

# GOVERNMENT POLICY IN HANDLING ROHINGYA REFUGEES BASED ON *MAŞLAHAH MURSALAH* PERSPECTIVE

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**Abstract:** This research aims to analyze the Indonesian government's policy towards Rohingya refugees based on the *maşlahah mursalah* perspective. Various polemics that occurred due to the continuous influx of refugees, giving rise to a negative stigma in society. The result shows, efforts that Indonesia can make are to fulfill the rights of the Rohingya people only when they become refugees or asylum seekers in Indonesia. Rights that can be fulfilled as *maşlahah* include: 1) freedom of religion, the right to live and be free from fear (maintenance person) in this case Indonesia has built an Integrated Community Shelter as a place to live for Rohingya refugees and built a mosque or place of worship for Rohingya ethnic Muslims named the Arakan's mosque; 2) Fulfilling the guarantee of safety, guaranteeing human honor; 3) The right to maintain one's tribe or ethnicity, the right to marriage to raise offspring; 4) The right to education (maintenance of mind); 5) The right to obtain a decent living by being given the opportunity to earn a living (property maintenance).

**Keywords:** Government Policy; Rohingya Refugees; *Maşlahah Mursalah*; al-Shāṭibī's Thought.

## Introduction

Many humanitarian problems, especially in Southeast Asia, continue to this day. Such as the tensions that occur in Assam, India, along the Myanmar-Thailand border, and those affecting the Rohingya ethnic group in Myanmar. They are a Muslim minority group who predominantly live in Myanmar's Rakhine state, which is largely a Buddhist-majority country.<sup>1</sup> This ethnicity has problems in terms of citizenship. The Rohingya ethnic group did not have citizenship starting from the enactment of the Foreign Countries deed in 1864 and the Myanmar citizenship deed in 1948 which was drawn up by the British government. And the peak occurred when the Myanmar citizenship law was implemented in 1982. In this law it was stated that the ethnic groups recognized as Myanmar citizens were those whose ancestors had lived in Rohingya since 1823.<sup>2</sup> The Myanmar government believes that the Rohingya ethnic group are illegal immigrants from Bangladesh because of the similar physical characteristics of the Rohingya ethnic group and the Bengali ethnic group. Thereupon, they have faced systematic discrimination, citizenship restrictions and violence by the Myanmar government.

Rohingya ethnic groups who choose to stay must be prepared to receive oppressed and inhumane treatment that threatens their lives, which is made worse by the non-recognition of the Rohingya ethnic group as citizens of Myanmar. This factor makes the Rohingya ethnic group feel afraid of the Myanmar government. Therefore, they fled from where they lived and fled to several nearby countries including Indonesia.<sup>3</sup> The presence of Rohingya in Indonesia is spread across several areas, namely Aceh, Medan, Tanjung Pinang, Batam (Riau Islands) and several people were found in Kupang, Banten and Banyuwangi catchment. However,

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<sup>1</sup> Dian Wahyu Utami, Rahmat Saleh and Irin Oktafiani, "The Case of Rohingya Ethnic Group Refugees," *Journal of Indonesian Social Sciences and Humanities*, Vol. 8, No. 2 (2018), 119-131.

<sup>2</sup> Budi Budaya, "Dampak Kewarganegaraan Etnis Rohingya di Myanmar terhadap Pelanggaran Hak Asasi Manusia dan Negara Sekitar," *Jurnal Ilmiah Hukum*, Vol. 11, No. 1 (2017), 106-120.

<sup>3</sup> Joseph Rizki Prabowo, Akim and Arfin Sudirman, "Peran Tentara Nasional Indonesia dalam Menanggulangi Pengungsi dari Luar Negeri: Studi Kasus Pengungsi Rohingya di Indonesia (2015-2020)," *Aliansi: Jurnal Politik, Keamanan dan Hubungan Internasional*, Vol. 1, No. 2 (2022), 99.

