

International Humanitarian Law Study of the Protection of the Rohingya Community in Indonesia

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Abstract

Until December 2023, the number of Rohingya refugees in Indonesia continues to increase, with more than 1500 Rohingya living in Indonesia. This situation poses ongoing challenges for Indonesia, both in terms of increasing numbers of refugees and in the policies and solutions needed to address this problem. This research aims to explore Indonesia's role in the case of the Rohingya ethnic group based on the concept of Responsibility to Protect (R2P) and to highlight legal protection and human rights for Rohingya refugees in Indonesia. The research method used is normative research to investigate how Indonesia handles the issue of Rohingya ethnic refugees in the international social context and legal system in Indonesia. The research results show that diplomatically, Indonesia has attempted to resolve the conflict in Myanmar through various steps, including active diplomacy and support for inclusive development and the capacity of the Myanmar government. Even though Indonesia has not ratified the 1951 International Convention and the 1967 Protocol on the Status of Refugees, the Indonesian government, especially the Aceh regional government, is seriously providing assistance and protection to Rohingya refugees by providing temporary shelter, living facilities and health services.

Keywords: International Humanitarian Law, Protection Rohingya Community, Humanitarian Law

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INTRODUCTION

Refugees are a situation that can cause concern and uncertainty regarding threats to individual safety. This threat could be in the form of a natural disaster such as a volcanic eruption, flood, or earthquake. Apart from natural disasters, there are also man-made disasters such as armed conflict, oppression, or disturbances that can be caused by rulers from certain groups. This crime can be triggered by differences in ethnicity, race, religion and social political factors (Bilhaqqi, 2020). In Myanmar, ethnic conflict is triggered by religious differences, where the Rohingya Muslim ethnic minority group is the victim of violence. They experienced harassment, murder, and even massacres carried out by the Myanmar military. Apart from that, there was a mass massacre of ethnic Rohingya Muslims during the rebellion in Rakhine. This situation shows that the Myanmar army not only failed to protect, but was also involved in violence committed by the Rakhine Buddhist community between late May 2012 and 2017.

As of June 2022, according to the UN Refugee Agency (UNHCR), there are 902 Rohingya registered in Indonesia. The majority of them come to Indonesia in the hope of getting the opportunity to continue their journey to Australia or Malaysia, to reunite with

family already in Indonesia, or because they see Indonesia as a country that provides a supportive social, economic and legal environment for refugees. (Mohajan, 2018). The International Organization for Migration (IOM) and UNHCR, as multilateral bodies dealing with refugee issues, provide monthly financial assistance to the most affected refugees to meet their basic needs. However, not all refugees receive this assistance, and the amount of money received is not enough to cover the ever-increasing cost of living in Indonesia. Therefore, Rohingya refugees must seek additional income through work to survive. However, finding work is a challenge for Rohingya because they are not officially allowed to work in Indonesia. As a solution, they engage in informal work to earn additional income (Kurniawan, 2017).

Until December 2023, the number of Rohingya refugees in Indonesia continues to increase. More than 1500 Rohingya refugees now live in Indonesia, and this situation may create ongoing challenges for the country, both in terms of increasing numbers of refugees and the need for policies and solutions to address the problem. The government continues to strive hard to overcome this humanitarian problem, with a focus on fulfilling human rights. Efforts have been made to adopt policies in dealing with Rohingya refugees, including increasing coordination between regional governments, especially in Aceh, and the central government. This is important considering that Aceh has a significant number of Rohingya refugees, with more than 1000 refugees living there (Mitzy, 2022).

The Indonesian government, represented by the Ministry of Politics, Law and Human Rights, has coordinated with regional and international organizations such as ASEAN and UNHCR. In addition, efforts are being made to bring Rohingya refugees back to their countries of origin by creating centralized settlements, with the requirement that they not be too close to general population settlements but still allow access to basic needs and security. Furthermore, the Ministry of Foreign Affairs is encouraged to increase diplomatic and intervention efforts more intensively, especially by actively participating in bilateral, regional and multilateral forums, including UN forums, to help end the conflict in Myanmar (Septia Renanda, Natasyafira, Julia Kusuma, Delia Reviska, & Putri Winarti, 2022).

