The International Refugee Regime and Legal Pluralism: Refugee Protection of the Rohingya in Aceh

Fitria

Doctor of Philosophy

University of York

York law School

December 2020

Abstract

Many countries, including Indonesia, base their refugee-related security on a human rights approach, with policies put in place to deter or slow refugees entering their territories. Responding to the policies, much refugee scholarship focuses on state compliance with the principles and norms set out in the Refugee Convention and other human rights instruments to protect refugees; subjects of these studies have included states non-signatory to the Refugee Convention. Through a case study of the Rohingya refugee crisis in Aceh in 2015, my research challenges this approach.

Indonesia, like many Asian countries, has not yet ratified the Refugee Convention. As a result, it has given UNHCR the authority to exercise subsidiary protection in managing refugees – including the Rohingya – in Indonesia. Referring to empirical findings from the case study, I argue that despite the limitations of national and international law, customary (*adat*) law and *sharia* have been effectively used by local actors to protect the Rohingya refugees fleeing to Aceh in 2015. Fishermen rescued Rohingya people stranded in the Andaman Sea, and concurrently local people extended a welcome to the Rohingya staying in Aceh.

Therefore, I highlight three significant findings of my thesis; firstly, there is a strong relationship between the political and cultural landscape of Aceh and the response of the actors in the Rohingya refugee crisis. Secondly, in contrast to current approaches to international protection that are characterised by dominant forces, this research suggests a "bottom up" approach, in which protection offered by local people and civil society have been effective in protecting refugees in Aceh. Thirdly, the findings have implications for socio-legal scholarship, in particular towards the exploration of TWAIL's critique and understanding of how legal pluralism works in practice.

List of Contents

Abstract **2**
Table of Contents **3**
List of Tables **7**
List of Figures **8**
Acknowledgment **9**
Author's Declaration **11**

Chapter 1: Introduction
- **A. Introduction** **12**
- **B. Thesis Background** **13**
  - ***1. The International Refugees Regime: Eurocentric characteristics*** **14**
  - ***2. Restrictive Measures: Protection Challenges*** **18**
  - ***3. Research Questions*** **22**
- **C. Research Design** **24**
  - ***1. Methodology*** **24**
  - ***2. Data Collection*** **25**
    - *a) Semi-structure Interviews* 26
    - *b) Focus Groups* 26
    - *c) Documentary Sources* 29
  - ***3. Analysing the Data*** **30**
  - ***4. Ethical Consideration*** **32**
    - *a) Informed Consent of participants* 32
    - *b) The safety of the Researchers and Participants* 33
    - *c) Data protection* 33
    - *d) Anonymity of Participants* 34
- **D. Thesis Structure** **35**

Chapter 2: Operational Roles and Governance of UNHCR
- **A. Introduction** **37**
- **B. UNHCR: The Key International Institution for Refugee Protection** **38**
  - ***1. The Roles of UNHCR*** **38**
  - ***2. Who Supervises UNHCR?*** **42**
  - ***3. Durable Solution: Viability of Local Integration in the Global South Hosting Countries*** **44**
    - *a) Should Country of First Asylum in the Global South Countries be Country of Perpetual Asylum?* 45
    - *b) Responsibility Sharing* 49
- **C. TWAIL: An Alternative Approach for a Better Protection for Refugees** **53**
  - ***1. TWAIL Ideas*** **54**
    - *a) Continuation of Colonialism in international law* 55
    - *b) An Emphasis on Considerations of Morality, Ethics and Justice* 57
    - *c) An Emphasis on Human Suffering* 59
  - ***2. Criticism of TWAIL*** **60**

a) TWAIL Blurs Concepts 60
b) The Lack of Tangible and Real Solutions for Improvement 63
D. Conclusion **65**

Chapter 3: Legal Pluralism
A. Introduction **68**
B. What is Law? **69**
1. Definition(s) of Law: Legal Theory **69**
2. Customary Law and Religious Law as Indigenous Laws in Global South Countries **72**
a) Customary law: its Inception and its Definition 72
b) Sharia: The Definition and its Implementation 76
1) Sharia: The meaning 76
2) the Incorporation and Implementation of Sharia in Indonesia 79
3. Werner Menski's Definition of Law: A Concluding remark **83**
C. Legal Pluralism: its Foundation and Definition
1. Some Approaches to Legal Pluralism
a) Werner Menski'Kite Model of Legal Pluralism
b) Franz von Benda-Beckmann and Keebet von Benda-Beckmann
c) Arskal Salim
2. Legal consciousness and legal pluralism
D. Conclusion **99**

Chapter 4: Background of Case Study
A. Introduction **100**
B. Rohingyas Crisis in 2015: Background **101**
1. The Rohingyas: Cultural and Religious Background **101**
2. The Myanmar Government's Prosecution of the Rohingyas **102**
3. The Flight of Rohingyas to Neighbouring Countries **104**
C. Aceh: an Introduction to Fieldwork **107**
1. Foundation of Acehnese Identity in Aceh: a Historical Perspective **108**
2. Position of Adat Law, Adat Law of the Sea and Sharia in Aceh **113**
a) Adat Law in Aceh 114
b) Sharia in Aceh 119
D. Refugee Law in Indonesia **120**
1. Ratification of the Refugee Convention: A Discourse **120**
2. Refugee Law and Policy in Indonesia: A Pragmatic Approach **122**

E. Conclusion **127**

Chapter 5: Rescue and Reception of the Rohingya Refugees in Aceh
A. Introduction **129**
B. Phase One of Reception: Crucial Aid **130**
1. Fishermen's Rescue Stories: Unconditional Help **130**
2. Local Inhabitants' Help Stories: Urgent Roles **133**
C. Phase Two of Reception: The Dynamics of the Relationships Among the Actors in the Shelters **136**
1. Taskforce to Handle the Rohingya Refugees: Limitations of the Decree? **136**
2. Shelter Making: Who is Responsible? **138**
3. Tensions and Harmonies: Between Actors in the Shelters **142**

4. The ''Langsa Convention'': an approach to protect the Rohingya **147**
D. The Rohingya Refugees'Future: Endless Painful Journeys 151
1. Rohingya Refugees' Difficult Journey to a Temporary Stay in Aceh **151**
2. Why did many Rohingya Refugees disappear from the shelters? **154**
E. The Limits of Hospitality
F. Conclusion 158

Chapter 6: Legal Pluralism and the Practice of Refugee Protection
A. Introduction 160
B. Actors' Perspectives: Motivation and Definition of Law 161
1. What drove the Actors to Take Part in Refugee Protection? **161**
2. What is the law? **164**
C. Perspectives of Fishermen and Local Inhabitants and Their Actions 167
1. Local Inhabitants and Fishermen: Motivations **168**
2. Fishermen and Local Inhabitants: Definitions about Law **171**
3. Fishermen and Local Inhabitants: Actions **172**
D. Perspectives of Local Governments and their Actions 179
1. Local Governments: Motivations **179**
2. Local Governments: Definition of Law **181**
3. Local Governments: Actions **183**
E. Perspectives of CSOs and their actions 188
1. CSOs: Motivations **188**
2. CSOs: Definition of Law **191**
3. CSOs: Actions **194**
F. Other Perspectives 197
1. Central Government, Member of Indonesian Parliament, and International Organisation of Migration: Motivations **197**
2. Central Government, Member of Indonesian Parliament, and International Organisation of Migration: Definition of Law **198**
3. Central Government, Member of Indonesian Parliament, and International Organisation of Migration: Actions **199**
G. Local People's Account: the Importance of Customary law

H. Conclusion 206
I.

Chapter 7: Refugee Protection in Aceh: TWAIL, and Approaches to Legal Pluralism
A. Introduction 208
B. TWAIL, the International Refugee Regime and Refugee Protection in Aceh 209
1. International Refugee Regime and (Neo)Colonialism **209**
2. History of Oppression: Understanding Human Suffering in Refugee Protection **214**
a). Giving the Voice to the Rohingya: Common Ground between the Acehnese and the Rohingya **214**
b). Ameliorating the Rohingya's Condition: From Urgent Aid to Local Integration Plan **216**
C. Refugee Protection Through the Lens of Legal Pluralism Approaches 218
1. Legal Pluralism and Subject of Law **218**
2. Relation between adat Law and Sharia **223**

3. The Practice of Refugee Protection in Aceh: Beyond the law (s). **226**
4. Actors' Contestation Over the Right to Work
D. Conclusion **233**

Chapter 8: Conclusion
A. Introduction **235**
B. Rohingya Refugee Crisis in Aceh: Under-Studied Case Study **235**
C. Dinstinct Approach to the Current Approach in Refugee Protection **237**
1. The Use of '*Pamulia Jamee'* Norm **240**
2. The Source of *Pamulia Jamee Norm* **241**
3. Significant Role of CSOs **242**
D. The Implications of the Findings for Broader Socio-Legal Scholarship **243**
1. Further developing of TWAIL's Critique **244**
2.
E. The Directions for Future Research **248**

Appendices 250

Appendix 1: Aceh Map 250

Appendix 2: Interview Guide 251

Glossary 253

Bibliography 255

List of Tables

Table. 1: Semi-Structured Interviewees 26

Table. 2: Focus Group Participants 28

Table. 3: Data on Rohingya Refugees 154

Table. 4: Interviewees' Accounts in Providing Aid to Rohingya Refugees 163

Table. 5: Interviewees' Perceptions of the Law 165

Table. 6: Motivations of Local Inhabitants and Fishermen 168

Table. 7: Perception of Law of Local Inhabitants and Fishermen 170

Table. 8: Motivations of Local Government 179

Table. 9: Perception of Law of Local Governments 181

Table. 10: Motivations of CSOs 187

Table. 11: Perception of Law of CSOs 191

Table. 12: Motivations of Central Government, Indonesian Members of Parliament, and International Organisation of Migration 197

Table. 13: Perception of Law of of Central Government, Member of Parliament, and International Organisation Migration 198

List of Figures

Figure. 1: Werner Menski's Triangle Legal Pluralism 90
Figure. 2: Werner Menski's Kite Model 92
Figure. 3: Division of *Adat* Courts in Aceh 116

Acknowledgments

I would like to offer a big “thank you” to Martin Jones, my supervisor, for his help over the last four years. Martin has been very supportive to me, introducing me to refugee studies, discussing important articles, and helping me to develop my thesis chapters until they are worth reading. I would also like to express great thanks to Lawrence McNamara, my TAP member. His contribution has been “beyond the call of duty”. He was willing to read every chapter and provide valuable comments on each one.

I would also like to thank the York Law School academic staff as whole. Special thanks go to Caroline Hunter, the head of the law school, for her valuable input during this process. I would also like to express my gratitude to Simon Halliday, who successfully trained me in socio-legal research, and to Kathryn Wright, who facilitated research training within the school. Thanks also to Salwa Eweis and Louise Prendergast, who have always helped with the administration side of the study.

I extend huge thanks to my beloved husband, Ismu Harkamil, and our beloved children, Aisyah Kamila and Adam Kamil, who have all been amazingly supportive over the years – in good times and bad. Without them, I would not have been able to accomplish the study. I would also like to thank, first, my late parents, Bandung Bondowoso and Poniah. My late Mum and Dad deserve my highest gratitude; their efforts in raising nine children were extraordinary. I also thank my parents-in-law, Ismail Sarmili and Koeshartati, for their endless support and prayers.

I would like also to thank our big family: first, my sister Dian, my brother-in-law James, and their children Shaun, Cullen and Ewan, who have abundantly helped us, fulfilling our needs in the first few weeks of our stay in York, and always welcoming us to their comfy house in London. I send great thanks to Ari, my oldest sister, and my brother-in-law Heru, who have visited us in York and always provide us with great support; to my sister Sri and her family Syarif, Rifki and Shafa for taking care of our affairs in Jakarta. I would like to thank every member of our big family, as all of their support and prayers are really valuable: my brothers, sisters, brothers-in-law and sisters-in-law, nephews and nieces in Jakarta: Topo, Wuri, Totok, Ety, Teki, Rojali, Wawan, Katrin, Pupung, Titik, Ida, Sutras, Beng, Dhenok, Andri, Rini, Nupi, Ireng and Noneng, Fatih, Khaerul, Anisa, Sarah, Tia, Fadhil, Mitha, Aya, Saddam, Rizka, Raisya, Dean, Tata, Elena, Danish, Thoriq, Dzawwad and Hudzaifah.

I would like to thank to those who gave me support during the fieldwork, especially local people like Bayu Putrima, who accompanied me during my research in Aceh. Each of my participants and interviewees, all the people in Aceh and Jakarta that I cannot name one by one that extended their help so that my field research went very well. Meeting many good people in Aceh, I would obviously love to go back again. I would like to thank to ESRC and the Indonesian Government for funding my field research.

I would like to thank the academic staff at UIN Jakarta, especially my colleagues, who I cannot name every person. I also want to thank the Indonesian Government for making my wishes to study in the UK come true.

I would like to thank Debbie Haverstock, administrator of ReCSS. ReCSS has become my second home, as I like to spend hours working at my comfy desk. I am also grateful to my amazing colleagues Amel, Katherine, Josephina, Petronel, Samia, Zainab, Ching, Mehren, Dong, Nasos and Chanon, who have been very supportive over the course of my studies, and who helped me to understand better the importance of respecting differences and always learning from others.

I would like to thank Peter Jameson who has worked with me on proofreading this thesis, making it more readable.

I would like to thank my Indonesian friends in York and across the UK for holding regular meetings, talking, sharing the knowledge and eating together as we would in our own homeland.

Lastly, I would like to thank all the people that I cannot name one by one, but whose help and support have enabled me to accomplish my study.

This thesis is dedicated to:

1. The Rohingya refugees; their struggle and resilience have taught us to be always grateful for the lives we live

2. My late parents; the kindest people I’ve ever met

3. My family; their endless support is amazing

Autor's Declaration

I declare that this thesis is a presentation of original work and I am the sole author. This work has not previously been presented for an award at this, or any other, University. All sources are acknowledged as References.

Work emanating from the research which this thesis is based upon has been presented elsewhere:

1. Fitria, 'Legal Pluralism in Protecting Refugees: Case Study of the2015 Rohingya Refugee Crisis in Aceh' (Durham Annual PGR Law Conference, May 2018)

2. Fitria, 'The Role of Customary Law in Protecting Refugees in Aceh' (SLSA Leeds, April 2019)

I can confirm that this thesis is under 100,000 words (including references, excluding bibliography and figures/tables). The law in the thesis is correct as of December 2020.

Chapter 1
Introduction

A. Introduction

I could not forget that day, 23 August 2018. Ibu (the wife) of Panglima Laot (the sea commander) and I were crying before I left the house. After staying in their house for four days, my mind was filled with good memories. I witnessed for myself how hospitality is offered by the Acehnese to an "uninvited" guest like me.
(Fieldwork reflection)

In employing the case study of the 2015 Rohingya refugee crisis in Aceh province (hereinafter referred to as the Rohingya refugee crisis), this thesis asks to what extent the customary (*adat*)[1] law is used in protecting Rohingya refugees. The roles of fishermen and local people have been crucial in rescuing and providing basic needs for the Rohingya refugees. The local response contrasted with the national (Indonesian) government's response, which was hostile to the Rohingya refugees and dilatory, due to the lack of a national legal framework for the protection of refugees.

I argue that the "bottom-up protection" offered to the Rohingya refugees by fishermen and other locals is not solely characterised by humanity, but also by legal accounts as they are bound to help, based on the norms and institutions they belong to. Although aware of the implications of the rescue and assistance decreasing their income or resources, these fishermen and local people have been keen to help the Rohingya refugees without expecting any return. I argue that the location of the even- Aceh contributes to shaping the actors' response, as custom and religion are very important in the life of the Acehnese, and are linked to their identity and actions.

---

[1] The term "*adat*" can be simply associated with customary law. The word *adat* itself is originally from the Arabic word for habit. There are two predominant definitions of *adat* law. One is that it is law presumed to be driven from superior authority within certain indigenous communities. Some scholars also highlight the element of sanction as a criterion for recognising *adat* law. Peter Burns, 'The Myth of Adat' (1989) 21 Journal of Legal Pluralism and Unofficial Law 1,127, and Ratno Lukito, 'Sacred and Secular Laws: A Study of Conflict and Resolution in Indonesia' (DPhil Thesis, McGill University 2006) < https://escholarship.mcgill.ca/concern/file_sets/d217qv126?locale=en> accessed 18 October 2018.

In order to understand to what extent law and legal ideas enter into people's understanding, attitude, and activities in response to the Rohingya refugee crisis, semi-structured interviews and focus groups were conducted. The findings show multiple accounts driving the local population to protect the Rohingya refugees, including *adat* and *sharia* laws. Therefore, this thesis reveals the role of legal pluralism in protecting refugees. Given that links between legal pluralism and refugee protection is still an understudied area, the intention of this thesis is to contribute to the discipline of the refugee studies by highlighting the role of "non-state-made law"[2] (e.g., customary/*adat* law) in protecting the refugees.

This chapter provides the background and research design of the thesis. As the protection of Rohingya refugees in Aceh is situated within the context of the global governance of the international refugee regime, the second section discusses how the inception of the regime highlights its Eurocentric characteristics. This section also presents the challenge of protection that the refugees face, especially regarding a range of measures taken by states to slow or prevent the arrival of these refugees. The third section provides the methodology and research design of the thesis, discussing how findings are extracted from the research. The fourth section presents the structures of the thesis.

B. Thesis Background

Since the case of the Rohingya refugee crisis is situated within the context of the international refugee regime, this section discusses the inception of that regime, its responses to the refugee crisis, and problems in the course of its work. I argue that the international refugee regime is characterised by Eurocentricity, as its work from 1914 to 1950 focused on refugee protection in Europe. As a result, the drafting process of the 1951 Convention Relating to the Status of Refugees (hereinafter referred to as the Refugee Convention) revealed the dominance of European countries over other nations. This led to the refusal of many Global South[3] countries (mostly from Asia and Middle East) to ratify the Refugee Convention.

[2] Masaji Chiba, for example differentiates "state law" from "non-state law", and "official law" (including state law and others officially authorised by state law) and "unofficial law" (other forms of law, such as religious and indigenous laws). Masaji Chiba, 'Other Phases of Legal Pluralism in the Contemporary World' (1998) 11(3) Ratio Juris 228. This thesis labels non-state law as: "non-state-made" law to highlight that, besides state law, other forms of law exist that do not emanate from the state, but from other sources, such as society.

[3] Global South signifies not simply the land below the equator. It is an ideological concept emphasising economic, political, and epistemic dependency, and unequal relations in the global world order, from the subaltern viewpoint. The Global South is made up of Africa, Latin America, and developing Asia, including the Middle East. On the other hand, Global

Further, this section also discusses restrictive measures employed by states, many of which are unable and unwilling to offer protection to refugees entering their territory. This discussion is relevant, as the Rohingya refugee crisis is a result of limits on protection provided by the state. In this case, non-state actors (fishermen and local people) provided protection at crucial times, during rescues, and during the temporary stay of Rohingya refugees in Aceh. Therefore, this section also explores challenges and limits of states' offers of protection for refugees.

1. The International Refugees Regime: Eurocentric characteristics

The Eurocentric character of the international refugee regime has existed since the regime's inception. Its amicable policy applied especially in the era 1920-1945, when European countries, represented through the international refugee regime under the League of Nations and its successor the United Nations (UN), welcomed millions of refugees to Europe for reasons of ideological gain and self-interest.[4] One of these was to combat communism by supporting the defeated "white armies" seeking refuge in European countries.[5]

It is worth understanding the character of the regime in the course of its work. The first monumental event was the establishment of a High Commissioner for Russian Refugees in 1921 by the League of Nations. The appointment of Nansen as the High Commissioner was recognised as the first formal acknowledgment of an international responsibility towards refugees.[6] Among his contributions was the ability to convince 51 states to give direct aid to refugees, and to create a travel document for refugees, dubbed the "Nansen passport". These achievements could not be separated from the fact that, even though he acted independently as the High Commissioner, Nansen was always dependent on governments-mostly from the two great powers Britain and France-for donations.[7] Indeed, the choice to help Russian

---

North is perceived as developed, powerful, and dominating world politics and commerce. It consists of the United States, Canada, developed parts of Europe, Australia and East Asia. The phrases "Global South", "Third World" and "developing countries" are here used interchangeably, as are "Global North", "First World" and "developed countries". Walter D. Mignolo, 'The Global South and World Dis/Order' (2011) 67(2) Journal of Anthropological Research 165,188, and Martin Müller, 'In Search of the Global East: Thinking between North and South' (2020) 25(3) Geopolitics 734.

[4] T. A. Aleinikoff, 'State-Centered Refugee Law: From Resettlement to Containment' (1992) 14 MICH. J. INT'L L. 120.

[5] B. S. Chimni, 'The Geopolitics of Refugee Studies: A View from the South' (1998) 11 Journal of Refugee Studies 350.

[6] Gill Loescher, *The UNHCR and World Politics: a Perilous Path* (Oxford University Press 2001) 26

[7] Loescher (n 6) 27.

refugees was boosted by the extreme hostility and suspicion of most League of Nations members towards the Soviet Union, which was not a member.[8]

During the inter-war period in Europe, the refugee problem increased significantly. To uphold the protection of refugees, the refugee regime created its first legal norms in the 1933 Convention,[9] which granted refugees basic rights such as the right to marriage, to education, and to association, as well as the most fundamental principle of non-*refoulement* and the interdiction of expulsions. However, the 1933 Convention was limited only to Russian, Armenian, and assimilated refugees.

As a result of the exodus of Jewish refugees from Germany, the 1938 Convention was adopted.[10] Economic depression at the time, along with the weakening of the League of Nations, led to Europe hesitating in solving the issue of Jewish refugees. Refugee problems became exacerbated after the outbreak of World War Two; an unprecedented population movement was taking place in Europe, reaching tens of millions of people, including millions of Germans.[11]

Refugee problems are not reserved to Europe, and have become a global concern, such as when the Korea crisis erupted in 1950, and with refugee crises at other times involving South Asia and Palestine.[12] Despite this phenomenon, Both the UNRRA[13] and the IRO[14] focused only on managing refugees in Europe. These facts

---

[8] Loescher (n 6) 27, 28.

[9] A definition of refugee is based on the 12 May arrangement regarding the issue of identity certificates to Russian and Armenian refugees, which stipulated: a Russian refugee is any person from Russia who does not enjoy the protection of the government of the Union of Soviet Socialist Republics, and who has not acquired any other nationality. Similarly, an Armenian refugee is any person of Armenian origin, formerly a subject of the Ottoman Empire, and who has not acquired any other nationality. League of Nations, '*Convention of 28 October, 1933 Relating to the International Status of Refugees*' Treaty Series Vol. CLIX No. 3663 <http://www.refworld.org/docid/3dd8cf374.html> accessed 8 July 2020

[10] This Convention was named by the League of Nations the *Convention Concerning the Status of Refugees Coming from Germany*, 10 February 1938, League of Nations Treaty Series, Vol. CXCII, No. 4461, 59 <http://www.refworld.org/docid/3dd8d12a4.html> accessed 10 July 2020.

[11] Peter Gatrell, *The Making of the Modern Refugee* (Oxford University Press 2015) 52, 81.

[12] Gatrell (n 11) 119,196.

[13] The United Nations Relief and Rehabilitation Agency (UNRRA) was established in 1943 and consisted of 44 participating states, including western powers (the United States and its allies). Its main goal was to return refugees to their respective home countries. However, this goal was criticised by the United States (US), which contributed 70 percent of UNRRA funds, as the US sought resettlement as the best solution for refugees. The US view was opposed by the Soviet Union, which preferred repatriation. Jessica Reinisch, 'Internationalism in Relief: The Birth (and Death) of UNRRA' (2011) 210 Past and Present 258, 289; Loescher (n 6) 36; and Gatrell (n 11) 97.

[14] The quarrel between the US and the USSR about UNRRA became one of the dominant issues in the first session of the UN General Assembly that created the International Refugee Organization (IRO) in 1946. The founding IRO statute recognised refugees as individuals rather than as a group (e.g., German refugees and Assyrian refugees). Other

reveal the Eurocentric nature of the international refugee regime, as it cared only about the fate of refugees in Europe. [15]

Under the UN, international refugee regime is equipped with certain norms and institutions. The norms are mainly embodied in the Refugee Convention and its 1967 protocol.[16] One year earlier, the United Nations High Commissioner for Refugees (UNHCR)-the successor to the IRO- was established by a UN General Assembly resolution.[17] Knowing the nature of the Refugee Convention, it would be significantly useful to recall its drafting process.

The Refugee Convention was not intended to be universal, for several reasons. Firstly, it was drafted mostly by Global North countries, with a few Global South countries such as India and Pakistan. At the time, only a small number of Global South countries took part in the process, as the majority of them were still under colonisation.[18] In addition, the Soviet Union and eastern European countries denounced the drafting process of refugee status arrangements because they considered refugees as traitors not worthy of protection.[19] Therefore, the Refugee Convention from the beginning lacked universality. Secondly, the Refugee

---

points of compromise were agreed, such as the adoption of repatriation and reestablishment in countries of temporary residences, and resettlement. United Nations Treaty Collection, 'Constitution of the IRO', <https://treaties.un.org/doc/Treaties/1948/08/19480820%2007-01%20AM/Ch_V_1p.pdf> accessed 10 July 2020.

[15] Laura Barnett, 'Global Governance and the Evolution of the International Refugee Regime' (2002) 14 International Journal of Refugee Law 238.

[16] In addition to the Refugee Convention, other norms have been put in place: the resolution of United Nations General Assembly (as soft norms), the UNHCR Statute and Executive Committee (ExCom). ExCom meets in Geneva annually to review and approve the agency's programmes and budget, to advise on international protection, and to discuss a range of other issues with UNHCR and intergovernmental and non-governmental partners. In this forum, developed countries, as the main donors to UNHCR, would exert their influence on how the organisation works. UNHCR, 'Executive Committee' <http://www.unhcr.org/uk/executive-committee.html> accessed 20 July 2020.

[17] The United Nations High Commissioner for Refugees (UNHCR) was finally established by UN General Assembly Resolution of No 319 (IV) 0f 3 December 1949. Due to the differences between UN state members, the resolution limited the office's mandate to only three years. This organisation is non-political in character, and was equipped by statute with two principal functions: to provide international protection to refugees and, in cooperation with governments, to seek durable solutions for refugees. This Statute is an annex of General Assembly Resolution 428 (v) of 14 December 1949. UNHCR, 'The Statute of the UNHCR', <https://www.unhcr.org/3b66c39e1.pdf> accessed 14 July 2020.

[18] In 1950, the UN consisted of only 60 member states (193 states by 2011), many of which were European, with some Latin American countries. United Nations, 'Growth in United Nations membership: 1945-present' <https://www.un.org/en/sections/member-states/growth-united-nations-membership-1945-present/index.html> accessed 21 October 2020.

[19] This was expressed by Mr Soldatov, UN delegate from the USSR: "Someone who collaborated in any way with the enemies should not be regarded as refugee or enjoy the protection of the UN." James C Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law' (1990) 31 Harvard International Law Journal 129.

Convention is insulated with western values, as it aims to facilitate international movement for a person searching for personal freedom.[20] Thirdly, it can clearly be seen from the scope of the Refugee Convention that it was intended to cover refugee matters during a particular time, especially in Europe "or elsewhere".[21] Some signatories were worried that refugees from Global South countries would flood Europe asking for recognition.[22]

The above explanation remains the substantial ground for today's position, where few Asian states are party to the Refugee Convention.[23] Davies has explained well that the drafting process of the Refugee Convention remains the psychological and political reason behind the Asian countries' refusal to adhere to it.[24] She further explains that even though India and Pakistan were present during the drafting, they were marginalised because their bid to include their refugees as refugees defined by the Refugee Convention was not accepted. [25]

The international refugee regime was subsequently globalised by the adoption of the 1967 Protocol Relating to the Status of Refugees. [26] This protocol

---

[20]James C Hathaway, 'The Evolution of Refugee Status in International Law: 1920-1950' (1984) 33 Int'l & Comp LQ 348 and Irial Glynn, 'The Genesis and Development of Article 1 of the 1951 Refugee Convention' (2011) 25 (1) Journal of Refugee Studies 134.

[21] See Article 1.B (1) of the Refuge Convention: For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either (a) "events occurring in Europe before 1 January 1951"; or (b) "events occurring in Europe or elsewhere before 1 January 1951"; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convent. Article 1.B. (b) extent the scope of the Convention to refugees not only coming from Europe but also elsewhere, however it is state's discretion to decide whether they are bound to tackle refugee from outside of Europe. UNHCR, 'Convention and Protocol Relating to the Status of Refugees' <https://www.unhcr.org/uk/3b66c2aa10> accessed 5 July 2020

[22] Sara Davies, 'Asian rejection' (2006) 52(4) Australian Journal of Politics and History 562 and Marina Sharpe, 'The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions' (2012) 58:1 McGill LJ 95.

[23] From 193 states in the world, of which 145 countries are state parties to the Refugee Convention. Most non-signatory states are from Asia and the Middle East. UNHCR,' States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html> accessed 15 July 2019

[24] Davies (n 22).

[25] Davies (n 22).

[26] Article I (2) stipulates that for the purposes of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words "As a result of events occurring before 1 January 1951 and..." and the words "...as a result of such events", in article 1 A (2) were omitted. Whilst Article 1 (3) stipulates that the present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article I B (I) (a) of the Convention, shall, unless extended under article I B (2) thereof, apply also under the present Protocol. United Nations Human Rights Office of the High Commissioner,' Protocol relating to the Status of Refugees'

lifted the geographical and temporal restrictions of the Refugee Convention, thus universalising UNHCR's mandate.[27] In the course of its work, UNHCR has been challenged by, for example, the protracted refugee situation in Global South countries, the lack of commitment of Global North countries to host refugees, and the growing number of refugees in the world (this will be discussed further in Chapter 2).

Recent large-scale movement problems have involved the influx of millions of Syrian refugees to Europe in 2015, and thousands of Rohingya refugees to Southeast Asian countries in 2015.[28] Some take the view that the international regime was not created to answer the problems of large-scale refugee movements or international solidarity.[29] In response to the large-scale influx of refugees, the New York Declaration for Refugees and Migrants was adopted in 2017.[30] Some expressed their disappointment that this instrument is not legally binding[31]. However, following the adoption, the Global Compact on Refugees (GCR) and the Comprehensive Refugee Response Framework (CRRF).[32]These frameworks are designed to overcome crucial issues in refugee protection, such as large-scale influx, and durable solutions for refugees, including refugees in protracted situations (further discussion will be presented in Chapter 2).

2. *Restrictive Measures: Protection Challenges*

States are the main protectors of refugees as well as the holders of sovereignty of their territories. Placing sovereignty above humanitarian considerations, many states are unable and unwilling to offer protection towards asylum seekers and refugees entering their states, especially since the 1980s. As national and international conflicts escalated in Global South countries in that

<https://www.ohchr.org/Documents/ProfessionalInterest/protocolrefugees.pdf> accessed 10 July 2020.

[27] Arthur C Helton, 'Forced Displacement, Humanitarian Intervention, and Sovereignty' (2000) 20 SAIS Review of International Affairs 61.

[28] UNHCR Turkey, 'Refugees and Asylum Seekers in Turkey' <https://www.unhcr.org/tr/en/refugees-and-asylum-seekers-in-turkey> accessed 9 July 2019, and Susan Kneebone, 'Comparative Regional Protection Frameworks for Refugees: Norms and Norm entrepreneurs' (2016) 20 (2) The International Journal of Human Rights 153.

[29] Guy S Goodwin-Gill, 'Editorial: "The International Protection of Refugees: What Future?" (2000) 12 (2) International Journal of Refugee Law 1.

[30] UNHCR, 'The New York Declaration for Refugees and Migrants", <http://www.unhcr.org/584689257.pdf> accessed 30 October 2017.

[31] Colin Harvey, 'Sharing Responsibility for a World in Crisis' (Oxford Human Rights Hub, 10 January 2017) <http://ohrh.law.ox.ac.uk/sharing-responsibility-for-a-world-in-crisis/> accessed 25 October 2017.

[32] UNHCR, 'Global Compact on Refugees'< https://www.unhcr.org/5c658aed4.pdf> accessed 24 October 2018.

decade, unprecedented millions of asylum seekers and refugees tried to reach Global North countries.[33] Having been prevented from entering the territories, only small numbers of refugees succeeded in entering Global North countries, with most of them ending up staying in neighbouring countries as protracted refugees.[34]

Global North countries perceived refugees trying to reach their countries as fake refugees seeking economic betterment rather than to find a safe haven.[35] These refugees were judged differently from those they encountered fleeing persecution under a communist regime, or refugees of the inter-war period- what Chimni describes as the "myth of difference."[36] This leads to the implementation of restrictive measures to deter or to slow refugees entering from Global South territories.

The necessity of embracing restrictive policies is based mainly on economic considerations, because of concerns about expenses states should bear to host refugees permanently.[37] The cost of a state asylum system is very high, "equal or exceeding the entire annual budget of UNHCR". Justifying such a huge level of expenditure can be a political challenge.[38] In addition to economic considerations, cultural and security factors are reasons behind this policy, especially after the 9/11 incident. [39] The Global North countries likely regard refugees as a burden, and a threat to their internal security.[40]

Restrictive policies have been implemented in various ways in Global North countries from the 1980s until recently. Two types of restrictive measures are being implemented: the first is containment, which aims to hinder people leaving their countries of origin and arriving at Global North countries' borders (e.g., visa

---

[33] Chimni (n 5).
[34] Protracted refugee situation (UNHCR 2004): one in which refugees find themselves in a long-standing and intractable state of limbo. Their lives may not be at risk but their basic rights and essential economic, social and psychological needs remain unfulfilled after years of exile. In 2004, 64% (5.7million) of total global refugees are in a protracted refugee situation, compared to 48% (7.9 million) in 1993. See: James Milner, 'Towards Solutions for Protracted Refugee Situations: The Role of Resettlement', Annual Tripartite Consultations on Resettlements (29 June 2007) <: http://www.unhcr.org/46934d4f2.pdf> accessed 1 August 2017.
[35] Aleinikoff (n 4).
[36] Chimni (n 5).
[37] Gerry Van Kessel, 'Global Migration and Asylum' (2001) 10(13) Force Migration Review 10.
[38] Van Kessel (n 37).
[39] Michelle Foster and Jason Pobjoy, 'a Failed Case of Legal Exceptionalism? Refugee Status Determination in Australia's "Excised" Territory' (2011) 23(4) International Journal of Refugee Law 583.
[40] Alexander Betts and Paul Collier, *Refuge: Transforming a Broken Refugee System* (Penguin Random House 2017) 8.

requirements, carrier sanctions).[41] Most developed countries impose a visa requirement enforced by carrier sanctions on the citizens of a refugee-producing state. [42]

Alongside containment are deterrence measures, a mixture of restrictive and punitive measures taken in the country of asylum.[43] These practices include detention, withdrawal of welfare benefits, and "protection elsewhere" schemes -a strategy where asylum seekers or refugees who have entered a state territory are transferred to other states in order to get the asylum proceeded, and to be resettled in the third countries.[44] Another form of deterrence measure that violates the Refugee Convention is to turn around or tow back vessels carrying irregular migrants, many of them asylum seekers, to the place where their vessels departed from.[45]

In principle, the Refugee Convention does not prohibit protection elsewhere schemes as it can potentially open a fair allocation of protection responsibility[46] Unfortunately, many protection elsewhere policies currently in operation undermine or do not comply with the Refugee Convention, as these policies redirect refugees from the country in which they wished to stay, and transfers them to less developed countries to get their status processed or to resettle them. [47] This represents a significant shift in asylum policy, from a principle-based approach to one of political bargaining created through agreement between states.[48]

Both protection elsewhere schemes and deterrence at sea convey an implied protection of asylum seekers and the refugees. In the context of the Australia-Papua New Guinea agreement, for example, having arrived by boat in Australia, many

---

[41] Lisa Hassan, 'Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States' (2000) 13(2) Journal of Refugee Studies 184.
[42] The restrictive measures are also conducted through denial of access and interception. See: James C. Hathaway and Michelle Foster, *The Law of Refugee Status* (First published 1991, Cambridge University Press 2014) 28, and Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (first published 1983, Oxford University Press 2007) 369, 380.
[43]Hassan (n 41).
[44] Michelle Foster, 'Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in another State' (2007) 28 Michigan Journal of International Law 223.
[45]Andreas Schloenhardt and Colin Craig, 'Turning Back the Boats: Australia's Interdiction of Irregular Migrants at Sea' (2015) 27 Int'l J Refugee L 536, Violeta Moreno-Lax, 'The Interdiction of Asylum Seekers at Sea Law and (mal)practice in Europe and Australia': https://www.unhcr.org/5a0574597.pdf accessed 10 November 2019 and The Jakarta Post, 'Australian Navy Drives Boat People into Indonesian Waters', *Jakarta Post* (Jakarta), 6 January 2014. <https://www.thejakartapost.com/news/2014/01/06/australia-navy-drives-boat-people-indonesian-waters.html>
[46] Foster (n 44).
[47] Kirsten McConnachie, 'Refuge Protection and the Art of the Deal' (2017) (9) Journal Human Rights Practice 190 and Foster (n 44).
[48] For example, agreement between Italy and Libya since 2004, and between Australia and Papua New Guinea in 2012.McConnachie (n 47) 190,191.

asylum seekers have their Refugee Status Determination (RSD) processed on Manus Island in New Guinea.[49] Further, they are detained and deprived of basic rights such as rights to work and to education.[50] After living in uncertainty for years, many refugees on Manus Island have finally been resettled in the US, although some refugees continue to stay in New Guinea without certainty.[51] In exchange, Australia resettled refugees from Central America.[52] Similarly, under the "incentivised agreement" between Indonesia and Australia, many refugees whose boats were prevented from reaching Australia ended up held for many years in detention centres in Indonesia, where these asylum seekers are construed as illegal immigrants.[53]

Already overwhelmed with the presence of protracted refugees who have failed to reach Global North countries, Global South countries have also prevented or decelerated the onward movement of refugees to their territories.[54] One common approach is to conduct navy patrols, preventing boats loaded with irregular migrants -many of them asylum seekers- to enter the territories.[55] Global South countries also impose stricter regulations governing the issuing of visas, with concurrently tighter immigration controls at the airports.[56]

---

[49] The governments of Australia and PNG entered into agreement in 2013 on the transfer of asylum seekers from Australia to PNG and to resettle them to attain refugee status in PNG. UNHCR, Papua New Guinea, <file://userfs/ff618/w2k/Downloads/UNHCR_UPR25_PNG_E_Main.pdf> accessed 10 October 2020.

[50] Amnesty International Report, 'Australia: this is Breaking People, Human rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea' (11 December 2013) <https://www.amnesty.org/en/documents/ASA12/002/2013/en/> accessed 10 October 2020.

[51] Shaminda Kanapathi, 'Refugees in PNG "limbo": "How much longer can our will survive?" *RNZ Co* (New Zealand, 22 November 2019) <https://www.rnz.co.nz/international/pacific-news/403886/refugees-in-png-limbo-how-much-longer-can-our-will-survive> accessed 11 October 2020.

[52] About 702 refugees from Manus Island have been resettled in the US. Andrew & Renata Kaldor Centre for International Refugee Law, 'The Australia-United States Refugee Resettlement Deal' Kaldo Centre for International Refugee Law (Sydney, March 2020) <https://www.kaldorcentre.unsw.edu.au/sites/default/files/Factsheet_Australia-US%20resettlement%20deal_24%20March%202020...pdf > accessed 20 October 2020.

[53] Indonesian authorities can detain asylum seekers or refugees for ten years without the asylum seekers or refugees being able to challenge the decision. Fitria, 'Perlindungan Hukum bagi Pengungsi di Negara Ketiga: Praktek Indonesia' ('Legal Protection of the Refugees in the Third Country: Indonesia Practice') (2015) 2(1) Padjajaran Jurnal; Ilmu Hukum and Susan Kneebone, 'Australia as a Powerbroker on Refugee Protection in Southeast Asia: The Relationship with Indonesia' (2017) 33(1) Refuge 29.

[54] Madeline Gleeson, 'Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman Sea Crisis' (2017) 1 Antropologi Indonesia 6.

[55] Penelope Mathew and Tristan Harley, 'Refugee Protection and Regional Cooperation in Southeast Asia: A Fieldwork Report' (March, 2014) <https://openresearch-repository.anu.edu.au/bitstream/1885/11662/1/Mathew%20%26%20Harley%20Refugee%20protection%202014.pdf> accessed 20 October 2020.

[56] Chris Lewa, 'Asia's New Boat People' (2008) 1(30) Forced Migration Review 40.

Despite hostile states' responses towards refugees, I argue that refugees can still, to some extent, receive their fundamental rights, protected by the non-state actors, mainly by local people. Presenting a case study of the Rohingya refugee crisis, this thesis highlights the state's limited offers of protection for refugees, while at the same time revealing the roles of fishermen and other local people in Aceh in extending hospitality towards the Rohingya refugees stranded in the Andaman Sea. Therefore, this case study is distinct from the majority of South East Asian Countries and South Asian Countries during the occurrence of the Rohingya refugee crisis, where their responses counted on the help of UNHCR and other international agencies and CSOs

3. Research Questions

Against the backdrop of the international refugee regime and limited protection offered by the states, the case study of the Rohingya refugee crisis is examined from two aspects. First, I argue that rescuing the Rohingya refugees is based not only on humanity but on other obligatory accounts. The recues have been extended consistently (successively in 2009, 2011, 2012, 2013, 2015, 2018 and 2020).[57] Some anecdotal accounts of rescue and protection efforts by the Acehnese link them to *adat* law. The need to recognise the presence of non-state-made law will lead to the recognition of different actors pursuing norms, and the nature of their interplay.[58] Secondly, I argue that location-in this regard, Aceh- contributes to the response of the actors due to the historical and socio-political context. In contrast to most provinces in Indonesia, *adat* and sharia law have a special place in Acehnese life. Therefore, this study will link refugee protection to legal pluralism.

In facing the reality of the problems of refugee protection in the world, much refugee scholarship has focused on state compliance with the principles and norms set out in the Refugee Convention and other human rights instruments to protect

---

[57] Hotli Simanjuntak, 'Hundreds of Myanmarese Rohingya Sheltered in Aceh Sports Hall' The Jakarta Post (Jakarta 12 May 2015) <https://www.thejakartapost.com/news/2015/05/12/hundreds-myanmarese-rohingya-sheltered-aceh-sports-hall.html> accessed 20 October 2020; Krithika Varagur, '"They are our brothers": Rohingya refugees find rare welcome in Aceh' (*Guardian*, 25 May 2018) <https://www.theguardian.com/world/2018/may/25/they-are-our-brothers-rohingya-refugees-find-rare-welcome-in-aceh> accessed 20 October 2020; and Lisa Schlein, 'Nightmare Ends for Hundreds of Rohingya Refugees Stranded at Sea'(Voanews, 8 September 2020) <https://www.voanews.com/east-asia-pacific/nightmare-ends-hundreds-rohingya-refugees-stranded-sea> accessed 10 September 2020.

[58] Benoît Frydman and William Twining, 'A Symposium on Global Law, Legal Pluralism and Legal Indicators' (2015) 47 (1) The Journal of Legal Pluralism and Unofficial Law 1.

refugees; these studies have included states non-signatory to the Refugee convention.[59] Similarly, as the refugee situation has become a component of regional or global issues, scholars have sought ways to manage refugees through creating binding regional mechanisms or norms to improve states' commitment.[60] These studies emphasise "top-down protection", where recommended protection emanates from states or other legitimate bodies through enforcing legal instruments.

Recent studies have connected the issue of refugee protection to legal pluralism. Refugee hosting countries could still, to some extent, work out their refugee matters in the camps or shelters. In addition, these studies reveal that refugees can manage their lives among themselves in the camps. The Karen refugee community, for example, has been able to maintain its peaceful life and avoid conflict in its camps in Thailand distinctly from regulations put in place by the Thai Government.[61]

Syrian refugees in Jordan, dissatisfied with the application of Jordanian law in the camps, have used the presence of influential *imams* (religious leaders) to manage their own legal problems through creating an alternative dispute mechanism.[62] Without overlooking challenges faced in the camps, these examples reveal the role of values and norms, cultural and religious, in managing a vibrant and harmonious life for refugees in the camps.[63] These two studies highlight the presence of legal pluralism, with state regulation and international norms operating in the field while cultural and religious norms are embedded in the daily lives of refugees in the camps.