among these regions, Aceh is visited by the most Rohingya refugees. This cannot be separated from the fact that the Aceh region is geographically closest to Myanmar.<sup>4</sup> In Aceh it is spread across the islands of Lhokseumawe, Sabang, Idi Rayeuk and East Aceh. On January 7<sup>th</sup> 2009, the first wave of Rohingya refugees entering Indonesia, 193 people identified as coming from Bangladesh and Myanmar, were found stranded in Sabang, Nanggroe Aceh Darussalam (NAD) Province. Continuing on February 3<sup>rd</sup> 2009, the second wave of Rohingya refugees entered Indonesia, namely 198 Rohingya refugees from Bangladesh and Myanmar, they were found stranded in Idi Rayeuk sub-district, East Aceh district. The Indonesian government is paying special attention to efforts to handle 391 boat people from Myanmar and Bangladesh who are still stuck in NAD.<sup>5</sup> Until Thursday, December 14 2023, Rohingya refugees continued to arrive. they were stranded on the beach of Kuala Idi Cut Aceh, based on the United Nations High Commissioner for Refugees (UNHCR) report, this is the 10<sup>th</sup> wave of Rohingya arrivals in the last month. UNHCR recorded that the total number of refugees in Aceh so far reached 1,608 people, including 140 people who remained in the past year.<sup>6</sup> However, the wave of Rohingya arrivals in Aceh was colored by the negative sentiment of Indonesian netizens. In fact, hate narratives and hoaxes about the Rohingya are widely circulating on social media.

The results of research previously conducted by Deasy et al., the Indonesian government allowed Rohingya refugees to temporarily reside in Indonesian territory. This policy is based on a sense of humanity as a form of Indonesia's orientation and

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<sup>4</sup> Muhammad Arief Hamdi, Hanifa Maulidia and Habibi Firlana, "Fenomena Pencari Suaka dan Pengungsi Etnis Rohingya di Indonesia (Studi Kasus Penanganan Rohingnya pada Provinsi Aceh)," *Jurnal Ilmiah Kajian Keimigrasian*, Vol. 6, No. 1 (2023), 55-71.

<sup>5</sup> Iin Karita Sakharina and Kadarudin, *Pengantar Hukum Pengungsi Internasional (Perbedaan Istilah Pencari Suaka, Pengungsi Internasional, dan Pengungsi dalam Negeri)*, First Edition (Yogyakarta: Deepublish, 2017).

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

commitment to helping Rohingya refugees.<sup>7</sup> After a long time the refugees continue coming in Indonesia, there are several negative issues related to Rohingya refugees spreading on social media. Thus, causing a polemic among Indonesian citizens themselves. There are residents who feel pity for them, while other residents insist on rejecting the arrival of the Rohingya. Then, some people think that this is a diversion from the issue of cases currently occurring in Indonesia and diverting information related to the war between Israel and Palestine. From the various pros and cons that occur, so this research will focus on how we act regarding Rohingya ethnic refugees in Indonesia from a *maṣlahah mursalah* perspective. The application of the *maṣlahah mursalah* theory in the policy for handling Rohingya refugees in Indonesia can be justified by looking at aspects of humanity, social justice and public interest. In this theory, the government should be able to understand the *maṣlahah mursalah* aspect, so that it prioritizes the interests of the Indonesian people compared to immigrants such as the Rohingya.

In 2016, the government issued Presidential Regulation (Perpres) Number 125 concerning Handling Refugees from Abroad. Therefore, this article will examine the Perpres that have been issued regarding Rohingya refugees if they are examined in light of existing religious regulations first. The figure of al-Shāṭibī and his thoughts about *maṣlahah* and *mursalah* specifically, especially in the field of interpretation. Using descriptive-analytical methods, the author will examine the concepts of *maṣlahah* and *mursalah* with current government policies regarding the polemic of foreign refugees. The researcher will also examine the concept of value hierarchy that he offers and looking for the relevance for facing the problems of Muslims nowadays.

### **Negative Issues about Rohingya Refugees**

In Indonesia, there are several types of refugees who come from various countries, either as a result of conflict, war, violence or natural disasters in their home countries. Several types of refugees in Indonesia such as Rohingya refugees are one group of refugees who come from Myanmar, especially from Rakhine state.

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<sup>7</sup> Deasy Silvy Sari, "Indonesian Government Policy on Rohingya Refugees," *Andalas Journal of International Studies (AJIS)*, Vol. 7, No. 1 (June, 2018), 1-13.

They are fleeing ethnic conflict, violence and discrimination faced in their home countries. Then, Timor Leste Refugees: A number of refugees from Timor Leste still live in Indonesia as a result of the conflict that occurred in Timor Leste in 1999. Also, Refugees from Afghanistan, Pakistan, and Somalia: There are also refugees coming from other countries such as Afghanistan, Pakistan, and Somalia, who are fleeing conflict, war, or violence in their home countries. However, as in many other countries, there are also challenges and negative attitudes that refugees may face, including discrimination, stigmatization and legal uncertainty. Therefore, it is important to continue to promote understanding and cooperation between local communities and refugees, and to ensure that their human rights are protected and their basic needs are met.

