

## **Non-Refoulement: The Legal Basis and Applied Approach in the Handling of Rohingya Refugees in Indonesia**

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**ABSTRACT:** Non-refoulement is a major principle in protecting refugees and has been widely discussed the status and obligations of its application by international legal experts over the years. In fact, countries comply non-refoulement in different ways. Indonesia is not a member of the 1951 Convention concerning Refugee Status, but it has consistently act in accordance with non-refoulement for a long time. The aim of the article was to assess the applied approach of non-refoulement that has been executed by Indonesia as a non-member country in handling refugees from abroad. We base our analysis on Indonesia's regulations and the Rohingya Refugees' mass migration in from 2009 to 2015. The empirical material consists of qualitative interviews with NGO representatives, immigration officers, the Indonesian navy, and fishermen in Aceh. We found that Indonesia is complying non-refoulement with an absolute country sovereignty approach, in which Indonesia is only obliged to comply with non-refoulement of refugees who have entered Indonesian territorial territory. On the other hand, Indonesia is not obliged to transport refugees outside the Indonesian seas to the nearest port in Indonesia.

**Keywords:** Non-Refoulement, Regulations, Applied Approach, Refugees' Handling, Rohingya, Indonesia

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### **I. INTRODUCTION**

International legal experts have been discussing about the status and obligations of the state against the principle of non-refoulement. Although the 1951 Convention expressly states that the principle of non-refoulement is an obligation to all member countries, it has even become a customary international law binding on non-participating countries, in practice there is still a debate over the interpretation and scope of non-refoulement principle. Countries have been implementing the principle of non-refoulement in different ways and different perspectives.

Nevertheless, Indonesia as a non-member of the 1951 Convention and has no specific rules on the handling of refugees, has consistently maintained non-refoulement principle since 1975. Indonesia never forcibly returned refugees who entered into the territory of the Republic of Indonesia. In this article, we analyze how Indonesia as a non-member country to comply with the principle of non-refoulement. We limit the application of non-refoulement principle to Rohingya refugees entering Indonesia from 2009 to 2015.

This article aims to further examine Indonesia's attachment to the principle of non-refoulement as an international customary law and its approach that has been applied so far. Research for this article was carried out primarily in Aceh, the westernmost Province of Indonesia, where hundreds of Rohingya refugees have entered and lived temporarily there. Interviews were conducted with Immigration Officials, representative of the Indonesian Navy, and fishermen in Aceh. Additional research was carried out through document exchanges and content analysis of state's official web news. We use the concepts of non-refoulement approach theory to analyse Indonesia's applied approach of non-refoulement, as a non-member country of the 1951 convention.

#### **Non-Refoulement Principle in Indonesian Legal System**

The handling and protection of refugees is generally subject to the 1951 Convention and the 1967 Protocol. States which are already members of either or both of these international legal instruments shall be obligated to apply the rules of the 1951 Convention. However, each country has its own regulatory or policy in handling refugees who enter their territory. Unfortunately, until now Indonesia has not been a member of the

1951 Convention and 1967 Protocol on the Status of Refugees. Moreover, Indonesia did not have a specific regulation on international refugee's handling until December 2016.

Recognition of the first asylum institution issued by Indonesia is the Circular Letter (CL) of the Prime Minister Number 11/RI/1956 on the Protection of Political Refugee. Article 1 of the CL states that: "to political refugees, who enter and exist in the territory of Indonesia shall be protected under human rights and freedoms, in accordance with customary international law." Political refugee is a refugee seeking asylum in Indonesia, who was committing a crime for political reasons, including attempts to commit and assist against a political crime, he/she shall be protected.<sup>1</sup>

The recognition of this asylum is then upheld through the Decree of the People's Consultative Assembly Number XVII/MPR/1998 on Human Rights, as set forth in Article 24, which reads: "Everyone has the right to seek asylum for political protection from other countries."<sup>2</sup> Although Indonesia is not a member of the 1951 Convention and 1967 Protocol, but Indonesia has signed the Convention against Torture and Cruel, Inhuman or Degrading Treatment of Humanity which has been ratified by Law Number 5 Year 1998 (Anti-Torture Act).