Human rights are rights inherent in every individual from birth and recognized by the state. Therefore, as creatures of God, humans have rights that must be protected, respected and upheld by a state based on law. Human rights are also considered fundamental rights which include the right to life in various aspects of life, including political, legal, economic, social and cultural (Angela & Siba, 2018). In the evolution of human rights, there are three aspects that must be fulfilled, namely freedom, equality and integrity, with respect for human dignity as the key. This approach to freedom, equality and integrity often presents complex challenges within a country. There are many incidents of human rights violations caused by ethnic-based injustice and discrimination. Examples of human rights violations that often occur include crimes of genocide and crimes against humanity, which mainly affect ethnic minority groups (Baskoro, Astuti, & Puspoayu, 2018).

Humanitarian law was originally known as the law of war, then became the law of armed conflict, and transitioned into international humanitarian law. According to KGPH. Haryonomataram, humanitarian law is a series of regulations originating from international treaties and international customs that regulate the use of methods and tools of war by fighting parties to defeat opponents and provide guidance in protection during war. Humanitarian law aims to harmonize efforts to carry out war with attention to humanitarian principles. Haryommataram identifies two main categories in the humanitarian law of war, namely: regulations governing the legal methods and means used in conflict (The Hague Laws); and regulations that protect combatants and civilians from the effects of war (The Geneva Laws). International humanitarian law (IHL) has a close relationship with human rights, where both focus on protecting individual rights and maintaining human dignity when threats of violence and violations occur during armed conflict. Protection of these rights is directed at the priority of safeguarding human rights (Gede et al., 2020).

A previous study conducted by Moch Idham Baskoro showed that Indonesia has a responsibility to protect unaccompanied Rohingya child refugees in accordance with

international law as a transit country. This is based on Indonesia's obligation to provide legal protection to refugees, including unaccompanied children, which is an applicable international legal principle. According to international law, Indonesia's responsibility as a transit country for unaccompanied Rohingya refugee children is in accordance with Article 22 of the Convention on the Rights of the Child, which regulates the fulfillment of the rights of unaccompanied Rohingya refugee children in Indonesia (Arianta, Gede, Mangku, Putu, & Yuliartini, 2020). Research conducted by Heri Heriyanto shows that in Indonesia's national legal system, the country uses instruments from international customs which are implemented through Presidential Regulation no. 125 of 2016 to overcome the refugee crisis. Indonesia's approach to the refugee issue tends to be closed, and Presidential Regulation no. 125 of 2016 gives legitimacy to the government to send refugees to third countries or temporary transit places, even for illegal migrants. Refugees can face the risk of forced deportation to their country of origin, placement in quarantine which limits freedom of movement, as well as uncertainty regarding the survival rights of refugees (Indradipradana & Haridha, 2023).

Based on previous issues and research, Indonesia also follows the principles and customs stated in international humanitarian law. Actions taken by the government are implementation of the Concept *Responsibiliti to protect* (R2P), which can be interpreted as a principle aimed at achieving humanitarian intervention in various countries, including Indonesia. Although humanitarian intervention has not yet been implemented in Indonesia, there is a possibility that this could happen if similar social crimes occur. Therefore, to understand how international law and the Indonesian government regulate policies regarding Rohingya refugees in dealing with social emergency situations is important.

The application of the principles of international humanitarian law is explained through national legal policies governing refugees, which have adopted regulations that can guarantee human rights. Apart from legal regulations, increased community involvement has also been implemented significantly in efforts to deal with Rohingya refugees. For example, the people of Aceh provided assistance covering basic needs such as adequate housing and basic food when Rohingya refugees arrived.

In a legal context, the implementation of humanitarian intervention mechanisms in Indonesia is an important concern. Therefore, the Indonesian government needs to continue to develop and manage policies regarding Rohingya refugees when facing social emergencies and protect human rights throughout the region. Regarding policies towards Rohingya refugees, this shows that Indonesia tends to maintain its country's sovereignty and reject foreign interference, even though it supports R2P principles in general. Thus, the international humanitarian law approach to Rohingya refugee policy in Indonesia reflects an effort to align between supporting R2P principles and rejecting foreign intervention which is considered a violation of state sovereignty.. So this research aims to determine Indonesia's role in the Rohingya Ethnic case based on the Responsibility to Protect (R2P) concept and to determine legal protection and human rights for Rohingya refugees in Indonesia.

