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# Unprotected at the Borders: Analyzing Refugee Status in Indonesia and the Non-Refoulement Principle

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***ABSTRACT***

*Indonesia, a key player in global migration flows, has not ratified the 1951 Refugee Convention or the 1967 Protocol, creating uncertainty regarding the legal status and protection of refugees. This article examines how Indonesia, as a non-signatory, upholds the principle of non-refoulement, a core element of customary international law. Using a normative legal approach, including doctrinal analysis and policy evaluation, the study explores Indonesia's national regulations, particularly Presidential Regulation No. 125 of 2016 on refugee handling, and its cooperation with UNHCR in Refugee Status Determination. Findings indicate that while Indonesia is not legally bound by the Refugee Convention, it adheres to fundamental humanitarian principles, including the prohibition of forced return. However, the lack of a national asylum system limits refugees' access to legal protection, basic rights, and long-term security. This article highlights the importance of strengthening Indonesia's domestic legal framework to ensure alignment with international protection standards, offering a contribution to the literature by emphasizing the necessity of a robust asylum system in a non-signatory state.*

***Keywords:*** *Asylum Seeker; Indonesia; Refugees;*

## INTRODUCTION

The global refugee crisis has reached unprecedented levels in recent decades, driven by ongoing conflicts, systemic violence, and widespread human rights violations across many regions. According to the United Nations High Commissioner for Refugees (UNHCR), over 100 million people worldwide have been forcibly displaced from their homes, a situation exacerbated by climate change, economic instability, and protracted conflicts. The international community has long recognized the need for a standardized framework to protect refugees, with the 1951 Refugee Convention and its 1967 Protocol serving as the cornerstone of global refugee protection. These agreements outline the rights of refugees, including the right not to

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be forcibly returned to a country where they would face danger—a principle known as non-refoulement.

Despite these international legal frameworks, many countries have yet to fully commit to the protection of refugees, either by not acceding the Refugee Convention or by lacking the domestic infrastructure to enforce refugee protections. The principle of **non-refoulement**, which prohibits the return of refugees to countries where they face serious threats to their lives or freedom, has become a norm of customary international law, binding even for countries not party to the Refugee Convention. However, the absence of universal adoption and the inconsistent application of this principle across nations create a precarious situation for refugees, leaving them vulnerable to exploitation, violence, and abuse.

Indonesia, as a significant transit country in Southeast Asia, is deeply entwined with this global issue. While not a party to the 1951 Refugee Convention or its Protocols, Indonesia *plays a pivotal role* in refugee protection. With its strategic location, Indonesia has become a destination for many refugees fleeing persecution in neighboring regions such as Myanmar, Afghanistan, and Sri Lanka. Despite its non-signatory status, Indonesia has expressed a commitment to the non-refoulement principle, often facilitating asylum processes in collaboration with international organizations such as the UNHCR. Nevertheless, Indonesia's lack of a formal asylum system leaves refugees in a legal limbo, with limited access to rights and protections, and uncertain futures as they await resettlement or potential deportation.

This global context underscores the complexities of refugee protection in Indonesia, particularly concerning its obligations under international law, its humanitarian responsibilities, and the gaps in its domestic asylum system. The implementation of thw principle of **non-refoulement** remains a pressing challenge for Indonesian policymakers, international organizations, and refugees themselves, as they navigate an increasingly fragmented and politically charged global refugee landscape.

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Despite these international legal frameworks, many countries have yet to fully commit to the protection of refugees, either by not signing the Refugee Convention or by lacking the domestic infrastructure to enforce refugee protections. The principle of **non-refoulement**, which prohibits the return of refugees to countries where they face serious threats to their lives or freedom, has become a norm of customary international law, binding even for countries not party to the Refugee Convention. However, the lack of universal adoption and inconsistent application of this principle by various nations creates a precarious situation for refugees, leaving them exposed to exploitation, violence, and abuse.

Indonesia, as a significant transit country in Southeast Asia, is deeply intertwined with this global issue. While not a party to the 1951 Refugee Convention or its Protocols, Indonesia remains a key player in refugee protection. With its strategic location, Indonesia has become a destination for many refugees fleeing persecution in nearby regions such as Myanmar, Afghanistan, and Sri Lanka. Despite its non-signatory status, Indonesia has expressed

a commitment to the **non-refoulement** principle, often facilitating asylum processes in collaboration with international organizations such as the UNHCR. However, Indonesia's lack of a formal asylum system leaves refugees in a legal limbo, with limited access to rights and protections, and uncertain futures as they await resettlement or deportation.

This global context sets the stage for understanding the complexities of refugee protection in Indonesia, particularly in relation to its obligations under international law, its humanitarian responsibilities, and the gaps in its domestic asylum system. The application of **non-refoulement** remains a critical issue for Indonesian policymakers, international organizations, and refugees themselves, as they navigate an increasingly fragmented and politically charged global refugee landscape.

In recent decades, the flow of international refugees has increased due to armed conflicts, humanitarian crises, and human rights violations in various parts of the world [1]. Indonesia, although not a state party to the 1951 Refugee Convention and its 1967 Protocol, has become one of the main transit countries for thousands of refugees and asylum seekers [2]. The absence of this conventional commitment raises questions about the legal status of refugees in Indonesia, especially regarding the protection of their rights and legal certainty.

Amid the limitations of the national asylum system, Indonesia continues to demonstrate its commitment to the principle of non-refoulement, which is a norm of customary international law that prohibits the return of refugees to countries of origin where they fear persecutions. This principle is implicitly reflected in national policies, such as Presidential Regulation No. 125 of 2016, and is further operationalized with the support of UNHCR in refugee status determination. However, without a clear national legal umbrella, refugees in Indonesia still face various obstacles, including limited access to education, health services, employment, and certainty of the future.

