan Pengungsian di Beberapa Negara." *Jurnal Pendidikan Transformatif* 1, no. 3 (2022): 93-107.

¹⁴ Awaliyah, et.al.

¹⁵ Des Gasper, and Oscar A. Gómez. "Human security thinking in practice: 'personal security', 'citizen security' and comprehensive mappings." *Contemporary Politics* 21, no. 1 (2015): 100-116.

locals can spark wider social conflicts. Indonesia needs to develop a more comprehensive policy to address this refugee problem. Sustainable policies will not only help refugees but also create social and economic stability in the affected areas.

The concept of voluntary repatriation has long been recognized as one of the principal durable solutions within the framework of International Law and Refugee Law. Early scholarship emphasizes that repatriation must be conducted voluntarily, safely, and with dignity, consistent with the protection standards promoted by the United Nations High Commissioner for Refugees.¹⁶ In this regard, James C. Hathaway argues that voluntary repatriation is legitimate only when refugees are able to return without coercion and when their fundamental rights are adequately protected in their country of origin.¹⁷ Similarly, Guy S. Goodwin-Gill¹⁸ and Jane McAdam¹⁹ highlight that the principle of non-refoulement remains central in assessing whether repatriation is genuinely voluntary. Other scholars, including Richard Black²⁰, Katy Long²¹, and Roger Zetter²², have critically examined the political and institutional factors shaping repatriation policies, noting that states often promote repatriation as a preferred solution even when conditions in countries of origin remain unstable.

In this context, Jack Donnelly's theory in *Cultural Relativism and Universal Human Rights* serves as a relevant analytical framework for examining Indonesia's dilemma in implementing the principle of non-

¹⁶ See Alexander Betts, Gil Loescher, and James Milner. *The United Nations High Commissioner for Refugees (UNHCR): The politics and practice of refugee protection*. Routledge, 2013.

¹⁷ James C. Hathaway, *The rights of refugees under international law*. Cambridge University Press, 2021.

¹⁸ Guy S. Goodwin-Gill, "The international law of refugee protection." *The Oxford Handbook of Refugee and Forced Migration Studies* (2014): 36-47.

¹⁹ Jane McAdam, *Complementary protection in international refugee law*. Oxford University Press, 2007.

²⁰ Richard Black, "Fifty years of refugee studies: From theory to policy." *International Migration Review* 35, no. 1 (2001): 57-78. . <https://www.jstor.org/stable/2676051>

²¹ Katy Long, "When refugees stopped being migrants: Movement, labour and humanitarian protection." *Migration Studies* 1, no. 1 (2013): 4-26. <https://doi.org/10.1093/migration/mns001>

²² Roger Zetter, "More labels, fewer refugees: Remaking the refugee label in an era of globalization." *Journal of Refugee Studies* 20, no. 2 (2007): 172-192. <https://doi.org/10.1093/jrs/fem011>

refoulement toward Rohingya refugees.²³ Donnelly contends that while human rights possess a universal character that transcends cultural and political boundaries, their realization is often shaped by local norms, state interests, and sociopolitical contexts. This perspective helps explain the tension faced by Indonesia in responding to the arrival of Rohingya refugees. On the one hand, the principle of non-refoulement, recognized as a fundamental norm of international refugee and human rights law, obliges states to refrain from returning individuals to territories where they face persecution, violence, or other serious threats. On the other hand, Indonesia must consider domestic concerns, including resource limitations, national security considerations, and public perceptions regarding refugee protection. Consequently, Indonesia's approach reflects the complex interaction between universal human rights obligations and contextual national interests, illustrating Donnelly's argument that the implementation of universal norms is frequently mediated by cultural, political, and institutional realities.

In the context of the Rohingya crisis, a substantial body of literature has explored the structural causes of displacement and the limitations of international protection mechanisms. Studies by Azeem Ibrahim²⁴ and reports from Amnesty International²⁵ document the systematic persecution and marginalization of the Rohingya minority in Myanmar. These conditions are closely linked to discriminatory legal frameworks, particularly the Myanmar Citizenship Law of 1982²⁶, which effectively rendered many Rohingya stateless. Research conducted by Nasir Uddin²⁷ and Keith A Leitich²⁸ further demonstrates that the absence of citizenship rights and ongoing security risks in Myanmar significantly undermine

²³ See Jack Donnelly, "Cultural Relativism and Universal Human Rights." *International Law of Human Rights*. (London: Routledge, 2017), pp. 173-192. <https://doi.org/10.4324/9781315092492>

²⁴ Azeem Ibrahim, *The Rohingyas: inside Myanmar's genocide*. Oxford University Press, 2018.

²⁵ See Amnesty International, "8 Years On: Accountability needed for Myanmar atrocities against Rohingya", *Amnesty International*, August 22, 2025. Retrieved from <https://www.amnesty.org/en/latest/news/2025/08/8-years-on-accountability-needed-for-myanmar-atrocities-against-rohingya/>

²⁶ See Myanmar. *Pyithu Hluttaw Law No 4 of 1982 (Burma Citizenship Law)*. Online at <https://burmapartnership.net/wp-content/uploads/2013/11/Burma-Citizenship-Law-1982.pdf>

²⁷ Nasir Uddin, "Ethnic cleansing of the Rohingya people." *The Palgrave Handbook of Ethnicity* (2019): 1575-1591. https://doi.org/10.1007/978-981-13-0242-8_116-1

²⁸ Keith A. Leitich, "Decoding the past: the Rohingya origin enigma." *Third Annual Southeast Asian Studies Symposium Keble College. University of Oxford*. 2014.

prospects for safe and voluntary return. Additional analyses by Michael W. Charney²⁹ and Matthew J. Walton³⁰ emphasize the role of historical ethnic tensions, nationalism, and political dynamics within Myanmar in perpetuating the crisis. Consequently, the existing literature largely agrees that the conditions necessary for meaningful voluntary repatriation of Rohingya refugees remain far from being fulfilled.

