

Toward a New Legal Framework for Settling Rohingya's Refugee Crisis in Indonesia: A Lesson Learned from Aceh Province

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ABSTRACT

The crisis of Rohingya people has been accumulated both in global and national sphere. Particularly, in northern part of Indonesia (Aceh province), Rohingya people found floating under emergency situation since 2015. Fortunately, local people and local government helps them while the Indonesian government faces a legal constrains as Indonesia is not a party to the 1951 Convention and the 1967 Protocol on the Status of Refugee. So there is no legal obligation to accept what has been called 'illegal migrants' under Indonesian's immigration law. However, the issuing of Presidential Regulation (Perpres) 125/2016 has flashed out a new hope for Indonesia to play a significant role in settling Rohingya people in Indonesia. Hence this paper examines the understanding and the extent to which the effectiveness of Perpres 125/2016 in dealing with refugees in Indonesia, especially with Rohingya people in Aceh province. Using doctrinal and field study approach, this paper found that the Perpres 125/2016 has been limited in terms of meaning and scope to cover the reality of Rohingya people in Aceh province. The meaning is mostly to cover emergency, political based refugees, handing over the responsibility from central into local government under immigration setting. Therefore this paper suggests some fundamental change of this Perpres 125/2016 to include preventive measures, resettlement and repatriation based on factual reality of Rohingya crisis which is remain uncertain in temporary places in Aceh province. The multi-stakeholders coordination should be taken into account, particularly, International organisation such as UNHCR representatives in Indonesia, government and non-government institutions, as well as local communities.

Keywords: *Presidential Regulation, refugee, Rohingya, Indonesia, Aceh*

1. INTRODUCTION

Rohingya has publicly known as refugees in Indonesia since 2009, and has attracted more serious attention in 2015 to date. The latest number of refugees in Indonesia is 14.016, including 8473 refugees in several temporary shelters and 13 detention centres, and 5543 are Independent refugees. There is no clear policy on their livelihood, health, education, and societal adaptation strategies. So the government primarily adhere to the general immigration law that considered refugee as illegal migrant. However, there is a breakthrough policy, called Presidential Regulation 125/2016 which recognised the term 'refugee' as foreign people within emergency situation found in Indonesian territory. This temporary policy is based on humanitarian sense, but in practice it has not work well as contradicted to higher level law of immigration 2011. But in certain regional level this was supported by the UNHCR and the International Organization for Migration (IOM), along with local community. Final report shows on 20 April 2018 that 79

Rohingya found under emergency situation in Bireun District, Aceh.

Rohingya refugees have entered the territorial waters of Aceh province, Indonesia in recent years. They were found by the local people of Aceh floating on the sea with desperately needed condition. The biggest refugee wave were found in 2015 estimated that 25,000 people fled from Myanmar across the Andaman sea to Thailand, Indonesia and Malaysia [1]. About 20 to 80 Rohingyas are sailing with their boats for fear of persecution from the Myanmar government [2]. They were accepted by fishing communities in the areas of East Aceh, Bireun and North Aceh [3]. The strategic position of Indonesia which is located on the equator and is located between the continents of Asia and Australia and the Pacific Ocean and the Indian Ocean which is the cause of this wave of refugees is inevitable [4].

Indonesia has not ratified the 1951 Convention and the 1967 Protocol, but humanitarian attitudes refer to the 1945 Constitution Amendment, Article 28g (paragraph 2)

which states that everyone has the right to be free from torture or treatment which degrades human dignity and is entitled to political asylum from other countries [5]. The arrangements that address the issue of refugees are contained in Law No. 37 of 1999 concerning Foreign Relations in Article 25 to Article 27 Chapter VI concerning Provision of Asylum and Refugee Issues [6]. In Article 26 stated that the granting of asylum to foreigners must be in accordance with national legislation, and also keep looking at the international custom and practices of countries.

