

Rohingya Refugees to Indonesia: An International Legal Perspective

Arsya Amarlaily Arbiyanti, Universitas Darussalam Gontor, Indonesia

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Abstract

In Indonesia there is a popular discussion about Rohingya refugees. Rohingya is an ethnic group living in Myanmar, specifically in the Rakhine or Arakan region. Cases related to the Rohingya began to surface in 1982. The Burmese Citizenship Law did not include the Rohingya among the 135 ethnicities recognized as indigenous citizens. All Rohingya ethnic groups do not receive Myanmar citizenship, which makes them stateless. This stateless status robs Rohingya of their rights in life. They cannot have a decent life. Many have witnessed death, mutilation and rape, as well as whole villages, what they called home, burning to ashes. Even the Rohingya have been designated as the world's most persecuted minority. This resulted in waves of refugees, one of whom came to the Aceh, Indonesia region. According to the findings of this study, Refugees acceptance to Indonesia in line with some Human Rights Conventions that had been ratified by Indonesia. Namely, The Convention Against Torture 1984; The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); The International Covenant on Economic, Social and Cultural Rights (ICESCR), and some more. These international instruments are extremely important for the protection of refugees and asylum seekers. This paper aims to reveal the legal perspective of Rohingya refugees in Indonesia. This study is a literature review that employs a critical analysis method called content analysis. Furthermore, this research can be a reference for policy makers and public education efforts related to legal perspective of Rohingya Refugees in Indonesia.

Keywords: Rohingya, Refugee, International Law

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Introduction

Rohingya ethnicity has become a topic of discussion in several countries. Because, many Rohingya people have become refugees in other countries. The UNHCR report as of December 5th, 2023 shows that more than a million Rohingya refugees seek protection across numerous countries.¹ Bangladesh is the country that accommodates the most, accommodate nine hundred thousand people.² Followed by Malaysia (200,000 people), India and United Arab Emirates (50,000 people), Australia, Thailand, and US (5,000 people) and Indonesia (1,000 people).³ The large number of Rohingya people who have fled to other countries has certainly sparked serious discussion in the international level.

The enormous number of refugees arriving in various nations has elicited both positive and negative reactions from the citizens of the receiving countries. Indonesia is no exception. Rohingya refugees came to Indonesia in several batch. In fact, according to the BBC, there could be up to 10 batch of Rohingya refugee arrivals. Rohingya Refugees arrival has reached 1608 people.⁴ Some people support Rohingya refugees, while others strongly oppose their arrivals.⁵ Those who refuse believe that the acceptance of Rohingya refugees in Indonesia will inflict chaos among Indonesian citizens. Meanwhile, those who agree stated that Indonesia has an obligation to assist Rohingya refugees.

The belief that Indonesia has a responsibility to assist the Rohingya is based on various factors. Indonesia, for example, has ratified several human rights accords.⁶ Another key reason is that the Indonesian constitution explicitly prohibits all forms of human torture.⁷ Another reason is the principle of non-refoulement, which, according to international law, all countries must follow when dealing with refugees who seek assistance.⁸ These three arguments are the foundation for why Indonesia should assist Rohingya refugees.

In conjunction with the preceding description, the purpose of this essay is to critically investigate and explain Rohingya refugees in Indonesia, as well as their legitimacy under international law.

Refugees and Their Vulnerabilities

The terms "refugee," "asylum seeker," and "migrant" are frequently used to refer to or characterize individuals who have left their home country and now in the territory of another.

¹ UNHCR Indonesia. *14 Fakta Mengenai Pengungsi Rohingya*. <https://www.unhcr.org/id/54329-14-fakta-mengenai-pengungsi-rohingya.html> (accessed June 5th, 2024)

² Medecins Sans Frontieres. *Rohingya : The World's Largest Stateless Population*. <https://msf.org.au/rohingya-worlds-largest-stateless-population> (accessed June 5th, 2024)

³ Beni Jo. *List of Rohingya Refugee Populations in Various Countries*. <https://tirto.id/daftar-populasi-pengungsi-rohingya-di-berbagai-negara-gSSM> (accessed June 5th, 2024)

