

# Minimum Protection of Rohingya Refugees (A Moral Approach in Aceh)

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**Abstract.** Indonesia is not a member of the 1951 Convention and 1967 Protocol on the Status of Refugees. However, the Government of Indonesia has been receiving many refugees. Aceh has some experiences in handling Rohingya refugees since 2009. The purpose of this research is to describe the minimum protection afforded to Rohingyas and the values of local wisdom that affect the provision of minimum protection to Rohingyas in Aceh. This is socio-legal research — structured interviews and observations conducted in North Aceh, East Aceh, and Langsa. The population in this study are all stakeholders involved in handling Rohingyas in Aceh. The result shows that Rohingyas in Aceh have gained better minimum protection, compared to other provinces in Indonesia. The interaction between the refugees and communities is fairly good, which is affected by the existing values of local wisdom in Aceh society and concurrently with the values in their country of origin. Minimum protection of refugees can be maximized if local wisdom values are well integrated into refugee management policies; Good coordination among agencies; and socialization to the local community about the existence of refugees in their area.

**Keywords:** Refugee Handling, Rohingyas, Local Wisdom, Aceh.

## 1 Introduction

The purpose of this research is to examine the minimum protection afforded to Rohingya refugees; The role of stakeholders and the community; As well as the values of local wisdom that affect the provision of minimum protection to Rohingya refugees in Aceh Province.

Aceh has some experiences in handling Rohingya refugees since 2009. The most recent influx mass occurred in 2015 when over 1,300 people landed in Aceh. Although Indonesia is not a member of the 1951 Convention and 1967 Protocol on the Status of Refugees, yet the Government of Indonesia received refugees and placed them in several shelters in East Aceh, Langsa, and North Aceh. 964 Rohingya refugees from Myanmar were rescued by fishermen in Aceh with 720 Bangladeshi migrants in early May 2015. The Indonesian Foreign Ministry ensured that Rohingya refugees from Myanmar would be stationed at temporary shelters in Lhokseumawe, East Aceh and North Aceh. The Indonesian government has set up temporary shelters to accommodate refugees for a year.

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, Addressed to 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. In general, in handling refugees, of the Government of Indonesia refers to Law Number 9 the Year 1992 concerning Immigration and Government Regulation No. 30 of 1994 on Procedures for the Prevention and Deterrence Prevention. However, as of December 31, 2016, the President of the Republic of Indonesia have signed the Presidential Regulation No. 125 of 2016 on the handling of refugees from abroad, as mandated by Law Number 37 the Year 1999 on Foreign Relations.

The Refugee Management Presidential Regulation which is still in the stage of socialization and has not been fully implemented, and it still needs a deeper assessment on a refugee protection concept based on local wisdom that grow in the local community. This study is expected to be able to test the concept of refugee protection from abroad that enters the territory of the Republic of Indonesia, which is in line with international law and keeps or integrates the values of local wisdom in society. The study is trying to identify and analyze the questions about the role of stakeholders in providing protection to refugees in Aceh and the values of local wisdom that affect the minimum protection of refugees in Aceh.

## **2 Method and Materials**

This is socio-legal research. Structured interviews and observations were conducted in North Aceh, East Aceh, Lhokseumawe, and Langsa. The population in this study are all stakeholders involved in handling Rohingya refugees in Aceh Province.

## **3 Legal Protection of Refugees**

The handling and protection of refugees are 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 obliged to apply the provisions of the 1951 Convention as the national law. However, each state has its arrangements or policies in handling refugees who enter their territory. Unfortunately, until now Indonesia has not been a member of the 1951 Convention and 1967 Protocol on Refugee Status.

Recognition of the first asylum institution issued by Indonesia is the Circular Letter (SE) of the Prime Minister Number 11/RI/1956 on the Protection of Political Escape. Article 1 of the SE states: "*too political refugees, who enter and exist in the territory of Indonesia shall be protected by human rights and freedoms, by customary international law.*" That is, a political refugee who is seeking asylum in Indonesia, committing a crime for political reasons or purposes, including attempts to commit and assist in a political crime shall be protected.