The Government of the Republic of Indonesia subsequently issued Law No. 39 of 1999 on Human Rights, which recognizes the right to seek asylum as regulated in Article 28, namely:

- (1) *Everyone has the right to seek asylum to obtain political protection from other countries.*
- (2) *The rights referred to in paragraph (1) shall not apply to those who commit non-political crimes or acts contrary to the purposes and principles of the United Nations.*<sup>3</sup>

The explanation of the aforementioned article is that the determinant of an act including political or non-political crime is the country that accepts asylum seekers (Muhammad Djamil Usamy, 2003). The Second Amendment of the 1945 Constitution in 2000 also incorporated the provision of an asylum institution in Article 28 G Paragraph (2) stating that: "Everyone has the right to be free from torture or degrading treatment of human dignity and entitled to political asylum from other countries."<sup>4</sup> Article 28 G of the 1945 Constitution is an affirmation of the protection of refugees in seeking asylum which has been guaranteed by the Constitution of the Republic of Indonesia.

Refugee handling is also regulated in Law No. 37 of 1999 concerning Foreign Relations from Articles 25 to 27. Article 25 states that:

- (1) *The authority of granting asylum to a foreigner shall be in the hands of the President with due regard to the Minister's consideration;*
- (2) *The exercise of authority as referred to in paragraph (1) shall be regulated by Presidential Decree.*

The essence of Article 25-27 is to mandate for the establishment of a Presidential Decree, currently called the Presidential Regulation, which will regulate the authority and procedures for handling refugees and synchronized with other national legislation, international law, customs and practices. The articles do not specify the procedures for the granting of asylum or the handling of refugees to be carried out by the Government of Indonesia.

The legal vacuum about the handling of refugees in Indonesia has been overcome through the Immigration Directorate General Regulation No. IMI-1489.UM08.05 of 2010 on Illegal Immigrants Handling, herein after called Perdirjen of Illegal Immigrants Handling. This Perdirjen is the implementing regulation to minimize the impact of foreign citizens as illegal immigrants who later declared themselves as asylum seekers and refugees and to arrange for similar immigration handling and treatment procedures throughout Indonesia.<sup>5</sup>

Perdirjen of Illegal Immigrants Handling stipulates that, every foreigner who enters into and/or resides in the territory of Indonesia not in accordance with the provisions of legislation referred to as illegal immigrants.<sup>6</sup> These illegal immigrants will be subject to immigration action. However, if they express their intention to seek asylum and/or for some reasons, they cannot be subject to deportation.<sup>7</sup> Illegal immigrants will not be questioned by the status of residence permit while in Indonesia, provided that the person:

- 1) *has obtained a certificate of asylum seeker;*
- 2) *has a status as a person under UNHCR protection;*
- 3) *has a status as refugees from UNHCR.*<sup>8</sup>

Law No. 6 of 2011 on Immigration became the main basis in regulating asylum seekers and refugees.<sup>9</sup> The Immigration Act does not explicitly mention the term of refugees or asylum seekers, but uses the foreigners term for any person entering Indonesian territory, who is not an Indonesian citizen, who generally has no official travel documents, so that she/he will be subject to administrative action by Indonesian immigration officials. While the Foreign Relations Act mentions the term refugees from abroad, but there is no explanation of the definition of refugees.

Foreigners, including refugees and asylum seekers, subject to administrative measures, will be placed in immigration detention or home or other places designated for it. Meanwhile, if such refugees or asylum

seekers are victims of trafficking or people smuggling, will get an exemption from administrative measures, but will still be placed in the house or detention room. The placement of refugees and asylum seekers in a location or space similar to that of illegal immigrants and inadequate capacity has adversely affected and triggered conflict over time. The Immigration Act uses the term victims of people smuggling and trafficking because most of asylum seekers and refugees are at the same time victims of smuggling and trafficking (Fitria, 2015).