The Rohingya ethnic group is a Muslim minority group that lives predominantly in Rakhine, a largely Buddhist-majority country. Since the last decade, they have faced systematic discrimination, citizenship restrictions and violence by the Myanmar government. The crisis reached its peak in 2017 when a series of attacks by the Rohingya rebel group, known as the Arakan Rohingya Salvation Army (ARSA), prompted a harsh response from the Myanmar military.<sup>8</sup> The Myanmar military carried out an ethnic cleansing operation that allegedly involved mass murder, rape and burning of villages. As a result, hundreds of thousands of Rohingya fled to Bangladesh to seek refuge.

The negative attitude that arises in Indonesian society towards Rohingya refugees is of course caused by factors that they perceive. The existence of uncertainty about the impact of the arrival of Rohingya refugees, such as economic, security and social problems, can trigger fear and negative attitudes among some Indonesians. Additionally, in some cases, communities may feel that the arrival of Rohingya refugees could lead to competition for resources, especially in terms of employment opportunities, health services, and access to public facilities. Propaganda or negative stereotypes about Rohingya refugees spread by the media or certain parties can strengthen negative attitudes and prejudice towards them among society. Ignorance or lack of understanding

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<sup>8</sup> Nurul Azizah Zayzda, "Protecting Rohingya Refugees in Asean: The Contested Human Rights in The World of Na-Tion-States," *Journal of Islamic Law Studies*, Vol. 1, No. 3 (2018), 26-39.

about the background and conditions of Rohingya refugees can cause society to take a negative attitude towards them. Some community groups may view the arrival of Rohingya refugees as a threat to national security, especially if they believe that there is a potential for terrorism or other security disturbances related to their arrival. However, as time went by, waves of Rohingya refugees continued to arrive in nearby countries, a negative perspective regarding the Rohingya ethnicity emerged. Firstly, Rohingya ethnic citizen was arrested by police for allegedly raping a minor at a temporary shelter camp in Padang Tiji, Pidie, Aceh.<sup>9</sup> There are also those who put forward their analysis that it is impossible for a wooden ship carrying Rohingya passengers to pass through the Indian Sea. There was still a lot of food stock on the ship and some of it was still warm. Then, it was suspected that a large ship was carrying them, then they continued their journey via the wooden ship.<sup>10</sup> Apart from that, the Rohingya people complained about the food assistance provided by the Acehnese people because the portions were not large enough.<sup>11</sup> Likewise, there are people who claim to be Rohingya refugees who come to the office demanding that they have residence documents on the grounds that they have been domiciled in Makassar for decades and bring a letter from the UNHCR.<sup>12</sup> The last, the Rohingya's arrival in Pidie, Aceh, apparently was not free. They have to hand over at least IDR 7 million to IDR 14 million. The money was to pay for the fare on the ship they were traveling on. The parties

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<sup>9</sup> Agus Setyadi, "Perkosa Anak di Kamp Penampungan Pidie, WN Rohingya Ditangkap," *Detiksumut* (4 July 2023), <https://www.detik.com/sumut/hukum-dan-kriminal/d-6804957/perkosa-anak-di-kamp-penampungan-pidie-wn-rohingya-ditangkap>.

<sup>10</sup> Risti Rahayu Ningsih, "Janggal! Navigator ini Ungkap Rohingya Sulit Sampai Indonesia Jika Hanya Gunakan Kapal Kayu," *Kilat.com* (7 January 2024), <https://www.kilat.com/Nasional/84411441690/Janggal-Navigator-Ini-Ungkap-Rohingya-Sulit-Sampai-Indonesia-Jika-Hanya-Gunakan-Kapal-Kayu>.

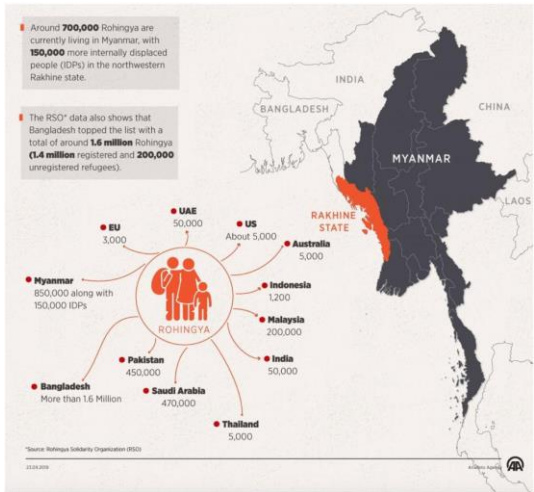
<sup>11</sup> "Keluhan Etnis Rohingya Tentang Porsi Nasi di Pengungsian Viral di Media Sosial," *PekanbaruKini.Com* (30 November 2023), <https://pekanbaruKini.com/Keluhan-Etnis-Rohingya-Tentang-Porsi-Nasi-Di-Pengungsian-Viral-Di-Media-Sosial>.