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 outlined in Article 24, which reads: "*Everyone has the right to seek asylum for political protection from other countries.*" Although Indonesia is not a member country participants of the 1951 Convention and 1967 Protocol, Indonesia has signed the Convention Against Torture and the Cruel, Inhuman or Degrading Treatment of Humanity which has been ratified by Law Number 5 the 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.*” The elucidation of the article above is explained that the determinant of an act, whether the act is a political crime or not, is the country that accepts asylum-seekers.

The Second Amendment of the 1945 Constitution in 2000 also incorporated the provisions on asylum 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 the state etc."* 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 Number 37 the Year 1999 concerning Foreign Relations (Foreign Relations Act) in Articles 25 - 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 a Presidential Decree."* The essence of Articles 25-27 is to order for the establishment of a Presidential Decree, currently called the Presidential Regulation, which will regulate the authority and procedures for handling refugees concerned 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 absence of legal instruments concerning the handling of refugees in Indonesia has been overcome through the Immigration Directorate General's Regulation Number IMI-1489.UM08.05 Year 2010 on Immigration Management. The Directorate General Regulation was born as the implementing regulation to minimize the impact of the existence of foreign nationals as illegal immigrants who later declared themselves as asylum seekers and refugees and have similar immigration handling and treatment procedures throughout Indonesia.

The Immigration Directorate General Regulation for Immigration Handling stipulates that *"every foreigner who enters into and or resides in the territory of Indonesia is not by the provisions of legislation is called illegal immigrants"*. Against these, illegal immigrants will be subject to immigration action, but as illegal immigrants expressing their desire to seek asylum and for some reason cannot be subject to deportation.

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 presidential regulation begins to use the term refugees as set out in the 1951 Convention.

The Presidential Decree on refugee handling does not explicitly stipulate the prohibition of discharge against refugees entering or leading to the territory of the Republic of Indonesia. However, there are arrangements relating to the handling of refugees in search and rescue operations, that can be concluded that Indonesia will seek and provide relief to refugees or people suspected to be 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.

## 4 The Role of Stakeholders

The presidential regulation on refugees' handling has just been signed and is still in the process of socialization so that when the wave of mass evacuation occurred in 2015, the Indonesian government applied the Immigration Authority regarding the handling of illegal immigrants in the face of refugees. Several government institutions have agreed to establish a Bureau for the Management of Human Smuggling, Refugees and Asylum Seekers (P2MP2S) to coordinate among ministries or agencies and to provide recommendations to subordinate institutions and local governments on the actions to be taken in addressing emerging displacement issues in the field.

The P2MP2S Bureau involved 11 relevant Ministries and Institutions. The absence of laws relating to the handling of refugees so far has led some government agencies to exercise their limited authority to resolve the problems of refugee and asylum seekers. The Ministry of Foreign Affairs of the Republic of Indonesia is one of the agencies representing the Government of Indonesia with the Coordinating Ministry for People's Welfare (Kemenkokesra) of the Republic of Indonesia in handling refugees in Aceh. Although Kemenkokesra is not included in the P2MP2S Bureau, in its implementation, the role of Kemenkokesra in protecting refugees is very significant. It is related to the availability of basic needs of refugees that cannot be budgeted and taken from the local government budget, both at the provincial and district/city levels.

The Bureau also encourages the formation of refugee-handling task forces at the local level involving various government agencies. The Bureau monitors the course of the handling of refugees in refugee areas in Indonesia. One of the concerns of this Bureau is the effectiveness of the Foreigner Oversight Team (TimPOrA), as mandated by the Immigration Act no. 6 of 2011, which instructs Immigration Department to become a leading sector in every region in Indonesia to supervise and handle foreigners in the Indonesian territory.

Based on the new Presidential Regulation, refugee handling in Indonesia is conducted through cooperation between the Central Government and the UN, through the existing of UNCHR in Indonesia and/or other international organizations working in the field of immigration or the humanitarian field with the cooperation of the Central Government. UNHCR as a unique body under the council of the United Nations on the economy and social (ECOSOC), which has been affirmed by its authority through Resolution No. 428 (V) of the UN General Assembly of 1950. This authority was later extended by UN Resolutions of several General Sessions of the UN ECOSOC Council, international protection to refugees by humanitarian and non-political reasons, and to seek a permanent solution for the refugees.

