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Application of the Non-Refoulement Principle in Handling Foreign Refugees in Indonesia

Rizky Amanda Devina[1]
[1]Raja Aji Haji Maritime University, Indonesia
Wanda Oktaviani[2]
[2]Raja Aji Haji Maritime University, Indonesia

Correspondence Author: : 2505040056@student.umrah.ac.id

Abstract

Indonesia, as a major refugee transit country, has not ratified the 1951 Refugee Convention and its 1967 Protocol and remains formally unbound by their provisions, although the principle of non-refoulement remains binding as part of customary international law applicable to all states. This study aims to analyse the application of the non-refoulement principle in Indonesia's refugee-handling policies, focusing on Rohingya refugees in Aceh as a reception area and Batam as a transit area, examined through the lens of the rule of law and human rights protection. This normative legal research employs a statute approach and a conceptual approach, with systematic and comparative interpretation techniques applied to relevant primary and secondary legal materials. The findings reveal that Indonesia applies the non-refoulement principle partially by avoiding forced repatriation, yet has not ensured comprehensive protection of refugees' basic rights. Aceh demonstrates a humanitarian approach in receiving refugees, whereas Batam reflects an administrative approach that restricts access to fundamental rights. Three key challenges are identified: the absence of specific refugee legislation creating a legal vacuum, weak inter-institutional coordination, and social dynamics affecting the sustainability of protection. This study concludes that Indonesia's implementation remains at the level of survival-based protection, falling short of the dignity-based standard required by international law. It is recommended that the government enact a comprehensive refugee law, strengthen inter-agency coordination mechanisms, and reorient policy towards active, rights-based refugee protection.

Keywords: non-refoulement; refugees; Rohingya; human rights; rule of law; Indonesia

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INTRODUCTION

The forced displacement of residents across borders has continued to increase significantly in recent decades. *United Nations High Commissioner for Refugees* (UNHCR) noted that the number of global refugees in 2023 has surpassed 117 million, the highest figure in the organization's recorded history (UNHCR, 2024). This increase is fueled by prolonged armed conflicts, ethnic and religious-based persecution and the climate crisis that has forced millions of people to flee their home countries. This phenomenon places the refugee issue as one of the most pressing challenges in international migration governance and international law (Ahimbisibwe & Nkiko, 2025). Countries around the world face the dual pressure of maintaining national sovereignty while fulfilling humanitarian obligations to individuals seeking refuge (Ps & Philipose, 2024). This pressure encourages the emergence of different policy approaches in each country, from humanist to restrictive.

International law responds to the global refugee phenomenon by developing a set of protection norms centered on the principle *non-refoulement*. This principle prohibits the state from expelling or returning a person to a territory that threatens the safety of life and liberty as expressly stipulated in Article 33 paragraph (1) of the 1951 Refugee Convention (Muhlashin, 2021). *Non-discharge* It is then strengthened by various international human rights instruments, including Article 3 of the Convention Against Torture (CAT) and Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR). UNHCR affirms that this principle has evolved into part of customary international law (*Customary International Law*) which binds all countries regardless of the ratification status of the relevant conventions (Heriyanto & Setiawan, 2023). This position makes the principle of *non-refoulement* as a norm that cannot be ignored by any country, including Indonesia.

Indonesia occupies a strategic position as a transit country in the flow of refugee migration in the Southeast Asian region. Indonesia's geographical position among the main migration routes makes it a stopover point for thousands of refugees fleeing conflicts in their home countries to third destination countries. Indonesia has not ratified the 1951 Refugee Convention and the 1967 Protocol, so it is not formally bound by the protection provisions stipulated therein (Putri, 2022). Nevertheless, Indonesia still has a normative basis in the national legal system that reflects the value of human protection. Article 28G paragraph (2) of the 1945 Constitution of the Republic of Indonesia guarantees the right of everyone to be free from torture and degrading treatment, as well as the right to obtain asylum(Constitution of the Republic of Indonesia of 1945, n.d.). Law Number 39 of 1999 concerning Human Rights also affirms that basic rights apply to everyone

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without discrimination, including foreign citizens.