<sup>12</sup> Andi Nur Isman, "Pengungsi Rohingya di Makassar Minta Dibuatkan KTP Modal Surat UNHCR," *Detiksulsel* (23 December 2023), <https://www.detik.com/sulsel/berita/d-7105534/pengungsi-rohingya-di-makassar-minta-dibuatkan-ktp-modal-surat-unhcr>.

who profit from this shipping are human smuggling agents. They made at least a profit of IDR 3.3 billion.<sup>13</sup> That several negative perspectives circulating on social media have caused friction between Indonesian citizen and Rohingya refugees.

**Government Policy in Regard to Rohingya Refugees**

The humanitarian crisis in the Rohingya ethnic group is a problem in ASEAN countries. Based on data obtained by Anadolu Agency (2019) from the Rohingya Solidarity Organization (RSO), there are several countries that accommodate the most Rohingya refugees, including the following:<sup>14</sup>



**Figure 1.** Distribution of Rohingya refugees from Anadolu Agency, 2019.

<sup>13</sup> Reni Susanti, “Cerita Rohingya Bayar Ongkos ke Aceh Rp. 14 Juta, Agen Raup Untung Rp 3,3 Miliar,” *Kompas* (2023), <https://regional.kompas.com/read/2023/12/08/092535178/cerita-rohingya-bayar-ongkos-ke-aceh-rp-14-juta-agen-raup-untung-rp-33>.

<sup>14</sup> Dzikiera Pesona Sadewa, “Kebijakan Luar Negeri Indonesia dalam Memberikan Bantuan Pengungsi Rohingya di Bangladesh,” *Jurnal Ilmiah Hubungan Internasional*, Vol. 15, No. 2 (2019), 89-103.



**Figure 2.** Distribution of Rohingya refugees from BBC News Indoensia, 2023.

Based on the data above, it can be seen that Bangladesh is the country that accommodates the most Rohingya refugees compared to other countries throughout the world. Since the first exodus of Rohingya, Bangladesh has welcomed more than one million Rohingya into its territory. One of the most logical reasons for Rohingya people to flee to Bangladesh is because the Bangladesh border is closest to Rakhine, the region where the Rohingya people live. When the Rohingya conflict broke out and hundreds of thousands of Rohingya fled to Bangladesh, diplomatic relations between Bangladesh and Myanmar heated up.<sup>15</sup> Even though, Bangladesh government finally openly welcomed the arrival of these refugees. The Bangladesh government at that time provided full accommodation to Rohingya refugees such as providing clothing, medicine and food.<sup>16</sup> Apart from that, the Bangladesh government also set up refugee tents in Cox’s Bazar which eventually became the largest refugee camp in the world.

Myanmar’s policies regarding the Rohingya have been the subject of debate and criticism from the international community.

<sup>15</sup> Eleanor Albert, “The Rohingya Migrant Crisis,” *Council on Foreign Relation* (2015), retrieved from [https://www.files.ethz.ch/isn/191762/Backrounder \\_%20The%20Rohingya%20Migration%20Crisis%20-%20Council%20on%20Fo reign%20Relations.pdf](https://www.files.ethz.ch/isn/191762/Backrounder_%20The%20Rohingya%20Migration%20Crisis%20-%20Council%20on%20Fo reign%20Relations.pdf).

<sup>16</sup> Taufiq-E-Faruque, “Rohingya Refugee Crisis in Bangladesh: The Case of UNHCR’s Response,” *Jurnal Hubungan Internasional*, Vol. 9, No. 1 (2020).



The Myanmar government has been strongly criticized for being involved in human rights violations against the Rohingya ethnic group. One of the main consequences felt most by the Bangladeshi government and its people from the exodus of Rohingya refugees is the presence of nearly one million Rohingya refugees in Cox's Bazar.<sup>17</sup> A district called Cox's Bazar is currently the largest refugee shelter in the world, where around 900,000 Rohingya refugees are in the district. This district is located in the southern part of Bangladesh which directly borders Myanmar.<sup>18</sup> Rohingya refugee camps are concentrated in two cities, namely, Ukhiya and Teknaf Upazilas. These two cities have been the main destination for Rohingya people fleeing Myanmar since the 1978 conflict occurred. Most of the area in Cox's Bazar was originally still forest and hills. However, after the Rohingya refugees came in, Cox's Bazar became more open and more livable for the refugees.