In 2016, the President of the Republic of Indonesia just issued a Presidential Regulation No. 125 of 2016 on the Handling of Refugees from Abroad, as the implementation of the Foreign Relations Act order. This refugee handling regulation starts to acknowledge the term of refugees as set out in the 1951 Convention. Article 1 point 1 of the Presidential Regulation on Refugee Handling states that:

*Refugees from abroad, hereinafter referred to as refugees, are foreigners residing in the territory of the Unitary State of the Republic of Indonesia due to a reasonable fear of persecution for reasons of race, ethnicity, religion, nationality, membership of certain social groups and different political opinions and unwilling to get protection from its home country and/or has obtained the status of asylum seeker or refugee from the United Nations through the High Commissioner for Refugees in Indonesia.*<sup>10</sup>

The difference in terminology used in this Presidential Regulation is an improvement in the handling of refugees in Indonesia. Previously, the used terms were illegal immigrants or foreigners who associated the position of refugees or asylum seekers with regular immigrants who were generally economic immigrants. These regular immigrants are not subjected to persecution threats in their home country. Asylum seekers and refugees are also equated with foreigners residing in the territory of Indonesia beyond the time limit (over-stayers). This definition has adopted the refugee definition contained in the 1951 Convention which forms the basis of international law in protecting refugees.

The Presidential Decree on refugee handling does not explicitly stipulate the prohibition of forced return or non-refoulement principles against refugees entering or moving to the territory of the Republic of Indonesia. However, there are arrangements related to the handling of refugees in search and rescue operations, it can be concluded that Indonesia will seek and provide relief to refugees or people suspected of being refugees if found in Indonesian territorial waters. The search and rescue procedures which are then followed up with shelter, the provision of security to asylum seekers or refugees indicates that Indonesia will accept persons entering its territory and treated as governed by international law.

Although the regulations on refugees and asylum seekers have been in place, Indonesia has never been firmly established on the principle of non-refoulement. The principle of non-refoulement needs to be specifically regulated which will serve as guidance for immigration officers, army, navy, and the community when faced with cases of shipwreck suspected of being loaded with refugees, both in Indonesia and outside Indonesia.

The above mentioned regulations are limited to the procedure of handling after the refugees are located in the territory of Indonesia, without discussing the obligation not to expel or refouler refugees who are still outside Indonesian territory or are on the border of the Republic of Indonesia. Only the Anti-Torture Act that explicitly regulates the principle of non-refoulement in Article 3, which states that: "*No country shall refuse, return, extradite a person to a country where there is a strong conviction/reason that he or she will be harmful for being subjected to torture.*"<sup>11</sup>

Indonesia has ratified the Convention Against Torture through Law No. 5 of 1998 on the Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Human Rights (CAT Act). That is, even though Indonesia is not a member of the 1951 Convention and/or 1967 Protocol, it remains bound by the principle of non-refoulement as set out in the CAT Convention. In addition, Indonesia has also ratified the Geneva Convention IV of 1949 and the International Covenant on Civil and Political Rights of 1966, as well as several other instruments of human rights law.

The 1951 Convention did not revise or amend the understanding and scope of refugees. However, in the practice and judgments of the courts, the notion of refugees having rights to the principle of non-refoulement has evolved beyond the scope of the 1951 Convention.<sup>12</sup> To be exact, the enactment of the principle of non-refoulement regulated in Article 33 of the 1951 Convention has experienced an extension of meaning, including those who do not belong to meet the criteria of Article 1 of the 1951 Convention.

The issuance of the Presidential Regulation on the Handling of Refugees has clarified the government's obligations on the handling of refugees from abroad. Although the regulation does not explicitly standardise the principle of non-refoulement of refugees entering or leading to the territory of the Republic of Indonesia, there are arrangements related to the handling of refugees in search and rescue operations. It can be concluded that Indonesia will seek and provide relief to refugees or people suspected of being refugees if found in Indonesian territorial waters.

The search and rescue procedures which are then followed up with shelter, and the provision of security to asylum seekers or refugees indicates that Indonesia shall admit persons entering its territory and treated as governed by international law.

### **Non-Refoulement Principles as International Customary Law in Indonesia**

The status of the principle of non-refoulement as an international customary law has created an obligation for the Government of Indonesia to implement this principle, even though it has not signed the 1951 Convention or the 1967 Protocol. Indonesia may refuse to implement the principle of non-refoulement, but must have a strong history in practice, which has been done so far. Indonesia must prove that during the formation or formulation of the principle of non-refoulement in the 1951 Convention up to the present time, consistently does not implement the principle. Indonesia must also express their disapproval clearly to the principle of non-refoulement before it is established as an international customary law (Charney, 1985). If proven otherwise, Indonesia cannot escape the obligation to comply with the principle of non-refoulement as an international customary law (Holning Lau, 2005).