Article 27 of Law No. 33/1999 on foreign relations has initiated the issuance of Presidential Regulation Number 125/ 2016 which normatively became a way in covering the legal vacuum related to the handling of refugees so far. This Perpres provides a clear definition of refugees so that the protection of refugees in this presidential regulation is carried out since the arrival of refugees into Indonesian waters. This Perpres is a temporary solution to the constraints of legal vacuum. The absence of *lex specialis* in Indonesian immigration arrangements, specifically causes refugees in the Aceh region to be categorized as *illegal migrants*, because their arrival is not accompanied by official documents as stipulated in Law No. 6 of 2011 concerning Immigration [7]. Even the Indonesian government in 2015 has rejected the flow of refugees for security and economic reasons [8]. However, Aceh continues to accept the flow of refugees and treats them as guests who need help. This then attracts the concerns of the government to the issue so that they initiated to draft a Perpres concerning foreign refugees stranded in Indonesian waters [9]. Therefore, this paper would focus on two main issues, including the legal framework as the basis for handling of Rohingya refugees in Aceh, and the experiences of local people and government in Aceh against Rohingya refugee.

2. METHODOLOGY

This study utilised doctrinal and field research. Comprehensive and analytical study of primary and secondary legal material is paramount. Using a statute and conceptual approach, the data found are analysed qualitatively by describing the data generated from the research in the form of systematic exposure so that it can be obtained an overview of the problems that are focusing on.

3. RESULTS

3.1. Legal Framework

Even though Indonesia has not ratified the 1951 Convention on Refugee status, Indonesia, on the other side, have ratified the Human Rights Convention which includes *Non Refoulment* principles [10]. The principle

has implicitly and explicitly stated in the article 3 Convention Against Torture, article 45 paragraph 4 Geneva Convention IV (Fourth Geneva Convention) 1949, at article 13 International Covenant Civil and Political Rights 1966, and other human rights instruments. This principle has also been recognized as part of international customary law. In a sense, countries that have not become parties (State Parties) to the 1951 Refugee Convention must respect this *Non Refoulement* principle as Indonesia has ratified the Anti-Torture Convention, Geneva Convention IV, and the International Covenant on Civil and Political Rights, all of which govern the principle of *Non Refoulement* [11].

Now the president of the Republic of Indonesia has issued Presidential Regulation no. 125/ 2016 concerning the handling of refugees from abroad, a solution for stakeholders to treat foreign-origin refugees who enter without official documents for reasons of fear of persecution from their country of origin. In Perpres No/126 Year 2016, Indonesia has adopted definition of Refugee which stated by the 1951 Convention, although Indonesia is not party of the Convention.

So the purpose of Perpres No.125/ 2016 is to manage the refugees who come to Indonesia. They will get treatment since they were found and facilitate and supervise with local and international institution, such as UNHCR. It stated by Director of Immigration in Ministry of Law and Human Rights, Ronny Sompie [12]. The Handling of Refugee is regulated in Article 2 of PR 125 [13] which states it will be applied based on cooperation among Central Government and United Nations through the representatives in Indonesia or international organization. For the International Organization, it is only for those who have agreement with Indonesia Government.

3.2. Aceh Experiences

The concept of protection provided by the Acehese community towards Rohingya refugees is based on three arguments: Islamic teachings, historical reasons experienced by Acehese people during the long conflict, and Acehese customs [14].

3.3. Islamic Teachings

Based on an understanding of the history and origin of Islam in the archipelago, especially in Aceh, it is not an exaggeration to say that Muslims, especially Acehese fishing communities, always view Islamic law, as sacred from the perspective of the practical aspects of their daily lives. The theme of discussion on social, political and legal aspects of Islam in Indonesia and especially Aceh is broadly focused on how to bridge the gap between religious ideals (the supposed level), that humans must be fair in treating other humans, no violence, mutual

protection and care. And we compare the complexity of social reality (the level of reality), that Indonesia has not prospered its people, there are still many poor people who still need government assistance and this is also experienced by the people of Aceh today. But the value of Islamic law has entered the daily lives of Acehese people, that religious law has never been separated from real human life [15]. That there is a side of happiness and the success of its own laws when local wisdom of Aceh can be one stage in resolving humanitarian issues.

The history of protection of refugees has been found in the application of the Islamic teachings [16]. The idea of providing protection (Asylum) arose naturally in the people of Aceh because of its Islamic teachings which teaches people to provide protection or assistance to those in need. In the Qur'an the asylum principle is clearly regulated in the Surah of Ibrahim verse 35 and the Letter of At Taubah verses 6 and 71 [17].

In Surah Ibrahim verse 35 stated: "And (remember), when prophet Ibrahim prayed, O Lord, make this country (Mecca), a safe country, and keep me and my grandchildren from worshiping idols." Here prophet Ibrahim begged to God that the mosque which he founded with Prophet Ismail, which later became the Grand Mosque in the city of Mecca, a safe place (asylum) for people who needed protection. The mosque is a sacred place and the house of God, so there is no violence against those who seek refuge in the Grand Mosque.