At the regional level, scholarship has examined how Southeast Asian states respond to Rohingya displacement despite limited formal refugee protection frameworks. Research by Antje Missbach³¹, Susan Kneebone³², and Savitri Taylor³³ highlights the challenges faced by transit countries, including Indonesia, in managing refugee arrivals without being parties to the 1951 Refugee Convention or the 1967 Protocol Relating to the Status of Refugees. Additional studies by Amy Nethery³⁴ and Riva & Hoffstaedter³⁵ reveal that regional responses are often characterized by ad hoc humanitarian measures rather than comprehensive legal frameworks. Although Indonesia has adopted domestic measures such as Presidential Regulation No. 125 of 2016 on the Handling of Foreign Refugees³⁶, the literature has paid limited attention to how these national policies interact

²⁹ Michael W. Charney, "Decolonizing History in "Myanmar": Bringing Rohingya Back into their own History." *Independent Journal of Burmese Scholarship* 1, no. 3 (2021). https://ijbs.online/?page_id=2718

³⁰ Matthew J. Walton, "Buddhist-Muslim Interactions in Burma/Myanmar." *Buddhist-Muslim relations in a Theravada world*. Singapore: Springer Singapore, 2020, pp. 63-99. https://doi.org/10.1007/978-981-32-9884-2_3

³¹ Antje Missbach, "Stuck in camps, at sea and in illegality: dimensions of stuckedness endured by Rohingya refugees." *Research Handbook on Irregular Migration*. Edward Elgar Publishing, 2023, pp. 168-177.

³² Susan Kneebone, ed. *Comparative regional protection frameworks for refugees*. Routledge, 2017.

³³ Savitri Taylor, "The Asia Pacific Refugee Rights Network and the Promotion of Refugee Rights in Southeast Asia." *Refugee Protection in Southeast Asia* (2024): 210. <https://dx.doi.org/10.2139/ssrn.5022931>

³⁴ Amy Nethery, and Claire Loughnan. "Regional responses to refugees: Insights from Asia." *Asian and Pacific Migration Journal* 28, no. 2 (2019): 123-131. <https://doi.org/10.1177/0117196819849973>

³⁵ Sara Riva, and Gerhard Hoffstaedter. "The aporia of refugee rights in a time of crises: the role of brokers in accessing refugee protection in transit and at the border." *Comparative Migration Studies* 9, no. 1 (2021): 1-17. <https://doi.org/10.1186/s40878-020-00212-2>

³⁶ See Republic of Indonesia. *Presidential Regulation No. 125 of 2016 on the Handling of Foreign Refugees*. Jakarta: Sekretariat Negara, 2016. Available online at <https://www.unhcr.org/id/sites/id/files/legacy-pdf/Presidential-Regulation-on-the-Handling-of-Foreign-Refugees-English.pdf>

with international legal principles governing voluntary repatriation. Therefore, this study seeks to fill this gap by examining the legal challenges surrounding the implementation of voluntary repatriation for Rohingya refugees within Indonesia's legal and policy framework, thereby contributing to broader debates on refugee governance in Southeast Asia.

Based on the foregoing discussion, this study seeks to conduct a more in-depth analysis of repatriation practices in Indonesia, particularly in relation to several key legal issues surrounding the repatriation of Rohingya refugees. Accordingly, this research addresses three main questions. First, how are the arrangements and legal provisions governing refugee repatriation established within the framework of International Law? Second, what obligations does Indonesia bear under international law as a transit country for Rohingya refugees? Third, how do Indonesia's international legal obligations interact with its domestic policies regarding the repatriation of Rohingya refugees?

Methodologically, this research employs a normative legal research design using a juridical–normative approach. Normative legal research focuses on the analysis of applicable legal norms, principles, and regulations that are relevant to the legal issues under examination. In this study, the analysis is directed toward legal instruments and frameworks related to refugee protection and repatriation. The scope of the research therefore corresponds to the research questions outlined in the introduction: first, the legal arrangements and provisions governing refugee repatriation under international law; second, Indonesia's obligations under international law as a transit country for Rohingya refugees; and third, the relationship between Indonesia's international legal obligations and its domestic policies concerning the repatriation of Rohingya refugees.

Repatriation Arrangements and Conditions for Refugees in International Law

The legal basis for the practice of repatriation can be found in Article 13 (2) of the Universal Declaration of Human Rights 1948 which states *Everyone has the right to leave any country, including his own, and return to his country*. The Article affirms the right of every individual to leave any country, including the country of origin, as well as the right to return to his or her country. This statement reflects the basic principle of freedom of

movement, which is a fundamental element of human rights.³⁷ This right not only gives the individual the freedom to seek a safer or better place but also recognizes the importance of the emotional and identity ties that a person has to the country of origin.

Based on these several phases, it can be known that the right to freedom of movement is a condition for a person as a refugee. There are restrictions that do not necessarily prevent the right to freedom of movement from immediately causing refugees to act arbitrarily. Meanwhile, Article 14 of the Universal Declaration of Human Rights 1948 states:

1. Everyone has the right to seek and to enjoy asylum in other countries from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

If examined more deeply, the article states that everyone has the right to seek and enjoy asylum in a country other than his or her own country. This article affirms that every individual has a fundamental right to seek refuge in another country when they face threats or resignations in their home country. This concept is also supported by the principle of non-refoulement, which prohibits states from returning refugees to places

³⁷ Freedom of movement is a fundamental element of Human Rights that guarantees individuals the right to move freely within a state and to leave and return to their own country. This right is recognized in international instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Freedom of movement allows individuals to seek safety, pursue opportunities, and maintain personal autonomy without arbitrary restrictions imposed by authorities. In the context of displacement and migration, this right is particularly significant, as it enables individuals fleeing conflict, persecution, or severe human rights violations to seek protection and safety beyond their place of origin. See Marjoleine Zieck, "Refugees and the Right to Freedom of Movement: From Flight to Return." *Michigan Journal of International Law* 39, no. 1 (2018): 19-116. <https://repository.law.umich.edu/mjil/vol39/iss1/3>; Jane McAdam, "An intellectual history of freedom of movement in international law: the right to leave as a personal liberty." *Melbourne Journal of International Law* 12, no. 1 (2011): 27-57. https://law.unimelb.edu.au/_data/assets/pdf_file/0011/1686926/McAdam.pdf; Fakhirafi Zharfan, et al. "Pulling at Both Ends of the String: The Political and Legal Tug in Refugee and Migration Policy in Indonesia." *Unnes Law Journal* 11, no. 2 (2025). <https://doi.org/10.15294/ulj.v11i2.15543>: 161-190; Muhammad Abdurrahman, "Digital Surveillance, State Power, and Civil Liberties in Contemporary Indonesia". *The Indonesian Journal of Critical Legal Studies* 1, no. 1 (2026): 121-50. <https://inleads.id/publications/index.php/IJCLS/article/view/19>

where they may be threatened.³⁸ It should be noted that this right cannot be exercised in cases of summons that actually arise from non-political crimes or from actions contrary to the purposes and principles of the United Nations. This article shows that the right to seek asylum is not absolute.