The Persistent Objector Rule (POR) states that countries that do not express continuous refusal are considered to have bind themselves to customary international law, including the principle of non-refoulement (Charney, 1985). A State which has not rejected continuously is considered to have demonstrated its agreement to be bound by such provision.

In order to assess Indonesia's attitude toward the principle of non-refoulement as an international customary law, there are two elements to be analysed: firstly, rejection must be continuous for a long time, before or after the establishment of customary international law; Secondly, rejection must be known by other countries (Stein, 1985). Analysis of Indonesia's position on non-refoulement principles will be assessed using the POR approach, below.

The principle of non-refoulement is considered customary international law, beginning in the late 1980's (Goodwin-Gill, 1986). At this time, Indonesia was facing the flow of refugees from Indochina, who came from Vietnam. In early 1975, when Vietnamese refugees set foot into Indonesian territory until the late 1980s, Indonesia faced the mass evacuation with various ways. Some refugees are accepted and not discharged, others are repatriated and directed out of the Indonesian territory (Stephen Fitzpatrick, 2009). Most of the boats were rejected into the sea and forced to leave the Indonesian sea territory.

However, at that time the Government of Indonesia never filed a rejection of the principle of non-refoulement and refused to provide protection to the refugees. The main reasons for rejection are for the country's security and resource constraints to cope with the needs of refugees and the infrastructure needed to accommodate them. Thus, after obtaining guarantees and assistance from UNHCR and other UN agencies, the Government of Indonesia provides its islands to accommodate refugees from Vietnam (Anonim, 2009). The same treatment also applies to Sri Lankan refugees, even the last is Rohingya refugees from Myanmar and Bangladesh. The Government of Indonesia has a positive attitude in implementing non-refoulement principle, including providing temporary shelter, basic needs of refugees, health, access to employment and education, and other basic needs.

Another evidence of Indonesia's positive attitude towards the principle of non-refoulement as an international customary law is Indonesia's membership in AALCO, which adopts the Bangkok Principles. Although the Bangkok Principle is a non-binding law, it has acknowledged the existence of a non-refoulement principle. In addition, the adoption of the 2016 Presidential Regulation on Refugee's Handling, which recognizes the existence of refugees as regulated by the 1951 Convention, has established Indonesia's position in addressing the principle of non-refoulement. Unfortunately, the Presidential Regulation does not explicitly regulate the prohibition of refouler or non-refoulement principle against refugees entering or leading to the territory of the Republic of Indonesia.

Indonesia's standpoint on non-refoulement principle might be perceived from country's real practice, diplomatic correspondence, and official state statements. But on many occasions, Indonesia has never declared a rejection of the principle of non-refoulement, but merely explains a different perspective on interpretation of non-refoulement (Heyder Affan, 2015a). The army officials infer that Indonesia is not obliged to help refugees outside Indonesian territory unless they are in real danger, but when they are in the territory, the army will help the refugees and be taken to the mainland (Heyder Affan, 2015b).

The Government of Indonesia has undertaken measures to handle refugees from abroad who enter Indonesian territory, even though Indonesia did not currently have specific regulations relating to the handling of refugees. In the framework of seeking a comprehensive solution, the government carries out joint efforts both at national level and bilateral and regional cooperation. It has also been discussed during a meeting between the President of the Republic of Indonesia and the Prime Minister of Myanmar (Teuku Faizasyah, 2009). The President of the Republic of Indonesia emphasized the need for practical solutions to the problem of Rohingya refugees.

The Government of Indonesia has also worked with international organizations, UNHCR and IOM, to verify and determine the status of the refugees. The focus of the handling effort at the time was to repatriate the refugees who had declared their willingness to be repatriated voluntarily (Teuku Faizasyah, 2009). Indonesia

along with UNHCR and IOM formed the Integrated Verification Team to determine the status of refugees from Myanmar and Bangladesh.