The earth in any part of the world is sacred to be a place of prostration, as long as there is the sound of the call to prayer echoing, the Muslims get the rights to other Muslims to protect and guard. When the flow of refugees into Aceh waters, one of the Acehese people echoed the Adhan, which caused a sense of emotion among the Acehese people, hand in hand helping victims stranded in the sea, as if meeting old families who found difficulties. They had time to carry out the Ramadan service in Aceh. According to them Aceh (Indonesia) is an Islamic country, Acehese are very kind and helpful so they have no fear and worry as experienced by their country. Adversely, since 2012 Rohingya in Myanmar was forbidden to pray in congregation in the mosque, forbidden for the adhan and read the Al-Qur'an in loudspeakers [18].

Furthermore, the verse concerning Asylum is found in the Surah At-Taubah verse 6: "And if one of the polytheists asks for your protection, protect him so that he can hear the word of God, then deliver him to a place that is safe for him. This is because of those who do not know. [19]"

The provisions in this verse come from Bedouin customs in pre-Islamic times which were then absorbed into Islamic teachings because they were considered not contradictory, namely providing protection (asylum) to foreigners for 3 days. Even the Islamic teachings protect the non-muslim who need protection This was the opinion of the Acehese when they found out why they spent

spending food and clothes that they had delivered to refugee camps, even though the Acehese in poor condition. This is reminiscent of the history of the prophet when migrating from Mecca to Medina was welcomed by the Ansar people.

This is reinforced by the Al-Qur'an Surah At-Taubah verse 71: And those who believe, men and women, some of them become helpers for others, they tell them to do good and forbid to do evil and they establish prayers and perform zakat, and obey Allah and His Messenger. They will be given mercy by Allah; surely Allah is Almighty.

Islam has enlighten muslim to settle safe places for other people in terms of asking for help and protection. When Acehese fishermen found out Rohingya refugees stranded in the sea, to welcome those in needs with basic necessities [20].

3.4. History of Conflict

Aceh has experienced a long-standing conflict, where being a refugee both in domestic and in international setting was common [21]. This feeling made them more empathetic towards what happened to the Rohingya people, so that the attitude of the Acehese people was considered to be uniquely conservative [22]. Since 2012 to 2015 several group of Rohingya were accommodated in Kuala Langsa, Bireun and other places by fishermen [23]

3.5. Customory Law of Aceh

Abdurrahman Kaoy said that Aceh as the Veranda of Mecca, a place where adat and Islam are upheld. Historically Acehese people are known with their generosity to help other people, even when the early time of Indonesian independence Acehese contributed to the first two Dakota Aircraft RI-001 to Indonesia, which then became a pioneer of the biggest national flight of Garuda. In similar sense the awareness of helping Rohingya refugees who entered the waters of Aceh, although at first time the Rohingya people had been rejected by the Indonesian Navy illegal migrant ground, and the rhetoric of sovereignty of Indonesia.

For the Aceh fishing community there is a principle as local wisdom regarding the treatment of victims at sea. Even though it is not written, every time there is an incident in the sea, the fishing community comes down straight away [24]. For instance, the case of foreign fishing boats that were carried away so that they enter the waters of Aceh, what appears in the minds of the fishermen is whether they are in need of help or not? Not a few foreign fishermen stranded into Aceh waters and ran out of fuel and food to get help from Acehese fishermen [25].

If they turn out to be illegal fishing, they will be escorted out of Aceh waters in coordination with Indonesian navy (LANAL nad POLAIR) [26]. Acehese fishermen was an Adat institution has been formally recognised and engaged with government agencies participate in the formulation of Qanun on fisheries and other associated even in the sea [27].

In a meeting of Panglima Laot in Aceh in 2006, aimed to strengthen adat laot (adat in the sea), there was an important thing that became the basis for Aceh fishing communities in responding to the issue of Rohingya refugees, one of the results of a meeting of Acehse panglima laot is the arrangement of social customs in the sea when there are boats damaged or drowned, searching for corpses in the sea, fishermen drowning and when there are things that are washed out in the sea, then reporting systems when there are violations at sea , a mechanism for coordinating between Panglima Laot and the authorities is arranged [28].

