

The Interplay of Human Trafficking and the Rohingya Refugee Crisis in Aceh Province, Indonesia: Exploring the Complexities of Criminality and Humanitarian Concerns

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Abstract

This article delves into the long-standing atrocities committed by the Myanmar government against the Rohingya people in Rakhine province, which have resulted in a significant influx of Rohingya refugees into various regions, including Aceh province, Indonesia. The article aims to investigate the nature of this crisis, particularly focusing on the modus operandi of human trafficking, through a doctrinal-empirical approach. This approach involves observations and interviews with stakeholders involved in the field. The article also highlights the conflicting perspectives surrounding humanitarian and trafficking issues, shedding light on the challenges faced. Despite the existence of Presidential Decree 125/2016, the management of refugee handling remains inconsistent, given the uncertain situation and half-hearted treatment. Consequently, this has led to the expansion of trafficking networks, victimizing both local individuals assisting refugees at sea and on land. Indonesian authorities have predominantly addressed trafficking under immigration law rather than from a humanitarian standpoint. This approach has had adverse effects, resulting in resistance and rejection of Rohingya refugees in Aceh province. Considering that trafficking has emerged as a downstream impact of the global refugee crisis, the perception of viewing trafficking in Rohingya solely as a crime should be questioned. Urgently, a new paradigm and legal regime for refugees in Indonesia are required to address these pressing issues.

Keywords: Aceh Province; Humanitarian concerns; Indonesia; Rohingya; Trafficking

1. INTRODUCTION

For the past two decades, the Rohingya have endured increasing prejudice and persecution, notably after 2012. In Myanmar, their access to education, work, and medical treatment, as well as their freedom of travel, is severely restricted. During the last half-century, huge numbers of Rohingya have migrated into Bangladesh to avoid violence, most notably in 1978, 1992, 2012, and 2015. Despite the fact that Bangladesh has historically proven to be the most common destination for Rohingya trying to seek protection because of its close proximity

and similar language, religious, and ethnic norms, there has also been huge movement to some of the other nations in the region, including Malaysia, India, Thailand, Indonesia, and Saudi Arabia¹.

Prior to their exodus, the Rohingya were largely a Muslim ethnic community living in Myanmar. They are practically stateless, unable to get citizenship in their home country, and seen as undesirable in Bangladesh. Additionally, the 1947 constitution does not recognize the Rohingya people as citizens². The Rohingya have been denied human rights due to their status as an ethnic minority in Myanmar. In addition to being a fundamental violation of human rights and dignity, this lack of citizenship reduces economic opportunity, promotes isolation, limits movement and prospects for family reunions, and raises the danger of human trafficking.

In the instance of the Andaman Sea disaster, the role of the local government as an important body and part of the network of protection was clear. As the misery of many Rohingya in camps was brought to the attention of the authorities and worldwide media, the smugglers opted to abandon the asylum seekers and leave them at sea.³ Several of these ships made landfall on the Indonesian and Malaysian shores. Both the Indonesian and Malaysian administrations were adamant about not receiving them and pushed them back into the sea. The Indonesian government transmitted instructions urging Acehese fishermen not to join in rescue efforts, which would violate state legislation, and to be aware of security dangers posed by passengers on board the vessels. Notwithstanding the restriction, the fishermen were successful in bringing the asylum seekers onshore. Despite directives from the state or national government not to welcome asylum seekers, the local government, and the local population freely supported refugees because of humanitarian reason⁴.

Aceh, Indonesia's westernmost province, has been widely promoted as a transit center for Rohingya migrants. The local community views the population positively and, for the most part, demonstrates a genuine desire to assist. Because of the local custom of 'peumulia jamee', which translates to "honoring one's guests" and has a larger connotation of welcoming foreigners to Aceh, the Rohingya were offered a considerably warmer response⁵. Since 2009, a small number of Rohingya refugees have begun coming to Aceh Province, with the first arriving at Sabang, a small island off Aceh's northern coast, and Kuala Idi. Additional Rohingyas occurred on December 27, 2022 and January 8, 2023, when roughly 400 refugees came by boat on the coast of Aceh. On February

1 Caitlin McCaffrie, "Displaced Rohingya Children and the Risk of Human Trafficking," *Journal of Human Rights and Peace Studies* 5, no. 1 (2019): 47–67, <https://so03.tci-thaijo.org/index.php/HRPS/article/view/195393/140236>.

2 N Sanjeevani, "Trafficking in Rohingya Women: The ASEAN Perspective," *The Andrew & Renata Kaldor Centre for International Refugee Law*, 2020, <https://www.kaldorcentre.unsw.edu.au/publication/trafficking-rohingya-women-aseanperspective>.

3 Dicky Eko Prasetyo, "Memahami Problematika Pengungsi Rohingya: Ada Apa?," in *Majalah BhumiPura*, 2024, 42–43.

4 Atin Prabandari and Yunizar Adiputera, "Alternative Paths to Refugee and Asylum Seeker Protection in Malaysia and Indonesia," *Asian and Pacific Migration Journal* 28, no. 2 (2019): 132–54, <https://doi.org/10.1177/0117196819850946>.

5 Robbins Lindsay, "The Rohingya Case in Aceh: Indonesia's Role as a Destination for Refugees," *Towson University Journal of International Affairs* 53, no. 2 (2020): 1–15, <https://bpb-us-w2.wp.mucdn.com/wp.towson.edu/dist/b/55/files/2018/04/S20.Robbins.pdf>.

16th, 2023, the most recent Rohingya refugees came to Lampanah Beach, Aceh Besar, with a total of 69 individuals⁶.

The arrival of Rohingya refugees to the province of Aceh has continued since 2015 until 2023. Meanwhile, the legal basis for handling refugees only refers to Presidential Decree 125/2016, which was to respond to a legal vacuum in handling refugees who are floating in the sea of Indonesian territorial waters (Aceh province). This presidential regulation still leaves limitations for medium- and long-term refugee protection. Therefore, illegal migration will occur in terms of humanitarian tragedy both in Myanmar and in Aceh province as a transit region. Moreover, while they were in temporary shelters in the Aceh region, this illegal migration occurred without any clarity in handling or anticipating it. This creates a dilemma for the central, provincial, and district governments in responding to illegal migration.

The Rohingyas are victims of human trafficking networks, are crew members of boats that are well organized, funded, and equipped with good communication and navigation equipment.⁷ Therefore, it is strongly suspected that many of the Rohingya who have been stranded in Aceh since May 2015 are victims of human trafficking. The United Nations High Commissioner for Refugees (UNHCR) issued a warning in August that departures by sea were expected to continue once the weather improved. Given the international concern about human trafficking, it is likely that traffickers will change their patterns and use new routes to escape surveillance⁸.

It is difficult to distinguish between trafficking refugees and non-trafficked refugees, as their conditions are remains as victims, whether victims of atrocities by the government of their country of origin (Myanmar) or the savagery of trafficking brokers of international syndicates. Therefore, the prevention of authoritarian and repressive policies from the country of origin must be carried out immediately to prevent the increase in the flow of refugees, and at the same time close/prevent opportunities for traffickers' syndicates⁹.

Refugees want to have a better life, but when government policies are not very clear, the traffickers take advantage of this situation as a business¹⁰. Such a situation also leads to exploitation, harassment, prostitution, and extremism. In fact, many victims are children and women who are unexpectedly involved in child labour, early and forced marriages. To address these gaps, the study focuses upon the research question of whether humanitarian action can be demonstrated over the crime of trafficking in Indonesia, with reference to the case in Aceh province?

⁶ Oktina Hafranti, The Representative of UNHCR Pidie, *Personal Interview*, February 2023

⁷ Robaiya Nusrat Mokbul Ahmad, "Human Trafficking and Crimes in the Rohingya Refugee Camps in Bangladesh," in *Present and Future Paradigms in Human Trafficking* (IGI Global, 2022), 26–42.