In general, policies regarding Rohingya refugees are mostly directed by local governments, international institutions and humanitarian organizations. UNHCR is a United Nations agency responsible for protecting and assisting refugees throughout the world. Some of UNHCR's contributions to Rohingya refugees are: First, protection and surveillance. UNHCR strives to provide protection for Rohingya refugees, including protection from violence, discrimination and exploitation. They also carry out monitoring to ensure that refugees' human rights are respected. Second, humanitarian aid. UNHCR provides humanitarian assistance including food, clean water, temporary shelter and health services for Rohingya refugees. They work together with other humanitarian partners to meet refugees' basic needs. Third, education. UNHCR is trying to provide access to education for Rohingya refugee children. They support the construction of schools and educational programs to increase access to education for children in refugee camps. Forth, economic empowerment. UNHCR can engage in economic empowerment programs to help

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<sup>17</sup> Kabir Shahin and Moyeenul Hasan, "The Rohingya Refugee Crisis: Political and Humanitarian Perspectives," *Southeast Asia: A Multidisciplinary Journal*, Vol. 23, No. 3 (2023), 151-161.

<sup>18</sup> Yukatari Fiorenza Ramada Haryadi, "In Perspective of International Legal Protection Law, the Rohingya Refugee Crisis," *Journal of ASEAN Dynamics and Beyond*, Vol. 4, No. 1 (2023), 24-31.

Rohingya refugees gain the skills and training necessary to improve the sustainability of their lives. Fifth, advocacy and diplomacy. UNHCR acts as an advocate for the rights of Rohingya refugees and carries out diplomatic efforts to increase the international community's understanding and support for the situation faced by Rohingya refugees. Sixth, sustainable solutions organizer. UNHCR seeks sustainable solutions for Rohingya refugees, including through conflict resolution processes, safe and voluntary repatriation, or resettlement in third countries.<sup>19</sup>

### **Government Policy in Handling Rohingya Refugees in Indonesia Based on *Maṣlahah Mursalah* Perspective**

Indonesia is a country that implements a presidential system in its government system. This government system is implemented clearly in the Indonesian constitution which is also strengthened by the characteristics of the presidential system itself. The democratic system in Indonesia has certainly experienced development with the implementation of general elections. Because Indonesia is a democratic country, Indonesia must pay attention to at least three things in the policy formulation process. The three things involved in formulating policies in a democratic system include public opinion, interest groups and the mass media. The formation of public opinion occurs because of the role of the mass media. Mass media, including social media, is a place for mass communication that can be a bridge between political communicators and the public and is able to influence and build public opinion.

The example of the power of mass media, *Kompas* and *DW*, where *Kompas* narrates that the Myanmar government treats the Rohingya community in a discriminatory manner, which can be seen from the Myanmar government confiscating land from the Rohingya community to give it to Buddhist communities. Meanwhile, this narrative was also shown in *DW* where the Rohingya people were victims of the Myanmar army's clean-up operations. In this way, this information then constructs public opinion which views the Myanmar government as the perpetrator of violence and the Rohingya people as victims of the Myanmar government who

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<sup>19</sup> Joko Setiyono, "Kontribusi UNHCR dalam Penanganan Pengungsi Internasional di Indonesia," *Masalah-Masalah Hukum*, Vol. 46, No. 3 (2018), 275.

must be defended. The emergence of this pressure from Amnesty International occurred because Indonesia was seen as playing an important role in the search and rescue of refugees from abroad, which was reflected in the stipulation of Perpres Number 125 of 2016. Apart from that, Amnesty International also provided three recommendations to the Indonesian government in handling Rohingya refugees. First, search for and evacuate ships containing Rohingya refugees in accordance with the mechanism in Perpres Number 125 of 2016. Second, implement the principle of non-refoulement by not returning refugees to their countries of origin. This recommendation arises because refugees are at risk of persecution, torture or extrajudicial killings. Finally, providing guarantees for the basic needs of refugees and protecting their rights while in shelters, including ensuring their safety and security, as well as adequate food, water, shelter and health needs.<sup>20</sup> This recommendation aims to ensure that refugees have a more decent life in Indonesia.

Apart from Amnesty International, pressure on Indonesia to accept Rohingya refugees also came from the Bahtsul Masail Institution of Nahdlatul Ulama. The institution encourages the Indonesian government to accept Rohingya refugees because saving refugees is a religious and humanitarian command.<sup>21</sup> The General Chairperson of the Fellowship of Churches in Indonesia also conveyed a similar thing. In this case, Human Rights Watch (HRW) also urges Indonesia to take action in handling the Rohingya crisis. This pressure arose because of concern for the Rohingya community.<sup>22</sup> Thus, pressure from a number of interest groups then resulted in the Indonesian government through the

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<sup>20</sup> “Surat Terbuka: Pemerintah Indonesia Harus Berperan Aktif dalam Penyelamatan Pengungsi Rohingya,” *Amnesty International* (17 November 2023), <https://www.amnesty.id/kabar-terbaru/surat-terbuka/surat-terbuka-pemerintah-indonesia-harus-berperan-aktif-dalam-penyelamatan-pengungsi-rohingya/11/2023/>.