Accordingly, the Refugee is not merely responsible to Local Government, an institution which taking the first assistant to the refugees. In Aceh case, there is no Immigration Detention House for refugee, except in Medan. For those reason, temporary shelter is facilitated by local government such as in SKB Bireun. In Aceh situation, fisherman helped the refugees who were in Aceh sea territory as wisdom in the Sea to help anyone in need in the Sea, even they are an enemy [29]. Liliane Fan (Geutanyoe Foundation) described “the Acehese Adat (customary law) is very strong and obliges fishermen to save any life that risk at the sea. These were the principles used by Acehese fishermen to say we can stand against national law because our law is higher” [30].

3.6. Legal Framework Constraints

The Presidential Regulation (PR) of the Republic of Indonesia Number 125/ 2016 concerning the Handling of Refugees is the temporary breakthrough, a legal source to treatment for Rohingya Refugee in Aceh. This PR contains key definitions and sets out process for the detection, shelter and safeguarding of Refugee and asylum-seekers [31]. Article 2 (1) of the regulation states “the handling refugees are carried out to cooperation between the central government and the United Nations through the United Nations High Commissioner for Refugees in Indonesia and/or international organizations.”

Since 1975, when Indonesia faced the Indochina refugee crisis, Indonesia has already shown its commitment to comply in good faith towards the international principle of non-refoulement, or not returning refugees or asylum seekers to their place of origin where they would be likely persecuted [32] Juridically, until December 31, 2016, Indonesia has no specific rules on refugee protection. The application of the principle of non-refoulement in Indonesia shall be conducted by Letter of

the Director General of Immigration No. F-IL.01.10-1297, Hence, the Head of Regional Office of the Department of Law and Human Rights and Head of the Immigration Office throughout Indonesia, to provide guidance on the handling of foreigners who declare themselves as asylum seekers or refugees [33].

It clearly states that central government and UNHCR are the main institution which responsible to Refugees in Bireuen. Even in the next sub article (2), others international immigration and humanitarian institutions are engaged, it is not alteration the responsibility those organizations to refugees.

From the factual situation, the PR does not fit to Immigration Regulation. The immigration Regulation is not a grounded of the PR itself. Hans Kelsen states that a lower norm is applicable, if there are higher basis and norms which create the uniform among those laws [34]. The PR should not oppose to the Immigration Regulation. However, in the PR, refugee and asylum-seeker derive to remains as Indonesia Government responsibility, similar to States which ratified the Convention 1951 and the Protocol 1967 concerning Refugee [35]. Basically, it is not responsibility of Indonesia Government. The PR is an initiative to fill the legal vacuum, reserved to act in the name of humanity and finding solutions to handle the refugees. Despite the PR is concerning to handle the refugee, but it still have challenges in the implementation. There are few of issues which need to address.

While Aceh fishermen help Rohingya in 2015, on behalf of humanity. There is a local wisdom among the fishermen; they should help anyone who needs help in the sea, yet their enemy. In addition, Aceh which has conflict experience, were another reason. During the conflict, many citizens have lived as internally displaced person (IDPs), few of victims were also turn in to refugee and asylum seeker.

As a State which is not party of Refugee Convention, Indonesia become a home for many Refugees. Indonesia has been a transit country for asylum seekers and refugees since the exodus of Indochinese refugees by boat 40 years ago, with established migration flows between refugee-producing States in Asia and the Middle East. Indonesia’s location and geography – a vast archipelago made up of 17,000 islands with a coastline of almost 55,000 kilometres – make its porous borders almost impossible to control [36].

Currently, Indonesia hosts more than 13,000 asylum seekers and refugees from Afghanistan, Iraq, Iran, Myanmar, and Somalia, seeking a durable solution, either via resettlement arranged by the United Nations High Commissioner for Refugees (UNHCR), or through onward passage to Australia. The reintroduction of Australia’s policy of turning back boats and the cessation of resettlement of refugees in Indonesia have closed off the possibility of onward travel, leaving more and more

irregular migrants in Indonesia for longer and longer periods of time [37].

In Aceh, the handling of Refugee becomes a dilemma, especially, when there are no more financial assistance from the related institutions, both International Organization and other Non-Governmental Organization. All the expenses for the daily needs were sustained from local government budget. Local government is overwhelmed. Mauli, Local Social Institution Official (Dinas Sosial) stated that central government only cover 14 (fourteen) days during emergency response [38]. It also has been problematic for Aceh Government. Government have to spend millions rupiah for refugee every months, which lived in SKB Building, Cot Gapu Village, Bireuen. Head of Social Institution described that every month they should spend about 100 IDR and it is a burden for us (December 13, 2018) [39].

