

## **Examining the Handling of Rohingya Refugees in Indonesia through the Lens of International Law and *Maqāsid al-Shari'ah*: An Exploration of Islamic Humanitarianism**

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### **Abstract**

The issue of Rohingya refugees has gained significant attention globally and within Indonesian society, especially as many seek refuge in Aceh to escape persecution in Myanmar. The 1951 Vienna Convention and the 1967 Refugee Protocol form the global legal framework for refugee protection. However, Indonesia has not formally endorsed these statutes, so it is not legally bound to fulfill refugees' basic needs. Despite this, Indonesia is obligated by the principle of non-refoulement, a customary international law or *jus cogens*, to manage Rohingya refugees entering its territory. This study examines Indonesia's approach to refugee management through international law and *maqāsid al-shari'ah*, representing Islamic humanitarianism. Islamic scholarly discourse, specifically *Fiqh al-Siyar*, linked with *maqāsid al-shari'ah*, provides a foundation for contemporary humanitarian efforts. The study concludes that, under international law, Indonesia must protect refugees as part of implementing *jus cogens*. Additionally, from the *maqāsid al-shari'ah* perspective, Indonesia's decision to welcome Rohingya refugees, despite not ratifying the 1951 Convention and the 1967 Protocol, exemplifies Islamic humanitarianism and acknowledges refugees' inherent human rights.

**Keywords:** Rohingya Refugees, International Law, *Maqāsid al-shari'ah*, Islamic Humanitarianism, Indonesia

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## **Introduction**

The concept referred to as Islamic humanitarianism ought to be elucidated within the humanitarian domain, not solely due to the predominant allocation of aid to Muslim nations, but also in recognition of the substantial growth of humanitarian institutions, whether official agencies or civil society organizations, within the Muslim world. Islamic humanitarianism is often perceived ambiguously due to the misconception that it exclusively caters to Muslims, thereby excluding non-Muslims from assistance. Nevertheless, humanitarian endeavours are inherently dedicated to humanity, irrespective of factors such as race, colour, nationality, or religion. The universal understanding of humanity often aligns with the ethical principles of goodness, benevolence, and impartial sympathy extended universally to all individuals.<sup>1</sup> Does the inclusion of Islam in the term “humanitarianism” imply a restriction to its universal applicability? Does this suggest that acts of kindness, benevolence, and sympathy are exclusively directed towards the well-being of fellow Muslims? This research aims to elucidate and underscore that Islamic humanitarianism is, in fact, a universal humanitarian ethic deeply grounded in Islamic teachings.<sup>2</sup> This investigation focuses on the situation involving Rohingya refugees in Indonesia.

Situated as an archipelagic nation bridging the continents of Asia and Australia, and positioned between the Indian Ocean and the Pacific Ocean, Indonesia’s

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<sup>1</sup> Farid Mirbagheri, “Islam and Humanitarian Values,” *Refugee Survey Quarterly* 21, no. 3 (December 24, 2002): 139–49, <http://www.jstor.org/stable/45054617>.

<sup>2</sup> Zezen Zaenal Mutaqin, “What is Islamic Humanitarianism? An Indonesian experience,” *Indian Law Journal*, no. 33 (2013): 61–80, <http://www.dbpia.co.kr/journal/articleDetail?nodeId=NODE02357358>.

geographic location is a primary factor drawing refugees from diverse nations, particularly those from Middle Eastern countries who transit through Indonesia with the ultimate goal of reaching Australia.<sup>3</sup> The direct maritime border shared with Australia serves as a significant incentive for refugees to enter Indonesia through various means.<sup>4</sup> The conveniently accessible geographical location of Indonesia has been a contributing factor to the entry of Rohingya refugees into Indonesian territory, particularly in the Aceh region,<sup>5</sup> spanning from 2015 to the present year, 2023.<sup>6</sup>

The matter of refugees stands as a global concern extensively deliberated within the international community. The escalating numbers of refugees underscore the urgency of the issue, prompting a heightened need for focused attention from the international community. The safeguarding of refugees under international law is codified in the 1951 Vienna Convention on the Status of Refugees and the 1967 Refugee Protocol, encompassing amendments made in New

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<sup>3</sup> Susan Kneebone, "Australia as a Powerbroker on Refugee Protection in Southeast Asia: The Relationship with Indonesia," *Refugee* 33 (2017): 29.

<sup>4</sup> Antje Missbach, "Asylum Seekers' and Refugees' Decision-Making in Transit in Indonesia: The Need for In-Depth and Longitudinal Research," *Bijdragen Tot de Taal-, Land-En Volkenkunde/ Journal of the Humanities and Social Sciences of Southeast Asia* 175, no. 4 (2019): 419–45. Amy Nethery and Carly Gordyn, "Australia–Indonesia Cooperation on Asylum-Seekers: A Case of Incentivised Policy Transfer," *Australian Journal of International Affairs* 68, no. 2 (2014): 177–93.

<sup>5</sup> Lindra Darnela and Mohammad Ady Nugroho, "Perlindungan Pemerintah Indonesia Terhadap Stateless Person Imigran Rohingya Di Aceh," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 51, no. 2 (2017): 473–95.

<sup>6</sup> BBC News Indonesia, "Pengungsi Rohingya Tembus 1.600 Orang, Mengapa Nelayan Aceh Menolong Mereka?," *BBC News*, December 15, 2023, <https://www.bbc.com/indonesia/articles/c4nye1ewp2xo>.

York. These instruments govern the principles governing the treatment of refugees, as well as the entitlements, rights, and obligations associated with refugee status.

As the Indonesian government has not formally ratified the 1951 Vienna Convention and the 1967 Protocol, it is devoid of legal obligations to fulfil the fundamental needs of refugees within Indonesian territory.<sup>7</sup> The sole international legal norm binding upon Indonesia is the principle of non-refoulement, which specifically prohibits the forced expulsion of refugees from its territory.<sup>8</sup>

The benevolent stance adopted by the Indonesian government in accommodating Rohingya refugees is poised to contribute to a broader influx of refugees entering Indonesian territory, particularly in Aceh, by the conclusion of 2023. It is noteworthy that Indonesia, as widely recognized, has not ratified the 1951 Refugee Convention. Indonesia has hitherto extended acceptance to Rohingya refugees on humanitarian grounds. Nevertheless, the benevolent stance of the Indonesian government is susceptible to exploitation by irresponsible entities. The Minister of Political, Legal, and Security Affairs, Mahfud MD, has disclosed suspicions regarding the involvement of a criminal trafficking syndicate behind the persistent rise in Rohingya refugees arriving in Indonesia.<sup>9</sup>

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<sup>7</sup> Finahliyah Hasan, "Politik Dan Kemanusiaan: Relasi Tumpang Tindih Dalam Penanganan Pengungsi Di Indonesia," *Jurnal Trias Politika* 7, no. 2 (2023): 167–82.

<sup>8</sup> Nur Heriyanto and Dodik Setiawan, "No Choice but Welcoming Refugees: The Non-Refoulement Principle as Customary International Law in Indonesia," *Lentera Hukum* 10 (2023): 135.