In the context of international law, individuals who engage in non-political crimes or acts that violate UN principles cannot claim the right to asylum as a legal shield. This includes ordinary criminal acts as well as more serious crimes such as war crimes or crimes against humanity. Therefore, while asylum is a right, there are limits set to maintain the integrity of the international legal system and the goals of the United Nations. Referring to the practice of repatriation, forced refoulement to the country of origin without proper evaluation can violate human rights and international protection principles.³⁹ Overall, this article reflects the balance between individual protection and the interests of the law and the security of the state because it does not accept all parties who have the potential to be criminals.

The legal basis for the practice of repatriation is contained in Article 12 (4) of the International Covenant on Civil and Political Rights which reads: *No one shall be arbitrarily deprived of the right to enter his own country.* This article emphasizes that no party can deprive a person of the right to enter his own country according to his nationality. So that the condition of a refugee who wants to decide to return to his country, no person/party can detain including the local government to prevent the entry of a citizen into the territory of the country where he is his nationality. This regulation supports the practice of repatriation, which is the practice of returning a refugee to his or her country of origin.

In addition, Article 13 of the International Covenant on Civil and Political Rights states:

³⁸ Aoife Duffy, "Expulsion to face torture? Non-refoulement in international law." *International Journal of Refugee Law* 20, no. 3 (2008): 373-390, <https://doi.org/10.1093/ijrl/een022>; Clare Frances Moran, "Strengthening the principle of non-refoulement." *The International Journal of Human Rights* 25, no. 6 (2021): 1032-1052. <https://doi.org/10.1080/13642987.2020.1811690>

³⁹ Jeff Crisp, and Katy Long. "Safe and voluntary refugee repatriation: From principle to practice." *Journal on Migration and Human Security* 4, no. 3 (2016): 141-147. *See also* Saul Takahashi, "The UNHCR Handbook on Voluntary Repatriation: The Emphasis of Return over Protection." *International Journal of Refugee Law* 9, no. 4 (1997): 593-612. . <https://doi.org/10.1093/ijrl/9.4.593>

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

This article emphasizes that a person who is legally in the territory of a party of the state can only be expelled based on a decision taken in accordance with the applicable law. This provision emphasizes the importance of a fair and transparent legal process in evictions. In addition, unless there are urgent reasons related to national security, the alien has the right to present grounds of denial against his or her deportation, providing an opportunity for individuals to defend themselves and present their arguments before a final decision is taken. This article also ensures the right of foreigners to have their cases supervised by competent authorities or specially appointed individuals, thus ensuring the existence of a mechanism for supervision and protection against expulsion decisions.

It should be noted that the existence of Article 13 of the International Covenant on Civil and Political Rights reaffirms the Theory of State Sovereignty. One of them was revealed by expert Jean Bodin⁴⁰ who stated that the similarities are divided into 2 (two) categories, namely "*sovereignty inward*" and "*sovereignty outward*." Inward sovereignty refers to the power of the state to regulate all internal affairs without interference from outside parties. In this context, the state has full authority to set and implement policies related to the lives of its people. In contrast, external sovereignty includes the role of the state in establishing relations with other countries, which often includes aspects of international partnerships and cooperation. Thus, these two types of sovereignty reflect the duality of state functions in managing internal and external affairs independently.

Based on Article 15 of the ASEAN Human Rights Declaration which reads: "*Every person has the right to freedom of movement and residence within the borders of each State. Every person has the right to leave any country including his or her own, and to return to his or her country.*"

⁴⁰ See Wm A. Dunning, "Jean Bodin on sovereignty." *Political Science Quarterly* (1896): 82-104. <https://doi.org/10.2307/2139603>

This regulation emphasizes the right to freedom of movement, which includes the freedom to return to one's country, which in this case is called repatriation. Repatriation that is often carried out by several countries so as not to violate the principle of non-refoulement is voluntary repatriation. Referring to Presidential Regulation No. 125 of 2016 concerning the Handling of Foreign Refugees, repatriation is explicitly referred to as voluntary repatriation, where voluntary repatriation is defined in Article 1 paragraph 2 which reads "*voluntary repatriation is the activity of voluntarily repatriating refugees to the refugee's country of origin.*" This voluntary repatriation can be caused because his refugee status application was rejected and finally rejected by the United Nations through the High Commissariat for Refugee Affairs in Indonesia. Refugees whose status is temporarily denied will be placed in the Immigration Detention Center.⁴¹ For individuals who do not have travel documents, a review will be carried out.

There are several implied meanings contained in international law. Article 33 of the Convention Relating to the Status of Refugees 1951 reads:

No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

This article affirms the principle of non-refoulement, which prohibits member states from expelling or returning refugees to territories where their lives or freedoms are threatened. This principle applies to

⁴¹ See Astrid Ditha FA, Amalia Diamantina, and Amiek Soemarmi. "Pelaksanaan Deportasi Orang Asing di Indonesia Berdasarkan Undang-Undang Nomor 6 Tahun 2011 Tentang Keimigrasian (Studi Kasus Kantor Imigrasi Jakarta Timur)." *Diponegoro Law Journal* 5, no. 2 (2016): 1-14; Okky Chahyo Nugroho, "Penegakan Hukum Terhadap Orang Asing di Kantor Imigrasi Kelas I Denpasar dan Kelas I Khusus Bandara I Gusti Ngurah Rai." *Jurnal Penelitian Hukum De Jure* 17, no. 2 (2016): 231-247. <https://lawpolicyjournal.id/index.php/dejure/article/view/157>. See also Tomás Ibarra Salinas, "Migration and Spatial Justice: Urban Integration of Refugees in Border Cities: Migración y justicia espacial: integración urbana de refugiados en ciudades de frontera". *Revista de Justicia Social en la Sociedad Urbana* 1, no. 2 (2025): 275-302. <https://publications.socipol.org/index.php/rjs/article/view/33>; Josefina Carmen Barrenechea Prado, "Migrants and Refugees: Examining the Global Protection System and Its Failures: Migrantes y Refugiados: Examinando el Sistema Global de Protección y sus Fracasos". *Revista de Derechos Humanos Contemporáneos* 1, no. 2 (2025): 257-284. <https://publications.socipol.org/index.php/rdh/article/view/41>.

international commitments to protect individuals from involvement they may face based on factors such as race, religion, nationality, membership in a particular social group, or political opinion. It can be said that countries that are parties to this convention have an obligation to provide protection to refugees and must not return them to their places of origin that could endanger their safety. This indicates that there are obstacles in the practice of repatriation, namely the principle of non-refoulement that opposes the repatriation action from transit countries. However, the benefits of this provision are not necessarily used by refugees to do things they should not. There are reasons that can be categorized as a condition of danger to the security of a country or the imposition of punishment by the judiciary that is final. Therefore, there is still potential for repatriation practices for refugees.