Based on the above evidence, it can be concluded that Indonesia has implemented the principle of non-refoulement consistently. Despite the refusal and neglect of refugees who are on the high seas, this is more based on security reasons and limited resources of the Government in providing protection to the mass refugees. Ultimately however, the Government of Indonesia continues to provide minimum protection to the refugees. In addition, Indonesia also reasoned that the refused boats did not contain refugees, but other foreign immigrants, especially economic migrants and human traffickers. To that end, Indonesia is bound by the principle of non-refoulement as an international customary law and has an obligation not to repatriate or move or direct refugees to areas that could threaten the safety and freedom of refugees.

### **Applied Approach of Non-Refoulement Principles**

Although the 1951 Convention clearly states that the principle of non-refoulement is an obligation for all participating countries, it has even become a binding international customary law for non-participating countries, in practice there is still a debate over the interpretation and scope of non-refoulement principle (D'Angelo, 2009).

According to D'Angelo (2009), the application concept of non-refoulement by countries, in general, can be divided into four concepts, namely: absolute state sovereignty, collective approach of non-refoulement, collective approach with a twist, and restrictive Definitional approach. The approaches can be explained as follows:

#### *Absolute State Sovereignty Approach*

The absolute state sovereignty approach recognizes the obligation to apply the principle of non-refoulement in the 1951 Convention as long as the refugees are within the territory of their country (Hathaway, 2005). The State considers no obligation to facilitate the arrival of refugees entering the territory of their country. That is, the state has no obligation to accompany refugees to leave their native country and drive them to the border of the recipient country.

Countries that apply the absolute state sovereignty approach, usually use various methods and ways to prevent refugees from approaching their territorial borders. One way is as the English Court of Appeal did, which is called pre-entry clearance procedures.<sup>13</sup> The Court considers that there is no provision in the 1951 Convention which allows a person to enter the territory of another country illegally, including refugees.

The Convention does not require states to assist in picking up refugees or fleeing from their home country, but only to the territory or countries where refugees should not be sent. It is concluded that the state is only obliged not to return or refouler if refugees are already in their country territory, but if refugees are not in their territory, the state is not obliged to help them enter the territory of the country. The country is even allowed to prevent refugees from entering the country's territory and is not considered an act of repatriation or refoulement.

#### *Collective Approach of Non-Refoulement*

The collective approach is a state approach to the application of the principle of non-refoulement using a very complex mechanism, based on multilateral or bilateral agreements, to relocate refugees from one country to another (D'Angelo, 2009). The settlement of refugees is conducted through two procedural stages involving the first country of arrival and the safe third country.

The first country of arrival mechanism can be seen in the implementation of the Dublin Convention in the European Union, which designates the first country where refugees enter the EU region, as those responsible for assessing and providing guarantees of protection to refugees (Official Journal of European Union, 1990). While safe third country mechanisms allow countries to send refugees to member countries or countries that have participated in the agreement, and the country will assess and provide assurance of protection or asylum (Hathaway, 2005). This approach implements refugee placement into safe third countries as a sharing of responsibility for refugee protection.

This approach is based on the provision of the 1951 Convention which prohibits the state from repatriating or putting refugees into the threatening and refugee territory, and the principle of non-refoulement does not obligate the state to accept refugees into its own territory. As long as there is no obligation to provide protection, the state applying the collective approach will send refugees to a safe third country, as long as the third country is not life-threatening and refugee freedoms.<sup>14</sup>

#### *Collective Approach with A Twist*

The application of non-refoulement by a collective approach with a twist uses a variety of standard procedures to avoid the process of acceptance and appraisal of protection and refugee status (Hathaway, 2005).

This approach, for example, is applied by France who designed several locations as a transit zone in the country. Transit zone is also usually known as the international zone, administrative zone, or waiting zone.

Initially, France said that the French national law does not regulate the transit zone, so that France cannot guarantee protection to refugees under national law and its international obligations (Foot, 1995). There was a change in the concept of this transit zone in the late 1980s because of internal and international political pressure (Judith Hippler Bello & Juliane Kokott, 1997). The new concept of transit zones has broadened the rights of refugees, including detention problems. However, the French Government continues to refuse to grant the right of assessment and protection in the transit zone for certain cases (John Foot, 1995).

#### *Restrictive Definitional Approach*

The approach by using a limited definition is done by taking a gap from the notion of the principle of non-refoulement set forth in the 1951 Convention. States that use this approach, avoiding the obligation of the principle of non-refoulement by stating that not all persons seeking refuge are refugees in the category of Article 1 Convention 1951 (Hathaway, 2005). Article 33 of the 1951 Convention provides that the application of the principle of non-refoulement applies only to refugees eligible under Article 1 of the 1951 Convention.