⁸ Amnesty International, "Perjalanan Mematikan, Krisis Pengungsi Dan Perdagangan Manusia Di Asia Tenggara," 2015, <https://www.amnesty.org/en/documents/asa21/2574/2015/id/>.

⁹ United Nations, "Heinous, Fast-Growing Crimes of Human, Drug Trafficking Will Continue to Ravage World's Economics without Coordinated Global Action, Third Committee Told," 2012, <https://press.un.org/en/2012/gashc4039.doc.htm>.

¹⁰ Sarina, "Antropolog: Kelemahan Aceh Akan Dijadikan Tempat Transit Kelompok Trafficking," *Aceh Journal National Network (AJNN)*, 2020, <https://www.ajnn.net/news/antropolog-kelemahan-aceh-akan-dijadikan-tempat-transit-kelompok-trafficking/index.html>.

This paper is based on normative-empirical research methods, which began with written affirmative legal provisions imposed on in-concreto legal events in society. This article studies the formulation of the problem with applicable legal norms and rules, and later, to support this normative research, this article also obtains interviews with the stakeholders involved in handling Rohingya refugees in Aceh Province.

2. ANALYSIS AND DISCUSSION

2.1. The origin of Rohingya's trafficking

Rohingya Muslims have continued to suffer human rights abuses under Myanmar's military junta since 1978, and many have fled to Bangladesh. More than 671,000 Rohingya Muslims have fled Burma's Rakhine State since late August 2017 to escape a large-scale campaign of ethnic cleansing by the military. Violations committed by the Burmese security forces include mass killings, sexual violence, and widespread arson. Military and civilian officials have repeatedly denied that the security forces committed these violations during operations, a claim that contradicts extensive evidence and witness testimony. In 2018, it was reported that the conflict in Rakhine had subsided and that even displaced Rohingya were allowed to return to Myanmar, however, the influx of refugees continued. The most recent was the seizure of 79 Rohingya people at Kuala Raja Beach, Bireuen, Aceh Province, in April 2020¹¹.

According to the United Nations Office on Drugs and Crimes (UNODS), human trafficking is the third fastest growing international crime after arms trafficking and drug trafficking. United Nations Convention Against Transnational Organized Crime which is the basis for the formation of the protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children itself was formed in the same year, namely in 2000. This convention is also widely known as the Palermo Convention (Palermo Convention), because the negotiations and its making were carried out in the City of Palermo, Italy. Indonesia acceded to the two conventions which were ratified and promulgated on January 12, 2009, for Law Number 5 of 2009 concerning the Ratification of the United Nations Convention Against Transnational Organized Crime, and on 5 March of the same year, for Law Number 14 of 2009 concerning Ratification of Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime human trafficking¹².

This makes Indonesia legally bound to the two international legal instruments, so that Indonesia must submit and obey every rule of law contained in it. In addition, in Indonesia itself there are laws that regulate human trafficking, namely Law No. 21 of

¹¹ Risky Novialdi, Chairul Bariah, and Zahraini, "The Failure of Providing Human Security For Rohingya Refugees (Case Study: Escaping Rohingya Refugees From Shelter In Skb Bireuen, Aceh Province)," *Indonesian Journal of Peace and Security Studies (IJPSS)* 2, no. 1 (July 26, 2020): 49–62, <https://doi.org/10.29303/ijpss.v2i1.39>.

¹² Zezen Z. Mufaqin, "Modern-Day Slavery at Sea: Human Trafficking in the Thai Fishing Industry," *Journal of East Asia and International Law* 11, no. 1 (May 31, 2018): 75–97, <https://doi.org/10.14330/jeail.2018.11.1.04>.

2007 concerning the Eradication of Criminal Acts of Trafficking in Persons or better known as the TPPO. Commitment to preventing displaced persons from becoming victims of people smuggling and trafficking in persons, and support their voluntary, sustainable, and dignified return; and welcome relevant countries' active engagement with the Bali Process, including in the Consultation Mechanism of October 2017 and Good Offices outreach of May 2018. It would need the provision of practical assistance by the Regional Support Office to affected countries and further Bali Process engagement¹³.

During the rampant of trafficking of Rohingya in Aceh province, since 2020, the Indonesian government has been involving a Task Force consisting of the 0103 North Aceh Military Command/KODIM 0103. The last few cases they were caught by the Kodim team and handed over to the Lhokseumawe Police Headquarters for further legal proceedings. They are suspected of wanting to take the Rohingya who are temporarily accommodated at the Lhokseumawe City Work Training Center (BLK) to Medan, North Sumatra. They can earn of Rp 12 million or 3,500 Malaysian ringgit if they succeed in smuggling the Rohingya to Malaysia¹⁴.

The complexity of the humanitarian crisis in Myanmar and Bangladesh has lead them to flee to expected better country such as Malaysia and Australia. But, in the middle of their voyage, migrants, particularly women refugees, risk being detained at sea or kept in jungle camps on the Thai-Malaysian border, while traffickers demand a price of US\$1200-2000 to allow them to continue their journey. If they were unable to pay the needed sum, the traffickers imprisoned them on board ships or in jungle camps, without supplying basic necessities such as water and food. Women refugees were likely more vulnerable to sexual and gender-based violence in this context, and many ended up in forced marriages or sex markets where they were sold for higher prices. These facts demonstrate unequivocally that the trafficking of Rohingya refugees is a complicated phenomenon intertwined with very sensitive issues like sexual and gender-based violence, property, and human dignity¹⁵.

When the Acehnese people responded positively to the Rohingya immigrants, the community became envious since the refugees continued to receive aid from the government and charity organizations, particularly in terms of food. The presence of migrants would spark cultural, social, and economic disputes in Acehnese society, as well as new causes of violence. Refugees became caught in this predicament. They are unsure whether or not they will be transported to a third country as international refugees. This has then become one method for traffickers, certain organized groups of individuals, and agents to conduct trafficking with the lure of turning Rohingya refugees into laborers in Malaysia. The refugees were transferred to Batam, where they became victims of

¹³ Bali Process, "Declaration of The Seventh Ministerial Conference of The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime," 2018, [https://www.baliprocess.net/UserFiles/baliprocess/File/BPMC%207%20Ministerial%20Declaration-Final\(2\)\(2\).pdf](https://www.baliprocess.net/UserFiles/baliprocess/File/BPMC%207%20Ministerial%20Declaration-Final(2)(2).pdf).

¹⁴ Sarina, "Antropolog: Kelemahan Aceh Akan Dijadikan Tempat Transit Kelompok Trafficking."

¹⁵ Sanjeevani, "Trafficking in Rohingya Women: The ASEAN Perspective."

human trafficking.¹⁶ Several people flee at night in different shelters, including one in East Aceh. Several of the immigrants who fled to Malaysia claimed to have paid the agent 1.500 ringgit. This money was sent from Malaysia by their husband, parents, or family. Refugees who leave the camps in Aceh frequently employ the services of human trafficking operators who transport illegal migrant labor to Malaysia. The presence of trafficking agents surrounding the shelters is unavoidable in this circumstance¹⁷

2.2. Non-refoulement principle and global smuggling

The Non-refoulement principle is an international refugee law principle that controls the prohibition against nations when the states are unable to return the refugee or resist, in any situation where the refugees are unable to exercise their rights and duties, or may be endangered¹⁸. The non-refoulement concept is governed by Article 32 of the 1951 Refugee Convention, which also addresses expulsion:

“Unless in cases of national security or public order, Contracting States may not legitimately deport a refugee from their territory. Expulsion of such a refugee shall be carried out only in compliance with a determination obtained in accordance with due process of law”

Non-refoulement, or the right not to be repelled or returned, was agreed upon by States as a narrow protection against the return to certain refugees as part of the Refugee Convention 1951. There is evidence to show that it existed in some form previously, through examining religious texts and early writings on international law. However, its adoption by human rights law has meant that the principle has been expanded and has departed significantly from the intention of the original drafters. This is problematic for both refugee law and human rights law: it encourages narrower interpretations of the right to non-refoulement by States, because of the intense concerns States have, and always have had, around mass migration¹⁹. Notwithstanding the fact that Indonesia is not a member to the 1951 Refugee Convention, it is committed to the concept of non-refoulement. It is considered customary law, binding all countries, including those that have not signed the refugee convention. This implies that other nations treat it as law, despite the fact that it is unofficial²⁰.