Refugees as individuals who choose Indonesia as a transit country have obligations that must be fulfilled in accordance with Article 2 of the Refugee Convention 1951 which reads: *“Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for maintenance of public order.”*

In the provision, it is known that refugees, in this case in transit countries, must continue to prioritize their obligations in maintaining public order. Based on the existence of refugees in Indonesia's sovereign territory, it is appropriate for the refugees to be subject to the applicable law. This is in accordance with the territorial principle which means that anyone who commits a crime in the territory of the country where the criminal law is enforced is subject to the criminal law.⁴² This principle is based on state sovereignty in its own territory and is stated in Article 2 of the Criminal Code which reads: *“Criminal provisions in Indonesian law apply to every person who commits a criminal act in Indonesia”*.

This article emphasizes Indonesia's commitment to upholding the law and protecting the public from various forms of crime. With the application of this inclusive law, any individual who breaks the law will face consequences, regardless of nationality or the location of the action taken. This strengthens the criminal system in maintaining justice and social security.

The sources of international law are divided into 4 (four), namely international treaties, international customs, general legal principles, and

⁴² Heidy Esmeralda Silooy, Juanrico Alfaramona Sumarezs Titahelu, and Denny Latumaerissa. “Penerapan Hukum Pidana Terhadap Warga Negara Asing Yang Melakukan Kejahatan Skimming di Indonesia.” *Pattimura Law Study Review* 1, no. 1 (2023): 65-77. <https://ojs3.unpatti.ac.id/index.php/palasrev/article/view/10871>

additional legal sources (court decisions and opinions of leading scholars in the world, as well as decisions on the equipment of international organizations and institutions).⁴³ Based on various sources of international law, they are divided into primary sources of law, namely international treaties, international customs, and general legal principles. Subsidiary legal sources are court decisions, international organizational and institutional decisions, and expert doctrine. Reference to primary legal sources has not been found explicitly governing the practice of repatriation in international legal sources. Meanwhile, according to *The Law Dictionary*, "*it occurs when a person who has been expatriated regains his or her citizenship.*"

Referring to customary international law as a secondary source of law, both state parties and non-state parties must comply with the principle of non-refoulement. For state parties, there is a juridical obligation to cooperate with UNHCR as stated in Article 35 of the Refugee Convention 1951 which states that states to the Convention must cooperate with UNHCR in the performance of its duties. For countries that are not parties to the Convention, this resolution that is recommended has no juridical force. Facts on the ground show that Indonesia has been cooperating with UNHCR since 1975. This shows that the resolution has become customary international law, as is the case with countries that are not parties to the convention.

The context of the Rohingya refugees they left their country due to conflict, so they were able to return to their country of origin. Furthermore, the right to return to the country of origin also emphasizes that every individual has a legitimate existence towards their homeland, which should not be ignored by the state.⁴⁴ This creates an obligation for every country to commit to ensuring that individuals can return to their home countries without fear. Therefore, Article 13 (2) not only serves as a protection for the right to freedom of movement but also as a record related to the state's responsibility to respect and protect the rights of its citizens. Therefore, the practice of repatriation can be carried out based on the theory of human rights, namely the right to return to one's country.

⁴³ Malcolm N. Shaw, *International Law*. Cambridge University Press, 2017.

⁴⁴ Anwar Hossain Choudhury, "Historical background of the Rohingya refugee crisis and the implication of their statelessness." *Innovation Journal of Social Sciences and Economic Review* 1, no. 1 (2019): 8-15, <https://doi.org/10.36923/ijsser.v1i1.23>; M. D. Islam, and Umme Wara. "Conflict potential of the Rohingya people in Bangladesh and beyond." *Journal of ASEAN Studies* 10, no. 1 (2022): 107-127. <https://doi.org/10.21512/jas.v10i1.8215>

Based on the four legal bases that govern the provisions of repatriation practices in international law, including the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights, the ASEAN Human Rights Declaration, and the Convention Relating to the Status of Refugees 1951, it can be drawn that the practice of repatriation is not explicitly regulated in international law sources. Based on various references, the researcher defines the practice of repatriation as the process of returning refugees to their country of origin after moving to a transit country or a third country.

According to the perspective of legal speaking, there is no obligation to ratify a convention. Based on the 189 member states of the United Nations, 141 countries are parties to the Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1967.⁴⁵ This means that approximately 74% of participants have ratified. There are 7 (seven) countries in Asia that are also party countries, namely Japan, South Korea, China, the Philippines, Cambodia, Iran and Yemen. Although Indonesia is not a state party and therefore the provisions of the Convention Relating to the Status of Refugees 1951 are not legally binding, the resolution issued by the UN General Assembly is customary law and politically and morally obligated to implement the resolution.

The repatriation process is regulated in the Convention Relating to the Status of Refugees 1951 through several principles and provisions aimed at protecting the rights of refugees. One of the main principles is non-refoulement, which is listed in Article 33, the content of which prohibits states from returning refugees to their countries of origin if their lives or freedoms are threatened. This confirms that repatriation cannot be carried out by force and must consider the safety of the individual concerned. Voluntary repatriation comes into focus in this context, where refugees have the right to return to their home countries without coercion, in a safe atmosphere. In 1996, for example, UNHCR issued a Repatriation Handbook Voluntary Letter, which defines volunteerism as the absence of physical, psychological or material effort that encourages refugees to repatriate.⁴⁶

⁴⁵ James C. Hathaway, ed. *Reconceiving international refugee law*. Vol. 30. Martinus Nijhoff Publishers, 1997.

⁴⁶ Jeff Crisp, and Katy Long. "Safe and voluntary refugee repatriation: From principle to practice." *Journal on Migration and Human Security* 4, no. 3 (2016): 141-147, <https://doi.org/10.1177/233150241600400305>

The voluntary repatriation process is often facilitated by UNHCR and other international organizations, which help to ensure that conditions in the country of origin are safe to return. UNHCR is a UN agency appointed to provide protection and assistance to refugees at the request of the government or the United Nations. UNHCR also has a responsibility to accompany refugees to obtain good protection. UNHCR was first established in Geneva, Switzerland on December 14, 1950. The UNCHR itself is engaged in the humanitarian field and has even received the Nobel Peace Prize in 1954 and 1981.⁴⁷ UNHCR has been operating in Indonesia since 1979. In addition to UNHCR, countries that are parties to the Convention Relating to the Status of Refugees 1951 are required to cooperate with UNHCR in the process of registering and issuing identity documents for refugees, which aims to protect them from deportation and arbitrary treatment.