In addition to UNHCR, the International Organization for Migration (IOM) also has a very big role in the handling of refugees in Indonesia so far. IOM is assisting the Indonesian government in handling refugees residing in the Indonesian territory. The authorities will immediately contact the IOM, then send a team to conduct a medical check-up, find a place to live and arrange their food. IOM also describes their situation and helps to address some issues, including requests for refugee status. If refugees choose to apply for refugee status, IOM will make recommendations to UNHCR. However, if they choose to be repatriated voluntarily, IOM will immediately arrange for the return, including travel documents, tickets, and other matters deemed necessary.

Regarding the specificity of refugees who landed in Aceh, the work of local NGOs is important, because the NGOs carried out and sustained emergency activities more quickly than the government. When dealing with refugees, NGOs are not bound by any regulations that could endanger their existence. While the Local Government is slower due to the lack of a legal

umbrella to take any action, the work of these flexible NGOs has made the refugee response conditions in Aceh handled swiftly.

The Task Force does not have a reporting mechanism and is established to avoid overlapping the handling of refugees as well as a means of coordination. All parties wishing to contribute to equal parts in the Task Force, whether governmental institutions, local or national NGOs or international organizations. All decisions related to refugee handling in Langsa, coordination of receiving and distributing aid, or other matters must be through Task Force approval.

Meanwhile, Social Agency of Langsa received direction from the Ministry of Social. In the first month of receiving refugees, a Social agency of Langsa provides logistics services and distribution of assistance. After more than a year of handling refugees, the Task Force finally has Standard Operating Procedures (SOP) that are based on the experiences of handling and learning from various parties on refugee handling.

The Government of Langsa established several policies related to the management of aid to refugees in the shelters, among others: to establish a task force for handling refugees; assigning tasks to social agencies to manage food aid; and lending 6 hectares of land to build temporary shelters for refugees. The establishment of a refugee handling task force can facilitate communication between the Langsa Government and the social institutions working to deal with refugees in Kota Langsa. The success of this communication has made it easy for Kota Langsa to raise funds for the basic needs of refugees.

The handling in Lhokseumawe and North Aceh is slightly different. It is because the function of the Task Force is not fully implemented so that some initiatives should be made by humanity from the personnel of various government agencies. To tackle the Task Force vacuum, some individuals in the government who are concerned about this issue build a Working Group (WG) together with local NGOs. All activities carried out either by Task Force or WG are reported to the Regional Secretary. The Regional Secretary also does communication to the Central Government. Initially, the Regent of North Aceh issued Decree on the Establishment of Task Force, but there was no renewal of Decree or local government initiative institutionally considering the refugees' handling. Therefore, the current handling of refugees in North Aceh becomes more indecision, whether the refugee handling activities carried out by the government apparatus is the appointment or volunteer by humanity from the government apparatus.

## **5 The View of Rohingya Refugees in Aceh**

The local community's view on refugees is relatively good. Several factors influencing people's views are religious and refugee factors. The people of Aceh are very open with refugees, whereas the Immigration, UNHCR, and IOM have imposed limits on the social interaction of refugees with surrounding communities. It cannot be separated from the sense of humanity among fellow brothers. The refugees became close to the fishermen communities that once rescued them while stranded in the waters of Aceh. The refugees say they often visit families in the village of Lapang and Kuala Langsa fishing village. They are considered as their own family.

The results of the interview with residents in the four areas visited, the society still associates the issue of Rohingya with the religious conflict between Muslims and Buddhists. These religious sentiments seem to be enough to induce the empathy of the Acehnese people towards the refugees. People also think that the refugees will only temporarily stay here because

it will soon be found a new country for them. Many refugees are living up to years in Indonesia. It has caused concern for local residents, especially with refugees who have built social closeness, because of daily interaction. Local people hope that governments and organizations responsible for them, immediately dispatched to other countries so that they can live a normal life. As long as the refugees do not cause problems, the local people do not question the existence of refugees in the community.