Thus, it is important to analyze in depth how Indonesia navigates its position as a non-state party to the 1951 Refugee Convention while adhering to the principle of non-refoulement. This analysis addresses the pressing need for the development of a more comprehensive domestic legal framework to ensure the sustainable protection of refugees..

Indonesia is one of the countries that has not yet ratified the 1951 Convention on the Status of Refugees and its 1967 Additional Protocol. As a result of this non-binding, Indonesia does not have a conventional legal obligation to provide status or protection to refugees as stipulated in the instrument. However, in practice, Indonesia continues to accept international refugees and makes itself a fairly significant transit country in the Southeast Asian region.

Although not bound by international agreements regarding refugees, Indonesia still has obligations under customary international law, especially the principle of non-refoulement. This principle is having attained the status of *jus cogens*it cannot be set aside, even by a country that is not a party to the agreement. This means that Indonesia must still respect this principle as part of its universally binding international legal commitments.

In this context, Indonesia's obligation does not lie in granting formal refugee status, but rather in minimum protection of basic refugee rights, such as the right to life, the right to protection from torture, and the right to humanitarian assistance. This obligation is also strengthened by Indonesia's participation in various international human rights conventions, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT), which require states to protect everyone under their jurisdiction from cruel, inhuman, or degrading treatment. In addition, Indonesia allows the presence and operation

[1]Melina Tri Asmara and Alvi Syahrin, "Aktualisasi Kebijakan Imigrasi Indonesia Terkait Hak Asasi Manusia Bagi Pengungsi Rohingya Di Indonesia," *Journal of Law and Border Protection* 1, no. 2 (2021): 73–84.

[2]Ninin Ernawati, "The Legal Consequences of the Application of Two Australian Policies as Members of the 1951 Refugee Convention Reviewed from the VCLT 1969," *Jurnal IUS* 7, no. 1 (2019).

of the United Nations High Commissioner for Refugees (UNHCR) in its territory. UNHCR is authorized to carry out the process of determining the refugee status or Refugee Status Determination (RSD) for asylum seekers in Indonesia. In practice, the presence of UNHCR replaces the role of the state in the refugee legal process and provides temporary protection until refugees can be transferred to a third country through a resettlement scheme.

Indonesia's domestic policies also reflect an administrative commitment to refugee protection, although they are not based on a national asylum law system. One important instrument is Presidential Regulation No. 125 of 2016 on Handling of Refugees from Abroad, which regulates basic procedures for identification, emergency response, and coordination between government agencies in dealing with refugee situations. Although it does not provide for the granting of legal refugee status, this regulation creates a temporary operational framework for the protection and management of refugees arriving in Indonesia.

However, Indonesia's limitations in providing comprehensive legal protection pose several challenges. Without a national asylum system, refugees have no legal certainty regarding their status, no formal access to employment, education, or health services, and are entirely dependent on assistance from international institutions or non-governmental organizations. This places refugees in a highly socially and economically vulnerable situation.

This situation poses a legal and humanitarian dilemma for Indonesia. On the one hand, the state has full sovereignty to determine migration policies and has no conventional obligations; on the other hand, as part of the international community, Indonesia is expected to respect global humanitarian norms, especially in the context of the increasing number of refugees in the world due to conflict, political crises, and climate change.

In many cases, Indonesia's approach is pragmatic and based on security and social stability considerations. The country seeks to balance international moral obligations with limited national capacity. Therefore, cooperation with UNHCR, IOM (International Organization for Migration), and local NGOs is crucial in filling the gap in formal legal protection.

In the long term, Indonesia needs to consider strengthening the domestic legal framework that can accommodate the presence of refugees in a more structured manner. This does not necessarily mean ratifying the 1951 Convention directly, but can be done through the preparation of a national law on asylum that regulates the protection mechanism, status assessment, and limited integration of refugees. In this way, Indonesia can maintain control over its asylum and immigration policies while demonstrating a consistent commitment to international human rights principles.

Thus, although Indonesia is not a party to the 1951 Refugee Convention, international obligations remain attached through the principle of non-refoulement and commitment to human rights norms. The preparation of a comprehensive national policy will strengthen Indonesia's position in handling refugee issues in a sustainable, just, and in line with global humanitarian values.

Several studies have explored Indonesia's position in refugee protection, particularly focusing on its non-signatory status to the 1951 Refugee Convention and its adherence to the refugee protection, specifically addressing how non-signatory countries like Indonesia manage refugee flows and cooperate with international bodies like the UNHCR. The research highlights Indonesia's humanitarian commitments while noting the absence of legal mechanisms for refugee protection. Similarly, Fearnley (2018) explores how Indonesia's status as a transit country for refugees impacts its ability to provide refugee protection, noting the challenges refugees face due to the lack of a formal asylum system. The UNHCR (2020) Report on Refugee Protection in Southeast Asia further underscores Indonesia's role in managing asylum seekers and its cooperation with international organizations, but it also points out the limitations in long-

term refugee protection due to the absence of a comprehensive domestic legal framework. In a more focused study, Aminah (2017) analyzes Indonesia's immigration policy concerning non-refoulement, arguing that while Indonesia respects this principle, refugees remain vulnerable without robust legal mechanisms for enforcement. Finally, Tan and Tan (2021) investigate the impact of Indonesia's non-ratification of the Refugee Convention on the Refugee Status Determination (RSD) process, emphasizing the role of the UNHCR in providing temporary protection, but also pointing out the challenges of not having clear legal status for refugees.