Empirically, the arrival of Rohingya refugees in Indonesia, especially in the Aceh region, shows a significant increasing trend in recent years (Heriyanto & Setiawan, 2023). Refugees generally arrive by sea in weak physical condition after fleeing ethnic and religious persecution in Myanmar. Aceh became the first receiving region to face the wave of arrivals. UNHCR data in *Indonesia Fact Sheet* December 2024 shows an increase from 297 people in 2020 to 1,500 people in 2024 as presented in the following table.

Table 1. Number of Rohingya Refugee Arrivals in Aceh (2020–2024)

Year	Number of Arrivals in Aceh	Initial Conditions
2020	297 people	Stranded at sea, weak physical condition
2021	114 people	Limited arrivals, pressure temporarily decreased
2022	500 people	Wave rising again
2023	1,000 people	A major surge, a humanitarian emergency
2024	1,500 people	Repeated and massive arrivals

Source: UNHCR Indonesia Fact Sheet, December 2024.

Table 1 shows an inconsistent pattern in 2020–2021, followed by a sharp spike since 2022. The increase from 500 people in 2022 to 1,500 people in 2024 reflects an increase in migration pressures of 200 percent within two years. This trend indicates that the conditions of violence and persecution in Myanmar have not shown any meaningful improvement (Bintarawati et al., 2023). For Indonesia, the surge has serious implications for the capacity of the refugee handling system, which until now has no systematic legal basis (Blair et al., 2021). If this capacity is not strengthened, Indonesia risks facing a recurring humanitarian emergency without adequate structural solutions.

Indonesia's structural unpreparedness is evident from the absence of special regulations at the legislative level that govern the legal status and protection of refugees as a whole. The absence of this regulation creates a vacuum of norms (*Legal vacuum*) which has a direct impact on the ambiguity of the legal position of refugees in the national system(Pitaloka et al., 2024). Refugees cannot be categorized as citizens, but also do not have a definite legal status as a subject

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of foreign law who receives protection. This condition encourages policies that are reactive and inconsistent between one region and another (Solihin et al., 2024). Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad is the only operational instrument that exists, but its scope is limited and does not regulate the recognition of the legal status of refugees substantially. This limitation makes the position of refugees completely dependent on administrative policies that can change at any time (Krause, 2021).

The policy inequality caused by the regulatory vacuum is evident in the difference in approach between Aceh and Batam. Aceh implements a humanitarian approach (*humanitarian approach*) by accepting Rohingya refugees and not committing rejection or forced repatriation. On the other hand, Batam as a transit area shows an administrative approach that places refugees in temporary shelter conditions with limited access to basic rights (Missbach & Adiputera, 2021). This difference shows that the implementation of the *non-refoulement* has not run uniformly and systematically throughout Indonesia. The inconsistency of the approach also reflects that refugee policy in Indonesia is more determined by local contexts and regional capacities, rather than by a standardized national legal framework (Afriansyah & Fitria, 2019).

Another challenge that aggravates the above conditions is the weak institutional coordination in handling refugees. The handling of refugees in Indonesia involves many institutions ranging from the Ministry of Foreign Affairs, the Directorate General of Immigration, the National Agency for Countering Terrorism, local governments to UNHCR and the International Organization for Migration (IOM). The involvement of many parties without a strong coordination mechanism often leads to overlapping authority and a lack of responsibility (Solihin et al., 2024). As a result, the response to refugee arrivals tends to be slow and not standardized. This lack of coordination also reflects that Indonesia has not fully positioned itself as the main actor in refugee protection, but is still dependent on international organizations as the de facto responsible (Syahrin, Qalandy, et al., 2024).

Social issues also complicate the long-term handling of refugees. In the early stages of arrival, the people of Aceh showed high humanitarian solidarity by providing help to refugees stranded in the waters. However, as the number and duration of refugee stays increased, there were socio-economic concerns among local communities about the pressure on public resources and services (Bintarawati et al., 2023). The stigma against refugees, which is often associated with security issues and human smuggling practices, also influences policies at the regional level. This condition shows that the sustainability of refugee protection depends not only on the legal framework, but also on the management of the relationship between refugees and recipient

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communities (Blair et al., 2021).