The practice of voluntary repatriation is one of the repatriation practices that is widely implemented in several countries and is recommended by UNHCR. If peace and reconciliation can last, UNHCR will support voluntary repatriation efforts. In less-than-ideal conditions (e.g. when the sustainability of the peace process is not guaranteed, but the refugees will return on their own), UNHCR can facilitate the repatriation process. The core components of voluntary repatriation are physical, legal and security and material reconciliation. Indonesia is not only silent, but Indonesia's real action is rolling out grants worth Rp 7.5 billion to help repatriate Rohingya refugees from Cox's Bazar, Bangladesh, to Rakhine, Myanmar. This assistance is a form of Indonesia's commitment to the Rohingya crisis.⁴⁸ The current conditions show that the repatriation process for Rohingya refugees to Myanmar is hampered by unstable political conditions in their home countries. Although Indonesia has committed to supporting repatriation, the effort still faces many obstacles, including assurances regarding their safety and recognition of their citizenship status in Myanmar.

So far, the return of the Rohingya to Myanmar has also reached an impasse due to the takeover of power from the National League of Democracy government under the leadership of Aung San Suu Kyi by the junta's military. If power is taken from Suu Kyi's side, which can be

⁴⁷ Gil Loescher, "UNHCR at fifty: Refugee protection and world politics." *Problems of Protection*. Routledge, 2013, pp. 3-18.

⁴⁸ Heru Susetyo, and Paul Chambers. "Repatriation for Rohingya asylum seekers in Indonesia: a durable but almost impossible solution." *Asian Affairs: An American Review* 48, no. 1 (2020): 63-84. <https://doi.org/10.1080/00927678.2020.1833414>

closely linked to the United States, countries such as Russia will provide support to the junta government. This is such as a statement from the Russian foreign minister who did not condemn the seizure of power carried out by the junta and a statement from Alexander Fomin, who is the Deputy Minister of Defense of Russia during his visit to Myanmar in commemoration of Myanmar's armed forces day in March 2021, stating that "Myanmar is an ally and strategic partner of the Russian Federation in Southeast Asia and the Asia-Pacific region".⁴⁹ Therefore, Russian support could slow the return of the Rohingya because of the country's role and influence at the UN.

As a country that has not ratified Indonesia, in handling foreign refugees when compared to Thailand and Australia has weaknesses and advantages. The similarities between these three countries are that they have not ratified regulations related to refugees.⁵⁰ Thailand does not have any specific laws governing refugees, only the Immigration Act B.E. 2522 (1979) which includes the term "*aliens*" for people who are not Thai citizens and "*immigrant*" for foreigners who enter Thailand. Meanwhile, Australia in its handling of refugees is quite harsh and even leads to punitive or punishing asylum seekers. Meanwhile, in Indonesia, it adheres to the principle of Voluntary Repatriation and Resettlement which in principle avoids repressive and punitive actions against foreign refugees. On the other hand, Thailand in handling refugees has a strict legal mechanism with a persuasive approach by providing opportunities for foreign refugees to stay in Thailand as stipulated in the Immigration Act B.E. 2522, especially Section 7 point (3) which is different from Indonesia while still returning foreign refugees to their country of origin.⁵¹

⁴⁹ Syafiq Athoillah, "The Rejection of Rohingya Refugees in Aceh: A Scientific Analysis from Human Rights and Public Policy Perspectives." *Al Mabhats: Jurnal Penelitian Sosial Agama* 9, no. 2 (2024): 101-114, <https://journal.uinsuna.ac.id/index.php/AlMabhats/article/view/3392>. See also Iqthyer Uddin Md Zahed, and Bert Jenkins. "Aung San Suu Kyi and ethnic cleansing: the dark side of 'Myanmar way' democracy." *South East Asia Research* 30, no. 2 (2022): 202-218. <https://doi.org/10.1080/0967828X.2022.2086062>

⁵⁰ M. Alvi Syahrin, et al. "Refugee Management in the National Security Dimension: A Comparative Study in Indonesia, Malaysia, and Thailand." *Journal Evidence of Law* 4, no. 3 (2025): 1276-1289. <https://jurnal.erapublikasi.id/index.php/JEL/article/view/1790>; Arie Afriansyah, Hadi Rahmat Purnama, and Akbar Kurnia Putra. "Asylum seekers and refugee management: (im)balance burden sharing case between Indonesia and Australia." *Sriwijaya Law Review* 6, no. 1 (2022): 70-100. <https://doi.org/10.28946/slrev.Vol6.Iss1.1145.pp70-100>

⁵¹ Mohamad Hidayat Muhtar, Zamroni Abdussamad, and Zainal Abdul Aziz Hadju. "Studi Perbandingan Penanganan Pengungsi Luar Negeri di Indonesia, Australia, dan

Analysis of Indonesia's Obligations in International Law as a Transit Country for Rohingya Refugees

Geographically, Indonesia is strategically located as a transit country for cross-border refugees. Indonesia has seaports and borders with other countries, especially bordering West Kalimantan and Sabah, Malaysia, Australia in the south, and the eastern part with Timor Leste.⁵² There are 79 (seventy-nine) legal border gates in Indonesia outside the immigration routes. This gate is generally known as 2 (two) routes, namely the west lane and the east lane. The western route passes through Medan, Jambi, Batam and Lampung while the eastern route passes through Bau-Bau, Southeast Sulawesi.⁵³

Rohingya refugees are individuals who experience discrimination not only in the form of administrative obstacles, but also systematic physical and psychological violence. Since the 1970s, they have repeatedly endured mass expulsions and military operations aimed at "clearing" the Rakhine region of the Rohingya presence. These operations often involve brutal acts such as torture, rape, burning of houses, and the destruction of their villages. The Myanmar government argues that these operations are part of an effort to counter "terrorists" or threats to the stability of the country, even though the main targets are the Rohingya civilian population.⁵⁴ As a result, waves of Rohingya refugees often flee to neighboring countries, one of which is Indonesia in very dire conditions.

Upon the arrival of the Rohingya community, the first classification will be carried out with the screening-in group, namely the boatman group who is classified as a refugee and the screening-out group, namely the boatman who is not a refugee. This screening-in group meets the criteria for genuine refugees protected by the Convention Relating to the Status

Thailand." *Jurnal Hukum Ius Quia Iustum* 30, no. 1 (2023): 26-48. <https://doi.org/10.20885/iustum.vol30.iss1.art2>

⁵² Antje Missbach, "Doors and fences: Controlling Indonesia's porous borders and policing asylum seekers." *Singapore Journal of Tropical Geography* 35, no. 2 (2014): 228-244. <https://doi.org/10.1111/sjtg.12059>

⁵³ Missbach.