<sup>9</sup> CNN Indonesia, "Mahfud MD Ungkap WNI Terlibat Sindikat TPPO Pengungsi Rohingya," *CNN Indonesia*, December 9, 2023, <https://www.cnnindonesia.com/nasional/20231209134357-12-1035071/mahfud-md-ungkap-wni-terlibat-sindik-tppo-pengungsi-rohingya>.

There is a paucity of literature addressing the management of Rohingya refugees in Indonesia, particularly discussions concerning Islamic humanitarian law. For instance, Rumiarta and Jayantri delved into the educational necessities of Rohingya refugee children in Aceh, Indonesia.<sup>10</sup> Similarly, Heriyanto and Setiawan explored facets of international customary law observed by the Indonesian government regarding Rohingya refugees.<sup>11</sup> Correspondingly, Darnela and Nugroho scrutinized the Indonesian government's stance on safeguarding Rohingya refugees in Aceh through an international legal lens.<sup>12</sup> Distinguishing itself from prior research, this study delves specifically into the Indonesian government's approach to Rohingya refugees from the perspective of Islamic humanitarian law utilizing the *maqāsid al-sharī'ah* framework.

This research delves into the refugee management policy in Indonesia through the lens of *maqāsid al-sharī'ah* as an illustrative instance of Islamic humanitarianism. It constitutes a qualitative descriptive study examining the government's approach to the phenomenon of Rohingya refugees entering Indonesian territory. Information was acquired via a systematic literature review, which involved scrutinizing research findings related to the Indonesian government's stance on Rohingya refugees. The data analysis was conducted qualitatively and descriptively, employing a juridical approach encompassing

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<sup>10</sup> I Nyoman Prabu Buana Rumiarta and I Gusti Agung Mas Rwa Jayantiari, "The Fulfilling Right to Education for Rohingya Refugee Children in Indonesia," *The Age of Human Rights Journal*, no. 21 (2023): 1-17.

<sup>11</sup> Heriyanto and Setiawan, "No Choice but Welcoming Refugees: The Non-Refoulement Principle as Customary International Law in Indonesia."

<sup>12</sup> Darnela and Nugroho, "Perlindungan Pemerintah Indonesia Terhadap Stateless Person Imigran Rohingya Di Aceh."

international and national legal principles, alongside a philosophical approach that integrated the concept of *maqāṣid al-sharī'ah* derived from the reservoirs of Islamic legal scholarship. *Maqāṣid al-sharī'ah* represents an Islamic legal methodology aimed at comprehending diverse social phenomena within society, with the overarching principle of welfare (*maṣlaḥa*) serving as the primary reference point. The application of the *maqāṣid al-sharī'ah* approach serves as an analytical framework to evaluate the Indonesian government's efforts in safeguarding and meeting the fundamental requirements of Rohingya refugees within its borders, a stance deemed legitimate within the precepts of Islam, the predominant faith embraced by the Indonesian populace. This study holds significance due to the presence of Indonesian factions advocating against Rohingya refugees entering the country, urging the government to block their entry. It offers an insight that the Indonesian government's management of Rohingya refugees aligns with Islamic principles and complies with international legal standards.

This study is structured into five distinct discussion sections. The first section examines the management of Rohingya refugees in Indonesia, while the second addresses international law concerning refugees and Indonesia's corresponding stance. The third section explores *maqāṣid al-sharī'ah* in the evolution of Islamic legal methodology and its role as the foundation for the concept of Islamic humanitarianism. The fourth section scrutinizes the policy for handling refugees through the lenses of international law and *maqāṣid al-sharī'ah* as a strategic initiative in delineating Islamic humanitarianism. The fifth section engages in a discourse on Islamic humanitarianism within Indonesia's policy towards

Rohingya refugees. The conclusive segment encapsulates the findings and conclusions derived from this study.

### **Managing the Rohingya Refugee Situation in Indonesia**

Rohingya refugees arrived in Indonesia through various phases, notably commencing in 2015. They utilized rudimentary fishing boats and had scant provisions, often facing dire circumstances such as starvation or maritime mishaps, with some vessels foundering due to overloading. The predominant concentration of Rohingya refugees in Indonesia is observed in the Aceh region, primarily owing to its geographic proximity to Myanmar relative to other areas in the country.<sup>13</sup> In 2015, substantial measures were undertaken by the Indonesian government to deter vessels transporting refugees from entering the sovereign territory of Indonesia. Additionally, the government enforced restrictions on fishermen in Aceh, prohibiting them from rescuing and bringing ashore refugees found adrift at sea. Concurrently, however, there were instances of fishermen and residents in Aceh defying government directives and providing assistance to hundreds of ethnic Rohingya refugees stranded in the open sea.<sup>14</sup>

In June 2015, a documented figure indicated the presence of approximately 1,722 refugees, comprising 1,239 adult males, 244 adult females, and 239 children. These refugees were distributed across four distinct regions in Aceh, with North Aceh hosting 560 refugees, Langsa City accommodating 682 individuals, Aceh Temiang sheltering

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<sup>13</sup> BBC News Indonesia, "Pengungsi Rohingya Di Aceh Yang Akan Didorong Kembali Ke Laut, Akhirnya Direlokasi Ke Penampungan," *BBC News*, November 21, 2023, <https://www.bbc.com/indonesia/articles/cyr2p6681kgo>.

<sup>14</sup> Zulkarnaini, "Dilema Warga Aceh Hadapi Ribuan Pengungsi Rohingya Terus Berdatangan," *Kompas*, November 20, 2023, <https://www.kompas.id/baca/nusantara/2023/11/19/aceh-mulai-menolak-pengungsi-rohingya>.

47 people, and East Aceh providing refuge for a total of 433 individuals. According to data from the United Nations High Commissioner for Refugees (UNHCR) in 2016, the number of Rohingya refugees seeking asylum in Indonesia was estimated to be around 897 individuals. The subsequent year witnessed a rise in this figure to 959 people. During the 2019 period, the number of Rohingya refugees declined to 582 individuals, a trend attributed to Myanmar's ongoing democratic transition process. Nevertheless, this figure experienced a surge in 2020, reaching 921 individuals, coinciding with escalating violence in Myanmar and culminating in the Myanmar coup in 2021. In 2023, recent data from the UNHCR as of December 10, 2023, indicates that the cumulative count of Rohingya refugees arriving in Aceh since mid-November 2023 has reached 1,543 people.<sup>15</sup>

Unlike the situation in 2015, the recent influx of thousands of Rohingya refugee migrants arriving on several beaches in Aceh Province since mid-November 2023 has sparked controversy. Numerous residents of Aceh have expressed refusal and called upon the government to take prompt action. The reluctance of the Acehnese towards the arrival of Rohingya refugees is not unfounded. Drawing from past experiences, residents of Aceh have formed an assessment that the conduct of Rohingya refugees tends to create a negative perception within society.<sup>16</sup> Due to these concerns, President Joko Widodo directed the Minister of Political, Legal, and

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<sup>15</sup> Rumiarta and Jayantiari, "The Fulfilling Right to Education for Rohingya Refugee Children in Indonesia."