Different interpretations of refugee criteria depend on the keywords used by the states. Article 1 emphasizes the phrase well-founded fear, which means there is a reasonable fear, whereas according to the interpretation of countries using this restrictive approach, it emphasizes the phrase threat to life or freedom, which means that reasonable fear must threaten the life and freedom of refugees.

All of these four approaches will be used to analyse Indonesia's approach to non-refoulement application in handling Rohingya refugees.

#### **The Implementation of Non-Refoulement Principles in Indonesia**

The Government of Indonesia delimits the application of the principle of non-refoulement as a prohibition not to repatriate refugees if the refugees have entered the territory of the Republic of Indonesia. As for those who have not entered the territory of Indonesia, the government has no obligation to do assistance and protection. This can be seen in the statement of Indonesian National Army (TNI) Spokesman, Fuad Basya, to the BBC Indonesia correspondent, as follows: "*Do not let our fishermen pick them (Rohingya refugees) outside our sea borders, then get out of the boat and enter the fishing boats, and enter our territory. That is what we forbid.*" Previously, some Acehese fishermen said that they were forbidden to pick up and bring illegal immigrants from Myanmar and Bangladesh, even if their ships were drowned.

The Spokesman denied this and clarified that land-sowing efforts could be undertaken if the vessel is threatened to drown and float in the sea. Fuad Basya said that foreigners entering the Indonesian mainland must use official documents. That is, the legal view of the state apparatus, in this case represented by the TNI, considers that every foreigner who enters the territory of Indonesia as an illegal immigrant and has no right to protection, and does not incur any obligation to apply the principle of non-refoulement.

In contrast to the view of TNI, Yahya Hanafiah as *Panglima Laot* (special local commander of the fishermen, which is only known in Aceh Province) in East Aceh and Langsa, instructed Acehese fishermen to rescue the refugees who were stranded in the sea, "*We ask the fishermen in Aceh to save them for humanity, because we live spinning, who knows we are in need later.*"

So did Ar Rahman, one of the fishermen in North Aceh. Rahman said that there were hundreds of Rohingya refugees who were on board after they approached because they received information from the communication radio between sailors. "*We heard the shout of Allahuakbar and some men plunged into the sea, to reach our ship.*" Ar Rahman explained at the time of the incident.

Nevertheless, the head of the customary institution governing the life of the fisherman in Aceh or *Panglima Laot* of Aceh Province, Teuku Bustaman, stated that: "*If our country forbids, we must obey, because what we do under the local wisdom institution is something that is not against the law.*" Despite the commitment to not reject the TNI command, many fishermen who feel inadvertent if they do not provide help to the people they meet in the middle of the sea in a state of concern, "*it seems we do not have the heart to not help, difficult, because it's a humanitarian issue.*" It further mentioned that Acehese fishermen help Rohingya and Bangladesh refugees because they have been helped by ships from other countries when experiencing difficulties in the middle of the sea. Bustaman affirms that the TNI statement prohibiting Acehese fishermen from picking up and bringing Rohingyas and Bangladeshi refugees to the Indonesian mainland, they will do so because they are considered illegal immigrants (Heyder Affan, 2015b).

The Indonesian government tightens patrols in the Sumatran sea area to prevent the arrival of illegal immigrants, due to the rising wave of Rohingya refugees from Myanmar and Bangladesh to Indonesia. Hundreds, even thousands estimated refugees are swayed in the sea after being denied entry to Indonesia and Malaysia, and expelled by the Government of Thailand. Previously, the United Nations urged Indonesia, Malaysia, and Thailand to accept Rohingya refugees from Myanmar and Bangladesh.

UN Human Rights Commissioner, Zeid Ra'ad Al Hussein, says that attention should be paid to saving the lives of more than 6,000 migrants estimated to remain at sea. Zaid stated, "*I am surprised by reports that Thailand, Indonesia and Malaysia return ships full of migrants to the sea, which in turn will cause many of them to die.*" The governments of the three countries should focus on saving their lives instead of endanger the safety of their lives. On the other hand, the UN also praised the community, especially the fishermen in Aceh, who had received hundreds of Rohingya migrants at the time. According to the United Nations, the most important issue is the Myanmar policy that does not recognize the citizenship of the Rohingyas, so they must be categorized as stateless people, and certainly receive international protection rights, including the principle of non-refoulement.