METHOD

This research is a normative study which aims to understand the issue of the Rohingya refugee crisis from a normative perspective regarding its handling in the context of social habits of the international community and its implementation in Indonesia as a legal system. Research methods include a statutory or state approach as well as a conceptual approach. The main data sources are international legal documents such as the 1951 Refugee Convention and the 1967 Protocol, international community norms, and national regulations. In addition, secondary research materials such as books, journals, research reports, and news from print and online media are used to support analyzes related to this topic obtained from literature studies. The collected legal data is analyzed qualitatively and presented descriptively to produce prescriptive conclusions.

RESULTS AND DISCUSSION

1) Indonesia's Role in the Rohingya Ethnic Case Based on the Concept of Responsibility to Protect (R2P)

a. Political Aspects

Indonesia and Myanmar are geographically close in the Southeast Asia region, with a distance of around 350 miles between them. In the history of the struggle for independence and emotional relations, these two countries have a special bond. Both countries are also known as countries with rich ethnic diversity. The national development processes in Indonesia and Myanmar have significant similarities. In addition, both countries have experienced periods of government dominated by the military. Historical records note that bilateral relations between Indonesia and Myanmar have been established since independence in 1945 (Odipradana & Kusumo, 2019). Indonesia is currently a country trusted by the Myanmar government to play a role in resolving the Rohingya crisis, with the hope of encouraging ASEAN to pay more attention to transnational human rights issues. This belief was reflected in the visit of the Indonesian Minister of Foreign Affairs, Retno Marsudi, to Aung San Suu Kyi, where Minister Retno asked the Myanmar government to end violence in Rakhine (Rohingya, Setiyani, & Setiyono, 2020).

Indonesia's involvement in resolving the Rohingya conflict is a form of concern for global humanitarian issues. Indonesia's participation in handling the Rohingya ethnic situation, both directly and indirectly, is a concrete step for the government to strengthen its positive image in the international arena (Bintarawati, Lubis, Iqsandri, & Utama, 2023). So it is hoped that Indonesia can become a leading model country in finding a solution to the issue of Myanmar's sovereignty through a diplomatic approach, and at the same time can be an inspiration for other ASEAN countries to play an active role in maintaining peace in the ASEAN region.

b. Security Aspects

The government's steps in providing humanitarian assistance to the Rohingya ethnic group in Rakhine State, Myanmar are seen not only as actions based on morality alone. ASEAN's stability is also threatened if the humanitarian crisis in Myanmar continues, which could ultimately disrupt regional cooperation. Every decision in a country's foreign policy is usually based on considerations of advantages and disadvantages, as well as considerations of morality. The Indonesian government's delivery of humanitarian aid to the Rohingya is not simply a matter of morality. Indonesia has a broader strategic goal, namely maintaining ASEAN stability in the future. Because if the humanitarian crisis continues, regional stability could be threatened, and this has serious implications for all countries in the region. Therefore, the benefit of this action lies in Indonesia's ability to maintain stability, which is important for the entire region (Putra & Rosmawati, 2019). If this issue is ignored by other countries, Indonesia will have difficulty maintaining regional stability. The main thing is to maintain regional stability so that other countries are encouraged to cooperate further in providing assistance. One example of a threat to regional stability is the situation of the Rohingya ethnic group.

Countries in the region have no choice but to accept if Rohingya people choose another country as a place of refuge. The same applies to Indonesia, which must accommodate the Rohingya ethnic group and must not ignore their dire conditions. Efforts being made by Indonesia are to prevent the situation from getting worse, with the aim of maintaining regional security and stability. Therefore, the humanitarian assistance provided is not only based on morality alone, but also to maintain the stability of the region. It is not strange for Indonesia to provide humanitarian assistance to citizens of other countries, because this can be seen as a rational action and based on the interests of maintaining regional

stability. From a regional interests perspective, it is important to ensure that internal problems in one country do not disrupt existing cooperative relations between countries, as this could have a negative impact on cooperation between those countries. Indonesia, as a member of ASEAN, holds an important responsibility in maintaining regional security stability from disturbances that may arise (Rafly Raihansyah & Fariz Farrih Izadi, 2024).