While existing studies have made valuable contributions to understanding Indonesia's refugee protection mechanisms, several key gaps remain. First, no study has comprehensively analyzed how Indonesia can strengthen its domestic legal framework to ensure the protection of refugees while remaining outside the Refugee Convention. While **non-refoulement** is respected, the lack of a formal asylum system limits the scope of refugee protection, leaving many in precarious situations. Second, although the collaboration with the UNHCR is frequently discussed, little research has focused on how Indonesia could better integrate the UNHCR's temporary protection mechanisms into its legal system to offer refugees long-term solutions. Furthermore, existing research has not fully explored the ongoing legal and humanitarian dilemmas faced by refugees, such as limited access to education, healthcare, and employment, due to the absence of a clear legal framework. Additionally, the need for sustainable refugee protection, including pathways to permanent residency or resettlement, has not been sufficiently addressed. Finally, there is a gap in comparative studies between Indonesia and other Southeast Asian countries with similar non-signatory statuses, which could offer regional insights into best practices for refugee protection. While existing studies have made valuable contributions to understanding Indonesia's refugee protection mechanisms, several key gaps remain. First, no study has comprehensively analyzed how Indonesia can strengthen its domestic legal framework to ensure the protection of refugees while remaining outside the Refugee Convention. While **non-refoulement** is respected, the lack of a formal asylum system limits the scope of refugee protection, leaving many in precarious situations. Second, although the collaboration with the UNHCR is frequently discussed, little research has focused on how Indonesia could better integrate the UNHCR's temporary protection mechanisms into its legal system to offer refugees long-term solutions. Furthermore, existing research has not fully explored the ongoing legal and humanitarian dilemmas faced by refugees, such as limited access to education, healthcare, and employment, due to the absence of a clear legal framework. Additionally, the need for sustainable refugee protection, including pathways to permanent residency or resettlement, has not been sufficiently addressed. Finally, there is a gap in comparative studies between Indonesia and other Southeast Asian countries with similar non-signatory statuses, which could offer regional insights into best practices for refugee protection.

This study aims to fill these gaps by critically analyzing the application of the **non-refoulement** principle within Indonesia's legal framework, despite its non-signatory status to the 1951 Refugee Convention. The research will propose a model for a national asylum system that could bridge the gap between Indonesia's sovereignty and international refugee protection standards, ensuring long-term protection and rights for refugees. Furthermore, this study will investigate how Indonesia can better integrate the role of the UNHCR and other international organizations into its domestic policies to ensure a more comprehensive protection system. By exploring the challenges refugees face due to the lack of a formal asylum framework, this study will assess the legal and humanitarian implications of Indonesia's current policies. Additionally, a comparative analysis of Indonesia's refugee policies with those of other Southeast Asian countries that have not ratified the Refugee Convention will be conducted to identify regional

best practices. This study ultimately aims to offer insights on how Indonesia can strengthen its refugee protection policies while aligning them with international humanitarian norms.

## METHOD

This study utilizes a normative legal research design, focusing on the analysis of legal norms, principles, and doctrines both at the national and international levels. Unlike empirical legal research, which relies on field data, normative legal research emphasizes the interpretation and application of legal materials to address juridical-conceptual issues. In this case, the study investigates the legal status of refugees in Indonesia, which is not a party to the 1951 Refugee Convention or its 1967 Protocol. By examining Indonesia's legal framework, the study explores how customary international law, particularly the principle of non-refoulement, influences the obligations of states that are not conventionally bound by international treaties.

The research adopts two main approaches to achieve its goals. The statute approach is used to assess binding legal instruments, including international conventions such as the 1951 Refugee Convention and the 1967 Protocol, as well as national legal provisions such as Presidential Regulation No. 125 of 2016 regarding the treatment of refugees. This approach provides a legal framework to evaluate Indonesia's obligations under international law. The conceptual approach, on the other hand, is employed to understand the foundational principles of international refugee law, such as the definition of refugees, state responsibility, and the key principle of **n**on-refoulement. This approach allows the research to analyze how international legal principles shape Indonesia's approach to refugee protection, even though it is not a party to the conventions.

Data for this study is collected from secondary sources, including primary, secondary, and tertiary legal materials. Primary legal materials consist of international treaties, national laws, and binding regulations. Secondary materials include academic literature, legal journals, expert opinions, and official documents from international bodies such as the UNHCR. Tertiary sources include legal dictionaries and encyclopedias, which assist in understanding key legal terms and doctrines. Data collection is primarily conducted through library research, using both physical and digital repositories, including international databases such as the **UN** Treaty Collection and UNHCR archives, as well as Indonesia's JDIH (Jaringan Dokumentasi dan Informasi Hukum). The collected materials are analyzed systematically to provide a comprehensive understanding of the legal status of refugees under Indonesian law and international law.

In addition to the primary analysis, the study adopts a comparative legal framework to examine how other countries, particularly Malaysia and Bangladesh, manage refugee protection despite not being parties to the 1951 Convention. These countries were chosen because they face similar challenges regarding large refugee populations while not being bound by the 1951 Refugee Convention. The comparative analysis will focus on how these countries have adapted their legal frameworks to meet international standards, particularly the non-refoulement principle, and will assess the effectiveness of their policies in providing refugee protection. By comparing Indonesia's approach with that of its neighbors, this study aims to identify alternative policy models that could guide Indonesia in improving its refugee protection mechanisms.