The spokesman of UNHCR in Bangkok, Vivian Tan, said the three countries still refused UN calls to allow thousands of marine stranded migrants to land in their territory. Thousands of migrants consisting of Rohingya refugees from Myanmar and migrants from Bangladesh, are thought to have been stranded in the middle of the sea after smuggling networks abandon them because of being hunted by the Thai government. The TNI asserted that it has prohibited fishermen operating in the Aceh region to pick up and take migrants to Indonesian territory, except the boats carrying migrants drown. Meanwhile, Thai Defense Minister General Pravit Wongsuwan warned migrant ships not to enter the territory of the country without permission.

Provisionally, although the Indonesian government initially refused the refugees, considering the UNHCR, International Organizations, communities and fishermen's attitude that insisted on helping refugees from the threat of hunger and death in the sea, the Indonesian government finally allowed them to land on the coast of Aceh and providing assistance and temporary shelter (Josie Susilo Hardianto, n.d.).

The governments of Thailand, Malaysia and Indonesia hold ministerial meetings in Putrajaya, Malaysia on May 20, 2015, as a form of emergency response from these three countries (Rizka Argadianti Rachmah & Zico Efraindio Pestalozzi, 2016). This meeting is to discuss solutions to the wave of refugees and Bangladesh as well as the national security issues of the three countries. The three countries agree to carry out their obligations and responsibilities under international law, taking into account the national laws of each country, including provision of temporary assistance to refugees.

Based on several cases of refugee entry into Indonesian territory, the Indonesian government in applying the principle of non-refoulement tends to the absolute state sovereignty approach, which limits the obligation of non-refoulement principle in the 1951 Convention as long as the refugees are within the territory of their country. The State considers no obligation to facilitate the arrival of refugees entering the territory of their country. Thus, the state has no obligation to accompany refugees to leave their native country and drive them to the border of the recipient country.

Countries that apply the absolute state sovereignty approach, will usually use various methods and ways to prevent refugees from approaching their territorial borders. This is implied by the statement of TNI Spokesman, Fuad Basya, to the BBC Indonesia correspondent: "*Do not let our fishermen pick them (Rohingya refugees) outside our sea borders, then get out of the boat and enter the fishing boats, and enter the territory we. That is what we forbid.*" It means, the obligation of non-refoulement principle is only applied if the refugees have entered Indonesian territory.

On the other hand, the community, especially the indigenous fishermen in Aceh, represented by Panglima Laot, see other meanings of rescue or help against Rohingya refugees from Myanmar, as stated by Yahya Hanafiah, Panglima Laot in East Aceh and Langsa. He instructing the Aceh fishermen to rescue the refugees who were marooned in the sea, "*We ask fishermen in Aceh to save them for humanity, because we live spinning, who knows we are in need later.*"

The absence of clear arrangements regarding obligations to the principle of non-refoulement makes the difference in treatment among some countries, even between countries and the people of the country itself, as it did in Aceh. Governments that refuse to accept refugees and even expel them, have violated the principle of non-refoulement stipulated in the 1951 Convention and have become customary international law. However, the moral obligation as well as the awareness of the importance of human values in community life demonstrated by the people of Aceh, has opened up a new interpretation of the meaning of justice in Indonesia.

## II. CONCLUSION

Based on the above results it can be concluded that although Indonesia is not a member country of the 1951 Convention and has no special regulation on the principle of non-refoulement, the fact that Indonesia remains consistent in implementing non-refoulement as part of customary international law. However, the application of the principle of non-refoulement undertaken by Indonesia in accordance with the concept of absolute state sovereignty, which interprets the principle of non-refoulement only to refugees who have entered Indonesian territory. As for refugees who have not yet entered Indonesian territory, the government has no obligation to pick up and provide protection to them. Therefore, it is advisable to the Government of Indonesia to immediately formulate specific rules relating to the principle of non-refoulement as a fundamental basis to protect refugees in Indonesia.

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