The above series of questions raises a real juridical dilemma between the interests of state sovereignty and the obligation to protect human rights. On the one hand, the state has the right to regulate the entry and exit of people into its territory based on immigration law as stipulated in Law Number 6 of 2011 concerning Immigration. On the other hand, the state is also bound by the obligation to respect the principle *non-refoulement* as part of customary international law and as a country that has ratified the ICCPR (*International Covenant on Civil and Political Rights (ICCPR)*, 1966). Failure to find a balance between these two interests has the potential to lead to violations of international norms as well as vulnerability to human rights for refugees(Syahrin, Qalandy, et al., 2024). This tension becomes more pronounced when the policies implemented on the ground differ without clear and binding legal guidelines.

The urgency of strengthening the refugee protection framework is getting stronger considering Indonesia's commitment in international legal forums. As a country that has ratified the ICCPR and other human rights instruments, Indonesia is bound by an obligation to protect the right to life and the right to be free from inhuman treatment for everyone within its jurisdiction. This obligation cannot be waived simply because there has been no ratification of the 1951 Refugee Convention. Harmonization between international legal norms and the national legal system is an unstoppable need (Yulianto, 2020). Without this harmonization, Indonesia risks continuing to operate in a legal gray space that harms refugees while lowering Indonesia's credibility in international relations in the field of human rights (Müller-Funk et al., 2023).

Academic studies on *non-refoulement* in Indonesia has developed in recent years, but it is still largely normatively descriptive and has not specifically compared two different implementation patterns within a single unified analytical framework (Susetyo et al., 2025). Existing research generally examines Indonesia in general without examining the difference between reception areas and transit areas as two substantively different policy contexts. This study gap needs to be filled through an analysis that is able to identify partial implementation models *non-refoulement* in the context of a transit country like Indonesia, it is not just describing the existing practices. This research is here to fill this gap with a more critical and structured approach.

Based on the description above, this study formulated three main questions. First, how is the application of *the principle of non-refoulement* in the practice of handling refugees in Indonesia, especially in the case of the Rohingya in Aceh and Batam reviewed from the perspective of the state of law and human rights? Second, what are the factors that are obstacles in its

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implementation, both in terms of regulations, institutions, and social dynamics? Third, how can efforts to harmonize international legal norms with the national legal system be made to strengthen refugee protection more consistently and sustainably? These three questions are designed to produce an analysis that is not only descriptive, but also capable of providing operational policy recommendations.

This study aims to analyze the application of *the principle of non-refoulement* in handling refugees in Indonesia through a comparison of humanitarian approaches in Aceh and administrative approaches in Batam. This research also aims to identify structural obstacles in policy implementation and formulate recommendations that can strengthen the legal framework for refugee protection in Indonesia. The results of this research are expected to make an academic and policy contribution in an effort to realize a more systematic, consistent and human rights-oriented refugee protection.

RESEARCH METHOD

This research is a doctrinal law research (*Doctrinal Legal Research*) which examines the compatibility between the principles *non-refoulement* in international law with its implementation in the Indonesian national legal system. This study uses a legislative approach (*Statute approach*) to examine refugee protection regulations at the international and national levels, as well as conceptual approaches (*conceptual approach*) to analyze the principle from the perspective of the state of law and human rights. Primary legal materials include the 1951 Refugee Convention, the 1967 Protocol, CAT, ICCPR, UUD 1945, Law Number 39 of 1999, Law Number 6 of 2011 and Presidential Regulation Number 125 of 2016 (Constitution of the Republic of Indonesia of 1945, n.d.)(Law No. 39 of 1999 concerning Human Rights, 1999), while secondary legal materials consist of scientific journals, legal textbooks and UNHCR reports. The technique of collecting legal materials is carried out through literature studies (*Library Research*) systematically against all relevant legal materials.