With regard to the research of protection "from below", Nah examines how local civil society actors in different locales in Asia and the Pacific interchange with one another under the Asian Pacific Refugee Rights Network, under which local civil society actors participate in norms entrepreneurship on refugee protection.[64]

---

[59] Savitri Taylor and Brynna Rafferty-Brown, 'Difficult Journeys: Accessing Refugee Protection in Indonesia' (2010) 36 Monash University Law Review 138, 161; and Amy Nethery and Carly Gordyn, Australia-Indonesia Cooperation on Asylum-Seekers: A Case of 'Incentivised Policy Transfer' (2014) 68(2) Australian Journal of International Affairs 177.

[60] Kneebone (n 53)153,167 and Alexander Bett and Jean-Francois Duriex, Convention Plus as a Norm-Setting Exercise (2007) 20(3) Journal of Refugee Studies 509.

[61] Kirsten McConnachie, *Governing Refugees: Justice, Order and Legal Pluralism* (Routledge 2014) 58, 76.

[62] George Riach and Zoe James, 'Strengthening the Rule of Law on the Margins: Experiences from Za'atari Refugee Camp, Jordan' 2016 20(4) The International Journal of Human Rights 549.

[63] Anna Lise Purkey, Book Review 2014 30(2) Refuge 103.

[64] Alice M. Nah, 'Networks and norm entrepreneurship amongst local civil society actors: advancing refugee protection in the Asia Pacific region' (2016) 20(2) The International Journal of Human Rights' 240.

Likewise, In the context of non-signatory states of South East Asia, where most states constantly reject the accession of the Refugee Convention, Jones argues the necessity of the development of local standards (laws of asylum) and capacities that ensure that refugees in all situations are afforded their rights.[65]

In the same vein, as mentioned previously, this study examines how far the law and legal ideas enter into people's understanding and attitude, informing their response to the Rohingya refugee crisis in Aceh. The meaning of law, in this regard, is not confined to international and state laws, but includes non-state-made law (e.g. *adat* law). Therefore, this thesis also asks what people experience as law.[66] , This study focuses further on the norms and regulations that the actors follow in managing the Rohingya refugees during the crisis, including in the shelters. These actors are from different backgrounds, ranging from fishermen, local inhabitants, senior office of local government and central government to international agencies and Civil Society Organisation (CSO) staffs.

Using the case study of the Rohingya in Aceh in 2015, this research seeks to answer the following primary question: How was local customary (*adat*) law employed to protect refugees?

The answer to the primary question will be developed through the following subsidiary questions:

(1) What was happening in the Rohingya refugee crisis that affected Aceh in 2015?
(2) What are the ideas of law of the actors involved in response to the Rohingya refugee crisis in Aceh, and what do the actors experience as law?
(3) How did these ideas about the law inform/affect their responses?
(4) How do international refugee law and domestic law (including local customary law) influence these ideas?

C. Research Design

1. Methodology

In order to answer the questions above, I use a socio-legal research approach, in which the analysis of law is closely linked to the analysis of the social situations or phenomena to which the law applies.[67] For that reason, this research explores the

---

[65] Martin Jones, 'Moving Beyond Protection Space: Developing a Law of Asylum in South East Asia' in S. Kneebone and others (eds.), *Refugee Protection and the Role of Law: Conflicting Identities* (Routledge 2014) 251, 270.
[66] Marc Hertogh, 'A "European" Conception of Legal Consciousness: Rediscovering Eugen Ehrlich' (2004) 31 Journal of Law and Society 457.
[67] Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M. Kritzer (eds), *Qualitative Approaches to Empirical Legal Research* (Oxford University Press 2010) 927.

response of the actors to the Rohingya refugee crisis, and how they worked together during the crisis. Therefore, this research attempts to understand the extent to which the law and legal ideas entered into people's understanding, attitude, and activities in response to the Rohingya refugee crisis.[68] As people's lives are not shaped only by state law, the scope of the research has been widened to non-state-made law (e.g. *Adat* law). Therefore, as mentioned previously, this research also investigates what people experience as law.[69]

This research takes a qualitative approach in its aim of understanding the meaning of the social phenomena or situation regarding legal ideas in people's beliefs, attitudes, and activities.[70] For this reason, I used a mixed method of case study, interviews, and documentary analysis.

The focus of this research is the Rohingya refugee crisis that affected Aceh in 2015. There are at least four reasons for this choice of case study. First, compared to previous incidents that affected Aceh, a large number of the Rohingya -around 2,000- were stranded in Aceh in 2015. This poses a question of how these refugees were managed. Second, it was the first time in Aceh (and the second time in Indonesia after receiving Vietnamese refugees on Galang Island in 1990s) that many actors from different backgrounds worked together in handling refugees, who were living in four shelters in North Aceh, East Aceh, and two shelters in the city of Langsa. Third, the fact that fishermen rescued the Rohingya several times gives rise to questions about what motivated their actions. Fourth, Aceh, as the site of the research, has its own characteristics compared to other provinces in Indonesia; its historical and political background have, to some extent, allowed the region to implement sharia.

In order to get a genuine perspective on, or insight into, the event, and also to capture the ideas of law from the actors who rescued and directly helped the Rohingya, interviews were conducted. Two types of interviews took place: semi-structured interviews and focus groups. In addition, this research examined official documents produced by local governments and the Directorate General of Immigration. These documents could be accessed only through the institutions, and could not be found from online sources.

---

[68] Simon Halliday and Patrick Schmidt, *Conducting Law and Society Research: Reflections on Methods and Practices* (Cambridge University Press: 2009) 214 and Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998) 21.
[69] Hertogh (n 66) 457,459.
[70] Webley (n 67) 927,928.

2. Data Collection

The data were collected mainly by using semi-structured interviews and focus groups. These two types of data collection allowed me to obtain a depth of understanding of the context of my research. Semi-structured interviews leave space for participants to offer new meanings to the study focus,[71] while focus groups are acknowledged in the methodological literature as an essential element in understanding social constructions of reality.[72] The data gathered from semi-structured interviews were also tested, clarified, and informed through feedback from focus groups.

a) Semi-structured Interviews

Most of the 35 participants who took part in interviews were invited due to their experience during the Rohingya refugee crisis; only two of them were interviewed on their expertise in *adat* law in Aceh. The participants are from a wide range of backgrounds, as seen in the table below:

Table. 1
Semi-Structured Interviewees

No	Participants	Number of interviewees
1.	Fishermen	3
2.	Local inhabitants	2
3.	Head of Acehnese customary law institution	1
4.	International organisation officials/representation	2
5.	Senior central government staff members	3
6.	Senior local government staff members	3
7.	(International, national and local) CSOs	15
8.	Experts on the customary law of Aceh	2
9.	Free of Aceh movement member	1
10.	Panglima Laot/traditional marine leaders	2
		35 people

[71] Anne Galletta, *Mastering the Semi-Structured Interview and Beyond: From Research Design to Analysis and Publication* (New York University Press 2013) 24.
[72] Uwe Flick, *An Introduction to Qualitative Research* (first edition 1998, Sage Publications 2014) 243.

The interviews took place from 14 July 2018 to 17 September 2018 (about two months), either in Jakarta or Aceh, while all the focus groups were conducted in Aceh. There were three locations in Aceh that were mainly affected by the Rohingya refugee crisis in Aceh: North Aceh, Langsa and East Aceh. Due to difficulty in interviewing senior staffs of East Aceh Local government and some other key actors, the field work[73] was mainly focused in two locations, in North Aceh and Langsa. The interview process was very exhaustive. In Aceh, for example, where I spent nearly four weeks, the interview and focus group processes were very busy and dense. At one point I interviewed three people in a day.

Before discussing the interviews and the FG processes, I acknowledge that my data set is not particularly large (35 interviewees and 26 FG participants). Therefore, the findings do not definitely reflect the ideas of all or majority of the actors who took part in the rescue and providing aid. Before starting the fieldwork, I expected to interview as many fishermen and local inhabitants as possible who had experience of rescuing and providing aid to the refugees. Due to some obstacles I faced in arranging interviews, I could invite only a small number of fishermen and local inhabitants (five interviewees and 12 participants in two focus groups). Despite the limited numbers in the data set, I strove to choose interviewees and focus group participants who played key roles in rescuing and providing aid to the Rohingyas, and I sought to interview people from various backgrounds. In the course of the thesis discussion, it emerges that the respondents represent multiple identities and motivations (mainly in Chapters 6 and 7).

Initially, I interviewed a handful of influential CSO staff members in Jakarta. I did this at the beginning of my fieldwork so as to understand the key issues of my research topic. In addition, through the NGOs' networks, I gained access to some of the key people in Aceh. Finally, I went back to Jakarta to interview government officials and an international organisation's elite in order to obtain official perspectives on the issues, and to get some clarification on, and confirmation of, the data already collected.

The most challenging task was to interview senior staffs, both at central and local levels. I needed to ask their staff several times to ensure that I would get my interview. Some were willing to be interviewed, while the rest delegated their

[73] The fieldwork was funded by Indonesian Government and the Economic and Social Research Council (ESRC) UK.

subordinates. As the interviewees' time depended on their availability, the decision to carry out an interview could occur suddenly. Once, I was even called to interview a senior Ministry staff member with only one hour's notice. Fortunately, I was staying at home near the Ministry, so I could accept the interviewee's invitation. A similar experience happened in Aceh; I was called to interview a senior local government staff member while I was in a different city. I had to rent a car to ensure I would arrive on time.

In contrast, most staffs and volunteers of CSOs were accessible, so in most cases it was not difficult to set up interviews with them. Through a snowballing effect, I could obtain personal contact information, which made it easier for me to contact interviewees directly. Compared to other actors, the proportion of interviewees from CSOs was the highest. However, since each CSO interviewee fulfilled a different role, each of their viewpoints was valuable to me.

Regarding the fishermen, as has been explained previously, I had planned to interview as many fishermen and local inhabitants as I could. Therefore, I spent four days in the house of one of the Panglima laots in North Aceh, a location close to the incident. I also spent two days and a night in Peurlak. However, I managed to interview only three fishermen and two local inhabitants and 12 participants in two focus groups in the two areas. There were some difficulties faced during fieldwork. First, with regard to interviewing the fishermen, they spend an average of five days sailing, so I was not able to meet and interview some of them. Secondly, some fishermen had moved to other villages. However, I had the privilege of conducting FGs with fishermen and local inhabitants. An FG in North Aceh, for example, was attended by the fishermen who first rescued the Rohingya offshore. In addition, one fisherman from North Aceh could not speak Indonesian, so I needed a local to act as an interpreter from Acehnese to the Indonesian language.

In relation to interviewing senior staff members of IOM and UNHCR to represent the international refugee regime, I could interview only a senior staff member of IOM (as described in Table 1). I have done my best to contact the UNHCR senior staff member and its staff members in a few ways. First, as a common procedure, I emailed UNHCR via the chairman of UNHCR's Indonesian representative, copying a UNHCR official into the email. Second, I used the personal mobile phone number I had obtained for a UNHCR staff who had worked on the ground during the Rohingya refugee crisis. Third, I personally asked one of my friends who had worked in the field during the event. The second and third ways were chosen, as I had not received any official response from UNHCR after one month of contacting them.

Unfortunately, none of these efforts was successful. My friend declined my request, as she was no longer working for UNHCR locally, but had been promoted to a UNHCR branch in another country. Similarly, two staff members I contacted also refused; the first said that he was no longer working for UNHCR, and the other said I should contact UNHCR officially. After waiting for more than a month, I received an email from an external staff member saying that she would do the interview. Unfortunately, although I responded promptly, and provided some of the paperwork she needed, she did not respond to my last email.

UNHCR was one of the key organisations on the ground, so, in order to understand its role and perspective, I used the organisation's own reports on the Rohingya refugee crisis. In addition, one question I asked interviewees related to UNHCR's role during the incident. I also contacted by email a senior US Customs and Border Protection official dealing with South East Asian countries, in order to get insight into the resettlement process for Rohingya refugees to the US. Unfortunately, the official refused to be interviewed, as none of the staff was in place in 2015.

Most of the semi-structured interviews lasted from 60 to 90 minutes. Apart from the elite central government respondents and the fishermen, many interviewees from an Acehnese background were very keen to speak a lot, making their interviews lasted from 90 to 120 minutes-much longer than expected. This is due to the dominance of oral culture in Aceh.[74] Acehnese people like to spend hours discussing subjects from their daily experience to politics, especially in local cafes across Aceh. Therefore, it was not surprising that when I asked for an interview, many of them requested to carry it out at a café.

b) Focus Groups

Table. 2
Focus Group Participants

No	Participants	Number of participants
1	Focus Group I (North Aceh)	7 (1 local government staff member, 1 *Panglima Laot*, 1 local inhabitant, 1 national humanitarian agency official, and 3 CSO members)

[74] John R. Bowen, 'Narrative Form and Political Incorporation: Changing Uses of History in Aceh' (1989) 4(31) Indonesia Comparative Studies in Society and History 671.

2.	Focus Group II (North Aceh)	9 (3 fishermen, 6 local inhabitants)
3.	Focus Group III (City of Langsa)	7 (a local government staff member, one advisor of local government, 3 CSO members, and 1 national humanitarian agency official
4.	Focus group IV (City of Peurlak)	1 *Panglima Laot* and 2 fishermen

Each focus group lasted approximately three hours. These focus groups were held in three locations: Focus group I and focus group II were held in North Aceh, focus group III was held in the City of Langsa, and focus group IV was held in the city of Peurlak. Groups I and III met in a seminar room in a hotel and at a restaurant. Groups II and IV met in two participants' houses.

Many participants of focus groups I and III (as shown in the table above) were chosen based on the recommendation of key persons that I had previously interviewed. These participants were contacted directly by the key persons. In addition, some participants in both focus groups were invited via formal invitation through a postal letter and email I sent one month and two weeks before. Interestingly, even though the focus groups were held three years after the crisis, the participants of focus group I seemed familiar and close to one another, as they had constantly kept in contact through WhatsApp groups they created during the crisis. One participant of focus group I highlighted how all members of the WhatsApp group had worked in a North Aceh shelter. Similarly, participants of focus group III had also been actively engaged in the shelters.

Apart from two fishermen I had contacted before focus groups II and IV took place, participants of focus group II and IV were directly chosen in the field, as they were fishermen and their neighbours who lived near the arrival point of the Rohingya refugees. Focus groups II and IV were conducted in a more informal way at fishermen's houses.

c) Documentary Sources

I included documents from local governments - reports on the refugee crisis and minutes of meetings attended by various actors, including senior local and central government figures. In addition, I received the North Utara Regent's and the Mayor of Langsa's regulations on the taskforces. These are documents that could not be sourced online. I also obtained documents from the Ministry of Immigration

related to the policy on asylum seekers and refugees. The data from such documentary sources complements the data from interviewees. In addition, I used online material, such as reports from UNHCR, IOM, and international non-governmental organisations such as Amnesty International. I searched for documentary data throughout the research process.

3. Analysing the Data

After the interview process, I proceeded with the transcriptions. Most interviews were conducted in the Indonesian language (Bahasa Indonesia), and only two were conducted in English. It took at least six months to translate the interviews from Indonesian to English. I used a flexible method, thematic analysis, to examine the data, and this was carried out in several steps.

The choosing of themes was guided by the research questions and developed through interview questions. For example, one research question concerns the ideas of law of the actors involved in rescuing and helping the Rohingya. Therefore, one of the themes is "the actors' perception of law". Similarly, I posed an interview question about the accounts that drive the interviewees in helping the Rohingya, and, as a result, I created the theme "the accounts of helping the Rohingya". However, some themes are based on the findings of the research, for example, "the disappearance of Rohingya in shelters".

The first step taken was familiarising myself with the data through reading the transcriptions. Familiarisation is not a passive process of reading only to understand the words (or images), but depends more on reading the words actively, analytically, and critically by asking the meaning of the data.[75] Reading the data is reading it in a critical or nuanced way.

The next step is to make sense of the interview and focus group transcriptions through a coding process.[76] As mentioned previously, this is a process of identifying aspects of the data in light of my research questions.[77] This process is very important because it builds the foundation of the study's structure.[78] Saldana defines a code as: "a word or a short phrase that symbolically assigns a summative, salient, essence capturing and/or evocative attribute for a portion of language based

[75] Virginia Braun and Victoria Clarke, *Successful Qualitative Research: A Practical Guide for Beginners* (Sage Publications 2013) 205.
[76] Victoria Elliott, 'Thinking about the Coding Process in Qualitative Data Analysis' (2018) 11(23) The Qualitative Report 2850.
[77] Braun and Clarke (n75)
[78] Jane Ritchie et al, *Qualitative Research Practice* (Sage Publications: 2005) 221

or visual data."[79] In short, a code captures the essence or meaning of a sentence or several sentences from an interview or focus group. For example, I asked a fisherman about his experience of refugees at sea. He answered in a chronological way, from the first time he saw a boat sinking until he brought the Rohingya refugees to land. I coded the answer of the fisherman as "rescue story."

In practice, these sentences were flagged using a highlighter marker, and each code phrase was written beside the related sentences. Not every sentence or sentences of an interviewee were given codes, as this process should not be exhaustive. For example, sometimes I found that the interviewees' responses were not answering the given questions, or interviewees provided long answers, parts of which were unrelated to the given question. Therefore, coding is a process to reduce data.[80] Putting aside the weaknesses of coding, I would reflect that it taught me how to treat data equally, so that the process of data analysis becomes accountable.

After coding, the next step was to create a theme or category which represents broad units of information comprising several codes aggregated to form a common idea.[81] In this part I tried to find similarities and relationships between codes from different interviewees, then putting together several codes into a wider theme. In the previous example of the theme "the accounts of helping the Rohingya", some codes are: personal account, humanity account and *adat* law account. As has already been noted, the coding process is also guided by the research questions, therefore it is not a purely inductive process. Chunks of data was transformed into many themes to which hundreds of codes were allocated. It took at least six months to go through the entire process from reading to creating themes. The codes on the transcript papers were typed up and arranged with the themes into an MS Excel document.

The nelliotext process is the use of software – in this regard, NVivo – in order to aid data management and analysis. This also makes it much easier to count codes (called "nodes" in the software). NVivo automatically puts together all data that have been assigned a particular code, so I could review them together.[82] Rather than going through the process as I did, another researcher might use NVivo software directly; however, even though the process I followed was time-consuming, manual coding of the transcriptions was a good way to familiarise myself with the data. I went through the transcriptions that had been given the codes one by one and put them in the software. This procedure allowed me to delete codes or amend my chosen

---

[79] Elliot (n 76) 2850, 2855.
[80] Elliot (n 76) 2850, 2853.
[81] John W. Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (Sage Publications 2013) 184,185.
[82] Elliot (n 76).

themes, so it was a double-check process. I needed two to three months to put all the codes and themes from 35 interviewees and four focus groups into the NVivo software.

As mentioned previously, I chose thematic analysis, which allows me to identify themes and patterns of meaning across a dataset in relation to a research question.[83] One of these types of approach is theoretical thematic analysis, in which analysis is guided by an existing theory and theoretical concepts (as well as by the researcher's standpoint, disciplinary knowledge, and epistemology). It is important to go beyond surface-level content to notice patterns, and this necessitates forming a link to theoretical concerns.[84]

4. *Ethical Consideration*

Every study that involves human beings as participants should consider the ethical aspects of the research, as the researcher must aim to treat participants well.[85] Regarding this research, the topic discussed was potentially a sensitive one, because it is based upon on the participants' experiences in dealing with the Rohingya refugee crisis, and might be emotional and dramatic.

Steps were taken to ensure that the interview process would not make a negative impact on interviewees/participants. In addition, the ethical aspect is also important to ensure safety for both the participants and the researcher. The scope of ethics consideration includes the research process, starting from the collection and selection of data, and also reporting the research.[86]

Upholding the integrity of the research, the researcher sought approval from the Economics, Law, Management, Politics, and Sociology Ethics Committee (ELMPS), University of York. This approval was received in April 2018, three months before the field research. Regarding the ethical institutions covering the field work in Indonesia, non-ethical standards are issued by either the Indonesian Ministry of Higher Education or individual universities in Indonesia governing the conduct of field research. Some key issues of ethical aspects in my research are presented in the sections below:

a) *Informed Consent of Participants*

---

[83] Braun and Clarke (n 75) 175.
[84] Braun and Clarke (n 75) 206.
[85] Ritchie et al (n 78) 78.
[86] Sue Richardson, 'Sue and Miriam McMullan, Research Ethics in the UK: What Can Sociology Learn from Health?' (2007) 41(6) Sociology 115.

Informed consent both from interviewees and focus group participants was to ensure that their involvement was on a voluntary basis, and concurrently to prevent harm that may be caused by the interview process. Before interviewing, I provided each participant with an information sheet and a consent sheet. Participants and I read together the information sheet, which contains background on my research, the interview process, and contact details for future queries. One of the things I highlighted was that if a discussion caused distress, the interview would be stopped, and could be continued only with the participant's approval.

I also provided the opportunity for participants to raise questions whenever they needed to. I let the interviewees and focus group participants read and fill in the forms of consent before they eventually signed their approval. I also informed them that approval could be withdrawn throughout the research process.

b) Safety of the Researchers and Participants

As mentioned previously, this research was conducted in Jakarta and Aceh. In general, in order to mitigate risk, interviews and focus groups were conducted during working hours in public places. I originally come from Jakarta, and did not encounter significant problems in terms of my personal safety or physical harm during my research. I have conducted previous research in several cities in Indonesia.

Regarding the research in Aceh, I tried my best to exercise caution when travelling to Aceh. Since the insurgent movement ended in 2005, Aceh is now very safe. However, to mitigate risk during my stay, I was accompanied by a local person during field research. This is due to Aceh being more conservative than any other province in Indonesia, as is widely known. This province, for example, prohibits individuals of different sexes from being together under certain circumstances. Therefore, I reduced the risk by behaving properly and in line with the *adat* and *sharia* laws.

Contrary to my concerns before starting the field work about the risks and well-being of the participants, the interview process mostly ran very smoothly. Fortunately, many participants enjoyed being interviewed, as they were laughing with me. Despite having the experience of being in a distressing situation, none of the participants showed signs of anxiety or trauma.

c) Data Protection

As has been said, this research is partly financed by ESRC (the Law of Asylum project), so data were collected as part of this project, and stored primarily

in a University of York file store. This was secure (with access only through a VPN), with access restricted based on need. The identities of participants in interviews and focus groups were removed from the interview transcripts and focus group reports, replaced with coded identities (e.g. I-1), and listed only in a master list of participants which was stored as an encrypted file.

The data from the voice-recording machine were transferred to a laptop which is protected with a password known only to the researcher. Transfer of data was conducted on a daily basis, and data are backed up on a public repository (i.e., Google drive). Once audio data were transferred, the original files were deleted permanently from the voice recorder. The data in the laptop/Google drive were then uploaded to the researcher's personal file store on the University of York's secure server at the earliest possible moment after the researcher returned to the UK, and data on the laptop were deleted.

d) Anonymity of the Participants

Preserving anonymity is an ethical practice which aims at protecting the privacy of participants in the course of a research process, including the report.[87] Anonymity in collecting data means that the name and any other way to identify a participant will not be revealed. Steps were taken to maintain participants' anonymity in collecting and analysing the data. First, I removed personal identifiers, including names, from all data files. Second, I used anonymous IDs, such as code names or numbers, on all data. I used, for example, I-1 is the first person I interviewed. Similarly, FG1-1 is used for the first participant in the list of attendees of FG1. Third, I stored the IDs separately from the data file in a locked drawer (for hard copies) and a password-protected computer (for soft copies) which could be accessed only by myself.

Anonymity at the reporting stage is as important as it is in collecting and analysing data. At this stage, I represented respondents' identities in the reports by their IDs (for example: I-1) instead of personal identifiers. Before interviewing and starting the focus groups, I promised to preserve the anonymity of participants in the way I was to manage the material. Interestingly, only a few of them requested anonymity in the reports, with most of them not minding if their name or identity was revealed in the reports. However, I decided to maintain anonymity among all participants.

---

[87] Ritchie et al (n 78) 96,100.

D. Thesis Structure

This thesis contains eight chapters. The first chapter is an introduction to the research and methodology, followed by chapter two and three, the literature review. Chapter four introduces the case study. Chapters five, six, and seven successively are research analysis, and the last chapter is a conclusion.

Chapter 2. The aim of this chapter is to critique the literature on the global governance of the international refugee regime. This chapter has two sections. The first section covers the governance of the international refugee regime, and the second covers Third World Approaches to International Law (TWAIL). The first section discusses the current debate on the governance of the international refugee regime, linked to the case study in Aceh, Indonesia. This debate focuses, firstly, on the supervision of operational entities of the Refugee Convention, and secondly, on the viability of local integration with the Global South hosting countries.

The discussion about global governance of the international refugee regime focuses on protecting refugees, and TWAIL scholars help to improve understanding in this area. Three ideas encapsulated from their work are pertinent to my thesis. Firstly, the continuing legacy of colonial histories, typified by an unwillingness to look at any problem as ahistorical, or to separate the law from the historical context within which it developed. Secondly, an emphasis on considerations of morality, ethics and justice, and thirdly, taking human rights and human suffering seriously. These three ideas are linked to contributions of TWAIL scholars such as Anthonie Angie, Karin Mickelson, and Upendra Baxi.

The aim of Chapter 3 is to provide, along with Chapter 2, the frameworks for the thesis, and to discuss theory to be tested in the subsequent chapters. The first section explores different definitions of law before discussing legal pluralism, including customary (*adat*) law and *sharia*. As the thesis seeks to address the use of non-state-made law, the discussion about legal pluralism is relevant. The second section is about Werner Menski's triangular concept of legal pluralism, which is presented in order to respond to the research questions, and to be considered against the data collected.

Chapter 4. This chapter introduces the case study of this thesis, the protection of Rohingya refugees in Aceh. It begins with an overview of the Rohingya, including their origin and the cause of their flight to Aceh and other South East Asian countries. There follows a discussion of the socio-legal environment in Aceh, where the Rohingya disembarked. This chapter ends with a presentation of the Indonesian legal context, especially regarding refugee protection in the country, and its connection with the international refugee regime.

Chapter 5. This empirical chapter covers successively the rescues of the Rohingya carried out by fishermen, the spontaneous aid of local inhabitants, especially during the establishment of temporary shelters, and the organised assistance by various actors in the shelters. This chapter is relevant as it provides the answer to the first subsidiary question about what happened during the 2015 Rohingya refugee crisis in Aceh. In addition, this chapter also seeks the answer to the overarching question about the use of customary law in protecting the refugees.

Chapter 6. This chapter is aimed at documenting the complex, multiple accounts of their actors, and their perspectives on law. It explores the ideas that drive the actors in providing aid to the Rohingya refugees, and connects them to their attitudes and actions in protecting the Rohingya. This chapter also looks into the actors' perspectives on law. Therefore, this chapter analyses how the actors' narratives manifest into actions or measures, and how the law was used to protect the Rohingya refugees.

Chapter 7. This chapter relates to Chapters 2 and 3, as it links important findings to TWAIL ideas, especially with regard to aspects of (neo)colonialism, refugee protection, and the discourse on Baxi's ideas on the importance of human suffering to human rights. In addition, this chapter also tests several findings against Menski's theory of legal pluralism.

Chapter 8: The aim of this chapter is to summarise the research. It presents the important aspects of the findings, and the contributions of the research to knowledge, especially within international refugee law. This chapter also offers recommendations for further research in the light of the current research.

Chapter 2
Operational Roles and Governance of UNHCR

A. Introduction

This chapter explores the roles of UNHCR both as a supervisor of the Refugee Convention and its 1967 Protocol and as a provider of protection and support for refugees. Subsequently, this chapter explores governance of UNHCR, focusing on politics. The chapter highlights Third World Approaches to International Law (TWAIL), an initiative proposing a more just and appropriate perspective on international law in response to current issues around the international refugee regime. This chapter relates to the analysis in (Chapters 5, 6 and 7).

The first section presents the roles of UNHCR, followed by discussion of how to supervise the organisation. The discussion about roles is relevant as, firstly, despite the fact that Indonesia is not a party to the Refugee Convention, it hosts around 14,600 refugees.[88] Indonesia is bound by the international customary law principle of *non refoulment* - the practice of not forcing refugees to return to a country in which they are subjected to persecution. Secondly, Indonesia has given UNHCR the authority to exercise subsidiary protection in managing refugees in Indonesia, including the Rohingya refugees. This section ends by discussing the viability of local integration in the Global South hosting countries and ends with outlining recent international developments in response to refugee problems put forward by the Comprehensive Refugee Response Framework (CRRF) and the Global Compact for Refugees (GCR).

The second section presents pertinent TWAIL ideas related to my thesis. I argue that TWAIL's critique of eurocentrism -that it refuses universal truth- is in line with the central concept of this thesis, legal pluralism. Therefore, this section discusses one of TWAIL's prominent ideas, on the continuation of colonialism in international law as an embodiment of neocolonialism in the refugee regime. Three further pertinent TWAIL ideas will be discussed in the section: the continuing legacy of colonial history; an emphasis on considerations of morality, ethics and justice; and thirdly, an emphasis on human suffering. These ideas will be linked to contributions by TWAIL scholars such as Anthonie Angie, Glen Peterson, Obiora Okafor and Upendra Baxi. The contributions of these scholars will be linked to issues within the governance of the international refugee regime.

[88] M. Suryono, 'UNHCR In Indonesia' <https://www.unhcr.org/id/en/unhcr-in-indonesia> accessed 2 November 2020.

B. UNHCR: The Key International Institution for Refugee Protection

This section explores the bigger roles of UNHCR in refugee protection, of which the first is supervisor of the Refugee Convention, and therefore the proponent of developing norms of refugee protection. Secondly, it is a provider of protection and support for refugees. Criticism of UNHCR's performance leads to a discussion of the supervisory mechanisms of UNHCR. This discussion is followed by an exploration of the viability of local integration in the Global South hosting countries, and the chapter ends with a look at current developments in the international framework in response to refugee problems put forward by CRRF and GCR.

1. The Roles of UNHCR

The specific authority of UNHCR emanates from two separate sources[89]: (1) the United Nations General Assembly (UNGA) resolution -as specified in UNHCR's statute in 1950- and the Refugee Convention and its 1967 protocol. The role of UNHCR as supervisor of the Refugee Convention is highlighted especially with regard to promoting international instruments for the protection of refugees, and supervising the application of those instruments.[90] Similarly, UNHCR has become a proponent of developing norms in refugee protection, for example advising governments on draft asylum laws.[91]

In the course of time, as with states, UNHCR has been given a role in implementing the Refugee Convention, which provides refugees with protection.[92] In the course of its work, UNHCR's mandate has broadened, being asked, for example, to reduce the number of stateless persons.[93] UNHCR cooperates with states

---

[89] Erik Roxström and Mark Gibney, 'The Legal and Ethical Obligation of UNHCR' in Nuklaus Steiner and others (eds.), *Problems of Protection: The UNHCR, Refugees, and Human Rights* (New York, Routledge
2003) 78.

[90] The preamble of the Refugee Convention stipulates that "Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees,and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner. Convention and Protocol Relating to the Status of Refugees: (n 21).

[91]Frances Nicholson and Judith Kumin, 'A Guide to International Refugee Protection and Building State Asylum System' UNHCR and the Inter-Parliamentary Union <https://www.unhcr.org/3d4aba564.pdf> accessed 5 November 2020.

[92] Dallal Stevens, 'Rights, Needs or Assistance? The Role of the UNHCR in Refugee Protection in the Middle East' 20(2) (2016) The International Journal of Human Rights, 264.

[93] UNHCR Excom, 'ExCom Conclusion No. 106 (LVII) 2006' <http://www.unhcr.org/publ/PUBL/3d4ab3ff2.pdf> accessed 1 November 2017.

to provide protection and humanitarian assistance to persons of concern,[94] mainly managing camp operations and conducting RSD. RSD exists in more than 50 countries, mostly those who are not parties to the Refugee Convention.[95] Thus, from initially functioning as a 'non-operational organization', UNHCR has become the main implementer of the Refugee Convention in many countries. In other words, UNHCR serves as a provider of protection for refugees,[96] and therefore supervisor and implementer of the Refugee Convention concurrently.

UNHCR's role as a provider of protection and support for refugees is conducted mainly within the territories of non-parties to the Refugee Convention, including Indonesia. In the territories of signatory parties to the Refugee Convention, refugees are in general given the rights enacted through the Refugee Convention, whereas within the territories of non-parties to the Refugee Convention, international protection is accorded by UNHCR.[97] Paragraph 8 of the Statute of the UNHCR describes among the principal functions of UNHCR seeking durable solutions for refugees (resettlement, repatriation and local integration) and working together with governments to improve the situation for refugees.[98]

UNHCR's accomplishment as a supervisor of the Refugee Convention and a provider to protect and support refugees can be examined through its performance in the course of its work. Through its high commissioners, UNHCR has played significant roles in shaping the international refugee regime. UNHCR has launched good initiatives to help refugees beyond their call of duty. Due to the contribution of

---

[94] The number of people of concern to the organisation rose from 36.4 million people in 2009 to over 86.5 million people at the end of 2019. The number of refugees under UNHCR's responsibility almost doubled, from 10.4 to 20.2 million, and internal displacement grew by nearly 60% from 27.1 million people to 43.5 million. UNHCR Global Report 2019, <https://www.unhcr.org/globalreport2019/#:~:text=The%20number%20of%20people%20of,million%20people%20to%2043.5%20million.> accessed 09 November 2020.

[95] UNHCR, 'Refugee Status Determination' <http://www.unhcr.org/uk/refugee-status-determination.html> accessed 10 November 2017.

[96] M. Zieck, 'UNHCR and States Collaborate to Provide Protection and Humanitarian Assistance to Those in Concern: Article 35 of the 1951 Convention/Article II of the 1967 Protocol' in A. Zimmermann (ed.), *The 1951 Convention relating to the Status of Refugees and its 1967 Protocol: A Commentary* (Oxford University Press 2011) 1507, 1508.

[97] There is no single agreed definition of international protection. One widely accepted definition is "a rights-based approach". This means that all of UNHCR's policies, programmes and activities are based on rights, as provided in international law; further, the realisation of rights; and the will to strengthen the capacity of rights holders (women, men, girls and boys) to claim their rights, and of duty bearers (states and other authorities) to meet their obligations to respect, protect and fulfil those rights. Antonio Fortín, 'The Meaning of "Protection" in the Refugee Definition' 12 (4) (2000) International Journal of Refugee Law 548.

[98] Alexander Betts, 'Institutional Proliferation and the Global Refugee Regime' (2009) 7(1) Symposium 53, and UNHCR,' Statute of the Office of the UNHCR,' <https://www.unhcr.org/4d944e589.pdf> accessed 2 October 2018.

UNHCR commissioner Auguste Lind, the organisation became one of the leading voices in international fora.[99] During the Hungarian Crisis in 1956, UNHCR independently interpreted the 1956 refugee influx as being a result of political change dating back to when the communist party was in power in 1947-1948.[100] Therefore, there was legitimation in UNHCR's involvement in granting the eligibility status for Hungarian (prima facie) as refugees. Both the western and eastern bloc welcomed the way UNHCR resettled Hungarian refugees to Austria and other western countries in Europe, at the same time repatriating some minor refugees whose families were in Hungary. However, as mentioned in Chapter 1, the work of UNHCR was under criticism with regard to its different response to the refugee crisis in Asia in the 1950s, which Peterson defines as a Cold War era institution and a Colonial era institution.[101]

Under Felix Schnyder, UNHCR became active in convincing states' parties -some of them in newly born states- to adhere to the Refugee Convention and its 1967 Protocol, and to give aid to refugees.[102] UNHCR effectively took part in designing regional protection such as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (the OAU Refugee Convention) in 1969 that has broadened the definition of refugee in order to fulfil the continent's needs.

Under the UNHCR's coordination, the camps such as in Mozambique and Tanzania were built due to the impact of post colonisation in Southern Africa in the 1970s. UNHCR also worked on the ground to help at least one million Angolans to be repatriated, of which hundreds of thousands were unsuccessfully repatriated.[103]Resettlement to the US, Canada, France and any other European country has become the choice of Vietnamese refugees since the Vietnam War reflected the impact of anti-communist policies of the West.[104]Nevertheless, refugees

[99] Loescher (n 6) 82, 90.
[100] Article 1.B. (1) of the 1951 Convention stipulates that refugees under the regulations are those fleeing from events occurring before 1 January 1951 in Europe; however, UNHCR interpreted the Hungarian Crisis (1956) as a continuation of precedent political change. Gil Loescher (n 6) 82, 90.
[101] There were different treatments between three types of refugees: European refugees fleeing Soviet persecution to China, Chinese refugees to Hongkong and Indonesian-Chinese Refugees from Indonesia to China. The resettlement process for European refugees in China was most likely to be successful, while Chinese refugees in Hongkong were only partially assisted, and the plight of Chinese refugees in Indonesia was ignored. See: Glen Peterson, 'The Uneven Development of the International Refugee Regime in Postwar Asia: Evidence from China, Hong Kong and Indonesia' (2012) 25 Journal of Refugee Studies 326.
[102] Loescher (n 6) 122, 125.
[103] Gatrell (n 11) 224, 252.
[104] UNHCR, 'The State of the World's Refugees' <
https://www.unhcr.org/afr/3ebf9bad0.pdf> accessed 1 July 2020.

had to live in limbo for many years first before they finally resettled to the US or were repatriated to their homeland.[105] Besides the resettlement programme for Vietnamese refugees, Global North countries were not interested in assisting refugees from Global South countries.

In response to the refusal of Global South countries to host many refugees, and to offer an alternative to the camps policy, UNHCR commissioner Jean Hocke (1986-1989) gave priority to repatriation policy as the most durable solution for refugees.[106] This idea was supported by Western countries worried about the cost of a protracted refugee population. As the already large number of repatriation practices increased massively, the decade was marked as the "decade of repatriation".[107]

Unfortunately, the implementation of repatriation has not always been ideal. Constrained by difficult situations on the ground, many repatriation efforts have been conducted without the permission of refugees. To mitigate the controversy of this policy, UNHCR softened the terminology, using the words "safe return".[108] Nevertheless, the ground of this policy could be challenged on an ethical basis, because the issue at hand concerns whose voices are being counted, and what calculations are used to determine the efficacy of repatriation.[109] The ethics of repatriation under less-than-ideal conditions can be accompanied by a decrease in power accorded to refugees.[110]

As with states, UNHCR is questioned over its RSD performance. Some studies -for example, conducted by Savitri Taylor and Brynna Rafferty-Brown, and Michael Kagan[111]- show that UNHCR should improve its record on completion of RSD. Not only has UNHCR yet to conduct RSD procedures in a fair, efficient, and

---

[105] The resettlement was conducted in several periods: between 1975 and March 1979 (200,000 Indochinese refugees), between July 1979 and July 1982 (623,800 Indochinese refugees). However, about 200,000 Indochinese people remained in refugee camps all over Southeast Asian countries in 1989. Antje Misbach, 'Waiting on The Island of "Stuckedness": Managing Asylum Seekers in Detention Camps in Indonesia from the Late 1970s to the Early 2000s' (2013) 6 Austrian Journal of South-East Asian Studies 281.
[106] Jean Pierre Hocke, 'Note on International Protection' (1986) 20(4) The International Migration Review 1020.
[107] Margaret Piper et al, 'Refugee Resettlement: 2012 and Beyond' UNHCR Research Paper No 253/2013 <http://www.unhcr.org/510bd3979.pdf> accessed 2 July 2020.
[108] Piper et al (n 107).
[109] Michael Barnet, 'UNHCR and the Ethnics of Repatriation' (2001) 10 Forced Migration Review 31.
[110] Barnet (n 109) 31,34.
[111] Taylor and Rafferty-Brown (n 59) and Michael Kagan, 'Frontier Justice: Legal Aid and UNHCR Refugee Status Determination in Egypt' (2006) 19 (1) Journal of Refugee Studies 45.

effective way, but it has also failed to provide asylum seekers with specific reasons when their applications are rejected.[112]

In addition to this, UNHCR's operation among many non-state parties hosting refugees prioritises the role of UNHCR as a negotiator of protected space, rather than as a promoter of the Refugee Convention.[113] This approach has often undermined refugees' rights.[114] Moreover, as has been discussed earlier, UNHCR's preference in the 1950s for handling European refugees over any other refugees outside Europe, the adoption of the phrase 'safe return' to soften the policy that might be seen as forced repatriation, or problems of security and violations of human rights in camps or shelters, have also raised questions on how to hold to account UNHCR, as one of institutions assumed to have responsibility.[115]

2. *Who Supervises UNHCR?*

There are relevant debates around governance of the international regime, for instance about the definition of refugee, and the lack of a supervisory body to interpret the Refugee Convention.[116] However, within the interest area of this thesis, the debate will focus on the supervisory mechanism of operational entities of the Refugee Convention - in this regard, UNHCR. The question about institutions that supervise UNHCR is pertinent to address, because supervisory bodies can be a tool to enable refugees to attain more protection.[117] The following discussion will be about the possibility of supervision of UNHCR, especially with regard to its role as a provider of protection and support for refugees.

As UNHCR is a UN agency, some scholar view that it is not formally bound by international human rights law, because it is not a party to these international instruments. However, some scholars have reconceptualised this thought, arguing that the UN and its subsidiary organs are obliged to obey international human rights

---

[112] Kagan (n 111).
[113] UNHCR uses "protection space" mostly used in states that are not party to the Refugee Convention. There is no official definition of the terms; from UNHCR's usage, "protection space" is a variable, negotiated and operationally focused state of affairs. Jones (n 65)
[114] Jones (n 65).
[115] Maja Janmyr, *Protecting Civilians in Refugee Camps: Unable and Unwilling States, UNHCR and International Responsibility* (Martinus Nijhoff Publishers 2014) 3, 20.
[116] For this debate: for example: Alexander Betts, 'The Normative of the Global Refugee Regime' (2015) 29(4) Ethics and International Affairs 363, 375, and Alexander Betts, 'State Fragility, Refugee Status and "Survival migration"', <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/fragilestates/betts.pdf> accessed 2 November 2020, and Katie O'Byrne, 'Is there a Need for Better Supervision of the Refugee Convention' (2013) 26 (3) Journal of Refugee Studies 330.
[117] Martin Jones, 'The Governance Question: the UNHCR, the Refugee Convention and the International Refugee Regime' in James C Simeon (ed.), *The UNHCR and the Supervision of International Refugee Law* (Cambridge University Press 2013) 93.

law for at least two reasons. Firstly, one of the core purposes of the UN is to promote and respect human rights. This leads to the belief that UN is bound by international human rights law, because UNHCR by its own charters is ordered to promote human rights law.[118] Despite the lack of clarity about the scope of rules, and legal consequences of violations, this notion creates a solid baseline from which to build a normative case for holding UNHCR accountable to human rights standards.[119]

Secondly, there is implied obligation from several human rights instruments that should be obeyed by the UN. For example, as a subsidiary organ of the UN, it is bound by the "general rules of international law" outlined in article 38 of the Statute of the International Court of Justice (ICJ), including human rights obligations such as the provisions of the International Covenant on Civil and Political Rights (ICCPR).[120]

However, holding UNHCR responsible for the violation of the rights of refugees can be legally inappropriate. As the UN Secretariat's Office of Legal Affairs has consistently argued -albeit erroneously in this reviewer's view- the subsidiary organs of the UN do not possess separate international legal personality from that of their parent organisations, and therefore should not be held responsible for their wrongful conduct.[121]

As there is no mechanism to supervise UNHCR designed by the Refugee Convention or any other international instruments, it is important to consider ExCom as a forum to supervise UNHCR's works. ExCom consists of representatives from UN member states. It is believed that ExCom is a forum where Global North countries can significantly influence the works of UNHCR, because it reviews funding and programmes. In addition, the ExCom forum also advises the High Commissioner in the exercise of his/her functions.[122] Indeed, there is arguably no forum more important in terms of international refugee protection than the annual ExCom sessions.[123] This is the public face of diplomatic efforts to promote

---

[118] Frederic Megret and Florian Hoffman, 'The UN as a Human Rights Violator? Some Reflections on the United Nations' Changing Human Rights Responsibilities' (2008) 25 (18) HUM. RTS. Q 314.
[119] Mark Pallis, 'The Operation of UNHCR's Accountability Mechanisms' (2005) 37 N.Y.U. J. Int'l. L. & Pol 869.
[120] Niamh Kinchin, 'The Implied Human Rights Obligations of UNHCR' (2016) 28 (2) International Journal of Refugee Law 251.
[121] Zachary A Lomo, 'Protecting Civilians in Refugee Camps: Unable and Unwilling States, UNHCR and International Responsibility by Maja Janmyr' (2015) 28(4) Journal of Refugee Studies 595.
[122] Michael Barutciski, 'Observations on ExCom's 60th Session (2009): Does UNHCR Need (More) ExCom Conclusions?' (2012) 2(27) Refuge Canada's Journal on Refugees 133.
[123] Barutciski (n 122) 133.

international refugee protection. In light of these arguments, ExCom could be used as a tool to supervise the work of UNHCR through ExCom decisions, which are called "conclusions".