The data analysis in this study is conducted using qualitative legal analysis, which involves interpreting, classifying, and synthesizing the collected legal materials. The analysis is structured in three stages: first, an interpretative analysis of the relevant legal provisions; second, a systematic analysis to integrate and align Indonesia's legal framework with international norms; and third, a comparative evaluation of Indonesia's practices against those of Malaysia

and Bangladesh. The findings of this analysis will contribute to understanding how Indonesia can navigate its refugee protection obligations, even as a non-party to the 1951 Refugee Convention, and help shape a more comprehensive and humane national policy for refugees.

## ANALYSIS AND DISCUSSION

### Indonesia's Position on the 1951 Refugee Convention and the 1967 Protocol

Indonesia is currently not a party to the 1951 Convention on the Status of Refugees or the 1967 Additional Protocol. The decision not to ratify these two international instruments has legal and practical consequences for how the country treats and protects refugees entering its territory. Within the framework of international law, a country's membership status in a convention determines the level of legal applicability of the norms regulated therein.

The 1951 Convention is the main instrument that regulates the definition of refugees, the basic rights of refugees, and the obligations of states to protect them. Meanwhile, the 1967 Protocol eliminates the geographical and temporal limitations that originally limited the application of the Convention only to refugees from World War II in Europe. Thus, these two instruments complement each other and apply universally in the international refugee protection system.

The main reason often put forward by the Indonesian government regarding its refusal to ratify the convention is the burden of responsibility that will arise. Indonesia feels that it does not have adequate legal and institutional infrastructure to fully manage a national asylum system. This is especially concerning the limited resources in handling large numbers of refugees.

In addition, Indonesia is concerned that ratification of the convention could create a pull factor for a wave of refugees to its territory[3]. With its strategic geographical position between South Asia and Australia, Indonesia is often used as a transit country by asylum seekers who want to go to a third country. The government is concerned that if it provides more certain legal protection, Indonesia will change from a transit country to a destination country.

However, although Indonesia is not a party to the 1951 Convention and the 1967 Protocol[4], the country has shown its commitment to humanitarian principles. In practice, Indonesia does not actively expel or deport refugees to their home countries. This shows respect for the principle of non-refoulement, an international principle that prohibits a country from returning someone to a place where they are threatened with torture, violence, or inhumane treatment.

The principle of non-refoulement has become part of customary international law and is *jus cogens*, which means it binds all countries, including countries that are not parties to a convention. Therefore, although not bound conventionally, Indonesia is still legally obliged to respect and apply this principle in its immigration policies.

In the domestic context, Indonesia issued Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad[5]. This regulation is the main legal basis for government agencies in handling refugees. However, this regulation is more administrative and operational in nature, not a substantial law that recognizes or regulates the legal status of refugees.

[3]Dita Liliansa, Dita Liliansa, and Anbar Jayadi, "Should Indonesia Accede To The 1951 Refugee Convention And Its 1967 Protocol ?" 5, no. 3 (2015), https://doi.org/10.15742/ilrev.v5n3.161.

[4]M. Alvi Syahrin, "The Implementation of Non-Refoulement Principle to the Asylum Seekers and Refugees in Indonesia," *Sriwijaya Law Review* 1, no. 2 (2017): 168–78.

[5]Adwani Adwani, Rosmawati Rosmawati, and M. Ya'kub Aiyub Kadir, "The Responsibility in Protecting the Rohingya Refugees in Aceh Province, Indonesia: An International Refugees Law Perspective," *IIUM Law Journal* 29, no. (S2) (2021): 1–21, https://doi.org/10.31436/iiumlj.v29i(s2).677.

In addition to legal aspects, Indonesia's approach to refugees is also heavily influenced by political and security considerations[6]. Concerns about social instability, horizontal conflict, and fiscal burdens are often the reasons why the Indonesian government takes a cautious stance in handling refugee issues.

Nevertheless, Indonesia continues to receive pressure from the international community and human rights institutions to improve protection for refugees. This is especially evident in the UPR (Universal Periodic Review) forum at the UN Human Rights Council, where member states have often recommended that Indonesia ratify the Refugee Convention and improve treatment of vulnerable groups.

One of the strategic considerations for ratification is to strengthen Indonesia's diplomatic position in the global arena. As the largest democracy in Southeast Asia and an active member of various international organizations, Indonesia's involvement in the refugee protection regime will increase its moral and political legitimacy as a country that upholds human rights.

On the other hand, it must be realized that ratification is not the only way. Countries can establish a national asylum legal system independently, without first having to become a party to the 1951 Convention. Many other countries (citation) have taken this approach by adjusting refugee protection mechanisms according to their respective domestic capacities and contexts.

Therefore, going forward, Indonesia has two strategic choices: ratify the Convention and Protocol, or draft a Law on Asylum and Refugee Protection. Both options have different consequences, but the goal is the same that is, to provide a clear and consistent legal framework in dealing with refugee issues.

In the current situation, the absence of comprehensive regulations causes the handling of refugees to be partial, dependent on local policies, and often unfair. This creates legal uncertainty, both for refugees and for local authorities on duty in the field.

With the increasing complexity of global migration flows, as well as the increasing number of refugees due to conflict and climate change, Indonesia will eventually be faced with the need to reform refugee policies and legal frameworks. The initial steps that can be taken are to build national consensus and prepare institutional capacity as a foundation for long-term protection that is fair, humane, and in accordance with the values of Pancasila and the constitution.

**The Principle of Non-Refoulement in International Law**

The principle of non-refoulement is one of the main pillars of international refugee law that prohibits a state from expelling or returning a person to a country where he or she faces a serious threat of persecution[7]. This principle is used as the basis for protection for refugees seeking asylum, even before their status is officially recognized. In the context of international law, this principle is considered an imperative norm or *jus cogens* that cannot be reduced or deviated from.