The analysis of legal materials is carried out qualitatively using systematic interpretation techniques and comparative analysis. Systematic interpretation is used to map the relationship between legal norms in international instruments and national legal systems. Comparative analysis was used to compare the provisions of international law with Indonesian national practices, especially the differences in policy approaches between Aceh and Batam so that the gap between *das sollen* and *das sein* can be sharply identified. Conclusions are drawn deductively, which is departing from the general principles of international law and then analyzed in the

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context of Indonesian national practice.

RESULT AND DISCUSSION

A. The Concept and Position of the Non-Refoulement Principle in International Law

Principle *non-refoulement* is a fundamental norm in international refugee law that expressly prohibits states from expelling or returning a person to a territory that threatens his or her life and liberty (Brown, 2018). This norm was first codified in Article 33 paragraph (1) of the 1951 Refugee Convention which states that no country may expel or return refugees to territories where their life or freedom is threatened because of race, religion, nationality, membership of a particular social group or political views (Kusumo et al., 2025). This prohibition is absolute and cannot be reduced for administrative reasons alone. Article 33 paragraph (2) does make exceptions for refugees who are considered a danger to state security or have been convicted of serious crimes, but this exception must be applied strictly and with fair procedures.

The development of international law expands the scope of the principle *non-refoulement* go beyond mere refugee legal instruments. Article 3 of the Convention Against Torture (CAT) prohibits the repatriation of a person to a country that has the potential to torture him. Article 6 of the ICCPR guarantees the right to life that cannot be reduced under any circumstances, while Article 7 of the ICCPR prohibits torture and inhuman treatment. The integration of this principle in various human rights instruments shows that *non-refoulement* not just a refugee legal norm, but part of a universal standard of human rights protection (Heriyanto & Setiawan, 2023). UNHCR affirms that this principle has evolved into *Customary International Law* which binds all countries, including those that have not ratified the 1951 Refugee Convention (Law Number 6 of 2011 concerning Immigration, 2011).

In the perspective of the state of law, the principle *non-refoulement* closely related to the State's obligation to guarantee legal certainty and protection of every individual within its jurisdiction without discrimination. The rule of law not only requires that power be exercised according to the law, but also demands that it guarantees justice and basic human rights(Muhlashin, 2021). Therefore, the application of the principle *non-refoulement* In the framework of the legal state, it is not enough to simply avoid formal forced repatriation. The rule of law demands a structured system of protection, which provides certainty of status, fair procedures and guarantees of the fulfillment of basic rights for all persons seeking refuge within their territory (Kusumo et al., 2025).

The principle *of non-refoulement* is also directly related to the concept of *state*

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responsibility in international law. Countries that carry out forced repatriations to dangerous areas can be held accountable for violations of their international obligations, both in bilateral and multilateral forums (Yulianto, 2020). This shows that this principle is not just a moral norm, but contains real legal consequences. The relevance of this principle for Indonesia is even stronger considering its position as a transit country that faces a large influx of refugees every year.

B. Implementation of the Non-Refoulement Principle in Indonesia

Indonesia's national legal framework for refugee protection has not yet established an integrated system. Article 28G paragraph (2) of the 1945 Constitution guarantees the right of everyone to be free from torture and the right to obtain asylum which systematically becomes the constitutional basis for the application of the principle *non-refoulement*(Constitution of the Republic of Indonesia of 1945, n.d.). Law Number 39 of 1999 concerning human rights affirms that basic rights apply to everyone without discrimination, including foreign citizens (Law No. 39 of 1999 concerning Human Rights, 1999). Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad is the main operational instrument, but it is limited to the regulation of administrative handling without touching on the substantive recognition of the legal status of refugees (Puspita, 2024). The absence of a specific refugee law has caused the legal position of refugees in Indonesia to lack a strong and consistent foundation.