No scholars argue that an ExCom conclusion is legally binding; rather it is a form of soft law that can be used to develop the international refugee regime.[124] The conclusion is mainly directed at states in protecting refugees and to address any other current issue that requires a response. However, the forum can also be used to ask UNHCR to improve performance, not only that delivered by the states parties, but also that of Non-Governmental Organisations (NGOs).[125] For example, ExCom Conclusion No.68 (1992) highlights that UNHCR's involvement with IDPS and related approaches should not undermine the institution of asylum, as well as other basic protection principles, notably the principle of *non-refoulment*.[126]

To conclude, there is no mechanism explicitly intended to supervise UNHCR. It is true that UNHCR itself has internal mechanisms, for example, the inspector general's office, to process misconducts committed by UNHCR staff members.[127] However, since this unit is located within UNHCR, its accountability is always open to question. Therefore, I argue that until recently we can rely only on the media or civil society (as the forth pillar of democracy) to voice concerns related to UNHCR performance.

3. *A Durable Solution: Viability of Local Integration in the Global South Hosting Countries*

The discussion about durable solutions is important to address because an important goal in refugee protection is for refugees to gain access to their rights, rights that enable them to live their lives. With regards to this thesis, the question of a durable solution for Rohingya refugees in Indonesia is relevant. Firstly, because the oppression of Rohingya people has been continuing, resulting in Rohingya refugees who have fled their country of origin. Thus, repatriation is not a viable

[124] Jerzy Sztucki, 'The Conclusions on the International Protection of Refugees Adopted by the Executive Committee of the UNHCR Programme' (1989) 1 (3) International Journal of Refugee Law 285.
[125] Marion Fresia, 'Building Consensus Within UNHCR's Executive Committee: Global Refugee Norms in the Making' 27 (4) (2014) Journal of Refugee Studies 514.
[126] Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (first published 1983, Oxford University Press 2007) 217.
[127] UNHCR, 'Inspector General Offices' <http://www.unhcr.org/uk/inspector-generals-office.html> accessed 10 November 2017.

solution for Rohingya refugees at present.[128] Secondly, as mentioned in Chapter 1, with the resettlement quota restricted, local integration becomes the most viable solution for Rohingya refugees.

In order to frame the discussion, I begin with durable solutions in a global context before bringing to the actual debate the viability of a "country of first asylum" in the Global South becoming a "country of perpetual asylum".

a). Should a Country of First Asylum in the Global South be a Country of Perpetual Asylum?

This debate is about the feasibility of refugees moving from temporary residence to more permanent residence in the Global South countries. Some scholars are doubtful about the viability of local integration. For instance, Jacobsen describes local integration as a forgotten solution.[129] However other scholars are certain about its viability; for example, Campbell points out that many refugees in protracted situations are economically self-sufficient.[130]

First, it is important to put the debate into context by defining local integration. There is no formal definition of local integration in the international refugee regime. In the first phase, local integration can be regarded as a process which leads to durable solutions for refugees.[131] It is above all a legal process, whereby refugees are granted a progressively wider range of rights and entitlements by the host countries, such as the right to seek employment, to get access to education and to own and dispose of property. Secondary to that, local integration can be seen as an economic process that includes the opportunity for refugees to develop their livelihoods in the host countries and obtain a growing degree of self-reliance. Thirdly, local integration is a social process, allowing refugees to live alongside the host population, without fear of systematic discrimination, intimidation or exploitation by the authorities or people of the asylum country.[132] These three

[128] Heru Susetyo and Paul Chambers, 'Repatriation for Rohingya Asylum Seekers in Indonesia: a Durable but Almost Impossible Solution' (2020) Asian Affairs: An American Review 1.
[129] Karen Jacobsen, 'The Forgotten Solution: Local Integration for Refugees in Developing Countries' UNHCR Working Paper 45/ 2001 <http://www.unhcr.org/uk/research/working/3b7d24059/forgotten-solution-local-integration-refugees-developing-countries-karen.html> accessed 15 November 2017.
[130] Elizabeth H. Campbell, 'Urban Refugees in Nairobi: Problems of Protection, Mechanisms of Survival, and Possibilities for Integration' (2006) 19 Journal of Refugee Studies 396.
[131] Jeff Crips, 'The Local Integration and Local Settlement of Refugees: A Conceptual and Historical Analysis' UNHCR Working Paper No. 102/2004 <http://www.unhcr.org/407d3b762.pdf > accessed 10 October 2017
[132] Crips (n131).

processes are also known as *de facto* integration.[133] The second phase is *de jure* integration.[134] This happens mainly when a refugee granted citizenship.[135]

As previously discussed, there are pessimistic views on the viability of local integration of refugees in Global South countries. As some studies reveal,[136] many Global South countries consider protracted refugees (85% of the world's refugees) as temporary refugees.[137] Most governments side with this argument not only because they lack economic resources, but also as they are non-parties to the 1951 Refugee Convention.[138] Therefore, they are bound to host refugees only temporarily. In addition, many of the world's refugees live in large cities, rather than camps or shelters (urban refugees), struggling in their own ways to keep alive.[139]

On the other hand, some scholars argue that local integration is viable for refugees in Global South countries.[140] Banki posits that the recognition of *de facto* requires some sort of integration, for example self-settled refugees and refugees living dispersed among the local population.[141] The daily life of refugees, mostly urban refugees, to some extent involves the ability to integrate within local communities. In addition, many refugees have become economically self-sufficient; for instance, the Somalian refugees in Nairobi.[142] They run businesses, engage in small-scale trades or become labourers.[143] In the same vein, Rohingya refugees in Malaysia work as labourers in informal sectors such as palm oil plantations. In Bangladesh, Rohingya refugees work in villages and towns near their camps, and

---

[133] Lucy Hovil, '"Local Integration" in Elena Fiddian-Qasmiyeh and Others' (The Oxford Handbook of Refugee and Forced Migration Studies, 2014) Oxford Handbook Online, 490 <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-042> accessed 16 October 2017.
[134] Hovil (n 133).
[135] Crips (n 131).
[136] For example: Barry N. Stein, 'Durable Solutions for Developing Country Refugees' (1986) 20 (2) The International Migration Review 264.
[137] UNHCR, 'Figures at a glance' < https://www.unhcr.org/uk/figures-at-a-glance.html> accessed 10 September 2020.
[138] Maja Janmyr, 'No Country of Asylum: Legitimizing Lebanon's Rejection of the 1951 Refugee Convention' (2017) 29(3) International Journal of Refugee Law 1.
[139] Alexander Betts and Paul Collier, *Refuge: Transforming a Broken Refugee System* (Penguin Books 2017) 7.
[140] Susan Banki , 'Refugee Integration in the Intermediate Term: A Study of Nepal, Pakistan and Kenya' New Issues in Refugee Research' UNHCR Working Paper108/2004 <http://www.unhcr.org/416b98b94.pdf> accessed 10 November 2017; Elizabeth H. Campbell (n 128) and Luci Hovil (n 131).
[141] Banki (n 140) and Campbell (n 130).
[142] Campbell (n 130).
[143] Campbell (n 130).

there is a significant level of intermingling with the local community, for example through intermarriage.[144]

Despite economic and social integration, many refugees in Global South countries remain deprived of their civil and political rights. They can at any time be subject to detention, and without legal documentation, they are considered to be working as illegal labourers.[145] Indeed, without citizenship, their status will always remain temporary and unstable.

UNHCR has initiated a resolution of the situation of protracted refugees in Global South countries through Convention Plus. This encourages a special multilateral arrangement to attain a satisfactory level of responsibility sharing between Global South and Global North countries.[146] However, this proposal is considered a failure, as no agreements were concluded between the states. One of the main reasons for the failure was the emphasis placed on the need to solve refugee problems -especially in Global South countries- without an explanation as to how those specifics would contribute to an effective system of global burden-sharing.[147] In addition to this, most Global North countries are still reluctant to assume responsibility for protected refugees, and indeed Global South countries were also concerned that upcoming development assistance they received would ultimately oblige them to welcome more refugees and to provide local integration, as revealed in the forum:

> .. a related issue was the question of aid conditionality. A number of States feared that targeting development assistance for durable solutions to forced displacement could potentially lead to the imposition of new conditionalities on development cooperation that would not necessarily enhance the capacity of developing countries to provide adequate protection to displaced communities or achieve durable solutions. They felt that targeting development assistance might, for example, be linked to agreements on re-admission, local integration of refugees or limiting the right to seek asylum.[148]

[144] Samuel Cheung, 'Migration Control and the Solutions Impasse in South and Southeast Asia:
Implications from the Rohingya Experience' (2011) 25(1) Journal of Refugee Studies 50.
[145] Cheung (n 144).
[146] UNHCR, 'Agenda Protection' <http://www.unhcr.org/uk/protection/globalconsult/3e637b194/agenda-protection-third-edition.html> accessed 9 November 2017.
[147] Madoleine Zieck, 'Doomed to Fail from the Outset? UNHCR's Convention Plus Initiative Revisited' (2009) 21(3) International Journal of Refugee Law 387.
[148] High Commissioner's Forum, 'Convention Plus Targeting of Development Assistance for Durable Solutions to Force Displacement' <http://www.unhcr.org/uk/protection/convention/437d9f152/convention-plus-targeting-development-assistance-durable-solutions-forced.html> accessed 16 November 2017.

This approach is also based on the Global South countries' notion of a "zero-sum gain", in which every livelihood established by a refugee deprives a citizen of the same opportunity.[149] For fear of being accused of giving priority to refugees over needy nationals, some Global South governments rejected the Convention Plus initiative.[150] They felt that the more benefits they provided to refugees, the more they would have to sacrifice the needs of their own nationals; such logic emanated from their belief that refugees are a burden for their states.

Going back to the initial debate, about the necessity of the Country of First Asylum in the Global South becoming the Country of Perpetual Asylum, the answer is obvious; in order to acknowledge that refugees should be fully integrated, with dignity, into their host community, the shift from Country of First Asylum to Country of Perpetual Asylum is necessary. To some extent, refugees have been able to integrate in certain Global South countries. Global South governments should therefore show their commitment to protecting them.

It is important to encourage and support governments in many ways, nationally, regionally and internationally. At the international level, for example, the success story of the Comprehensive Plan of Action (CPA) in handling Vietnamese refugees in Southeast Asian countries should be an inspiration to finding solutions in common in handling refugee problems in Southeast Asian countries. For this reason, Shum suggests a new CPA framework for Southeast Asia, utilising local and regional integration to provide a much-needed source of migrant labour.[151] In Latin America, current developments in the protection of refugees in the region have been influenced by the concepts of responsibility sharing, reinforced by the Mexico Plan of Action (MPA).[152]

To sum up, the accomplishment of local integration as a viable solution will not be satisfactory without the Global South and the Global North countries playing their roles. The contribution required of Global South countries is fundamentally about designing legal frameworks that recognise the presence of refugees in their own territories, while Global North countries' engagement should be through resettlement, financial aid and any other assistance. Therefore, discussing

---

[149] Jeff Crisp, 'New York Declaration on Refugees: A One-Year Report Card' <https://www.newsdeeply.com/refugees/community/2017/09/18/new-york-declaration-on-refugees-a-one-year-report-card> accessed 10 November 2017.
[150] Stein (n 136) 264,277.
[151]Keane Sum, 'A New Comprehensive Plan of Action: Addressing the Refugee Protection Gap in Southeast Asian through Local and Regional Integration' (2011) 1(1) Oxford Monitor of Forced Migration 60.
[152] Stefania Eugenia Barichello, 'Refugee Protection and Responsibility Sharing in Latin America: Solidarity programmes and the Mexico Plan of Action' (2015) 20 (2) The International Journal of Human Rights 1.

responsibility sharing is key to refugee protection, especially after the adoption of the New York Declaration.

b) *Responsibility Sharing*

As has been discussed, the success of local integration as a viable solution can be achieved through cooperation between the Global South and the Global North countries. One key to pursuing durable solutions more effectively is the accomplishment of responsibility sharing between them. There are pertinent questions to address with regard to this issue: what is the meaning of responsibility sharing? What type of responsibility must be shared? Who are the actors that will deal with the responsibility sharing? How do the Comprehensive Refugee Response Framework (CCRF) and the Global Compact on Refugees (GCR) respond to this question, and what should be done to achieve equitable burden sharing?

Burden sharing is defined as a subset of international cooperation in which states either take responsibility for refugees who, in terms of the international refugee regime, would fall under the protection of other states, or assist other States in fulfilling their responsibilities.[153] As has often been affirmed, the definite nature of burden sharing is unclear.[154] It has been considered as a moral obligation, legal principle[155] or mechanism.[156] The substantial debate is how to make burden sharing principle/mechanism applicable. If moral or political engagement is not sufficient, in what ways should UNHCR design it so as to make it enforceable?

One proposal, "the framework proposal" has been suggested in order to provide normative and institutional mechanisms for equitable responsibility

---

[153]Kathleen Newland, 'Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations short of Mass Influx', discussion paper prepared for UNHCR expert meeting on international cooperation to share burdens and responsibilities <http://www.unhcr.org/4ef332d29.pdf> accessed 10 November 2017.

[154] Patrick Wall, 'A New Link in the Chain: Could a Framework Convention for Refugee Responsibility Sharing Fulfil the Promise of the 1967 Protocol?' (2017) 29(2) International Journal of Refugee Law 201.

[155] For example, ExCom Conclusion on Refugee Without an Asylum Country No. 15 (XXX) (1979) stipulates "influx should as necessary and at the request of the State concerned receive immediate assistance from other States in accordance with the principle of equitable burden-sharing" <http://www.unhcr.org/uk/excom/exconc/3ae68c960/refugees-asylum-country.html> accessed 15 November 2017.

[156] For example, ExCom Conclusion on The International Protection of Refugees No. 65 (XLII) (1991) calls upon "the High Commissioner in this regard actively to explore new options for preventive strategies which are consistent with protection principles, the ways in which State responsibility and burden-sharing mechanisms might be strengthened and public information strategies could be used to complement protection activities" <http://www.unhcr.org/uk/excom/exconc/3ae68c404/general-conclusion-international-protection.html> accessed 10 November 2017.

sharing.[157] It implants the concept of the 2016 UN Framework Convention on Climate Change, since there are similarities between refugee and environmental protection in addressing collective action problems. In addition, the principle of common but differentiated responsibilities describes the roles that the Global North and Global South countries can play to tackle refugee problems.

Additionally, Patrick Wall argues that the proposal is applicable because the contribution of the states is on a "bottom up" basis, as it will be determined by each country's interest.[158] However, the Global North countries admit their negative contribution to climate change,[159] and allow the Framework Convention to act as their "compensation" for the negative effects of suffering; this trade-off might not work for refugee matters. To many Global South countries, the Global North countries never consider wars around the planet as being their responsibility.[160]

As has been noted, despite their financial constraints, Global South countries host the majority of refugees in the world. On the other hand, Global North countries that are supposed to take more responsibility remain silent on meeting their commitments. However, this does not mean they do not help at all, since, as previously discussed; some have been welcoming refugees through their resettlement programmes, while others allocate funds to UNHCR and to refugee crises such as the Syrian crisis.[161] Yet, these contributions have been considered insufficient.

Likewise, the flight of the Rohingya refugees to Southeast Asian countries has triggered discourse on the protection provided not only by ASEAN but also by countries outside the Southeast Asian region, most of them in the Global North. In response to the issues of massive influxes of refugees and the problems of the protracted refugee situation in many Global South countries, a UN General Assembly summit meeting in 2016 adopted a non-legally binding instrument, the

---

[157] Wall (n 152). Before this proposal, there were other proposed designs for burden sharing between Global South and Global North countries. For example, James Hathaway and Alexander R Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivised and Solution-Oriented protection' (1997) 10 UNSW Harvard Human Rights Journal 15.
[158] Wall (n 152).
[159] Wall (n 152).
[160] B.S. Chimni, 'Global Compact on Refugees: One Step Forward, Two Steps Back' (2018) 30(4) International Journal of Refugee Law' 630.
[161] The EU dedicated over €10 billion from the EU budget to dealing with the refugee crisis in 2015 and 2016. European Commission, 'The EU and the Refugee Crisis' <file://userfs/ff618/w2k/Downloads/NA0417265ENN.en.pdf> accessed 8 November 2017

New York Declaration for Refugees and Migrants, raising issues of international commitments on refugee protection. It stipulates:[162]

> We underline the centrality of international cooperation to the refugee protection regime. We recognize the burdens that large movements of refugees place on national resources, especially in the case of developing countries. To address the needs of refugees and receiving States, we commit to a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees, while taking account of existing contributions and the differing capacities and resources among States…Annex I to the present declaration contains a CRRF and outlines steps towards the achievement of a GCR in 2018.

As the New York Declaration acknowledges the principle of responsibility sharing, with the aim of shaping a more predictable international response to large movements of refugees and migrants, the CRRF and GCR are the ways or instruments to implement this principle. With regard to the institution that is given the mandate to supervise CRRF and GCR, GCR highlights how "UNHCR will play a supportive and catalytic role" in realising the Compact's objectives.[163]

With regard to CRRF and GCR, there are four key objectives that define the achievement of CRRF and GCR: to ease pressures on countries hosting large numbers of refugees, to enhance refugee self-reliance, to expand access to third-country solutions, and to support conditions in countries of origin to allow return in safety and dignity.[164] CRRF is not a new mechanism put in place, but rather a continuation of existing mechanisms, such as Refugee Response Plans (RRPs) under the leadership of UNHCR.[165] In addition, CRRF includes broader stakeholders, such as the private sector, development partners and financial institutions, for implementing its programmes.[166]

The first CRRF implementation involved thirteen states hosting large number refugees, Belize, Costa Rica, Guatemala, Honduras, Mexico, Panama, Djibouti, Ethiopia, Kenya, Uganda, the United Republic of Tanzania, Somalia, and

---

[162] The New York Declaration for Refugees and Migrants" < http://www.unhcr.org/584689257.pdf> accessed 30 October 2018.

[163] Paragraph 33 of Global Compact of Refugees. UNHCR, 'Global Compact of Refugees' <https://www.unhcr.org/5c658aed4.pdf> accessed 1 November 2020.

[164] Nicholas Crawford et al,' The Comprehensive Refugee Response Framework Progress in Rwanda' Humanitarian Policy Group (HPG) (HPG Working Paper, September 2019) < https://www.odi.org/sites/odi.org.uk/files/resource-documents/12936.pdf> accessed 2 November 2020

[165] UNHCR, 'Bringing the New York Declaration to Life Applying the Comprehensive Refugee Response Framework (CRRF)' <https://www.unhcr.org/593e5ce27> accessed 7 November 2020.

[166] UNHCR (n 163).

Zambia joined the initiative between December 2016 and late 2018.[167] In the context of Burundi refugees in Tanzania and Somalia, the situation in their state of origin was still unsafe and resettlement therefore low; many of them opted to remain in the camps or become urban refugees. Consequently, the main focus of CRRF has been to foster economic self-reliance for refugees and host communities.[168]

Some scholars view GCR as being one step forward in improving refugee protection world-wide, as GCR, for example, arranges a Global Refugee Forum every four year as a way to improve responsibility sharing through financial and non-financial pledges towards implementing the GCR.[169] GCR has involved not only states but also other actors such as development bodies, enterprises, NGOs, and refugees in its forum. One commitment that has emerged from the first Global Refugee Forum is the World Bank's agreement to provide $2.2 billion in funding from July 2020 to June 2023 to support refugees in host countries through, for example, job creation.[170] However, resettlement commitments from member states - especially Global North countries- are still low. European Union member states have pledged a total of only 30,000 resettlement places for 2020, compared to about 1.44 million refugees proposed by the UNHCR.[171]

Despite some of the achievements of GCR, scholars such as Chimni view it without enthusiasm. He highlights the difficulty in relying on the UNHCR to realise the Compact's objectives as, he argues, UNHCR itself is part of the problem, since its sustainability is constrained by voluntary funding from western countries.[172] Further pessimism about the success of GCR hinges on GCR's approach in addressing root causes as the responsibility of countries of origin, while remaining

---

[167] UNHCR (n 163).

[168] UNHCR, 'Burundi Regional Refugee Response Plan' <https://www.unhcr.org/uk/partners/donors/5c330c444/burundi-2019-2020-regional-refugee-response-plan-december-2018.html> accessed 6 November 2020.

[169] Sarah Deardorff Miller, 'High Hopes: The Global Compact for Refugees and Improving Responsibility Sharing' RLI Blogs (London, 27 February 2019) <https://rli.blogs.sas.ac.uk/2019/02/27/high-hopes-the-global-compact-for-refugees-and-improving-responsibility-sharing/> accessed 1 November 2020.

[170] World Bank Press Release, 'World Bank Announces $2.2 Billion Scale-up in Support for Refugees and Host Communities at First Global Refugee Forum' World Bank (Geneva, 17 December 2019) <https://www.worldbank.org/en/news/press-release/2019/12/17/world-bank-announces-us22-billion-scale-up-in-support-for-refugees-and-host-communities-at-first-global-refugee-forum> accessed 7 November 2020.

[171] European Council on Refugees and Exiles, 'Global Refugee Forum: EU MS Pledge 30,000 Resettlement for 2020, MEPs Urges More Ambition' (Brussel, 20 December 2019) https://www.ecre.org/global-refugee-forum-eu-ms-pledge-30000-resettlement-for-2020-meps-urges-more-ambition/

[172] B. S. Chimni, 'Global Compact on Refugees: One Step Forward, Two Steps Back' (2018) 30(4) International Journal of Refugee Law 630.

silent on the role of external state actors in producing refugees.[173] In order to make GCR more meaningful, some scholars propose the principle of binding yet pragmatic agreements, based on reciprocity.[174]

C. TWAIL: An Alternative Approach for Better Protection for Refugees

Despite some of the weaknesses inherent in the governance of UNHCR, as previously discussed, this thesis does not suggest a radical replacement of the international refugee regime, rather it is concerned with how TWAIL[175] will make a positive impact on the governance of UNHCR. It takes different approaches to the current mainstream of international law that has been Eurocentric and which has failed to meet the needs of Global South people.[176]

TWAIL contributes pertinent ideas to international law. I will refine TWAIL scholars' three ideas most relevant to this thesis, and link them to the chapters of analysis (especially Chapter 7). These ideas are: firstly, the continuing legacy of colonial histories typified by an unwillingness to look at any current problem as ahistorical, or to separate the law from the historical context within which it developed.[177] Secondly, an emphasis on considerations of morality, ethics and justice; in other words, an unwillingness to separate law from wider concerns, or to define law in a narrow "legalistic" fashion.[178] Thirdly, an emphasis on taking human rights seriously while also taking human suffering seriously.[179]

These three issues are worth elaborating. Firstly, it is important to take into account the historical context in which the international refugee regime was founded, and the continuation of its neocolonialist character in the current regime. Likewise,

---

[173] Chimni (n 172).

[174] Alexander Betts, 'The Global Compact on Refugees: Towards a Theory of Change?' (2018) 30 (4) International Journal of Refugee Law 623.

[175]Third World means the underdeveloped and marginalised countries of Asia, Africa and Latin America. The Third World is made up of a diverse set of countries, extremely varied in their cultural heritages, with very different historical experiences. Peter Worsley, *The Three Worlds: Culture and World Development* (Weidenfeld & Nicolson 1984) 306. The term Third World also refers to what is called Global South (as has been explained before). The term First World equates to Global North.
Therefore, for the purposes of this thesis, the term Third World is substituted with the phrase Global South and, for consistency, First World with Global North.

[176]Worsley (n 175).

[177] Karin Mickelson, 'Rhetoric and Rage: Third World Voices in International Legal Discourse' (1998) 16(2) Wisconsin International Law Journal 375.

[178] Mickelson (n 177).

[179] As William Twining summarises Baxi's thoughts on Human Rights: "while his arguments are complex, dialectical, and often ironic, one clear message rings out: taking human rights seriously must involve taking human suffering seriously," William Twining, *Human Rights, Southern Voices: Francis Deng, Abdullahi An-Na'im, Yash Ghai and Upendra Baxi* (Cambridge University Press 2009) 159.

the response of local people in Aceh in rescuing and providing aid to the Rohingya refugees can be linked to their past history under the Netherlands' colonisation, and to oppression by central government.

What local people have been through in Aceh accords with the central discourse of Fourth World Approaches to International Law (FWAIL). FWAIL scholars postulate on ongoing (neo) colonial occupation and exploitation by the First World (colonial powers) and the Third World (central governments) of Fourth World people (indigenous people).[180] In contrast to many regions in Asia that continue to seek self-determination, in Aceh, a peace agreement between GAM (the Free Aceh Movement) and the Indonesian government was concluded, resulting in Aceh remaining an Indonesian province.[181]

An emphasis on morality, ethics and justice -seeing the law not in a narrow, "legalistic" way -offers insight into the law(s) that motivated the local community in Aceh in helping Rohingya refugees, despite Indonesia not being a party to the Refugee Convention. Likewise, a central idea of TWAIL scholars is to refuse universal truth put forward by the First World, an idea in line with the context of this study around Aceh, where legal pluralism became a strength, including in the area of refugee protection.

Furthermore, as the Refugee Convention does not regulate "burden sharing" as an obligation norm, the emphasis on morality, ethics and justice is relevant in response to the refugee crisis affecting the Third Word, including the case of the Rohingya refugees in Indonesia. Thirdly, the emphasis on human suffering can be considered as a common language of humanity in response to the need to help Rohingya refugees in Indonesia.

1. TWAIL Ideas

In the following section, these three ideas will be linked to contributions of TWAIL scholars such as Anthonie Angie, Karin Mickelson, Obiora Okafor and Upendra Baxi, and they will be linked to issues within the governance of the international refugee regime.

a) Continuation of Colonialism in International Law

[180] Hiroshi Fukurai, 'Fourth World Approaches to International Law (FWAIL) and Asia's Indigenous Struggles and Quests for Recognition under International Law' 5(2018) Asian Journal of Law and Society 221.
[181] Anthony Reid, 'War, Peace and the Burden of History in Aceh' 2004 5(3) Asian Ethnicity 301.

Mainstream thoughts on international law view it as an instrument for rights-protection, interstate harmony, and socio-economic development,[182] but the works of Anthonie Angie[183] and Upendra Baxi[184] highlight interdependence between international law and colonialism. In light of this view, Glen Peterson emphasises the relationship between the international refugee regime and neocolonialism.

Angie argues that despite the end of colonialism and the colonial subordination of the Global South people, the values and norms of colonialism continue within international law and its institutions.[185] By connecting international law to colonialism, Angie explains that the recognition of Indians by Fransisco de Vitoria paradoxically legitimised Spanish colonisation of the Indian people of Latin America. As the Indian people were considered uncivilised, the presence of the Spanish settlers was presumed to bring them into the embrace of a civilised nation by means of a western-oriented version of universal natural law.[186]

By using international law, European colonialists maintained their superiority over non-European people for centuries.[187] During the 19th century, the doctrine of positivism had a great influence in international law, mainly through its notion of sovereignty. International law then differentiated sovereign (European) states and non-sovereign (non-European) states. The latter were not considered as states because they were made up of uncivilised and inferior people.[188]

Since the demise of colonialism, its values have resided in its international institutions, and it has been transformed into another form of the Global North countries' domination of the Global South countries, widely known as neocolonialism -this against the background of the notion of sovereign equality and political independence of states proclaimed in the UN Charter, which led to the independence of the most Asian and African countries.[189]

---

[182] Andrew F. Sunter, 'TWAIL as Naturalized Epistemological Inquiry' (2007) 20 Can. J. L. and Jurisprudence 475.
[183] Anthony Angie, 'The Evolution of International Law: Colonial and Post-Colonial Realities' (2006) 27 Third World Quarterly 739.
[184] Upendra Baxi, *the Future of Human rights* (Oxford University Press 2009) 33, 95.
[185] As international law was created in Europe, its doctrines and principles were developed in Europe, especially after the conclusion of Treaty of Westphalia in 1648. Upendra Baxi (n 184).
[186] Anthony Angie (n 183).
[187] Anthonie Angie (n 183).
[188] Anthonie Angie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2004) 39.
[189] Article 1 of the UN Charter stipulates that the organisation is based on the principle of the sovereign equality of all of its Members. United Nations, UN Charter <https://www.un.org/en/sections/un-charter/un-charter-full-text/> Accessed 17 October 2018.

Although sovereignty presupposes equality between states for the preservation of a just world, paradoxically, neocolonialism -in terms of the superiority of the Global North- sustains resiliently, not only in the praxis but also in international norms. In the UN context, for instance, despite adhering to the principle of the sovereign equality of all its members, the UN has institutionalised domination by some colonial powers over the rest of the world by giving them veto rights in the UN Security Council, and in recommending the UN Secretary General.[190]

Connecting the international refugee regime to neocolonialism, Glen Peterson argues that the international refugee regime is characterised not only by its humanitarian or intergovernmental response to displacement, but is also deeply informed by histories of colonialism, racial exclusion, and Western constructions of non-Europeans as "others".[191] He bases his claims on the UNHCR's discriminatory approach to refugee problems in Asia in the 1950s.[192] European refugees fleeing Maoist persecution in China were successfully resettled in European countries, whereas only some of the Chinese refugees were assisted to Hongkong, and Indonesian-Chinese refugees from Indonesia to China were ignored.[193]

In recent developments in the refugee regimes, Global North countries have influenced UNHCR through guiding UNHCR's programmes through their contribution as donor countries. For example, Global North countries urged UNHCR to shift its policy from camps to repatriation during the Cold War period.[194] In fact, by far the most important relationship for UNHCR remains its relationship with donor countries.[195] Therefore, taking into consideration the characteristics of (neo)colonialism within the regime, and the significant influence of the Global North countries on UNHCR in directing UNHCR policies that suit their own interests informs how neo-colonialist characteristics are embedded in this institution.

---

[190] Article 23 of The UN Charter stipulates: "The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council." And article 27 (3) stipulates: "Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter 6, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting". United Nations: (n 187).

[191] Glen Peterson, 'Sovereignty, International Law, and the Uneven Development of the International Refugee Regime' (2015) 49 (2) Modern Asian Studies 439.

[192] Peterson (n 101).

[193] Peterson (n 101).

[194] Gil Loescher and James Milner, 'UNHCR and the Global Governance of Refugees' in Alexander Betts (ed.), *Global Migration Governance* (Oxford University Press 2011) 200, 202

[195] Loescher and Milner (n 194)

b) An Emphasis on Considerations of Morality, Ethics and Justice

As law in a narrow "legalistic" sense cannot respond to the needs of people, especially in the Global South, an emphasis on considerations of morality, ethics and justice becomes important. Obiora Okafor, B. S. Chimni and Karin Mickelson emphasise the lack of considerations of morality, ethics and justice in their respective disciplines. With regard to the international refugee regime, the gap in comprehensive regulation should be filled by considerations of morality, ethics and justice, in the hope that most of refugees no longer live in peril.

The substance of the law is not always equally filled with values of moral, ethics or justice. In the international law context, a treaty is an international agreement concluded between states in written form and governed by international law.[196] The treaty-making process can be closely analogous to legislation in national legal systems.[197] Every state represents its own interests. With regard to politics, a treaty can be a means to fulfil certain political interests.[198] Indeed, the treaty-making process is often influenced by powerful states because of the resources they have, and their ability to influence other states.

Related to the implementation of international treaties within the international forum, Okafor is concerned with how the International Criminal Court (ICC) functions.[199] Despite the fact that some political or military leaders from Global South countries had been strongly suspected of gross violations of human rights, the ICC was subjective and impaired in choosing only African political and/or military leaders for prosecution and punishment.

As Okafor argues, the idea of preventing impunity for perpetrators of the most serious crimes has many supporters everywhere, but sadly, the one-sided form of justice led by the ICC freezes out other viable countries.[200] As the dominant global powers shaped this ICC process, it is seen as a reinforcement of their power over Global South countries, especially those in Africa. For Okafor, in order to be considered credible, the ICC must be impaired in dealing with cases and selecting

---

[196] As defined in Article 2(1) (a) Vienna Convention on the Law of Treaties of 1969 (VCLT). United Nations,' Vienna Convention on the Law of Treaties of 1969' < https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf> accessed 17 October 2018

[197] P. Allot, 'The Concept of International Law' (1999) 10(1) European Journal of International Law 31, 50.

[198] Miro Cerar 'The Relationship Between Law and Politics' (2009) 15(1) Annual Survey of International & Comparative Law 19.

[199] Obiora Okafor, 'The International Criminal Court as a Transitional Justice Mechanism in Africa: Some Critical Reflection' (2015) 9 International Journal of Transitional Justice 90.

[200] Okafor (n 199)90.89.

situations from only the African Continent.[201] African military leaders might deserve to be judged at international tribunals because they had breached the Rome Statute of the ICC; however, the ICC's way of prosecuting justice, with political pressure coming from major powers such as the US, informs the lack of consideration of morality, ethics and justice.

As sovereign countries, the Global North countries are entitled to employ policies within their respective territories. Nevertheless, one of the controversial policies is the so-called non-admission policy. This allows many refugees from Global South countries who have successfully attained Global North territories to be transferred to third countries which are mostly less committed to fulfilling the latter's obligations, especially regarding the fulfilment of articles 2-34 of the Refugee Convention (rights of refugees).[202] As discussed in Chapter 1, the practice of the "protection elsewhere agreements" such as Australia and a third country (such as Nauru) concluded was intended to reduce Australia's responsibility towards asylum seekers and refugees.[203] "Non-admission policies" implemented in some Global North territories might not be against the Refugee Convention, but they are scarce considerations of morality, ethics and justice, and would lead to disadvantages to refugees.

Furthermore, linking the discipline of international environmental law to an emphasis on considerations of morality, ethics and justice, Mickelson criticises the approach of common but differentiated responsibility in addressing environmental problems; the principles behind implementation are unclear, because of different perspectives of thinking about respective roles among Global South and Global North countries.[204] She criticises the "mainstream accomodationist" approach of the discipline, which tends to ignore the role of Global South countries, preferring to let them become passive actors in solving environmental problems.

Mickelson's concern regarding fair burden-sharing between the Global North and Global South countries over environmental problems simultaneously becomes a preoccupation with refugees' problems, as explained previously. In addition, the legal shortcomings in the case of the Rohingya refugee crisis should have been met with considerations of morality, ethics and justice; as with

[201] Okafor (n 199).
[202] Okafor (n 199).
[203] Foster: (n 44). See also: James C. Hathaway and Michelle Foster, *The Law of Refugee Status* (First published 1991, Cambridge University Press 2014) 663, 664.
[204] Karin Mickelson, 'South, North, International Environmental Law, and International Environmental Lawyers' (2000)11 Yearbook of International Environmental Law 52.

environmental issues, the Global South countries are still passive in tackling refugee problems in their territories.

c) *An Emphasis on Human Suffering*

The concept of human suffering is one of the core concerns of this thesis, since its focus is on protecting disadvantaged people (refugees), especially the Rohingya people that fled to Indonesia. The first discussion of this idea, an article by Fagbongbe about women's rights from a TWAIL perspective, recalls Third World scholars' response to the needs of vulnerable Global South people, especially women and concurrently the discourse about human suffering put forward by Upendra Baxi.

Fagbongbe emphasises the bias within the discourse on human rights that affect women in the Global South put forward by the Global North countries. It focuses mostly on the tension between universality and cultural relativism that often blames the latter of being the source of human rights violations against women in the Global South-for instance, the practice of genital mutilation in some Global South countries. This regard must be replaced, Fagbongbe argues, with "more balanced analyses that recognise aspects of culture and other identities that have resonance with women's rights and promote societal cohesion."[205]

Furthermore, Fagbongbe criticises universal human rights discourses of prioritising civil and political rights over economic, social and cultural rights; on the contrary, considering the poverty most Global South countries, TWAIL scholars should engage with international human rights law to combat this poverty. Thus, by centralising non-state actors in the violation of women's rights, the author suggests a critical alternative analysis that might well pave the way for developing more effective modes of engagement with women's rights. She views the vulnerability of women in Global South countries as often defined by Global North countries, a perspective that is often misleading and gives impact to falsehoods in searching for solutions.

Connecting this to previous discussion of refugees, as with women, their voices are often unheard. States frequently try to find solutions without considering their suffering. As the majority still live in peril, it is important to find solutions in a way that responds to their wishes. With regard to my thesis, it is important to better protect Rohingya refugees in Aceh by understanding their suffering.

---

[205]It is important to speak about women because they represent a great proportion of the marginalised population in the majority of the world. Mosope Fagbongbe, 'The Future of Women's Rights from a TWAIL Perspective' (2008) 10 International Community Law Review 401.

Addressing human suffering, Upendra Baxi argues that modern human rights[206] has brought concepts of "justification of the unjustifiable which support colonialism and imperialism." The implication of this belief is the rise of the collective human rights of the "superior" races to command the "inferiors", namely the colonised; the dominant rights of colonialism implied a strong command. In addition, the suffering and the rights of the "inferior"[207] were ignored, since they were considered incomplete human beings.

As the UN has recognised the Rohingya as one of the world's most persecuted ethnic groups, the idea of human suffering is central to this thesis. Without trying to understand human suffering, UNHCR or governments will not be successful in addressing the real needs of refugees. Realising the use of human rights issues as a commodity by entrepreneurs and technocrats wanting to gain advantage for their personal or political aspirations, Baxi places the vulnerable and the poor at the centre of the discourse on human rights. [208]

The voice of vulnerable and poor people, both as main authors and beneficiaries of the human rights discourse, is important, since their experience enables them to address genuinely their human rights needs and concerns. One key aspect of human rights put forward by Baxi is the experience and struggle of individuals, so the ultimate aim of human rights discourse is to give voice to human suffering and ameliorate it.[209] Baxi's ideas will be linked to the Acehnese experience as a people oppressed in the past, and to their current experience in rescuing and providing aid to the Rohingya refugees.

2. *Criticism of TWAIL*

a) *TWAIL Blurs Concepts*

One criticism that can be addressed to TWAIL scholars is the way they define themselves to others, including the terminology around the "Third World" itself. Macau Matua defines the Third World as: "a political reality. It describes a set of geographic, oppositional, and political realities that distinguish it from the

[206] Modern human rights (from the Declaration of Human Rights of Man and of the Citizen in 1789 and before the Universal Declaration of Human Rights in 1948) define a person as one who possesses reason and autonomous moral will. Nevertheless, many categories of people (e.g. "slaves", "barbarians", indigenous populations, women and children) were not included in this modern definition of human rights. Baxi (n 184) 32, 41.
[207]Inferior: many categories of people (e.g. "slaves", "barbarians", colonised peoples, indigenous populations, women, children). Baxi (n 184) 29.
[208] Tamara Relis, Book Review 2011 33(2) Human Right Quarterly 509.
[209] Baxi (n 184).

West".[210] Another is the term that TWAIL scholars use to describe the people they defend, "Third World people".[211] From these conceptions, it seems that TWAIL scholars locate their struggle as being against the West; in other words, they oppose eurocentrism. Therefore, it is important to define who are "us" (the TWAIL) and who is the West. To be precise, who comprises TWAIL? Does it include developed countries such as Japan and China? Conversely, who is the West? Does it include Russia or the Scandinavian countries?

From my understanding in reading TWAIL scholars, they do not set qualifications for placing countries into these two categories, but they generally divide "the West" and "the rest" (i.e., not the West).[212] Okafor, for example, argues that the Third World is not necessarily a categorisation of economic achievement, so China and Japan can be included in the Third World, as inclusion signifies "a shared sense of subordination within the global system."[213] My first observation is that this concept is flawed, especially when it is related to foreign policies. If China can be categorised as Third World as it has "a shared sense of subordination within the global system", it does not mean that China will favour a sense of solidarity with the Third World countries over its own domestic affairs. This can clearly be seen in China's persistence to take control over the South China Sea and its infamous policy over minority ethnic groups such as Uighur people.[214]

TWAIL's assumption that Western countries (the West) comprise one single community is not entirely acceptable. European or (Western) countries are not one. There are countries in Eastern Europe that have constantly opposed Western Europe over the domination of Europe in global politics -for example, the Cold War between parts of Eastern Europe and many European countries. Russia's annexation of the Crimea raised the tension between Russia and Europe in 2019[215]. In this case,

---

[210] Makau Mutua and Antony Anghie. 'What is TWAIL? 94 Proceedings of the ASIL Annual Meeting 31 (2000).
[211] Obiora Chinedu Okafor, 'Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both' (2008) 10 Int'l Comm L Rev 371
[212] Obiora Chinedu Okafor, 'Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective' (2005) 43 Osgoode Hall Law Journal 171.
[213] Okafor (n 212).
[214] Stephanie Nebehay, 'U.N. Says it has Credible Reports that China Holds million Uighurs in Secret Camps' *Reuters* (Reuters, 10 August 2018) < https://www.reuters.com/article/us-china-rights-un-idUSKBN1KV1SU> accessed 19 September 2020.
[215] Leonid Ragozin, ' Annexation of Crimea: A masterclass in political manipulation' *Aljazeera* (Doha, 16 March 2019) <https://www.aljazeera.com/opinions/2019/3/16/annexation-of-crimea-a-masterclass-in-political-manipulation/> accessed 19 September 2020.

TWAIL's standpoint that the West is Europe (and the USA) can be challenged, as in reality Europe is not one single entity with effectively one policy.

Therefore, in my opinion, it is unjust to generalise the West's (Western countries') politics, since these will be driven relative to the politicians in power. Taking the example of Germany, that took the initiative to receive nearly one million refugees, raises the question of whether TWAIL scholars regard Germany differently to other European countries. Similarly, based on fact, many European countries - especially France and Germany-[216]opposed the Iraq war launched by the US and Britain in 2003. Again, it is unfair to perceive the West as one single static entity whose policies always disadvantage non-Western countries.

Another point to address is TWAIL's understanding of "Third World people". Reading some TWAIL scholars, it seems probable that TWAIL's focus is on Third World people who live in the Third World.[217] There is racism against black people in Europe, raising questions about whether they should be included within the meaning of "Third World people".[218] Are they also concerned about the oppressed people living in the Global North? Do they also pay attention to these types of minority? The voice of TWAIL scholars over their fate has hardly been heard.

Another noted aspect is that TWAIL declares its objective as "anti-hierarchy", contra hegemony, and suspicious of beliefs in universal truth.[219] One criticism by the TWAIL scholars is of the Western-designed institution, the UN, which has created unjust elements rooted within its systems.[220] Despite the UN Charter highlighting the equality of state members, it also gives strong power to five countries seated on the Security Council. On the one hand, the Security Council's resolutions are binding, whereas most of the General Assembly's resolutions are weak and place only moral obligations on state members. Importantly, the UN General Assembly is the representation of each member state in the world. To combat injustice in the UN system and within other institutions, TWAIL scholars welcomed similar movements such as Critical Race Theory (CRT) and New

---

[216] The Guardian,' France and Germany unite against Iraq war' *The Guardian* (London, 22 January 2003) <https://www.theguardian.com/world/2003/jan/22/germany.france> accessed 19 September 2020.
[217] Okafor (n 212).
[218] BBC, 'Racism against black people in EU 'widespread and entrenched' *BBC* (London, 28 November 2018) < https://www.bbc.co.uk/news/world-europe-46369046> accessed 20 September 2020.
[219] Martin Gallie, 'Les Theories Tiers-Mondistes du Droit International (TWAIL): un Renouvellement? (Third World Approaches to International Law: A Renewal?)' (2008) Etudes Internationales 1.
[220] Mutua and Anghie (n 210).