Obstacles that can be obtained from the interviews of several institutions related to refugees in Aceh such as those delivered by Khuzaimah, the Secretary of North Aceh Social Agency:

*"the average refugee has a hard habit and a hard character against the family if punish the child or spouse with a hard and repeated blow, so that the local Aceh people feel pity for the children and his wife who is pregnant. Language differences between refugees and local communities which causes the difficulty of communication, thus making it difficult to inform the refugees about something that applies in Aceh. In principle, the people of Aceh are a friendly and helpful society. They consider refugees to be guests who must be served well, as evidenced by the many contributions of the people given to refugees by their respective capabilities."*

These obstacles can be handled with the help of some parties and people who care and feel sorry, in addition to doing some coaching by teaching English skills, Bahasa Indonesia and playing games with the kids and other skills. This is consistent with the explanation given by Noni from the ACT, namely:

*"At the beginning of their arrival we have difficulty communicating, so we only use the media images and assisted by one refugee who had lived in Malaysia. Children are invited to play and study, where the number of children in refugee camps in Kuala Cangkoï is about 50 children out of 350 refugees. In principle, the community around the refugee receives both the arrival of refugees, some even interested in raising children and like to give small gifts directly to the children. After the completion of shelter building and several times coaching and providing skills, they become more up and more regular, do not look dirty and chaotic anymore."*

From some interview results, it is interesting to discuss the handling of these refugees, because everything begins with good intentions and sincerity in helping. This may be due to the bonds of brotherhood in the case of one religion. Although they are all Muslims, whose religion is the same as the local people or the people of Aceh, there are some who have not to be able to read the Qur'an so well, so there are some volunteers who sincerely teach them to study. Unfortunately, after a few weeks or months of settling, some are attracted to run away with some job seekers, this is one of the obstacles and disappointments of the Aceh government who have willingly accepted and assisted them.

Those who fled were mostly persuaded by labor agents who came from Medan, without realizing human trafficking risk. So, the immigration and local police officers made some efforts and mapping the refugees by communicating with the help of a spokesman and trying to bring back those who fled. It is by the exposure and explanation of Sarimin from North Aceh police, where:

*"Refugees are looking for work and earn income that can help their lives, and can change their destiny for the better. The escape effort is easy because the refugees should not be made prisoners, let them free and get out in the refuge without having to feel in the bridle."*

## 6 Local Wisdom In Protection of Refugees

Local wisdom is the view of life and science and various life strategies that manifest the activities undertaken by local communities in answering various problems to meet their needs. In foreign languages, it is often conceived of local policy or local knowledge or local genius [1]. Local wisdom can also be interpreted as certain principles and ways adopted, understood, and applied by local people in interacting with their environment and transformed in the form of customary value systems and norms. Others argue that local wisdom refers to knowledge that comes from the experience of a community and is an accumulation of local knowledge [2].

Local wisdom according to Law no. 32 of 2009 on the protection and management of the environment, Chapter 1 Article 1 point 30 are the noble values prevailing in the way of life of the people; among other things protecting and managing the environment sustainably. Local wisdom can be understood as a human effort by using its mind to act and behave towards an object of events, occurring in a particular room. While wisdom understood as the ability of a person to use his mind in acting as a result of the assessment of an object or event that occurred [3].

In May of 2015 yesterday, there were people from Bangladesh and Myanmar stranded in Aceh, in critical condition, Fishermen tried to help those consisting of children, men and women to provide care assistance, provide food and drink. The existence of people who have a reason to immigrate because of the threat of life, oppression, and violence perpetrated by the Myanmar government to the Rohingya tribe community, has made the Acehnese people have local wisdom called "*Peumulia Jamee*".

The people of Aceh are known as people who uphold the teachings of religion, believing the life of today is closely related to life in the hereafter, and understand that after the difficulty there is happiness. The values of customary laws and norms that blend with Islam are "way of life" for the people of Aceh and continue to grow throughout history. So Islam becomes the fundamental of Acehnese traditional culture that has the fighting power to reach the future. As often referred to in the *hadith maja* namely: *Adat bak Poe Teumeureuhom, Hukom bak Syiah Kuala, Qanun bak Putroe Phang, Reusam bak Lakseumana*. Also *hukom ngon adat lagee dzat ngon sipheut*, which means religious law and customs such as substances and properties, cannot be separated [4].