⁴ BBC News Indonesia. *There are 1,600 Rohingya Refugees, Why are Acehnese fishermen helping them?* <https://www.bbc.com/indonesia/articles/c4nye1ewp2xo> (accessed June 5th, 2024)

⁵ Badan Riset dan Inovasi Nasional. *Hateful Narratives and Hoaxes on Social Media Influence the Rejection of Rohingya Refugees*. <https://www.brin.go.id/news/117111/narasi-kebencian-dan-hoax-di-medsos-pengaruh-penolakan-pengungsi-rohingya> (accessed June 5th, 2024)

⁶ Dian Wahyu Utami, et.al. *Indonesia's Constitutional Immigration Policy : The Case of Rohingya Ethnic Group Refugees*. JISSH Volume 8, Issue 2, 2018 (119-131)

⁷ Indonesian Constitution of 1945, Article 28 G (paragraph 2). <https://www.dpr.go.id/jdih/uu1945>

⁸ Maria-Teresa Gil-Bazo. *Refugee Protection under International Human Rights Law : From Non-Refoulement to Human Rights Law: From Non-Refoulement to Residence and Citizenship*. Refugee Survey Quarterly, 2015, 34, 11-42

Distinguishing and explaining these phrases is critical, given that each term has a unique meaning and legal repercussions that differ from one another.

The 1951 Geneva Convention concerning the Status of Refugees Article 1 A (2)⁹, provides the following limitations regarding refugees: the term "refugee" means any person who has the well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear is unwilling to avail himself of the protection of that country; or not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear is unwilling to return to it. Thus, refugees are people who (1) left their country of nationality, (2) has a feeling of dread toward mistreatment because of reasons of race, religion, ethnicity, enrollment of a specific gathering, political assessment.

According to the 1951 Convention, refugees are people who are fearful as a result of hard treatment or mistreatment because of their ethnicity, color, religion, nationality, or specific social and political affiliation and are seeking help in the country.¹⁰ Refugees are those who are compelled to flee their homes due to fear or situations that jeopardize their life and those of their family members.¹¹

Meanwhile, the other two terms have similar but not the same meanings. Asylum seekers are people who have left their home country and are on the territory of another nation to seek protection from acts of persecution and serious breaches of human rights, but have not been legally recognized as refugees and are awaiting a judgment on their asylum claim.¹² While, for migrant term, it is to describe people who are neither refugees nor asylum seekers. Migrants might be people who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.¹³ Some migrants might leave their country because they want to get a more decent job, for study purpose or follow a family member.

The growing number of migrants and asylum seekers worldwide usually sparks conflict in destination countries.¹⁴ One of them are Rohingya refugees. Struggle in Myanmar has constrained the Rohingya ethnic group to flee and seek protection. The refugee crisis in Myanmar began with a confrontation between ethnic Rohingya minorities and the Myanmar government. As indicated by Amnesty International, the military has been disregarding the human rights of the Rohingya ethnic populace beginning around 1978. This scenario inhibits the Rohingya ethnic community from acquiring fundamental citizenship privileges such as housing, employment, and benefits.¹⁵

⁹ The Office of the United Nations High Commissioner for Refugees. *Text of the 1951 Convention Relating to the Status of Refugees*

¹⁰ (UNHCR, 2018)

¹¹ Pratama, A. Y. (2014). *Status Pengungsi Rohingnya, Myanmar Ditinjau Dari Hukum Internasional*. Padang: Fakultas Hukum Universitas Bung Hatta.

¹² Cristiano d'Orsi. 2015. *Asylum-Seeker and Refugee Protection in Sub-Saharan Africa*. (England : Taylor & Francis) page 5

¹³ International Organization for Migration. *IOM Definition of "Migrant"* <https://www.iom.int/who-migrant-0> (Accessed June 20 2024)

¹⁴ Jennifer Dabbs Sciubba. *The Future Faces of War: Population and National Security*. (England : Bloomsbury Publishing, 2010)

¹⁵ Purwanto, A. (2017, June 3). Menelisik Akar Persoalan Rohingnya. Retrieved from www.kompas.com: <http://print.kompas.com/baca/2015/06/03/Menelisik-Akar-Persoalan-Rohingnya>