According to the principle of Responsibility to Protect (R2P) in international law, a country cannot refuse responsibility for the protection of its population if the actions taken violate the norms of international law. This condition especially applies when the violation involves Human Rights principles, such as slavery, torture, or genocide. As a regional entity, ASEAN is responsible for dealing with the situation of human rights violations that occurred in Myanmar in accordance with the concept of Responsibility to Protect (R2P), which was recognized by UN member states at the 2005 United Nations Summit. emerged as a reaction to the tragedy of genocide and human rights violations in Rwanda. Even though it has its own challenges, ASEAN has institutions such as the ASEAN Regional Forum (ARF) and the ASEAN Intergovernmental Commission on Human Rights (AICHR) which can act as mechanisms for implementing R2P principles. Countries in ASEAN with a majority Muslim population, such as Indonesia and Malaysia, are expected to play an important role through ASEAN in voicing issues related to the Rohingya (Kaloko, Prasetiawan, & Utari, 2020; Rosmawati, 2015).

The Principle of Responsibility to Protect (R2P) is a concept in international relations that provides legitimacy for states to intervene in the internal affairs of another state based on humanitarian considerations. This idea was introduced by the UN with the aim of preventing crimes against humanity such as genocide, war crimes, ethnic cleansing and other crimes against humanity in a country. If a country does not have the ability or desire to protect its citizens for certain reasons, then the international community has a responsibility to intervene to prevent these crimes against humanity. In the ASEAN context, the R2P principle can be implemented through various means ranging from sanctions to the use of military force against Myanmar. ASEAN plays an important role in resolving this humanitarian crisis because the Rohingya problem is not only limited to Myanmar, but also has an impact on the entire region. Violence against the Rohingya has caused an ethnic outflow to other countries which has the potential to undermine regional security stability. Therefore, even though it adheres to the principle of non-intervention, ASEAN has the ability to take firm steps in handling this humanitarian crisis because the R2P concept focuses on humanitarian values rather than state sovereignty.

As a country with a majority Muslim population in the Southeast Asia region, Indonesia is not just watching the situation in Myanmar silently. The actions taken by Indonesia do not just provide encouragement, but are also a collaboration in inclusive development efforts and increasing capacity to provide assistance to Myanmar. This also takes into account security aspects related to the illegal entry of the Rohingya into Indonesia through waters. In responding to the Rohingya issue, the Indonesian Government has used official diplomatic channels through the Ministry of Foreign Affairs of the Republic of Indonesia. Indonesia's diplomatic approach deserves recognition, considering the ASEAN principle of non-intervention which regulates the diplomatic actions of countries in the Southeast Asia region. Nevertheless, Indonesia's humanitarian approach which is based on a free and active foreign policy has shown a strong commitment to resolving the conflict in Myanmar. As a member of ASEAN, Indonesia succeeded in gaining direct access from the Myanmar government to the Rakhine region. This success is the result of Indonesia's seriousness in encouraging involvement and support for

inclusive development in Myanmar. This action was taken by Indonesia as part of its responsibility to help Myanmar protect its population (Rosyid, 2012).

The first step that Indonesia can take is to ensure that the Myanmar government continues to accept the arrival of volunteers from other countries and humanitarian assistance to help the Rohingya in Rakhine. Furthermore, Indonesia needs to ensure that there are no more reckless military actions carried out by the Myanmar Government in the Rakhine region. As a country affected by the departure of the Rohingya, the Indonesian Government needs to make a commitment and agreement with the Myanmar Government regarding handling Rohingya immigrants in Indonesia. One possible mechanism is immediate repatriation on the condition that they will not be discriminated against when returning to their homeland, or a gradual return as the political situation in Myanmar improves and the Myanmar government's capacity to resolve conflicts increases. Humanity is very crucial in relations between countries, where human values can sometimes transcend existing boundaries. The efforts made by the Indonesian Government to resolve the conflict in Myanmar are a form of diplomacy that relies on humanitarian values rather than solely considering national interests. Through a humanitarian-oriented diplomatic approach, it is hoped that stability can be achieved in the region which will ultimately support Indonesia's national stability and sovereignty in the future.