A close examination of the presidential rule indicates that the Indonesian approach to asylum is primarily based on “humanitarianism” and “immigrant control” methods. The state and Indonesian scholars view the Indonesian government’s policy to

¹⁶ Fairus Maria Novianti Prinelti, Tri Indah Wulandari, “Juridical Analysis Of Human Trafficking In Batam City Viewing From Human Rights,” *Interdisciplinary Journal and Hummanity*, 1, no. 1 (2022): 20–28.

¹⁷ Lindra Darnela, “Islam and Humanity: Commodification of Aid for Rohingya in Aceh,” *Al-Jami’ah: Journal of Islamic Studies* 59, no. 1 (May 29, 2021): 57–96, <https://doi.org/10.14421/ajis.2021.591.57-96>.

¹⁸ Yordan Gunawan, Abdullah Teguh Thamrin Rettob, and Kevin Kalagita, “The Analysis of Non-Refoulement Principle towards Rohingya Refugees in Bangladesh,” *Lambung Mangkurat Law Journal* 5, no. 1 (March 18, 2020): 13–24, <https://doi.org/10.32801/lamlaj.v5i1.138>.

¹⁹ Clare Frances Moran, “Strengthening the Principle of Non-Refoulement,” *The International Journal of Human Rights* 25, no. 6 (July 3, 2021): 1032–52, <https://doi.org/10.1080/13642987.2020.1811690>.

²⁰ Dio Herdiawan Tobing, “Indonesia’s Refugee Policy-Not Ideal, but a Step in the Right Direction,” *The Conversation*, 2017, <https://theconversation.com/indonesias-refugee-policy-not-ideal-but-a-step-in-the-right-direction-75395>.

permit asylum seekers and refugees to enter and remain in the country as essentially “humanitarian aid,” indicating a “humanitarian” reaction or “humanitarianism” toward refugee protection. According to this viewpoint, protection is provided as an exercise of the state’s discretion rather than as a fulfillment of legal requirements. For example, although the non-refoulement principle legally binds Indonesia as an obligation under international law, Indonesia’s adherence to it as an expression of humanitarianism. It is argued that the government’s humanitarian approach is enshrined in key pieces of legislation and policy²¹.

The ideology of non-refoulement has been embedded in the fishermen system in Aceh province²². Supporting by historical and living experiences, many Acehnese during armed conflicts, and helping other people in emergency become a must. However, as Aceh is under the jurisdiction of Indonesia, which objected to the principle of non-refoulement by not ratifying the 1951 Convention of Refugees, it has no legal standing to handle such refugees until Presidential Degree 125/2016. Despite this presidential degree, Indonesia is not concerned with fully handling refugees, and even more, helping refugees may be considered a crime under the frame of smuggling/trafficking under the law of immigration (Article 120).

According to a study conducted in June 2022 among various categories of individuals using online surveys on opinions on the return of Rohingyas to Aceh. The community’s acceptance of Rohingya refugees is 44%, according to the 267 responses, which were based on religious teachings and humanitarian ideals. The religious effect of the Rohingya refugees themselves cannot be separated from this viewpoint. The majority of respondents believed that because Rohingyas were fellow Muslims, they had a duty to be helped. Muslims should assist other Muslims in need in every way they can. Muslim refugees known as Rohingyas are thought to have fled their homes due to persecution for their religion²³.

There has been the value of Custom to help any ‘emergency’ situation at sea, despite the Indonesian military and government has tried to push them back to the sea. In alternative language, this notion may be defined as humanitarian aid, which consists of giving commodities and services with the goal of assisting people to live; the concept is directly influenced by disasters produced by humans, including armed war and natural catastrophe. Humanitarian support is founded on moral commitments that are unbiased, impartial, and independent of commercial or political objectives. Therefore, humanitarian aid benefits all parties and is not limited to certain groups²⁴. Panglima Laot and community surrounding insists to help them referring to religion and humanitarian sentiment. However, they have a limited role only to rescued them

21 Bilal Dewansyah and Ratu Durotun Nafisah, “The Constitutional Right to Asylum and Humanitarianism in Indonesian Law: ‘Foreign Refugees’ and PR 125/2016,” *Asian Journal of Law and Society* 8, no. 3 (October 21, 2021): 536–57, <https://doi.org/10.1017/als.2021.8>.

22 Moran, “Strengthening the Principle of Non-Refoulement.”

23 Malahayati Rahman, “Community’s Perspectives on the Attendance of Rohingyas in Aceh,” in *Proceedings of the International Conference on Social Science, Political Science, and Humanities (ICoSPOLHUM 2020)* (Paris, France: Atlantis Press, 2021), 128–32, <https://doi.org/10.2991/assehr.k.210125.022>.

24 Gunawan, Rettob, and Kalagita, “The Analysis of Non-Refoulement Principle towards Rohingya Refugees in Bangladesh.”

from the sea to the land shore²⁵. Then the authorities of Military district command, Police and Migration office facilitate them to temporary shelters, which then supported by NGOs and community surrounding²⁶.

While people may have obligations to rescue migrants in various ways, it appears doubtful that bystanders are ethically compelled to transport refugees over borders for free in large part because the hazards and expenses of doing so are high. The development of smuggling networks that ease border crossings has enabled Rohingyas to migrate illegally from Myanmar or other transit countries. The smuggling of Rohingyas entails many sorts of exploitation that may endanger their lives and diminish their dignity²⁷.

Rohingya victims, particularly boys and men, are compelled into forced labor, while girls and young women are pressured into forced marriage. The existence of horrific components, including as kidnappings and deaths of Rohingyas, depicts smuggling as a trafficking crime. The Protocol against the Smuggling of Migrants by Land, Sea, and Air, which supplements the United Nations Convention against Transnational Organized Crime, governs the prevention of smuggling²⁸. Human smuggling, often known as “migrant smuggling” or “people smuggling” was defined as follows in article 2 of the United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air, which was adopted by the General Assembly as: “The unlawful admission of a person into a state Party of which the person is neither a national or a permanent resident in order to receive, directly or indirectly, a pecuniary or another material benefit.”

Human smuggling may be seen analytically as a market in which the commodity exchanged is unlawful admission into a country. By definition, markets are defined by supply and demand. In this case, migrants are on the demand side. People are prepared to pay for a service, unlawful admission, for a variety of reasons such as fleeing a war zone, extreme poverty, economic difficulties, and prosecution²⁹.

The Indonesian government has collaborated with the Australian Federal Police to dismantle a people-smuggling network aiming at sending false Rohingya refugees to Australia. The police have named three individuals, including a Rohingya man, as the organizers of a complicated plot to unlawfully transfer people to Australia. The scheme was devised by a Rohingya refugee who had previously entered Indonesia, resided in Indonesia, and spoke Indonesian fluently before transforming into a people smuggler who coordinated journeys for Bangladeshis³⁰.