Historically, the principle of non-refoulement was first codified in Article 33 of the 1951 Refugee Convention, which states that: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened..."[8]. This means that contracting states are prohibited from returning refugees to their home country if there is a threat to their right to life or freedom.

[6]M. A Syahrin, "The Rohingya Refugee Crisis: Legal Protection on International Law and Islamic Law," in *1st International Conference on Indonesian Legal Studies (ICILS 2018)*, 2018, . 94-99, https://doi.org/10.2991/icils-18.2018.18.

[7]Kees Wouters Bruin, Rene, "Terrorism and the Non-derogability of Non-refoulement," *International Journal of Refugee Law* 15, no. 1 (2003): 5–29, https://doi.org/https://doi.org/10.1093/ijrl/15.1.5.

[8]Feyzi Baban, Suzan Ilcan, and Kim Rygiel, "Syrian Refugees in Turkey: Pathways to Precarity, Differential Inclusion, and Negotiated Citizenship Rights," *Journal of Ethnic and Migration Studies* 43, no. 1 (2017): 41–57, https://doi.org/10.1080/1369183X.2016.1192996.

However, the principle of non-refoulement is not limited only to the framework of the 1951 Refugee Convention[9]. As international law develops, this principle is also strengthened by other human rights instruments, such as the Convention against Torture (CAT) [10], the International Covenant on Civil and Political Rights (ICCPR)[11], and through state practices and international jurisprudence, which confirm its position as a norm of customary international law[12].

The existence of this principle is very important[13], especially for countries that have not ratified the Refugee Convention, including Indonesia. Although not conventionally bound, countries are still morally and legally bound by the principle of non-refoulement because of its universal nature. This means that countries are still prohibited from deporting refugees to their home countries if there is a serious threat to their safety and freedom.

In addition, the principle of non-refoulement also includes protection against threats of torture, inhuman treatment, or cruel punishment, as guaranteed in Article 3 of the Convention against Torture[14]. This expands the scope of protection not only against political persecution, but also against other forms of serious human rights violations.

In international practice, the principle of non-refoulement is often a key issue in immigration policy and border enforcement[15]. Countries must be careful in carrying out deportations or expulsions, because such actions can be categorized as serious violations of international law if carried out arbitrarily or without a thorough risk assessment.

International jurisprudence has also confirmed this principle. One example is the *Soering v. United Kingdom (1989)* decision by the European Court of Human Rights, which stated that the extradition of a person to a country that is likely to place him or her at risk of torture is a violation of Article 3 of the European Convention on Human Rights (ECHR)[16].

In the regional context, this principle is also emphasized in the Bangkok Declaration of 1966, which is the moral and political basis for Southeast Asian countries in providing temporary protection for refugees, although many countries in the region are not yet parties to the 1951 Refugee Convention[17].

In Indonesia, although there is no explicit recognition in national law, the principle of non-refoulement is implicitly reflected in policies and field practices. For example, Indonesia does not conduct mass deportations of asylum seekers and allows UNHCR access to conduct the Refugee Status Determination (RSD) process[18].

However, the absence of a national asylum legal system poses major challenges in implementing the principle of non-refoulement. In many cases, immigration and security

[9]Barbara Harrell-Bond, "Can Humanitarian Work with Refugees Be Humane?," *Human Rights Quarterly* 24, no. 1 (2002): 51–85, https://doi.org/10.1353/hrq.2002.0011.

[10]Maja Janmyr, "The 1951 Refugee Convention and Non-Signatory States : Charting a Research Agenda" 33, no. 2 (2021): 188–213.

[11]Liliansa, Liliansa, and Jayadi, "Should Indonesia Accede To The 1951 Refugee Convention And Its 1967 Protocol ?"

[12]Santiago Villalpando, "The Legal Dimension of the International Community : How Community Interests Are Protected in International," *European Journal of International Law* 21, no. 2 (2010): 387–419, https://doi.org/10.1093/ejil/chq038.

[13]J. Havez, M., Ernawati, N., Pitaloka, D., Rosidi, A., & Jumadi, "Balancing Local Community Interest and International Responsibilities in the Context of the Expulsion of Rohingya Refugees in Aceh," *Indonesian Journal of International Law* 21, no. 4 (2024): 6, https://doi.org/10.17304/ijil.vol21.4.1823.

[14]Janmyr, "The 1951 Refugee Convention and Non-Signatory States : Charting a Research Agenda."

[15]Titi Herwati Soeryabrata, "Juridical Review of the Refugees in Indonesia from the Human Rights Side and the Private Protection" 140, no. Icleh (2020): 271–76, https://doi.org/10.2991/aebmr.k.200513.055.

[16]Mahardhika Sjamsoe oed Sadjad, "What Are Refugees Represented to Be? A Frame Analysis of the Presidential Regulation No. 125 of 2016 Concerning the Treatment of Refugees 'from Abroad,'" *Asian Journal of Law and Society* 8, no. 3 (2021): 451–66, https://doi.org/10.1017/als.2021.3.

[17]Deborah E. Anker, "Refugee Law, Gender, and the Human Rights Paradigm," *International Refugee Law* 25 (2017): 237–58, https://doi.org/10.4324/9781315092478-11.

[18]Nurul Adhaniah, Dudy Heryadi, and Deasy Sylvia Sari, "The Cooperation of UNHCR and Indonesia on Afghan Refugee Handling in Indonesia," *Andalas Journal of International Studies* X, no. 1 (2021): 51–65, https://doi.org/DOI: https://doi.org/10.25077/ajis.10.1.51-65.2021.

forces do not have clear legal guidelines regarding refugees, making arbitrary detention or secret deportations.