<sup>21</sup> Arafatul Islam, “Mengapa Pengungsi Rohingya Melarikan Diri ke Indonesia?” *Deutsche Welle Indonesia* (2023), <https://www.dw.com/id/mengapa-pengungsi-rohingya-melarikan-diri-ke-indonesia/a-67590835>.

<sup>22</sup> Muhammad Ahyar, “Human Rights Watch Desak Indonesia Ambil Tindakan Soal Myanmar,” *VOA Indonesia* (2023), <https://www.voaindonesia.com/a/human-rights-watch-desak-indonesia-ambil-tindakan-soal-myanmar/6915378.html>.

Minister of Foreign Affairs deciding to accept Rohingya refugees on a temporary basis.

President Joko Widodo implemented Perpres Number 125 of 2016 coordinated with the relevant ministries to take a number of steps. These steps include discovery, accommodation, security and immigration control.<sup>23</sup> Relating to the discovery of refugees in emergency situations in Indonesia territory, President Joko Widodo as leader appointed an agency in charge of search and rescue and collaborated with the International Organization for Migration (IOM). Meanwhile, in sheltering refugees, President Joko Widodo involved local governments to provide shelter and clean water facilities. The involvement of various parties shows that President Joko Widodo wants Perpres Number 125 of 2016 to run well under his leadership.

President Joko Widodo's policy is based on the perspective of the *maṣlahah mursalah* theory, which is a concept in Islamic fiqh which includes the principle of welfare or general good. This concept is not found explicitly in the texts of the Qur'an or Ḥadīth, but was developed by fiqh scholars to understand Islamic laws in a broader and actual context.<sup>24</sup> The theory of *maṣlahah mursalah* according to Mālik, as quoted by al-Shāfi'ī in the book *al-I'tiṣām*, is a *maṣlahah* that is in accordance with the objectives, principles and postulates of Sharī'ah which function to eliminate narrowness, both *darūriyah* (primary) and *ḥājjiyah* (secondary).

To avoid using the *maṣlahah mursalah* theory for subjective purposes, there are at least several strict conditions that must be fulfilled, namely as follows: 1) *maṣlahah mursalah* must have a tendency towards the objectives of the Sharī'ah even though it is general and does not conflict with the basics of the Sharī'ah, the legal postulates; 2) discussion of *maṣlahah mursalah* must be rational with appropriate rhetoric, if it is presented to intelligent people that they will accept it; 3) its use is intended for very emergency needs or to eliminate various forms of religious difficulties; 4) the

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<sup>23</sup> Novianti, "The implementation of Presidential Regulation Number 125 of 2016 on the Handling of International Refugees," *Negara Hukum*, Vol. 10, No. 2 (2019), 281-300.

<sup>24</sup> Rohmad Adi Yulianto, "Positivising Sharī'a in National Regulation through *Maqāsid* Approach (Studies on Government Policy in Handling of Foreign Refugees in Indonesia)," *Jurnal Hukum Islam*, Vol. 17, No. 2 (2019).

*maṣlaḥah mursalah* used to make laws is truly a real *maṣlaḥah*, not mere conjecture; 5) the *maṣlaḥah* used is a general *maṣlaḥah*, not a *maṣlaḥah* for the interests of a particular group or individual.<sup>25</sup>

The Perpres Number 125 of 2016 will be analyzed with five general principles and objectives of the *maṣlaḥah mursalah* perspective of al-Shāṭibī thought in terms of their importance (*ḍarūrīyāt* and *ḥājīyāt*).<sup>26</sup> The first, *ḥifẓ al-dīn* (protection of religion and freedom of worship). Maintaining religion in the *ḍarūrīyāt* level, namely maintaining and carrying out religious obligations which are included in the primary level, such as: carrying out *fard* (five daily) prayers and for the level of *ḥājīyāt*, namely carrying out religious provisions, with the aim of avoiding difficulties, such as: performing congregational prayers and *qasr* when traveling. Government Regulation No. 125 of 2016 Article 26 states that district/city regional governments determine shelters for refugees that are facilitated with various basic needs including worship facilities.<sup>27</sup> Therefore, a special mosque was built for Rohingya refugees in Aceh by Indonesian humanitarian agencies within two weeks. Named the Arakan Mosque, it is located in the middle of the Blang Adoe Integrated Community Shelter (ICS) land, Kuta Makmur, North Aceh Regency, and was built by *Aksi Cepat Tanggap* (ACT) on June 30<sup>th</sup> 2015.<sup>28</sup> The Arakan Mosque is a symbol as the concern of the Indonesian people for Rohingya refugees in accordance with the contents of the current Perpres.