2) Legal Protection and Human Rights for Rohingya Refugees in Indonesia

Indonesia has not ratified the 1951 International Convention and the 1967 Protocol Relating to the Status of Refugees. The United Nations High Commissioner for Refugees (UNHCR) functions as an international organization that monitors and seeks solutions to the problems faced by countries. The presence of Rohingya refugees arriving in Indonesia is the result of violence and discrimination resulting from ethnic conflict in Myanmar. The Myanmar government did not grant them citizenship because they were considered illegal immigrants in the region. Because respect for human rights is one of the principles of the ASEAN Charter, it is important to emphasize human rights principles in ASEAN cooperation. The Indonesian Navy (TNI AL) through KRI Blue Unit 647 recently evacuated a ship carrying more than 100 Rohingya refugees from its discovery location in waters 53 nautical miles to Khrunkeku Harbor in Loxmawe, Aceh. The choice of port location was considered based on the need for adequate mooring facilities, sanitation at the health inspection site, as well as the importance of law enforcement to prevent crowds that could disrupt the health inspection process, as well as its location being closer to the port, quarantine site, and field facilities if necessary. TNI Chief of Naval Staff (Kasal) Admiral Yudo Margono ordered troops and members of the TNI-AL to withdraw in accordance with the government's decision which was based on humanitarian considerations (Heriyanto & Hasnda, 2023). Head of the Naval Intelligence Agency (Kadispenal) First Admiral TNI Julius Widjojono stated that the evacuation process had started at 06.00 WIB this morning when the weather conditions were clear and safe enough to moor and tow the ship amidst high sea waves. It is estimated that the ship will arrive at Kruengkeukuh Lhokseumawe port at around 18.30 WIB. The government's action to bring Rohingya refugees who were at sea to land in the Aceh region was taken as a basic step based on humanitarian values. This decision was taken taking into account the emergency situation faced by the refugees on the ship. It was reported that most of the Rohingya on board the ship were women and children.

Based on Article 6 of the Protocol, the crime of human smuggling requires the existence of an "intent" to gain profit, either directly or indirectly. Additionally, according to human smuggling protocols, the crime must be proven to be transnational in nature and committed by a transnational organized crime group. The existence of

the Human Smuggling Protocol aims to prevent and eradicate acts of human smuggling, strengthen cooperation between countries and protect the rights of victims of human smuggling. Therefore, the aim of this Protocol clearly emphasizes the protection of persons who are victims of human trafficking. Problems arise when the person being smuggled is an asylum seeker as they may not understand the risks associated with people smuggling. They may see smuggling as the only quick way to leave a country that endangers them. Asylum seekers who choose to use smuggling often feel they have no other legal options to obtain protection in an efficient and safe manner, especially if the legal bureaucratic process is too slow and dangerous for their safety in their country of origin. As a result, they choose this illegal route.

The country through which asylum seekers pass must continue to respect human rights (HAM) and not deport them or return them to their country of origin which could endanger their safety. Although Indonesia is not a party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, compliance with these principles remains important. Therefore, the safety of asylum seekers and refugees must be guaranteed regardless of whether they have official documents upon entry. However, regarding the issue of smuggling of asylum seekers, the application of the *Das Sein* and *Das Sollen* principles is still inconsistent. According to *Das Sollen* principles, human smuggling is a criminal act that must be prosecuted legally. However, according to the *Das sein* principle, asylum seekers who are smuggled into the country must be protected by law, and the principle of non-refoulement must be respected.

The Rohingya population in Indonesia is spread across several locations such as Aceh, Medan, Tanjung Pinang, Batam (Riau Islands), Kupang, Banten and Banyuwangi. Aceh is one of the main destinations for Rohingya refugees, perhaps because of its strategic location close to Myanmar. In Aceh, they are divided into islands such as Lhokseumawe, Sabang, Idi Rayeuk, and East Aceh. Even though the distance between Aceh and Myanmar is relatively close, traveling by traditional boat usually takes around 23 days to Aceh waters. This means that before reaching Aceh, the refugees already face a difficult sea journey with limited supplies. With an average capacity of 121 passengers per ship, many of them did not survive the journey. Some even became victims of gunfire by Thai security forces or were forced to remote islands without food and drink before being pushed back into the sea. In such extremely unsafe conditions, Rohingya refugees experience serious threats when they cross the sea, enter Indonesian waters, and try to achieve their desires (Hamdi, Immigration, Maulidia, & Firlana, 2023).