The absence of such specific regulations creates a legal vacuum that has a serious impact on the implementation of the principle *non-refoulement* in the field. Refugees do not have a clear legal status in the national system so the treatment they receive is entirely dependent on administrative policies that can change at any time(Maula, 2024) This condition also results in a great dependence on UNHCR as an institution that is *de facto* carry out the function of determining the status of refugees in Indonesia. UNHCR provides protection by first ensuring that refugees are safe from *Discharge*, conduct identity verification and issue documents that can protect refugees from deportation. UNHCR's very dominant role reflects the weak capacity of the state to manage refugee issues independently(Syahrin, Aji, et al., 2024) .

Mochtar Kusumaatmadja in his theory of development law asserts that law functions as a tool of social engineering (*Law as a tool of social engineering*) that can drive societal change towards a more just and orderly goal (Maula, 2024). In this context, the absence of a refugee law is not only a technical-juridical shortcoming, but also a failure to use the law as an instrument of development in favor of humanity. Indonesia actually has the normative and institutional capacity to build a better refugee protection system, as shown by Presidential Regulation Number 125 of

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2016. However, these regulations are not sufficient as a strong foundation for protection because their position is only at the level of a presidential regulation.

Institutional challenges are also significant obstacles in the implementation of refugee protection principles. The handling of refugees in Indonesia involves many institutional actors without a clear and binding coordination mechanism. As a result, the response to refugee arrivals is often not standardized and depends on the initiative of individual regions or institutions. This weak coordination is exacerbated by the low understanding of some authorities of the normative meaning of non-refoulement so that in some cases the act of rejection or deportation is carried out without adequate verification procedures (Solihin et al., 2024). This situation directly undermines the consistency of protection provided to refugees throughout Indonesia.

C. Implementation in Receiving Areas: An Aceh Case Study

Aceh is the main area for the reception of Rohingya refugees in Indonesia and has consistently shown the character of a humanitarian approach in handling the wave of arrivals. The Acehnese people, who have strong bonds of solidarity based on common religion and human values, often actively rescue refugees stranded in the waters and provide emergency assistance in the form of food, clean water and shelter. This action is a tangible expression of the principle *non-refoulement* in the most basic sense, that is, not allowing someone to be returned to a dangerous situation. The Indonesian government also does not refuse or forcibly repatriate arriving refugees, which systematically reflects respect for customary international norms (Syahrin, Aji, et al., 2024).

The involvement of UNHCR and other humanitarian agencies helped fill the gap in the country's capacity to provide more structured protection in the early phases. Arriving refugees are placed in temporary shelters and have access to emergency health services, data collection, and the initial status determination process (Baran, 2025). This approach shows that protection in Aceh does not solely depend on local values, but is also supported by an international aid network that serves as a buffer of capacity. However, this dependence on external actors also confirms that the state is not yet fully present as the main protector(Syahrin, 2017).

The humanitarian approach in Aceh faces structural limitations that are increasingly evident as the number of arrivals increases. Limited shelter facilities, the absence of long-term integration mechanisms, and the socio-economic burden felt by local communities began to create friction in the reception of refugees. An Antara News report revealed indications of human smuggling practices that exploit the Rohingya migration route to Indonesia, which puts the

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country in a dilemma between the obligation to protect victims of persecution and the need to enforce the law against transnational crime networks(Nabima & Djaja, 2025). This situation confirms that the handling of refugees in Aceh requires an approach that goes beyond a spontaneous humanitarian response, it requires a structured and sustainable legal and institutional system(Tobing, 2021).

D. Implementation in Transit Areas: A Case Study of Batam

Batam serves as a transit area in Indonesia's refugee handling system, taking advantage of its geographical position close to international shipping lanes. Refugees placed in Batam generally await the process of determination of status by UNHCR or possible transfer to a third country. In practice, refugees are not repatriated to their country of origin, so the formal aspect of the principle *non-refoulement* Stay respected. However, the approach applied in Batam is very different from that of Aceh, emphasizing more administrative control than active protection of refugee rights (Missbach & Adiputera, 2021).