The second, *ḥifẓ al-ʿaql* (protection of intellect and mental health). Maintaining intellect at the level of *ḍarūrīyāt*, such as being prohibited from consuming alcoholic beverages and at the level of *ḥājīyāt*, as recommended for the pursuit of knowledge. In accor-

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<sup>25</sup> Imron Rosyadi, "Pemikiran al-Shāṭibī tentang *Maṣlaḥah Mursalah*," *Profetika*, Vol. 14, No. 1 (2013).

<sup>26</sup> Zulkarnain Abdurrahman, "Teori Maqasid Al-Syatibi dan Kaitannya dengan Kebutuhan Dasar Manusia Menurut Abraham Maslow," *Jurnal Ushuluddin: Media Dialog Pemikiran Islam*, Vol. 22, No. 1 (August, 2020).

<sup>27</sup> Peraturan Presiden No. 125 Tahun 2016 Tentang Penanganan Pengungsi dari Luar Negeri (Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad).

<sup>28</sup> Awan, "Masjid Arakan di Aceh untuk Pengungsi Rohingya," *ICMI Media* (2015), <https://icmi.id/media/siaran-pers/masjid-arakan-di-aceh-untuk-pengungsi-rohingya>.

dance with Qanun (Ar. *qānūn*, 'law') of NAD number 12 of 2003 article 3 states that the aim of the prohibition on drinking wine and the like is to protect the public from various forms of activities and/or actions that damage the mind.<sup>29</sup> Supported by Article 30 in Presidential Decree No. 125 of 2016 that every refugee is obliged to comply with the rules and regulations in the shelter as referred to in Article 25 letter h, mores that implemented in the local community, and provisions of laws and regulations, every foreigner as a refugee who does not comply with the rules and customs at the shelter as intended in paragraph (1) is subject to action in the form of special placement. However, the Indonesian people's form of concern in maintaining the mental health of Rohingya refugees is through education. Being in the Mina Raya refugee camp does not prevent Rohingya children from getting access to proper education.<sup>30</sup> Through education, volunteers routinely share knowledge with refugees, although sometimes language is one of the obstacles for volunteers in delivering their teaching material.

The third, *ḥifẓ al-nafs* (protection of life and safety). Maintaining the soul at the *ḍarūrīyāt* level is fulfilling basic needs in the form of food and drink to maintain survival and at the level of *ḥajīyāt* is recommended for trying to get halal and delicious food. As stated in Presidential Decree No. 125 of 2016 article 26 concerning facilities for providing clean water, meeting the needs of food, drink and clothing for refugees. In its Press Statement Number 70/HM.00/XII/2023, Komisi Nasional Hak Asasi Manusia (the National Commission on Human Rights) of the Republic of Indonesia also appreciated the Police's efforts in enforcing the law against alleged human trafficking and human smuggling of Rohingya refugees in Aceh.<sup>31</sup> For example, local social services and

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<sup>29</sup> Qanun of Nanggroe Aceh Darussalam Number 12 of 2003 on "Larangan Minuman Khamar dan Sejenisnya" (15 July 2003).

<sup>30</sup> "Sulitnya Mengurus Pengungsi Rohingya, Semangat Belajar Melawan Kendala Bahasa," *kompas.com* (2023), <https://youtu.be/UtPufvuLUJk?si=eOAAwxxvZSofD-obN>.

<sup>31</sup> "Keterangan Pers Nomor 70/HM.00/XII/2023 Pernyataan Komnas HAM Terkait Penanganan Pengungsi Rohingya di Aceh" (2023), <https://www.komnasham.go.id/index.php/siaran-pers/2023/12/28/309/keterangan-pers-nomor-70-hm-00-xii-2023-pernyataan-komnas-ham-terkait-penanganan-pengungsi-rohingya-di-aceh.html>.

UNHCR built public kitchens to provide food to Rohingya refugees.<sup>32</sup> Not a few local residents also provided other food assistance.