⁵⁴ Nicholas Idris Erameh, and Victor Ojakorotu. "The Myanmar-Rohingya crisis, civilian protection, and the dilemma of the responsibility to protect norm institutionalization." *Ethnic Studies Review* 44, no. 1 (2021): 50-74. <https://doi.org/10.1525/esr.2021.44.1.50>

of Refugees. There are several factors that cause Indonesia to be targeted as a transit country, including:⁵⁵

1. Indonesia has a large sea area and a long coastline, but it is not supported by strict legal rules. To make it easy for refugees and asylum seekers to enter Indonesian territory.
2. Indonesia's position is very weak in dealing with the problem of asylum seekers and refugees from other countries because they do not have national regulations that specifically address this problem.
3. Lack of facilities and infrastructure in handling refugees and asylum seekers to monitor Indonesian waters massively.
4. The existence of UNHCR in Jakarta is also a special attraction for refugees.
5. The culture of Indonesians people who are famous for their hospitality, creates the impression that Indonesian people can easily accept the arrival and presence of refugees.
6. Indonesia has a harmonious life with various ethnicities, religions, and cultures.

Because Indonesia's legal system has not ratified the 1951 Refugee Convention, Law No. 6 of 2011 on Immigration still considers refugees as immigrants who enter Indonesia without official documents. Therefore, refugees who arrive in Indonesia always take immigration action in the form of elimination, which can last up to a maximum of 10 years in immigration detention centers spread across 13 locations throughout Indonesia. Immigration detention houses serve as temporary shelters for foreigners subject to immigration administrative measures.⁵⁶

Indonesia's attitude as a transit country has allowed 2 (two) international institutions to take care of asylum seekers.⁵⁷ These two international institutions are:

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) which monitors refugee status, placement to third countries, and refugee repatriation.

⁵⁵ Anis Widyawati, and Ridwan Arifin. "The Protection of Illegal Immigrants under Indonesian National Law and International Law." In *1st International Conference on Indonesian Legal Studies (ICILS 2018)*, pp. 305-308. Atlantis Press, 2018.

⁵⁶ Syarsabilah Syarsabilah, and Hendry Andry. "Analisis Kinerja Seksi Keamanan dan Ketertiban Pada Deteni di Rumah Detensi Imigrasi (RUDENIM) Kota Pekanbaru." *PUBLIKA: Jurnal Ilmu Administrasi Publik* 4, no. 2 (2018): 237-262. <https://journal.uir.ac.id/index.php/JIAP/article/view/3596>

⁵⁷ Antje Missbach, *Troubled transit: Asylum seekers stuck in Indonesia*. ISEAS-Yusof Ishak Institute, 2015.

2. The International Organisation for Migration (IOM) is responsible for providing assistance including the provision of food, accommodation and health care. Asylum seekers are the responsibility of IOM until the refugees are placed in a third country or voluntarily return to their country of origin.

As a country that has been independent since 1945 and has been a member of the United Nations for 57 years, Indonesia can ratify the relevant Conventions. The Preamble to the 1945 Constitution of the Republic of Indonesia, has stated its intention to implement a world order based on independence, lasting peace, and social justice. Indonesia's position at the international level should be at the forefront of the success of international instruments on human rights that have not yet been ratified, including the 1951 Refugee Convention which has been ratified by 140 countries. If you look at its history, Indonesia was once the host and one of the initiators of the 1955 Asian African Conference in Bandung. In its final decision, it expressed its full support for the fundamental principles of human rights as stated in the UN Charter and noted the Universal Declaration of Human Rights 1948 as a standard of common achievement for all people and nations.

Until now, Rohingya refugees who enter Indonesia have never been returned to the sea and have always received assistance from the Indonesian government. This assistance is given until the refugees are placed in a third country because Indonesia's status is only a transit country. Indonesia, which is a transit country, has not yet ratified the 1951 Refugee Convention so Indonesia is not obliged to accommodate refugees permanently. More deeply, Indonesia's condition as a transit country should not suffer losses. This is because the position of refugees while in transit countries is entirely under the responsibility of UNHCR including daily living expenses until these refugees are transferred to the destination country, this is because these refugees cannot earn a living while in transit countries.⁵⁸

Although funding for refugees has been assisted by UNHCR, IOM, and JRS, the Indonesian government continues to allocate funds to support the lives of its Rohingya refugees in Indonesia. The growing number of refugees can potentially disrupt Indonesia's economic stability. It is also known that the existence of Rohingya refugees in the number of arrivals and departures is not always worth it, so that many internal

⁵⁸ Yanuar Sumarlan, "Political economy of pragmatic refugee policies in Indonesia as a transit country." *Asian Review* 32, no. 3 (2019): 63-93. <https://so01.tci-thaijo.org/index.php/arv/article/view/240363>

conflicts arise in the future. Indonesia as a transit country is hit by international obligations based on human rights as well as national obligations to maintain order and security for the Indonesian people themselves.

Reviewed there are 4 (four) principles that must be carried out by the state towards refugees, including:⁵⁹

1. The prohibition against expulsion or return in the event of repatriation, is in violation of Articles 32 and 33 of the 1951 Refugee Convention.
2. The destination country or transit country is obliged to provide special protection can provide security of refugees.
3. The destination country or transit country is not allowed to arrest refugees (prohibition against detention of refugees). The arrest of refugees in camps by the destination or transit country in violation of Article 31 of the Refugee Convention.
4. Recognition and status (gainful employment of refugees). That granting status to refugees is only the initial stage so that refugees get their rights.

Based on these four principles, Indonesia has tried to maintain the lives of refugees who choose Indonesia as a transit country. First, Indonesia does not impose forced repatriation of refugees but involves UNHCR as an accomplice of the UN in accordance with the human rights theory, namely the right to move. However, this is done by Indonesia not based on international obligations because Indonesia has not ratified related conventions and the application of the Dualism Theory to international law. Second, Indonesia has protected the safety of refugees by providing life assistance in the form of boards, food, and clothing according to capacity. Third, Indonesia as a transit country does not make baseless arrests of refugees. However, if an unlawful act is found, it will be subject to strict sanctions so as not to harm Indonesia's sovereignty. According to the theory of state sovereignty regulates various aspects of government, and performs various actions within a country, including but not limited to power i.e. the state can make laws, implement and enforce laws, and punish people.⁶⁰ Fourth, the existence of refugees in Indonesia will get their rights after their status as a refugee is declared valid by

⁵⁹ See Riadussyah, "Tanggung Jawab Indonesia sebagai Negara Transit bagi Pengungsi Anak Berdasarkan Hukum Internasional."

⁶⁰ Ayu Nrangwesti, "The Concept of Sovereignty in the Perspective of International Law." *Criminal Law and Legal Development* 5, no. 1 (2022): 11-24. <https://doi.org/10.13140/RG.2.2.34928.40961>

UNHCR. This aims to have good data collection for the next process, namely repatriation or departure to a third country.