2.3. Indonesia’s policy on refugee and Trafficking

²⁵ Mr. Hamdani, The Chief of Panglima Laot of North Aceh, *Personal Interview*, 14 June 2021

²⁶ Mujiburrahman, Field Officer of Geutanyo Foundation, *Personal Interview*, 14 June 2021

²⁷ Andika Ab. Wahab, “Rethinking Refugees as Economically Isolated: The Rohingyas Participation in Informal Economy in Klang Valley, Malaysia,” *JAS (Journal of ASEAN Studies)* 5, no. 2 (April 28, 2018): 100–118, <https://doi.org/10.21512/jas.v5i2.3664>.

²⁸ AB Andika Wahab and Aizat Khairi, “Smuggling of Rohingyas from Myanmar to Malaysia: A Threat to Human Security,” *Akademika* 90, no. 3 (2020): 27–37, <https://doi.org/https://doi.org/10.17576/akad-2020-9003-03>.

²⁹ Paolo Campana, “Human Smuggling: Structure and Mechanisms,” *Crime and Justice* 49 (July 2020): 471–519, <https://doi.org/10.1086/708663>.

³⁰ Adam Harvey, “Indonesian Police Bust Fake Rohingya People-Smuggling Network With AFP Help,” *ABC News*, 2018, <https://www.abc.net.au/news/2018-04-24/indonesian-police-bust-fake-rohingya-people-smuggling-network/9690798>.

The execution of the Foreign Relations Act order was completed in 2016 with the issuance of Presidential Regulation No. 125 of 2016 on the Management of Refugees from Abroad by the President of the Republic of Indonesia. The ban on releasing refugees who are entering or heading toward the territory of the Republic of Indonesia is not stated directly in the Presidential Decree on Refugee Handling. The handling of refugees in Indonesia is done in accordance with the new Presidential Regulation through cooperation between the Central Government and the UN, through the presence of UNCHR in Indonesia, and/or through other international organizations working in the immigration or humanitarian fields in conjunction with the Central Government³¹.

Concerning the Presidential Decree 125 of 2016, the government has not decided who will monitor the implementation. These refugees from Kandang shelter has been handed over from Nation and Political Unity (Kesbangpol) Aceh to kesbangpol Medan. It is referring to Immigration law. This transfer system shows Indonesia remain uses the political security approach to refugee. It is uncertain when Indonesian is not a party to 1951 convention, and the local community in Aceh has received the Rohingya in their areas. It then leads to initiatives of temporary shelter, which is initially refer to community hall, such as BLK Hall in Lhokseumawe. In following years such as in 2021 in Kandang sub district there has been a special shelter was built by NGOs. So, it looks more organised and prepared. While official detention centre in Medan, North Sumatra, has only provided for illegal migrant who has no legal document and/or rejected to be a refugee status by UNHCR. Due to Indonesia is not a party to 1951 convention, Indonesia basically has to reject all illegal migrant, but some of migrant has legally visit Indonesia but then failed to extend their visa. In this case Immigration Detention Center or Rudenim has authority to detent them until their home country's embassy approved to return them to their home country. However, for those who has a refugee status, as Indonesia is not a party to 1951 convention, so Indonesia facilitate UNHCR and IOM to handle the refugee³².

The International Organization for Migration (IOM), in addition to the UNHCR, has up to now played a significant part in managing refugees in Indonesia. IOM is helping the Indonesian government deal with refugees who are on Indonesian soil. The authorities will immediately get in touch with the IOM and dispatch a team to arrange for a medical examination, a place to stay, and food. IOM also provides a description of their circumstance and offers assistance with resolving specific problems, such as petitions for refugee status. IOM will offer suggestions to UNHCR if refugees decide to request refugee status. If they decide to return home willingly, IOM will make all required arrangements for their return right once, including obtaining the requisite travel documents, tickets, and other things³³.

31 Malahayati Malahayati, Laila Rasyid, and Hadi Iskandar, "Minimum Protection of Rohingya Refugees (A Moral Approach in Aceh)," in *Proceedings of the International Conference on Social Sciences, Humanities, Economics and Law* (EAI, 2019), 3–5, <https://doi.org/10.4108/eai.5-9-2018.2280979>.

32 Indra Wilis, The Sub-Head of Registration of Rudenim-Medan, *Personal Interview*, 18 June 2021

33 Malahayati, Rasyid, and Iskandar.

The refugee will be assessed by the UNHCR, when they rejected, they still can appeal, so if approved, they will be located under the UNHCR system supported by IOM. If rejected means that they are not a refugee, so the Rudenim will take in charge. Rudenim will assess their identity, including photo, finger screen, and provide report each month, every month we used to check in the field. Some of them are from illegal fishing cases, and still stay in Rudenim because of embassy has no fund to return them back ³⁴.

Meanwhile, the transfer of Rohingya was based on the Letter of the Coordinating Ministry for Political, Legal and Security Affairs (Kemenko Polhukam) of the Republic of Indonesia Number: B-579/KM.00.02/2/2021 concerning Submission of Recommendations for Coordination Meeting on the Handling of Refugees from Overseas in Lhokseumawe Aceh Province and Medan, North Sumatra Province, issued on February 25, 2021 and Letter of Approval from the Directorate General of Immigration IMI.5.GR.02.07-4.068 dated March 24, 2021.

When the Rohingya migrants arrive and are saved by the people of Aceh, the Indonesian government should decide whether to accept or reject the refugees. When such views are put into action, there should be a basic guideline that governs the action. On a national level, the Indonesian government should acknowledge some technical policy on the handling of the Rohingya refugee policy on Indonesian territory. Nonetheless, the Presidential Decree 125 of 2016 is currently the framework for dealing with refugees in Indonesia. On a regional and international level, the Indonesian government announced a foreign policy dealing with the Rohingya issue, both bilaterally and regionally, as well as developing collaboration with international institutions ³⁵.

In Addition, the action of regional NGOs is significant with regard to the particularity of refugees who arrived in Aceh since they carried out and sustained emergency efforts faster than the government. NGOs are not constrained by any laws while working with refugees, which might risk their existence. While the Local Government is slower because it lacks a legal framework under which to operate, the efforts of these adaptable NGOs have allowed the Aceh refugee response situation to be addressed quickly ³⁶.

When compelled to evacuate, individuals leave more than just their houses behind. They do not have access to basic resources or employment possibilities. These and other circumstances lead to refugees and other forcibly displaced persons becoming an easy target for traffickers, who take advantage of their desperate condition to abuse them. Many people fleeing conflict, violence, or persecution are forced to travel irregularly in order to find safety. They frequently use the services of smugglers to do this. Under these conditions, refugees are especially vulnerable to being trafficked or becoming victims of serious crimes and abuses of human rights ³⁷.

³⁴ Indra Wilis, The Sub-Head of Registration of Rudenim Medan, *Personal Interview*, 18 June 2021

³⁵ Deasy Silvyia Sari, Taufik Hidayat, and Aliyuna Pratisti, "Indonesian Government Policy on Rohingya Refugees," *Andalas Journal of International Studies (AJIS)* 7, no. 1 (June 22, 2018): 1–13, <https://doi.org/10.25077/ajis.7.1.1-13.2018>.

³⁶ Malahayati, Rasyid, and Iskandar, "Minimum Protection of Rohingya Refugees (A Moral Approach in Aceh)."

³⁷ Saiful Huq Omi, "Trafficking in Persons," *UNHCR*, 2022, <https://www.unhcr.org/human-trafficking.html>.

People trafficking is a type of crime with a minimal danger but a high return. The extremely methodical nature of the crime and the sophistication employed are compounded with the reality that many nations still do not have laws or rules in place to combat this crime. Yet, even though law enforcement is still lax, so many examples occur in which traffickers are readily freed while victims are regarded as criminals. Human trafficking has become a major worry for the worldwide community. This is because a multitude of human rights breaches are seen as both causes and consequences of human trafficking³⁸.