Approaches of International Law (NAIL) to strengthen their struggle through intellectual and political movements.[221]

In reality, criticism over the unjust systems within the UN and other global systems has caught the attention of international law scholarship in the West.[222] An example is one of the Western scholars critical over ICC prosecutors abstaining from investigating crimes outside Africa.[223] This concern is also raised by TWAIL scholars. Therefore, should Western scholars of international law who are not part of TWAIL or similar movements – despite their criticism of the unjust, Western-designed global system – still be considered distinct from TWAIL or its associated movements?

Taking into account the above discussion, it is concluded that some basic concepts that the TWAIL scholars have created seem flawed, especially when connected to the politics within Western and non-Western countries, and to mainstream Western international law scholarship. In reality, the West is not one entity, but represents multiple states, politicians, and also scholars. In the same vein, non-Western countries are not a single entity, as they are also bound by their national interests. Moreover, some interests and politics are beyond TWAIL's aspirations, such as the protection of oppressed ethnic minority groups. Even though the fight with arbitrary countries within the Third World might be included in the TWAIL agenda, such a concern attracts little attention among TWAIL scholars.

b) The Lack of Tangible and Real Solutions for Improvement

TWAIL scholarship has been very critical of the world's system. However, it has not offered significant tangible solutions for the needs of the Third World. As previously discussed above, one of the emphases put forward by TWAIL scholars is that TWAIL scholars take human suffering seriously. Everyone would absolutely agree with this emphasis. However, the next challenges would be at the practical level on how their important ideas are elaborated into policies or actions in order to tackle global problems that affect the world and the Third World in particular.

One of the criticisms put forward by the TWAIL scholars about the regime of the ICC is lack of impartiality, as it targeted only African political or military leaders for prosecution.[224] On the other hand, it has also admitted that some political

---

[221] Mutua and Anghie (n 210).
[222] John Dugard, Book Review 107(2) The American Journal of International Law 478.
[223] Dugard (n 222).
[224] Okafor (n 199).

or military leaders from Africa might have seriously committed gross violations of human rights against their own populations.

Given the example of indictments by the ICC of the Sudan president in 2009 and in 2010 that have not been enforced, TWAIL's stance on the matter might be questioned. Should TWAIL scholars suggest the UN Security Council use its force to be able to bring the president to the court or, on the contrary, should they agree with the president's disobedience? TWAIL's proposition should have given an alternative perspective from either the ICC or the UN Security Council.[225]

Regarding the UN system, as mentioned previously, TWAIL scholars consider the UN's structures, particularly the UN Security Council, as unjustified. The power of the UN Security Council has been used by Western countries to maintain foreign policies that are often against the interests of Third World countries.[226] Meanwhile, there are propositions by the mainstream international law scholars to reform the UN, for example, strengthening the Human Rights Council to the level of principal UN organs, amending the Statute of the International Court of Justice (ICJ) with regard to eliminating ad hoc judges, and authorising states to ask for advisory opinions.[227] On the other hand, there has been no comprehensive proposal or proposition for the betterment of the UN on the part of the TWAIL scholars.

In the field of international refugee law, TWAIL scholars are critical of restrictive measures put in place by Western countries in preventing refugees coming from the Third World[228] However, this criticism does not come only from TWAIL Scholars, but also Western international law scholars propose just treatment for refugees.[229] Another important aspect highlighted by the TWAIL scholars is the ability of the international refugee regime to respond to current global refugee problems, which they suggest would create a just world.[230] However, until recently, no comprehensive proposal has come from TWAIL scholars on the design or concept of responsibility sharing between the Global North and Global South. One highlighted idea is the necessity to create ad hoc international cooperation that

[225] Jose E Alfarez, (Opiniojuris, September 2010) <http://opiniojuris.org/2010/09/28/my-summer-vacation-part-iii-revisiting-twail-in-paris/> accessed 20 September 2020.
[226] Mutua and Anghie (n 210).
[227] Dugard (n 222).
[228] Chimni (n 5).
[229] Hathaway and Alexander (n 155) and Goodwin-Gill and McAdam (n 42).
[230] B.S. Chimni, 'Third World Approaches of International Law: A Manifesto' (2006) 8(1) International Community Law Review 3.

employs comprehensive packages to address the root causes of displacement.[231] However, there is no further explanation about, for example, the structure of this institution for "ad hoc international cooperation" or its funding.

The last thing to highlight regards TWAIL's project to advocate marginal voices as the majority population of the Third World. In order to get all the marginal voices heard, TWAIL proposes full democratisation of structures of both national and international governance, although, again, there is no evident steps taken by TWAIL scholars in realisation of their projects.[232] TWAIL might have become a prominent source of intellectual scholarship, but its influence has not reached those at grass-roots level in many Global South countries, as its combat with eurocentrism still resides at the intellectual or political activism level.[233]

Taking into consideration the discussion above, it is evident that TWAIL possesses some weaknesses. I notice that the meaning of Third World itself is not entirely clear. In addition, TWAIL's discourse is vague, as it addresses only general issues facing the world. Unfortunately, there have been no solutions, or at least proposals, about the above-mentioned issues in order to overcome the problems. However, TWAIL's discourse is pertinent. Despite its lack of clarity, the TWAIL scholars' concept of Third World has helped to situate TWAIL's struggle in the context of international law scholarship. In addition, TWAIL has convincingly shown that there are connections between international law and (neo)colonialism. Moreover, it has shown that the characteristic of eurocentrism still resides in international law and its institutions. Another thing to highlight is TWAIL's position "to refuse universal truth", which is in line with the reality highlighted in this thesis: legal pluralism.

D. Conclusion

Taking into account the above discussion, it is concluded that despite its additional roles as a provider to protect the refugees, UNHCR still has no mechanism supervising it. Therefore, the situation leaves refugees the most affected population. With regard to the viability of local integration in the Global South hosting countries,

---

[231] Samuel Berhanu Woldemariam, Amy Maguire & Jason von Meding, 'Forced Human Displacement, the Third World and International Law: A TWAIL Perspective' (2019) 20 Melbourne Journal of International Law 248.
[232] James Thuo Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011) 3 Trade Law and Development 26.
[233] Usha Natarajan, John Reynolds, Amar Bhatia & Sujith Xavier, 'Introduction: TWAIL: On Praxis and the Intellectual' (2016) 37 (11) Third World Quarterly 1946.

satisfactory accomplishment of a local integration solution will not happen without the Global South countries and Global North countries playing their roles.

Considering recent developments on CRRF and GCR, I argue that putting in place a "burden sharing" mechanism/principle has not yet resulted in significant changes among the countries hosting large numbers of refugees. The CRRF is still using the current mechanism (e.g. Refugee Response Plans), with UNHCR taking a lead in the process. According to Chimni, placing UNHCR in the leadership of CRRF and GCR is problematic, as UNHCR itself is still part of the problem. Despite involving various stakeholders, such as development actors, the role of Global North countries is still insignificant. This is shown, for example, by the lack of commitment to resettle significant numbers of refugees in their own territories.

As the discussion about governance of UNHCR should focus on protecting refugees, TWAIL scholarship helps to better understand that focus. Therefore, TWAIL contributes to my thesis in light of three ideas: he continuing legacies of colonial history, an emphasis on considerations of morality, ethics and justice, and an emphasis on human suffering. Regarding the first idea, despite the end of colonialism, such values remains inherently embedded as neocolonialism within UNHCR. Furthermore, as UNHCR was created mostly by Global North countries, their domination has translated to UNHCR policies and programmes that mainly suit their interests.

Secondly, an emphasis on considerations of morality, ethics and justice. Due to the lack of framework in the Refugee Convention, Global North countries are still reluctant to assume their responsibility in helping the majority of the world's refugees who are hosted by Global South countries. The lack of burden-sharing at regional and international level in the case of the Rohingya refugee crisis should have been met with a response based on consideration of morals, ethics and justice. As with environmental issues, relying on UNHCR and the lack of any national instrument to protect the refugees, Global South countries remain inactive in tackling refugee problems in their territories. The third issue, an emphasis on human suffering, is closely related to my thesis. In order to provide better protection for Rohingya refugees in Aceh, it is important to understand their suffering, as one of the most oppressed ethnic groups in the world.

Despite the meaningful aspects of TWAIL discourses, it is worth noting the weakness of TWAIL's ideas. Some meanings of basic concepts, such as Third World are not entirely clear. Importantly, there have not been any solutions or proposals on some important preoccupations facing the world. Despite TWAIL's weakness, it should be admitted that TWAIL's ideas serve as a reminder, especially to

international scholarship, that there are evident connections between international law and (neo)colonialism. In addition, TWAIL's stand on refusing "universal truth" suits the interest of this thesis, which is the primacy of legal pluralism over the oneness of the law (state law).

Chapter 3
Legal Pluralism

A. Introduction

This chapter provides a framework for the case study of refugee protection in Aceh. The theory of legal pluralism put forward by Werner Menski, along with Franz von Benda-Beckmann and Keebet von Benda-Beckmann, and Arskal Salim, is discussed and tested against the findings discussed in the analysis chapters. With respect to my thesis, discussion about legal pluralism is relevant because this thesis seeks to address the use of *adat* law to uphold refugee protection. In addition, legal consciousness literature is also discussed, as this thesis is also about the ideas of the law held by the people protecting the refugees.

The first section discusses the definition of law, starting with its definition as recognised in legal theory. It is important to highlight definitions from this perspective, as the influence of legal theory is significant, especially regarding the foundation of international law and state law. As this thesis seeks to establish the primacy of legal pluralism over a singular law (i.e., state law), the next discussion explores the conception of customary law, followed by a discussion of sharia. To sum up, this thesis will borrow Menski's "plurality-focused" terms in defining the law.

The second section develops some approach of legal pluralism that are: Menski's 'kite model' of legal pluralism, Benda-Beckmann and Benda-Beckmann on the contestation between state law, adat law and sharia and lastly on Arskal view on the relation between adat law and sharia. This research uses the frameworks for the following reasons. Menski develops a plurality-focused definition of law that recognises three main sources of law: state, religion/ethics/morals and society. In a similar way, the Indonesian legal system recognises the coexistence of state law, customary (*adat*) law and sharia and the relationship between them. In addition, Menski highlights the coexistence of state law, natural law (sharia) and social-legal norms (customary law) in a given context. This approach is in line with my thesis, which seeks to examine refugee protection (refugee law) in action. In addition, Benda-Beckman and Benda-Beckmann's views that relationship between state law, adat law and sharia could be examined further trough the contestation of these normative orders that results, In the context of their research on inheritance law in Minangkabau, 'inheritance consensus'. This approach can be used in refugee protection in Aceh as it exists not only harmony but to some extent is conflict between these normative orders. Lastly, with regards Arskal, his research on the

impact of socio-socio-political changes in Aceh over a decade (2005-2015) and the practice of legal pluralism in the province is undoubtfully useful to understand the context where the research is conducted, which is Aceh.

The third section draws on legal consciousness literature. This approach is relevant as the research seeks to understand the significance of law in refugee protection in Aceh. As legal consciousness literature examines the legal consciousness of ordinary citizen, therefore the approach, -put forward by Ewick and Shelbey- is very useful to lead on how and what questions should be posed to the interviewees and respondent. Similarly, the narratives on the attitudes of ordinary people towards law could be understand through the lens of legal consciousness literature.

B. What is Law?

1. Definition(s) of Law: Legal Theory

This section discusses influential perspectives on the law. Discussing the conception of law recognised in legal theory is important, as this viewpoint has had significant influence on both international law and national law in Global North and Global South countries. First, aside from international customary law and general principles of law, international law places importance on written forms of law-international agreements (e.g. international covenants) concluded among states. Likewise, colonial countries have influenced their colonised countries, especially with regard to the legal system put in place in the colony especially after their independence. The colonial legal system or law was co-opted into national legal law in many Global South countries.[234] For example, the Netherlands' Indies Criminal Code was put into practice in Indonesia in 1918.

There is no agreed definition of what the law is. However, law is often perceived as rules for behaviours. In trying to highlight some definitions of law, I will begin from natural theories. Natural law theorists argue that norms are authoritative because of their moral content. The essential idea of natural law theory is that man uses his reason and -possibly helped by the revelation of gods or God-establishes how he can act correctly in connecting with another person.[235] The

[234] Sally Engle Merry, Book Review (1991) 25(4) Society Review 889.
[235] J.E. Penner and E. Melissaris, *McCoubrey and White's, Textbook on Jurisprudence* (first published 1993, Oxford University Press 2018) 12, 14.

combination of revelation and reason laid down rules for behaviours, and the word "law" seemed suitable; hence "natural law".[236]

Historically, religious (canon) law played a huge role in Western communities. Canon law is described as sets of norms for regulating Christian conduct and the relations between Christians.[237] Canon law is important in a Christian's life (e.g. canons on family matters) especially before the movement of secularism in many states in twentieth-century Europe. [238]

One of the most influential natural theorists, Thomas Aquinas (1225-1274) argues that ultimate reason is accessible to human beings through two principal channels; these are the *lex divina* (divine law), which is presented essentially as scriptural revelation; and the *lex naturalis* (natural law), which is the fruit of rational human observation of an order guided by God.[239]

Departing from Aquinas, Grotius (1583-1645) disconnects natural law from revelation. In his account, natural law is founded upon reason applied to human nature alone, independent of the existence and authority of God.[240] He reconstructed natural law theory in rationalism in a period when religious authority was in decline and science developed.

Along with the rise of modern states, the dominant position of natural law was superseded by legal positivism. The prevalent conception of law has been as a collection of rules designed by state institutions.[241] Legal positivists believe that the source of law is not divine commandments, morality or reason.[242] Some argue that if moral principles become law it is not because they are important, but simply

[236] Penner and Melissaris (n 235).
[237] Edward Peters and Melodie H. Eichbauer, 'Canon Law' <https://www.oxfordbibliographies.com/view/document/obo-9780195396584/obo-9780195396584-0033.xml> accessed 28 October 2020.
[238] Michael M. Sheehan, 'The European Family and Canon Law' (1991) 6(3) Continuity and Change 347.
[239] Penner and Melissaris (n 235).
[240] Brian Tamanaha, *A General Jurisprudence of law and Society* (first published 2001, Oxford University Press 2006) 20, 21.
[241] During the early rise of nation state (18th century), the definition of law, as put forward by Austin, is the command of a sovereign supported by sanctions in cases of non-compliance. A sovereign is defined as a person or groups (superior) who are obeyed by the majority of people (inferior). The sovereign does not, at the same time, obey his own command. Austin's opinion is opposed by Hart, who argues that this fails to account for the continuity of legislative authority characteristic of a modern legal system. Furthermore, the sovereign person or persons could not be identified with either the electorate or the legislature of a modern state. In the course of time, the sovereign has been transformed, Hart argues, into legislative bodies which have a mandate to make laws/regulations. W.L. Morison, *John Austin* (Stanford University Press 1982), H.L.A. Hart, *The Concept of Law* (first published 1961, Oxford University Press 2012) 79.
[242] Encyclopaedia Philosophy, 'Legal Positivism' <http://www.iep.utm.edu/legalpos> accessed 10 September 2017.

because they are put into law.[243] Therefore, legal positivism does not consider the content of the rules, such as whether the norms are created to ensure justice in society.[244] Rather, the law has been made through a legitimate process and a legitimate institution. As norms are made by humans and subject to time and space limitations, their value becomes relative.[245]

Some legal scholars, including Von Savigny, challenged the legal positivist conception of law. According to him, legal positivism failed to recognise the true source of law. Further, he noted that, "In the earliest times, law will be found to have already attained a fixed character, peculiar to the people, like their language, manner and constitution".[246] In addition, he emphasises that the law reflects common convictions of the people, the kindred consciousness of an inward necessity, excluding all notions of an accidental and arbitrary origin. There is an organic connection of law to the being and character of the people.[247] In his opinion, law is closely related to the customs and culture of society.

In a similar vein to that of Von Savigny, Ehrlich's account on "living law" also recognises the custom and usage of society; as he highlights:[248]

> The living law is the law which dominates life itself even though it has not been posited in legal propositions. The source of our knowledge of this law is, first, the modern legal document; secondly, direct observation of life, of commerce, of customs and usages and of all associations, not only those that the law has recognised but also of those that it has overlooked and passed by, indeed even of those that it has disapproved.

Living law or customary law has played a significant role in Western countries, especially in common-law countries such as the UK. Customary law is widely recognised as the source from which common law is made.[249]

---

[243] Hart (n 241) 184, 212.

[244] However, there exist some positivists who accept some sources of law from moral consideration; this is called "inclusive positivism". "Exclusive positivism", on the other hand, holds that legal validity is exhausted by reference to conventional sources of law. Marmor Andrei, *Positive Law and Objective Values* (2001 Clarendon Press) 50.

[245] Hans Kelsen*, Pure Theory of Law* (The Law Book Exchange 2001) 18.

[246] Friedrich Karl von Savigny, *Of the Vocation of Our Age for Legislation and Jurisprudence* (Arno Press: 1975) 24.

[247] Von Savigny (n 246).

[248] Kurt A. Ziegert, *Introduction to Eugen Ehrlich, Fundamental Principles of the Sociology of Law* (Transaction Publishers 2002) 493.

[249] J.T. Cameron, 'Custom as a Source of Law in Scotland' (1964) (27) The Modern law Review 306, 321.

After the recognition of human rights in international relations, theories of "new natural law" have been presented.[250] Recognising the law-making powers of the state, these new natural theories focus on moral evaluation of the law. They highlight two points: on the one side, a "proper purposes" doctrine in law making; and on the other side, the nature and limitations of the obligation to obey the law.[251] Fuller suggests a procedural natural theory to combat twentieth-century totalitarian regimes. He qualifies eight negative elements that indicate failure in law making.[252] In addition, Finnis differentiates moral and "collateral" moral obligation.[253] In his view, people ought to obey a bad law due to the damaging effects of disobedience to the legal system as a whole, [254] whereas Dworkin argues that legality is not determined solely by social rules/facts, but also by morals, because the existence and content of positive law is ultimately governed by the existence and content of moral law.[255]

From the explanation above, there is no generally accepted definition of law. The common ground of these thoughts is that the law comprises rules (written or unwritten) and the process of making the law requires a valid authority (e.g., sovereign, legitimate institution). Some parties do not consider the content of the rules as the important aspect of the law, since its validity is determined by the authority of the law-making institution. On the other hand, other scholars highlight the importance of content in the rules, such as moral values. The idea of "living law" is also highlighted, as it recognises multiple legal orders within society. The discussion below confirms the presence of living law other than written law made by the state, especially in the context of the Global South countries.

---

[250] This began around 1900-1960. The rise of "new natural theory" will lead to the recognition of human rights. Werner Menski, *Comparative Law in a Global Context: The Legal System of Asia and Africa* (Cambridge University Press 2006) 168, 171.
[251] Penner and Melissaris (n 235).
[252] These criteria are: (1) failure to establish rules at all, leading to absolute uncertainty; (2) a failure to publicise or at least to make available to the affected party; (3) the abuse of retroactive law-making; (4) failure to make rules understandable; (5) the enactment of contradictory rules; (6) rules that require conduct beyond the powers of the affected party; (7) introducing such frequent changes in the rules that the subject cannot orient his action by them; and, finally, (8) a failure of congruence between the rules as announced and their actual administration. Edwin W Tucker, Book Review 40 (2) (1965) Indiana Law Journal 270
[253] Penner and Melissaris (n 235) 34.
[254] Penner and Melissaris (n 235) 358, 362.
[255] Scot J. Shapiro, 'The Hart-Dworkin Debate: A Short Guide for the Perplexed' Public Law and Legal Theory (Working Paper Series Working Paper No. 77, March 2007 University of Michigan Law School) <https://law.yale.edu/system/files/documents/pdf/Faculty/Shapiro_Hart_Dworkin_Debate.pdf> accessed 9 August 2018.

2. *Customary Law and Religious Law as "Indigenous" Laws in Global South Countries*

The existence of forms of law other than the written rules made by bodies in authority is widely recognised within Global South countries. There are two common forms of the law: customary and religious.[256] During colonisation, many colonial powers implemented aspects of their state laws into their colonised countries (colonial law). At the same time, the colonial powers allowed the colonised countries to put in place both customary and religious law. The next discussion presents the inception and definition of customary and religious laws. Since the topic is discussed within the Aceh context, the meaning of religious law is narrowed down to the law of Islamic believers, known as sharia.

a) *Customary law: Its inception and definition*

In many parts of Asia and Africa, a dual legal system has existed since colonisation. colonial law and native law coexisted. Colonial law was introduced as partly through the colonialist motive civilising the colonised people. Law was the main instrument of the "civilizing mission" of imperialism.[257] The aim of introducing Western law justified and legitimised conquest and control. For example, British law was represented by the colonisers in Asia and Africa as a substantial advance over the "savage" customs of the colonised. Law was conceptualised, as Fitzpatrick points out, as "the gift we gave them."[258] On the other hand, colonial law functioned as an instrument to regulate conflict that occurred between the colonial powers and colonisers working with noble natives who voluntarily subjected themselves to colonial law.[259]

However, in most colonial territories, the colonising countries failed to impose their law on the natives, letting the latter live their lives using their own laws, customary as well as religious. Paradoxically, this policy was part of their strategy to reduce resistance from native people.[260] It applied especially in the field of "personal law", which related to family law, (e.g. marriage law and inheritance). Colonial powers such as the British allowed religious or indigenous leaders to apply

---

[256] Chiba (n 2).
[257] Merry (n 234).
[258] Merry (n 234).
[259] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2004) 39.
[260] W.J. Momsen and J.A. de Moor (eds.), *European Expansion and Law: The encounter of European and Indigenous Law in 19th and 20th-century Africa and Asia* (Berg Publishers 1992) 1, 14.

their laws and settle mechanisms/disputes resolution between themselves.[261]

Similarly, under Belgian and Dutch colonial regimes, the dualism of the legal system was maintained in colonised countries due to the extraordinary variety of cultures and of legal systems.[262] The judicial administration, for example, was a plural system with law courts for Europeans and indigenous tribunals for natives. In Indonesia, a new penal code for natives came into force in 1872, marking a complete dualism of legal organisation.[263] However, in most cases, colonial law was used for external affairs, commercial activities and labour relations.

In the colonial context, most of the law of the colonised people is unwritten, and colonising countries refer to this as "tribal", "native", "indigenous", "customary" or "local" law of the politically subordinate communities.[264] Most non-European law is customary law, which usually means a lack of written sources.[265] The law of colonised peoples recognised by colonial governments was generally labelled "customary law"[266] In some colonial territories, the meaning of customary law is broadened to include religious law, as in India and West Africa.[267] In addition, Netherlands scholars recognise the unwritten law called *adat* as presumably law driven from a superior authority within certain indigenous communities.[268]

Regarding the inception of customary law, some scholars believe that customary law existed before colonisation.[269] The process had occurred before the Europeans came, and continued thereafter. Nevertheless, many scholars believe that even though customary law implies historical continuity, its origins are relatively new. Along with colonial domination, customary law is formed and conceptualised.[270] Further, many identify customary law with precolonial legal forms that have been modified and distorted to maintain the colonialist's interest in their colonised territories, and to compensate for a loss of authority among

---

[261] H.J. Leue, 'Legal Expansion in the Age of the Companies: Aspects of the Administration of Justice in the English and Dutch settlements of Maritime Asia C.1600-1750' in W.J. Momsen and J.A. de Moor (eds.), *European Expansion and Law: The encounter of European and Indigenous Law in 19th and 20th-century Africa and Asia* (Berg Publishers 1992) 143,146.
[262] M.B. Hooker, *Legal Pluralism: An Introduction to Colonial and neo-colonial Laws* (Clarendon Press 1975) 6, 309 and 255.
[263] Hooker (n 263).
[264] Martin Chanock, *Law, Custom and Social Order* (Cambridge University Press 1985) 31.
[265] Dirk Heirbaut, 'Europe and the People without Legal History: On the Need for a General History of Non-European Law' (2000) 68 Tijdschrift voor Rechtsgeschiedenis 269.
[266] Merry (n 234).
[267] Hooker (n 263) 81, 84 and 113.
[268] Burns (n 1).
[269] Keebet von Benda-Beckmann, 'Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra' (1981) 117 J. Legal Pluralism, 19.
[270] Francis G. Snyder, 'Colonialism and Legal Form: The Creation of Customary Law in Senegal' (1981) 49 J. Legal Pluralism.

indigenous leaders.[271] What was termed and applied as "customary law" was often therefore a new kind of law, created by colonial courts and through interaction between the colonial administration and consulted local experts.[272]

Entering the 20th century, there was a tendency for colonial governments to formalise customary law (to become state law) into their respective territories; one method was by unification of the law, especially public law, such the penal law. One argument for this was that the efficient enforcement of law and order in any colonised territory was an important asset for the colonising countries.[273] In 1910, there were efforts to codify local customary law by experts like Van Vollenhoven, who endeavoured to draft a specimen code of Indonesian *adat* law containing 111 articles into a whole set of coordinated *adat* principles to be used by judges.[274] However, this attempt was undermined by the colonial powers due to its lack of certainty. For example, in the chapter on *adat* penal Law, punishable offences were defined as facts that conflicted with *adat* law and/or facts that violated the good faith required in society, unless the judge was of the opinion that this behaviour had been justified by demands of self-interest.[275]

In many places in Africa, in 1920s and 1930s, British colonialism created "native courts." These were an historical construct of the colonial period. They demonstrate the determination of colonial powers to give formal recognition to African courts to shore up traditional authority and strengthen traditional customs in many of the colonised territories in Africa.[276] The colonial government created a new system of native courts under the control of local chiefs to apply rules derived from the "traditional" past of each tribal group. In the native courts, as Francis Snyder describes, the nature of law changed as it was reshaped from a subtle and adaptable system, often unwritten, to one in which fixed and determined rules were applied.[277]

In the post-colonial era, there was a tendency to establish uniform law, since

---

[271] Snyder (n 270).
[272] Franz Von Benda-Beckmann and Keebet von Benda- Beckmann, 'Myths and Stereotypes About *Adat* Law: A Reassessment of Van Vollenhoven in the Light of Current Struggles over *Adat* Law in Indonesia' 167 (2011) Bijdragen tot de Taal-, Land- en Volkenkunde, 167.
[273] C Fasseur, 'Colonial Dilemma: Van Vollenhoven and the Struggle Between *Adat* Law and Western Law in Indonesia' in W.J. Momsen and J.A. de Moor (eds.), *European Expansion and Law: The encounter of European and Indigenous Law in 19th and 20th-Century Africa and Asia* (Berg Publishers 1992) 237, 256.
[274] Fasseur (n 273).
[275] Fasseur (n 273).
[276] Filip Reyntjens, 'The Development of the Dual Legal system in Former Belgian Central Africa (Zaire-Rwanda-Burundi)' in W.J. Momsen and J.A. de Moor (eds.), *European Expansion and Law: The encounter of European and Indigenous Law in 19th and 20th-century Africa and Asia* (Berg Publishers 1992) 111, 127.
[277] Snyder (n 270).

many newly born Asian and African countries wanted to create a nation.[278] In a spirit of post-colonial euphoria, many leaders of new states believed they should create modernised state laws. As efforts to make their own was not successful at the time, transplanting written colonial laws, such as code civil and code penal, became a pragmatic choice.[279] In the course of time, a large bulk of state law has been controlled by legal professionals, had transplanted origins (as mentioned before) and covered economic, government and judicial affairs.[280]

Despite this trend, legal pluralism could not be ignored, so parts of customary law and religious law were incorporated within many Asian and African legal systems, including that of Indonesia.[281] In many countries in Africa, a single-hierarchy court applied written or customary law in order to unify the judicial system by ending the dichotomy of judicial organs.[282] African political and cultural nationalism were reflected in the production of an African legal nationalism, which could not possibly approve the division of a legal system into two parts in the uncontrolled hands of traditional leadership.[283]

In some other countries where dualism of legal systems was maintained, customary law and religious law enjoyed an official boost in status. Moreover, in many Muslim countries, *sharia* was given greater official recognition; in some instances, *sharia* has been accorded a position of supremacy within and above state law.[284]

b) *Sharia: The Definition and its Implementation*

1). *Sharia*: The meaning

Both the terms *sharia* and *fiqh* (Islamic jurisprudence) are often translated as Islamic law. However, the meaning of these terms is different. *Fiqh* is the understanding derived from *sharia* by Muslim jurists.[285] In the Arabic language, *sharia* literary means "the path to water". *Sharia* is the path or the way that was

[278] Jan Prins, 'Adat Law and Muslim Religious Law in Modern Indonesia' (1951) 1 Die Welt des Islams 283, 300.
[279] Daniel Berkowitz, Katharina Pistor and Jean-Francois Richard, 'The Transplant Effect' (2003) 51 The American Journal of Comparative Law 163.
[280] Reyntjens (n 277) 111, 113.
[281] Jan Michiel Otto, *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden University Press 2011) 457.
[282] Otto (n 281).
[283] Chanock (n 264)54.
[284] Tamanaha (n 240).
[285] Mashood Baderin, 'Understanding Islamic Law in Theory and Practice' (2009) 9 Legal Information Management 186.

pointed out by God and His messenger (the Prophet Muhammad) for all humans.[286] From this definition, there are three components of *sharia* that can be highlighted: first, the sources of *sharia*, which are God and His messenger (the Prophet Muhammad); secondly, the "object", which is all humans; and lastly, the path, or the way that is widely recognised, which are the *Quran* and *Hadith*. Therefore, *sharia* can also be interpreted as a religious law based on the *Quran* (from God) and the prophetic tradition.

Sharia is about a way of life, so its scope envelops all aspects of life. This distinguishes Islam from Christianity and Judaism, as Islam acknowledges the spiritual value of "human social relations".[287] If Muslims do not do well to others- even if they accomplish praying five times a day- they will not be regarded as good Muslims in God's eyes. Furthermore, if Muslims do bad things to others and feel sorry about it, it is not enough for them to seek only God's forgiveness. They must express their guilt to those affected and give them compensation, if needed. God will not forgive them unless their victims, or the family affected, have forgiven their faults first.[288] With regards to marriage, for example, this is not only an expression of submission to God, but also a contract between a man and a woman. To protect women in marriage, for example, *sharia* obliges a *mahr* (dowry) to be given by the groom to the bride, and the *mahr* remains the property of the woman, even after a divorce.[289] This point highlights the importance of *sharia* in influencing the social interactions of Muslims towards others, including non-Muslims. Therefore, *sharia* covers a wide range of areas.

In addition to the Quran, the second source of *sharia* is *hadith*, or the prophetical tradition.[290] Hadith (meaning "news" or story) is the record of the traditions or sayings of the prophet Muhammad, revered and received as the second

---

[286] John R Bowen, *Islam, Law and Equality in Indonesia* (first published 2003, Cambridge University Press 2006)14, 16.
[287] H. Chad Hillier, 'Muhammad Iqbal on Al-*Fiqh*: Towards a Natural Law Jurisprudence' (2010) 12 J Islamic L & Culture 258.
[288] For example, Quran verses 4: 92: "Never should a believer kill another believer, except by mistake. If anyone kills a believer by mistake he must free one Muslim slave and pay compensation to the victim's relatives, unless they charitably forgot it'" M.A.S. Abdel Halim, *The Quran, a New Translation* (Oxford University Press 2008) 59.
[289] Sarah M Fallon, 'Justice for All: American Muslims, Sharia Law, and Maintaining Comity Within American Jurisprudence' (2013) 36 British Colombia International Law and Comparative Law Review 153.
[290] The confirmation of *hadith* as the second source after the Quran can be seen in some sources. One is in the Quran itself: QS Al hasr: 7: "And whatever the Messenger (Muhammad) gives you, and abstain from whatever he forbids you." Halim (n 288) 366.

important source of sharia.[291] The important position of the *hadith* is confirmed by the recognition of it as an institution in Islam.[292] In order to enshrine a tradition as an institution, an individual can observe the recitation of the *shahadah*, or witness (there is no god but God; Muhammad is the prophet of God) as a requirement of that person being a Muslim.

There are at least three functions of *hadith*: first, it provides further explanations of the verses of the Quran.[293] For example, the Quran orders humans to eat *halal* food, and the *hadith* explain the categories of halal and non-*halal* food.[294] Secondly, it confirms or expands upon verses in the Quran, so ensuring that Muslims do not misunderstand the meaning. For example, the interdiction of manslaughter in the Quran is confirmed by the *hadith* through examples. Thirdly, it gives practical guidance on the verses. For example, the Quran highlights the interdiction of *riba* (usury). The prophet provides guidance to believers on dispute settlement between them with regard to the interpretation of *riba* in commerce.[295] As the Quran contains principles, values, and general norms, *hadith* serves to provide specific norms and practical guidance on the Quran.

Sharia in not seen only as normative orders that Muslims have to obey. For Muslim believers, the meaning of *sharia* is deeper and higher, as it is inspired by moral and metaphysical purposes (e.g., the happiness of life in the hereafter).[296] This moral or metaphysical purpose of *sharia* might explain the loyalty of Muslim believers who consistently apply values or rules from it, despite the absence of immediate punishment (from God). With reference to donations, for example, the obligation to give donations (*zakat*) yearly on the basis of income, as highlighted in both the Quran and *hadith*, has added significant amounts of donations collected throughout civil society in Muslim majority countries throughout the world. [297]

---

[291] Albert Kenneth Cragg, '*Hadith*' (Britannica) <https://www.britannica.com/contributor/Albert-Kenneth-Cragg/638> accessed 16 September 2020.

[292] Cragg (n 291).

[293] Ahmad Sanusi Azmi, 'Ahl al Hadith Methodologies on Qur'anic Discourses in the Ninth Century: A Comparative Analysis of Ibn Hanbal and al Bukhari' (2017) 4(1) Online Journal Research in Islamic Studies 17 accessed 17 September 2020.

[294] Hamdani Khairul Fikri, 'Fungsi Hadits terhadap Al Quran' (Function of *Hadith* towards Al Quran) (2015) 12(2) Journal UIN Malang 178.

[295] Muhammad Nejatullah Siddiqi, *Riba, Bank Interest and the Rationale of its Prohibition* (Islamic Research and Training Institute 2004) 35, 40.

[296] Dominic McGoldrick, 'Accommodating Muslims in Europe: From Adopting Sharia Law to Religiously Based Opt Outs from Generally Applicable Laws' (2009) 4(9) Human Rights Law Review 603.

[297] Jon B. Alterman and Shireen Hunter, 'The Idea of Philanthropy in Muslim Contexts, The Centre for Strategic and International Studies' (CSIS Washington, 22 February 2004) <http://www.mafhoum.com/press7/188C31.pdf> <http://www.mafhoum.com/press7/188C31.pdf > accessed 15 September 2020.

As explained previously, *sharia* and *hadith* are sacred and fixed norms, as both originate from God and the prophet (Muhammad). However, in order to give guidance to Muslims, *sharia* is interpreted by Islamic jurists as a reflection of political, social, and religious conditions of the time.[298] This is what is known as Islamic jurisprudence *(fiqh*). As it is based on human knowledge of *sharia*, Islamic jurisprudence is fallible.[299] Islamic jurisprudence was developed in the early years of the prophet Muhammad, and was significantly developed in the 10th century. There are, for example, four main Sunni schools of Islamic jurisprudence applicable in different parts of the Muslim world.[300] In addition to the Quran and *hadith*, each of the four schools of Islamic jurisprudence, in formulating its thoughts on certain issues, calls on more sources of law such as *ijma* (the consensus of Islamic scholars) and *urf* (customary law).

In *sharia*, there is an important concept called *maqsid* (*maqasid* in the plural) *sharia*. *Maqasid* is an Arabic word which means purpose, principle, or goal for the protection of every human being. Therefore, *maqasid sharia* is the purposes and principles of *sharia*. The terms *maqasid sharia* and *masalih* (the public interest) are used interchangeably.[301] Traditional Islamic jurists have agreed on five purposes of *sharia*: preserving faith, soul, wealth, mind, and offspring.[302] In preserving the soul, for example, every Muslim is prohibited from killing another human being, as a violation against *sharia* will be sanctioned. The Quran Verse 5: 3 affirms that "whoever kills a soul unless for a soul or for corruption [done] in the land -it is as if he had slain mankind entirely. And whoever saves one, it is as if he had saved mankind entirely."[303]

In the course of time, in order to develop protection of society and to respond to global issues, some prominent Muslim jurists developed the concept of *maqasid* f*sharia* from the scriptures' higher values and principles. Yusuf Qardhawi, for example, labels them as "universal *maqasid*" (universal purposes) that include: preserving true faith, maintaining human dignity and rights, calling people to worship God, purifying the soul, restoring moral values, building good families,

[298] Lars Berger, '*Sharia*, Islamism and Arab Support to Democracy' (2019) 2 (26) Democratization 309.
[299] Bowen (n 286) 15.
[300] The Maliki School (North Africa, West Africa and Kuwait), the Hanafi School (Turkey, Syria, Lebanon, Jordan, India, Pakistan, Afghanistan, Iraq, and Libya), the Shafi'i School (Southern Egypt, Southern Arabia, East Africa, Indonesia and Malaysia), and the Hanbali School (Saudi Arabia and Qatar). Mashood Baderin (n 286)
[301] Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (The International Institute of Islamic Thought: 2009) 7.
[302] Auda (n 301)
[303] Halim (n 289).

treating women fairly, building a strong Islamic nation, and calling for a cooperative world.[304] It is important to note that Qardhawi's universal *maqasid* deal not only with individual protections, but also family, society, state, and world interests. It is interesting also to highlight the importance given to protecting women. The extended purposes highlighted by Islamic jurists such as Qardhawi show the relevance of *sharia* in the current situation.

2). The Incorporation and Implementation of *Sharia* in Indonesia

Sharia, as mentioned previously, is a living law as practised in the life of Muslims globally. The implementation of *sharia* has existed since the time of the prophet Muhammad in the seventh century, long before colonialism or the birth of the modern state in many Muslim countries. Against this background, the following discussion focuses on the incorporation of some aspects of *sharia* into the Indonesian legal system after the country's independence. This raises substantial questions on the grounds that affect this incorporation. The discussion is pertinent, as it helps in understanding the context of the implementation of *sharia* in Aceh.[305]

According to the 1945 Indonesian Constitution (Indonesian Constitution), Indonesia is a non-Islamic country.[306] However, Indonesia cannot also be qualified as secular state as it recognises "the belief in the One and Almighty God", in the preamble to the Constitution. Some scholars view the recognition of religious values in the Constitution as a way out, since there was deadlock between the founding fathers who aspired to establish Indonesia as either a secular or an Islamic state.[307] Due to its position as the biggest Muslim country in the world, Indonesia's policy has always been shaped by Islam. The specific point to address is on the role of Islam in organising the lives of Indonesian people.

On the other hand, Indonesia's source of law emanates from the Indonesian Constitution, the Acts, and any regulations below them. [308] Therefore, neither the Quran nor *hadith* is part of the source of law in Indonesia. The Indonesian Constitution recognises the applicability only of legal products introduced by the colonial power and therefore implanted or implemented before independence (e.g.,

[304] Auda (n 301) 7,8.
[305] Jan Michiel Otto, *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in the Past and Present* (Leiden University Press 2011) 457.
[306] Timothy Lindsey and Simon Butt, *Indonesian Law* (University of Oxford 2018) 1, 4.
[307] Lindsey and Butt (n 306) 4.
[308] The hierarchy of laws set up by Law 12 of 2011 on Law Making: People's Consultative Assembly Decision, Statute/legislation (produced by the national legislature, the DPR, Interim Emergency Law (literally, "Government regulation in lieu of Law")), Government regulation, Presidential regulation, and Provincial regulation and County/city regulation. Lindsey and Butt (n 306) 36,37.

the Netherlands Indies Criminal Code). Similarly, Islamic institutions such as *penghulu* (the administrator of marriage) and *sharia*, especially in family matters, have always been present as living law and recognised as part of state institutions through Act No 1 of 1974 on Marriage (Act on Marriage).[309]

Over the course of time, the incorporation of *sharia* into state law has been taking place, especially, as noted previously, in regard to the rules and norms on marriage, and in religious courts. Many Muslims in Indonesia adhere to the *Shafi'i* school (one of the four leading global Islamic jurisprudences), where the rules and norms of marriage in Indonesia originate. In legal forms, these rules and norms are incorporated into the Act on Marriage. Some scholars take the view that despite the Islamic nature of the Act on Marriage, it should no longer be seen as *sharia*, as it has been incorporated into state law.[310] In this regard, *sharia* can be regarded as one of the important elements in formulating a law. In response to people's needs, many Members of Parliament (MP) seek to include Islamic values or norms in order to accommodate *sharia* into state law. In addition to family law, several Acts that are strongly inspired by *sharia*, such as Act No. 10 of 1998 (revised by Act No. 21 of 2008) on *sharia* banking. Therefore, the influence of *sharia* is not solely in the field of family law, but has also reached the business sector.

After the reformation in Indonesia that ended the 30-year regime of President Suharto in 1998, *the Majelis Permusyawaratan Rakyat* (MPR) People's Consultative Assembly (the Indonesian Senate) made several amendments to the Indonesian Constitution. Concerns highlighted included the desire of some provinces to seek self-determination. In response, greater autonomy was granted to some of the provinces, including Aceh, to implement *sharia* and *adat* law.[311] Article 18B (1) of the Indonesian Constitution stipulates that "The state shall recognize and respect entities of regional administration that possess a specificity or a distinctiveness that are to be regulated by law". [312] The story of Aceh will be discussed in the next chapter

---

[309] Article II of Transitional Provisions of the 1945 Constitution: "Existing laws and regulations shall remain in effect as long as new laws and regulations have not yet taken effect under this Constitution". The Constitutional Court of the Repiblic Indonesia, 'The 1945 Constitution of the Republic of Indonesia' < https://www.mkri.id/public/content/infoumum/regulation/pdf/uud45%20eng.pdf> assessed in 10 October 2019.
[310] Lindsey and Butt (n 306)22.
[311] Article 18A (1) the Constitution of 1945: "The authority for relations between the central government and the regional authorities of the provinces, regencies and municipalities, or between a province and its regencies and municipalities, shall be regulated by law having regard to the particularities and diversity of each region". The Constitution of the Republic of Indonesia of 1945 (n 308).
[312] The article is amended in the Second Amendment (18 August 2000). The Constitution of the Republic of Indonesia of 1945(n 310).

in the background to the case study. However, it is worth noting here that the space allowed by the Indonesian Constitution has given Aceh more flexibility in deciding what elements of *sharia* are implemented through the legally binding instrument (local law), *Qanun.* This has raised a new debate in Indonesia about how far autonomy can be implemented.

3. Werner Menski's Definition of Law: A Concluding remark

Taking these different strands into account, it is evident that aspects of state, society and religion are determinant factors in defining the law-as is most clearly reflected in the legal systems of many Asian and African countries. Regarding these, Menski highlights a "plurality-focused" definition of the law, arguing that some agents assert what the law is.[313] He adds that law can manifest in a variety of forms, can be made in a number of ways, and may derive from different and competing sources.[314] Law cannot be defined from only one legal theory. For example, if one defines a collection of rules as a body of rules that must have been made by group of people that have the authority to do this, we would fall into a narrow definition of law, which is positivism. Therefore, his definition of law contains three important aspects: elements of law, the origins or sources of the law, and to whom the law applies. These three elements may be addressed in a variety of ways[315]:

a body of rules or a set of rules	made by applying in	a state a particular country
a system of norms a particular country	developed by applying to	a certain group of people a particular social group
a body of rules or a set of norms	laid down by applying to	God a religious community

313 Menski (n 250) 179.
314 Menski (n 250) 180, 181.
315 Menski (n 250) 182, 183.

On one hand, the first two phrases have in common their association with the state as an authority that makes a body of rules. This is compatible with Western mainstream law. On the other hand, the second and third pairs of phrases indicate the presence of rules that are not originated from the state, but from a group of people in society, or from God. Having recognised that the first and foremost model of law is state law, a more complex definition of law also takes into account the existence of a body of rules made by group of people.