Devi, Secretary of Social Institution Aceh described that it has been corresponded with the related institutions, such as Ministry of Foreign Affairs, Ministry of Law and Human Rights, and also Social Ministry. Unfortunately, there were no adequate responses. According to the regulation, refugee should be handled by Ministry of Law and Human Rights through the Immigration Institution, and also IOM [40]. According to Mauli, there was no unit of Ministry of Foreign affair when they handled the refugees.

Based on descriptions above, there are few issues need to be addressed; coordination between the Ministry, budget for the refugee, and responsibility of International Institution. Even though, the PR clearly described that handling of refugee is responsibility of each ministry and international institution which have agreement with Indonesia Government, but then in the application, local government supported bigger portion of responsibility. They only received financial aid in a few months. On May 10, 2019, there were only two Rohingya refugees who still remain stay in Aceh (Bireuen shelter), Muhammad Islam and Yusuf. The others refugee had leave SKB without notification. In Ramadhan Muhammad Islam and Yusuf was moved to Tresna Werdha House (PSTW) [41] for temporary, but then on May 23, 2019, they also leaved without any notice to the officials.

Muhammad Islam and Yusuf are not the first who escaped from temporary shelter in Aceh. The others refugees have escaped earlier. They have gone to Medan, and they also leave SKB without any notice. [42]. In the Presidential Decree No.125 Year 2016 Concern in Handling Refugee, Immigration Detention Center authority is to supervise the refugees and asylum seeker, it includes: finding, at the shelter and outside the shelter, departure to destination country, voluntarily repatriation, and deportation. According to those authorities, the Presidential Decree No.125/2016 is a specific regulation (*lex specialis*) of Immigrations Regulations [43].

Local government is not the main institution which carried out the responsibility to the refugee. According to Article 2 (1) "The handling of refugees is carried out pursuant to cooperation between the central government with the United Nations through the United Nations High Commissioner for Refugees in Indonesia and/or international organizations"[44]. But in the implementation and the facts which collected during research in Aceh, most responsibility was implemented by local government, (especially Regency Local Government). In the earlier of Ramadhan, before Muhammad Islam and Yusuf was relocated to PSTW, the Social Institution of Bireuen, sent food for Sahur to SKB.

In chapter III, Article 24 (1) the Immigration Detention Center coordinates with the local regency/municipal government to transport and place refugees from the place of finding to a shelter and Paragraph (3) states the temporary shelter referred in paragraph (2) shall be determined by the head of regency/mayor [45]. Based on the Article 2 and Article 24 above, the most important responsibility is on the Central Government and UNHCR in Indonesia, the regency/mayor only has authority to determined temporary shelter, while in the Presidential Regulation, it is responsibility of Immigration Office (pursuant to Art.10,11, 12). Responsibility of local government is only to determine the shelter for refugee and next for the facilitation; it is responsibility of International Organization which relates to immigration affairs (Article 26).

Based on information of Social Institution officials, the International Organizations and Non-Governmental Organizations were only few of months supported the financial for refugees daily needs. For the rest, before the leaving without communication, all expenses were supported from local government, and it was really causing overwhelmed. In fact Article 40, related to Funding, can be taken from; a. the state budget through the relevant ministry/agency; and/or b. Other legal and un-binding source in accordance with prevailing laws and regulations. In 2018, Ministry of Social Institution helped local government to cover budget 10.000 IDR/day/refugee, for 45 (forty five) days[46].

IOM and UNHCR were still willing to plant their flag on the Joint Decree, but Pak Zul told him to revoke it because they were no longer helping. UNHCR wanted to protest to Pak Zul but did not dare to meet him. the migration was out of hand, the Kesbangpol party, we have contacted Pak Sudirman, acknowledging that they were tasked with monitoring him but did not want to take care of us because he accused him of not having the same data as him, but directly to the social service. so also from Bireun Sudirman BPBD, also claimed that there was no information that could be provided, so he referred to the National Budget. In the field, we see that the most important role is TAGANA under the social service, with member around 45 people. we worked there with a budhist, paid 5000 myanmar money, ate crowded.