According to UNHCR, at the end of 2023, there were 12,295 refugees registered with UNHCR in Indonesia. As a transit country, refugee reception in Indonesia is based only on humanity. According to the theory of human rights, there are several rights that are recognized and protected, especially in this case refugees, namely the rights of refugees in international law including the right not to be treated discriminatory, the right to freedom of religion or belief, the right to exemption from extraordinary measures, the right to personal status, the right to access to justice, the right to wage employment, the right to practice one's profession, the right to a place of residence, the right to public education, the right to public assistance, the right to labor laws and regulations, the right to administrative assistance, the right to freedom of movement, the right to an identity document, the right to exemption from legal sanctions for refugees who enter illegally, the right not to be expelled, and the right not to be repatriated.⁶¹

The Relationship between Indonesia's International Obligations and Domestic Policy in the Repatriation of Its Rohingya Refugees

In international law, it is known that there are two theories: Monism and the Theory of Dualism.⁶² According to the Monism Theory, international law and national law are correlated with each other, national law is compliant and must be in accordance with international law. According to the Dualism Theory, international law and national law are 2 (two) different legal systems, not having a correlation of superiority or subordination. These two theories can be chosen one and applied in the implementation of international law in each country. Indonesia itself

⁶¹ M. Alvi Syahrin, Anindito Rizki Wiraputa, and Koesmoyo Ponco Aji. "Indonesian Legal policy in treating international refugees based on human rights approach." *Law and Humanities Quarterly Reviews* 1, no. 4 (2022). <https://doi.org/10.31014/aior.1996.01.04.41>; Tinnakorn Rattanakorn, "Inclusive Education in Indonesia: A Case Study of Policies Supporting Migrant and Refugee Children". *Indonesian Education Policy and Justice Review* 1, no. 4 (2024). <https://doi.org/10.65815/ddc2ng45>; Ridwan Arifin, and Ngboawaji Daniel Nte. "The Role of Faith-Based Organizations in Promoting Justice for Refugees and Migrants in Indonesia". *Indonesian Theological Justice Review* 2, no. 1 (2025). <https://doi.org/10.65815/7rf78c35>

⁶² Natalia A. Chernyadeva, "On the Concept of Monism in the Theory of International Law." *Justice* 7, no. 4 (2025): 181-192. <https://doi.org/10.37399/2686-9241.2025.4.181-192>

adheres to the Dualism Theory in implementing international law in its national law. The difference between national law and international law is seen from 3 (three) aspects, namely:⁶³

1. The difference from the source of law, national law comes from the will of the state, while international law comes from the common will of various countries in the international community.
2. The difference from the subject of law, where the subject of national law is an individual who is in a country, while the subject of international law is a member country of the international community; and
3. The difference in the force of law is that national law has more binding power compared to international law which is more of a horizontal and non-binding relationship between countries.

The selection of the Dualism Theory positions Indonesia that international law and national law are separate legal systems, and do not have a relationship of superiority or subordination. Indonesia is recognized as a subject of international law after becoming a country. To be declared a state itself has requirements that must be met, according to the Montevideo Convention, which include permanent residents, territories, governments, and the ability to establish international relations with other countries/state sovereignty. One of the conditions that must be met is state sovereignty. According to his theory, state sovereignty is the supreme power of a state held by the state itself.⁶⁴ The theory of state sovereignty asserts that each state has the right to regulate its own internal affairs without outside interference. However, in an era of increasing globalization and interdependence, state sovereignty cannot be separated from international obligations. This condition makes Indonesia have to balance maintaining national sovereignty and fulfilling its international obligations to refugees.

Indonesia's national domestic policy in dealing with Rohingya refugees must reflect a commitment to the protection of human rights while still paying attention to security and integrity. The relevant legal basis covers a wide range of domestic and international legal instruments. For example, Law No. 23 of 2006 on Child Protection and Law No. 12 of 1997 on the Establishment of Laws and Regulations provide a legal

⁶³ Jazim Hamidi, Moch Adi Sugiharto, and Muhammad Ihsan. *Membedah Teori-Teori Hukum Kontemporer*. Universitas Brawijaya Press, 2013.

⁶⁴ Jorge E. Núñez, "State sovereignty: Concept and conceptions." *International Journal for the Semiotics of Law-Revue Internationale de Sémiotique Juridique* 37, no. 7 (2024): 2131-2150. <https://doi.org/10.1007/s11196-024-10170-y>

framework for the protection of basic rights for all individuals, including refugees. In addition, Indonesia is also involved in cooperation with international institutions such as UNHCR to ensure that the basic needs of refugees are met. This cooperation includes the provision of humanitarian assistance, temporary housing, and access to health and education services. The implementation of Indonesia's international obligations and domestic policies can be seen from several concrete steps taken by the government. For example, the government has committed to providing educational facilities for Rohingya refugee children in shelters. In addition, basic health services are also provided through cooperation with non-governmental organizations and international institutions.⁶⁵

Referring to human rights theory, it emphasizes that every individual, including refugees, has basic rights that must be universally protected. Universal here is interpreted as any individual or country that is not even correlated with refugees. Therefore, human rights will operate as a global localism or a form of globalization from above.⁶⁶ In this context, Indonesia is expected to fulfill its responsibilities in protecting the rights of Rohingya refugees, such as access to education protected in human rights theory, namely the right to education, health services protected in human rights theory, namely the right to life, and decent housing protected in human rights theory, namely the right to find a safe place to live. This is in line with humanitarian principles regulated in various international instruments, even though Indonesia is not a party to the 1951 Refugee Convention.⁶⁷ Constructive dialogue through displacement is essential to

⁶⁵ Talia Sarah Alisha Gunawan, "Health Justice for Migrants and Refugees: Addressing Healthcare Disparities in Indonesia's Healthcare System". *Indonesian Health Justice Review* 1, no. 3 (2024), <https://doi.org/10.65815/r72h5y04>; Ni Luh Gede Astariyani, et al. "Policy on the Right to Education of Refugees in Indonesia and Australia". *Lex Scientia Law Review* 7, no. 1 (2023): 249-276, . <https://doi.org/10.15294/lesrev.v7i1.62964>; Mumpuni Tri Utami, "The Implementation of Non-Refoulement Principle in Case of Rohingya." *The Digest: Journal of Jurisprudence and Legisprudence* 1, no. 2 (2020): 197-222. <https://doi.org/10.15294/digest.v1i2.48629>

⁶⁶ Boaventura de Sousa Santos, "Toward a multicultural conception of human rights." In *Human Rights*. Routledge, 2017, pp. 341-355.