It worth noting that the law as put forward by Menski is a body of rules established by an entity (one of three entities above). It manifests in many different ways, and is effective in social life.[316] Taking into account this plurality definition of law through the different sources of law, I will move on to discuss legal pluralism. In addition, the discussion of legal pluralism will be historically linked to colonisation, due to its revitalisation during the period of colonisation.

C. Legal Pluralism

1. Legal Pluralism: Its Foundation and Definition

The existence of legal pluralism is dependent on two undeniable facts: first, the submission of each individual in the world to a national legal system; second, due to colonialism, official law normally coexists with non-state-made law (customary, indigenous, folk, religious or informal legal and normative orders) in colonised countries.[317] Likewise, historians have long recognised the coexistence of multiple legal orders, for example in medieval Europe and in the Ottoman Empire.[318] The coexistence of state, customary and religious laws has proved that legal pluralism has always existed in every civilisation.

In the context of colonised countries, many scholars believe that legal pluralism would be a better approach to giving people access to justice.[319] State law has not always been able to resolve problems within society, but the idea has emerged of searching for other laws that are out there in the contemporary social world, laws that would enable people, fuel new hope, and create a sense of transformation.[320] However, this noble idea is not always easy to apply. Boaventura

---

[316]Menski (n 250) 184.
[317] Chris Fuller, 'Legal Anthropology: Legal Pluralism and Legal Thought Author' (1994)10(3) Anthropology Today 9.
[318] William Twining, 'Normatif and Legal Pluralism: A Global Perspective' (2010) 20(3) Duke Journal of Comparative and International Law 473.
[319] Mitra Sharafi, 'In Many Rooms since Galanter: De-Romanticizing Legal Pluralism through the Cultural Defense' (2008) 71(2) Law and Contemporary Problems 139.
[320] Andrea Bianchi, *Legal Pluralism* (Oxford University Press 2016) 228.

de Sousa Santos critiques this approach by saying that "there is nothing inherently good, progressive, or emancipatory about legal pluralism".[321] He then accuses legal pluralism of being reactionary.[322]

Despite this criticism, rapid development in legal pluralism took place in the 1970s and 80s, after most colonialisation had ended. In the course of colonialisation, as part of a strategy by colonial rulers to maintain their hegemony in many colonised areas, they mandated the creation of so-called "native courts" that enforced customary and religious law.[323] These institutions and norms coexisted with "implanted" overarching legal systems (courts and norms) originating from the colonial powers who applied principles that applied also to their own economic and government affairs.[324] After the independence of colonised countries, their legal systems, which were inherited from colonialisation, become stronger. They neglected, to some extent, the existence of customary and religious law that had been applied before.

Many believe that legal pluralism studies are a common language to combat state domination.[325] Griffith characterises the ideology of state centralism as: "law and should be the law of the state, uniform for all people, exclusive of all other law, and administered by a single set of state institutions".[326] In the 1990s, scholars of legal pluralism indicated the interaction and mutual influences of one another's rules, processes and institutions.[327]

Despite the agreement of legal pluralists of the need to combat state domination, there is no agreed definition of legal pluralism within the literature. The early version of legal pluralism is put forward by Ehrlich. He argues that law contains not only the law of the state (the modern legal documents), but also the law of non-state groups, which are effectively norms of conduct. This law becomes the source

---

[321] Boaventura de Sousa Santos, *Toward a New Legal Common Sense* (Butterworth 2002) 428.
[322] Santos (n 321).
[323] Brian Z. Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2008) 30(3) Sydney Law Review 375.
[324] Tamanaha (n 323).
[325] Ralf Michaels, 'The Re-State-ment of Non-State Law: The State, Choice of Law, and the Challenge from Global Legal Pluralism' (2005) 51 Wayne Law Review 1209.
[326] John Griffith, 'What is Legal Pluralism?' (1986) 18 The Journal of Legal Pluralism and Unofficial Law 1.
[327] Kleinhans, Martha-Marie and Roderick A Macdonald, 'What is a Critical Legal Pluralism?' (1997) 12 (2) Canadian Journal of Law and Society 25. See also: Sally Engle Merry, 'Legal Pluralism' (1988) 22(5) Law & Society Review 869. Also: William Twining, *General Jurisprudence: Understanding Law From a Global Perspective* (Cambridge University Press 2009) 362, 375.

in the different kinds of associations in which people co-exist. Ehrlich's ideas about living law seem to embrace a wide range of normative phenomena.[328]

Another definition of legal pluralism includes the concept of law as not only the law of state, but also of semi-autonomous social fields.[329] These semi-autonomous social fields can create their own sets of norms and coerce or induce compliance with them. Therefore, legal pluralism is a situation in which two or more sets of norms coexist in the same social field. This concept derives from an acceptance that law is associated with the ability of a state to use coercion or modes of inducing compliance. The ability to use coercion is also found in a semi-autonomous social field, as indicated in Moore's research about the garment industry in the US and a tribe in Tanzania.[330] These two semi-autonomous social fields have their own ways to coerce and induce compliance.

Furthermore, legal pluralism is also defined as another form of normative ordering of institutionalised bodies, social norms and practices.[331] This definition will lead us to an even broader scope of norms, one that includes social norms.

As legal pluralists agree, there is a variety of directives not attached to the state which nevertheless are "law". Such non-state legal orders cover a very broad range, including normative orders, which exist within small social groups such as community associations, sports leagues and the family.[332] This concerns some of the leading theorists in the field, who argue: "Calling all forms of ordering that are not state law by the term law confounds the analysis."[333]

From the above discussion, it is obvious that there is no approved definition. This is understandable, as the scholars interested in these issues come from different backgrounds and disciplines. In order to get an operative definition of legal pluralism in this thesis, I will highlight a definition put forward by Hooker. He defines legal pluralism as a situation in which two or more laws interact, and in which several legal systems operate within the same territorial area of a state.[334] This definition is relevant as it captures both the interaction of two or more laws, and also the interaction of legal systems (e.g. Islamic and customary) within the area of a state.

---

[328] David Nelken, 'Eugen Ehrlich, Living Law, and Plural Legalities' (2008) 9 (2) Theoretical Inquiries in Law 443.
[329] Sally Falk Moore, 'The Semi-Autonomous Social Field as an Appropriate Subject of Study' (1973) 7(4) Law and Society Review 719 and John Griffith, 'What is Legal Pluralism?' (1986) 18 The Journal of Legal Pluralism and Unofficial Law 1.
[330] Moore (n 329).
[331]Twining (n 179) 362, 375.
[332] Merry (n 234).
[333] Moore (n 329) 719,729 and John Griffith (n 335).
[334] Hooker (n 263) 6, 309.

2. Approaches to Legal Pluralism

a) *Werner Menski's kite model of Legal Pluralism*

Legal pluralism scholarship consists of different disciplines, such as legal anthropology, socio-legal studies and comparative legal studies. A prominent comparative legal studies academic, Werner Menski, is one of the most cited scholars in the literature on legal pluralism.[335] Menski's work is distinct from that of other scholars, and is of particular interest to my thesis.

Menski grew up in the Western intellectual tradition, but his comparative legal studies work in the Global South (e.g. in South Asian countries) show his interests in the existence of legal pluralism and, importantly, on how we should deal with it. Menski's work is distinct from that of other scholars on legal pluralism. Taking Chiba's view, Menski highlights the existence of law in three forms: state, customary and religious.[336] These laws have made a significant impact on the lives of people in many countries, especially in Asia and Africa.[337] Furthermore, Menski adds, the influence of international law is significant not only to the state but also to the individuals who live within its territory. Regarding this, Menski's observation on the influence of international human rights law is relevant, due to the presence of global legal pluralism.[338]

Another important aspect of Menski's work is his concept of interlinking theory and practice. Menski's theory of legal pluralism will be discussed later, but it worth saying now that his theory captures the complexity of the relation between state law, customary law, religious law and international law in the given context. This view is relevant to my project, which is aimed at understanding the interaction between laws in different legal systems, and laws (e.g. state and customary/*adat*) in the context of refugee protection in Aceh.

Menski's theory on legal pluralism emanates from his previous studies of legal systems in Asia and Africa. Through his non-eurocentrist approach, he argues that it is important to go beyond legal positivism to incorporate in a theory of law positivism, natural law theories, and socio-legal approaches.[339] According to

---

[335] William Twining, 'Normative and Legal Pluralism: A Global Perspective' (2010) 20 Duke Journal Comparative and International law 473.
[336] Arinori Kawamura, 'Rethinking legal pluralism and Asian law in the face of globalization' (2016) 48 (3) The Journal of Legal Pluralism and Unofficial Law 441.
[337] Kawamura (n 336).
[338] Werner Menski, 'Flying Kites in a Global Sky: New Models of Jurisprudence' (2011) (7) Socio-Legal Review.
[339] Gordon R. Woodman, Book Review (2013) 38 (52) The Journal of Legal Pluralism and Unofficial Law 207.

Menski, every manifestation of law comprises elements of state law (legal positivism), of religion, ethics or morality (natural law theories), and of society (socio-legal norms/approaches).[340]

Menski's view that associates state law with legal positivism might be arguable, but his idea can be understood in light of his concern about the dominant position of the legalistic approach of state law. Likewise, his description of socio-legal norms seems unclear;[341] however, linking his explanation both to his definition of law as customary law, and to his explanation of African law that links customary and state law,[342] it seems most likely that his description of socio-legal norms relates to customary law.

Through his observations, he argues that effective laws are derived in part from prescriptions of the state, in part from ethical beliefs held by some members, and in part from acceptance of customary practices.[343] In some societies, one aspect is more dominant than others, but in many, none is dominant.

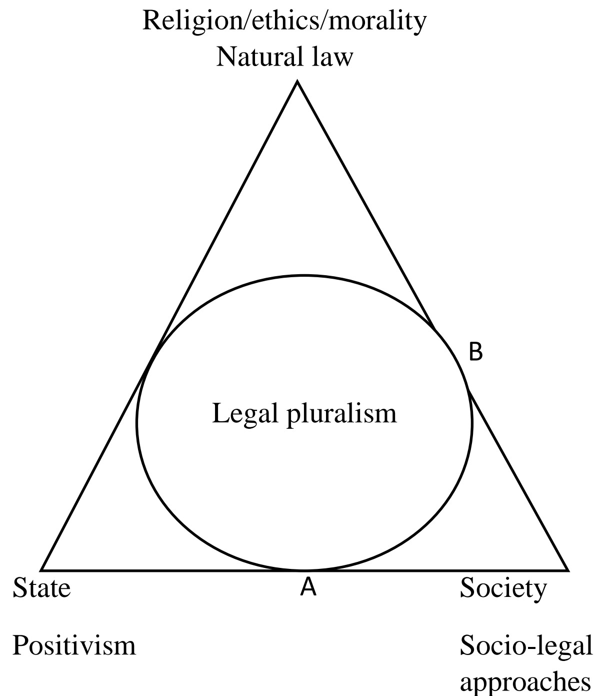
Menski describes the plural nature and constant dynamic interaction of three major elements of law: state, religion/ethics/morality, and society.[344] This model introduces legal pluralism as a major fourth methodological approach of legal theory. Unavoidably, this methodology puts legal pluralism at the centre of Menski's triangle. The image is shown as follows:

Figure. 1

Werner Menski's Triangle Legal Pluralism

---

[340] Menski (n 250) 185.
[341] Menski (n 250) 190.
[342] For example, under the subheading 'The Search for African Law and Legal Theory'. Menski (n 50) 390, 492.
[343] Woodman (n 356).
[344] Menski (n 250) 185, 190.



Legal pluralism fills the central space of this triangle because ‘‘it signifies all those scenarios and conflict situations in which none of the three major law-making sources rules dominate absolutely.”[345] The centre of this triangle would appear to show justice as a result of equilibrium between the various competing forces. Conflicts might occur between the three corners; however, there will always ways to renegotiate the differences between the corners.

Menski points out, for example, the controversy over the implementation the Act of 1986 on Protection of Rights on Divorce of Muslim Women in a secular country like India as an example of the situation described in his theory. One of the provisions of the Act is to give maintenance to divorced women for the period of *iddah* (three months after the divorce, according to *sharia*).[346] This Act was in response to the decision of the court in 1985 over the *Shah Bano* case that upheld maintenance rights for a divorced Muslim wife until death or remarriage. Following the adoption of the Act of 1986, Danial Latifi, the lawyer of the ex-wife, sent a petition to the Indian Supreme Court to declare the Act unconstitutional.[347]

This case caught the attention of two sides; first, many Muslims in India were obviously against the annulment of the Act, and on the other side, activists and

---

[345] Menski (n 250) 185.
[346] Werner Menski, ‘Shah Bano, Narendra Modi and Reality Checks about Global Understandings of Indian Law’ (2011) 1 GNLU Law and Society Review 7.
[347] Menski (n 357).

secular supporters agreed on the annulment of the Act, which they felt reflected women's inequality, and the denial of a distinct personal law system within the secular country of India[348]. The Supreme Court remained in silence for 15 years. Only in 2001, by affirming that maintenance rights are given to divorced women until their death or remarriage, did the Court pronounce the Act of 1986 constitutional.[349]

From the decision it can be concluded that the Supreme Court tried to maintain a balance between upholding the rights of Muslim women in personal law, while at the same time highlighting gender equality, as recognised by section 125 of the uniform civil code. Menski praised both the decision and the "judicial passivism" in not giving the decision for 15 years, in the public interest.[350] This case shows that neither Muslim believers or secular activists are the "winners". Despite the Court's decision in pronouncing the legality of the 1986 Act, it affirms that maintenance rights must be granted to divorced women until their death or remarriage. Therefore, in substance the decision is not fully compatible with *sharia*, as in *sharia* maintenance is given only during the period of *iddah* (three months). This case shows the difficulty in reconciling the laws.

Going back to Figure I, this diagram also indicates that exclusive and "pure" reliance on either positivism (state law), natural law, or socio-legal norms (customary law) may be the exception rather than the rule. [351]Menski emphasises: "We can only handle such challenges constructively in a realistic spirit of negotiation with respect for plurality and diversity, rather than fighting over competing visions that seek to totally exclude other perspectives." [352]

Furthermore, as mentioned earlier, Menski admits that more laws should be included in testing this model within a real legal system, as it can hardly be grasped in its theoretical totality. He then added two more law elements: foreign legal transplant (A) and ethnic implants (B) into any particular legal system.[353]

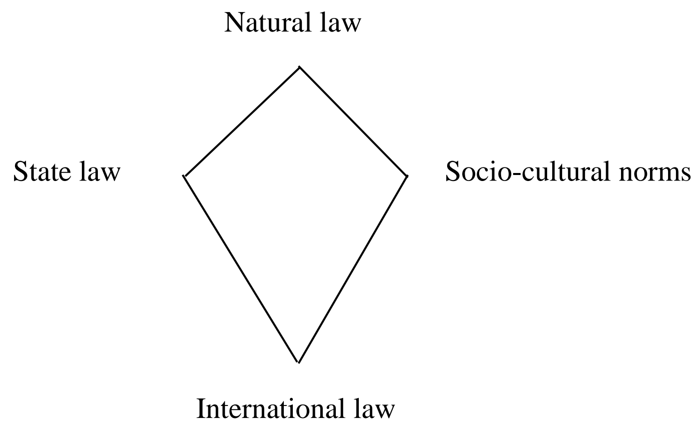
Realising the unavoidable intervention of international norms, he renews his theory and adds the element of international law as a fourth corner. The triangle model was thus transformed into the "kite model", as he describes in his seminal article[354]:

---

[348] Menski, 'Judicial Passivism in the Public Interest' (2006) 1 (10) Bangladesh Journal of Law 11.
[349] Menski (n 348).
[350] Menski (n 348).
[351] Menski (n 348).
[352] Menski (n 250) 613.
[353] Menski (n 250) 188.
[354] Menski (n 338).

Figure. 2

Werner Menski's Kite Model



> ..four different types of law, namely (1) at the top, natural laws in the form of ethics and values, which may be religious and/or secular; (2) on the right hand side, socio-cultural and socio-economic norms, and thus mainly people's customs and ways of doing things; (3) on the left hand side, state law and its various kinds of rules, which may of course not have been made by the state, but were accepted by it on various grounds of expediency from the other corners and (4) in the bottom corner, international law and the various forms of human rights, collectively perceivable as new natural laws..

Menski's kite model theory is based on his study of Indian Family Law. One of his observations is the plurality-conscious prohibition of the Child Marriage Act of 2006. This Act does not nullify all child marriages, leaving it to the parties concerned to decide whether they wish to remain married.[355] However he criticises the Indian Law Commission's proposal to make the common legal minimum age for marriage 18 years, due to its adherence to the Convention of the Right of the Child that defines a child as being under 18.[356]

The domination of one corner, or the dismissal of another, can cause harm to society. Therefselbyore, in order to navigate the kite of law, it is important to consider all four corners. Menski adds:[357] "The skilful interconnectedness of all corners of the kite mirrors theories of interlinkage and interlegality proposed by

[355] Menski (n 338).
[356] Menski (n 338).
[357] Menski (n 338).

major legal thinkers like Chiba, Twining and Santos." By considering this, he argues that he has closely interlinked theory and practice.[358]

b) Franz von Benda-Beckmann adatand Keebet von Benda-Beckmann

Franz von Benda-Beckmann and Keebet von Benda-Beckmann are prominent scholars in legal anthropology. They conducted research on numerous topics within their field, especially in West Sumatera, the Moluccas and Malawi. Their research focuses on natural resources, legal pluralism, and social security issues. The discussion about their works on property, inheritance, and dispute processes among the Minangkabau is relevant to this thesis, as these projects demonstrate the contestation between *adat* law, state law and *sharia*. Interestingly, the Minangkabau themselves are equally fascinated with their unique *adat*; their society is a matriarchal one, and they are proud of being able to combine this with being Muslim.[359]

The Benda-Beckmanns' research shaped my understanding of the relationship between *adat*, religion and state, and the conflict and harmony within the resultant contestations. Their insightful research also highlights the importance of the roles of the actors in situations of legal pluralism. As with many anthropologists, they dispute the claim that state law is by definition more important than other laws. In their view, legal pluralism is a sensitising concept in a situation in which people use (often mixed) state, customary, religious or unnamed new laws – even in a situation where the state explicitly denies the validity of these other kinds of law in social or economic interactions.[360]

Furthermore, the Benda-Beckmanns and Turner emphasise that all legal systems embody ways of dealing with other legal systems[361]. A broad empirical and comparative concept of legal pluralism that acknowledges more than one legal system could be relevant in social interaction. Moreover, this view of legal pluralism is extremely useful in understanding that constellations of legal pluralism differ widely in scope, and the relative importance of their components varies. The view has led to studies of modes of governance and the methods by which power relations

---

[358] Menski (n 338).

[359] Franz von Benda-Beckmann and Keebet von Benda-Beckmann, 'Islamic Law in a Plural Context: The Struggle Over Inheritance Law in Colonial West Sumatera, Journal of the Economic and Social History of the Orient 55 (2012) 771, 793

[360] Franz von Benda-Beckmann and Keebet von Benda-Beckmann, 'The Dynamics of Change and Continuity in Plural Legal Orders' (2006) 38 The Journal of Legal Pluralism and Unofficial Law 1, 44

[361] Keebet von Benda-Beckmann and Bertram Turner, 'Legal pluralism, social theory, and the state' (2018) 50 (3) The Journal of Legal Pluralism and Unofficial Law 255, 274

are inscribed into law, and to understanding how the law regulates access to resources and justice.[362]

The Benda-Beckmanns' first joint research in 1974-1975 was into a dispute over inheritance and property at the Nagari (village) level. This research reveals the use actors make of available laws and legal institutions in pluralistic legal situations. Since economic, social, and symbolic power relations are differentially inscribed into law, choices from among legal systems have real consequences[363]. This applies not just to disputing parties' resort to forum shopping, but often also to institutions dealing with a dispute, depending on how they challenge to attain greater authority[364]. In the Nagari context, for example, the village council had the highest authority to decide whether a dispute should be resolved by them or should first be returned to the parties to let them decide.

Another important finding of the research is that villagers prefer the village mechanism (e.g., deliberation between themselves in village court) to state court to resolve property disputes over *pusako*[365] (lineage).[366] There are three mechanisms (village council, religious state court and state court) competent in resolving disputes about inheritance and property[367]. The villagers prefer the village mechanism over religious or state court. It was new at the time of the research for an Islamic court to deal with family matters, including inheritance. State court was not chosen either, due to the cost the villagers had to bear to get their cases resolved, and to the unpredictable nature of the court's decisions.[368]

Later research showed that the awakening of *adat* and *sharia* law after colonialisation intensified the constellation of *adat*, *sharia* and state law, including over inheritance and property rights.[369] Over the centuries, the Minangkabau had struggled over the choice of whether inheritance should follow the matrilineal

---

[362] Von Benda-Beckmann and Turner (n 361)
[363] Keebet von Benda-Beckmann, 'Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra' (1981) 117 J. Legal Pluralism, 19
[364] Von Benda-Beckmann (n 363)
[365] *Pusako* is inherited property (mainly irrigated rice-land) within a matrilineage under a lineage head. Von Benda-Beckmann (n 363)
[366] The data from court registers shows that only 11.4% of disputes over *pusako* (lineage) property are between *kaum* (sublineage) relatives and the rest are between different *kaum*. Von Benda-Beckmann (n 363)
[367] Von Benda-Beckmann (n 359)
[368] Von Benda-Beckmann (n 359)
[369] Franz von Benda-Beckmann and Keebet von Benda-Beckmann, 'Temporalities in property relations under a plural legal order: Minangkabau revisited' (2014) 46(1) The Journal of Legal Pluralism and Unofficial Law 18,36

inheritance rules of *adat* or *sharia*, particularly around the rules of transfer of *pusako* and *pencaharian*.[370]

Mitigating the differences, key important figures such as *adat l*eaders, religious leaders, judges, bureaucrats, and politicians in 1952 and 1960 gathered to confirm what was called an "inheritance consensus" (first formulated in 1930). Through the consensus, *pusako* should be inherited based on *adat* law, whereas pencaharian (self-acquired property) should be inherited according to *sharia*,[371] while *pusako rendah* would be abolished.[372] For some scholars, *pusako* – as it cannot be inherited – was not aligned with *sharia*. Therefore, searching for recognition of *sharia*, these key figures translated *pusako* into Islamic categories such as *wakf*, property still be considered as the Islamic endowment of property that cannot be inherited.[373] Due to social and economic changes, especially in urban areas of West Sumatra, merchants pushed the validity of Islamic inheritance that allowed them to transfer their property to their children. Indeed, Islamic pressure contributed also to the changing practice of inheriting *pencaharian* within the conjugal family, which was eventually recognised by state law.[374]

This shows how *adat* and Islam have been negotiated and formulated at the Nagari level. The Benda-Beckmanns' account of the struggles and negotiations over inheritance law among the Minangkabau demonstrates the importance to different arenas (e.g., court proceedings, interviews with *adat* elders and religious scholars) of how the relationship between *sharia*, state and *adat* law are normatively constructed and are adopted at village level and in the state courts.[375]

Considering the above explanations, elements of one legal order may change under the influence of another legal order, and new, hybrid or syncretic legal forms may emerge and become institutionalised, replacing or modifying earlier legal forms or co-existing with them.[376]According to the Benda Beckmanns, the relationship between *adat* law, *sharia* and state law and another normative orders can be expressed in political and ideological statements as "complementary, equivalence, or superiority of the different orders of the different social organisation, such as property and inheritance".[377]

---

[370] Von Benda-Beckmann and Von Benda-Beckmann: (n 360)
[371] *Pencaharian* is property acquired by individual lineage members (*harato pencaharian*) after the death of the acquirer were inherited by his lineage segment. Von Benda-Beckmann and von Benda-Beckmann: (n 363)
[372] Von Benda-Beckmann and von Benda-Beckmann (n363)
[373] Von Benda-Beckmann and von Benda-Beckmann (n 363)
[374] Von Benda-Beckmann and Von Benda-Beckmann (n 359)
[375] Von Benda-Beckmann and von Benda-Beckmann (n 359)
[376] Von Benda-Beckmann and von Benda-Beckmann (n 359)
[377] Von Benda-Beckmann and von Benda-Beckmann (n 359)

c) Arskal Salim

Arskal's research looks at the impact of socio-political changes in Aceh over a decade (2005-2015) in terms of significant changes to the legal structure in Aceh, and the practice of legal pluralism in the province.[378] Furthermore, his study interrogates whether subordination exists between the sources of law. Through his research he interviewed actors across different backgrounds, such as judges, both in civil and *Mahkamah Syariah* (Islamic) courts, and in *adat* institutions at village and national levels. Similarly to West Sumatra, in the Aceh context, the contestation between *adat* law, *sharia* and state (colonial) law developed under Dutch colonialisation.

In contrast to Menski, who does not discuss the position of actors in the situation of legal pluralism, Arskal argues that the actors shape the implementation of legal pluralism as they navigate through choosing the law that suits them. Based on Arskal's study on the application of legal pluralism in the Aceh courts, for example, it is revealed that some Christian defendants voluntarily agreed to having their case ruled on by a *sharia* (Islamic) court rather than by a general court, as the former gave milder punishments than the latter.[379]

Another important aspect of Arskal's findings is the influence of international human rights law – as a result of Aceh construction projects after the tsunami on judges of Aceh's *sharia* courts through a programme of gender mainstreaming for them. Thus, the judges are more sensitive to gender equality and are inclined to uphold women's rights through, for example, appointing female guardians to under-age orphaned heirs in managing inherited estates, or obliging husbands to settle post-divorce payments before a divorce is officially declared.[380] From these examples, it is clear that through the roles of actors, the norms of one legal system could be incorporated into another.[381]

In addition, Arskal highlights the relationship between *sharia* and *adat* law. Plural legal orders in Aceh have been present since before Indonesia's independence. During Aceh's sultanates, Islamic law and *adat* co-existed, and at times were hardly distinguishable from one another. In fact, a widely known Acehnese aphorism suggests harmony between *sharia* and *adat*: "*hukom ngon adat, lagee zat ngon sifeut* [the relationship between *sharia* and *adat* is similar to the link between the substance

---

[378] Arskal Salim, 'Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh' (2010) 61 Journal of Legal Pluralism and Unofficial Law 1
[379] Arskal Salim, *Contemporary Islamic Law in Indonesia:* Sharia *and Legal Pluralism* (Edinburgh University Press 2015) 85,89
[380] Salim (n 378)
[381] Salim (n 378)

of something and its characteristic]". Besides overlapping, another way to describe the relationship between *adat* law and *sharia* is that *sharia* prevails to *adat* law.[382]

D. Legal Consciousness and Legal Pluralism

I grasp the law and its significance through legal pluralism, but also through the lens of legal consciousness literature. This relates to legal pluralism as the scope of the former beyond state law.[383] Legal consciousness can be defined as "all the ideas about the nature, function and operation of law held by anyone in society at a given time".[384] Thus, legal consciousness literature relates not only to an individual's experience of law, but to an incorporated collective perception about law; Hertough and Kurkchiyan describe legal consciousness as "a cognitive image of law that is constructed through the life experience of people".[385] Examining the legal consciousness or ordinary citizens concerning offensive public speech, Nielsen concludes that legal consciousness of ordinary citizens is not a unitary phenomenon, but must be contextualised in relation to particular types of laws and to race and gender.[386]

The methodological research of my thesis is influenced by literature on legal consciousness, mainly the seminal work of Silbey and Ewick on the "Common Place of Law"; the way I explore actors' ideas of law was inspired by their seminal book. In seeking to comprehend interviewees' understanding of the law without at the same time projecting their own hypotheses regarding legality, Silbey and Ewick suggest three sequences to be followed in interviewing, which I applied. First, the initial part of an interview consists of a series of questions related to the interviewee's community and neighbourhood.[387] I asked the interviewees, for example, about how long they had lived in their community, their activities in their neighbourhood, the relationships within their community. These questions made it easier for me to be connected to the interviewees, and to continue to the second sequences.

---

[382] Teuku Muttaqin Mansur, *Hukum Adat: Perkembangan dan Pembaharuannya di Indonesia*' (*Adat* Law: Its Development and Reformation in Indonesia) (Percetakan Bandar 2017) 40

[383] Simon Halliday, 'After Hegemony: The Varieties of Legal Consciousness Research' (2019) 28(6) Social & Legal Studies 859, 878 and Hertogh (n 66)

[384] D. Trubek, `Where the Action Is: Critical Legal Studies and Empiricism' (1984) 36 Stanford Law Rev. 575, 592

[385] Marc Hertough and Marina Kurkchiyan, 'When politics comes into play, law is no longer law: images of collective legal consciousness in the UK, Poland and Bulgaria' (2016) 12(4) International Journal of Law in Context 404, 419

[386] Laura Beth Nielsen, 'Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment' (2000) 34 (4) Law & Society Review 1055, 1090

[387] Ewick and Silbey (n 68) 25, 26

To determine their views and perspectives on the law, I asked, in the second sequence, about experiences or practices that they could not forget that might have bothered or troubled them.[388] The final sequence comprised a set of research questions I had prepared. Given time constraints on some interviewees, especially those from a government background, I could not apply this method to all interviewees. The first and second sequences revealed that the interviewees' understanding of the law was not limited to "the state". For example, when I asked an interviewee which local people in their experience managed conflicts with others, it struck me that he answered that the community always tried its best to solve conflict with the help of the most respected person in the village. From this answer, I could understand that a form of law other than state law was part of their daily lives.

As discussed earlier, the study of law within legal consciousness research is not limited by state law, but reaches beyond state law. In line with other aspects of socio-legal scholarship, legal consciousness study examines legality beyond the state. Therefore, the research highlights various actors other than formal legal officials who need to be included into any understanding of how the law works.[389] For that reason, legal consciousness study began with studying people's perceptions and experiences of law in various ordinary settings, including the workplace and everyday life in general. The geographical context of the research – Aceh – strongly indicates a presence other than state law in Acehnese lives, and my research is about the legal ideas that ordinary people hold, especially about what they think and do about the law.

My research also owes a debt to legal consciousness study, as it provides insight into the attitudes of individuals or groups towards the law by theorising varieties of legal consciousness: before the law, with the law or against the law.[390] "Before the law" is a situation that existed where the law was perceived as serious and sacred, in which the world was refigured in importance and consequence.[391] People tend to be loyal and accept legal constructions, as they believe in the appropriateness and justness provided through formal procedures, despite the result not always being fair to them.[392] "With the law" is defined as a situation where law is described and "played" as a game involving the pursuit of individual interest.[393]

---

[388] Ewick and Silbey (n 68) 47
[389] Simon Halliday and Bronwen Morgan, 'I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination' (2013) 66 Current Legal Problems 1, 32
[390] Ewick and Silbey: (n 68) 47
[391] Ewick and Silbey (n 68) 47
[392] Ewick and Silbey (n 68) 47
[393] Ewick and Silbey (n 68) 48

People accept formal legal constructions and procedures only for specified objectives and in limited situations. Whereas "against the law" is a situation in which people reveal their sense of being caught within the law, or being up against the law, as its schemas and resources override their capacity either to maintain its distance from their everyday lives, or to play by its rules.[394] Further, Ewick and Silbey highlight that "Resistance entails a consciousness of being less powerful in a relation with power. Second, resistance represents a consciousness of both constraint and autonomy, of power n possibility. Third, resistant acts involve assessments that power has produced unfair constraints and opportunities. It involves a justice claim and attribution of responsibility for the unfair situation."[395]

Another narrative of legal consciousness put forward by Halliday and Morgan is that it represents an expression of collective rejection of the authority of state law.[396] This narrative is based on Halliday and Morgan's study of radical environmental activists. It highlights the gaming potential of state law, concurrently with the activists' belief in a higher transcendent law above state law, the two merged powerfully in a legal consciousness of dissenting collectivism.[397] The idea is connected to my research with regards to the collective efforts shown by the fishermen in rescuing Rohingya refugees, despite the hostile response of Indonesian authorities towards the Rohingya.

E. Conclusion

Menski has theorised the existence of four dominant legal orders (state law, international law, customary law and natural/religious law) in many societies, especially in Asia and Africa. This view is relevant to my thesis, as it shows the coexistence of four normative orders in the context of refugee protection in Aceh. Furthermore, Menski highlights how laws work not only in isolation, but interact, pulling each other into a centre.

The view of Menski is complemented by the work of the Benda-Beckmanns and Salim, whose researches are based on their empirical studies. The Benda-Beckmanns' research point out various arenas in which the relationship between *adat* law, *sharia* and state law are normatively constructed and in which their respective legal repertoires are used at village level and in the state courts. In addition, Arskal highlights the role of actors, not only local but also international actors, in shaping

[394] Ewick and Silbey (n 68) 48
[395] Ewick and Silbey (n 68) 183
[396] Halliday and Morgan (n 389)
[397] Halliday and Morgan (n 389)

the situation of legal pluralism, including their choices in negotiating the laws they are abide by.

As my research explores the idea of a law of the people protecting the refugees, Legal consciousness study is very useful in at least two ways. First, It has contributed in guiding the interviews and FGDs, and secondly, it explains the attitude of the actors (especially common people) towards the law(s), as it translates their attitudes into four narrations: before the law, with the law, against the law, and dissenting collectivism.

Chapter 4
Background of Case Study

A. Introduction

This chapter introduces the specific case study of this thesis, the protection of Rohingya refugees in Aceh. The background information about the Rohingya, their arrival in Aceh in 2015, and the broader legal and political features of Aceh (and of Indonesia more generally) contextualise my later analysis of the challenges caused by limitations in the international refugee regime, and of the role of legal pluralism. This chapter is divided into three sections providing background information about, respectively, the Rohingya refugee crisis, the socio-legal environment of Aceh, and the national legal context of refugee protection in Indonesia (and its relationship with the international refugee regime).

The first section provides background on the Rohingya refugee crisis. It discusses the cultural background of the Rohingyas, the cause of their flight in 2015, and its consequences, including their arrival in Aceh. With regard to my thesis, discussion of the Rohingya refugee crisis is pertinent because it provides context for the perilous flight of the Rohingya to Aceh.

The second section provides background on Aceh. This is relevant because, firstly, despite the numbers of the Rohingya refugees being small, their situation did provoke more regional cooperation. Secondly, discussing Aceh contributes to a better understanding not only of the Rohingya, but also of refugee protection in Indonesia and in the region more generally. Therefore, this section will provide background on the situations of the various actors responding to the Rohingya within the broader cultural and political context of Aceh. This section will also review the particular features of the "autonomous" legal system of Aceh, including its recognition of *adat* law and *Sharia*.

The third section will provide an overview of the broader, national legal context of refugee protection in Indonesia. This discussion is important because it highlights the limits of legal protection for refugees in Indonesia, a factor that unavoidably influences steps taken to tackle the Rohingya refugee situation in Aceh. Consequently, this section will discuss the (non) ratification of the Refugee Convention and the 1967 Protocol, the prolonged lack of a state law on refugees, and the important adoption more recently as of the Presidential Decree in 2016.

B. Rohingya Crisis in 2015: Background

This section provides a context of the flight of Rohingya people from Myanmar to its neighbouring countries. It presents the background to the Rohingyas, the policy of Myanmar governments towards them since independence, and lastly explores how the outflow of Rohingyas from their country have spurred maritime movements.

1. The Rohingya: Cultural and Religious Background

While most of the Rohingyas have fled to neighbouring countries, there are an estimated 600,000 remaining in Myanmar in the North Arakan townships of Maungdaw, Buthidaung, and Rathedaung.[398] Currently, 860,000 Rohingya refugees live in the densely populated refugee camps in the Cox's Bazar district of Bangladesh, and other countries host about 150,000 Rohingya refugees.[399]

The use of the term Rohingya is rejected by Myanmar's government and the broader Buddhist population, who prefer to describe the Rohingyas as Bengali, illegal immigrants from Bangladesh.[400] The word Rohingya originates from the word "*Rohang*", the ancient name of Arakan.[401] Some scholars believe the word Rohingya comes from the word *Rooinga* – natives of Arakan, who are mainly concentrated in Rakhine (Arakan) state in the south west of Myanmar.[402] It is recognised that Muslims were living in Arakan long ago, in the cosmopolitan kingdom of Mrauk-U (1429 to 1785).[403] Holding various occupations, including high-ranking Muslim ministers, merchants and soldiers, Muslims held on to their distinct heritage and identity within the Buddhist majority environment.[404]

With regard to their religious convictions, the Rohingya are observant Muslims.[405] Both in their country of residence, Myanmar, and in the camps in

---

[398] UNHCR,' Myanmar' (September 2019) <https://reporting.unhcr.org/sites/default/files/UNHCR%20Myanmar%20Fact%20Sheet%20-%20September%202019.pdf> accessed 10 November 2020.
[399] UNHCR, 'UNHCR Calls for Solidarity, Support and Solutions for Rohingya Refugees Ahead of an Urgent Donor Conference' (20 October 2020) <https://www.unhcr.org/uk/news/briefing/2020/10/5f8d7c004/unhcr-calls-solidarity-support-solutions-rohingya-refugees-ahead-urgent.html> accessed 10 November 2020.
[400] Khin Maung Yin, 'Salience of Ethnicity among Burman Muslims: A Study in Identity Formation' (2005) 2 (13) Intellectual Discourse 161.
[401] Yin (n 400).
[402] Syed S. Mahmood, 'The Rohingya People of Myanmar: Health, Human Rights, and Identity' (2017) 389(1) The Lancet 1841.
[403] Anthony Ware and Costas Laoutides, *Myanmar's Rohingya Conflict* (Oxford University Press 2018) 85, 86
[404] Ware and Laoutides (n 403).
[405] Ware and Laoutides (n 403).

Bangladesh, for example, many Rohingya men pray five times a day in the mosque.[406] The Rohingya also preserve social conservatism in their religion, so Rohingya women spend most of the time in the house, looking after the children and avoiding being seen by outsiders, in order to maintain their dignity.[407] Similarly to many villagers in Muslim communities, Rohingya people pay high respect to a *mullahs* (Islamic preachers), the *moulvis* (Islamic teachers) and the elderly.[408]

The Rohingya in Myanmar earn their living through agriculture.[409] There display the typical characteristics of peasantry, such as a lack of social conflict among themselves, and persistence in holding on to their traditional culture and beliefs.[410] Since the community has a significant position in their lives, it is important for them to maintain harmony and good relations with their family, and with their community at large. Consequently, support is given to members of community whenever they need it. In reality, the Rohingya put in place a mechanism to maintain strong solidarity and collectivism in the villages, which they call *samaj.* [411]

2. *The Myanmar Government's Persecution of the Rohingya*

The upcoming brief discussion about Rohingyas and the systematic human rights violations they endure allows us to understand the root cause of their flight to reach safe haven in neighbouring countries. The tension between the Rohingya and majority ethnic groups in Myanmar (Rakhine) is believed to be one of the factors; however, it is widely recognised that violence towards Rohingyas is mostly state-sponsored or structural.[412] Rohingyas-similarly to other ethnic minorities like Karens and Katchin- have been the victims of persecution by the state in Myanmar for

---

[406] Kerrie Holloway and Lilianne Fan, 'Dignity and the Displaced Rohingya in Bangladesh' (HPG Working Paper, August 2018) <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12362.pdf> accessed 19 September 2018.

[407] Holloway and Fan (n 406).

[408] A.K Tay *et al*. (2018), 'Culture, Context and Mental Health of Rohingya Refugees: A Review for Staff in Mental Health and Psychosocial Support Programmes for Rohingya Refugees' (UNHCR, 2018) <https://www.unhcr.org/5bbc6f014.pdf> accessed 9 September 2020.

[409] Helal Mohammed Khan, 'Interpreting Migrant Culture: Beginner's Notes in Anthropology (Study Case the Rohingya)' (panel paper at Anthropology Graduate Colloquium, Ku Leuven, April, 2017) <https://www.researchgate.net/profile/Helal_Khan/publication/316857681_Interpreting_Migrant_Culture_Beginner's_Notes_in_Anthropology_Study_Case_-_the_Rohingya_2017/links/592d65d7aca272fc55a5d810/Interpreting-Migrant-Culture-Beginners-Notes-in-Anthropology-Study-Case-the-Rohingya-2017.pdf> accessed 15 August 2018.

[410] Victor T. King, *Sociology of Southeast Asia: Transformations in a Developing Region* (Nias Press 2008) 30, 44.

[411] Tay *et al* (n 408).

[412] Maung Zarni and Alice Cowley, 'The Slow-Burning Genocide of Myanmar's Rohingya' (2014) 23 Pacific Rim Law and Policy Journal 682.

decades. The report of an independent international fact-finding mission in Myanmar concludes that gross human rights violations and abuses have been committed towards the Rohingyas.[413]

The Rohingya were declared part of Myanmar's ethnic minorities under U Nu, the first Prime Minister of Myanmar -then still known as Burma- in 1948. This recognition enabled them to get access to fundamental human rights, such as the right to citizenship. However, after the military coup in 1962, the Rohingya's rights started to be infringed.[414] Systematic violation of Rohingyas' human rights began in 1977 with the *Naga Min* operation, aimed at forcing them away from Myanmar. The Burmese Army forcibly evicted them and was accused of widespread brutality, rape and murder.[415] These violations led more than 200,000 Rohingyas to flee to Bangladesh by May 1978.[416]

A bilateral agreement was later signed with Bangladesh to repatriate Rohingyas to Myanmar, but their exclusion continued, as the revised Myanmar Citizenship Law excluded Rohingyas from the list of 135 national ethnic groups. This exclusion, combined with burdensome requirements to apply for citizenship, resulted in the Rohingya becoming stateless and denied their basic rights by 1982.[417]

The Myanmar military government remained in power, and initiated a further operation, *Nat-Say Ku-Kwey Ye* (the *Nasaka*), consisting of police military intelligence and immigration/customs and other officials. In connection with the militarisation of Myanmar's border, the *Nasaka* was established as the military border force in 1992. It imposed severe restrictions on physical movement, and on marriage, and increased extortion and abuse.[418] This policy caused 250,000 Rohingyas (30% of the Rohingya population of north Arakan) to leave Myanmar for Bangladesh, and about 15,000 made their way to Malaysia, in 1991-1992.[419]

---

[413] The Office of the High Commissioner for Human Rights, 'Report of the Independent International Fact-Finding Mission on Myanmar' (OHCHR, 12 September 2018) <https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf> accessed 19 October 2018.
[414] Susetyo and Chambers (n 128).
[415] Human Rights Watch, 'The Government Could Have Stopped This" Sectarian Violence and Ensuing Abuses in Burma's Arakan State' *HRW* (New York, 2012) <https://www.hrw.org/sites/default/files/reports/burma0812webwcover_0.pdf > accessed 16 October 2018.
[416] Human Rights Watch (n 415).
[417] Cheung (n 144).
[418]Human Rights Watch, 'Perilous Plight: Burma's Rohingya Take to the Seas' *HRW* (New York, 26 May 2009) <https://www.hrw.org/report/2009/05/26/perilous-plight/burmas-rohingya-take-seas> accessed 11 October 2018.
[419] Human Rights Watch (n 418).

3. The Flight of Rohingyas to Neighbouring Countries

Entering the 21st century, there was no sign of violence towards Rohingyas diminishing. It has continued to be sustained. The plight of the Rohingyas became widely known amidst worldwide media coverage of the case of the "boat people" who tried to reach Thailand and were eventually towed out to sea by Thai officials in 2009.[420] A new chapter of significant flows of Rohingyas occurred successively in 2011, 2012, 2013, 2015, 2018 and most recently in 2020.

In June 2012, violence arose after an Arakan woman was alleged to have been raped and killed by three Rohingya men. As reports circulated locally, large numbers of villagers stopped a bus and brutally killed ten Rohingyas.[421] As mobs from both communities gathered, there was little effort by the Myanmar government to stop the violence. On the contrary, it escalated the situation by announcing a state of emergency, allowing killings, mass arrests and looting against Rohingyas.[422] This situation led the flight of around 10,000 Rohingyas to neighbouring countries.