<sup>16</sup> Rachmawati, "Warga Aceh Gelar Aksi Demo Tolak Pengungsi Rohingya, Sebut Masyarakat Lokal Lebih Butuh Bantuan Pemerintah," *Kompas*, November 30, 2023, <https://regional.kompas.com/read/2023/11/30/063000578/warga-aceh-gelar-aksi-demo-tolak-pengungsi-rohingya-sebut-masyarakat-lokal?page=all>.

Security Affairs, Mahfud MD, to address the issue. The president tasked Mahfud MD with coordinating efforts with the local government and UNHCR. Mahfud MD suggested the possibility that certain entities might intentionally bring refugees to Indonesia as an interim stop before dispatching them elsewhere to engage in illegal employment. They selected Indonesia as an interim stop because of their confidence in being welcomed by the local populace renowned for their amicable disposition.<sup>17</sup>

Indeed, Indonesia does not serve as a destination for refugees seeking political asylum; rather, it functions solely as a transit or stopover country.<sup>18</sup> The Indonesian government is calling upon countries designated as refugee destinations to accept Rohingya refugees. The government, conveyed by the Minister of Foreign Affairs, Retno Marsudi, expressed criticism towards the recent stance of destination countries that have refrained from accepting refugees, despite having ratified the 1951 Convention.<sup>19</sup> Countries designated as destination countries, also termed as third countries or receiving countries for refugees, are those that have formally ratified the 1951 Convention and the 1967 Refugee Protocol. This includes nations such as Australia, New Zealand, Japan, several Middle Eastern countries, select Southeast Asian countries (the Philippines and Cambodia), various European nations, and

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<sup>17</sup> BBC News Indonesia, "Polisi Selidiki Sindikat Perdagangan Manusia Pengungsi Rohingya Di Aceh - 'Saya Bayar Rp20 Juta Agar Keluarga Saya Bisa Naik Perahu,'" *BBC News*, November 27, 2023, <https://www.bbc.com/indonesia/articles/cj5pne2n06do>.

<sup>18</sup> Tirza Listiarani, "Analisis Kebijakan Luar Negeri Indonesia Dalam Menerima Pengungsi Rohingya Di Indonesia," *Jurnal PIR: Power in International Relations* 5, no. 1 (2021): 19–32.

<sup>19</sup> Danu Damarjati, "RI Desak Negara Tujuan Pengungsi Terima Rohingya, Ini Respons Kedubes AS," *Detik*, December 19, 2023, <https://news.detik.com/berita/d-7098146/ri-desak-negara-tujuan-pengungsi-terima-rohingya-ini-respons-kedubes-as>.

Canada. While the United States did not ratify the 1951 Convention, it did ratify the 1967 Refugee Protocol, thereby becoming a state party to the protocol. In other words, the United States bears the responsibility of adjudicating asylum seekers' claims and determining their eligibility for legal protection within the country.<sup>20</sup>

Within Southeast Asia, only two countries, namely the Philippines and Cambodia, have formally ratified the 1951 Convention on the Status of Refugees. Notably, the majority of Southeast Asian nations currently lack national regulations or laws specifically addressing refugee affairs. Despite Indonesia not being a signatory to the 1951 United Nations (UN) Convention on Refugees, the Indonesian government extends protection and fundamental rights to Rohingya refugees within its borders. This is facilitated through Presidential Regulation Number 125 of 2016, which outlines the procedures for managing refugees from abroad. While not a comprehensive law governing all aspects of refugee affairs, Presidential Regulation Number 125 of 2016 does offer specific provisions for addressing refugees or asylum seekers who enter Indonesia through unofficial channels. The regulation outlines the Indonesian government's role in providing shelter and oversight for refugees, but it is important to note that the primary authority for managing Rohingya refugees in Indonesia remains with the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), as the UN agency tasked with global refugee management.<sup>21</sup>

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<sup>20</sup> Damarjati.

<sup>21</sup> Nadia Tia Pramita and M Syaprin Zahidi, "Analisis Peranan Indonesia Dalam Pemberian Bantuan Kemanusiaan Terhadap Etnis Rohingya Di Era Jokowi," *Review of International Relations* 5, no. 1 (2023): 84–106.

Rohingya refugees are not typical migrants pursuing opportunities or seeking employment. They are individuals seeking refuge or asylum, having become victims of persecution in their country.<sup>22</sup> Repatriating those who have already been forcibly expelled from their home country is a complex process, particularly when their safety is jeopardized upon return. Despite Indonesia not being a party to the 1951 Convention on the Status of Refugees, the country is obligated by the principle of non-refoulement. The principle of non-refoulement entails refraining from sending refugees back to their home country if their safety is at risk. Recognized as customary international law or *jus cogens*, this principle applies universally,<sup>23</sup> even to countries not signatory to the 1951 Refugee Convention, establishing it as an imperative norm to be adhered to.<sup>24</sup>

According to Article 28G Paragraph 2 of the Indonesian Constitution, “individuals have the entitlement to be free from torture or degrading treatment of human dignity and have the right to seek political asylum in another country”. This constitutional provision serves as the foundation for the Indonesian government’s commitment to safeguarding refugees who cross the border into Indonesia. The term individuals in this context implies that there are no limitations based on citizenship status for anyone seeking legal protection from Indonesia. This humanitarian stance is substantiated by Indonesia’s active

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<sup>22</sup> B Lora Christyanti, “Right to Asylum versus Sovereignty: Case Study of the Rohingyas’ Asylum Seekers,” *Jurnal HAM* 13 (2022): 333.

<sup>23</sup> Tilman Rodenhäuser, “The Principle of Non-Refoulement in the Migration Context: 5 Key Points,” *Humanitarian Law & Policy Blog* 30 (2018).

<sup>24</sup> Maja Janmyr, “The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda,” *International Journal of Refugee Law* 33, no. 2 (2019): 188–213.

involvement in addressing refugee issues within its borders. The Indonesian government voluntarily provides lodging and makes preparations for temporary accommodation for Rohingya refugees.<sup>25</sup>

The humanitarian aid extended by the Indonesian Government to Rohingya refugees in Aceh has garnered global attention, prompting international participation in alleviating the humanitarian crisis. Financial support, designated to address the immediate requirements of Rohingya refugees in Aceh, has been contributed to the Indonesian Government by entities such as the United States, Qatar, the United Nations, and several other nations.<sup>26</sup>

In addressing the Rohingya refugee situation, the Indonesian government adheres to existing legal frameworks by aligning pertinent regulations with the procedures outlined in international law for handling refugees. Pursuant to Article 3 of Presidential Regulation Number 125 of 2016 regarding the Handling of Refugees from Abroad, the management of refugees incorporates universally acknowledged international principles and is conducted in accordance with statutory provisions. Article 4 of Presidential Regulation No. 125/2016 delineates that the coordination of refugee management falls under the purview of the Minister of Political, Legal, and Security Affairs. This encompasses policy formulation and activities such as identification, shelter, security, and immigration control. Concurrently, while managing refugees domestically, Indonesia collaborates with entities including

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<sup>25</sup> Muhammad Arief Hamdi, Hanifa Maulidia, and Habbi Firlana, "Fenomena Pencari Suaka Dan Pengungsi Etnis Rohingya Di Indonesia (Studi Kasus Penanganan Rohingnya Pada Provinsi Aceh)," *Jurnal Ilmiah Kajian Keimigrasian* 6, no. 1 (2023): 55–71.

<sup>26</sup> Christyanti, "Right to Asylum versus Sovereignty: Case Study of the Rohingyas' Asylum Seekers."

UNHCR, ASEAN, IOM, and various NGOs in endeavours aimed at asylum-seeking and repatriation for Rohingya refugees with well-defined citizenship status.<sup>27</sup>

### **International Legal Provisions on Refugees and Indonesia's Stance on Refugee Matters**

To address international refugee challenges, there exist legal frameworks governing refugees globally, including the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, the Convention Relating to the Status of Stateless Persons (1954), and the Convention Governing the Specific Aspects of Refugee Problems in Africa (1969). These conventions serve as protective measures for refugees.

In Indonesia, two international organizations are dedicated to addressing refugee issues, namely the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM). Both entities operate under the auspices of the United Nations (UN) and have been actively engaged in addressing concerns related to refugees or forced migration. Foreign individuals who identify as refugees or asylum seekers are not subject to penalties akin to those imposed on illegal immigrants; instead, they are referred to UNHCR and IOM for management until a resettlement in a third country is facilitated.

UNHCR represents one of the humanitarian agencies established by the UN. Its role is pivotal in ensuring that individuals affected by conflicts in their native environments receive security, can pursue asylum, and

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<sup>27</sup> Heru Susetyo and Paul Chambers, "Repatriation for Rohingya Asylum Seekers in Indonesia: A Durable but Almost Impossible Solution," *Asian Affairs: An American Review* 48, no. 1 (2020): 63–84.

locate a secure haven in alternative regions or countries. On the other hand, IOM serves as the primary UN agency focused on migration. IOM is responsible for executing operational assistance programs catering to migrants, encompassing internal refugees, international refugees, and migrant workers. The distinctions between UNHCR and IOM encompass various facets. Firstly, UNHCR possesses the authority to determine an individual's refugee status, a prerogative not held by IOM. Secondly, UNHCR is vested with the responsibility of designating the third country for refugees, while IOM facilitates voluntary repatriation to the refugee's country of origin.<sup>28</sup>

The Indonesian government has not entered into an agreement by signing the 1951 Convention and the 1967 Protocol related to refugees. Consequently, from a legal standpoint, Indonesia is not bound to acknowledge or extend protection to asylum seekers within its borders.<sup>29</sup> Nevertheless, as a nation that accepts and has ratified the Universal Declaration of Human Rights (UDHR), Indonesia acknowledges the entitlement to seek asylum in other countries. This acknowledgment is evident in Indonesian legislation, which recognizes the right to seek asylum. Notably, there are no distinct regulations specifically addressing the management of refugees and asylum seekers arriving in Indonesia; instead, the existing regulations are analogous to those governing illegal immigrants entering Indonesia, as stipulated in the Director General of Immigration Regulation Number IMI-

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<sup>28</sup> Anne Koch, "The Politics and Discourse of Migrant Return: The Role of UNHCR and IOM in the Governance of Return," in *International Organisations and the Politics of Migration* (London: Routledge, 2017), 41–59.

<sup>29</sup> Heriyanto and Setiawan, "No Choice but Welcoming Refugees: The Non-Refoulement Principle as Customary International Law in Indonesia."

1489.UM.08.05 of 2010 concerning the Handling of Illegal Immigrants.<sup>30</sup>

Global directives governing the protection of human rights encompass several key instruments, including the UN Charter, the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social, and Cultural Rights 1966, the International Convention on the Elimination of All Forms of Racial Discrimination 1965, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, the Convention on the Elimination of All Forms of Discrimination Against Women 1979, and the Convention on the Rights of the Child 1989. These international human rights norms have been formulated and adopted through various types of international agreements, both bilateral and multilateral, thereby binding the parties involved.

The status of the presence and safeguarding of Rohingya refugees in Indonesia is intricately linked to human rights. This connection arises from the fact that individuals opting for the path of becoming asylum seekers or refugees are evidently those who lack adequate protection in matters of human rights within their country of origin.<sup>31</sup> Regarding this matter, Indonesia possesses legal instruments, including Law Number 39 of 1999 concerning Human Rights, Law Number 37 of 1999

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<sup>30</sup> Dita Fisdian Adni, "Implementasi Peraturan Direktur Jenderal Imigrasi Nomor IMI-1489. UM. 08.05 Tahun 2010 Tentang Penanganan Imigran Ilegal (Studi Di Kantor Imigrasi Kelas 1 Pekanbaru)," *WEDANA: Jurnal Kajian Pemerintahan, Politik Dan Birokrasi* 3, no. 2 (2017): 351–60.

<sup>31</sup> Zezen Zaenal Mutaqin, "The Rohingya Refugee Crisis and Human Rights: What Should ASEAN Do?," *Asia-Pacific Journal on Human Rights and the Law* 19, no. 1 (2018): 1–26, <https://doi.org/https://doi.org/10.1163/15718158-01901001>.

concerning Foreign Relations, Law Number 6 of 2011 concerning Immigration, Government Regulation Number 31 of 1994 concerning the Supervision of Foreigners and Immigration Actions, and Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad.

Fundamentally, the Indonesian government is obligated to ensure the protection of its citizens. However, circumstances may arise where the government or state is either unwilling or incapable of affording protection to its citizens, compelling them to seek refuge in other countries, thus being identified as asylum seekers.<sup>32</sup> The initial management of issues pertaining to asylum seekers and refugees in Indonesia is guided by Law Number 6 of 2011 concerning Immigration. This is because, whether as asylum seekers or refugees, they are foreigners entering Indonesian territory, and thus, the regulations are analogous to those governing other foreigners entering Indonesia, be it legally as tourists or foreign students, or illegally, such as through people smuggling. Article 83, paragraph (1), letter b of Law Number 6 of 2011 stipulates that immigration officials are empowered to place foreigners in Migration Detention Centres if the foreigner is present in Indonesian territory without valid travel documents.

The Indonesian government lacks the authority to ascertain the refugee status of an individual or group. This prerogative is vested in UNHCR, the agency responsible for managing refugee issues. Individuals whose status remains unidentified by UNHCR may be subjected to

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<sup>32</sup> Anne-Marie Jeannet, Tobias Heidland, and Martin Ruhs, "What Asylum and Refugee Policies Do Europeans Want? Evidence from a Cross-National Conjoint Experiment," *European Union Politics* 22, no. 3 (2021): 353–76.

detention, while those declared non-asylum seekers or refugees by UNHCR will undergo prompt deportation.

### ***Maqāṣid al-sharī'ah* as the Basis of Islamic Humanitarianism**

*Maqāṣid al-sharī'ah* (hereinafter referred to as *maqāṣid*) is the aim of laying down sharia to realize the benefit of humanity.<sup>33</sup> It serves as an alternative in determining the legality of an act, aside from relying on legal texts from the Quran and hadith. *Maqāṣid*, representing the fundamental goals of Islamic law, has been employed since the inception of Islam as a foundation for *ijtihād* in establishing Islamic legal principles. During the era of the Companions of the Prophet, Umar Ibn Al-Khaṭṭāb (d. 644), for instance, incorporated *maqāṣid* as a reference and basis for undertaking *ijtihād*. Consequently, the outcomes of Umar's *ijtihād* were recognized for their practicality, realism, flexibility, and humanistic approach in addressing legal challenges confronted by society at that time.<sup>34</sup>

As an academic concept, the term *maqāṣid* was initially formulated by Al-Juwaini (419-478/1028-1085)<sup>35</sup> and subsequently refined by his disciple, Al-Ghazālī (448-505/1056-1111).<sup>36</sup> This *maqāṣid* theory reached its zenith through the contributions of Al-Shāṭibī (720-790/1320-1388) with his work titled *Al-Muwāfaqāt fī Uṣūl Al-*

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<sup>33</sup> Ahmad Al-Raysuni, *Naẓariyāt Al-Maqāṣid 'inda Al-Imām Al-Syāṭibī* (Herndon: The International Institute of Islamic Thought, 1995).

<sup>34</sup> Yudian Wahyudi, *Maqashid Syari'ah Dalam Pergumulan Politik: Berfilsafat Hukum Islam Dari Harvard Ke Sunan Kalijaga* (Yogyakarta: Pesantren Nawesea Press, 2007).

<sup>35</sup> Jasser Auda, *Maqashid Al-Shariah as Philosophy of Islamic Law: A System Approach* (Herndon: The International Institute of Islamic Thought, 2007), 13-16.

<sup>36</sup> Abū Ḥāmid Muhammad Al-Ghazālī, *Al-Mustaṣfā Fī 'Ilm Al-Uṣūl* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1993), vol. 2, 174.

*Sharī'ah*.<sup>37</sup> Al-Juwayni classified levels of benefit into *darūriyyāt* (essential), *ḥājjiyyāt* (complementary), and *taḥsīniyyāt* (ornamental). The hierarchical structuring of benefit levels devised by Al-Juwayni is regarded as the primary underpinning for subsequent scholars' works in *maqāṣid* studies. Building upon this foundation, Al-Ghazali identified five fundamental purposes (*darūriyyāt al-khams*): safeguarding religion, life, intellect, lineage, and property, which constitute the core objectives of sharia.

The methodical elucidation of the intentions and wisdom behind the application of Sharia, as presented by al-Shatibi, inspired Muhammad al-Tahir ibn 'Ashur (d. 1379 H.) to expound on the practical sequencing of intentions in the implementation of Sharia. In his work *Maqāṣid al-Sharī'ah al-Islāmiyyah*, Ibn 'Ashur provides a clear exposition of the concept of intention in the application of Sharia, particularly as it pertains to the reciprocal relationships among individuals. This encompasses aspects such as family dynamics, financial and economic practices, employment agreements, non-profit arrangements, the realms of justice and testimony, and the field of criminal justice. Additionally, Ibn 'Ashur asserts that tolerance, freedom, including equality, legal rights, and justice, are inherent aspects of human nature, both tangible and intangible, and are also objectives within Islamic law.<sup>38</sup>

The methodological construction of *maqāṣid al-sharī'ah* underscores for scholars of Islamic law that the

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<sup>37</sup> Abū Ishāq Al-Shāṭibī, *Al-Muwāfaqāt Fī Uṣūl Al-Sharī'ah*, ed. Izzah Darwazah (Cairo: al-Hay'ah al-Miṣriyyah al-'Āmmah li al-Kitāb, 2006). The book consists of four volumes, and the second volumes specifically discuss *maqāṣid*.

<sup>38</sup> Muhammad al-Tāhir Ibn 'Ashur, *Maqāṣid Al-Sharī'ah Al-Islāmiyyah*, ed. Muhammad Tāhir Al-Mesāwī (Jordan: Dār al-Nafā'is, 2001), 114-5, 415.

*maqāṣidī* method is distinct from *Usul al-Fiqh* and *al-qawā'id al-fiqhiyah*, despite sharing the common objective of determining the legal status of an event or action in Islamic legal discourse. *Maqāṣid* prioritizes the *istiqrā'* method as the paramount means of establishing legal status in Islamic law, in addition to other sources that align with the *Usul al-Fiqh* study method, namely the Qur'an and al-Hadith. *Istiqrā'* involves deducing conclusions from the examination of specific facts that are not explicitly mentioned in the source texts of Islamic law.<sup>39</sup>

The inductive *istiqrā'* method emphasizes meticulous investigation, assigning each case a distinct and unique position to prevent the generalization of law from one case to another—a common practice in extracting the essence of the legality of Islamic law through deductive legal analogy (*istidlāl*). Al-Shāṭibi designates this method as the primary foundation for asserting that universal evidence (*al-kulliyat*) in Islamic law takes precedence over partial evidence (*al-juz'iyat*).<sup>40</sup>

The elucidation of *maqāṣid* outlined above highlights that the examination of Islamic law is grounded in clear principles and methodologies concerning human values. The development of Islamic law goes beyond mere legalization or Islamization of state law; rather, it establishes a substantive correlation, giving rise to an integral synthesis between the principles of Islamic law and governmental regulations. The objective of Islamic Sharia is to actualize universal values that align harmoniously with the human values embedded in the principles of governance, aiming for the realization of prosperity for the nation and state.

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<sup>39</sup> Al-Ghazālī, *Al-Mustaṣfā Fī 'Ilm Al-Uṣūl*, vol. 2: 64.

<sup>40</sup> Al-Shāṭibi, *Al-Muwāfaqāt Fī Uṣūl Al-Sharī'ah*, Vol. 1: 23 & 37; Vol. 4: 327.

In terminological terms, *maqāṣid* refers to the goals envisioned by the *al-syāri'* (legislator or creator of Sharia). Within the context of national and state affairs, the objective of governmental entities is to enforce regulations aimed at achieving social welfare. The regulations encompassed in positive law represent a synthesis of the objectives of individual life with those of the broader societal structure. The foundational factor of benefit serves as the rationale for positioning *maqāṣid* studies as a perspective within legal studies. *Maqāṣid al-sharī'ah* constitutes a moral perspective that underpins the manner in which legal development aligns with universal human values.<sup>41</sup>

According to Ibn 'Asyur, the paramount objectives in Sharia can be distilled into six key points. Firstly, Sharia rules should yield broad enhancements in both societal and individual realms. Secondly, the objectives of Sharia should align with the inherent nature of humanity. Thirdly, fostering attitudes of tolerance and compassion towards fellow humans is imperative. Fourthly, ensuring the continuity of human life within the global system by enhancing the quality of each successive generation is crucial. Fifthly, effecting improvements on the social front is essential. Lastly, the realization of benefits and prevention of harm, along with avoiding various factors that may lead to harm, constitute pivotal objectives.<sup>42</sup> The matter of humanitarianism is intricately linked to fundamental human values and the essential rights that every individual should possess. These values hold a

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<sup>41</sup> Rohmad Adi Yulianto, "Kebijakan Penanganan Pengungsi Di Indonesia Perspektif Maqasid Al-Syari'ah," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 2 (November 28, 2019): 169–86, <https://doi.org/10.24090/mnh.v13i2.2460>.

<sup>42</sup> Ibn 'Ashur, *Maqāṣid Al-Sharī'ah Al-Islāmiyah*.

prominent position within the discourse of *maqāṣid al-sharī'ah*. Consequently, as an approach in Islamic jurisprudence that prioritizes universal values, *maqāṣid al-sharī'ah* is better equipped to address contemporary humanitarian issues.<sup>43</sup>

### **Islamic Humanitarianism and International Humanitarian Law**

The term “humanitarian” encompasses a broad spectrum of meanings, rooted in the improvement of human welfare and characterized by ethical values such as kindness, benevolence, and a sympathetic disposition toward fellow humans, devoid of distinctions based on race, skin colour, class, nationality, or religion. Humanitarian activities, often synonymous with humanitarian assistance, pertain to endeavours related to providing aid in times of need. The concept of “humanitarian” and humanitarian assistance has evolved into a terminology within international law, delineating the laws and principles that various entities must adhere to in the context of both armed conflicts and humanitarian endeavours.<sup>44</sup>

The evolution of humanitarian activities within the Islamic world, propelled by Islamic humanitarian organizations, has created a dynamic sphere in the advancement of international humanitarian law and its application in nations with predominantly Muslim populations. Various entities have endeavoured to articulate the concept of Islamic humanitarianism or the

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<sup>43</sup> Gamal al-Din ‘Atṭiya, *Nahwa Taf’īl Maqāṣid Al-Syarī’ah* (Damascus: Dār al-Fikr, 2003), 177.

<sup>44</sup> Hilman Latief and Zezen Zainal Mutaqin, “Islam Dan Urusan Kemanusiaan: Peta Wacana Dan Perumusan Agenda Kerja,” in *Islam Dan Urusan Kemanusiaan*, ed. Hilman Latief and Zezen Zainal Mutaqin (Jakarta: Serambi Ilmu Semesta, 2015), 27.

Islamic humanitarian ideology, a term employed by Muslim humanitarian activists engaged in relief efforts at disaster sites. Islam inherently possesses both a universal and primordial aspect, prompting questions about the Islamic humanitarian movement—whether it implies endeavours solely for the betterment of Muslims and how to delineate universal ethical standards for benevolent actions rooted in Islamic values within the framework of contemporary humanitarian legal discourse.<sup>45</sup>

To delve into this issue, it is imperative to revisit the delineation of the objectives of Sharia (*maqāṣid al-sharī'ah*). Deductively formulated by scholars through the examination of the Qur'an and the Sunnah of the Prophet, this process has yielded the concept of *maqāṣid al-sharī'ah*, elucidated earlier. Consequently, it becomes evident that the primary goal of Islamic law is the safeguarding of humanity and its pertinent aspects, encompassing the preservation of religious beliefs (*ḥifẓ al-dīn*), the protection of life (*ḥifẓ al-nafs*), the preservation of intellectual faculties (*ḥifẓ al-'aql*), ensuring the continuity of human existence through progeny (*ḥifẓ al-nasl*), and safeguarding property rights (*ḥifẓ al-māl*). This realization has prompted considerable concern among scholars, Muslim intellectuals, social activists, and policymakers, fostering diverse approaches to grasp key concepts in Islamic literature and history aligned with the principles of humanitarian law.<sup>46</sup>

Various perspectives employed by scholars and observers to examine the intersection of Islam and humanitarianism vary. There exists a debate on whether

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<sup>45</sup> Latief and Mutaqin.

<sup>46</sup> Eva Svoboda et al., *Islamic Humanitarianism? The Evolving Role of the Organisation for Islamic Cooperation in Somalia and Beyond* (London: Humanitarian Policy Group, 2015).

the Islamic humanitarian movement should be scrutinized through a Western lens and whether Islamic humanitarian activists can integrate their Islamic perspectives into what is commonly known as humanitarian law. Within this discourse, social activists, intellectuals, and policymakers are endeavouring to reframe “Islamic humanitarian law” by amalgamating International Humanitarian Law with Sharia. In this context, observers emphasize diverse aspects, with some delving deeply into Islamic legal principles, others focusing on humanitarian ethical principles, and yet others concentrating on the practical dimensions of humanitarian actions.<sup>47</sup>

At present, a growing number of individuals have observed the heightened involvement of Islamic organizations in humanitarian endeavours during times of disaster. These humanitarian organizations are proactively garnering funds through diverse humanitarian campaigns, enlisting volunteers from various backgrounds, establishing collaborative networks with private enterprises and governmental institutions, and, importantly, coordinating the delivery of aid to victims in disaster-stricken areas. In numerous instances of disasters and conflicts worldwide, the influence of Islamic humanitarian organizations in assisting victims of disasters and conflicts has been notably impactful. The majority of Islamic humanitarian institutions are established as initiatives from civil society, implying that they are founded, financed, and operated by communities within society. In this context, the mechanism for collecting *zakat*, *infaq* (donation), and alms funds plays a crucial role. Nevertheless, there are a number of Islamic humanitarian organizations whose establishment is financially supported

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<sup>47</sup> Latief and Mutaqin, “Islam Dan Urusan Kemanusiaan: Peta Wacana Dan Perumusan Agenda Kerja.”

by the state. Undoubtedly, the expansion of Islamic humanitarian organizations has significantly impacted the development of discourse and the administration of humanitarian missions.<sup>48</sup> This observation underscores the correlation between Islamic norms and the universally acknowledged concept of humanity recognized by the international community.<sup>49</sup>

Islam propagates the concept of benevolence and generosity through practices such as *zakat*, *infaq* (donation), alms, and *waqf*. This ethical framework serves as the foundation for Muslims engaging in humanitarian endeavours. Religious doctrines emphasizing the duty to assist those in need, both in ordinary circumstances and during crises, inspire devout individuals to provide aid, particularly in times of war or conflict.<sup>50</sup> Maintaining an objective stance during humanitarian missions in areas of war and conflict poses considerable challenges. Islamic teachings provide guidance on conducting warfare and hostilities with the primary objectives of minimizing casualties and alleviating suffering in times of conflict. Rules governing conduct during war, as outlined by Islamic legal scholars in classical literature, are referred to as *al-*

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<sup>48</sup> Latief and Mutaqin.

<sup>49</sup> Ahmad Rofii, "Islam, Islamic Law and Constitution Making: International and Domestic Engagement in the Constitution-Making Process in Afghanistan," *Mazahib: Jurnal Pemikiran Hukum Islam* 19, no. 1 (June 25, 2020): 1–40, <https://doi.org/10.21093/mj.v19i1.2142>.

<sup>50</sup> Jamal Krafess, "The Influence of the Muslim Religion in Humanitarian Aid," *International Review of the Red Cross* 87, no. 858 (2005): 327–42.

*fiqh al-siyar*.<sup>51</sup> *Fiqh al-siyar* in Islamic jurisprudence pertains to the law of nations or international law.<sup>52</sup>

*Fiqh al-siyar* addresses regulations governing the interactions of the Islamic nation with other nations, with a significant focus on war. Some scholars argue that *fiqh al-siyar* is essentially synonymous with the law of war (*jus in bello*), encompassing rules that govern the rights, justifications, and legitimacy of using weapons during warfare. Additionally, *fiqh al-siyar* also encompasses various aspects of the aftermath of war (*jus ad bellum*), including the regulation of human rights, the protection of non-combatant members of warring parties and individuals no longer engaged in the conflict, as well as safeguarding children, women, the general public, and prisoners of war.<sup>53</sup> Contemporary international humanitarian law acknowledges Islam as a significant civilization that contributes to the evolution of key international legal instruments in the humanitarian domain.<sup>54</sup>

International humanitarian law encompasses a wide range of cross-border issues between nations, addressing both the laws of war and human rights. The legal regulations found in the 1949 Geneva Convention, particularly its protocols, govern the treatment of the sick

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<sup>51</sup> Anke Iman Bouzenita, "The Siyar: An Islamic Law of Nations?," *Asian Journal of Social Science* 35, no. 1 (2007): 19–46, <https://doi.org/https://doi.org/10.1163/156853107X170150>.

<sup>52</sup> Asma Afsaruddin, "Jihād, Gender, and Religious Minorities in the Siyar Literature," *Studia Islamica* 114, no. 1 (December 26, 2019): 1–26, <https://www.jstor.org/stable/26745547>.

<sup>53</sup> Fajri Matahati Muhammadin and Shania Dwini Azzahra, "The Role of Fiqh Al-Siyar in International Law-Making: Escaping the Lethargy," *Al-Jami'ah: Journal of Islamic Studies* 60, no. 2 (2022): 509–46.

<sup>54</sup> Mutaqin, "What is Islamic Humanitarianism? An Indonesian experience."

and wounded during conflict, the handling of prisoners of war, and the safeguarding of civilian populations in times of war. Indonesia ratified the 1949 Geneva Convention on the treatment of war victims through Law Number 59 of 1958.<sup>55</sup>

The foundation of the concept of international humanitarian law is rooted in the 1949 Geneva Convention, guided by a philosophical perspective of universal humanism. This notion aligns with *fiqh al-siyar*, drawing from the Islamic viewpoint that humans are creations of God and are meant to be revered by their fellow humans and the governing authority or state. Islamic humanitarianism is grounded in the fundamental teachings of Islam, emphasizing the sanctity of human life, as exemplified in the Quran, Surah al-Maidah verse 32: "...if anyone slew a person unless it be for murder or for spreading mischief in the land it would be as if he slew the whole people: and if anyone saved a life it would be as if he saved the life of the whole people..." The essence of this Quranic verse conveys that Islam's fundamental purpose in this world is to be a source of blessing for the entire natural order and all its inhabitants, transcending specific religions or ethnicities.

The primary focus of the examination in both *fiqh al-siyar* and humanitarian law lies in ensuring the utmost protection for non-combatant civilians during armed conflicts. Additionally, it involves offering protective assistance to those individuals involved in warfare who have lost the capacity and capability to continue their involvement, shielding them from potential harm in the

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<sup>55</sup> Moh Rosyid, "Menggugah Peran Hukum Humaniter Internasional Islam Dalam Mengurai Konflik Etnis Perspektif Sejarah," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 12, no. 2 (2012): 193-215.

aftermath of armed conflict or war.<sup>56</sup> Hence, the regulations found in *fiqh al-siyar* and international humanitarian law can mutually reinforce and enhance one another. Collaborating with Islamic communities can harness substantial religious resources to advance understanding of international humanitarian law alongside relevant religious norms, thereby amplifying religious and cultural legitimacy.<sup>57</sup>

### **Indonesia's Approach to Rohingya Refugees Reflects Islamic Humanitarian Principles**

Indonesia serves as a destination for Rohingya refugees seeking protection from the perilous conditions in Myanmar. The Indonesian government, in safeguarding Rohingya immigrants, is mandated to adhere to human rights standards and International Refugee Law, ensuring protection without resorting to discriminatory actions. Consequently, the Indonesian government bears the responsibility to protect Rohingya refugees in accordance with international law, encompassing both international agreements and customary norms. However, despite the government's commitment to protection efforts, there have been instances where Indonesia struggled to meet the service and protection standards outlined in international law while facilitating Rohingya immigrants.<sup>58</sup>

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<sup>56</sup> Muhammad Amin Summa, "Merumuskan Perspektif Islam Tentang Hukum Humaniter," in *Islam Dan Urusan Kemanusiaan*, ed. Hilman Latief and Zezen Zainal Mutaqin (Jakarta: Serambi Ilmu Semesta, 2015), 67.

<sup>57</sup> Andrew Bartles-Smith, "Religion and International Humanitarian Law," *International Review of the Red Cross* 104, no. 920-921 (2022): 1725-61, <https://doi.org/DOI: 10.1017/S1816383122000376>.

<sup>58</sup> Ibnu Mardiyanto and Hidayatulloh Hidayatulloh, "The Responsibility to Protect (R2P) Concept as an Attempt for Protection of Human Rights in International Humanitarian Law Context,"

The legal foundation underpinning the global refugee protection system is embodied in the 1951 Convention Relating to the Status of Refugees. Within this convention, Article 33 Paragraph 1 upholds the principle of non-refoulement. According to this principle, states are prohibited from expelling or repatriating refugees to their country of origin if such an action would endanger their life or freedom due to factors such as race, religion, membership in a particular social group, or political opinions. The non-refoulement principle, often regarded as the core of international refugee protection and an integral part of human rights, holds the status of *jus cogens* in international law, demanding universal acceptance and respect. Despite Indonesia not being a party to the 1951 Convention, the non-refoulement principle outlined in Article 33 Paragraph 1 retains its *jus cogens* status, applicable to Rohingya immigrants. According to this provision, the Indonesian government is obligated to refrain from expelling those who arrive on the shores of Aceh, given their precarious situation in their home country.<sup>59</sup>

In addition to the aforementioned instruments, another pertinent regulation is the 1967 Protocol Relating to the Status of Refugees. A nation can accede to the 1967 Protocol independently of the 1951 Convention. An intriguing facet of this protocol lies in its broadening of the refugee definition, aimed at addressing post-World War II refugee challenges, particularly those stemming from political conflicts in Africa during the 1950s and 1960s.

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*Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (2023): 103–118, <https://doi.org/10.24090/volksgeist.v6i1.7229>.

<sup>59</sup> Darnela and Nugroho, “Perlindungan Pemerintah Indonesia Terhadap Stateless Person Imigran Rohingya Di Aceh.”

Unlike the 1951 Convention, the 1967 Protocol eliminates time and place limitations in defining a refugee.

In cases where individuals from a particular ethnic or social group flee their country of origin due to persecution on grounds outlined in the 1951 Convention, they fundamentally qualify as refugees. The bestowal of refugee status upon them by host countries or international entities constitutes an official acknowledgment of their predicament. This recognition holds significant importance as it subjects them to legal provisions regarding refugees, along with associated rights and responsibilities in the host country. In the absence of refugee recognition, they may be treated as illegal immigrants.<sup>60</sup>

In this context, the 1967 Protocol offers an avenue for the recognition of Rohingya immigrants as refugees, a provision that was not explicitly addressed in the 1951 Convention. When the Rohingya ethnic group faced persecution from the Myanmar Government, their status as refugees was automatically acknowledged upon their relocation to another country, such as Indonesia, as a means of self-preservation. Consequently, the rights and responsibilities applicable to refugees in the host country are extended to them.

As a nation governed by the rule of law, Indonesia establishes legal norms as the cornerstone of its state foundation. The issuance of Presidential Regulation Number 125 of 2016, addressing the Handling of Refugees from Abroad, serves as a directive for Indonesia in managing the influx of asylum seekers and refugees. From a normative perspective, this Presidential Regulation addresses the legal vacuum pertaining to the regulation of

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<sup>60</sup> Darnela and Nugroho.

refugees and asylum seekers within Indonesia, aligning with the stipulations outlined in Article 28G of the Constitution,<sup>61</sup> and Articles 25 to 27 of Law Number 37 of 1999 concerning Foreign Relations. This Presidential Regulation serves as a guide for all government officials in Indonesia in managing asylum seekers and refugees. Prior to the enactment of this regulation, local or regional governments frequently faced challenges in comprehending the appropriate response to refugees or asylum seekers, particularly in cases where asylum seekers arrived in Indonesian territory by sea unexpectedly.<sup>62</sup>

Prior to the acknowledgment of an individual's refugee status, they are categorized as asylum seekers. The refugee management process involves several phases, commencing with the identification or detection of asylum seekers in transit within Indonesia. Subsequently, they are placed in the Immigration Detention Centre, supervised by the local Immigration office. The subsequent steps include the status determination conducted by UNHCR. Upon the confirmation of refugee status, individuals are either relocated to a third country or repatriated to their nation of origin (resettlement).

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<sup>61</sup> Article 28G of the Indonesian Constitution stipulates the following: (1) Every individual possesses the entitlement to safeguard oneself, one's family, honour, dignity, and property under one's control, and has the right to experience a sense of security and protection from threats, be they fears related to actions or inactions that are fundamental human rights. (2) Every individual has the right to be exempted from torture or any treatment that diminishes human dignity, and holds the right to seek political asylum in another country.

<sup>62</sup> M. Alvi Syahrin and Yusa Shabri Utomo, "Implementasi Penegakan Hukum Pencari Suaka Dan Pengungsi Di Indonesia Setelah Diberlakukannya Peraturan Presiden Nomor 125 Tahun 2016 Tentang Penanganan Pengungsi Dari Luar Negeri," *Jurnal Ilmiah Kajian Keimigrasian* 2, no. 2 (2019): 83–96.

Typically, the journey of Rohingya refugees is extensive. Prior to reaching Aceh, these refugees traversed through Thailand and Malaysia, facing rejection from both the government and the local communities. Their arrival in Indonesia serves as an alternative due to the precarious situation faced by this ethnic group on the global stage. In their countries of origin, they encounter discriminatory treatment and even the threat of extermination. Simultaneously, as they depart their home nations, they encounter staunch resistance from the countries along their maritime routes.<sup>63</sup> Indonesia is widely acknowledged for its tolerance, particularly in providing refuge to displaced populations. This inclusive stance extends beyond Rohingya refugees, with Indonesia demonstrating a history of accommodation dating back to 1979. At that time, Galang Island (now part of the Riau Islands Province) served as a temporary sanctuary for refugees from Vietnam, a practice that continued until 1996.

From the standpoint of international law, the Indonesian government is compelled to engage in legal safeguards to ensure the protection of human rights for stateless individuals. Despite not having ratified certain conventions related to stateless persons and refugees, Indonesia is bound by several provisions in these international agreements, as they represent *jus cogens*, which is universally applicable to all nations.

As previously indicated, the protocols governing the treatment of refugees in Indonesia are outlined in the Presidential Regulation of the Republic of Indonesia Number 125 of 2016. Concerning the interplay between international law and domestic legislation, this Presidential Regulation constitutes a type of indirect adoption

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<sup>63</sup> Syahrin and Utomo.

implemented by the Indonesian government in response to international conventions addressing refugee status. This signifies the Indonesian government's dedication to upholding the non-refoulement principle outlined in international accords. Hence, despite not being a signatory to the refugee convention, Indonesia assumes the responsibility for managing Rohingya refugees who enter its territory. The essence of the Presidential Decree embodies humanitarian principles and aligns with Islamic values, framing refugees not as infringers of immigration regulations but as foreign individuals necessitating distinctive care—a strategy laden with benefits for both refugee groups and Indonesia as a transit nation.

The perspective of *maqāṣid al-sharī'ah* underscores that the Indonesian Government's decision not to ratify the 1951 Convention and the 1967 Protocol, yet still welcoming Rohingya refugees, exemplifies Islamic humanitarianism. This approach acknowledges their fundamental human rights, ensures their safety and dignity, all while endeavouring to facilitate their eventual return to their home country. While the Indonesian government extends humane treatment to Rohingya refugees, it concurrently condemns all forms of repression against them. It urges collective efforts to address the refugee issue by minimizing and eliminating the root causes of displacement. In the absence of robust legal frameworks, religion serves as a reinforcement for humanitarian ethics. It taps into the identities, motivations, and moral values of the diverse stakeholders involved, acting as a potent tool to disseminate humanist values and foster voluntary compliance.<sup>64</sup>

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<sup>64</sup> Bartles-Smith, "Religion and International Humanitarian Law."

## **Conclusion**

The issue of managing refugees in Indonesia is a complex matter that necessitates discussion, drawing insights from diverse scholarly sources, national laws, international legal perspectives, and Islamic scholarship. The global community recognizes that formulating effective refugee management strategies in all nations demands multifaceted approaches. Humanitarian considerations, economic factors, political dynamics, and religious values play crucial roles in aligning regulations for refugee management with the acceptance levels of both the government and society in the host country. In Islamic terms, *fiqh al-siyar* stands as a venerable scholarly resource, and when coupled with the *maqāṣid al-sharī'ah* approach, it has the potential to serve as a foundation for contemporary humanitarian endeavors. The Indonesian government has not formally adopted the Vienna Convention of 1951 and the Refugee Protocol of 1967. Consequently, Indonesia is not legally obligated to furnish refugees with basic necessities during their stay in the country. The sole international norm binding Indonesia is the principle of non-refoulement, prohibiting the forced expulsion of refugees from its territory. Hence, viewed through the lens of international law, Indonesia remains obligated to play a role in safeguarding refugees within its borders as an expression of implementing *jus cogens*. Additionally, the *maqāṣid al-sharī'ah* perspective underscores that the Indonesian Government's decision not to ratify the 1951 Convention and the 1967 Protocol, while still extending acceptance to Rohingya refugees, exemplifies Islamic humanitarianism by acknowledging their fundamental rights as human beings.

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