There are many reasons why the people of Aceh continue to accept refugees while some other areas reject their arrival. One of them is solidarity among Muslims; around 98% of Aceh's population claims to be Muslim. Even though the majority of Aceh's population is Muslim, Muslim solidarity does not fully explain their friendliness towards non-Muslim refugees. For example, in 2016, the people of Aceh provided assistance to Tamil Hindu asylum seekers from Sri Lanka. Another reason is Aceh's customary maritime law (*Panglima Laot*) which requires Acehnese fishermen to help anyone who is in danger at sea. The *Panglima Laot* system has existed since at least the 17th century.

Like most customary rules in Aceh, *Panglima Laot* reflects the principles of Sharia, which regulate all aspects of fishing practices and social life in fishing villages along the coast. Aceh's strong culture of hospitality, also known as *Peumulia Jamee*, could explain why residents were so welcoming to refugees after they arrived in the region. In addition, the history of conflict and natural disasters in Aceh also plays an important role in the way the Acehnese see their own identity and that of others. The Indonesian government, especially the Aceh Regional Government, shows a high commitment to providing the assistance needed to provide a sense of security and comfort for Rohingya refugees, especially children. Real efforts have been made, such

as providing temporary shelter for refugees and implementing various other assistance programs that have helped meet their living needs in shelters.

In addition to this, the local government also sent volunteers from various community organizations and NGOs in the area who focused on the humanitarian sector. They were deployed to provide assistance, facilitate needs, and provide basic supplies to refugees, with special attention to refugees who needed extra care. In this context, the Indonesian government's efforts to provide protection and treatment to Rohingya refugees in Bireuen and Langsa continue to follow the guidelines stated in Presidential Decree No. 125 of 2016 concerning Handling of Refugees from Abroad. The Indonesian government, especially regional governments, have tried their best to provide services and treatment for Rohingya refugees, especially refugee children. Collaboration with International and Regional Organizations such as UNHCR, IOM, and ASEAN has also been carried out by the Indonesian government to ensure that the protection and services provided to Rohingya refugees who continue to come to Indonesia, especially from the Rohingya ethnic group, are in accordance with applicable international standards.

According to an evaluation conducted by UNHCR, Indonesia is known as one of the countries that provides adequate shelter and facilities for refugees, including those from the Rohingya ethnicity, especially children. Even though Indonesia has not ratified the 1951 Convention, this country still plays an active role in providing protection to Rohingya refugees within its territory, showing significant involvement in efforts to provide assistance to them. This can be seen from the facilities available to meet the daily needs of refugees, such as places of worship, areas for studying and playing, medical facilities for refugees who are seriously ill, as well as open spaces or halls where refugees can interact with fellow refugees and the surrounding community who came to visit. The services provided by the regional government have been adjusted to the standards set out in international law and Presidential Decree No. 125 of 2016 concerning Handling of Refugees from Abroad. Collaboration with International and Regional Organizations has also been carried out by the Indonesian government to provide assistance in overcoming the current Rohingya refugee crisis in Aceh.

CONCLUSION

In the context of the Rohingya ethnic case, Indonesia has played an important role in promoting the concept of Responsibility to Protect (R2P) diplomatically. By prioritizing humanity, Indonesia has tried to fight for the resolution of the conflict in Myanmar through various steps, including active diplomacy, sending humanitarian aid, and efforts to assist Myanmar in inclusive development and increasing government capacity. These efforts are carried out in order to maintain the stability and security of the ASEAN region, as well as respect universal human rights values. Thus, Indonesia has demonstrated commitment to protecting international humanity, despite obstacles such as the ASEAN principle of non-intervention. In the context of legal protection and human rights for Rohingya refugees in Indonesia, there are several aspects that need to be considered. First, Indonesia has not ratified the 1951 International Convention and the 1967 Protocol concerning the Status of Refugees, but plays an active role in providing assistance and protection to Rohingya refugees who arrive in Indonesian waters. Second, the acceptance of Rohingya refugees in Indonesia, especially in the Aceh region, can be explained by religious solidarity, cultural traditions of hospitality, as well as local customary and legal obligations, such as Panglima Laot, which requires fishermen to help anyone threatened at sea. Third, the Indonesian government, especially the Aceh regional government, is serious about providing assistance and protection to Rohingya refugees, including providing temporary shelter, living facilities and health services.

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