Laws expressly governing human trafficking have been developed in Indonesia, especially Law No. 21 of 2007 about the Elimination of Crime in Human Trafficking, so that victims of human trafficking can be legally protected. Essentially, the substance of human trafficking regulation With Law Number 21 of 2007, the community's expectations for the enforcement of criminal legislation against human trafficking are met. Moreover, in order to promote the execution of human trafficking prevention and law enforcement in general, it is not sufficient to rely solely on Law Number 21 of 2007, but must be supplemented through other legislation and rules, given the nature and scope of criminal acts trafficking in persons, which is very complex and can cross national borders³⁹.

Several cases on trafficking occurred under the trial local court. Trafficking as the consent of the trafficker and the victim has been in a vicious circle, when the refugee themselves wanted to relocate to find a better life and close with their family. Trafficking in this sense were an impact, a consequence, a need and necessity. As long as Indonesian government and international authorities has not found a better way to help the refugee so the trafficking become temporary solution for them to survive, to find out the desire to have a better life within uncertainty.

2.4. Trafficking or humanitarian: In Search of Modus Operandi

The Aceh National and Political Unity Agency (Kesbangpol) in coordination with related parties including law enforcement agencies, detected the presence of the human trafficking in the series of Rohingya migrant arrivals to Aceh. However, the mode and handling of trafficking must be properly understood so that the policies and handling are not sporadic, and are able to provide direction for long-term solutions. Although there have been several arrests of traffickers, the legal process and the root of the problem have not been clearly revealed. The assumption is that this trafficking will continue until the Rohingya refugees are no longer in Aceh. So even though the perpetrators of this crime were arrested, it is not clear how long the existence of the Rohingya refugees in Aceh will last, while the burden on the government or society is getting heavier, then trafficking is the reason for the inability of the government and international parties (UNHCR) to solve this problem.

³⁸ Abdul Rahman Prakoso and Putri Ayu Nurmalingda, "Legal Policy On Human Trafficking Crimes," *IJCLS (Indonesian Journal of Criminal Law Studies)* 3, no. 2 (November 30, 2018): 133–46, <https://doi.org/10.15294/ijcls.v3i2.17172>.

³⁹ Prakoso and Nurmalingda.

Meanwhile, the refugees, who are dominated by children or 56 children under 18 years old, already have a refugee card issued by the United Nations High Commissioner for Refugees (UNHCR). Foreign Minister Retno Marsudi said Indonesia would investigate the alleged 99 Rohingya refugees in Indonesia. Aceh is a victim of human smuggling and trafficking. She said this in the virtual meeting of the Special ASEAN-Australia Foreign Ministers Meeting on C. Indonesia will also explore further, the possibility that they are victims of human smuggling and trafficking. The Minister of Foreign Affairs, has indicated from the beginning that the arrival of the Rohingya to Aceh is part of the mode of international trafficking. However, it is not clear how the Indonesian government will deal with this problem in a systematic and humane way⁴⁰. Second cases were, a woman from North Sumatra trying to kidnaped the refugee from shelter to Medan but unfortunately the police have caught her and she admitted she was paid by unknown person to do that.

The incident in human trafficking issue happened in Rohingya management in the province of Aceh. The Aceh Police have named five suspects for allegedly trafficking Rohingya refugees to Indonesia in June. The suspects were identified as two fishermen from East Aceh regency, a woman from Medan in North Sumatra and two people of Rohingya ethnicity, as revealed by Aceh Police general crimes unit chief Sr. Comr. Sony Sanjaya during a recent press briefing. The two fishermen were tasked with renting a small boat and picking up dozens of refugees from a large ship in the middle of the sea. The vessel initially brought around 900 refugees, Meanwhile, the female suspect from Medan was paid by the suspects of Rohingya ethnicity to pick up three refugees from a camp in Lhokseumawe, Aceh⁴¹. “The refugees were going to be taken to Medan, before being eventually transported to Malaysia,” Sony said. He added that the police were still looking for the two other suspects who allegedly acted as middlemen in the trafficking. In June, three Indonesian fishermen rescued 94 foreign nationals who were believed to be Rohingya refugees from a sinking cargo ship in the waters of North Aceh. They attempted to transport the group to Kuala Tanah Jambo Aye in Seuneddon district in the regency, but their engine was broken. They were rescued by other fishermen after traditional fishing community, Panglima Laot, received reports about them.

The 15 remaining refugee in Kandang shelter will be relocate to Medan⁴². When Mr Fahmi (IOM) announced them on this relocation, they only asked to relocate to the same place with their husband. This indicate that Rohingya refugee has been taken a long time in Medan, so they initiate to pick up their family from the boat using local people to the land. Mr. Jumiin from Military office (Koramil) confirm that they have been engaged in supporting the police to handling refugee since 2020. However, based on the data received only a few cases trafficking was found. Teuku from Kapalres

40 Sania Mashabi and Krisiandi, “RI Akan Dalami Dugaan Pengungsi Rohingya Di Aceh Korban Penyelundupan,” *Kompas.Com*, 2020, <https://nasional.kompas.com/read/2020/07/01/08272581/ri-akan-dalami-dugaan-pengungsi-rohingya-di-aceh-korban-penyelundupan>.

41 Fauzan Fauzan et al., “The Importance of Humanistic Dimension in Managing Rohingya Refugees in the Indonesian Western Province of Aceh,” *Pertanika Journal of Social Sciences and Humanities* 30, no. 3 (July 5, 2022): 1049–69, <https://doi.org/10.47836/pjssh.30.3.07>.

42 Fahmi, Field Officer of IOM, *Personal Interview*, 14 June 2021

Lhoksemawe, has rejected to accept the refugee, as we have no interest with them. Accepting refugee is just become a burden for us⁴³. The recent case was Mr. Faisal case happened in 2021. He was proceed for trafficking crime, as he was caught communicate with somebody in Malaysia and picking up refugee to facilitate the mobility of refugee⁴⁴. It seems three cases of trafficking was proceed in court in Aceh utara. All the refugees were moved to Medan City were part of the Rohingya refugees who landed in Aceh since June 20, 2020 in the first batch and September 2020 for batch II. Meanwhile, while in Lhokseumawe, in fulfilling and improving services for the needs of clothing, food, shelter, health, informal education, and other social activities for the Rohingya, various parties continue to support them. Both from local, national and international levels, including United Nations agencies such as IOM and UNHCR⁴⁵. Following the information gathered, it shows several reasoning behind the trafficking of Rohingya in Aceh region.

2.5. Family reuniting

During the uncertain time of conflict, they try to survive leaving their family in their home town. But then as time went by, overseas families made strenuous efforts to reunite with their families, looking for ways and paying people some service money to arrange this relocation. During this technology communication advancement such situation become easier. However, in the journey they will face many high risks such as drowning, abuse, and uncertainty about what will happen. In this shelter kandang, even some of them was voluntarily went from Medan to Kandang, as she admitted the situation in Kandang is far much better than in Medan⁴⁶. Medan-Malaysia based controlling Refugee. A woman from Medan was paid by unknown person in Medan to pick up refugee in Lhoksemawe camp. She was caught by military officer. The recent flow of refugee in June 2021, found that they have a very goof ferry ship and sufficient facilities (Stove, battery, AC, productive age refugee) in Pulau Idaman East Aceh. When they arrive in very short time they were embarked to Medan. The victimise of local people for helping refugee or stateless. The main perpetrator was in Malaysia and paid several people in North Sumatra to kidnap refugees to take them with them.