After the June 2012 violence and its aftermath, Tomas Ojea Quintana, a UN special rapporteur for human rights in Myanmar between 2008 and 2014, concluded:

> The pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court. The extrajudicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations has taken place on a large scale and has been directed against the Rohingya Muslim population in Rakhine State.[423]

As a result of attacks on personnel from the UN and humanitarian organisations in March 2014, several international organisations suspended their operations in Rakhine state. This had a massive impact on the livelihood of Buddhists, but mainly on the Rohingyas, in the state. For the Rohingyas, the situation was aggravated by restrictions on freedom of movement imposed on them, and

---

[420] Subir Bhaumik, 'Thailand "Deported" Burmese Rohingya' *BBC* (London, 14 February 2011) <https://www.bbc.co.uk/news/world-south-asia-12445480> accessed 12 October 2018.

[421] Human Rights Watch, 'The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma's Arakan State' *HRW* (New York, 31 July 2012) <https://www.hrw.org/report/2012/07/31/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan> accessed 13 October 2018.

[422] Human Rights Watch (n 421).

[423] Tomás Ojea Quintana, 'Report of the Special Rapporteur on the Situation of Human Rights in Myanmar' (OHCHR, 2 April 2014) <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/.../A-HRC-25-64_en.doc> accessed 29 November 2018.

discrimination in access to basic services.[424] In October 2014, the Myanmar government issued its Rakhine State Action Plan, which allowed the Rohingyas apply for citizenship, but they would be registered only as "Bengali", with those who refused to be registered, and who had inadequate documents, placed in camps.[425]

Over the course of time, the violations continued. In February 2015, the president issued a notification announcing that all existing temporary registration cards would expire on 31 March 2015, and requiring the submission of expired documents by 31 May 2015.[426] All of these factors would unavoidably result in thousands more Rohingyas fleeing to neighbouring countries. In December 2014, UNHCR estimated 53,000 people left Bangladesh and Myanmar on smuggling boats bound for Thailand and Malaysia.[427]

Before coming ashore in Aceh in May 2015, the Rohingya refugees and Bangladeshi migrants were experiencing long and dangerous journeys.[428] Due to economic reason, the Bangladeshi migrants were persuaded by the traffickers to get a better life abroad.[429] Many of Rohingya refugees and Bangladeshi migrants began from the coastal city of Cox's Bazar, while other Rohingya refugees went directly from Myanmar and used Bangladesh as a transit point.[430] Many Rohingya refugees living in the camps at Cox's Bazar chose -or were persuaded by traffickers- to leave the camps to get a better life in Malaysia.[431] Without legal status in Bangladesh, Rohingyas' fundamental rights are not fully protected.[432]

---

[424] Quintana (n 423).

[425] Katherine Southwick, 'Preventing Mass Atrocities Against the Stateless Rohingya in Myanmar: A call for Solutions' (2015) 68(2) Journal of International Affairs 137.

[426] Yanghee Lee, 'Report of the Special Rapporteur on the Situation of Human Rights in Myanmar' (OHCHR, 23 March 2015) <https://www.ohchr.org/en/hrbodies/sp/countriesmandates/mm/pages/srmyanmar.aspx> accessed 29 November 2018.

[427] UNHCR, 'South-East Asia: Irregular Maritime Movements, January-November 2014' (UNHCR, 30 November 2014) (UNHCR<www.unhcr.org/53f1c5fc9.html> accessed 29 November 2018.

[428] Amnesty International report, 'Deadly Journey: The Refugee and Trafficking Crisis in Southeast Asia' *Amnesty International* (London, October 2015) <https://www.amnesty.org/download/Documents/ASA2125742015ENGLISH.PDF> accessed 17 October 2020.

[429] Mohammad Abdul Munim Joarder and Paul W. Miller,' The Experiences of Migrants Trafficked from Bangladesh' (2014) 653The Annals of the American Academy of Political and Social Science 141.

[430] David Bergman, 'In Bangladesh, Human Traffickers Rely on Silence and Extortion' *Aljazeera* (Doha, 10 June 2015) <http://america.aljazeera.com/articles/2015/6/10/In-Bangladesh-human-traffickers-rely-on-silence-and-extortion.html> accessed 10 November 2020.

[431] Bergman (n 430).

[432] Cheung (n 144).

On the other hand, some of the Rohingya were forced to flee, as described in this interview by Human Rights Watch: "They dragged me to the boat, they had sticks, and threatened to beat me. I screamed, I cried loudly. My parents were weeping, but they could not do anything".[433]

Before arriving in Aceh, the Rohingya had spent several weeks and months at sea.[434] UNHCR estimated an average of 76 days.[435] Rohingya refugees and Bangladeshi migrants were gathered into groups of people in small fishing boats in Cox's Bazar before being transferred to larger ships anchored in international waters, then eventually ending up in their respective boats that carried them to Aceh.[436] In the course of the journeys, they witnessed or suffered from severe abuse at sea, including killings and beatings.[437] On the boats, they could not move freely and received only one meal a day.[438]

As their journeys were not free, many of the Rohingya were abused if they could not provide ransom for traffickers. One of the Rohingya interviewed by Amnesty International reported that he was beaten many times with plastic-sleeved metal pipes for failing to provide ransom for the traffickers.[439] He was eventually moved to another boat when his family in Myanmar paid 7,500 Malaysian Ringgit (about USD1, 700) after borrowing money from other villagers. [440]

Unfortunately, a crackdown was ordered by the Thailand government, leaving boats that carried thousands of Rohingya and Bangladeshi immigrants stranded in the coastal areas of Thailand, Malaysia and Indonesia in May 2015.[441] After being caught up in an international "ping pong game" between Thailand,

---

[433] Human Rights Watch, 'Southeast Asia: Accounts from Rohingya Boat People Denial of Rights in Burma, Bangladesh, Lead to Trafficking and Dangerous Sea Voyages' *Human Right Watch* (New York, 27 May 2015) <https://www.hrw.org/news/2015/05/27/southeast-asia-accounts-rohingya-boat-people>, accessed 15 August 2019.
[434] Amnesty International report (n 471)
[435] UN Office on Drugs and Crime, 'Migrant Smuggling in Asia: Current Trends and Challenges' UN Office on Drugs and Crime (Bangkok, 28 April 2015) available at https: <https://reliefweb.int/report/world/migrant-smuggling-asia-current-trends-and-related-challenges-enmy> accessed 14 August 2019.
[436] Amnesty International report (n 428).
[437] Amnesty International report (n 428).
[438] Amnesty International report (n 428).
[439] Amnesty International report (n 428).
[440] Amnesty International report (n 428).
[441] Amnesty International report (n 428).

Indonesia and Malaysia, many of them finally got help from Acehnese fishermen in three different locations in Aceh.[442]

As the plight of thousands of Rohingyas in neighbouring countries continued, for the same reasons as in 2018 and in 2020, the international communities looked to the UN to provide solutions to the conflict. The presence of Rohingyas in neighbouring countries had become the current issue to tackle, with the question about the responsibility for those involved in human rights violations against Rohingyas a pertinent one. As several studies concluded that Rohingyas had suffered gross human rights violations,[443] the current UN report recommended the top military official in Myanmar be brought before the International Criminal Court for crimes against humanity and genocide.[444] After discussing the plight of the Rohingya, the next discussion will focus on Aceh, the main fieldwork location.

C. Aceh: An Introduction to Fieldwork

Aceh is a province of Indonesia, at the northern end of Sumatera, surrounded by water on three sides: the Andaman Sea of the Indian Ocean to the west and north, and the Strait of Malacca to the east. In 2019, the population of Aceh was 5,371, 532, of which about 97%, was Muslim.[445]

Aceh consists of five municipalities and eighteen districts. The capital is Banda Aceh. Fishery is one of Aceh's resources, and there are at least 17,000 fishing ships in the province.[446] However, as most of the fishing ships are traditional, the Ministry of Fishery estimates that there is the potential for a 90% greater catch.[447]

---

[442] The *Guardian*, '"We helped out of Solidarity": Indonesian Fishermen Come to Aid of Boat Migrants' *The Guardian* (London, 18 May 2015) <https://www.theguardian.com/world/2015/may/18/solidarity-indonesian-fishermen-boat-migrants-aceh> accessed 17 October 2018 and BBC, 'The Indonesian Villagers Saving Migrants' *BBC* (London, 20 May 2015) <https://www.bbc.co.uk/news/world-asia-32807799> accessed 17 October 2018.

[443] Irish Centre for Human Rights*, Report on Crimes against Humanity in Western Burma: The Situation of the Rohingyas,* Irish Centre for Human Rights (Galway, 2010) <http://burmaactionireland.org/images/uploads/ICHR_Rohingya_Report_2010.pdf> accessed 18 October 2018.

[444] UNHCR (n 427).

[445] BPPS Aceh, 'Jumlah Penduduk Provinsi Aceh Menurut Kabupaten Kota Tahun 2017-2019' (Acehnese Population 2017-2019) Aceh Civil Registry Office, (Banda Aceh, 2019) < https://aceh.bps.go.id/statictable/2020/02/24/247/jumlah-penduduk-provinsi-aceh-menurut-kabupaten-kota-tahun-2017-2019-.html> accessed 10 November 2018.

[446] Aceh Provincial Government, 'Di Aceh Laut Tidak Dipunggungi, Laut adalah Etalase Kami' (Banda Aceh, 17 October 2017) <https://acehprov.go.id/news/read/2017/10/17/4633/di-aceh-laut-tidak-dipunggungi-laut-adalah-etalase-rumah-kami.html> accessed 30 November 2018.

[447] Aceh Provincial Government (n 489).

Despite having the natural resource of oil, and one of the largest natural gas reserves in the world, Aceh is among the poorest provinces in Indonesia.[448]

1. The Foundation of Acehnese Identity in Aceh: A Historical Perspective

Aceh has always been an important region, as its position at the entrance to the Strait of Malacca has contributed to cultural and commercial exchange with a wide range of other societies, from China to the Coromandel Coast of India.[449] Arabian and Gujarat merchants introduced Islam and spread it to the Acehnese through the arrival of Islamic scholars (*ulamas)* in Aceh.[450] They created a permanent settlement in Aceh; making it the first region in Indonesia to accept Islam.[451]

According to Salim, there are at least three historical causes for the Acehnese firmly identifying as Islamic devotees.[452] First, Aceh was the first region in Indonesia to embrace Islam. Second, the first Muslim kingdom in Indonesia was founded in Aceh. Third, the long history of implementation of *sharia* dates back to Acehnese sultanates in the sixteenth and seventeenth centuries.

Organised trading networks between the fourteenth and mid-seventeenth centuries in Southern Asia created coastal kingdoms in the region, one of which was Aceh.[453] From the beginning of the sixteenth century, Aceh was ruled successively by sultans (kings) or sultanas (queens). As revealed in manuscripts, during the sixteenth and seventeenth centuries, prominent *ulamas,* at the request of Acehnese sultanates, wrote books on *sharia*. Among these *ulamas* was the famous Abdurrauf as Singkili, who, commended by Sultana Alam Saiafuddin Syah (1641-1675), wrote *Mir'at al Tullab* (mirror for a knowledge seeker) as a guide for judges.[454] The

[448] Tribunnews, 'Cadangan Minyak Aceh Capai 100 Juta Barel' (The Reserve of Aceh's Natural Gas attain 100 million Barrel) *Tribbunews* (Aceh, 10 April 2018) <http://aceh.tribunnews.com/2018/04/10/cadangan-minyak-aceh-capai-100-juta-barel> accessed 30 November 2018.

[449] R. Michael Feener, 'The Acehnese Past and its Present State of Study' in R. Michael Feener *et al.*, *Mapping the Acehnese Past* (KITLV Press, Leiden 2011) 1.

[450] Priyambudi Sulistiyanto, 'Whither Aceh?' (2001) 3 (22) Third World Quarterly 437.

[451] Arskal Salim, 'Sharia from Below in Aceh (1930s-1960s): Islamic Identity and the Right to Self-Determination with Comparative Reference to the Moro Islamic Liberation Front (MILF)' (2004) 32 (92) Journal of Indonesia and the Malay World 80.

[452] Salim (n 451).

[453] Reid (n 181).

[454] The text is divided into 71 paragraphs (numbered in the edition, but in the original manuscript), half of which concern commercial transactions (*hukum muamalah*), fifteen criminal law (*hukum jinayat*), and the rest various
topics, including inheritance law (*hukum faraid*). Henri Chambert-Loir, 'Sharia in 17th Century Aceh' (2017) (94) Archipel. 51.

influence of *ulamas* reached Acehneses' lives through religion-based education institutions, called *dayah* –the first and oldest education institutions in Aceh.[455]

The most famous and influential sultan was Iskandar Muda (1607-1636), who conquered a great deal of Sumatera and the Malay peninsula, and successfully built an administration and system of law.[456] In a journey to Aceh, French Admiral Agustin de Beaulieu witnessed the diverse application of justice in civil, criminal and commercial law.[457] In addition, Sultan Iskandar Muda also promulgated *Adat Makuta Alam*, a state regulation, which consists of the principle of the state, the basic regulations for external state regulation, and the rights of the citizen.[458] In addition, the sultan skilfully managed his authority over two influential powers within the kingdom: one comprised merchants at the capital who were also court officials, known as *orang kaya*, and the other comprised the *ulubalangs* (territorial chiefs).[459]

However, after the reign of Sultan Iskandar Muda, the power of the Aceh sultanate became weak, especially under Sultan Alaudin Muhammad Daud Syah II. During Aceh's sultanates, *sharia* and *adat* co-existed and at times were intertwined.[460] In fact, a widely known Acehnese aphorism, or *hadih maja*,[461] suggests harmony between *sharia and adat*: *"hukom ngon adat, lagee zat ngon sifeut*" ("the relationship between *sharia and adat* is similar to the link between the substance of something and its characteristic").

---

[455] Hasbi Amiruddin, *Aceh dan Serambi Mekah* (*Aceh and Veranda of Mecca*) (Yayasan Pena 2006) 24, 28.

[456] The judicial system under Iskandar Muda was a composite one, consisting of two different levels of administration. One was the central and upper level, which was under the direct authority of the ruler, whose representatives were the *Qadi* and the leading *Orang Kaya* in the capital. The other was the local level, at which internal disputes and transgressions occurring in the territory of the *Orang Kaya* i.e. Nanggro, were settled by respective *Orang Kaya* as de facto rulers, who acted nevertheless in the name of the Sultan. Agustin de Beaulieu, '*Memoires d'un Voyage aux Indes Orientales 1619-1622: Un Marchand Normand a Sumatra*' (Memory of Journey to East Indies: 1619-1622: Normandy Merchant in Sumatra) (Maisonneuve and Larose, 1996) 200, 203 and The Editors of Encyclopaedia Britannia, 'Iskandar Muda' Britannica <https://www.britannica.com/biography/Iskandar-Muda> accessed 25 October 2018.

[457] De Beaulieu (no 456).

[458] Teuku Iskandar, 'Aceh as a Crucible of Muslim-Malay Literature' in R. Michael Feener, Patrick Daly and Anthony Reed (eds.), *Mapping the Acehnese Past* (KITLV Press Leiden 2011) 54, 57.

[459] Ainslie T. Embree, Book Review (1996) 3(28) A Quarterly Journal Concerned with British Studies 552.

[460]Salim (n 378).

[461] Hadih Maja contains philosophical elements that are used as guidance for advice, warning, clarification, or constructive criticism in daily life. Husein Taqwaddin and Teuku Alvisyahrin, 'Role of Community and Communal Law in Aceh in the Great Sumatra Earthquake and Tsunami Recovery: A Case Study in Lambada Lhok Village, Aceh Besar' (2014) 2(21) Journal of International Cooperation Studies 63.

Along with the absence of effective rule under the last sultan, the Dutch colonial power declared war on Aceh in 1873. Aceh was no longer concentrated under one sultan, but rather was decentralised under the power of the *ulubalangs* and the influence of *ulamas* and female *ulamas*, such as Tengku Chiek Ditiro and Cut Nyak Dhien, who both served concurrently as religious and war leaders.[462] Unlike many provinces in Indonesia, Aceh was difficult to defeat. The resistance of the Acehnese was led by prominent *ulamas* who fuelled the combat by proclaiming "*perang sabil*" (holy war).[463] Through this call, they were able to mobilise a large proportion of the Acehnese population.[464]

On the other hand, the Dutch colonial power (the Colonial) favoured sharper demarcations between *sharia* and *adat* law. As Islam had always presented a serious threat to Dutch rule, the colonists' policies tended to support *adat* institutions and *adat* leaders to the detriment of specifically Islamic interests in Aceh.[465] The colonial rulers, for example, appointed Snouck Hurgronje in 1891 as their adviser to conduct a study on the religious element within Aceh's political context.[466] He concluded that *adat* law influenced Acehnese life, therefore it *was* used as a colonial tool of legitimation.[467]

During the war, the Colonial destroyed educational institutions and killed many *ulamas* who had encouraged the application of *sharia* in Aceh.[468] They adopted the tactics of divide and rule, supporting a large number of *ulubalangs* in gaining self-government in their territories,[469] and pressuring them to fight on their side in return. The Colonial could win the war only in 1907, qualifying this as the longest war the colonial power ever faced in Indonesia.[470]

After the cessation, as a strategy to prevent further resistance from the Acehnese, the Colonial applied indirect rule, appointing the *ulubalangs* as formal chiefs of the Aceh territories.[471] Under their control, the Colonial applied law year

---

[462] Emmanuel Kreike, 'Genocide in the Kampongs? Dutch Nineteenth Century Colonial Warfare in Aceh Sumatra' (2012) 3(4) Journal of Genocide Research 297.
[463] Kreike (n 462).
[464] Antje Missbach, 'The Aceh War (1873-1904) and the Influence of Christian Snouck Hurgronje' in Arndt Graf *et al.*, *Aceh History, Politics and Culture* (ISEAS: 2010).
[465] Salim (n 478).
[466] C Snouck Hurgronje, *The Acehnese* (A.W.S. O'Sullivan and R.J. Wilkinson (eds.) Vol 1, Martino Publishing 2007) 10.
[467] Antje Missbach, 'Facet of Hospitality: Rohingya Refugees' "Temporary Stay in Aceh"' (2017) (104) Indonesia, 41
[468] Kreike (n 462).
[469] Salim (no 378) and Missbach (n 464)
[470] Reid (n 181).
[471] Nurhayu W. Santoso and Susi Moeimam, 'De Koloniale Staat (Negara Kolonial) 1854-1942; Gids voor het archief van het Ministerie van Koloniën; De Indonesische archipel

1845 (*regeringsreglement*-1845) and added articles to recognise *sharia* (concerning family law) and *adat* law.[472] Yet, the *ulamas* and some of pious *ulubalangs* never stopped fighting Dutch colonial power.

After Indonesia proclaimed its independence in 1945, four prominent *ulamas* (on behalf of Aceh's *ulamas*)[473] declared their submission to the new Indonesia state and expressed their support in the fight against the Colonial, which still wanted to regain its power in Indonesia. During this era, Aceh contributed to Indonesia in order to support its existence.[474] In the course of time, Aceh would continue to fight, with their next combat a battle for justice under Indonesia's authority.

Many scholars describe Aceh under the authority of the Indonesia Republic as the centre of resistance against central government in Jakarta.[475] The main factor was the irreconcilable conception of the place of religion in the Indonesian state. Islam has played important roles in Acehnese life for centuries; however, the founding fathers of the Indonesian state rejected the idea of an Islamic state of Indonesia.[476] Following their declaration of a non-Islamic state of Indonesia in 1945, the first rebellion movement '*Darul* (State) Islam rebellion' was founded in 1948. This movement was aimed at changing Indonesia from a "*pancasila"* state[477] to an Islamic one. To halt the movement, as a concession, in 1959 the Indonesian government granted Aceh province special autonomy, mainly in education, religion and *adat* law.[478]

Over the course of time, social welfare and issues around the dominance of Javanese culture would be the main reasons behind the foundation in 1976 of the secessionist movement known as Gerakan Aceh Merdeka (GAM) (the Free Aceh

---

Desember', Den Haag National Archief 2009) <https://adoc.pub/de-koloniale-staat-negara-kolonial.html> accessed 6 September 2018.

[472] Santoso and Moeimam: (n 471).

[473] They are: Tengku Haji Hasan Krueng Kale, Tengku M. Daud Beureuh, Tengku Haji Ja'far Sidik Lamjabat and Tengku Haji Hasballah Indrapuri. Teuku Haji Ibrahim Alfian, 'Aceh dalam Bingkai Negara Kesatuan Republik Indonesia' ('Aceh Under the Republic of Indonesia') (1999) 4(2) Jurnal Ketahanan Nasional Gajahmada University 1.

[474] Alfian (n 473).

[475] Rizal Sukma 'Security Operations in Aceh: Goals, Consequences, and Lessons Policy' (Washington DC East-West Center 2004) <https://www.eastwestcenter.org/publications/security-operations-aceh-goals-consequences-and-lessons> accessed 5 September 2018.

[476] Salim (n 451).

[477] Pancasila is the official philosophical foundation of the Indonesian state. It consists of two Sanskrit words: *panca* meaning five and *sila* meaning principles. These five principles are inseparable and interrelated: belief in the One and Only God, a just and civilised humanity, a unified Indonesia, democracy and social justice for all Indonesians. Lindsey and Butt: (n 306) 1, 4.

[478] Alfian (n 473).

Movement).[479] In 2002, the Indonesian Government and GAM signed a breakthrough cessation of hostilities agreement (COHA). However, this truce held for only a few months before clashes began again. Following this failure, the Indonesian Government sent more than 30,000 troops to Aceh to terminate the GAM.[480]

According to Nah and Bunnel, the Acehnese have fled to Malaysia to seek protection at least four times.[481] First, Dutch oppression from 1873 prompted an Acehnese migration across the Strait of Malacca. Secondly, as the result of conflict in the Tengku Daud Beareuh rebellion against central government in 1953. Thirdly, the GAM-central government conflict which spawned two movements: after the launch of a major operation to counter military insurgency by the Indonesian military in 1990, and after the declaration of martial law in 2003; and fourthly, the impact of the 2004 tsunami.

The experience of the Acehnese in sanctuary in Malaysia was very mixed. Before the 1980s, it was not difficult for Acehnese (and other Indonesians) to be granted permanent residence in Malaysia, but from the 1990s onwards stricter measures were adopted to control immigration.[482] Those fleeing to Malaysia illegally would live in fear as they could be arrested and deported.[483] On humanitarian grounds, the Malaysian government allowed some tsunami survivors to stay in Malaysia for certain period of time.[484]

Having received a significant lesson from the 2004 tsunami disaster, the Indonesian government and GAM reached a comprehensive peace settlement in 2005. This was a milestone in rebuilding the Acehnese governance system with respect for the historical traditions and customs of the Acehnese.

---

[479] Simone Tholens, ‘Which and Whose Authority? EU Support to Security Governance in Aceh’ (2012) 2(21) European Security 294.
[480] P. Ramasamy, ‘Globalization and Transnational Migration: The Malaysian State’s Response to Voluntary and Forced Migration’ (2006) 1 (15) Asian and Pacific Migration Journal 137.
[481] Alice M. Nah and Tim Bunnell, ‘Ripples of Hope: Acehnese Refugees in Post-Tsunami Malaysia (2005) 2 (26) Singapore Journal of Tropical Geography 249.
[482] Antje Missbach, ‘The Acehnese Diaspora After the Helsinki Memorandum of Understanding: Return Challenges and Diasporic Post-Conflict Transformations’ (2011) 12(2) Asian Ethnicity 179.
[483] Nah and Bunnell (n 481), and Richard Lloyd Parry, ‘Tales of Horror from Malaysia’s Camps’ (*Independent*, 2 May 1998) <https://www.independent.co.uk/news/tales-of-horror-from-malaysias-camps-1162011.html>
[484] Katrina Munir-Asen: ‘(Re)negotiating Refugee Protection in Malaysia: Implications for Future Policy in Refugee Management’ (discussion paper No. 29/2018 Deutsches Institut für Entwicklungspolitik (DIE) <https://www.econstor.eu/bitstream/10419/199549/1/die-dp-2018-29.pdf> accessed 10 November 2020.

2. *Position of Adat Law and Sharia in Aceh*

In Indonesia, *adat* law is recognised in the 1945 Constitution, Articles 18, 18A and 18B.[485] This recognition is given in the context of empowerment and autonomy for Indonesia's regions. Within this regional autonomy, significant political and law-making powers were given to elected local government at the provincial, city and regent/county levels (Articles 18, 18A and 18B).[486] Further, Article 18B requires the state to recognise and respect *adat* law communities and their traditional rights.[487] In addition, Article 5 (1) of Act No 48 of 2009 on Judicial Powers orders judges to explore, follow, and understand the legal values and justice that live in a society.[488] This prevents judges from refusing to decide a case due to the absence of written law applying to that case, and, as a result, they must seek "living law".

Through recognition of regional autonomy in Indonesia, and strengthened by the MoU between the Indonesian government and GAM, Act No 11of 2006 on Autonomy of Aceh was strengthened. This law made reference to *sharia* and *adat* law as part of the Acehnese way of life. This legislation has been adopted at the provincial, city and regent/county level. In the Indonesia legal system, a local law is called *perda*, in Aceh, *qanun*.

Two *qanuns* were introduced to recognise *adat* law and its institutions: *Qanun* No 9 of 2008 on establishing the life of *adat*, *Qanun* No 10 of 2009 on *adat* institutions, and in addition, Governor Decree No 60 of 2013 on the application of *adat* in disputes settlement (the Governor Decree). It is important to note that the institutions of *adat* existed before the Qanuns were adopted, and therefore the incorporation of some aspects of *adat* law in the *qanuns* and the Governor Decree has been used by the Acehnese government -as regulated in Article 2 of *Qanun* No 9 of 2008 -as a tool to maintain and restore *adat* law in society.[489]

---

[485] After the resignation of President Suharto in 1998, reform was started. One approach was through amendments to the 1945 Constitution in 1999, 2000, 2001 and 2020. These rules for regional autonomy were introduced in the second amendment (in 2000). Lindsey and Butt (n 306) 127.
[486] Lindsey and Butt (n 306) 127
[487] Lindsey and Butt (n 306)127
[488] *Komisi Informasi Pusat Republik Indonesia* (Information Commission of Republic of Indonesia) Undang-Undang No.48 Tahun 2009 tentang Kekuasaan Kehakiman (Act No 48 of 2009 on Judicial Powers) Komisi Informasi (Commission of Information) <https://komisiinformasi.go.id/?p=1807> accessed 10 November 2020
[489] Acehnese Government, *Qanun No 10 Tahun 2008 tentang Lembaga Adat'*(*Qanun* No 10 of 2008 on *Adat* Institutions) Aceh Provincial Government (Banda Aceh, 2008) <https://www1-media.acehprov.go.id/uploads/qanun_aceh_no_10_tahun_2008.PDF> accessed 12 November 2020.

As discussed earlier regarding the Acehnese's identity as Islamic devotees, *sharia* has always been part of Acehnese's life. In the same vein as with *adat* law, some aspects of *sharia* have been incorporated in *Qanun* and in the Governor Decree. *Qanuns* that have aspired to *sharia* include*: Qanun* No 6 of 2014 on criminal law,[490] *Qanun* No 10 of 2002 on *sharia* courts, *Qanun* No.9 of 2014 on the creation of the Sharia Bank of Aceh, and *Qanun* No. 2 of 2009 on the Acehnese *ulamas* (Islamic scholars) council.

a) *Adat Law in* Aceh

1) Adat Law of Aceh and its Institutions

The term *adat* was introduced by Dutch scholars at the end of the eighteenth century. The word *adat* itself is originally from the Arabic word meaning habit. In general, *adat* comprises rule, custom, usage, practice, even the personal habits of an individual.[491] As Indonesia was influenced by Hinduism and Islam, *adat* is also perceived as a complex mixture of ancient Hindu law books and Islamic precepts, topped up with local customs, traditions and myths.[492] The word *adat* is in essence understood to be the binding norm preserved by the community in order to regulate the daily life of the people[493]

Despite the inherent legal component conveyed in the term *adat* -the equal weight accorded to local customary law- Dutch scholars use the term "*adat* law" rather than simply *adat.*[494] *Adat* law is presumably a law driven from a superior authority within a certain indigenous community.[495] Likewise, *adat* law is *adat* which is accepted as law by *adat* functionaries.[496] Therefore, in line with the concepts of customary law discussed in Chapter 3, the making of adat law is by the leaders in the *adat* community who create *adat* law through the consultation process.

Adat law is a set of rules (mostly unwritten) which covers diverse aspects from private matters (e.g. marriage and heritage) to public affairs (e.g. criminal

---

[490] This *Qanun* abolished previous *Qanun*s: *Qanun* of provincial government No 12 of 2002 on alcohol, *Qanun* No. 13 of 2002 on gambling, and *Qanun* No.14 of 2002 on seclusion. Acehnese Government, *Qanun* No 6 Tahun 2014 tentang Hukum Jinayat (*Qanun* No 6 of 2014 on Criminal Law) <https://www1-media.acehprov.go.id/uploads/Qanun_Aceh_Nomor_6_Tahun_2014_tentang_Hukum_Jinayat.pdf> accessed 12 November 2020.
[491] Adam D. Tyson*, Decentralization and Adat Revivalism in Indonesia* (Routledge 2010) 1.
[492] Tyson (n 491).
[493] Lukito (n 1).
[494] Lukito (n 1).
[495] Burns (n 1).
[496] Jan Prins, 'Adat law and Muslim Religious Law in Modern Indonesia' (1951) 1 Die Welt des Islams 283.

offences and environmental issues). In describing *adat* law in Aceh, the seminal works of Snouck Hurgronje show that despite the significant influence of *sharia* on *adat* law, there were some aspects of *adat* that contradicted *sharia.* He describes the *adat* of *meudua basi* (dividing a premium into equal portions) being commonly practised during the Dutch colonial occupation at the end of the nineteenth century. However, in many other private areas, mostly in family law, the practice of *adat* law was constrained by *sharia*; as he writes:

> The conscientious observance in connection with marriages of sundry ancient custom many of which are of non-Mohammedan origin shows that in Aceh, as elsewhere, human conservatism does not confine itself to the sphere of religion, but also makes itself most strongly felt in that of domestic life; yet the legal actions and legal relations connected with the married state almost entirely governed by the religious law.

It was widely practised in Aceh that *adat* law and *sharia* governed side by side.[497] In Aceh, the *kadi* (judges in family law) were given the authority to govern over a wide range of family affairs, including dissolution of marriages, guardianship of maidens, and calculating the division of inheritances.[498] The rest of the affairs, such as criminal affairs, were under the responsibility of *ulubalangs* (territorial chiefs), and were carried out by imams and *keutchiks* (village leaders).[499] In recent times, since Indonesian independence and the creation of the modern state, the roles of the *keutchik*, both as territorial leader and judge, have been preserved. Besides *keutchiks*, the *adat* leaders/institutions vary in terms of their scope of work and territory, from the district leader (*imam mukim*) to the leader in forestry (*pawing glee).*[500] All of these institutions are under the coordination and supervision of *Majelis Adat Aceh*-MAA (*Adat* Assembly of Aceh). This institution is aimed at improving and implementing *adat* values and *adat* law in society, strengthening the roles of *adat* institutions and its leaders, and maintaining the *adat* heritage in Aceh.[501]

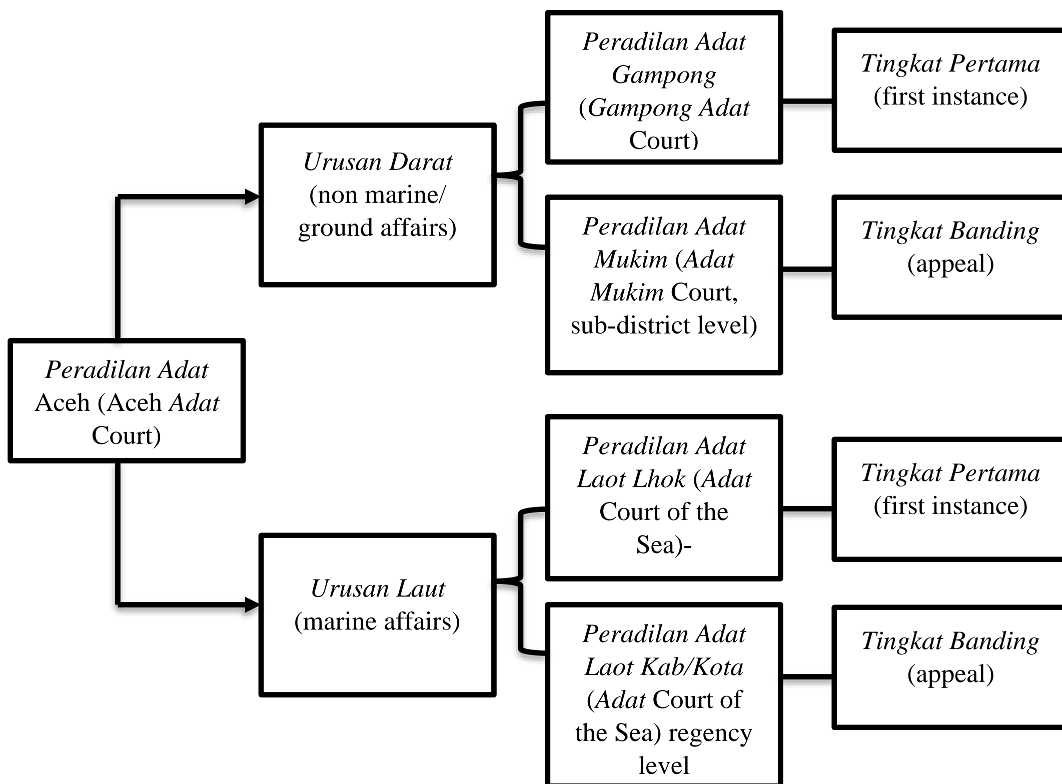
All of these *adat* leaders are appointed by their respective communities, chosen due to their seniority and knowledge. However, they do not resolve conflict

---

[497] Salim (n 379) 1, 21.
[498] Hurgronje (n 466) 93, 96.
[499] Hurgronje (n 466) 100.
[500] Article 1 of *Qanun* No 10 of 2008 on the enumerated *adat* institutions, which are: leader of district assembly (*tuha peut mukim*), leader of the mosques in a district (*imam chik*), leader of a village (*keuchik*), leader of village assembly *(tuha peut gampong*), leader in religious affairs in a village (*imam meunasah*), traditional marine leader (*panglima laot*), leader in rice field affairs (*keujruen blang*), leader in farm affairs (*peutua seuneubok*), leader in traditional markets (*haria peukan*), leader in port (*syahband*a). Acehnese Government (n 86).
[501] Aceh provincial government, '*Profil Majelis Adat Aceh*' ('Profile of *Adat* Aceh Assembly') <https://maa.acehprov.go.id/pages/profil> accessed 16 October 2018.

by themselves; rather they involve the adviser of the community, commonly coming from a religious leadership background. In the village, the adviser of *geuchik* is *teungku menasah*.[502] The decision made through deliberation reflects a widely recognised principle in *hadih majah*: *Gadoh adat ngon mupakat, Meunyoe ka pakat lampoh jeurat ta peugala* (meaning "to change the *adat* should be through deliberation; if deliberation is carried out, a tomb can be mortgaged"). This aphorism maintains that for the purpose of achieving social agreement, the Acehnese would even compromise sacred property.[503]

Figure. 3
Division of *Adat* Courts in Aceh[504]



[502] Muliardi Kurdi, *Aceh Di Mata Sejarahwan: Rekonstruksi Sejarah Sosial Budaya* (Aceh in the Eyes of an Historian: Social History Reconstruction) (Naskah Aceh 2016) 39
[503] Salim (n 378).
[504] Mansur (n 382) 204.

The Governor's Decree gives authorisation to *keutchik* and *imuem mukim* to administer justice at village and sub-district level. It also regulates the mechanism of *adat* courts and the nomination of *adat* judges. There is an *adat* court in every *gampong* (village) and *mukim* (sub district) in Aceh. The *gampong* court is chaired by the head of *gampong* (*keutchik*), and the *gampong* secretary functions as his or her registrar. If a dispute occurs, the case will be reported to the *keutchik*. He will encourage the two parties to reach a compromise through *musyawarah* (consultation process). If no agreement has been reached, the *keutchik* will keep trying to mediate by involving the *imuem meunasah* (religious leader of a village), who will give advice on the case. If an agreement is made, the sanction will be handed out. If the parties are not satisfied with the decision, they can appeal to *mukim* court. The *mukim* court is chaired *by imuem mukim* advised by the *tuha lapan* and *imuem chiek* (religious leader of a district). The decision of the *gampong* court is final and binding. The *mukim* courts also resolve disputes about the ownership of land within a *gampong*, or any other cross-border problems.

A wide range of cases can be resolved by these courts, from private matters (such as disputes in marriage, and seclusion – association by unmarried individuals of the opposite sex in proscribed circumstances), petty theft, environmental pollution (small-scale), defamation, and quarrels in a market. Sanctions vary from fines and compensation, to removal of *adat* noble rank, to expulsion.

2) *Adat Law of the Sea of Aceh and its Institutions*

With regard to the *adat* law of the sea, it has been developing for centuries, and has existed since the early seventeenth century under Sultan Iskandar Muda.[505] Besides maintaining commercial interests by collecting customs fees, it regulated the fishing seasons, and resolved conflicts between fishermen.

Currently, *adat* law of the sea has enumerated different kinds of wrongdoing in the fishery community. Summarising from the meeting of the *Panglima Laot* Congress that gathered *panglima laot* from across Aceh in 2000 and information from I-20, the substance of *adat* law of the sea is as follows[506]:

---

[505] M. Adli Abdullah *et al*., *Selama Kearifan adalah Kekayaan: Eksistensi Panglima laot dan Hukom Adat Laot di Aceh* (the Wisdom is Our Richness: the Existence of *Panglima Laot* and *Adat* Law in Aceh) (Kehati Indonesia Biodiversity Foundation 2006) 163, 171.

[506] Abdullah *et al*: (n 505) and Crispen Wilson and Matthew Linkie, 'The Panglima Laot of Aceh: a Case Study in Large-Scale Community-Based Marine Management After the 2004 Indian Ocean Tsunami' (2004) 4 (46) Oryx 495.

a. Forbidden days to sail: during the marine customary ritual meal on Fridays, on *Eid Mubarak* day, *Eid Al-Adha* day (the Festival of Sacrifice), on Independence Day (August 17).

b. Code of conduct for daily activities:

   - When a fishing boat or other fishing equipment is damaged, the fishermen must give a sign by fluttering a flag to ask for help. If the fishermen in another boat see that sign, they have to help as soon as possible.
   - When a boat is on fishing activities, the crew or the captain have to raise their hats to signal the "possession of the marine resources in fishing area". This is intended to warn other boats not to come closer and fish the same area, unless the first boat gives permission, or the area has a lot of marine resources. Another reason is to prevent boats destroying one another's fishing equipment.
   - A fisherman must help another fisherman or any person who in distress in the sea. If a fisherman is drowned, all the crews on the boats have to look for the drowned body for at least the whole day, and whoever finds the body must bring it back on to land.

c. Natural conservation rules:

   - Fishermen are forbidden to bomb, administer poison or toxins, use electricity, or other materials that may damage coral and sea biota
   - Fishermen are forbidden to cut down trees in the coastal areas, such as pine, pandanus, almond and mangrove
   - Fishermen are forbidden to catch protected fish or other sea biota, such as dolphins and turtles.

With regard to the *Adat* Courts of the Sea (as described in Figure 3), these are located in every district and city/regency across the coastal areas of Aceh. The first court is headed by the *panglima laot lhok* (traditional marine leader in a sub-district). His vice-*panglima laot laok* is his registrar. Appeal courts are chaired by the head *panglima laot* of the districts and municipalities. Similarly to the *gampong* and *mukim* courts, decisions are binding. A *panglima laot* court exists at the provincial level. It has an obligation to coordinate the works of *panglima laot* at

district and municipality levels, and to initiate programmes which have a major impact on the fisheries community.

Some cases can be resolved by the *Adat* Courts of the Sea; for example, violation of *adat* norms such as damaging fishing equipment, failing to observe no-fishing days, or the destruction of mangrove. The decision of *panglima laot* across Aceh in 2000 included a prohibition on failing to help people/fishermen drowning at sea, regarded as a violation of *adat* norms.[507] Sanctions can be imposed on those who breach the *adat* law, such as confiscation of fish yields and a sailing ban for three to seven days.

b) Sharia in Aceh

Sharia as discussed in Chapter 3 comprises sacred and fixed norms originating from God and the prophet Muhamad. In the Aceh context, as with *adat* law*, sharia* is a living law, so its implementation does not mainly depend on the state. Likewise, Acehnese local government incorporates only some aspects of *sharia*. For example, *Qanun* No 6 of 2014 on criminal law does not include all the criminal acts that are prohibited either in *sharia* or in the Indonesian Criminal Code (KUHP).[508] Article 3 of *Qanun* No. 6 of 2014 classifies ten criminal acts (e.g. gambling, seclusion, sexual assault) that are tried by *sharia* court in Aceh. Qanun regulates not only criminal offences, but also other domains, such as economic matters (e.g. *Qanun* No 11 of 2018 on *sharia* finance institutions).

The application of *Qanun* towards Muslims and non-Muslims is not fully equal. Regarding a criminal act (e.g. seclusion) that is regulated only under the *Qanun* No 6 of 2014, but not in the KUHP, everyone in Aceh who has committed it will be charged under the *Qanun*. On the other hand, non-Muslims who have committed a criminal act (e.g. gambling) that is prohibited under both Qanun No 6 of 2014 and KUHP, can choose to be charged under either this Qanun or the KUHP.[509]

Some institutions were founded to implement the *sharia* in Aceh, such as the *Sharia* Court (*Mahkamah Syariah Islam*) and the Consultative Council of *Ulama*/Islamic scholars (*Majelis Permusyawaratan Ulama*). There are two levels of *Sharia* Court, one provincial (Appeal *Sharia* Court), the other city or regency (first instance of *Sharia* Court). Under Article 8 of Qanun No 10 of 2002, the judges of

---

[507] Abdullah *et al*. (n 549).
[508] Hasnil Basri Siregar, 'Lessons Learned from the Implementation of Islamic Shari'ah Criminal Law in Aceh, Indonesia' 24(1) (2008/2009) Journal of Law and Religion 143.
[509] Siregar (n 551).

Sharia Court decide on cases that relate to family law (e.g. marriage, heritage) and other cases regulated by *Qanun*, such as criminal law and another private cases (*muamalah*).[510]

Similarly to the *Sharia* Court, the Consultative Council of Ulama is located at provincial and in city and regency levels. Article 6 (1) of *Qanun* No 2 of 2009 stipulate that the roles of the council are to advise the Acehnese Government and Acehnese Parliament on implementing policy based on *sharia*, to conduct research, translation, and publication, and provide documentation, on *sharia*-related archives, and to recruit and train *ulama*.[511]

D. Refugee Law in Indonesia

The third section provides information about the national legal context of refugee protection in Indonesia. This section discusses the (non-) ratification of the Refugee Convention, the prolonged lack of a state law on refugees, and the more recent important adoption of Presidential Decree No 125 of 2016 on Handling of Refugees from Abroad.

1. Ratification of the Refugee Convention: A Discourse

Despite having acceded to significant sections of the Human Rights Convention, Indonesia is still not a signatory to the Refugee Convention or the 1967 Protocol. Indonesia still hesitates to adhere to the international protection regime because the regime is perceived to be non-universal, tending to be Eurocentric and therefore suitable only in the European context. This is believed to be the predominant reason why only a minority of Asian states are party to the Refugee Convention.[512] However, another reason is the economic and social cost of ratification.