Maulidar, from service. due to the condition of the two Rohingya refugees who lived 2 more people there were no official parties who helped with the costs of their lives, Maulidar took the initiative to write to Bireun's immigration, but he was disappointed to get a very formal answer and did not help at all. then he made a personal approach with him in the Department of Foreign Affairs, hoping that there would be a way out for these two people. until ansib 2 people were still hanging around. communication is difficult because of the lack of language skills. their unclear fate causes psychological issues. the social service that manages them is now overwhelmed because there is no official budget for their living expenses. Fortunately only 2 people, so many are helping personally, but of course it is also impossible to continue their fate depends.in the beginning there were many institutions that helped but now they no longer existed.

Most refugees who have run away from Bireuen Shelter went to Medan and most of them wanted to go to Malaysia[47]. Another condition that should be consider is almost 80% (eighty percent) of Rohingya do not want to stay in Indonesia. However, they also never wanted to go back to Myanmar. So then repatriation is not an option for them. In case of Muhammad Islam, before leaving from PSTW, he ever expressed that he wanted going home to Myanmar, because he worried to his sick mother. Resettlement option is the hard one. Until this time, there are not only Rohingya, but also many refugees who stay in Indonesia and waiting for third state respond their request. Indonesia government and UNHCR need to discuss the formula of resettlement for refugee.

Bearing in mind the general rule that treaties are to be interpreted with regard to their object and purpose Vienna Convention on the Law of Treaties, Article 35 of the 1951 Refugee Convention can only be properly understood by reference to its Preamble, wherein the high contracting parties note UNHCR's role in "supervising international conventions providing for the protection of refugees" and recognize "that the effective coordination of measures taken to deal with this problem will depend upon the cooperation of States with the High Commissioner", 1951 Refugee Convention. Because the problem of forced migrations cannot and should not be considered any single country's burden, the role of UNHCR in coordinating efforts remains crucial. In an international system where the grant of asylum remains particularized, a central coordinating body to ensure a certain level of uniform practice must exist[48].

4. CONCLUSIONS

Even though Rohingya refugees in Aceh have leaved the shelter, but there is possibility others Rohingya refugee will come to Aceh in the future. Learning from the past, it was not the first time Rohingya refugee came to Aceh. From Aceh experience, it realizes that there are few

of substances which need to address. First coordination among institution especially Ministries, International Organization, and Local Government, secondly financial support for refugee, and thirdly is certain time of period in local shelter and option for those who want to resettlement and repatriation.

First, mechanism among ministry, international organization, and local government. The Ministry that include in the Presidential Regulation have to have clear mechanism in implementing their duties for handling the refugee. In Aceh, it showed less responsiveness from those related ministries. The Presidential Regulation needs to revise more detail in aspects of job description of each ministry and how they will do the collaborated in managing refugee. It needs to be formed an *Ad Hoc* Team to respond the situation. Each ministry will set their representatives in *Ad Hoc* Team. The ad hoc team will do coordination with local government, and all the necessary things will be able to be optimized. Coordination is very important, especially among the ministry, because International Organization should organize the aid with the central government.

Second, financial support for refugees. Financial support is very crucial aspects and it is unfair for local government to cover all the expenses. Article 40 of PR says that the budget comes from national budget of each related ministries, and other source of relevant budget. This article need to be revised to anticipate the experience in Aceh. Central government could assign each ministry to allocate budget to anticipate refugee crisis. Since Rohingya refugees arrived in Bireuen in 2015, all the ministries assigned are still not submit the allocation budget for refugees. UNHCR also should actively assist and support the government to solve budgeting problem.

Third, there are two issues, time of period in local shelter and the further step ; resettlement and repatriation. The Presidential Regulation should enclosure allocation of maximum time in temporary shelters before they are moved to Immigration Detention Center; because it will also have impact to budget should be expensed by local government. Learning from Aceh experience, local government only "should" set the temporary shelter, but then there is certitude for the refugees and local government. In refugee aspect, the options are resettlement and repatriation. Since Indonesia is only transit state, but either resettlement or repatriation are also not options for Rohingya refugees. Rohingya refugees itself, also not seek asylum from Indonesia government, most of destinations are Australia and Malaysia.