⁶⁷ Siti Faridatul Istiqomah, and Ethan Surya Fajar Mahardhika. "State Responsibility for Human Rights Violations in the Rohingya Crisis under International Law". *Sangia Nibandera Law Research* 2, no. 2 (2025): 181-206, <https://doi.org/10.5281/zenodo.19655757>; Fakhirafi Zharfan, et al. "Pulling at Both Ends of the String: The Political and Legal Tug in Refugee and Migration Policy in Indonesia." *Unnes Law Journal* 11, no. 2 (2025): 161-190; Ridwan Arifin, et al. "Building a Model for Refugee Rights Fulfillment: Community Collaboration at Cisarua Refugee Learning Centre in the Context of International Law." *Indonesian Journal of Legal Community Engagement* 8, no. 2 (2025):

build trust and ensure that the assistance provided is tailored to their needs. Therefore, the relationship between Indonesia's international obligations and domestic policies in the repatriation of Rohingya refugees reflects efforts to implement human rights principles and defend state sovereignty. Indonesia seeks to implement policies that are responsive to the needs of Rohingya refugees without ignoring the security challenges that may arise. In this context, a balanced approach between the protection of human rights and the welfare of the state is crucial to achieving sustainable solutions for Rohingya refugees in Indonesia.

On the other hand, from a domestic policy perspective, Indonesia as a country of law, is obliged to guarantee and protect the rights of its citizens. The 1945 Constitution expressly contains the basic rights of citizens, hereinafter referred to as constitutional rights. The constitutional rights of citizens are rights regulated in the 1945 Constitution including the right to life, the right to family and continue posterity, the right to self-development, the right to justice, the right to personal freedom, the right to a sense of security, the right to welfare, the right to be in government, the rights of women, and the rights of children.⁶⁸ Explicitly, the issue of Rohingya refugees that causes conflict can be contrary to efforts to fulfill the right to a sense of security for Indonesian citizens. Furthermore, in the Criminal Code, Article 28G paragraph (1) states:

Everyone has the right to the protection of his or her personal life, family, honor, dignity, and property, and to the right to a sense of security and protection from the threat of fear to do or not do something that is a human right.

In addition, Article 28I of the 1945 Constitution reads "*that the protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the state, especially the government*". This article emphasizes that the

469-492, <https://doi.org/10.15294/jphi.v8i2.33111>; Ahmad Lukman Hadi, Kholifatul Muna, and Fanisa Mayda Ayiliani. "Indonesia's Accountability as a State That Did Not Ratify the 1951 Refugee Convention on the Rohingya Ethnic Group in the Perspective of International Human Rights." *Pandecta Research Law Journal* 19, no. 2 (2024): 702-722, <https://doi.org/10.1093/oxfordhb/9780199652433.013.0021>; Ayub Torry Satriyo Kusumo, et al. "Reforming Social Rights for International Refugees in Indonesia: Towards Enhanced Welfare and Legal Protection." *Journal of Law and Legal Reform* 6, no. 4 (2025): 1929-1966. <https://doi.org/10.15294/jllr.v6i4.22778>

⁶⁸ Leli Tibaka, and Rosdian Rosdian. "The Protection of human rights in Indonesian constitutional law after the amendment of the 1945 constitution of the republic of Indonesia." *Fiat Justisia: Jurnal Ilmu Hukum* 11, no. 3 (2017): 266-288. <https://doi.org/10.25041/fiatjustisia.v11no3.1141>

Indonesian government is also responsible for the fulfillment of human rights. However, an analysis of the Rohingya refugee problem shows that this issue is not only Indonesia's responsibility, but a global problem that requires serious attention. The resolution of this problem will not happen on its own as time goes by without concrete action. It is hoped that the United Nations (UN) will not underestimate this issue, given that this problem has existed consistently every year without any significant realization to solve it. Countries that are parties to the 1951 Refugee Convention are expected to be more active and committed in addressing these humanitarian issues, rather than ignoring the obligations to which they have signed. Indonesia, which has shown a greater active role than other countries in the 1951 Refugee Convention, is expected to take advantage of bilateral relations with other countries to communicate and cooperate in resolving refugee issues. This is important so that the rights of refugees can be fulfilled and discrimination against them can be avoided.

What needs to be studied is that Indonesia has tried to treat refugees fairly, even though it has not ratified the 1951 Refugee Convention. However, it is also important to maintain the rights and obligations of Indonesian citizens so as not to cause social conflicts between refugees and local communities. In this situation, Indonesia is expected to continue to pay attention to the principle of non-refoulement, which is not to return refugees to places where they are threatened with discrimination or violence. The policy steps taken must be in line with humanitarian efforts, while maintaining the welfare of the Indonesian people. Therefore, UNHCR as the party with full responsibility is expected to carry out voluntary repatriation practices for the convenience and protection of the rights of potentially deprived parties.

Conclusion

Repatriation arrangements for refugees, as reflected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the ASEAN Human Rights Declaration, and the Convention Relating to the Status of Refugees, reveal that while international law does not provide detailed procedural rules for repatriation, it establishes a normative framework emphasizing the protection of fundamental rights and the voluntary nature of return. In this study, repatriation is defined as the process by which refugees return to their country of origin after residing in a transit or third country. In Indonesia, UNHCR has played a central role in refugee protection since

1979, and as a transit country, Indonesia provides reception on humanitarian grounds. By upholding principles such as the prohibition of forced return, the provision of security, and recognition of refugee status, Indonesia has sought to protect refugees, including the approximately 12,295 registered Rohingya refugees at the end of 2023, demonstrating a commitment to humanitarian protection despite not being a party to the 1951 Refugee Convention.

From the perspective of international law, Indonesia has an obligation to contribute to the protection of human rights for displaced individuals. However, under the Dualism Theory, international law and domestic law operate as separate legal systems, requiring incorporation into national legislation to be directly enforceable. While Indonesia has not ratified the 1951 Refugee Convention, it has nevertheless made efforts to treat refugees fairly and humanely. At the same time, it must balance refugee protection with safeguarding the rights and welfare of its citizens to prevent social tensions. Upholding the principle of non-refoulement remains essential, ensuring that refugees are not returned to situations of persecution, violence, or discrimination, while reflecting Indonesia's ongoing engagement with both humanitarian and legal responsibilities in the region.

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GENERATIVE AI STATEMENT

During the preparation of this manuscript, the authors use ChatGPT and Gemini to refine language and improve readability. Following this process, the authors critically reviewed, edited, and validated the output to ensure accuracy and scientific integrity. The authors maintain full accountability for the final content. AI was used solely as a supportive tool and is not credited with authorship. No original data analysis or interpretations were performed by the AI without human oversight.