Refugees are part of the world's most vulnerable groups; There are at least three reasons why refugees are vulnerable.¹⁶ Refugees are more susceptible to shocks. Refugees are frequently the victims of theft, harassment, discrimination, and aggressiveness, and they are far more prone to experience physical and mental health issues.¹⁷ Disruptions and decreases in humanitarian assistance are common among camp residents. Second, refugees do not have the same legal status as host country nationals, which limits their benefits.¹⁸ There is unequal access to health care, education, employment, and social benefits. In most situations, the situation for asylum seekers and irregular migrants is far worse. Third, refugees frequently face limited choices for coping with shocks. People in low-income areas frequently rely on networks to deal with shocks.¹⁹ In certain circumstances, people sell their assets or take on additional work. However, these options are frequently unavailable to refugees due to poor employment rates, a lack of assets, and ineffective informal social protection institutions.

That is why the community provides legal instruments in the form of the 1951 Geneva Convention and the 1967 New York Protocol to build an international protection system for them. Apart from that, it was also supported by the 1969 Organization of African Unity Convention.

Rohingya People: A Closer Look

Rohingya is an ethnic group living in Myanmar, specifically in the Rakhine or Arakan region. Cases related to the Rohingya began to surface in 1982.²⁰ According to certain accounts, the harsh treatment of Rohingya groups, which prompted the commencement of this war, had occurred for a long time in the form of incidences of rape, discrimination against minorities, and ethnic entity issues.²¹ This issue is aggravated by the Myanmar government's refusal to acknowledge the status of Rohingya ethnicity and its failure to assist Rohingya communities.²² They thought that the government would resolve the problem, but instead they were banished. As a result, the persecution and slaughter of the Rohingya ethnic groups continues to this day.

Before learning more about the Rohingya communal conflicts, it's critical to understand the socio-historical roots of the issue. The Second World War marked the beginning of the conflict in Myanmar. Rohingya first came in Arakan State, Burma (Myanmar) between the seventh and ninth centuries. They are a Muslim ethnic minority that has had trouble preserving their native identity. Their stay in Arakan coincided with British and Japanese colonialism (1942-1945). It had a significant influence in inciting hostility between Muslims and Buddhists.²³ When a conflict emerged between these two world powers (British and

¹⁶ Refugee Economies. Shocks, Vulnerability, and Livelihoods. <https://www.refugee-economies.org/> (accessed June 24th, 2024)

¹⁷ Mixed Migration Centre. *Journey to Indonesia for Rohingya Refugees: Routes, Risks, Assistance, and Needs*. MMC Asia 4Mi Snapshot-June 2022

¹⁸ The Office of the United Nations High Commissioner for Refugees. *Text of the 1951 Convention Relating to the Status of Refugees*

¹⁹ Op.cit

²⁰ Jon Anderson. 2021. *Understanding Cultural Geography: Places and Traces*. (England : Taylor & Francis) page 174.

²¹ Melanie O'Brien. *From Discrimination to Death: Genocide Process Through a Human Rights Lens*. (England: Taylor & Francis, 2022)

²² Nasir Uddin. *Voices of the Rohingya People, A Case of Genocide, Ethnocide and 'Subhuman' Life*. (England: Springer International Publishing, 2022)

²³ Muhammad Busyairi. *Rohingya, A Struggle for Recognition as 'Indigenous'*. Jurnal Ilmiah Kajian Keimigrasian. Vol. 4 No. 1 Tahun 2021

Japanese), Majority of Myanmar citizens including Rakhine ethnic sided with the Japanese colonial while Rohingya ethnic groups remained loyal to the British. As a result, the violence between Rohingya and Myanmar populations started.²⁴ The conflict was escalated and got worse.

Furthermore, the rivalry between the two intensified until the Myanmar government enacted the Citizenship Law in 1982. According to this statute, the Myanmar government recognizes an ethnic group that existed in Myanmar prior to the British colonial conquest in 1824. It only summoned 135 ethnicities, excluding Rohingya.²⁵ The unreasonable treatment began to be felt by the Rohingya communities. The Burmese Citizenship Law did not include the Rohingya among the 135 ethnicities recognized as indigenous citizens. All Rohingya ethnic groups do not receive Myanmar citizenship, which makes them stateless.²⁶ This status then leads to many problems that related to human rights. The exclusion of Rohingya people occurred in the right to attained identity, the right to pursue education, the right to access standard health, and the right to obtain job.

Rohingya people do not have the luxury for nationality. They are sitting in the middle of two countries who do not acknowledge them at all, Myanmar and Bangladesh. “On the one hand, Myanmar sees Muslim Rohingya as the foreigner from Bangladesh and try to expel them from the Myanmar territory. On the other hand, Bangladesh does not acknowledge them as their citizens” (Utami et al., 2018, p. 125). This circumstance left Rohingya with identity crisis that leads to another problem such as the right to pursue education.

Access for education became scarce for Rohingya people. Whereas many international treaties and legislation for the protection of refugees emphasize the right to education. This conception based on the Universal Declaration of Human Rights and the UN Convention on the Rights of the child.²⁷ But, this could not be applied to Rohingya people. As a matter of fact, “Rohingya children who lack birth registration and/or citizenship continue to have difficulties accessing education” (The Equal Rights Trust, 2014). If this condition repeated for several years ahead, the set back that might be happened is that Rohingya people will be uneducated forever and could not afford a better life in the future. Because, a better life would start with a better access for education.

Another problem that being noticed within Rohingya society was a difficult way in for the highest attainable standard of health. This privilege should be accessible for everyone including moslem Rohingya because the right to access standard health was guaranteed by ASEAN Human Rights Declaration. But, the actual fact stated otherwise. Some Rohingya

²⁴ Utami, D.W., Saleh, R., Oktafiani, I., Indonesia’s Constitutional Immigration Policy : The Case of Rohingya Ethnic Group Refugees. . Journal of Indonesia Social Sciences and Humanities. Volume 8, Issue 2, 2018 (119-131)

²⁵ Norman et.al. *The Rohingya Crisis : A Moral, Ethnographic, and Policy Assessment*. (England : Taylor & Francis, 2020)

²⁶ Sabyasachi et.al. *The Rohingya in South Asia: People Without State*. (England: Taylor & Francis, 2018)

²⁷ Burmese Rohingya Organisation UK. *The Right to Education Denied for Rohingya Refugees in Bangladesh*. (London, 2018)

refugees witnessed that it is difficult to acquire expert care²⁸. Even when the UNCHR had intervened, the proper healthcare still difficult to access²⁹.

A crucial problem that needed to be point out is a difficult access to get a job. According to the ICESCR and the ASEAN Human Rights Declaration, the right to work is a basic right for everyone but it seems like there was an exception for Rohingya descendants. It was claimed that Rohingya people have the right for temporary residence were not permitted to work or receive health benefits.

Should Indonesia Lending a Hand for Rohingya?

As the world's population of migrants and asylum seekers grows, conflict usually erupts in the countries of destination. The countries may respond to this scenario in a variety of ways, including refusing to admit these migrants³⁰ by putting residents' social security first, or embracing and tolerating refugees as illegal immigrants. The pros and cons of the entry of Rohingya refugees into Indonesia had also sparked debate.

Proponents claim that Indonesia must accept the arrival of refugees. The Rohingya's journey is not easy. From 2012 until the present, Rohingya migrants have traveled to Indonesia in stages, using small boats with little food, and many of them have died on the journey due to malnutrition or boat sinking.³¹ They traveled from Myanmar to Indonesia, crossing the Indian Ocean. These streams are tough to travel. The Indian Ocean is the most terrible ocean. This ocean is famed for its high, unmanageable waves. Rohingya people are willing to incur the risk of crossing a dangerous ocean, hinting that what was left behind them is even more awful. While, the opponents argue that bringing Rohingya refugees to Indonesia will generate anarchy. Until June 2024, this claim has not been proven at all.

The arduous trek that Rohingya refugees faced was not without perils. As mentioned in the graph below, the Mixed Migration Centre indicates that refugees who come to Indonesia face physical abuse, extortion, detention, death, sexual violence, robbery, kidnapping, and others.³²

²⁸ Shreehari Paliaath. *How Rohingya Refugees are Impacted by Limited Access to Healthcare*. India Spend. <https://www.indiaspend.com/health/how-rohingya-refugees-are-impacted-by-limited-access-to-healthcare-890067> (accessed June 29, 2024)

²⁹ Utami, D.W., Saleh, R., Oktafiani, I., Indonesia's Constitutional Immigration Policy : The Case of Rohingya Ethnic Group Refugees. . *Journal of Indonesia Social Sciences and Humanities*. Volume 8, Issue 2, 2018 (119-131)

³⁰ Ruma Paul and Sudipto Ganguly. *Bangladesh Will Not Let in Any More Rohingya Refugees*. <https://www.reuters.com/world/asia-pacific/bangladesh-will-not-let-any-more-rohingya-refugees-minister-2024-02-07/> (accessed June 22nd 2024)

³¹ Mixed Migration Centre. *Jourey to Indonesia for Rohingya Refugees: Routes, Risks, Assistance, and Needs*. MMC Asia 4Mi Snapshot-June 2022

³² Ibid.

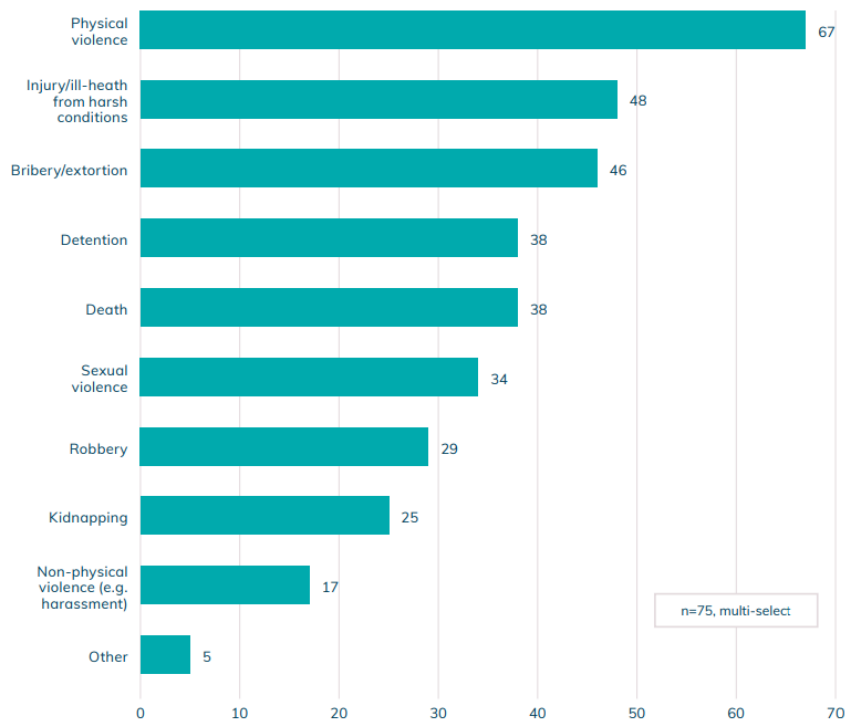


Figure 1: Graph of violence against Rohingya refugees who traveled to Indonesia

Does it legal to accept Rohingya Refugees to Indonesia? Indonesia has not ratified Refugees convention. However, refugee acceptance in Indonesia is in accordance with some Human Rights Conventions that Indonesia has ratified.³³ Those conventions are The Convention Against Torture 1984; The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); The United Nations Convention on the Rights of the Child; The International Covenant on Economic, Social and Cultural Rights (ICESCR), The International Covenant on Civil and Political Rights (ICCPR).

Aside from the Human Rights Convention, refugees' admission in Indonesia is consistent with Indonesia's constitution. In Article 28 G (paragraph 2) of the 1945 Constitution states: "Every person has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country" (Indonesian Constitution of 1945). This means that Indonesians should humanize persons and aid anyone who has been subjected to human rights crimes.

The Indonesian government's approach on welcoming refugees alludes to Pancasila as a basic value of Indonesia.³⁴ and the 1945 Constitution as the source and foundation of the national law. The Indonesian people protect human dignity in accordance with this law, as evidenced by the just and civilized humanity norms. Furthermore, the Indonesian people are compelled by law to contribute to the creation of international peace. Although Indonesia has not become a part to the 1951 Convention and 1967 Protocol, as a part of the international

³³ Shafa et al. *Analysis on Human Rights Enforcement by Adopting UDHR in Indonesia and Malaysia*. Proceedings Universitas Muhammadiyah Yogyakarta Undergraduate (2021)

³⁴ Siti et al. *The Essence of Pancasila as the Foundation and Ideology of the State: The Values of Pancasila*. International Journal of Educational Narratives. Volume 1, No. 2, 2023

community, Indonesia holds moral responsibility for implementing the General Human Rights Declaration. (Universal Declaration of Human Rights).³⁵ In addition, Indonesia has continuously put the universal human rights principle into reality.

Several Indonesian legislation contain the fundamental ideals and concepts of the 1951 Convention and 1967 Protocol, such as in Law Number 5 of 1998³⁶ concerning the Ratification of the Convention Against Torture and Other Cruelties, and in Human or Degrading Treatment or Punishment. This Act affirms that Indonesia, as a member of the international community, encourages a respectful attitude and supports the values and purposes of the United Nations Charter and the Universal Declaration of Human Rights. Furthermore, Indonesia has implemented Law Number 39 of 1999³⁷ concerning Human Rights, that the State of the Republic of Indonesia acknowledges and defends human rights and fundamental human freedoms as inherent and inseparable from humanity. In order to enhance human dignity, well-being, happiness, intelligence, and justice, these rights must be preserved, respected, and upheld. In Article 28 of this law, It is said that everyone has the right to seek protection and political assurance from various nations. This law indicates that this Act strengthens the 1951 Convention and the 1967 Protocol.

Concerning the management of refugees from abroad, Indonesia has made policies through Presidential Regulation (PERPRES) number 125 of 2016. According to the regulations, the Indonesian government handles refugees in compliance with international legal cooperation principles.³⁸ This rule states that the Indonesian Minister coordinates the processing of refugees, beginning with discovery, shelter, security, and monitoring. This is consistent with Indonesia's commitment to fulfill refugee protection standards and the concept of nonrefoulement.

Aside from that, Indonesia is also obligated to assist Rohingya refugees who have escaped to its territory under the non-refoulement principle. Non-refoulement principle protects refugees or asylum seekers from being expelled or returned to places where his life or freedom would be threatened on particular accounts, for example his race, religion, or nationality.³⁹ The idea of non-refoulement has been internationally recognized as *jus cogens*. It signifies that this principle cannot be deviated from under any circumstances.

The Non-Refoulement Principle is the cornerstone of the international protection system for refugees and asylum seekers, as it is established in several international and national legal documents. The presence of the Non-Refoulement principle in the legal framework for protecting refugees and asylum seekers is also crucial for the preservation of human rights in general.

³⁵ Shafaet al. *Analysis on Human Rights Enforcement by Adopting UDHR in Indonesia and Malaysia*

³⁶ Law (UU) Number 5 of 1998 concerning Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

³⁷ Law (UU) Number 39 of 1999 concerning Human Rights.

³⁸ Novianti. *The Implementation of Presidential Regulation Number 125 of 2016 on Handling of International Refugees*. Negara Hukum: Vol.10, No.2, November 2019.

³⁹ Sigit Riyanto. *Prinsip Non-Refoulement dan Relevansinya dalam Sistem Hukum Internasional*. Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada. Volume 22 Issue 3.

Conclusion

After the discussion above, it can be concluded that Indonesia must help Rohingya refugees who fled to Indonesia for 3 reasons. First of all, Indonesia had been ratified some Human Rights Conventions. Although Indonesia has not become a part to the 1951 Convention and 1967 Protocol, as a part of the international community, Indonesia holds moral responsibility for implementing the General Human Rights Declaration (Universal Declaration of Human Rights).

Secondly, It was written in Indonesia constitution itself, the 1945 Constitution as the source and foundation of the national law. The Indonesian people protect human dignity in accordance with this law, as evidenced by the just and civilized humanity norms. Furthermore, the Indonesian people are compelled by law to contribute to the creation of international peace.

Finally, There was a non-refoulement principle which prohibit a country in returning refugees to their original country where they were being persecuted. Non-refoulement principle protects refugees or asylum seekers from being expelled or returned to places where his life or freedom would be threatened on particular accounts, for example his race, religion, or nationality.

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