As articles 2 to 34 of the Refugee Convention grant refugees a package of rights,[513] the Indonesian government believes that ratification of the Refugee

---

[510] Dewan Syariah Islam, '*Qanun* No 10 Tahun 2002 tentang Peradilan Syariah Islam' *(Qanun* No 10 of 2002 on the Sharia Court) <http://dsi.acehprov.go.id/wp-content/uploads/2017/02/*Qanun*-Propinsi-Nanggroe-Aceh-Darussalam-Nomor-10-Tahun-2002-Tentang-Peradilan-Syariat-Islam.pdf> accessed 12 November 2020.
[511] Majelis Permusyawaratan Ulama, '*Qanun* No 2 Tahun 2009 tentang Majelis Permusyawaratan Ulama' (*Qanun* No 2 of 2009 on the Consultative Council of Ulama) <https://mpu.acehprov.go.id/index.php/news/read/2014/04/28/6/mpu-aceh-bahas-penerapan-qanun-aceh-nomor-2-tahun-2009.html> accessed 12 November 2020.
[512] Davies (n 22) and Kneebone (n 53).
[513] A refugee should receive at least the same rights and basic help as any other foreigner who is a legal resident, including freedom of thought, of movement, and freedom from torture and degrading treatment. Refugees should have access to medical care, schooling

Convention will create a burden. Until recently, about 13,500 refugees were registered with the UNHCR office in Indonesia.[514]

The Indonesian government also expresses its worry that if it ratifies the Refugee Convention, many more asylum seekers will enter Indonesian territory.[515] Other concerns include the effect that refugees can have on social cohesion with local inhabitants, and transnational crimes, such as the drug trade.[516]

Despite these objections, the Indonesian government included the Refugee Convention among its objectives in the National Action Plan on Human Rights (the Ranham) for the period 2011-2014. The Ranham was discussed in the Indonesian parliament. However, the government was not sure about the plan, as revealed in the minutes of the meeting of the Directorate of Political, Security and Territorial of Ministry of Foreign Affairs, as follows:

> ..as we know that the ratification of the Refugee Convention was included in the National Action Plan on Human Rights in 2011-2014 (the Ranham). However, this decision remains controversial. Previously, the inter-ministerial meeting held by the Ministry of Justice and Human Rights in 2010 had agreed not to include ratification of the Refugee Convention in the Ranham for various reasons, among other thing, is that the Refugee Convention has been left by many countries because of its insufficiency to deal with the increasingly complex issues of migration. [517]

This minute demonstrates that the government's voice was not unanimous with regard to the ratification of the Refugee Convention. This resulted in a lack of government initiative in discussing the ratification in the Indonesian parliament. Likewise, the hesitation of the parliament to acknowledge asylum seekers and refugees can be traced back to a discussion of the Bill on Immigration in which the majority of political parties refused to regulate asylum seekers and refugees on the

---

and the right to work. UNHCR, 'The Refugee Convention' <https://www.unhcr.org/uk/1951-refugee-convention.html>, accessed 15 October 2020

[514] UNHCR Indonesia, 'UNHCR in Indonesia' (December 2019) <https://www.unhcr.org/id/en/unhcr-in-indonesia#:~:text=At%20the%20end%20of%20December,the%20population%20are%20Afghan%20refugees>Accessed 15 October 2020.

[515] Antje Missbach, 'Stalemate: Refugees in Indonesia: Presidential Regulation No 125 of 2016' *Centre for Indonesian Law, Islam and Society' (CILIS)* (Melbourne, Policy Paper of (CILIS) Melbourne Law School, 2016) <https://law.unimelb.edu.au/_data/assets/file/0006/2777667/CILIS-Paper-14_Missbach-et-al_final.pdf> accessed 10 October 2018.

[516] Kneebone (n 53).

[517] Fitria (n 53).

Bill in 2011.[518] From the discussion above it is most likely that Indonesia will not ratify the Refugee Convention soon.

2. *Refugee Law and Policy in Indonesia: A Pragmatic Approach*

As discussed previously, Indonesia has not become a party to the Refugee Convention or the 1967 Protocol. Therefore, this discussion moves to state or national law and policy dealing with asylum seekers and refugees. I argue that, in general, Indonesia's law and policy on asylum seekers and refugees are strongly influenced by the UNHCR and the Australian government through funding disbursed to the International Organization for Migration (IOM) in Indonesia, and through bilateral or multilateral agreements.

There are two areas of evidence to support this argument. First, from the very beginning, Indonesia has declared itself a country that respects the application of the non-refoulement principle; however, it is still reluctant to assume responsibility for giving effective protection to refugees. This policy led to a more pragmatic choice: allowing asylum seekers and refugees to enter Indonesia's territory, and let the UNHCR and IOM take care of their affairs.[519] Similarly, the "incentivised policy transfer" of Australia has contributed to Indonesia's asylum policy.[520] Secondly, the lack of a framework would give a significant role to UNHCR in creating "protection space policy". As has been discussed in chapter 2, UNHCR's operation in many non-state situations hosting refugees prioritises its role as a negotiator of protection space, rather than as a promoter the Refugee Convention.[521] This approach has undermined refugees' rights.[522]

However, looking back into the asylum policy in Indonesia, Indonesia has been engaged in refugee protection issues since the early decades of its independence, as can be seen in Circular Letter of the Prime Minister No 11/RI/1956 of 7 September 1956 on protection of Political Fugitives.[523] This letter was a

---

[518] Fahri Hamzah, 'Immigration Law Moves from "The Wall" to "The Gateway" *the Jakarta Post* (Jakarta, 14 April 2011) <http://www.thejakartapost.com/news/2011/04/14/immigration-law-moves-%E2%80%98-wall%E2%80%99-%E2%80%98-gateway%E2%80%99.html> accessed 13 November 2018.

[519] Asher Lazarus Hirsch and Cameron Doig, 'Outsourcing Control: the International Organization for Migration in Indonesia' (2018) 5 (22) The International Journal of Human Rights 681.

[520] Amy Nethery and Carly Gordy, 'Indonesian Cooperation on Asylum-Seekers: a Case of "Incentivised Policy Transfer"' (2014) 2 (68) Australian Journal of International Affairs 177.

[521] Jones (n 653).

[522] Jones (n 653).

[523] Enny Suprapto 'Promotion of Refugee Law in Indonesia' (2004) 1 (2) Indonesian Journal of International Law.

guideline in order to grant protection on the basis of human rights and fundamental freedoms to political fugitives who sought refuge in Indonesia. However, this framework was never heard or applied.

The refugee problems came into existence after the influx of hundreds of thousands of people from the Indochinese Peninsula (Cambodia, Laos and Vietnam) escaping from the Vietnam War and its aftermath to Southeast Asian countries, including Indonesia, during the late 1970s. Due to the absence of legal frameworks, Presidential Decree No 38 of 1979 regarding the Coordination of the Resolution of Issues Related to Vietnamese Refugees in Vietnam, was adopted.[524] This regulation legitimates the UNHCR's role in finding resettlement for refugees in third countries, and in planning repatriation to their own countries, whereas Indonesia government's role was to provide a space for Indochinese refugees. Indochinese refugees were transported to the remote Galang Island (Sumatra Island) to prevent them from escaping or interacting with Indonesian people.[525] This experience highlighted the beginning of UNHCR's establishment of an international refugee regime located in Indonesia since 1982. In order to prevent the continuing arrival of Indochinese people to Indonesia and neighbouring countries, UNHCR created its Comprehensive Plan of Action (CPA) in the late 1980s.

As national and international conflict has escalated in Global South countries during the 1980s and 1990s, millions of refugees have unprecedentedly tried to reach developed countries, including Australia. Australia, like many other wealthy states, has put deterrent measures in place to prevent asylum seekers and refugees entering its territories.[526] A regional Cooperation Arrangement (RCA) was made between the Australian and Indonesian governments and the IOM. Most of Australia's global funding of the IOM is directed to Indonesia.[527]

As a result, Indonesia authorities have always intercepted migrants who are determined to reach Australia. These migrants are then referred to the IOM for "case management and care", then transferred to the UNHCR if they wish to claim asylum.[528] Asylum seekers whose status claims are rejected by UNHCR are placed

---

[524] Hukum online, 'Presidential Decree No 28 of 1979' (Hukumonline.com) <file://userfs/ff618/w2k/Downloads/KEPPRES_NO_38_1979.PDF> accessed 12 November 2018.

[525] Antje Missbach 'Waiting on the Islands of "Stuckedness". Managing Asylum Seekers in Island Detention Camps in Indonesia from the Late 1970s to the Early 2000s' (2013) 6(20) Austrian Journal of South East Asian Studies 281.

[526] Chimni (n 5).

[527] For example, Australia's global funding of the IOM increased from $17 million in 2001 to $72 million in 2016. Hirsch and Doig (n 562).

[528] Hirsch and Doig (n 562).

in the detention centre to await deportation. However, some refugees waiting for placement to third countries are also held in detention centres, where most of them stay in community houses managed by the IOM. Until recently, there were 13 detention centres, 20 makeshift detention facilities and 42 community-housing facilities across Indonesia.[529] This mechanism has been formalised through Regulation of the Director General of Immigration No. IMI.1489.UM.08.05 Year 2010 Regarding Handling of Irregular Migrants. Before the adoption of Presidential Decree No 125 of 2016, this regulation was the main source of authority in handling asylum seekers and refugees in Indonesia.

As mentioned earlier regarding the Bill on Immigration, this bill was adopted in 2011, and called the Law No 6 of 2011 on Immigration. It regulates the legal status of immigrants in Indonesia, without reference to asylum seekers or refugees. Article 83 of Law No. 6 of 2011 qualifies any person entering Indonesia without a visa as an illegal immigrant, allowing them to be detained in an immigration centre, with the exemption of children, sick people, pregnant women or victims of human trafficking or smuggling. Asylum seekers and refugees are considered "victims of human trafficking or smuggling" and can be released from detention with an attestation letter from the UNHCR. However, in practice, some remain in detention centres across Indonesia.

The Refugee Convention and the 1967 Protocol are the main sources of refugee protection; however, some scholars also refer to human rights laws as important sources to protect refugees.[530] In relation to this, we can highlight at least two human rights instruments that Indonesia is party to: Act No 12 of 2005 on the Ratification of the Convention on Civil and Political Rights, and Act No. 5 of 1998 on the Ratification of the Convention against Torture. These two instruments lay down rights of asylum, an interdiction on discrimination, and an interdiction of torture or inhuman punishment. This potentially offers a legal basis for Indonesia to constantly implement the principle of non-*refoulement* and to lay down rules and mechanisms that recognise the existence and the rights of asylum seekers and refugees in Indonesia.

[529] Hirsch and Doig (n 562).
[530] Vincent Chetail, 'Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations Between Refugee Law and Human Rights Law' in Ruth Rubio-Marin (ed.), *Human rights and Immigration* (Oxford University Press 2014) 23, 62.

3. The Presidential Decree: A milestone

Having waited for more than 17 years, many people believed that the Rohingya refugee crisis was the main factor that triggered the adoption of the Presidential Decree in 2016.[531] However, the Decree had not yet been adopted when the Rohingya refugee crisis took place, although, to some extent, it has had an impact on the handling of the Rohingya refugee crisis over the course of time.

Some parties celebrated the adoption of the Presidential Decree. It recognises the existence of asylum seekers and refugees in Indonesia, and it affirms the definition of "refugee" in the Refugee Convention.[532] Furthermore, it introduces a legal framework for handling refugees and asylum matters; it therefore functions as legal reference for government officials in handling asylum seekers and refugees stranded in Indonesian territories.[533]

The Presidential Decree stresses the need to manage refugees in an emergency, ensuring that there is a mechanism for search-and-rescue operations in place, to guarantee that asylum seekers and refugees stranded at sea can obtain adequate rescue assistance from the Indonesian government. This highlights Indonesia's commitment to the non-*refoulement* principle – not to send back refugees to the place where they have been persecution. As a result, there has been no "push back" measure for refugees who entered Indonesian territory throughout 2017.[534]

Besides the framework of handling those stranded at sea or on land, the Presidential Decree also confirms the role of central government and acknowledges the roles of the UNHCR and the IOM. In addition, it includes more actors, such as

---

[531] Article 27 of Act No.37 of 1999 on Foreign Affairs Orders: 'President of Indonesia to Make a Decree with Regard to Refugees from Abroad. Ministry of Foreign Affairs', 'Undang-Undang No 37 Tahun 1999 tentang Hubungan Luar Negeri' (Act No.37 of 1999 On Foreign Affairs) <https://pih.kemlu.go.id/files/UU-No.37.1999_-tentang-Hubungan-Luar-Negeri.pdf> accessed 19 October 2018.

[532] "Refugee shall mean a foreigner who resides within the territory of the Republic of Indonesia due to a well-founded fear of persecution due to race, ethnicity, religion, nationality, membership of a particular social group, and different political opinions, and does not wish to avail him/herself of protection from their country of origin and/or has been granted the status of asylum-seeker or refugee by the United Nations through the United Nations High Commissioner for Refugees." Hukum online: (n 122).

[533] Indonesian NGOs Coalition for International Human Rights Advocacy, 'Refugee Protection Must Answer Key Issues Regarding Asylum Seekers and Refugees in Indonesia' *HRWG* (Jakarta, 25 January 2017) <https://hrwg.org/2017/01/25/perpres-refugee-protection-must-answer-key-issues-regarding-asylum-seekers-and-refugees-in-indonesia/> accessed 10 November 2018.

[534] Dio Herdiawan Tobing, 'A year of Jokowi's Refugee Decree: What has Changed?' *the Jakarta Post* (Jakarta, 12 January 2018) <http://www.thejakartapost.com/academia/2018/01/12/a-year-of-jokowis-refugee-decree-what-has-changed.html> accessed 20 October 2018.

local government, as important parties that can contribute to refugee protection by providing shelters to refugees. Those with special needs can receive special treatment by being placed outside the shelters, allowing them to acquire more protection.

Despite the aforementioned strengths, this regulation presents several weaknesses, mainly related to the setting of this regulation, which is intended to resolve refugee issues on a temporary basis. Currently, the most significant problem for refugees anywhere around the world -including in Indonesia-is finding a safe haven where they can enjoy their fundamental rights; however, it appears that in the Presidential Decree, the humanitarian approach is overridden by national security issues. The Presidential Decree stipulates how Indonesian agencies should work together in handling the temporary stay of refugees in Indonesia, so that the refugees' presence will not cause Indonesia security problems, rather than ensuring that refugees' rights are fulfilled and protected. Therefore, the access to basic needs such as the right to work, as well as the right to education, would be difficult to accomplish. [535]

As mentioned previously, the Presidential Decree involves local actors (e.g. governor, mayor or regent) in handling refugees; therefore, the successful implementation of this regulation will very much depend on their willingness to accept this duty. The Rohingyas' presence in Aceh was warmly welcomed by local government in the province. Conversely, an expression of displeasure by the Governor of South Sulawesi at the presence of Rohingyas in Makasar was widely publicised in social media in September 2017, demonstrating that the political will of local government would be an important factor in this regulation sticking.[536] As the Presidential Decree creates no mechanism to enforce its implementation from central government to local government, the other focal point is the source of funding for handling refugees.

Article 40 stipulates that funding required for the handling of refugees can be taken from the state budget through the relevant ministry/agency, and/or other legal and non-binding sources, in accordance with the prevailing laws and regulations. With regard to this article, the main issue is the degree of certainty on

---

[535] Vinsensius Shianto, 'Refugees in Indonesia: Is it Possible?' *the Jakarta Post* (Jakarta, 11 July 2018) http://www.thejakartapost.com/academia/2018/06/11/employing-refugees-in-indonesia-is-it-possible.html accessed 21 October 2018.

[536] Muhamad Syadri, 'Gubernur ini tolak Pengungsi Rohingya Videonya Viral' ('Governor Rejects Rohingya Refugees; His Video Went Viral') *Jawa Pos* (Surabaya, 4 September 2017) <https://www.jawapos.com/jpg-today/04/09/2017/gubernur-ini-tolak-pengungsi-rohingya-videonya-viral> accessed 16 October 2018.

whether the provincial and municipal/district budgets (APBD) fall into category B (other legal sources). The Ministry of Finance permits the use of APBD,[537] whereas the vice president at the time offered different information when he said that funding for tackling the refugee situation is disbursed from the APBN.[538] These different perspectives could create doubt on the part of provincial/municipal/district government. The local governments might be afraid to use APBD due to the possibility of conviction by the Commission for Corruption Eradication (KPK).

E. Conclusion

This chapter has provided the necessary background information for the specific case study of protection of Rohingya refugees in Aceh. It began with a discussion of the ethnical background of the Rohingya, the persecution of the Rohingyas, and their flight to Indonesia. Despite the long existence of Rohingyas in Myanmar, the Myanmar government considers them to be illegal migrants. It has been proved that the persecution the Rohingyas endured was state sponsored. Two events generated substantial momentum that led to the persecution of the Rohingyas. First, Systematic violation of Rohingyas' human rights began in 1977 with the *Naga Min* operation, aimed at forcing them away from Myanmar, and secondly when they were formally excluded from the list of 135 national ethnic groups in 1982. Due to these policies, the Rohingya people have been subject to human rights violations such as unlawful killings, excessive use of force, and severe restrictions on physical movement and marriage. These human rights violations have contributed to the several flights of Rohingyas to their neighbouring countries; in 2009, 2011, 2012, 2013, 2015, 2018 and 2020, thousands of Rohingyas fled to Aceh, Indonesia.

With regard to Aceh as one of the sites of the Rohingya refugee crisis: due to its strategic geographic position, Aceh has made important contacts - in terms of commerce and cultural exchange – with diverse societies across the world, including Muslim society. As a result, Aceh was the first region in Indonesia to embrace Islam. Due to the important position of Islam, and the impact of Acehnese sultanates

---

[537] Galang Aji Putro, 'Penanganan Pengungsi dari Luar Negeri akan Gunakan APBN dan APBD') ('The Handling of Refugees Will Use State and Provincial/Municipal/District Budgets) Detik.com (Jakarta, 9 March 2017) <https://news.detik.com/berita/d-3443019/penanganan-pengungsi-dari-luar-negeri-akan-gunakan-apbn-dan-apbd> accessed 15 October 2018.

[538] Tempo, 'JK: Dana untuk Pengungsi Rohingya dari APBN' (JK: The funding for Refugees from State Budget) *Tempo* (Jakarta, 25 May 2015) <https://nasional.tempo.co/read/669086/jk-dana-untuk-pengungsi-rohingya-dari-apbn/full&view=ok> accessed 16 October 2018

particularly as the producers of *sharia* and *adat* law, the Acehnese population identifies as Islamic devotees.

In the Aceh context, *adat* law and *sharia* have an important place in the population's lives; therefore, providing information about these elements is essential. *Sharia* and *adat* law have been deeply rooted in Acehnese history for centuries. Therefore, these two elements create an identity that differentiates Aceh from Indonesia's other provinces.

As discussed previously, *Adat* law is a law presumed within certain indigenous communities to be driven by a superior authority. In connection to the *Adat* Courts of the Sea, *panglima laot* is authorised to resolve conflicts between fishermen. With regard to this court, some cases can be resolved, including a prohibition on failing to help a person/fisherman who is distressed in the sea. In line with *adat* law, *sharia* in Aceh is also a living law. In order to preserve their values and norms, some aspects of both *adat* law and *sharia* have been incorporated into the local law (*Qanun)*.

Another important aspect discussed was the national legal context of refugee protection in Indonesia. Despite its attention to refugee protection since 1956, Indonesia is not a signatory to the Refugee Convention. The Refugee Convention is perceived as Eurocentric, and is believed to potentially cause economic and social costs to the government and to Indonesian society. However, Indonesia is committed to implement the *non-refoulement* principle. In order to fill the gap, the Indonesian government issued the Regulation of the Director General of Immigration that counts on UNCHR and IOM to tackle the refugees' problems. Under this regulation, asylum seekers and refugees are considered illegal migrants.

The important development of refugee law in Indonesia is the adoption of the Presidential Decree. This decree recognises asylum seekers and refugees in Indonesia, and introduces a role for local government in refugee protection - providing shelters to refugees. Unfortunately, the Presidential Decree is solely to regulate refugees in an emergency. In addition, this regulation does not recognise the fundamental rights of refugees, such as the right to work and the right to education.

Chapter 5

Rescue and Reception of the Rohingya Refugees in Aceh

A. Introduction

This chapter is the first of the study's empirical chapters, and it draws upon interviews as well as documentary resources. It depicts what was happening during the Rohingya refugee crisis. The first two sections discuss the rescue and the urgent aid provided by both the fishermen and local inhabitants, followed by the reception of the Rohingya refugees in Aceh. The final sections lookat the future for Rohingya refugees, and reveals their secondary movement to Malaysia and the limit of hospitality.

The first section covers the first phase of the crucial aid: the rescue stories of fishermen and local inhabitants on the first day Rohingya refugees and Bangladeshi immigrants arrived in Aceh. Sacrificing the best of their belongings, the fishermen and local inhabitants were keen to rescue the refugees and provide them with urgent assistance. They had rescued Rohingya refugees before the crisis, in 2009, 2011, 2012 and 2013, and after the crisis in 2018 and 2020.[539] The motives behind the Aceh inhabitants' responses will be discussed more fully in Chapter 6, but these consistent rescues indicate their obedience to the law(s) they abide by.

The second section explores the next phase, after the crucial aid from the fishermen and local inhabitants was delivered, the time of the Rohingya refugee's temporary stay in North Aceh and Langsa. The section begins with a discussion about the formation of a taskforce for handling the Rohingya refugees, the shelter-making process, and the relationship challenges between the actors in the shelters. In a situation lacking national regulation of refugee protection, I argue that consensus between the actors is essential in handling the Rohingya refugees, as evidenced by the existence of '*Konvensi Langsa*' -the unwritten rules initiated by the Government of Langsa as a framework for it to tackle the Rohingya refugee situation in Langsa.

---

[539] Simanjuntak (n 57) and Yayan Zamzami, 'Indonesian Fishermen Discover 94 Rohingya Refugees Adrift at Sea' *Associated Press* (New York, 24 June 2020) <https://abcnews.go.com/International/wireStory/indonesian-fishermen-discover-94-Rohingya refugees-adrift-sea-71423364> accessed 16 November 2020. Indrika Ratwatte, 'UNHCR Welcomes the Life-Saving Disembarkation of 300 Rohingya Refugees in Indonesia' *UNHCR* (Geneva, 7 September 2020) <https://www.unhcr.org/uk/news/press/2020/9/5f55eeb54/unhcr-welcomes-life-saving-disembarkation-300-Rohingya refugees-refugees-indonesia.html> accessed 16 November 2020.

The third section describes the Rohingya refugees' future, a relevant discussion, because this thesis seeks to find better protection for Rohingya refugees. The section depicts the relationship between the Rohingya refugees and the actors in the shelters, and ends by portraying the disappearance of the Rohingya refugees from the shelters, and discussing the factors causing this phenomenon.

The fourth section reflects the relationship between host and guest through the lens of hospitality put forward by Derrida. Through examination of the handling of Rohingya refugees in the shelters, the chapter shows that unconditional hospitality is not possible, because resources are not unlimited, because of the uneasy relationship between host and guest, and lastly, due to the prevalence of immigration rules put in place.

B. Phase One of Reception: Rescue and Crucial Aid

This section discusses the rescue story that involved the fishermen and local inhabitants. It describes what happened during the incidents, and the unpleasant impact the fishermen faced after helping the Rohingya refugees. As local inhabitants spontaneously followed the fishermen's rescue, this section also discusses the narrative of their support.

1. Fishermen's Rescue Stories: Unconditional Help

It was dawn on 10 May 2015. Hundreds of Rohingya refugees fleeing Myanmar were first spotted by a fisherman in the north of Aceh:

> *The boat came closer and closer, and I thought this boat was an Acehnese's boat – because I saw one of them; his face looked like an Acehnese, my neighbour in Malaysia. When I asked them to jump down from the boat, I was surprised to see that there were many of them*[540]

At the time, this fisherman and his son were setting sail at around 6.00 am. About half an hour later, their fellow fishermen joined them. The Rohingya refugees' boat was about 25 meters from the shore, so they could see its arrival with their naked eyes.[541] They thought the boat was running out of oil, but fortunately, it had not yet sunk.[542]

---

[540] Focus group (FG2-1): FG participant is a fisherman from Gampong Sago Village, Sinedeoan, North Aceh (Aceh, 4 August 2018).
[541] FG2-2: FG participant is a local inhabitant from Gampong Sago Village, Sinedeoan, North Aceh (Aceh, 4 August 2018).
[542] FG2-3: FG participant is a fisherman from Gampong Sago Village, Sinedeoan, North Aceh (Aceh, 4 August 2018).

Soon they discovered that inside the boat were men, women and children. The men could reach the shore by themselves, but the children and women needed to be rescued by the fishermen.[543] There were 583 passengers on the boat, both Rohingya refugees and Bangladeshi immigrants.[544]

Evacuating the women and children took four to five hours, using traditional equipment, such as buckets and ropes, as described by one of the interviewees:

> *We had just decided to go sail when we saw there was a boat heading from the east. I saw nobody but just one single person on board. But then within five minutes many people went outside, filling up the deck, almost all of a sudden. The people (the men) on the deck were all jumping into the water as soon as they saw us. The kids this big* [indicating the height of a small child] *were put into buckets and the older people swam to the shore while pushing these buckets. The women pulled themselves down using ropes, one by one.*[545]

News of the incident rapidly spread. The fishermen reported the incident to their local *panglima laot* (traditional marine leader), who soon transferred the news to the local authority.[546] This evacuation process was witnessed by another interviewee:

> *There was information on foreigners lost on the shores of Aceh. So I heard about it from that radio community. We wanted to provide information for the public, what was actually happening, so we immediately went there. If I remember correctly, it was in Sago Village, Blang Geumpang, Sineudoun. So we went there early in the morning. It was still quite dark. Alhamdulillah (praise be to God) we arrived there safely. There was an evacuation process, the Rohingnya arrived in a large boat, a dragon image, and I thought it was from Thailand – the boat, I mean. It was quite large. Our fishermen were the ones who helped them to evacuate from the large boat, to our fishermen's small boats. So, the process was like offloading cargo.*[547]

---

[543] Graham Thom, 'The May 2015 Boat Crisis: the Rohingya refugees in Aceh' (2006) 8(2) UTS ePress

[544] The total number of Rohingya refugees and Bangladeshi immigrants rescued was revealed in the minutes of the first meeting attended by the Vice-Governor of Aceh, the North Aceh Regent, the North Utara Immigration Office, the Coordinator of the Ministry of Politics, Law and Security, UNHCR and IOM representatives, and the Director of Aksi Cepat Tanggap (ACT) (Minutes of North Aceh Government (13 May 2015). In another version, there were 578 passengers, not 583.

[545] FG2-3 (n 542).

[546] FG2-1 (n 540).

[547] I-9: interview with a member of Radio Antar Penduduk Indonesia (RAPI), or Inter-community Radio, who prefers to remain anonymous (Aceh, 1 August 2018).

About 50 rescued people were taken to hospital.[548] As discussed in Chapter 4, they could eat only once a day, and, therefore, when they were stranded in Aceh, in general they were suffering from starvation, and many of them were very thin.[549]

Ten days after the rescue, a similar incident happened in Langsa. After sunset on 15 May 2015, two fishermen in a small boat spotted a big boat with many people inside, as one witness recounted in interview: "*Yes, I was near those. They gave signs but we didn't realise that the Rohingya refugees were asking for help there were many people in the boat".*[550]

The boat was about 40 miles from shore.[551] The captain of a big boat also saw the Rohingya refugee boat sinking, due to its damaged engine,[552] and the captain radioed to ask the nearest boats to get involved in the rescue. The rescue ran rapidly, as he described:

> *Boat captain organised the rescue. We also exchanged information with some sea captains. They decided how many boats, and which boats, would rescue the refugees. If we did not manage the boats, things would not run well.*[553]

One interviewee depicted the rescue as follows:

> *When our boats got near, they jumped rapidly. They didn't want to take turns. They would race to jump because they were so hungry...When the small boats got attached to their boat, they would jump to the boats. And they let their boat sink.*[554]

One of the fishermen from a small boat said they rescued 30 people, and he described the process in bringing survivors to the nearest port, Kuala Langsa:

> *It was around 8am. They left at 12am and arrived at around 8am here. Because our boat's engine was not big, it was slow. If we had broken the rules, we could have arrived faster.*[555]

There were 825 people rescued. It emerged that 400 of them were Rohingya refugees, and the rest Bangladeshi migrants.[556] However, the grouping of the passengers into either Rohingya refugees or Bangladeshi immigrants is contestable,

---

[548] The Guardian, 'Hundreds of Rohingya Refugees Rescued from Boats off Indonesian Cost' *The Guardian* (London, 10 May 2015) <https://www.theguardian.com/world/2015/may/10/hundreds-of-Rohingya refugees-refugees-rescued-from-boats-off-indonesian-coast> accessed 15 November 2020

[549] The Guardian (n 591).

[550] I-21: interview with a fisherman from Telaga Tujuh village, city of Langsa (Aceh, 9 August 2018).

[551] FG4-3: a fisherman from the city of Peurlak (Aceh, 9 August 2018).

[552] FG4-3 (n 551).

[553] FG4-3 (n 551).

[554] FG4-1: a fisherman from Peurlak (Aceh, 9 August 2018).

[555] I-21 (n 550).

[556] I-17: interview with (de facto) head of city of Langsa taskforce (Aceh, 6 August 2018). Different numbers of passengers have been cited by different sources: 820 passengers were rescued, of which 500 were Bangladeshi migrants, and the rest Rohingya refugees, see also Thom (n 543).

since in a few cases Rohingya refugees were born and/or raised in Bangladesh, especially in Cox's Bazar.

On 20 May the last boat, containing 409 passengers, was rescued off East Aceh by fishermen.[557] They were picked up about 40 miles from shore and brought to the port in East Aceh at around 2am.[558]

Fishermen in North Aceh and Langsa share the same stories on the losses they suffered and, at the same time, the confiscation of their boats by Indonesian Army Police.[559] Despite being considered heroes, the fishermen lost large amounts of money, as they gave their onboard food supplies to the boat people, and they used up fuel.[560] One of the fishermen explained that they lost IDR 30 million (equivalent to GBP 1,750). [561] Besides these direct losses, the fishermen faced the consequence of being prohibited to sail for a week or two, as one interviewee described: *After arriving here, there was a problem with the navy. "Why did you bring them?" Our documents were confiscated.*[562]

In rescuing the Rohingya refugees and Bangladeshi immigrants, fishermen were putting themselves at risk, as they had received phone calls from local security telling them not to rescue the people in the boats.[563] Following this rescue, fishermen's boats were confiscated by North Aceh Water Police for helping illegal immigrants to enter Indonesian soil.[564] The police returned the boats a few days after the incident, but the fishermen suffered large losses, as this had prevented them from sailing.

On the other hand, an interviewee from the Coordinator of the Ministry of Politics, Law, and Security argued that the Indonesian Army's policy of confiscating the boats was only for an inspection report on the apparatus for their institution.[565] However, this policy was not on the fishermen's side.

---

[557] Thom (n 543).

[558] M.A. Imran, 'Pengungsi Rohingya refugees Diangkut ke Malpores Aceh Timur' (Rohingya Refugees are Transported to Police Sub-District of East Aceh) *Tempo.co* (Jakarta, 20 May 2015) <https://dunia.tempo.co/read/667958/pengungsi-Rohingya refugees-diangkut-ke-mapolres-aceh-timur> accessed 15 November 2020.

[559] As discussed in Chapter 1, the fieldwork was conducted mainly in two locations: North Aceh and Langsa

[560] I-20: interview with fisherman in Langsa (Aceh, 8 August 2018).

[561] FG4-3 (n 551).

[562] I-20 (n 560).

[563] I-15: Interview with a fisherman from Gampong Sago Village, Sinedeoan, North Aceh (Aceh, 5 August 2018); and Anne McNevin and Antje Missbach, 'Hospitality as a Horizon of Aspiration (or, What the International Refugee Regime Can Learn from Acehnese Fishermen)' (2018) 31 (3) Journal of Refugee Studies.

[564] I-15 (n 563).

[565] I-26: Interview with Secretary of the Desk for People Smuggling, Asylum-Seekers and Refugees, the Coordinating Ministry for Political, Law and Security Affairs (Jakarta, 26 August 2018).

Despite the loss the Acehnese fishermen suffered, they would still be willing to welcome the Rohingya refugees, as this interviewee stated: *We would be willing to do the same if there are other refugees coming and we expect that we could continue our life and our job as soon as we finish rescuing them, as we have done before*.[566]

2. *Local Inhabitants' Help Stories: Urgent Roles*

Following the rescue by the fishermen, local inhabitants from all over Aceh spontaneously helped the Rohingya refugees with donations, mostly basic needs such as food and clothes.[567] Paradoxically, as has been discussed previously, Aceh is the poorest province on the island of Sumatera.

During my observations at the fieldwork locations, I concluded that both North Aceh and the City of Langsa were underdeveloped. Many of local inhabitants I came across lived very modest lives. One of the focus groups I conducted was in a participant's house. The floor on which we sat was made of cement. In the guest room, there was no valuable equipment, only a television on the cupboard. Most of the inhabitants of Sinendon village, North Aceh, worked as fishermen, and they either rented a boat or owned a very traditional one. In the same vein, I visited Telaga Tujuh village in Langsa where I interviewed a fisherman. I needed to take a 30-minute boat ride from Langsa Port to reach this remote village. Most of the houses were very modest. As clean water was scarce, the inhabitants had to buy it for their daily needs.

Food availability was very urgent during the first day of the rescue and the strategy on how local inhabitants provided it was fascinating:

> *We gave them used clothes. We fed them. All houses took them inside. I had some of them in my house. There were five of them, whereas another man took ten people into his house. All were fed.*[568]

Every housewife fed at least five passengers in Sinendon village, North Aceh. In the same vein, many wives from Simpang Lhee village, East Aceh, spontaneously set up and ran community kitchens for feeding the refugees.[569] Local

---

[566] FG4-3 (n 551).
[567] Missbach: (n 467).
[568] FG2-8: an inhabitant of Gampong Sago village, Sinedeoan, North Aceh (Aceh, 4 August 2018).
[569] CNN Indonesia, 'Kebaikan Warga Aceh yang Mengharukan' ('The touching kindness of the Acehnese') *CNN Indonesia* (Jakarta, 21 May 2015) < https://www.cnnindonesia.com/internasional/20150521134315-107-54780/kebaikan-warga-aceh-yang-mengharukan> accessed 14 November 2020.

inhabitants not only fed them but also let them clean themselves in their respective houses, and gave them proper clothes.[570] No governmental institution had ordered them to do so. This impulse to offer a warm reception is strongly imprinted in their blood.

In the afternoon, the government of North Aceh held a meeting on the temporary accommodation of the Rohingya refugees and Bangladeshi immigrants. Due to the difficulty of finding a place that could contain hundreds of people, the North Aceh Regent decided to place them in new buildings in the Lapang district, near the local port, where the Rohingya refugees and Bangladeshi immigrants could stay for about two month.[571] The buildings had been planned as an education and training centre.[572] The decision to accommodate the Rohingya refugees and Bangladeshi immigrants on Aceh soil was very brave in the light of Indonesian immigration law that categorised the Rohingya refugees as illegal immigrants, to be confined in Indonesian detention centres.

This was the first time that the Acehnese government had decided to keep Rohingya refugees in Aceh; after the previous arrivals in 2009, 2011, 2012 and 2013, they were instead transferred to Medan and held in a detention centre.[573] The local governments' motivations will be discussed in the next chapter; their choice to hold the Rohingya refugees was eventually agreed by central government. Bolstered by pressure from the international community, the Malaysian and Indonesian governments in joint statements agreed to provide temporary assistance to the irregular migrants (both Rohingya refugees and Bangladeshi migrants), and invited the international community to take responsibility for their repatriation or resettlement to third countries within a year.[574]

As news of the arrival of persecuted Rohingya refugees spread throughout Aceh province, more and more local inhabitants came to give help, as witnessed by I-22:

> *As soon as they arrived in Lapang, the local inhabitants, came pouring into the place from all directions. They came from the mountains and the sea, bringing anything that may be needed*

---

[570] CNN Indonesia (n 612).
[571] Minutes of North Aceh Government: (n 587).
[572] I-22: interview with a senior staff member of the Government of North Aceh. He was also a member of the taskforce for Rohingya refugees in North Aceh (Aceh, 9 August 2018).
[573] Thom (n 543).
[574] Reliefweb, 'Joint statement: Ministerial Meeting on Irregular Movement of People in Southeast Asia' <https://reliefweb.int/report/myanmar/joint-statement-ministerial-meeting-irregular-movement-people-southeast-asia> accessed 10 August 2019.

by these refugees. In just one day, we received 20 tons of rice from them.[575]

At that time, a lot of people came to see, and this meant that they also brought donations. Some of them brought rice; others brought other food and snacks; there were also some who brought clothes, money, and charitable things, just to express their kindness and warm-hearted feelings towards the refugees.[576]

After arriving at Kuala Langsa Port, as in North Aceh, the local inhabitants happily helped the Rohingya refugees and provided their basic needs such as rice, other food and clothes, so the storehouse was full.[577] Similarly, university students took part, as described by one of the interviewees: "*Friends from Samudera University came wearing alma mater jackets in a truck loaded with donations*".[578]

From discussions about the situation, I argue that the fishermen's and local inhabitants' hospitality are not only a common expression of a friendly welcome or a humanity account,[579] but also represents their obedience towards the law(s) they abide by. The motives that drive the actors will be discussed in the next chapter, however it worth recalling Chapter 4's exploration of the important position of *adat* law and *sharia* in the lives of the Acehnese.

C. Phase Two of Reception: The Dynamics of the Relationships Among the Actors in the Shelters

This section describes the next phase of the aid, the reception of the Rohingya refugees in Aceh. It discusses the formation of a taskforce to handle the Rohingya refugees, and its limitations, and this is followed by a discussion about shelter foundation, and the challenges to relations among the actors providing for the needs of the Rohingya refugees. The conflicts between the actors occurred due to the lack – not to say the absence – of arrangements for the rights and obligations of the actors on the ground. Therefore, by putting the "*Konvensi Langsa*" in place, the Langsa government reduced conflict on the ground.

[575] FG1-1: senior staff member at the Office of Women Empowerment and Protection of the Children of North Aceh Government (Aceh, 2 August 2018).
[576] I-22 (n 572).
[577] I-29: interview with *Dompet Dhuafa* senior staff (Jakarta, 3 September 2018).
[578] FG3-3: an advisor to the Mayor of Langsa (8 August 2018).
[579] McNevin and Missbach (n 563).

1. *Taskforce to Handle the Rohingya Refugees: Limitations of the Decree*

Due to the lack of a legal framework on refugee matters, both the regent of North Aceh and the Mayor of Langsa issued a decree on the formation of a taskforce to handle the Rohingya refugees. The following discussion shows the limitation of the decrees, as the regulations fail to stipulate the obligations and rights of members of the taskforce, including their respective roles. These decrees highlight the short-term nature of the goals, which were to contain the Rohingya refugees only temporarily. Moreover, the absence of financial arrangements pushed the local governments to use their discretionary powers to overcome the problems.

On 13 May 2015, in North Aceh, the first meeting to be attended by a variety of actors such as local government (both at regency and provincial level), the North Aceh regency police, the North Aceh regency army, the coordinator of the ministry of politics, law and security, IOM, UNHCR, and, a CSO, *Aksi Cepat Tanggap* (ACT) was held.[580] Interestingly, ACT was the only CSO attending the meeting.[581] This meeting made two recommendations: assign a taskforce to tackle the Rohingya refugee issue, and improve the buildings in Lapang's Kuala Cangkoi sub-district so that they could be used as temporary shelters. [582]

On 5 June 2015, the taskforce was assigned by North Aceh Regent Decree No 100/442/2015.[583] The Head of Immigration of North Aceh was appointed to head the taskforce.[584] Along with him, 12 people were appointed to steering committees and 79 to member committees. Excluding the CSOs, the membership of the taskforce consisted of senior local government executives and officials, senior local immigration officials and staff, plus staff from UNHCR and IOM. Interestingly, over the course of time, the role of CSO became significant, especially in the creation of the shelters and improving conditions for Rohingya refugees (e.g. with language training).

Similarly, On 15 May 2015, the taskforce was assigned under Mayor of Langsa Decree No 327/460/2015.[585] As in the North Aceh Regency, the head of immigration from the City of Langsa was appointed to head the taskforce.[586] Along with him, 12 people were assigned to steering committees, and 34 to member

[580] Minute from North Aceh Government (27 May 2015).
[581] Minute from North Aceh Government (n 623).
[582] Minute from North Aceh Government (n 623).
[583] Minute from North Aceh Government (n 623).
[584] North Aceh Regent Decree No 100/442/2015 related to the change in North Aceh Regent Decree No 100/355/2015 on the Formation of Taskforce for Handling Asylum Seekers in North Aceh Regency.
[585] I-17 (n 556).
[586] Mayor of Langsa Decree No 327/460/2015 on the Formation of Taskforce for Handling Asylum Seekers in the City of Langsa.

committees. In contrast to the North Aceh Decree that excluded CSOs, membership of the taskforce consisted of local government senior executives and their staff, senior local immigration officials, staff from UNHCR and IOM, and representatives of CSOs. Having been promoted to the post, the head of the Langsa taskforce resigned three months later, in August. A senior City of Langsa official was appointed to fill the position. However, this appointment was made orally, without any decree that nullified the then-current one.[587]

Neither decree was intended to provide long-term solutions for the Rohingya refugees, but rather served as an emergency response. The decrees stipulate the objectives of the taskforce, which are: to provide the facilities needed; to coordinate and meet with those involved in issues of handling asylum seekers; to provide basic needs, including logistics, health and sanitation; and to report to the related institutions.[588] In addition, neither decree explains the rights and duties of the head and members of the taskforce.

Importantly, neither decree regulates the budget, therefore leave the local governments with no choice but to employ their discretionary powers in handling the Rohingya refugees. The next discussion highlights the important role of the CSOs in shelter foundation. In addition, the leadership of local governments also contribute to the (lack of) success of shelter making.