The continuing Rohingya crisis has shown how ill-prepared the region is to deal with such a movement of refugees from one member state to others. The meetings that have taken place between ASEAN Member States to discuss the crisis are a good start but the situation needs close monitoring if better regional cooperation is to lead to improved protection for its refugees. Member States must

develop a refugee and asylum policy that includes guidance for action to be taken when a Member State's internal issues cause people to flee to neighbouring states. Such a policy agreed by all ASEAN Member States would furthermore help to ease both the escalation of opposition and any future ethnic or religious tensions between States. Any future conflicts can be addressed through the ASEAN Intergovernmental Commission on Human Rights but this body must be strengthened, lacking as it does the mandate to protect and investigate. ASEAN as yet lacks a Human Rights Court to interpret and enforce the ASEAN Human Rights Declaration, a further factor that must be remedied if the region's refugees including Rohingya are to be protected [49].

Under selective policy of immigration approach now Indonesia treat refugees in the context of foreign relations law, under the security and territorial sovereignty perspective, rather than human rights based. Indonesia has lack of capacity to cope with Myanmar and other refugees, as it has no clear legal framework, lack of national budget allocation, and lack of coordination among stakeholders. The undergoing challenges are Increased trend of foreign refugee influx (due to prolonged conflicts, limited shelters, constrained budget of the international organizations (UNHCR and IOM), Low rate of the implementation of durable solutions (voluntary repatriation and resettlement to the third countries) and Increasing impact of Refugee's presence on Economic, Social, Cultural, and Security.

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- [13] Presidential Regulation No.125/2016 concerning Handling of Refugees from Overseas

[14] Interview with Tgk. Bustamam, chairman of Panglima Laot North Aceh who is also intense in handling refugees, North Aceh, 2015.

[15] See also Lukito, Ratno, and Pranoto Iskandar. *Tradisi Hukum Indonesia: Disertai Postscript Baru Oleh Penulis & Pranoto Iskandar*. Cianjur, Indonesia: IMR Press, 2013. p. 82-83

[16] In resolving disputes at sea in the people of Aceh. Fishermen strongly adhere to customary law agreements, so when there are fishermen who violate abstinence days in a row for up to 3 times, then the boat or boat used to search for fish must be burned. In practice fishermen whose ships were burned reported the incident to the police on charges of burning boats and vigilante vigilantes. After an investigation was made that the arson was an implementation of customary law at sea, the police released the case at the adat court, interviewed with asnawi the secretary of Panglima Laot, 2015.

The Panglima laot is often included in legal drafting activities in the legislative parliament in the regency related to the drafting of fisheries kanun, sea security / Illegal fishing, adat laot, marine tourism and others. Then some academics from outside countries examined the concept of disaster management in the sea by involving traditional customary institutions which from this activity became an intake for renewal of international instruments.

[17] Achmad Romsan, *Perlindungan Internasional Pengungsi, dalam "konsep perlindungan (asylum) dalam ajaran beberapa agama di dunia"*, UNHCR, 2001, p. 60-61

[18] "Pengungsi Rohingya Senang Berpuasa Ramadhan Dengan Tenang Di Aceh." BenarNews. Accessed February 20, 2019. <https://www.benarnews.org/indonesian/berita/ramadan-roingya-aceh-06232015163206.html>.

[19] See. Bill Frelick, director of Policy: *Entry for the Human Rights Encyclopedia dalam worldwide Refugee Information : U.S. Committee for Refugee: Evolution of the Term Refugee*). Then this tradition was extended to those who requested protection at the time of the war as stated in the Surah At-Tawbah verse 6 above.

[20] Observation of the author while in the location of Rohingya refugee settlements in North Aceh and Bireun in 2015.

[21] In the case of the exodus of the people of Prophet Musa (as) from Egypt to Palestine, the migration of the Prophet Muhammad and his companions from Mecca

to Medina explained the similarity with the criteria contained in the definition of refugees in the present: ruler in their place of origin for reasons of race, religion, etc. See. Achmad Romsan, International Refugee Protection, in "the concept of perlindungan (asylum) in the teachings of several religions in the world", UNHCR, 2001, p. 55.

From the example above there is an idea of protection (asylum) given by local authorities to foreigners who need protection in their country. This condition is the same as that experienced by Rohingya Muslims, they need better protection for their right to life. And the attitude of the Acehnese people welcomed the Rohingya as well as the rights and obligations of a Muslim over other Muslims. Providing a sense of security and comfort in attitude, oral and hand.

[22] Krithika Varagur "More Rohingya Refugees Arrive in Indonesia's Aceh." Voice of America. Accessed May 24, 2019. <https://www.voanews.com/east-asia-pacific/more-rohingya-refugees-arrive-indonesias-aceh>.