The forth, *ḥifẓ al-nasl* (protection of descendants and family). Maintaining offspring at the *ḍarūrīyāt* level, such as the recommendation for marriage and the prohibition of adultery, as well as at the *ḥājīyāt* level, such as the stipulation of talaq as a settlement of marriage ties for refugees. As supported on Presidential Decree No. 125 of 2017 article 25 states about the placement of refugees indoors are based on family aspects, gender, age, nationality, race, ethnicity and religion. To avoid adultery, the government and local organizations support marriages between Rohingya refugees. However, before getting married, Rohingya refugee couples first undergo a verification process from UNHCR, namely regarding age adequacy. This is for later they can be registered as refugees who are already husband and wife. The marriage process is carried out after registration and UNHCR recommendations. Various needs are provided, including dowry assistance for grooms who do not have any assets.

The fifth, *ḥifẓ al-māl* (protection of property). Maintaining assets at the level of *ḍarūrīyāt*, as prescribed by religion to obtain ownership through buying and selling transactions and is prohibited from taking other people's property in improper ways such as stealing, robbing, etc., and for the *ḥājīyāt* level, such as the sale and purchase transactions of *salām* and *istiṣnā'* (buying and selling orders). As supported on Presidential Decree No. 125 of 2017 article 25 concerning refugee data collection procedures, namely regarding the storage and handover of goods belonging to refugees, recorded in the goods storage and handover register book. By carrying out this data collection, the local government/local person in charge will know if there is an increase in goods owned by refugees.

In determining laws or fatwas, ulama can use the concept of *maṣlaḥah mursalah* to determine decisions that are deemed to benefit

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<sup>32</sup> Indra Widyastuti, "UNHCR Dukung Penanganan Pengungsi Rohingya yang Dilakukan Pemda," *Radio Republik Indonesia (RRI)* (2024), <https://www.rri.go.id/lain-lain/504979/unhcr-dukung-penanganan-pengungsi-rohingya-yang-dilakukan-pemda>.

society or the Muslim community as a whole.<sup>33</sup> However, the use of *maṣlaḥah mursalah* also requires caution so that it does not conflict with the clearer and stricter principles of Islamic law. It is important to note that there are differences of opinion among scholars regarding the use of *maṣlaḥah mursalah*, and some groups tend to be careful in applying it to avoid potential misuse or misinterpretation.

## Conclusion

Previous research regarding government policy regarding Rohingya refugees in Indonesia stated that the Indonesian government accepted their arrival was only temporary, related to meeting their living needs with assistance from UNHCR and IOM. However, as time passes, the refugees continue to arrive until this year. In accordance with Perpres Number 125 of 2016 and from a *maṣlaḥah mursalah* perspective, what the government and surrounding communities have done is truly in line with humanity. but of course, there is a feeling of worry, how long will this end. Then the opinion also emerged that the social activists who accommodated funds donated by the Indonesian people to help the Rohingya refugees, whether they had been used well or whether the Indonesian people would accept living side by side with the Rohingya refugees. This can be studied further in the future research.

The policies taken by the Indonesian government are appropriate regarding Rohingya refugees. where the Indonesian president made a policy to accept refugees who came temporarily, and fulfill their needs. Therefore, efforts that Indonesia can make are to fulfill the rights of the Rohingya people only when they become refugees or asylum seekers in Indonesia. Rights that can be fulfilled as *maṣlaḥah* include: 1) freedom of religion, the right to live and be free from fear (maintenance person) in this case Indonesia has built an Integrated Community Shelter as a place to live for Rohingya refugees and built a mosque or place of worship for Rohingya ethnic Muslims named the Arakan's mosque; 2) Fulfilling the guarantee of safety, guaranteeing human honor; 3)

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<sup>33</sup> Irwansyah and Al Asya'ari, "Rohingya Muslims in Indonesia: Interaction, Stigmatization and Religious Response," *Fikrah*, Vol. 10, No. 2 (2022).



The right to maintain one's tribe or ethnicity, the right to marriage to raise offspring; 4) The right to education (safeguarding of mind); 5) The right to obtain a decent living by being given the opportunity to earn a living (property maintenance). Where we must be able to humanize fellow human beings.

However, Indonesian people think that there are still many Indonesian citizens who need to be helped. rather than having to pay attention to the needs of the Rohingya ethnic group who continuously arrive and want to settle in Indonesia. Therefore, it would be better if the government immediately sent Rohingya refugees to third countries to get a better life rather than having to integrate and become Indonesian citizens because it is considered that this will become a social burden in the future. With this research, researchers hope this paper can become a policy reference for policy makers in Indonesia to be able to continue peace negotiations in Myanmar to resolve the Rohingya conflict in Myanmar. This research can at least provide an overview of the social reality of the Rohingya ethnic group in Indonesia so that the central and regional governments can carry out humanitarian action to fulfill their rights while they are in refugee camps.

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