In connection with the Rohingya refugees, the reception of the Acehnese people when they were first stranded at sea in the Seunoddon area, were greeted like their own relatives who were in distress. The people around the area gave assistance as much as they could give to their brothers. This was delivered by Norita Handayani, one of the volunteers that:

*"In Kuala Cangkoi, when they recently came, the community was happy, some would take it for children. We also support in terms of food, beverages, clothing and also the needs of spiritual matter, such as the needs of musholla and so because most of them are Muslims."*

The local wisdom that prevails in this situation is the initiative of the fishermen to pull them ashore influenced by the Acehnese culture that is the value of helping others who have been running for so long, as influenced by the values of Islam, in the verse that reads "*all Muslims are brothers*."

The acceptance of the community around the refugees also shows these values, some seen in interviews with Rauzi Haristia, ACT Coordinator for Rohingya in North Aceh. Attention to the refugees is done by giving by the ability of the surrounding community, before any other assistance comes. This attitude does not just arise to the people of Aceh, but has become a local wisdom that is wise, full of wisdom, guided and implemented by members of the community,

the "*Peumulia Jamee* – In respect of the guest" culture and those Rohingyas are guests who come to Aceh, so we should welcome and help them.

The process of rescuing Rohingya refugees was done by Acehnese fishermen who felt sorry to see them hanging around for so long at sea, so took the initiative to pull them ashore.[5] The actions of these fishermen are contrary to the principle of defense of a country, wherein the principle of state land, the coming foreigner is considered an enemy, anyone, and must be drowned. As DMT Siagian, Lhokseumawe Lanal staff, said:

*"Based on the principle of defense, anything that goes in illegally, we consider the enemy. Because of what? we keep the unity of the Unitary State of the Republic of Indonesia, just because there is a human rights issue, we should not refuse them, they are human too. That is what we balance so we just throw it away."*

The values of local wisdom carried out by the people of Aceh in helping Rohingya refugees are not only *peumulia jamee*, For example, in facing the problems that occur among fellow refugees or between the refugees and local community, they are resolved according to the customs (*adat*) in Aceh, with the idea that *dimana bumi dipijak, disitu langit dijunjung*, (where the earth is located there it is upheld, that where we are, the local law is applicable).

Sarimin, one of the Police officers of North Aceh, was assigned to maintain security around the Rohingya refugee shelters, argues that there was a desire from Rohingya refugees to marry, whereas according to IOM rules they should not do so because it will increase their problems based on their stateless status. This was trying to resolve through local wisdom by asking the opinion of '*ureung tuha* - elders' in the village:

*"Yes, we have asked for the opinion of teungku (religious leader), because if we do not allow them, then they will commit adultery. If one commits adultery there, then one village will face the consequence. There was one case, in Blang Adoe, when Rohingya married the villager, we call teungku, we call keuchik (the head of the village), and the local communities. The process was not based on state law but the local wisdom and religious law."*

Some cases occur between refugees and the local community, and being resolved in local custom ways, as Sarimin said: *"In local wisdom, the administrative processes, we applied Qanun No. 9 of 2008 concerning the development of indigenous life and customs. They should follow our custom here."*

Almost every community has distinctive local wisdom as an adaptation strategy to the environment. With such wisdom, a society can survive and successfully live his life well. Strategies for success in the life of a society cannot be separated from the beliefs and customs that are taught and practiced for generations. Islam as a live view of the people of Aceh can color all aspects of life ranging from social aspects, politics, law, education, and culture. In the cultural context, Islamic teachings can harmonize the customary order in religious values.

## **Acknowledgment**

We thank the Dean of Law Faculty of Universitas Malikussaleh, the Head of LPPM of Universitas Malikussaleh, and especially the DRPM of Ristekdikti of Indonesia.



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