The principle of non-refoulement also requires countries to provide sufficient time and space for asylum seekers to file a claim for protection. Therefore, actions such as refusing entry to refugee boats without inspection (push-back policy) can be considered contrary to this principle.

Another challenge in implementing the principle of non-refoulement is the difference in interpretation between countries[19]. Some countries interpret this principle to apply only if refugee status has been determined, while others consider that protection must be provided from the time there is a credible claim for protection, even before formal verification is carried out.

In addition, there is debate about the extent to which the principle of non-refoulement applies to non-state threats, such as persecution by armed groups, criminal gangs, or sectarian violence[20]. Several countries and international courts are now beginning to recognize that threats from non-state actors can also be a basis for protection under this principle.

In certain situations, the principle of non-refoulement can conflict with national interests[21], such as state security. However, the limitations on this principle are very narrow and must be carried out with great care. Even Article 33(2) of the Refugee Convention, which provides an exception, emphasizes that the threat to state security must be extremely serious and legally proven[22].

On the other hand, the application of the principle of non-refoulement does not always mean that refugees must be given the right to stay permanently[23]. Countries can still seek alternative solutions such as resettlement in a third country, local integration, or voluntary repatriation when the situation is safe.

To improve the protection of this principle, cooperation between countries, international institutions, and civil society organizations is needed. One form of effective cooperation is burden sharing, because the burden of refugee protection cannot be borne by one country alone.

Indonesia, as a transit country, has a humanitarian responsibility to ensure that refugees are not returned to dangerous places. Although it does not yet have a national asylum system, Indonesia can still build administrative policy instruments that guarantee the implementation of the principle of non-refoulement more explicitly and operationally.

The consistent application of this principle will strengthen Indonesia's position as a country that respects human rights, while increasing its credibility in the eyes of the international community. This is also in line with the values of Pancasila and Indonesia's constitutional commitment to protecting human dignity.

As a step forward, Indonesia can consider drafting special legislation on refugees and asylum seekers, which clearly states the application of the principle of non-refoulement, procedures

[19]Anker, "Refugee Law, Gender, and the Human Rights Paradigm."

[20]S. McMillan, K., & Petcharamesree, "Towards an Asean Model of 'Responsibility-Sharing'for Refugees and Asylum-Seekers," *Asia-Pacific Journal on Human Rights and the Law* 22, no. 1 (2021): 49–68, https://doi.org/https://doi.org/10.1163/15718158-22010005.

[21]Seunghwan Kim, "Non-Refoulement and Extraterritorial Jurisdiction: State Sovereignty and Migration Controls at Sea in the European Context," *Leiden Journal of International Law* 30, no. 1 (2017): 49–70, https://doi.org/doi:10.1017/S0922156516000625.

[22]Nils Coleman, "Non-Refoulement Revised Renewed Review of the Status of the Principle of Non-Refoulement as Customary International Law," *European Journal of Migration and Law* 5 (2003): 23–68, https://doi.org/https://doi.org/10.1163/157181603100405657.

[23]Ellen F. D'Angelo, "Non-Refoulement : The Search for a Consistent Interpretation of Article 33," *Vanderbilt Journal of Transnational Law* 42, no. 1 (2009): 279–316, https://doi.org/https://heinonline.org/HOL/LandingPage?handle=hein.

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for handling refugees, and the rights and obligations of all parties involved. This is important so that there is no more doubt in the implementation of the principle at the operational level.

Thus, the principle of non-refoulement in international law is not only a legal norm, but is the moral foundation of the global refugee protection system. Its application by countries, including those not parties to the Refugee Convention, is essential to ensure that the right to life and liberty of every human being remains protected from dangerous threats.

## CONCLUSION

The principle of non-refoulement is a fundamental norm in international law that ensures that no one should be returned to a country where they face a threat to their life, freedom or safety. While originally codified in the 1951 Refugee Convention, its evolution into a norm of customary international law has rendered it binding on all states, regardless of formal treaty accession. This universality is further reinforced by its incorporation into broader human rights instruments such as the CAT and ICCPR. In practice, the principle of non-refoulement faces significant implementation challenges. States are often caught between humanitarian responsibilities and national interests, such as issues of security, sovereignty, and migration control. However, international law emphasizes that restrictions on this principle can only be carried out in very limited conditions and must be based on strong evidence.

Indonesia, as a transit country, has a moral and legal obligation to respect the principle of non-refoulement, even though it is not yet a party to the 1951 Convention. Indonesia's practice of not carrying out mass deportations and providing access to UNHCR shows a form of respect for this principle, even though it is still within the administrative framework and has not been institutionalized under national law.

The absence of a national asylum legal system in Indonesia makes it difficult to fully strengthen the principle of non-refoulement. Without a clear legal framework, protection for refugees and asylum seekers is sporadic, depending on local policies and the capacity of international institutions such as the UNHCR. This leaves a large room for legal uncertainty and potential human rights violations.

Encouraging the strengthening of the principle of non-refoulement in Indonesia requires policy and legal reforms, including through the drafting of a national law on refugees. This regulation can serve as a basis for regulating procedures for examining asylum claims, temporary protection, and legitimate limitations on deportation.

In addition, training and understanding of this principle among law enforcement officers, immigration officers, and local governments is essential. Without a comprehensive understanding, the risk of arbitrary deportation remains high, even if the state does not have bad intentions towards refugees in principle.

The principle of non-refoulement can also be an important part of Indonesia's image and strategic role in global humanitarian diplomacy. By demonstrating compliance with this principle, Indonesia can strengthen its position as a democratic country that upholds human rights values and international solidarity.