2. *Shelter Making: Who is Responsible?*

As has been discussed, on the day of their arrival, after having been fed by local inhabitants, the passengers were transported into temporary shelters in Lapang District, North Aceh. As these buildings were meant to be used as a training centre, they did not meet the specifications for shelters. The training centre consisted of two buildings: the first building was used for the Bengali immigrants and the other for the Rohingya refugees.[589] The conditions were not suitable for Rohingya refugees coming in with families. Worryingly for security considerations, the setting of the buildings allowed interaction between local inhabitants, Rohingya refugees and Bangladeshis immigrants.[590] Thus, soldiers and the police started guarding the shelters. In addition to this, as the Rohingya refugees and Bengali Immigrants

---

[587] I-17 (n 556).
[588] I-17 (n 556), and North Aceh Regent Decree (n 584).
[589] FG1-3: a local inhabitant (Aceh, 2 August 2018). In order to get more information about this participant's role, I interviewed her by phone on 1 May 2020.
[590] FG1-3 (n 589).

exceeded the capacity of the building, they were able to stay there only temporarily.[591]

One thing to note before discussing the shelter-making process is that there is no explicit mandate in the decree for the taskforce to provide shelters for the Rohingya refugees; however, establishing a proper shelter was the main issue that the North Aceh Regency had to deal with. Identifying the shortcomings of the shelter in Lapang sub-district, the following meeting between the North Aceh Regent, UNHCR and IOM concluded that a new shelter should be made.[592] However, these concerns could not be followed up by concrete action because of the constraints that the two international organisations faced:

> *At night, UNHCR staff also came to meet the Regent. We take decision that they could not stay for too long at the shelter, because we understand the circumstances: it was full. We asked IOM and they said they did not have the money.*[593]

Meanwhile, ACT was lobbying the Vice-Governor of Aceh and the North Aceh Regent to find a way for it to build a shelter for the Rohingya refugees.[594] ACT had gained the trust of donors in Middle-Eastern countries.[595] In addition, helped by religious sentiment, ACT also successfully collected abundant charity from Indonesian citizens, mostly Muslims.[596] The approach successfully persuaded Muslims to provide help, because helping fellow Muslims in distress is not a choice but an obligation.[597]

Following the flight of Rohingya refugees to Aceh in 2015, on 20 May 2015 ACT initiated the formation of KNSR (Komite Nasional Solidaritas Rohingya refugees) – the National Committee for Rohingya Refugees Solidarity.[598] One of the reasons to create this body was the need for more funds, as it allowed them to collect money from the public, especially from Indonesian Muslims.[599] The head of KNSR is one of the ACT's directors. In North Aceh Regency, ACT assigned its own chairperson to also chair KNSR. The first mission accomplished by the ACT's Aceh

---

[591] I-11: interview with one of the trustees of Yayasan Geutanyoe Indonesia (YGI) (a CSO). The interviewee is also one of the advisors of the North Aceh Regent (Aceh, 2 August 2018).
[592] Minute from North Aceh Government: (n 623)
[593] I-11 (n 591).
[594] I-2: interview with a director of ACT (Jakarta, 24 July 2018).
[595] I-2 (n 594).
[596] ACT, 'Rohingya Refugees' <https://act.id/Rohingya refugees/> accessed 15 August 2019.
[597] Jamal Krafess, 'The Influence of the Muslim Religion in Humanitarian Aid' (2005) 87(858) International Review of the Red Cross 327.
[598] I-2 (n 594).
[599] I-2 (n 594).

branch director was to make a shelter. The chairperson was not only an Acehnese, but also had a network with the elites in Aceh, as revealed in the interview:

> *I was lucky enough that the Regent is someone I used to know. We used to chitchat, have a nice coffee together. So, maybe since we were close to each other – we were both alumni of the same law faculty (in college) – we met in Baiturrahman Mosque and everything went well. The process was quickly completed. We just needed a day for it. Having finished with the negotiations, we could have the paper. All was done on the same day.*[600]

Permission for shelter making was obtained in a day, due to the closeness of the chairperson of ACT/KNSR with the North Aceh Regent. Besides that, the chairperson of ACT/KNSR North Aceh also understood how the GAM had influence on the Acehnese government, since most Acehnese local government was administered by GAM loyalists. Therefore, during the meeting, the chairperson of ACT/KNSR North Aceh was accompanied by one of the GAM leaders, as described:

> *We were asked to approach the Regent to give the possession of the land. Since the beginning I was the one who negotiated with the communications advisor of GAM. We both attended the meeting. In these forums we negotiated things until it was then decided that the next day, we would receive the letter.*[601]

Elites of GAM were involved not only to allow the shelter making, but moreover to help find the most suitable land for the shelters, as admitted by one of the elite GAM:

> *There were some spaces or areas that we thought were suitable enough for the refugees. We went to Landing, an area in the eastern part. We found out that the location was not sufficient for our plan. And then we came to Blang Ado. And this place was close enough to the place where we contained the refugees temporarily. The next morning, all the administration matters were taken care of by the Regent's staffs. And the day after, we could finally build the shelter.*[602]

The shelter was eventually built in less than two months, as the builders worked day and night in order to be ready to accommodate the Rohingya refugees as quickly as they could.[603] Only ACT was involved in building the shelters. ACT was confident of its own resources; one participant noted: *"In Northern Aceh we had only ACT, and they wanted to be a dominant group. They wanted to get huge*

---

[600] I-10: interview with a volunteer of ACT (Aceh, 1 August 2018).
[601] I-10 (n 600).
[602] I-8: interview with the chairman of one of the GAM departments (Aceh, 1 August 2018).
[603] I-8 (n 602).

(funding) resources, and they wanted it all".[604] The CSOs have noble aims in providing help for the Rohingya refugees, however, it is evident that they used their very active engagement in a humanitarian issue also as a means to generating their income.[605]

Indonesia had experience of handling Vietnamese refugees under the CPA from 1980 to 1990. However, CSO had never before played a significant role in initiating construction of a shelter.[606] The lack of responsibility from central government and the limits of international organisations' funding led both the Acehnese Provincial Government and the North Aceh Government to accept CSO's involvement:

> *They entered the shelter once it was done, which means that we worked fast for the refugee shelter. There were 120 houses, mosques, schools, shops and a park. There was also an economic centre in the back of the residence. It was fast. We indeed had a commitment that if we wanted to help them, we had to do our best and work in a quick period.*[607]

On the other hand, in contrast to North Aceh, where ACT was dominant in initiating shelter-making for Rohingya refugees, the creation of the shelter depended on the leadership of the government of Langsa, as well as consensus among the actors involved.

Having been founded in 2001,[608] the City of Langsa had no experience of managing refugees. Moreover, the government of Langsa had no experience of tackling any single issues of refugees or internally displaced persons (IDPs).[609] Following of the flight of 425 Rohingya refugees to Langsa, a meeting was held between the Mayor of the City of Langsa, UNHCR, IOM, and the city's immigration, armed forces, and police officials.[610]

Having failed to provide any solutions for accommodating the Rohingya refugees and the Bangladeshi immigrants, the Mayor launched an initiative to temporarily hold the Rohingya refugees and Bangladeshi migrants in a warehouse belonging to *Pelindo* (a state enterprise) near Langsa Port.[611] It was confirmed that

---

[604]I-30: interview with one of the directors of Dompet Dhuafa, a charity based in Jakarta (Jakarta, 12 September 2018).
[605] Missbach (n 467).
[606] Antje Missbach, 'Waiting on the Islands of 'Stuckedness'. Managing Asylum Seekers in Island Detention' (2013) 6 (2) ASEAS 281.
[607] I-2 (n 594).
[608] I-17 (n 556).
[609] I-17 (n 556).
[610] I-17 (n 556).
[611] 1-17 (n 556).

the detention centre in the nearest city, Medan, was overcapacity.[612] As discussed in Chapter 4, the common practice in containing asylum seekers/refugees entering Indonesian territory was to use detention houses or community houses funded and managed by IOM.

Pelindo asked the Langsa government to empty the warehouse, so the Rohingya refugees were moved to CSO-funded temporary shelters in Kuala Langsa less than two months after their arrival.[613] As the temporary shelters were not suitable for accommodating about 600 Rohingya refugees and Bangladeshi immigrants, the City of Langsa decided to build shelters for the Rohingya refugees.[614] Realising that IOM and UNHCR were unable to propose any solutions to providing a shelter for the Rohingya refugees, the head of the taskforce turned to the CSOs. One of these was Dompet Dhuafa, as highlighted by one of the interviewees:

> *The local government were active in contacting us. It was one of the Mayor of Langsa's advisors who contacted us. He was in the Jesuit Refugee Service (JRS) before. Our activist friends saw him (the advisor) as a mastermind.*[615]

The head of the taskforce discussed a joint project with the CSOs, initially talking about the location and design of the shelter.[616] Every CSO was given the opportunity to do its utmost; the *Peduli Muslim* organisation was responsible for sanitation, while the *Dompet Dhuafa* Foundation built classrooms for the Rohingya children.[617] Compared to the construction of the North Aceh shelter, which took less than two months, it took at least six months for the Timbang Langsa shelter to be ready.[618] It is most likely that the involvement of many CSOs on the ground had an impact on the decision-making process for the shelter's construction. However, the involvement of CSOs reflected how their contribution was very much appreciated.

---

612 1-17 (n 556).
613 Maya Nawangwulan, 'Pengungsi Rohingya Diminta Keluar dari Penampungan di Langsa' ('Rohingya Refugees are Asked to Empty the Temporary Containment') Tempo.co (Jakarta, 28 June 2015) <https://nasional.tempo.co/read/679101/pengungsi-Rohingya refugees-diminta-keluar-dari-penampungan-di-langsa/full&view=ok> accessed 17 November 2020.
614 Maya Nawangwulan, 'Pengungsi Rohingya Tinggalkan Gudang di Pelabuhan Langsa' ('Rohingya Refugees Leave the Warehouse in Langsa) Tempo.co (Jakarta, 28 June 2015) <https://nasional.tempo.co/read/679105/pengungsi-Rohingya-tinggalkan-gudang-di-pelabuhan-langsa/full&view=ok> accessed 17 November 2020.
615 I-30 (n 604).
616 I-17 (n 556) and I-30 (n 604).
617 I-30 (n 604).
618 Mukhlis, 'Imigran Rohingya Tempati Shelter Baru' ('Rohingya Refugees Contained in New Shelter') Antaranews (Jakarta, 19 March 2016) <https://www.antaranews.com/berita/550903/imigran-Rohingya-tempati-shelter-baru> accessed 15 November 2020.

Due to the lack of UNHCR and IOM funding, the role of CSOs in tackling the Rohingya refugees -with reference to the shelter-making- are sharply revealed by the process. Local government was using its discretion in tackling the situation, as the support of central government was, if not absent, minimal in this regard.

3. *Tensions and Harmonies Between Actors in the Shelters*

Various actors (local government, UNHCR, IOM and CSOs) were taking part in handling the Rohingya refugees and some of the Bangladeshi immigrants who had not yet been deported, especially after the containments in temporary shelters in North Aceh and Langsa.[619] I argue that due to the absence of regulation defining the rights and duties of the actors involved, the leadership of local government became the key aspect in managing the shelters.

As described previously, the head of the North Aceh taskforce was a senior immigration official in North Aceh. Due to a lack leadership at the head of the taskforce, the de facto leader was a taskforce member who was also a senior staff member of the North Aceh Government's Office of Women Empowerment and Protection of the Children.[620] She described the situation in her interview:

> *All the matters concerning the refugees were referred to the Kantor Pemberdayaan Perempuan dan Perlindungan Anak (KP3A)/the Office of Women Empowerment and Protection of the Children under the North Aceh Government. All people seemed to behave like this: whenever there was a problem, they would come to me; complain to me, as if the owner of the shelter was me. Everyone says if you have a problem just come to me.*[621]

One example she described, an incident involving child marriage between the Rohingya refugees, illustrates how the actors relied on I-7 as the only person who could solve delicate problems:

> *But then something happened. Everybody seemed to be irresponsible with the (child) marriages, leaving me all alone to be responsible for it. This is crazy, but I said, "Well, it's okay. Whatever. I handled this myself." The last was UNHCR who also went away from the shelter. The North Aceh Government senior official had already given up and went away.*[622]

---

[619] With regard to the Bangladeshi immigrants, they were deported in some treads, starting in June. Zulkifli Marbun, 'Government to Deport 19 Stranded Bangladeshi from Aceh' Republika.co.id (Jakarta, 7 June 2015) <https://www.republika.co.id/berita/en/national-politics/15/06/07/npkbxj-govt-to-deport-19-stranded-bangladeshis-from-aceh> accessed 14 November 2020, and Ika, '150 Bangladeshi to be Deported from Aceh' The Jakarta Post (Jakarta, 3 August 2015) <https://www.thejakartapost.com/news/2015/08/03/150-bangladeshis-be-deported-aceh.html> accessed 14 November 2020.

[620] FG1-4: participant is a member of ACT.

[621] I-7: interview with is a vice chairperson the Office of Women Empowerment and Protection of the Children of North Aceh Government (Aceh, 31 July 2018).

[622] 1-7 (n 621).

I-7 also highlighted that it was normal for her to stay late at the North Aceh shelter to ensure that things were going well.[623] She also happened to visit the shelter at midnight when a rumour of rape incident circulated.[624] She admitted that her background as an activist before working as a civil servant was a determining factor in her commitment to work her best.

Due to the lack of leadership from the head of the taskforce, I-7 was trying to fill the gaps. At the same time, UNHCR, IOM and ACT used this lack of leadership to influence the management of the Rohingya refugees. Disputes often occurred between the international organisations – UNHCR and IOM – and ACT, due to perceptions of the power held by the actors engaged. Holding subsidiary protection, UNHCR and IOM took control of handling the refugees, but ACT, who had contributed significantly, wanted a greater role, for example, to be involved in daily proceedings.

Conflict occurred not long after the Rohingya refugees were transferred from the Lapang sub-district to the Blang Ado shelter. IOM changed the colour of the Blang Ado shelter, and this was perceived as IOM's tactic to control the shelter. As one ACT director commented:

> *IOM was too much. They suddenly changed the colour, then, they removed our partners' logo on the houses we built. This was embarrassing. A big institution such as IOM didn't help building the shelter or houses for the refugees, but then they changed it without any reasons.*[625]

It is admitted that both IOM and UNHCR were holding determinant roles in fulfilment of the logistics and resettlement of Rohingya refugees.[626] However, in the focus group attended by local actors, both UNHCR and IOM staff were often described as superior and arrogant.[627] Their attitudes prevented them working as they should have, as told by one of the participants of the FG:

> *But in the end, the UN and IOM just washed their hands. They just let everybody do the job while they chose to keep their hands off. They let ACT, Save the Children (STC), and the Indonesian*

---

[623] 1-7 (n 621).
[624] I-7 (n 621).
[625] I-2 (n 594).
[626] IOM report, 'Bay of Bengal and Andaman Sea Crisis'<https://www.iom.int/sitreps/bay-bengal-and-andaman-sea-crisis-response-situation-report-august-2016> accessed 16 August 2019. UNHCR report, 'UNHCR Indonesia: Response to the Rohingya Refugees Situation in Aceh and North Sumatera' <https://www.refworld.org/docid/58208e224.html> accessed 16 August 2019. FG1-1: (n 575).
[627] Local actors are local people coming from various backgrounds such as local government officials, Indonesian Red Cross, North Aceh branch, volunteers from local, national and international *N-2GOs*, fishermen and local inhabitants. FG1-5: a volunteer from Save the Children, and FG1-3: (n 589).

Red Cross stay busy and they simply said: "Oh, here they are! Everything has been handled and done. We don't have anything else to do".[628]

One example recounted was that UNHCR and IOM staff pressurised were CSOs to provide data about the number of Rohingya refugees in the shelters.[629]

As there was no consensus on the rights of Rohingya refugees, the IOM and the UNHCR were on one side, often generating tension with the CSOs who were on the other side. The CSOs believed that Rohingya refugees could stay in Aceh for the long term, so they focused on empowering the Rohingya refugees, teaching them to raise chickens and plant seeds.[630] The IOM and UNHCR, on the other hand, limited the activities of Rohingya refugees in the shelters, as their aim was to move or resettle them to third countries.

The difficulty that the actors faced in working together, especially between the international organisations and the CSOs, also occurred in Langsa. As in North Aceh Regency, IOM reportedly felt superior and dominant, as described by one of the interviewees:

IOM wanted to play a dominant role. But then the government thought that it was not going to help for the betterment of the process of handling the refugees, because now we are involving more CSOs.[631]

IOM's attitude was understandable, since it is an inter-state organisation that had never experienced working with the CSOs.[632] IOM has always worked with UNHCR and the Directorate of Indonesian Immigration, especially in providing logistics for asylum seekers and refugees in detention centres and community houses across Indonesia.

The second thing was the cultural distance between IOM staff and CSO staff, since the former come from Jakarta, while the latter are mainly Acehnese or worked in Aceh. Presumably, IOM staff lacked knowledge of Acehnese culture. However, there was no choice for IOM but to accept the way the shelter was run, since they could not fully support the shelters, as explained by one of the interviewees:

IOM has a standard for good and hygienic sanitary facilities and water facilities. Those standards are often times incompatible with the standards set by "Peduli Muslim" CSO, for example. However, since IOM hadn't decided yet whether or not they were going to build the facilities, we decided

[628] FG1-1 (n 575).
[629] FG1-5 (n 627)
[630] I-7 (n 621).
[631] I-17 (n 556).
[632] I-33: interview with a senior staff member of IOM Indonesia (14 September 2018).

ourselves that "Peduli Muslim" and its contributors would lead the building process of the facilities. Then they built the facilities together and reported the process and the budget and others, all written in documents.[633]

This approach was not easy to accept, especially to those who had always been in charge of handling refugees, like IOM, which furthermore was used to applying its international standards. As one of the Interviewees pointed out:

But they also have their standards which are sometimes not in the same line as the ones set by our government, especially the ones concerning the logistic problems which have been the main focus of IOM. IOM had its standards – international standards.[634]

In order to lessen the domination of the international organisations, the (de facto) head of the taskforce in Langsa took a lead in tackling the Rohingya refugees, as highlighted below:

IOM leading the shelter is not written in the paper. Moreover, it was me who became the leader in the process. So far, IOM would always feel more dominant than the others; they were dominant in setting the standards for others. Today the one who is leading and more dominant is the local government, and you (IOM) are given a mandate to support the local government. I told them clearly, black and white.[635]

This approach gave an advantage to volunteers from any organisations supporting the taskforce, as they did not feel underestimated. As doors were opened, organisations from various backgrounds were welcomed, including CSOs from different backgrounds and interreligious organisations.

Facing the enthusiasm of CSO staffs and volunteers, all taskforce heads decided to have regular meetings in two weeks.[636] Overcoming the overlapping programmes among the organisations, the taskforce asked the actors involved to sit together in deciding who did what, when, and where.[637] It was one of the important roles of the government and the taskforce, to be a mediator or facilitator for the actors involved:[638] The head of the taskforce also showed these CSOs that he could work

---

[633] I-17 (n 556).
[634] I-17 (n 556).
[635] I-17 (n 556).
[636] I-17 (n 556).
[637] I-33 (n 632).
[638] FG3-2: interview with a staff member of PMI City of Langsa, a branch of the Indonesian Red Cross in Langsa (Aceh, 8 August 2018).

outside office hours. This flexibility created a more relaxed attitude on the CSOs' part about working with him.[639]

Therefore, there was no favouring of any one institution. Every organisation must receive similar access.[640] IOM cooperated with the Department of Social Services and the Department of Health of the Langsa Government. Others also have their own health divisions. What IOM has available to give, others do not, and vice-versa. For example, regarding mental health, IOM does not provide any care, so MSR (Medicine Sans Frontiers) took over. This was where the government would take a role – to manage, and avoid overlaps.

This approach would lessen competition among organisations. For every programme they created, each organisation must provide a report to the taskforce. The head of the taskforce is an accessible person and regularly visited the Rohingya refugees to be able to spot any problems.[641] He put in place his strong leadership and established equality between organisations/actors in tackling the Rohingya refugee situation, as witnessed by I-30: *He was considered capable and smart, so he was also one of the key persons behind the Mayor of Langsa.*[642]

The dominant role of local government on one side could create harmony between the actors, especially between the CSO staff, and IOM and UNHCR staff who got involved. However, as noted previously, the local governments' lack of experience, coupled with the diminution of IOM's and UNHCR's roles in providing the Rohingya refugees with basic needs, contributed to a reduction in rights that the Rohingya refugees should have enjoyed. The basic accommodation in Langsa, for example, was substandard.[643] In addition, sanitation and cooking facilities were in poor condition.[644]

4. The "Langsa Convention": an Approach to Protecting the Rohingya Refugees

From the beginning of the crisis, the Mayor of Langsa was aware that in handling the Rohingya refugees, his team should refer to Act No 5 of 2011 on Immigration Law and the Directorate Immigration Decree No IMI.1409.IM.08.05 dated 17 September 2010 on the handling of illegal immigrants.[645] In brief, these

[639] FG3-2 (n 638).
[640] FG3-3 (n 578).
[641] I-18: interview with a volunteer with *Dompet Dhuafa* (Aceh, 7 August 2018).
[642] I-30 (n 604).
[643] Thom (n 543).
[644] Amnesty International Report (n 471).
[645] FG3-3: (n 578) and I-17 (n 556).

regulations designated every person entering Indonesian territory without valid documents an illegal immigrant. Illegal immigrants who want to apply for asylum through UNHCR should be detained in an immigration house. Such illegal immigrants are deprived of their basic rights, such as to movement, education and work.

Since the approach of both pieces of legislation did not fit with his beliefs, the Mayor of Langsa took a different perspective, which he felt was more humane.[646] This perspective was what later called "*Konvensi Langsa.*" -a set of unwritten rules used as common ground by the actors introduced by the Langsa Government. One of the interviewees described the use of *Konvensi Langsa*: "*We didn't use any other conventions. We used the Langsa convention. This is a humanitarian problem. We all act together*".[647]

Analysing the interviews of the actors involved in the City of Langsa, some points can be drawn on the essence of the *Konvensi Langsa*: (1) equality between the actors involved, (2) resource mobility, (3) rights-based approaches.

Endorsing the equality between the actors involved, the Mayor of Langsa underlined his decision on the taskforce team regarding handling of the refugees by including CSO members as a component of the taskforce.[648] This created a friendly environment inside the taskforce. As has been discussed earlier, the taskforce door was open to every organisation wanting to get involved.

Konvensi Langsa were applied, especially after the former head of the taskforce, who was also head of immigration in Langsa City, resigned from the position, as he was promoted to another post in Indonesia. The vice-chairperson of the taskforce – also a senior Langsa Government official – took up the position.[649] The change of leadership put the government of Langsa fully in charge of applying the policy of handling the Rohingya refugees. In relation to this, an interviewee noted:

> *Until this time, as a vice-chairperson, my job was merely to observe because, honestly speaking, I don't have any experience in handling refugees from overseas. However, as long as three months, from 15 May to mid-August, I made intensive communications with our friends from IOM,*

[646] I-17 (n 556).
[647] FG3-3 (n 578).
[648] One of them was the head division of the Geutanyoe Foundation. This NGO focuses on upholding human rights, especially those of refugees.
[649] His nomination was acclaimed by taskforce members and NGOS who were present during the resignation of the head of the taskforce. I-17 (n 556) follow-up written communication (18 April 2019).

UNHCR, and from other CSOs. We monitored problems arising in the field.[650]

In contrast to North Aceh Government, who did not invite CSOs to handle the Rohingya refugees, the Government of Langsa was very active in including them, and so their presence was significant. In addition, the Government of Langsa set up an open system where every organisation could join the work of the taskforce without discrimination, as an interviewee noted:

> *The most interesting fact is that in Langsa we also had non-Muslim organisations. We had Peduli Muslim from Roja and we had Save the Children (STC). Well, it was beautiful. It is impossible to live alone, you know?*[651]

Concerning the resource of mobility as the second important idea of the *Konvensi Langsa*, despite a prohibition on disbursing the city budget, the Government of Langsa and the taskforce could still use city resources to support protection for the Rohingya refugees. In terms of health, for example, at the beginning of the crisis the injured and unwell Rohingya refugees were brought to public hospitals in Langsa. Similarly, Rohingya refugees' babies and children were given vaccines alongside Acehnese babies and children during the annual vaccination programme in 2016.[652]

As discussed earlier, both the Mayor of Langsa and the taskforce took a refugee protection approach towards the Rohingya refugees. In interviews with the head of the taskforce, he always used the term "refugee" for the Rohingya refugees.[653] This reflects the third aspect of the *Konvensi Langsa*, the "rights-based approach". I argue that this approach led the Major of Langsa and the taskforce to give their utmost in handling the Rohingya refugees stranded in the City of Langsa.

One of the rights that the Rohingya refugees were entitled to was freedom of movement, as described below:

> *If their status is the refugee, they have rights. One of the rights is the right of movement. You need to check it out, I'm afraid if I'm mistaken. But if they are not refugees, if they are illegal immigrants, they cannot go out from the detention house, thanks to their own status. So they will receive a different treatment. If their status is the refugee, and they are caught in another place, they are just going to be taken and put back in*

---

[650] I-17 (n 556).
[651] FG3-3 (n 578).
[652] I-17 (n 556) and Asrul' 'Di Langsa, bocah Rohingya juga diimunisasi' (in Langsa, Rohingya children were also given the vaccines) *AJJN* (Banda Aceh, 15 March 2016) <https://www.ajnn.net/news/di-langsa-bocah-rohingya-juga-diimunisasi/index.html> accessed 10 October 2018.
[653] I-17 (n 556).

> *the refugee shelter, in Langsa. They will be returned to the shelter, just like that. They are not going to be arrested and sent to jail because they are refugees, not illegal immigrants. Illegal immigrants would receive a very different treatment undoubtedly.*[654]

An interviewee and volunteer from *Dompet Dhuafa* witnessed the enjoyment of freedom of movement of Rohingya refugees during his work in the shelter: "*They just can go in and out without being watched. They got free and there's no problem with the local government*"[655]. An interviewee from Save the Children added:

> *At the security post, they asked for permission. As time goes by, they could. It was difficult at the beginning. Currently, they could go outside. Well, they would be asked what time they would go back.*[656]

From conversations after the interview period, it was revealed that the interviewees were involved at the beginning of the crisis and spent most of their daily time at the shelter. Moreove, I-19 often spent the night there. I-18 considered that the implementation of right of movement of the Rohingya refugees was getting better. At the beginning of the crisis, along with the Rohingya refugees there were also Bangladeshi immigrants. Therefore, security checks were important. After the Bangladeshi immigrants were deported, the local government provided freedom of movement for the Rohingya refugees within the City of Langsa.

Another point that came up from the interviews was that the Rohingya refugees were, to some extent, allowed to earn their living during their stay in the shelter.[657] Rohingya refugees liked to mingle with the Acehnese, because it made it easier for them to learn the Acehnese language, and to be welcomed by the Acehnese.[658] Their interaction with the Acehnese made it possible for them to take part in economic life, as described by I-18: "*Even in Langsa, there are refugees who went sailing with the local people, lived in local people's houses and earned money.*"[659] Similarly, FG3-3 witnessed "*Rohingya refugees who work at parking lots at some shops. There are those who become construction workers*".[660]

---

[654] I-17 (n 556).
[655] I-18 (n 641).
[656] I-19: interview with a Save the Children (STC) volunteer in the City of Langsa who preferred to remain anonymous (Aceh, 7 August 2018).
[657] I-18 (n 641).
[658] I-18 (n 641).
[659] I-18 (n 641).
[660] FG3-3: (n 578).

The right to work has been a central issue in refugee protection. This right opens access to other rights, such as the right to housing. Moreover, the attainment of the right to work makes refugees feel empowered and useful - able to live their lives as normal people.

One of the concerns of the taskforce, however, was about the traumatic experience of the Rohingya refugees' children. While the trauma-healing process involving CSOs was taking place, the taskforce also used the right to education as a tool to heal these children, as described by one of the interviewees:

> *Then they went to the school. On the first day, they went to school with some kind of welcoming party. There was a marching band welcoming the children. The Rohingya children were welcomed cheerfully. They were dressed in school uniforms… They need to heal faster to erase unfavourable memories in their mind by getting along with other children. They need to feel associated, to feel socially accepted and respected. The teachers understand this and they said it was not a problem at all now. The teachers taught the children normally like they did to others.*[661]

The decision of the head of the taskforce in allowing the Rohingya refugees' children to go to public school triggered resistance from central government.[662] It was argued that letting them study at public school would go against the Indonesian Constitution, since public schools received their funding from the State Budget and were designed for the prosperity of Indonesian children.[663] Allowing the Rohingya refugees to go to public school would sacrifice the rights of the Indonesian children, since they would be competing against the Rohingya children:

> *We knew there were laws, rules, or regulations for that, but here we are not talking about the law-about the administration; we are talking about the traumatised children and how to make them recover from their stressful condition.*[664]

The *Konvensi Langsa* was employed by the Langsa government since there was a lack of framework for handling the refugees. The Langsa government considered the Rohingya refugees as refugees rather than as illegal immigrants, so the *Konvensi Langsa* was its inspiration for treating the Rohingya refugees. This approach was not fully supported by central government.

---

[661] I-17 (n 556).
[662] I-17 (n 556).
[663] I-35: interview with a senior staff member of the Ministry of Foreign Affairs (Jakarta, 17 September 2018).
[664] I-17 (n 556).

D. The Rohingya Refugees' Future: Endless Painful Journeys

It is relevant to discuss the Rohingya refugees in the shelters, because this thesis seeks to find better protection for the Rohingya refugees. In addition, data analysis revealed that discussion of the Rohingya refugees is very dominant. The third section discusses the harsh journey of the Rohingya refugees to their temporary stay in Aceh, connecting their previous life as an oppressed population to their attitudes. This section ends by describing the disappearance of the Rohingya refugees from the shelters, and discusses factors behind this phenomenon.

1. The Rohingya Refugees' Difficult Journey to a Temporary Stay in Aceh

As discussed in Chapter 4, the Rohingya are one most the most persecuted ethnic minorities in the world. Many Rohingya people eventually fled Myanmar to find safe haven in third countries. Like their previous experiences, the journey of the Rohingya refugees in the spring of 2015 was extremely difficult and painful.

The continuing multiple acts of violence against the Rohingya in their country of residence, Myanmar, and the course of their journey to Aceh had shown the serious levels of oppression they suffered. Considering this factor, the difficulties the Acehnese faced in handling the Rohingya refugees can be understood in a more empathic way, instead of blaming or punishing the unpleasant behaviour by the Rohingya.

Despite being pleased to serve Rohingya refugees in Aceh, CSOs and local government staff members expressed concerns over the Rohingya refugees' behaviour.[665] Relations between refugees and the actors, including the Acehnese, consequently became uneasy. With regard to health issues, for example, one volunteer in the City of Langsa described the effort she made for five months just to educate the Rohingya refugees on cleaning the toilet.[666] However, she believed that their poor awareness of hygiene was a result of their habit of living with a poor sanitation in their country of residence.[667]

Similarly, Rohingya refugees' disagreeable behaviour could be seen in their interactions with their children, peers, or partners.[668] Interviewees often witnessed parents asking a favour from their children, and if the children did not cooperate, their parents would sometimes hit them using something like an iron bar, or would

[665] I-7 (n 621), I-18 (n 641). I-10 (n 600) I-14: interview with the head of North Aceh's *panglima laot* (Aceh, 5 August 2019), I-19 (n 656), and FG1-5 (n 627).
[666] FG3-3 (n 578).
[667] FG3-3 (n 578) and I-29 (n 577).
[668] I-18 (n 641).

simply throw a stone.[669] There was a case where a woman and a man ended up fighting by throwing rocks at each other.[670]

In connection with their sexual behaviour, in both shelters, in North Aceh and in the City of Langsa, there were cases that contravened the customs and religion followed by the Acehnese. As one of the interviewees explained: "*There was no knowledge. Some Rohingya refugees practised free sex while they were here. They exchanged sex partners".*[671]

However, Rohingya refugees should not be fully blamed for such attitudes. When the male shelter in Kuala Langsa was opened, Rohingya men were free to come and go, as were people from outside the camp. These included young local girls and mature women who could go and talk to male Rohingya refugees, and since the former also wanted to know the latter, this opened opportunities for them to get closer.[672]

As is commonly accepted, refugees should adhere to local laws, and can be convicted for crimes they conduct in the country where they are staying. Taking into account information from several interviewees, some Rohingya refugees appear to have contravened the seclusion laws in Aceh.[673] However, no Rohingya refugees or Aceh locals were convicted of breaches of law, or for breaking Aceh's *adat* law. Local governments were prevented from applying the law, as they considered Rohingya refugees as oppressed people or victims, rather than as law breakers. One of the interviewees commented:[674]

> *They (the Rohingya refugees) were hard to manage, uneducated. They did not have manners either in the home or at school. It's because they have been living in the camps since 1982. They don't have any rights to have nationality, to get better health, to have a house. It's because they were removed from their nationality. So, they were uneducated...*[675]

The Rohingya refugees' unpleasant behaviour could be a result of frustration at the lives they experienced during their stay in Aceh. In the first few months, their rights of movement were limited, and they could not carry out activities as they had

[669] FG1-5 (n 627).
[670] I-18 (n 641).
[671] I-7 (n 621).
[672] Rina Wijaya and Andreas Subiyono, *Rohingya Refugee Drama in Aceh* (Yayasan Sheep Indonesia: 2016) 52.
[673] For example, Article 5 of Qanun No 14 of 2003 forbids acts of seclusion.
[674] I-30 (n 604).
[675] I-30 (n 604).

at home, such as growing vegetables or rice.[676] Moreover, they did not know what their destiny would be.

Local government and CSO staff and volunteers were also trying their best to care for the Rohingya refugees. They understood very well the refugees' origin, so they created a shelter that could empower as well as make them at home:

> *We created a cattle-fattening place at that time, in that shelter, and provided land for planting vegetables so they didn't need to buy anything – just plant it and then cook it by themselves. We keep pet ducks, and they wanted to handle them.*[677]

In the same vein, one of the interviewees said: "*Some of them (Rohingya refugees) were taking the chance to grow some chickens and plant seeds*"[678]

There were expectations from CSO staff and volunteers that the Rohingya refugees would stay longer in the shelters. They were planning to enable the refugees to live as normal people who could earn money. The Mayor of the City of Langsa went further by offering them a permanent stay in Aceh if central government would grant them citizenship.[679] However, some scholars believe that this kind gesture could also be perceived as his strategy to gain people's support, as the next election was due in the next few months.[680]

However, there must be more than simply economic or political gain to explain why the actors were helping the Rohingya refugees. Despite some unpleasant behaviours by the Rohingya refugees, many local actors could still cope with them, and tried their utmost to ensure they would be happy to stay in Aceh. This phenomenon showed that to some extent, the actors-especially the local actors-still consider the importance of *adat* law norms and religious norms in their activities.

2. Why Did Many Rohingya Refugees Disappear From the Shelters?

Table 3.
Data on Rohingya Refugees

---

676 Rizka Aryadianti Rachmah and Zico Efraindo Pestalozi, 'Hidup yang terabaikan: Laporan Penelitian Nasib Pengungsi Rohingya refugees di Indonesia' ('An Abandoned Life: The Fate of Rohingya Refugees in Indonesia') (Suaka Report, 2016) <https://suakaindonesia.files.wordpress.com/2016/12/suaka-laporan-penelitian-pengungsi-Rohingya refugees-2016-ind.pdf> accessed 17 August 2019.
677 I-17 (n 556).
678 I-7 (n 621).
679 FG3-3 (n 578).
680 Missbach (n 467).

No	Location	Rohingya refugees May 2015	Rohingya refugees January 2016	Rohingya refugees July 2018
1	Blang Ado (North Aceh)	582[681]	76[682]	0
2.	Kuala Langsa and Lhok Buni (City of Langsa)	400[683]	85[684]	0
3.	Bayeun, East Aceh	409[685]	98[686]	0
4.	Beraspati Hotel (Medan), IDC Belawan (Medan) and Tanjung Balai (Asahan)		51[687]	Resettled to Canada and USA

Despite the Rohingya refugees being welcome and treated well in Aceh,[688] during my fieldwork I found none of them left in the shelters. More than a thousand Rohingya refugees were stranded in Aceh in May 2015 (including those in the Bayeun, East Aceh, shelter). Over the course of time, more Rohingya refugees disappeared from the shelters in North Aceh and the City of Langsa. In seven months, there was a significant decrease, from 982 to only 212 persons, of whom 51 were moved to North Sumatera for resettlement. During my fieldwork in Aceh in July 2018, there were no Rohingya refugees left in the shelters.

Since their personal choice might be a good explanation to frame their departure,[689] I argue that more critical perspective can be used to understand this phenomenon. Hundreds of people going missing in a few months in shelters cannot be considered normal. Therefore, the government should have investigated their disappearance; otherwise, it can be seen as it turning a blind eye.

[681] Minutes of the first meeting attended by Vice Governor of Aceh, North Aceh Regent, North Utara Immigration Office (North Aceh Government, 13 May 2015).
[682] UNHCR Indonesia (n 626).
[683] I-17 (n 556).
[684] I-17 (n 556).
[685] Thom (n 543).
[686] UNHCR Indonesia (n 626).
[687] UNHCR Indonesia (n 626).
[688] Rachmah and Pestalozi (n 676).
[689]Missbach (n 467).

From being stranded in Aceh, it seems indisputable that the Rohingya refugees' destination was Malaysia.[690] It was a popular destination, since the Rohingya refugees wanted to join their families who had been living there previously. Also, neighbours or friends induced them to work there as cheap labour in oil palm plantations or in construction.[691] Rohingya refugees have been escaping from the violence of Myanmar to Malaysia since the 1990s, and they could effectively fill labour shortages in the country.[692]

Rohingya refugees' wishes to go to Malaysia could be traced from the beginning of their stay at the shelters. They often communicated with their relatives in Malaysia, as explained by one of the interviewees:

> *We checked their cell phones. They frequently contacted their relatives back there in Malaysia. They were stranded here since their boat engine broke down. Their main destination was absolutely not Indonesia, but Malaysia.*[693]

To realise their dreams, some of the Rohingya refugees escaped from the shelters. They had told international and national CSO volunteers of their plans:

> *When we were in the shelter, before they left and escaped from the shelter, I told them the risks that they were going to face outside. But they insisted on escaping. I told them whatever happened with them outside the camp, they must tell me. They must keep in contact with me.*[694]
>
> *She was in Malaysia. She decided to escape eventually. She usually told me a story and ended up crying because she missed her children in Malaysia. She asked me whether or not I could help her to go to Malaysia. I said, "I can't, madam. Just be patient." Then, after she had told me a story while crying as well, I got the information that she had gone. The next morning, she wasn't in the camp, and all of the people in the one room were gone.*[695]

The Rohingya refugees' second movement from Indonesia to Malaysia was not free of charge. An Indonesian Red Cross staff member from the Aceh branch told a story of a Rohingya parent whose child was in Aceh. This parent was obliged to pay IDR 15 million to an "agent" via an account of local inhabitants in Kuala Cangkui, North Aceh.[696] Similarly, a Rohingya refugee who wanted to work in

[690] I-18 (n 641), Amnesty International (n 471), Human Rights Watch (n 476).
[691] FG1-6: interview with staff member of Indonesian Red Cross in city of Lhoksemawe (Aceh, 8 August 2018),
[692] Cheung (n 144).
[693] I-10 (n 600).
[694] FG1-5 (n 627).
[695] I-18 (n 641).
[696] I-18 (n 641).

Malaysia needed first to provide money to the traffickers, such as IDR 18 million for working in a restaurant, or IDR 12 million for working in construction.[697] Those who had neither relatives nor money had borrowed money (in this case from those who run the business in Malaysia) to pay an agent to bring them from Aceh to Malaysia through Medan (the capital city of North Sumatera).[698] Once they arrived in Malaysia, they worked day and night without being paid.[699]

Some of the Rohingya refugees who were unable to pay the agent faced a tragic destiny, as highlighted by one of the interviewees:

> *Now, for those who were thrown overboard. So, did everyone arrive there? No. Some were thrown overboard. Why? Because they did not pay. If they were sick, they were also thrown overboard. So, we were terribly concerned – yaa Allah (oh my God) – why were they thrown overboard, why did they go? The more we are worried, yaa Allah. Why were they thrown overboard? There were some people I know, the one on the boat was that kid, thrown overboard. Yes. Why? It is true what I said before; if nobody made payment for them, they must have been sold.*[700]

Interviews in the City of Langsa and in North Aceh reveal the presence of traffickers among the Rohingya refugees in both locations. During the discussion with the first focus group, for example, interviewees recalled spotting a suspicious figure:

> *I witnessed in Blang Ado there were five refugees just disappeared. And another day, there were ten more disappeared. Finally, the so-called "Ustadz" also disappeared. The Ustadz had been here in Aceh several times. I noticed him few times here in Aceh. Whenever there were refugees coming to Aceh, he was always spotted among them.*[701]

The presence of traffickers has been reported to UNHCR and was known by local government staff.[702] From my written communication with the head of the taskforce, he explained that the disappearance of the Rohingya refugees from the shelters was not local government's responsibility, but that of the police department, because the latter were in charge of security matters.[703] However, the police would not perform any investigation if they did not receive a report.

---

[697] I-6: interview with one of the leaders of a local CSO (30 July 2018).
[698] I-9 (n 547).
[699] I-9 (n 547).
[700] I-9 (n 547).
[701] FG1-7: a member of Association of Radio Antar Penduduk Indonesia (RAPI), or Inter-community Radio, who preferred to remain anonymous (Aceh, 1 August 2018).
[702] FG1-5 (n 627).
[703] Thom (n 543).

The presence of trafficker syndicates was evident, but the absence of any investigation led by central government -as it was about security- showed an ignorance towards Rohingya refugees' fate. The second movement to Malaysia subjected the Rohingya refugees to another difficult situation; the absence of an investigation opened up to the traffickers the possibility of doing the same to any Rohingya refugees stranded in Aceh in the future. Unfortunately, 79 Rohingya refugees stranded in Aceh in 2017 also disappeared, from a shelter in Bayeun, East Aceh.[704]

The vanishing of Rohingya refugees from the shelters could also be seen as a failure of the Indonesian Government to provide basic rights for the Rohingya refugees, such as the right to work, and to live outside of the shelters. As explained earlier, local government (especially in Langsa) and local CSOs have tried their utmost to provide for the Rohingya refugees' needs. Moreover, there were intentions both from local government and CSOs to enable the Rohingya refugees to integrate with the Acehnese. This would not have been possible, however, as the Indonesian Government's plans were to host the Rohingya refugees for only one year maximum.

E. The Limits of Hospitality

In the context of refugee protection, hospitality has become a source of inspiration and legal obligation to the Acehnese. This is clearly proved by the spontaneous rapid response of local inhabitants to the need of the Rohingya in the first reception after the latter were rescued by the fishermen. However, there is evidence that the hospitality offered was not unlimited, especially during the second phase of reception, the time of the Rohingya refugees' temporary stay in the North Aceh and Langsa shelters. To examine this point, I will use the lens of hospitality. I argue that the limits of hospitality in the context of Aceh can be seen through at least three points, first, the limit of resources, secondly, relationship between hosts and guests, and thirdly, the immigration rules put in place in the shelters.

Hospitality and hostility are closely interrelated, even though they look contradictory.[705] Research among refugees in the camps reveals that, along with hospitality, hostile situations often occurred in the camps.[706] Thus, hospitality is

---

[704] I-17 (n 556).
[705] Mette Louise Berg and Elena Fiddian-Qasmiyeh, 'Introduction to the Issue Encountering Hospitality and Hostility' (2018) 1(6) Migration and Society
[706] Berg and Fiddian-Qasmiyeh (n 748), Robin Vandevoordt 'The Politics of Food and Hospitality: How Syrian Refugees in Belgium Create a Home in Hostile Environments'

shown to be not unlimited. Derrida theorises there are two sorts of hospitality: unconditional hospitality and conditional hospitality. Unconditional hospitality is not possible, he argues, as it is "a welcome without reserve and without calculation, an exposure without limit to whoever arrives".[707] This unconditional hospitality potentially creates hostility within a family, a community, or a state as the need to protect "a 'home' by guaranteeing property and what is 'proper' to itself against the unlimited arrival of the other; but also to render the welcome effective, determined, concrete, to put it into practice."[708] However, the two sides of hospitality are irreducible. It is for the sake of "the most just legislation" that unconditional hospitality is still necessary to provide an ethical and moral base.[709]

With regard to local people helping the Rohingya, one opinion put forward by McNevin and Misbach is that unconditional hospitality was impossible because the villagers' resources were limited.[710] This is in line with previous discussion about Aceh being one of the poorest provinces in Indonesia. Interviewee I-17 highlights that the programme designed in the shelters to empower the refugees took in poor local people who lived near the shelters.[711] The willingness of local people (fishermen and local inhabitants) to provide aid was extraordinary as they considered it a legal obligation; however, through "the calculation" – as pointed out by Derrida – it would be difficult for local people and local government to carry the burden on their own for the long term. In 2019, for example, the Acehnese provincial government expressed its concern at not being able to provide logistic support for 79 Rohingya stranded in Aceh in 2017.[712]

One essential aspect of hospitality in relation to host-guest relations is about the treatment of the guest (in this regard, the Rohingya).[713] During fieldwork, I had the impression that the treatment of the Rohingya was ambiguous. On one hand, many participants among local people[714] who managed the Rohingya in the shelters

(2017) 30(4) Journal of Refugee Studies and, Estella Carpi and H. Pınar Senoguz' Refugee Hospitality in Lebanon and Turkey, On Making 'The Other' (2019) 57(2) International Migration

707 Jacques Derrida, 'The Principle of Hospitality' (2005) 11(1) Parallax 9

708 Derrida (n 707)

709 Derrida (n 707)

710 McNavin and Missbach (n 563)

711 I-17 (n 556)

712 Agus Setyadi, 'Urus Rohingya Rogoh Rp 90 Juta/Bulan, Pemprov Aceh Mengeluh' (Spending 90 million (equivalent to USD5,000) per month. Acehnese Provincial Government Complains) detik.com (Jakarta, 13 December 2018) <https://news.detik.com/berita/d-4341878/urus-rohingya-rogoh-rp-90-jutabulan-pemprov-aceh-mengeluh> accessed 25 May 2021

713 Julian Pitt-Rivers, 'Law of Hospitality' 2012 2(1) Journal of Ethnographic Theory 517

714 I-7 (n 621), I-18 (n 641), I-10 (n 600) I-14 (n 708), I-19 (n 656), and FG1-5 (n 627)

repeatedly stated that they did their best to serve them. On the other hand, they complained about disagreeable behaviour by the Rohingya, and their difficulty in educating the Rohingya refugees, for example about cleaning toilets. