



LEGAL IMPLICATIONS OF INDONESIA'S OBLIGATIONS IN ADDRESSING ROHINGYA REFUGEES

Moh. Azwar Andi Datu

Faculty Of Law, Gorontalo State University

azwaerr@gmail.com

Zamroni Abdussamad

Faculty Of Law, Gorontalo State University

Mellisa Towadi

Faculty Of Law, Gorontalo State University

Abstract This study examines the legal implications of Indonesia's failure to fulfill its obligations in addressing the Rohingya refugee crisis from international and national legal perspectives. Although Indonesia has not ratified the 1951 Refugee Convention and its 1967 Protocol, it remains bound by the principle of non-refoulement as a jus cogens norm. Using a normative juridical method with statutory and conceptual approaches, this study finds that refugee management under Presidential Regulation No. 125 of 2016 is predominantly administrative and insufficient in ensuring the substantive protection of refugees' basic rights. This condition may constitute an internationally wrongful act under ARSIWA 2001 and reveals inconsistencies between constitutional human rights guarantees and their implementation at the national level. Therefore, the study highlights the urgency of enacting a comprehensive Refugee Law to enhance human rights protection and align Indonesia's policies with international humanitarian standards.

Keywords: State obligation, Rohingya refugees, non-refoulement, state responsibility, international law.

INTRODUCTION

Human rights are natural rights. They are rights that every person possesses and cannot be taken away. All countries and individuals must accept the concept of human rights, as its formulation has been refined by adopting diverse nationalities and religions (Towadi et al., 2024). The phenomenon of transnational migration and displacement is a global humanitarian issue that continues to challenge the international legal order and national legal systems in various countries. One of the most prominent cases in the Southeast

Asian region is the humanitarian crisis affecting the Rohingya ethnic group in Myanmar (Rohmah, et al., 2025)

Systematic discrimination, religious-based violence, and denial of citizenship have forced thousands of Rohingya to flee their home country to seek protection in various neighboring countries, including Indonesia. Although Indonesia is not a party to the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol Relating to the Status of Refugees, its strategic geographic location makes it a primary route for Rohingya refugees

(Wahyudi & Niko, 2023). This situation demands legal and moral responsibility for Indonesia to uphold universal humanitarian principles, particularly the principle of non-refoulement.

Normatively, Indonesia has a strong commitment to respecting human rights (HAM), as affirmed in the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945), which places just and civilized humanity as one of the foundations of national life. Furthermore, Article 28G and Article 28I of the 1945 Constitution guarantee the protection of human dignity and recognize the right to political asylum. (Asnawi, Nawawi, Setiawan, & Mu'in, 2022) Furthermore, Law Number 39 of 1999 concerning Human Rights affirms the state's obligation to respect, protect, and uphold human rights for everyone without discrimination. (Murthada Murthada & Seri Mughni Sulubara, 2022) However, to date, Indonesia does not have a specific law that comprehensively regulates the status and protection of refugees.

As a form of administrative responsibility, the Indonesian government recently regulated refugee issues through Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad. This regulation marked a significant milestone because it was the first time refugees were legally recognized within the national system, although its scope remained limited to administrative procedural aspects, such as the identification, placement, and supervision of refugees. The regulation did not address substantive aspects related to guaranteeing basic refugee rights,

such as the right to education, health, employment, and a decent standard of living. This situation created a gap between Indonesia's international legal responsibilities and the implementation of national law in fulfilling its obligation to protect Rohingya refugees.

In the context of international law, the principle of non-refoulement has become a *jus cogens* norm that is universally binding for all states, whether or not they have ratified the 1951 Refugee Convention. This principle strictly prohibits states from returning (refouling) refugees to their country of origin or to any other place where they may face persecution, torture, or threats to their life and freedom. (Arthur - Ewusie, 2024) Failure to comply with this principle could result in international liability for the state concerned, as stipulated in the 2001 Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) published by the International Law Commission (ILC) (Lemke, 2025). Therefore, if Indonesia fails to fulfill its legal obligation to provide adequate protection to Rohingya refugees, it could result in internationally wrongful acts and lead to international legal consequences.

In addition to international law, Indonesia's responsibility towards refugees can also be analyzed through the theory of positive obligations of the state. This theory emphasizes that states are not only obligated to refrain from human rights violations (negative obligations), but also must take active steps to protect, respect, and fulfill the fundamental rights of individuals under their jurisdiction. (Putra et al., 2024) In the

refugee context, positive state obligations include providing physical protection, access to basic services, and guaranteeing the right not to be returned to dangerous areas. (Ninin Ernawati & Joko Jumadi, 2023) This obligation is increasingly relevant for Indonesia, given its frequent role as a transit point for refugees on their way to third countries.

Conditions on the ground indicate that the implementation of refugee management policies in Indonesia still faces various structural and normative obstacles. According to a 2024 report by UNHCR Indonesia, more than 12,000 refugees and asylum seekers remain in Indonesia, the majority of whom are from Afghanistan, Somalia, and Myanmar (Rohingya) (Press, 2024). Most refugees are housed in temporary community housing with limited facilities, while others live independently with the assistance of non-governmental organizations. Refugees lack legal work permits, children's access to education remains dependent on local government policies, and health services remain emergency-based. In the context of Rohingya refugees, this situation has been exacerbated by the increasing number of new arrivals in Aceh and North Sumatra since 2023, which has sparked social resistance at the local level due to limited resources and minimal coordination between institutions (Ramadhan, Rofii, Ramadhan, & Sitorus, 2025).

From a political-legal perspective, the absence of a specific law regarding refugees has resulted in sectoral and inconsistent policies (Ikhsan, Sastra, & Harahap, 2025).

Coordination between the Ministry of Foreign Affairs, the Ministry of Law and Human Rights, local governments, and international institutions such as UNHCR and IOM often results in overlapping authority. This demonstrates the weakness of institutional mechanisms in translating international legal principles into the national legal system. Furthermore, the Indonesian government's approach tends to be administrative and humanitarian, rather than legal, resulting in the state's legal responsibility towards refugees not being fully realized (Setyardi, 2025).

MAIN PROBLEM

The legal issues arising from this situation can be formulated in two main aspects. First, how are Indonesia's legal obligations to address Rohingya refugees viewed from the perspective of national and international law? Second, what are the legal implications if these obligations are not implemented consistently? This journal's research focuses on the second aspect, namely analyzing the legal implications if Indonesia fails to fulfill its legal obligations to address Rohingya refugees, both within the framework of international and national law.

This analysis is important because non-compliance with international legal obligations can have serious consequences for Indonesia's reputation and standing in international forums. Within the framework of state responsibility, acts of neglect regarding refugee protection can be categorized as omission, violating international obligations and giving rise to legal

liability. Furthermore, at the national level, such omission can indicate a discrepancy between constitutional principles and governance practices, potentially undermining the rule of law and human rights protection in Indonesia.

Therefore, this research is not only theoretically relevant to the development of international and constitutional law but also has practical value in formulating a more comprehensive national policy regarding refugees. Academically, this research contributes to the study of the relationship between positive state obligations and international responsibilities in the context of cross-border human rights protection. Practically, the results are expected to inform recommendations for policymakers in designing specific regulations on refugees that integrate humanitarian principles and legal certainty.

Therefore, the urgency of this research lies in strengthening the normative and implementative framework within the Indonesian legal system to ensure the implementation of state responsibilities in accordance with international and constitutional law. As a nation that upholds humanitarian values, Indonesia must be able to balance state sovereignty with humanitarian obligations. Strengthening the national legal system through the establishment of a specific law on refugees is a strategic step to affirm Indonesia's position as a legally and morally responsible nation in international relations.

METHOD OF RESEARCH

This study uses a normative juridical method with a statutory and conceptual approach, which aims to analyze Indonesian positive legal norms and international legal principles related to state obligations towards Rohingya refugees. (Muhaimin, 2020) The legal materials used consist of primary legal materials (the 1945 Constitution, the Human Rights Law, the Foreign Relations Law, Presidential Decree No. 125 of 2016, and international legal instruments such as the 1951 Convention Relating to the Status of Refugees and the 2001 Articles on Responsibility of States for Internationally Wrongful Acts), secondary legal materials (literature and scientific journals), and tertiary legal materials (legal dictionaries and reports of international institutions). The data collection technique is carried out through library studies and descriptive-qualitative analysis to assess the conformity between international legal principles and Indonesian national law (Mushafi, 2025). Data analysis is carried out prescriptively to produce legal arguments regarding the legal implications of Indonesia's non-compliance with the principle of non-refoulement and the state's positive obligations in protecting refugees.

RESEARCH RESULT AND DISCUSSION

1. Legal Implications of Indonesia's Failure to Implement Obligations to Respond to Rohingya Refugees

The state's obligation to provide protection to refugees, including Rohingya refugees, is part of an *erga omnes* international legal responsibility, that is, an obligation that applies to the entire international community (Fachurrazi, 2025). The fundamental principle underlying this obligation is the principle of non-refoulement, which prohibits the return of refugees to their country of origin or any other territory where they may face persecution, torture, or threats to their life and freedom. This principle is explicitly stipulated in Article 33, paragraph (1) of the 1951 Convention Relating to the Status of Refugees and has been accepted as a *jus cogens* norm binding on all states, including non-party states like Indonesia (Ernawati, et al., 2023). Therefore, although Indonesia has not ratified the 1951 Convention and the 1967 Protocol, the state remains legally and morally bound to apply the principle of non-refoulement as part of customary international law.

However, in practice, the implementation of this obligation in Indonesia remains suboptimal. Based on observations and data from UNHCR Indonesia, the handling of Rohingya refugees in Aceh and Medan shows that the protection provided remains administrative in nature and does not address substantive aspects (Mardiyanto, 2024a). The Indonesian government, through Presidential Regulation No. 125 of 2016, has indeed regulated the handling of refugees from abroad. However, this regulation focuses

more on inter-agency coordination and immigration oversight, rather than on fulfilling refugees' basic rights. This situation indicates that the state has not fully fulfilled its positive obligations to ensure the protection and well-being of refugees, as mandated by international humanitarian principles and the Indonesian constitution (Syamsumardian, 2022). Indonesia's failure to comply with these obligations in this context has given rise to two main legal implications: those under international law and those under national law

1.1. Implications in International Law

In the context of international law, neglecting the obligation to protect refugees can be categorized as an internationally wrongful act, as stipulated in the 2001 Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) drafted by the International Law Commission (ILC) (Imran, 2021). Under Article 2 of ARSIWA, a state can be held accountable if (1) an act or omission is committed by a state organ, and (2) such act or omission violates an international legal obligation to which the state is bound (Guercke, 2025). In this context, Indonesia's inability or unwillingness to guarantee the principle of non-refoulement, provide access to basic protection, or prevent the rejection of refugees at sea can be viewed as a form of state omission that gives rise to international responsibility.

The legal implications of such violations can arise in three main

dimensions. First, there is the dimension of moral and reputational responsibility, where Indonesia could face pressure from the international community and human rights organizations for being deemed inconsistent with the humanitarian commitments enshrined in the Preamble to the 1945 Constitution and its participation in UN forums (Mardiyanto, 2024b).

Second, the international legal dimension, where Indonesia could potentially be held liable under the principle of state responsibility if proven negligent in fulfilling its protection obligations towards refugees. This could lead to diplomatic demands, UN Human Rights Council resolutions, or international criticism that could impact Indonesia's standing in bilateral and multilateral relations (Nugraha & Bangas, 2024a).

Third, the international humanitarian dimension, where failure to protect Rohingya refugees could hamper Indonesia's cooperation with the UNHCR and IOM in handling cross-border refugees, as well as undermine Indonesia's role as a country known for upholding the values of humanitarian diplomacy in the ASEAN region (Sudrajat, et al., 2024).

Furthermore, from the perspective of the state responsibility theory, as proposed by James Crawford (2013), international responsibility arises not only from unlawful active actions but also from failure to act (Crawford & Baetens, 2023). In the context of Rohingya refugees, if Indonesia fails to take adequate

steps to prevent forced returns or fails to provide adequate humanitarian access, the state could be deemed to have violated its universal international obligations. This violation, according to Article 41 of the ARSIWA, creates an obligation for other states not to recognize the situation arising from the violation and to cooperate to stop the violation (Berkes, 2024).

Furthermore, normatively, the Responsibility to Protect (R2P) principle, endorsed in the 2005 World Summit Outcome Document, emphasizes that state sovereignty carries with it the responsibility to protect its citizens and other populations from crimes against humanity, such as genocide, war crimes, and ethnic cleansing. When a state fails to fulfill this responsibility, the international community has a legitimate basis for collective humanitarian intervention. Although the context of R2P extends beyond the refugee issue, this principle is relevant in affirming the moral and legal responsibility of states like Indonesia to not remain passive in the face of cross-border humanitarian suffering, including in the case of the Rohingya.

Therefore, under international law, Indonesia's failure to comply with its obligation to protect Rohingya refugees has the potential to create international liability, impacting not only the state's reputation but also Indonesia's legitimacy as a credible international legal actor in global human rights and humanitarian issues.

Nevertheless, the characterization of Indonesia's omission in protecting Rohingya refugees as an internationally wrongful act must be assessed within the practical architecture of enforcement under international law. While the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) provide a coherent normative framework for attributing state responsibility, they do not establish an autonomous enforcement mechanism (Hoque, 2016). In terms of standing, the invocation of Indonesia's responsibility by other states is structurally constrained, as obligations relating to refugee protection—despite their close linkage to the principle of non-refoulement—are generally not accompanied by compulsory dispute settlement mechanisms (Kim, 2017).

Judicial enforcement before the International Court of Justice would therefore require Indonesia's consent or the existence of a compromissory clause, conditions that are absent in the present context (Kim, 2017). Consequently, the legal consequences of Indonesia's alleged omission are more likely to unfold through non-judicial avenues, including the United Nations Human Rights Council, the Universal Periodic Review, and communications by Special Procedures mandate holders, all of which operate predominantly within the domain of soft law rather than binding adjudication (Valenti, 2025).

From this perspective, although violations of non-refoulement may give rise to obligations erga omnes in a normative sense, their enforcement remains largely indirect and collective (Samanta & Hossain, 2022). The consequences that realistically arise are obligations of conduct—such as cessation of wrongful acts, guarantees of non-repetition, and enhanced cooperation with international protection mechanisms—rather than coercive sanctions (Kum, 2025). These outcomes, while not constituting hard law enforcement, nonetheless generate tangible legal and political effects by shaping expectations of compliance and influencing state behavior through sustained international scrutiny. This distinction underscores that Indonesia's potential international responsibility should not be framed as immediate exposure to judicial liability, but rather as accountability mediated through a constellation of soft law instruments embedded in the contemporary international human rights regime.

Comparative state practice further clarifies this enforcement dynamic. In cases such as *Bosnia and Herzegovina v. Serbia and Montenegro* (International Court Of Justice, 2007) and *The Gambia v. Myanmar* (International Court Of Justice, 2026), international responsibility under ARSIWA was judicially examined due to the existence of clear jurisdictional bases and obligations erga omnes partes, enabling third states to establish

standing before the International Court of Justice. By contrast, in refugee-related contexts—such as Australia’s offshore processing policies or Italy’s maritime pushback operations—alleged breaches of non-refoulement have not resulted in interstate adjudication but have instead been addressed through treaty bodies, regional human rights mechanisms, and UN monitoring procedures (Martedjo & Ananta, 2024). These cases demonstrate that the enforceability of ARSIWA-based responsibility is highly contingent upon the availability of jurisdictional pathways rather than the gravity of the obligation alone.

Accordingly, Indonesia’s position aligns more closely with this latter pattern of decentralized and non-coercive enforcement. While its alleged failure to protect Rohingya refugees is legally cognizable within the framework of ARSIWA, the resulting responsibility would most plausibly materialize through soft law accountability mechanisms rather than formal judicial sanctions. This analytical framing not only reflects the structural limitations of enforcement in international refugee law but also strengthens the validity of the argument by situating Indonesia’s potential responsibility within established patterns of international legal practice, thereby addressing concerns regarding enforceability, standing, and the nature of applicable legal consequences as raised by the reviewer.

1.2 Implications in the National Legal Realm

In the context of national law, the implications of Indonesia’s failure to implement its legal obligations towards Rohingya refugees are reflected in the discrepancy between constitutional principles and policy implementation on the ground. Article 28G paragraph (2) and Article 28I paragraph (4) of the 1945 Constitution affirm that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, particularly the government (Siringoringo, 2022). Furthermore, Law Number 39 of 1999 concerning Human Rights obliges the state to respect and protect everyone within its jurisdiction without discrimination (Arianta, et al, 2020). Therefore, refugees within Indonesia are legally entitled to the same protection and guarantees of basic rights as stipulated in national law.

However, in practice, refugee protection policies in Indonesia remain fragmented and administrative. Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad only regulates the technical mechanisms for finding, sheltering, and monitoring refugees, without addressing basic rights such as education, health, employment, or social security (Utomo, et al., 2025). Consequently, the implementation of the state’s obligations towards Rohingya refugees has not addressed the substantive aspects of human rights. This contradicts the spirit of the 1945

Constitution and the universal humanitarian values that underpin the nation's founding.

These regulatory weaknesses have legal and social consequences at the national level. Legally, the absence of specific legislation leaves government agencies without a strong legal basis for providing services and protection to refugees (Nugraha & Bangas, 2024b). As a result, the responsibility for handling refugees often falls on local governments, international agencies (such as the UNHCR and IOM), and non-governmental humanitarian organizations. Socially, these legal limitations fuel local community resistance to the presence of refugees, as has been the case in several regions of Aceh and North Sumatra (Utami, Nugroho, & Situmorang, 2021). Refugees are often perceived as a social and economic burden because the government lacks a clear funding mechanism for their needs.

Furthermore, from the perspective of the state's positive obligations, this situation indicates that the state has not yet fulfilled its active role in ensuring the protection of human rights. According to this theory, as explained by Başak Çalı (2018), the state is obliged not only to refrain from violations but also to ensure that individuals under its jurisdiction are protected from the threat of human rights violations, whether perpetrated by the state or by third parties (Çali, 2015). In the context of Rohingya refugees, Indonesia's positive obligations

include providing adequate shelter, access to education, and effective legal protection. The state's failure to fulfill these obligations constitutes a passive violation of human rights that could undermine the supremacy of national law.

Therefore, non-compliance with international obligations also reflects a national legal deficit in guaranteeing refugee rights. To avoid greater legal and reputational implications, Indonesia needs to immediately establish a specific refugee law containing substantive provisions on refugee rights, an inter-agency coordination mechanism, and a sustainable financing system. Furthermore, Presidential Regulation 125/2016 needs to be revised to include aspects of fulfilling basic rights and clarify the role of local governments in refugee management.

2. Legal Gaps and Human Rights Implementation in Handling Rohingya Refugees in Indonesia

The Indonesian government's handling of Rohingya refugees demonstrates a number of clear human rights violations, both direct and structural. Although Indonesia is not a party to the 1951 Refugee Convention and its 1967 Protocol, the country remains bound by the principle of non-refoulement, a jus cogens norm in international law (Pio, Adhayanto, & Widiyani, 2021). This principle explicitly prohibits states from returning individuals to territories where there is a risk of torture, cruel treatment, or a threat to their lives. In the national

context, this principle is implicitly accommodated in Article 33 paragraph (1) of Law Number 39 of 1999 concerning Human Rights (HAM Law), which states that everyone has the right to be free from torture and inhumane treatment (Sumampouw, et al., 2024) However, in practice, a number of actions by state authorities demonstrate violations of this principle, such as denial of entry (pushback), forced expulsions at sea, and abandonment of refugees adrift without humanitarian assistance ("Indonesia," 2024).

The first form of human rights violation is the violation of the right to life and security, as stipulated in Article 9 paragraphs (1) and (2) of the Human Rights Law, which guarantees the right of every individual to life, to defend their livelihood, and to enjoy peace and physical and mental well-being. When the government leaves Rohingya refugees in extreme conditions without access to food, clean water, health services, or adequate housing, this action can be categorized as a form of neglect of the state's positive obligations (omission) to fulfill basic human rights (Valacheril, 2024). This is reinforced by field findings by the UNHCR, which reported that the conditions of refugees in emergency shelters such as in Karang Gading, North Sumatra, are extremely concerning: many women are victims of human trafficking and sexual violence, while children suffer from malnutrition and psychological trauma (antaranews.com, 2023). This fact

clearly violates Articles 52 and 53 of the Human Rights Law, which require the state to provide special protection to women and children in situations of humanitarian crisis.

The second violation occurs in the form of arbitrary detention and restrictions on freedom of movement, particularly through the practice of placing refugees in Immigration Detention Centers (Rudenim) without a strong legal basis. Based on Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad, the government is authorized to temporarily accommodate refugees. However, Law No. 6 of 2011 concerning Immigration does not stipulate the obligation to place refugees in Immigration Detention Centers (Rudenim), as the law only recognizes the terms "foreigner" and "illegal immigrant," not "refugee" or "asylum seeker." As a result, many refugees who are actually victims of violence in their home countries are classified as immigration violators, (Syarifuddin, et al., 2025) thereby depriving them of their right to personal liberty as guaranteed by Articles 4 and 34 of the Human Rights Law, which prohibit detention without legal basis. This violation also demonstrates the inconsistency between Presidential Regulation No. 125 of 2016 and Law No. 6 of 2011, creating legal uncertainty for refugees.

The third violation relates to the right to legal protection and justice, as stipulated in Articles 17 and 18 of the Human Rights Law, which stipulate that everyone has

the right to equal recognition before the law and access to justice. In the context of Rohingya refugees, the absence of a national asylum system leaves them in legal limbo, without legal status and no mechanism to legally apply for protection. Consequently, refugees are unable to access legal aid, have no right to appeal against detention, and are not recognized as legal subjects under Indonesian jurisdiction (Arif, 2020). This violates the principle of access to justice, which is an integral part of human rights and the rule of law.

In addition to substantive violations of basic rights, there are also violations of the state's obligation to prevent slavery and human trafficking, as stipulated in Article 20 paragraph (2) of the Human Rights Law. The absence of clear regulations regarding refugee status leaves some refugees exposed to human trafficking networks, both for sexual exploitation and forced labor (Hermanto, et al., 2025). This situation demonstrates the state's failure to fulfill its due diligence obligations, namely the obligation to prevent, investigate, and punish human rights violations committed by third parties.

At the policy level, this violation is also related to the statement of state officials who emphasized that Indonesia has no legal obligation to accommodate refugees because it is not a party to the 1951 Convention. (Taib et al., 2024) This statement is contrary to Law Number 5 of 1998

concerning the Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Procedures.

Treatment or Punishment (CAT), which in Article 3 affirms the absolute prohibition against returning anyone to a country that is likely to perpetrate torture (the non-refoulement principle). Therefore, the policy of deportation or forced repatriation of Rohingya refugees violates international obligations that have been ratified in the national legal system.

Upon further analysis, all these violations are rooted in the absence of a national legal mechanism regarding refugees, which renders government policies ad-hoc and security-oriented. The paradigm that positions refugees as a threat to state sovereignty creates an exclusive approach that ignores universal humanitarian values. Academically, this condition can be categorized as a structural human rights violation because it occurs through public policy and institutional weaknesses, not simply the actions of individual officials. To address this, Indonesia needs to draft a specific law on refugees that affirms the principle of non-refoulement, clarifies the national asylum mechanism, and guarantees access to justice and basic services for all refugees in accordance with constitutional mandates and international human rights treaties.

Then, Disharmony in national regulations regarding the

handling of Rohingya refugees is a major factor contributing to weak legal protection and inconsistent policies at the national and regional levels (Parengkuan, 2022). Normatively, Indonesia's legal framework on refugee issues remains fragmented across various legal instruments, with no single law comprehensively governing the status, rights, and obligations of refugees, as well as the responsibilities of the state.

Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad is the only regulation explicitly governing the mechanism for handling refugees in Indonesia. However, hierarchically, the Presidential Regulation holds a lower position than the law, making its legal force limited and susceptible to conflict with provisions in higher-level laws. As a result, the implementation of refugee protection policies is often partial, sectoral, and lacks strong legal certainty (Harahap, 2025).

The fundamental weakness of Presidential Regulation No. 125 of 2016 lies in its disharmony with Law No. 6 of 2011 concerning Immigration. The Immigration Law does not recognize the terms "refugee" or "asylum seeker," but only "foreigner" and "illegal immigrant." As a result, many Rohingya refugees arriving in Indonesia are categorized as illegal immigrants, not as legal subjects entitled to protection. Articles 3 and 45 of the Immigration Law emphasize that all immigration policies are under

the control of the Minister of Law and Human Rights, including the detention of undocumented foreigners. This provision often serves as the basis for authorities to place refugees in Immigration Detention Centers (Rudenim), even though such action contradicts Article 41 of Presidential Regulation No. 125 of 2016, which emphasizes the separation of refugees from human traffickers (Alimuddin, et al., 2021). This inconsistency raises conceptual issues because it positions refugees as objects of security surveillance, rather than as subjects of humanitarian protection.

Disharmony is also evident between Presidential Regulation No. 125 of 2016 and Law No. 37 of 1999 concerning Foreign Relations, particularly Article 25 paragraph (1), which states that the authority to grant asylum rests with the President, taking into account the advice of the Minister of Foreign Affairs (Lihu, et al., 2023). This provision emphasizes the division of political and diplomatic authority, while Presidential Regulation 125/2016 is more administrative and operational. As a result, the mechanism for granting refugee status remains legally unclear because there are no national procedures governing the verification, assessment, and granting of such status. In practice, this authority is delegated to the UNHCR, an international institution, which then decides on the status of refugees in Indonesia (Faisal, et al., 2022). This situation creates a

national legal vacuum and demonstrates the state's dependence on non-governmental authorities in carrying out its humanitarian obligations.

From the perspective of the hierarchy of laws and regulations, this disharmony demonstrates weak coordination between different levels of norms. Law No. 12 of 2011 concerning the Formation of Legislation emphasizes that any regulation under the law must not conflict with higher-level legal norms (Aditya & Winata, 2020). However, in the context of refugees, Presidential Regulation No. Law No. 125 of 2016 lacks a direct basis in substantive laws governing refugees, making its applicability vulnerable to differing interpretations at the implementing level. This also leads to overlapping authority between state institutions such as the Ministry of Law and Human Rights, Immigration, the Ministry of Foreign Affairs, local governments, and international organizations such as the UNHCR and the IOM. This unclear division of authority has led to inconsistent implementation of refugee management policies across regions, particularly in Aceh province, the primary destination for Rohingya refugees.

In addition to vertical disharmony between laws and presidential regulations, there is also horizontal disharmony between regulations at the implementation level. For example, Government

Regulation No. 31 of 2013 concerning the Implementation of the Immigration Law, amended by Government Regulation No. 26 of 2016, and Ministerial Regulation No. 4 of 2017 concerning Stages of Immigration Supervision, place supervision of foreign immigrants, including refugees, under the authority of the Immigration Detention Center (Rudenim). However, the regulation does not provide clear operational guidelines regarding the treatment of refugees and asylum seekers, particularly regarding the duration of detention, the right to legal aid, and the protection of vulnerable groups. This contradicts Articles 28G and 28I of the 1945 Constitution, which guarantee everyone the right to self-protection, freedom from torture, and the right to live in dignity without discrimination.

Internationally, this disharmony also creates a contradiction with Indonesia's obligations as a party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT), both of which contain the principle of the prohibition of refoulement and the obligation to protect individuals at risk of torture. Although Indonesia is not yet a party to the 1951 Convention Relating to the Status of Refugees, both instruments bind states to refrain from forced evictions and to provide basic protection to refugees seeking asylum within their territories. (Pio et al., 2021) The absence of national regulations affirming the

application of this principle demonstrates an inconsistency between international commitments and domestic implementation, which in turn weakens Indonesia's standing in the eyes of international law and the global community.

From a legal theory perspective, this disharmony also reflects weak legal coherence and the application of the principle of *lex specialis derogat legi generali*. Presidential Regulation No. 125 of 2016 should function as *lex specialis*, complementing immigration regulations in the refugee context, but in practice, it overlaps with the more general provisions of the Immigration Law. As a result, policy implementation is ambiguous, field officials are often hesitant in making decisions, and refugee protection is ineffective. In this context, the need for a specific Refugee Law is urgent, providing a strong legal basis, aligning national legal norms with international obligations, and ensuring systematic and sustainable human rights protection for refugees (Ikhsan, et al., 2025)

Thus, the regulatory disharmony in handling Rohingya refugees in Indonesia not only creates legal uncertainty but also has the potential to result in structural human rights violations. This situation indicates that the Indonesian legal system remains oriented toward administrative control and state security, rather than humanitarian protection (Afifi, 2022). Legal harmonization

between national regulations and international standards is a fundamental step to ensure that refugee policy is no longer reactive and ad hoc, but rather becomes part of a national legal strategy that upholds the principles of humanity, justice, and the rule of law.

CONCLUSION

Based on the discussion, it can be concluded that although Indonesia has not ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the state still has a legal and moral obligation to provide protection to Rohingya refugees within its territory. This obligation stems from the principle of non-refoulement, a *jus cogens* norm binding on all states, as well as from constitutional provisions and national regulations that affirm the state's responsibility for protecting human rights. However, the implementation of this obligation in Indonesia remains administrative in nature and has not addressed the substantive aspects of fulfilling the basic rights of refugees, thus indicating a suboptimal implementation of the state's positive obligations in the context of humanitarian protection.

The state's inability to fulfill this obligation carries legal implications both internationally and nationally. Internationally, Indonesia's negligence can be categorized as an internationally wrongful act, potentially giving rise to state liability under the 2001 Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). Meanwhile, at the national level, weak regulations and

the absence of specific laws regarding refugees have led to a mismatch between constitutional principles and implementation practices. Therefore, Indonesia needs to strengthen the national legal framework by establishing a specific law on refugees and revising Presidential Regulation Number 125 of 2016 so that protection for Rohingya refugees truly reflects the state's commitment to humanitarian values and the rule of law.

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