Thus, it can be concluded that the principle of non-refoulement is not only a legal norm, but also a reflection of universal values regarding human protection. Countries, including Indonesia, are required to continue to strengthen its implementation, both through regulations, policies, and administrative practices, to ensure that no individual is returned to a place where they face serious danger to their life and dignity.

## BIBLIOGRAPHY

Adhaniah, Nurul, Dudy Heryadi, and Deasy Sylvia Sari. "The Cooperation of UNHCR and Indonesia on Afghan Refugee Handling in Indonesia." *Andalas Journal of International Studies* X, no. 1 (2021): 51–65. https://doi.org/DOI: https://doi.org/10.25077/ajis.10.1.51-65.2021.

Adwani, Adwani, Rosmawati Rosmawati, and M. Ya'kub Aiyub Kadir. "The Responsibility in Protecting the Rohingya Refugees in Aceh Province, Indonesia: An International Refugees Law Perspective." *IIUM Law Journal* 29, no. (S2) (2021): 1–21. https://doi.org/10.31436/iiumlj.v29i(s2).677.

Anker, Deborah E. "Refugee Law, Gender, and the Human Rights Paradigm." *International Refugee Law* 25 (2017): 237–58. https://doi.org/10.4324/9781315092478-11.

Asmara, Melina Tri, and Alvi Syahrin. "Aktualisasi Kebijakan Imigrasi Indonesia Terkait Hak Asasi Manusia Bagi Pengungsi Rohingya Di Indonesia." *Journal of Law and Border Protection* 1, no. 2 (2021): 73–84.

Baban, Feyzi, Suzan Ilcan, and Kim Rygiel. "Syrian Refugees in Turkey: Pathways to Precarity, Differential Inclusion, and Negotiated Citizenship Rights." *Journal of Ethnic and Migration Studies* 43, no. 1 (2017): 41–57. https://doi.org/10.1080/1369183X.2016.1192996.

Bruin, Rene, Kees Wouters. "Terrorism and the Non-derogability of Non-refoulement." *International Journal of Refugee Law* 15, no. 1 (2003): 5–29. https://doi.org/https://doi.org/10.1093/ijrl/15.1.5.

Coleman, Nils. "Non-Refoulement Revised Renewed Review of the Status of the Principle of Non-Refoulement as Customary International Law." *European Journal of Migration and Law* 5 (2003): 23–68. https://doi.org/https://doi.org/10.1163/157181603100405657.

D'Angelo, Ellen F. "Non-Refoulement : The Search for a Consistent Interpretation of Article 33." *Vanderbilt Journal of Transnational Law* 42, no. 1 (2009): 279–316. https://doi.org/https://heinonline.org/HOL/LandingPage?handle=hein.journals/vantl42&div=9&id=&page=.

Ernawati, Ninin. "The Legal Consequences of the Application of Two Australian Policies as Members of the 1951 Refugee Convention Reviewed from the VCLT 1969." *Jurnal IUS* 7, no. 1 (2019).

Harrell-Bond, Barbara. "Can Humanitarian Work with Refugees Be Humane?" *Human Rights Quarterly* 24, no. 1 (2002): 51–85. https://doi.org/10.1353/hrq.2002.0011.

Havez, M., Ernawati, N., Pitaloka, D., Rosidi, A., & Jumadi, J. "Balancing Local Community Interest and International Responsibilities in the Context of the Expulsion of Rohingya Refugees in Aceh." *Indonesian Journal of International Law* 21, no. 4 (2024): 6. https://doi.org/10.17304/ijil.vol21.4.1823.

Janmyr, Maja. "The 1951 Refugee Convention and Non-Signatory States : Charting a Research Agenda" 33, no. 2 (2021): 188–213.

Kim, Seunghwan. "Non-Refoulement and Extraterritorial Jurisdiction: State Sovereignty and Migration Controls at Sea in the European Context." *Leiden Journal of International Law* 30, no. 1 (2017): 49–70. https://doi.org/doi:10.1017/S0922156516000625.

Liliansa, Dita, Dita Liliansa, and Anbar Jayadi. "Should Indonesia Accede To The 1951 Refugee Convention And Its 1967 Protocol ?" 5, no. 3 (2015). https://doi.org/10.15742/ilrev.v5n3.161.

McMillan, K., & Petcharamesree, S. "Towards an Asean Model of 'Responsibility-Sharing' for Refugees and Asylum-Seekers." *Asia-Pacific Journal on Human Rights and the Law* 22, no. 1 (2021): 49–68. https://doi.org/https://doi.org/10.1163/15718158-22010005.

Sadjad, Mahardhika Sjamsoe oed. "What Are Refugees Represented to Be? A Frame Analysis of the Presidential Regulation No. 125 of 2016 Concerning the Treatment of Refugees 'from Abroad.'" *Asian Journal of Law and Society* 8, no. 3 (2021): 451–66. https://doi.org/10.1017/als.2021.3.

Soeryabrata, Titi Herwati. "Juridical Review of the Refugees in Indonesia from the Human Rights Side and the Private Protection" 140, no. Icleh (2020): 271–76. https://doi.org/10.2991/aebmr.k.200513.055.

Syahrin, M. A. "The Rohingya Refugee Crisis: Legal Protection on International Law and Islamic Law." In *1st International Conference on Indonesian Legal Studies (ICILS 2018)*, . 94-99, 2018. https://doi.org/10.2991/icils-18.2018.18.

Syahrin, M. Alvi. "The Implementation of Non-Refoulement Principle to the Asylum Seekers and Refugees in Indonesia." *Sriwijaya Law Review* 1, no. 2 (2017): 168–78.