The trafficking issue of Rohingya in Aceh is not be seen from crime perspective, but also family reuniting. At the early of August 2021 there is still 1 family (four people still in BLK Kandang Shelter) which is move to Makasar, due to personal request of refugee for family reunification⁴⁷. Hence the Rohingya conflict and its force deportation from Rakhine Myanmar was not merely trafficking for business, but predominantly trafficking as a strategy for surviving through family connection around various places.

⁴³ Malahayati, Lecturer at University of Malikulsaleh, Focus Group Discussion, 15 June 2021

⁴⁴ Mr. Hamdani, The Chief of Panglima Laot of North Aceh, *Personal Interview*, 14 June 2021

⁴⁵ S Bahri, "Empat Rohingya Di BLK Lhokseumawe Segara Dipindahkan Ke Makasar," *Tribunnews.Com*, 2021, <https://aceh.tribunnews.com/2021/08/02/empat-rohingya-di-blk-lhokseumawe-segara-dipindahkan-ke-makasar>.

⁴⁶ Mujiburrahman, Field Officer of Geutanyo Foundation, *Personal Interview*, 14 June 2021

⁴⁷ Bahri.

It may be torture, when they are not fulfilling their promise to pay agreed fees, but when the agreed fees is paid they will arrange to meet with their family. In addition, pre-arranged marriage become another issue for connecting with the Rohingya in Rakhine and Rohingya abroad. Many Rohingya in Aceh was having family connection with the existed Rohingya in Medan, so when the situation in Aceh is uncertain they tried to move to Medan and then find another way to another country.

Trafficking of Rohingya refugees in the Aceh region is not by chance. It is well organized as part of the global trafficking network. The refugee mostly from Malaysia or they have a relative in Malaysia. Interestingly some family member was escape from Medan to this shelter as they found this shelter has supported more to pregnancy women and other facilities⁴⁸. They will be relocated to North Sumatra by UNHCR and IOM in the coming Thursday night⁴⁹. 'I want to be relocated with my husband in Pelangi Hotel Medan', he has been 10 years in Medan'. So, family reuniting become a reason of such trafficking. The process of relocation was fully support by IOM and UNHCR. In terms of trafficking, he admitted it has been 'internal and external involvement of many actors' to facilitate such trafficking⁵⁰.

2.6. Pre-Arranged married

In addition, pre-arranged marriage became another issue for connecting with the Rohingya in Rakhine and Rohingya abroad. Many Rohingya in Aceh was having family connection with the existed Rohingya in Medan, so when the situation in Aceh is uncertain, they tried to move to Medan and then find another way to another country. stronger cooperation between governments, UNHCR, International Organization for Migration (IOM) and non-government partners for the provision of counselling, materials assistance, return monitoring and reintegration support can help unblocks the current deadlock⁵¹. Normally the bus was not normal, as it has been arranged to pick them up from the shelter. Mostly they have stayed for long time in Malaysia, as they can speak Malay. In Military Rayon Command or koramil Muara dua shelter Kandang, Menasah Mee. They have mobile phone, the role of TNI was involved in 2020 as supporting to police and community⁵².

The national military has been engaged in handling refugee in Aceh since 2020, as it indicated to the security approach to refugee. In the past, military is not involved as the awareness of current weakness of government institution such as, police, Migration officer, and Social Department. The role of TNI was as supporting system for police in monitoring and preventing the Rohingyas from trafficking and security purposes. The military has very limited role only to help the other stakeholders to ensure the

⁴⁸ Mujiburrahman, Field Officer of Geutanyo Foundation, *Personal Interview*, 14 June 2021

⁴⁹ Fahmi, Field Officer of IOM, *Personal Interview*, 14 June 2021

⁵⁰ Mr. Hamdani, The Chief of Panglima Laot of North Aceh, *Personal Interview*, 14 June 2021

⁵¹ N. Kelley, "International Refugee Protection Challenges and Opportunities," *International Journal of Refugee Law* 19, no. 3 (October 17, 2007): 401–39, <https://doi.org/10.1093/ijrl/eem055>.

⁵² Jumiin, Head of External Relations of Kodim 0103, *Personal Interview*, 14 June 2021

refugee under control by the authorities⁵³. Current legal stakeholders considering many aspects, including humanity, but the law is sacred, black and white and predominant. Their domination and are confined in Article 120 paragraph (1) of Law Number 6 of 2011 concerning Immigration. But we hope that there are other aspects that are more dominant and open the Pandora Article 120 to be considered by legal stakeholders at the next level of the legal process, by not only looking at the positivistic aspect. One of the outcomes of this discussion was a proposal for strengthening regulations at the national or regional level, such as the existence of laws and Qanun specifically dealing with refugees⁵⁴.

2.7. Trafficking for Exploitation

This uncertain situation also provides a trafficking business promising, while there many people in needs. It is hard to find the obvious information of this business, in particular when it attracts local authorities and people. The Refugee Law, the immigration law (sovereignty) and the anti-trafficking law. Indonesia is not a party to 1951 convention and its protocol. It indicates that Indonesia has not concerns of the refugee issue, as traditional understanding of sovereignty (territory) become prevalent. Hence no foreign person is allowed to enter the territory of Indonesia without valid identity and documents. It is the idea of Immigration Law.

This has happened since the first generation of Rohingya were stranded on the coast of Aceh. Various modes, such as recognition as the family of refugees often occur. Even those arrested confessed that ‘... if they are people controlled by a human trafficking syndicate in Malaysia for a fee of 1200-2000 Malaysian ringgit’⁵⁵. Other facts also show that those who take Rohingya people from boats, trade them to be exploited as labourers on land or at sea. For several years, the Thai fishing industry has been complicit in this exploitation, including forced labour and human trafficking⁵⁶.

Testimonies from Rohingya people in Aceh that many of them spent a long time in Malaysian waters or Thai waters near the forced labor camp where mass graves were found in May 2015. Several sources said that they made several trips to and from the island, which some have identified as Langkawi. Media reports since June 2015 appear to confirm statements by sources in Aceh who told Amnesty International about a very large ship staying in Langkawi after all the other boats had left. A Malaysian police official told the media that a boat containing 1,158 Bangladeshis and Rohingya had landed in Langkawi on 10 May 2015. This is one day after the date several Rohingya sources told Amnesty International that they had passed a very large boat near Langkawi⁵⁷

⁵³ Jumiin, Head of External Relations of Kodim 0103, *Personal Interview*, 14 June 2021

⁵⁴ International Centre for Aceh and Indian Ocean Studies (ICAIOS), *Public Discussion Webinar*, 1 July 2021

⁵⁵ Fahzian Aldevan, “Kronologi Penangkapan Pelaku Perdagangan Manusia Di Aceh,” *Tagar.Id*, 2020, <https://www.tagar.id/kronologi-penangkapan-pelaku-perdagangan-manusia-di-aceh>.

⁵⁶ Asian Research Center For Migration, “Employment Practices and Working Conditions in Thailand’s Fishing Sector,” *International Labor Organization*, 2013, 1–128, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_220596.pdf.

⁵⁷ The Malaysian Insider, “Boat Used to Smuggle Rohingya to Langkawi Owned by Local Man, Say Police.,” *Perdana Leadership Foundation*, 2013, <http://library.perdana.org.my/cgi-bin/koha/opac-detail.pl?biblionumber=253962>.

The Labor Rights Promotion Network estimates that 80 % to 90 % of Myanmar's people working in the seafood processing sector in Thailand's Samut Sakhon province are in exploitative debt bondage⁵⁸. The large number of graves of Rohingya and Bangladeshis found in human trafficking camps near the Thailand-Malaysia border in May 2015 provides further evidence of the scale of the trafficking network in this Southeast Asian region⁵⁹.

Testimonies from Rohingya people in Aceh that many of them spent a long time in Malaysian waters or Thai waters near the camps forced labor where mass graves were found in May 2015. Several sources said that they made several trips to and from the island, which by some identified as Langkawi. Langkawi is the name of the largest island in the Malaysian archipelago in the state of Kedah, not far from the mainland border between Malaysia and Thailand where mass graves of trafficking victims were found in May 2015.

2.8. Opening a Pandora's box of article 120 of Immigration law

In reaction to the forcible deportation of thousands of Rohingyas from Myanmar by Thai security forces during December 2008, the Bali process was resurrected and a conference of the process was conducted in 2009. As a result, Indonesia was persuaded to outlaw people smuggling, which was defined as the irregular transit of refugees over maritime boundaries. In May 2011, Indonesia officially enacted Immigration Law Number 6 of 2011. This legislation oversees the legal status of immigrants and places a particular emphasis on irregular migration and the formation of smuggling offenses. The refugees are grouped together with irregular immigrants because they entered the country without proper travel documents and also do not go through the appropriate channels, During the debate of the proposed immigration legislation, refugees and asylum seekers were seen as victims of human trafficking and/or people smuggling⁶⁰.

Indonesia's international law non-refoulment responsibilities constantly shape Indonesia's reaction in allowing refugees to temporarily live in Indonesia on humanitarian reasons. In Indonesia, the government has a humanitarian heritage of assisting international refugees. The right to refugees and asylum seeker in Article 28G (2) of the constitution is reinforced by the second of the five Pancasila principles put out in the preamble to the constitution, namely a "fair and civilian humanity". The argument is that Article 28G (2) is only another manifestation of the humanitarian argument rather than a better constitutional rule. As previously stated, the "humanitarian approach" seeks support from Pancasila values⁶¹.

Regarding the handling of casualties at sea, the Aceh fishing community adheres to a concept of traditional knowledge. Even though it is not stated, if there is an event

⁵⁸ Asian Research Center For Migration, "Employment Practices and Working Conditions in Thailand's Fishing Sector."

⁵⁹ Emmanuel Stoakes, "Thailand Human Trafficking Death Toll Far Greater than Feared, Claims Rights Group," *The Guardian*, 2015, <https://www.theguardian.com/global-development/2015/may/06/thailand-human-trafficking-mass-grave-burma-rohingya-people>.

⁶⁰ Susan Kneebone, Antje Missbach, and Balawyn Jones, "The False Promise of Presidential Regulation No. 125 of 2016?," *Asian Journal of Law and Society* 8, no. 3 (October 21, 2021): 431-50, <https://doi.org/10.1017/als.2021.2>.

⁶¹ Kneebone, Missbach, and Jones.

at sea, the fishing community responds immediately. For example, in the situation of foreign fishing boats being swept away and into the waters of Aceh, the fishermen's first thought is if they want assistance. Acehnese fisherman operate on the premise of humanity. The fishermen have a local sense; they should aid anybody who needs help at sea, yet their enemy⁶².

The case of trafficking which has been victimize Aceh fisherman has attracted public attention, questioning whether helping refugee can be considered a crime. It is several considerations of judge for sentencing the minimum of 5 years' jail. The judges have been very careful in ensuring every single convincing legal fact of Faisal cs trafficking, and also considered human rights as humanitarian values which contradictory to the immigration law. However, in its decision alienate such humanitarian arguments and prevalence positivistic article of 120 of Law Number 6 Year 2011 About immigration law. It seems the decision has been trapped under article 120 of immigration law, without any alternatives article in this law. So, it seems the judges has trying to refer to humanitarian values, but failed to find an explicit law to support such argument, and they cannot go beyond that.

Article 120 (2) of immigration law has become a corner stone of trafficking trial in Indonesian court. Using this article means that the court asses the crime of trafficking in the criminal justice system⁶³. However, the decision can be different if the judge has a capacity to link up the humanitarian facts of Faisal, which overcome the trafficking fact. Faisal cs only completed primary school which is considered low educated person, he has 3 children which the smallest 5 months' baby. Faisal only ordered to bring 36 refugees but due to humanitarian he helped 99 refugees to the Aceh Timur beach. So essentially the smuggling has not fully satisfied the smuggling criteria. In this case, it is considered that What Faisal has been done is more dominated by humanitarian sense, and the transaction he had does not fully indicate he has been a part of this organized crime, as it is the first time he has got such order and the money paid to him was only for simple living of basic need. So, the profit objective has not yet satisfied of article 120.

Mr. M. Fadhil Rahmi as an Aceh senator said that he was moved to speak up because he heard the response from the public at lower levels regarding three Acehnese fishermen who were arrested and subsequently sentenced to prison based on the decision of the Lhoksukon District Court Judge (PN) dated June 14, 2021. met with DPR-RI Member, Fadli Zon who also protested against the decision and together will commit to guarding this case. Without reducing respect for law enforcement, Mr. Fadhil hopes to see other sides to make this case more dignified. "Faisal is the leading pawn. The rhino, the fort, the minister, where's the king? It's against the law." He also saw that there was a legal

⁶² Sophia Listriani, Rosmawati, and M. Ya'kub Aiyub Kadir, "Toward a New Legal Framework for Settling Rohingya's Refugee Crisis in Indonesia: A Lesson Learned from Aceh Province," in *Proceedings of the International Conference on Law, Governance and Islamic Society (ICOLGIS 2019)* (Paris, France: Atlantis Press, 2020), 277–85, <https://doi.org/10.2991/as-sehr.k.200306.227>.

⁶³ Dr. Gausyah, Keynote Speaker of Indonesia National Radio Broadcast (RRI Banda Aceh), *Personal Interview*, 21 June 2021

vacuum so that later he would try to push for more concrete regulations at the national level⁶⁴.

Meanwhile, Rima from the Geutanyoe Foundation believes that for small fishermen, this case is reminiscent of a grandmother who collects wood from a private plantation who is sentenced to two years. “If you use the right law to steal, there is no mercy.” Rima believes that what the fishermen do has a greater human value because they were asked to take 36 people but the total taken is 99 people. Rima also suggested that there should be a better legal alternative, such as a request for clemency. He also saw the need for fishermen’s education by Panglima Laot about what to do or not to do regarding the rescue of Rohingya refugees. In line with Rima, Hendra from Kontras said that Aceh’s fishermen need to be strengthened. What needs to be anticipated from the impact of this case is the concern or reluctance of fishermen to save refugees or Rohingya in the middle of the sea in the future. “When there are fishermen who rescue refugees in the middle of the sea, be careful you will be Faisal”, referring to one of the fishermen who was sentenced to prison. He also hopes that in the future there will be more active coordination between fishermen and Panglima Laot.

In recent corruption case, such as Pinangki case, Joko Chandra show adversely, when the maximum of 15 but only 4 years in prison based on humanitarian considerations: still have a child, committed a crime together, not only one. So the Faisal cs also have a baby of 8 months and no income wife with other two children. Some money 2 Millian only transferred to his wife account? So based on such humanitarian argument faisal cs should be free ⁶⁵. Furthermore, the issue of Rohingya refugees is a humanitarian crisis that cannot be ignored, and it has become a “Jus Cogen” norm among worldwide societies. As a result, Indonesia has decided not to release the refugees who have become stuck in the Indonesian waters. Indonesia has ratified the 1982 Sea Law Convention, which requires any government to help persons in an emergency at sea. In this situation, the danger of receiving migrants is resettling Rohingya refugees who have arrived on Indonesian territory for an extended length of time.

In addition, the trafficking that occurred against Rohingya refugees in Aceh is an emergency solution, as an effort to get out of shelters that have no certainty, from the government of the Republic of Indonesia for their future. However, for eternal integration with local community seems questionable as they worried to lead to other conflicts, as they informally heard from Malaysia and other sources⁶⁶. In this context Indonesia can selectively considered to non-refoulement principle for stateless people, such as Rohingya, which has become part of global concerns ⁶⁷. Despite they have become a part of global trafficking network, cannot exempt the humanitarian aspect of this refugee. Particularly for small money received by the fishermen in Aceh.

⁶⁴ International Centre for Aceh and Indian Ocean Studies (ICAIOS), *Public Discussion Webinar*, 1 July 2021

⁶⁵ Nasruddin, Social Worker for Refugee Base in Langsa, *Personal Interview*, 17 June 2021

⁶⁶ Mr. Hamdani, The Chief of Panglima Laot of North Aceh, *Personal Interview*, 14 June 2021

⁶⁷ Jobair Alam, “The Status and Rights of the Rohingya as Refugees under International Refugee Law: Challenges for a Durable Solution,” *Journal of Immigrant & Refugee Studies* 19, no. 2 (April 3, 2021): 128–41, <https://doi.org/10.1080/15562948.2020.1746872>.

2.9. Looking for a Way Forward

Presidential decree 125/2016 has not been able to provide legal certainty for the handling of Rohingya refugees in Aceh Province in the medium and long term. So that when refugees do not get certainty how long they will be in the shelter, and where will their fate be in the future. Based on monitoring when they have lived for more than 3 months, the crime of trafficking begins to occur in various modes. Human trafficking occurs because there is no certainty about the future of refugees in Aceh province, due to legal uncertainty. Trafficking as a crime occurs because there are opportunities and needs for refugees who want to leave and seek certainty in the midst of uncertainty in temporary shelters. Limited funds and adequate facilities for refugees, which resulted in the vulnerability of gender-based violence in temporary shelters to be one of the factors urging refugees, especially female refugees, to seek certainty elsewhere. Therefore, the meaning of ‘trafficking’ as a crime should be questioned in its reality. Trafficking is the only way out to free them from the shackles of uncertainty in temporary shelters in Aceh province. The heavy burden of the district government and the community to finance the lives of refugees opens up opportunities for ‘allowance’ to this trafficking.

From 2015 to 2020, since the initial generation of Rohingya refugees in Aceh to the latest generation in early 2020, human trafficking has been and is still happening. Even the results of a field visit at the end of 2019 researchers met with the last refugees from the early generation who were waiting for their time to escape. The mode and handling of human trafficking for Rohingya refugees has not received much attention so far, even though there has been a lot of information submitted by various parties. This raises the question of whether trafficking is still a crime in the context of the Rohingya? If through trafficking they can get out of uncertainty, why doesn’t the government officially carry out ‘trafficking’ by sending them back to their country. Myanmar’s unsafe condition for the Rohingya makes the problem even more complicated. Because of that, the Indonesian government must encourage Asean countries, especially Myanmar, to ensure the security and life of their spirits. If this can be confirmed then the Indonesian government can deport the Rohingya back to their home country in Arakhan.

Beside the presidential decree 125/2016, Rudenim also consider some of the provision is not applicable, so they have to follow several such as 15 March 2018 of Circular of the Director General of Immigration (Surat Edaran Dirjen Imigrasi), since the rigidity of Australian aid. UNHCR, Indonesia also has obligation to protect refugees due to some ratification for several human rights covenants such as: Convention on the Rights of the Child, the Convention Against Torture, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights. And Presidential decree 125 of 2016 has provide to common responsibility for refugee, particularly in Aceh region⁶⁸.

Fahmi (IOM) highlighted the recent found Rohingya in Aceh Timur, which is rejected by Lhoksemawe authorities, as it arrives in Aceh Timur Beach. Hence in implementing

68 Forum Group Discussion in Banda Aceh, June 2021

the Perpres 125, each district now has limited themselves to accept and handle refugees as limited capacity, despite the IOM said they will support whatever situation is⁶⁹. Fahmi also highlighted the missing of more than 200 refugees when they arrive in Aceh, as only 98 people was departed to Medan. It is still suspicious how stakeholders did not know the moving of refugee in their area. While UNHCR use ‘free movement’ principle as escape argument which also questionable⁷⁰. However, when Acehnese community help the refugee, the idea of immigration law become questionable. The humanitarian purposes become attracted the central government attention, which then the Presidential Decree 125/2016 issued, as temporarily legitimate the community action to help the refugees.

Moreover, Presidential Decree No. 125 of 2016 regulating the treatment of international refugees was not based on Immigration Law No. 6 of 2011. That a lower norm does not apply, is derived from, and is founded on a higher norm in order to achieve conformity between the already in force legal norms⁷¹. Presidential Decree Number 125 of 2016 on the treatment of international refugees has a lower position than Immigration Law Number 6 of 2011. The presidential rule must not be in conflict with immigration law. According to the presidential decree, the Indonesian government appears to have a duty to treat asylum seekers and refugees in the same manner as nations that have accepted the 1951 convention and the 1967 Protocol on Refugee Status. In truth, Indonesia was not one of the nations that accepted the 1951 convention or the 1967 protocol⁷². However, the presidential decree has a lower level than the law, in which the immigration officials would prefer to immigration law rather than presidential decree. The presidential decree gives some concession for the community and local community to help refugees.

3. CONCLUSION

The intricate relationship between human trafficking and the Rohingya refugee crisis in Aceh Province, Indonesia has been a chronicle. The significant connection between these two issues, emphasizing the humanitarian crisis that underlies the refugee situation. The absence of Indonesia as a signatory to the 1951 Refugee Convention raises questions about the country’s responsibility towards the Rohingya population in Aceh. Through extensive research, this study confirms that the trafficking of Rohingya refugees in Aceh is primarily driven by family connections and arranged marriages, serving as survival strategies amidst the ongoing atrocities in Rakhine, Myanmar. Unlike other contexts, such as labor exploitation and sexual exploitation, these modes of trafficking are not prevalent in Aceh. Therefore, it is crucial to recognize that Rohingya trafficking should not be viewed solely as a criminal matter but also as a humanitarian issue, rooted in the survival and well-founded fear of forced deportation from Rakhine, Myanmar.

⁶⁹ Fahmi, Field Officer of IOM, *Personal Interview*, 14 June 2021

⁷⁰ Fahmi, Field Officer of IOM, *Personal Interview*, 14 June 2021

⁷¹ M. Alvi Syahrin and Yusa Shabri Utomo, “The Implementation of Asylum Seekers and Refugees Law Enforcement in Indonesia After Presidential Decree Number 125 of 2016 on the Treatment of Foreign Refugees,” *Jurnal Ilmiah Kajian Keimigrasian* 2, no. 2 (October 20, 2019): 83–96, <https://doi.org/10.52617/jikk.v2i2.60>.

⁷² Muhammad Alvi Syahrin, “Menakar Kedaulatan Negara Dalam Perspektif Keimigrasian,” *Jurnal Penelitian Hukum De Jure* 18, no. 1 (March 28, 2018): 43–57, <https://doi.org/10.30641/dejure.2018.V18.43-57>.

The emergency situation and the uncertain fate of refugees residing in shelters have created a distressing environment that fuels the demand and supply for human trafficking. Compounded by the lack of clear regulations, numerous cases of undocumented movement of Rohingya individuals have been observed, indicating well-organized operations spanning various shelter points in Aceh, Medan, Makasar, and Malaysia. In light of these circumstances, it is imperative that the trial of trafficking cases in Aceh province incorporates a humanitarian approach, rather than solely relying on the criminal provisions outlined in Article 120 of the immigration law. To effectively respond to this complex issue, it is recommended that the Aceh administration considers the improvement of Presidential Decree 125/2016 and the development of a new, specific law addressing the rights and protection of refugees in Indonesia. Striking a balance between security, political interests, and humanitarian concerns is crucial in order to navigate this challenging situation and provide a renewed sense of hope for all parties involved.

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