The living conditions of refugees in Batam illustrate a situation that academics refer to as *Legal limbo*, which is a state in which a person is not fully recognized for his or her rights but is also not deported. Refugees in Batam do not have documents recognising their status in the national legal system, are not free to move around, cannot work legally and have very limited access to basic public services. This prolonged uncertainty of status creates serious psychological distress in the form of anxiety, depression and loss of hope for the future. This condition is in direct contradiction to the principle of protection based on human dignity (*dignity-based protection*) which is at the heart of international refugee law(Heriyanto & Setiawan, 2023).

The policy pattern in Batam reflects a tendency that can be called "*containment without resolution*". The state has managed to avoid formal violations of the repatriation ban, but has not provided a clear path to settlement of refugee status. Prolonged transit policies without a definite settlement mechanism have the potential to create new problems, such as social tensions with local communities and deteriorating mental health conditions for refugees. This situation shows that the principle *of non-refoulement* is applied very narrowly in Batam only limited to the prohibition of physical expulsion without being followed by substantive state responsibility for the living conditions of refugees.

E. Critical Analysis in the Perspective of the State of Law and Human Rights

A comparison between the approaches in Aceh and Batam reveals systematic

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inconsistencies in the application of the principle *non-refoulement* which is rooted in the absence of a systematic national legal framework. In the perspective of the state of law, this inconsistency reflects a failure to meet the principle of legal certainty (*Legal Certainty*) which is an essential element of the modern legal state. Legal certainty demands that the rule of law is applied consistently and predictable by all legal subjects. When refugee policies vary from one region to another without a binding legal basis, the real state of law has not been substantially realized in the realm of refugee protection (Maula, 2024).

From a human rights perspective, the protection provided to refugees in Indonesia is still at a very minimal level. The state has indeed fulfilled its most basic obligation, which is not to carry out forced repatriation but has not moved towards the fulfillment of more substantive rights (Kaendo & Adhari, 2025). Refugees in Batam are unable to access jobs, quality education or adequate health services which are rights guaranteed in international human rights instruments that Indonesia has ratified. This condition shows that Indonesia is still operating at a level of survival-based protection *(survival-based protection)*) far from the standard of human dignity-based protection *(dignity-based protection)* required by international law (Susetyo et al., 2025).

The tendency to delegate responsibilities to UNHCR and other international organizations also shows that Indonesia has not fully exercised its role as the main guarantor of human rights in its territory(Tobing, 2021). Within the framework of international law, the primary responsibility for the protection of individuals lies with the country in which the individual is located, not with international organizations. This delegation, although practical in the short term, actually creates a fragile protection structure because it depends on the availability of resources and the mandate of external institutions that can change at any time (Hidayah, 2023). A state that claims to be a state of law should build an independent and sustainable protection system, independent of *outsourcing* Responsibilities (Ardian, 2025).

Overall, this study identifies the *partial implementation model* of the principle *of non-refoulement* in Indonesia, which is a condition in which the state has fulfilled the formal aspects of the expulsion ban, but has not fulfilled the substantive active protection aspect. This model comes as a new conceptual contribution that distinguishes this study from previous studies that are more descriptive in nature. These findings underscore the need for a policy transformation from "not violating" to "actively protecting" so that *the principle of non-refoulement* can be fully implemented within the framework of a rule of law that upholds human rights.

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CONCLUSION

The application of *the principle of non-refoulement* in the handling of refugees in Indonesia is partial and has not been systematically integrated into the national legal framework; the state has fulfilled its minimum obligations by not carrying out forced repatriations, but has not ensured the comprehensive protection of refugees' basic rights. The difference in approach between Aceh, which implements a humanitarian pattern, and Batam, which implements an administrative pattern, reflects the inconsistency of implementation rooted in the absence of refugee laws, weak institutional coordination, and poorly managed social dynamics. This condition shows that Indonesia is still operating at the level *of survival-based protection*, far from the standard *of dignity-based protection* required by international law. Therefore, the Indonesian government needs to urgently draft a systematic refugee law to provide legal certainty and become a consistent policy foundation, strengthen institutional coordination mechanisms so that refugee handling runs effectively and standardized, and shift policy orientation from a minimalist approach to a human rights-based approach that guarantees refugees' access to health, education and a dignified life.

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