Villalpando, Santiago. "The Legal Dimension of the International Community : How Community Interests Are Protected in International." *European Journal of International Law* 21, no. 2 (2010): 387–419. https://doi.org/10.1093/ejil/chq038.

Adhaniah, Nurul, Dudy Heryadi, and Deasy Sylvia Sari. "The Cooperation of UNHCR and Indonesia on Afghan Refugee Handling in Indonesia." *Andalas Journal of International Studies* X, no. 1 (2021): 51–65. https://doi.org/DOI: https://doi.org/10.25077/ajis.10.1.51-65.2021.

Adwani, Adwani, Rosmawati Rosmawati, and M. Ya'kub Aiyub Kadir. "The Responsibility in Protecting the Rohingya Refugees in Aceh Province, Indonesia: An International Refugees Law Perspective." *IIUM Law Journal* 29, no. (S2) (2021): 1–21. https://doi.org/10.31436/iiumlj.v29i(s2).677.

Anker, Deborah E. "Refugee Law, Gender, and the Human Rights Paradigm." *International Refugee Law* 25 (2017): 237–58. https://doi.org/10.4324/9781315092478-11.

Asmara, Melina Tri, and Alvi Syahrin. "Aktualisasi Kebijakan Imigrasi Indonesia Terkait Hak Asasi Manusia Bagi Pengungsi Rohingya Di Indonesia." *Journal of Law and Border Protection* 1, no. 2 (2021): 73–84.

Baban, Feyzi, Suzan Ilcan, and Kim Rygiel. "Syrian Refugees in Turkey: Pathways to Precarity, Differential Inclusion, and Negotiated Citizenship Rights." *Journal of Ethnic and Migration Studies* 43, no. 1 (2017): 41–57. https://doi.org/10.1080/1369183X.2016.1192996.

Bruin, Rene, Kees Wouters. "Terrorism and the Non-derogability of Non-refoulement." *International Journal of Refugee Law* 15, no. 1 (2003): 5–29. https://doi.org/https://doi.org/10.1093/ijrl/15.1.5.

Coleman, Nils. "Non-Refoulement Revised Renewed Review of the Status of the Principle of Non-Refoulement as Customary International Law." *European Journal of Migration and*

*Law* 5 (2003): 23–68. https://doi.org/https://doi.org/10.1163/157181603100405657.

D'Angelo, Ellen F. "Non-Refoulement : The Search for a Consistent Interpretation of Article 33." *Vanderbilt Journal of Transnational Law* 42, no. 1 (2009): 279–316. https://doi.org/https://heinonline.org/HOL/LandingPage?handle=hein.journals/vantl42&div=9&id=&page=.

Ernawati, Ninin. "The Legal Consequences of the Application of Two Australian Policies as Members of the 1951 Refugee Convention Reviewed from the VCLT 1969." *Jurnal IUS* 7, no. 1 (2019).

Harrell-Bond, Barbara. "Can Humanitarian Work with Refugees Be Humane?" *Human Rights Quarterly* 24, no. 1 (2002): 51–85. https://doi.org/10.1353/hrq.2002.0011.

Havez, M., Ernawati, N., Pitaloka, D., Rosidi, A., & Jumadi, J. "Balancing Local Community Interest and International Responsibilities in the Context of the Expulsion of Rohingya Refugees in Aceh." *Indonesian Journal of International Law* 21, no. 4 (2024): 6. https://doi.org/10.17304/ijil.vol21.4.1823.

Janmyr, Maja. "The 1951 Refugee Convention and Non-Signatory States : Charting a Research Agenda" 33, no. 2 (2021): 188–213.

Kim, Seunghwan. "Non-Refoulement and Extraterritorial Jurisdiction: State Sovereignty and Migration Controls at Sea in the European Context." *Leiden Journal of International Law* 30, no. 1 (2017): 49–70. https://doi.org/doi:10.1017/S0922156516000625.

Liliansa, Dita, Dita Liliansa, and Anbar Jayadi. "Should Indonesia Accede To The 1951 Refugee Convention And Its 1967 Protocol ?" 5, no. 3 (2015). https://doi.org/10.15742/ilrev.v5n3.161.

McMillan, K., & Petcharamesree, S. "Towards an Asean Model of 'Responsibility-Sharing' for Refugees and Asylum-Seekers." *Asia-Pacific Journal on Human Rights and the Law* 22, no. 1 (2021): 49–68. https://doi.org/https://doi.org/10.1163/15718158-22010005.

Sadjad, Mahardhika Sjamsoe oed. "What Are Refugees Represented to Be? A Frame Analysis of the Presidential Regulation No. 125 of 2016 Concerning the Treatment of Refugees 'from Abroad.'" *Asian Journal of Law and Society* 8, no. 3 (2021): 451–66. https://doi.org/10.1017/als.2021.3.

Soeryabrata, Titi Herwati. "Juridical Review of the Refugees in Indonesia from the Human Rights Side and the Private Protection" 140, no. Icleh (2020): 271–76. https://doi.org/10.2991/aebmr.k.200513.055.

Syahrin, M. A. "The Rohingya Refugee Crisis: Legal Protection on International Law and Islamic Law." In *1st International Conference on Indonesian Legal Studies (ICILS 2018)*, . 94-99, 2018. https://doi.org/10.2991/icils-18.2018.18.

Syahrin, M. Alvi. "The Implementation of Non-Refoulement Principle to the Asylum Seekers and Refugees in Indonesia." *Sriwijaya Law Review* 1, no. 2 (2017): 168–78.

Villalpando, Santiago. "The Legal Dimension of the International Community : How Community Interests Are Protected in International." *European Journal of International Law* 21, no. 2 (2010): 387–419. https://doi.org/10.1093/ejil/chq038.