[23] For example, Marzuki Ramli 45 years with 30 other fishermen helping people floating on the sea, about 5 miles or 1hour drive from where Aceh fishermen are looking for fish. See <https://www.rapler.com/world/regions/asia-pacific/indonesia/93355-nelayan-aceh-dan-penyelamatan-pengungsi-bangladesh-myanmar>

[24] Van Vollenhoven in his book *Adatrecht Volume 2* by arguing: "That in this case people do not have to use a theory, but must examine reality. If the judge finds out that there are customary rules, actions (behavior) that the community deems appropriate and binding on the residents and there is a general feeling that these regulations must be maintained by the customary head and other legal officers, then the regulations are of a legal nature "(Van Vollenhoven in Soerojo Wignjodipoero, 2004: 19). See Teuku Muttaqin Mansur, *Hukum Adat : Perkembangan dan Pembaharuannya di Indonesia*, Bandar Publishing, Banda Aceh, 2017, p.33

[25] Interview with Asnawi, deputy panglima laot Aceh Utara, 2015

[26] *Ibid.*

[27] *Ibid.*

[28] Report of the Meeting of the Aceh Commander of the Laot, Aceh Laot Commander and BRR SDKP Working Unit (ADB Program) in Aceh, 2006.

- [29] T. Muttaqien, *Adat Law Lecture in Faculty of Law, Syiah Kuala University*, interviewed in April 2019
- [30] *Loc.Cit.* Krithika Varagur
- [31] UNHCR.org “UNHCR in Indonesia - UNHCR Indonesia.” UNHCR. Accessed May 25, 2019. <https://www.unhcr.org/id/en/unhcr-in-indonesia>.
- [32] Brianta Petra Ginting, A. I. “Studi Kritis Peraturan Presiden No.125 Tahun 2016 Tentang Penanganan Pengungsi Luar Negeri Dalam Perspektif Keimigrasian” Politeknik Imgrasi. (2018)
- [33] Malahayati, M.Rasyid, Laila, & Iskandar Hadi (2018)
- [34] Academia.edu (2018)
- [35] *Ibid*
- [36] Tan, Nikolas Feith. “The Status of Asylum Seekers and Refugees in Indonesia.” *International Journal of Refugee Law* 28, no. 3 (2016): 365–383. <https://doi.org/10.1093/ijrl/ew045>
- [37] *Ibid*
- [38] *Interviewed on May 10, 2019*
- [39] Setyadi, Agus. “Urus Rohingya Rogoh Rp 90 Juta/Bulan, Pemprov Aceh Mengeluh.” *detiknews*, December 13, 2018. <https://news.detik.com/berita/d-4341878/urus-rohingya-roguh-rp-90-jutabulan-pemprov-aceh-mengeluh>
- [40] *Ibid*
- [41] Panti Sosial Tresna Werdha (PSTW) is a place for senior citizen who are not stay with their family anymore. This place is managed by Social Institution
- [42] Mauli said that she got information from IOM Medan who arrested the refugees who have leaved Bireuen
- [43] Primawardani, Yuliana, and Arief Rianto Kurniawan. “Penanganan Pengungsi Dari Luar Negeri Oleh Petugas Rumah Detensi Imigrasi Di Provinsi Sulawesi Selatan.” *Jurnal Ilmiah Kebijakan Hukum* 12, no. 2 (2018): 179–97. <https://doi.org/10.30641/kebijakan.2018.v12.p.179-197>.
- [44] *Unofficial translation*
- [45] *Unofficial translation*
- [46] Zuraya, Nidia. “Kemensos Bantu Uang Tunai Pengungsi Rohingya.” *Republika Online*. *Republika Online*, December 29, 2018. <https://www.republika.co.id/berita/nasional/daerah/18/12/30/pkiv1k383-kemensos-bantu-uang-tunai-pengungsi-rohingya>.
- [47] Zulfikar, Head of TAGANA (Taruna Siaga Bencana). He got information from Nur Hakim, one of Rohingya refugees who able communicated using malay language. Zulfikar as head of TAGANA was actively supervise the refugees in SKB Bireuen
- [48] Kilibarda, Pavle. “Obligations of Transit Countries under Refugee Law: A Western Balkans Case Study.” *International Review of the Red Cross* 99, no. 904 (2017): 211–39. <https://doi.org/10.1017/s1816383118000188>.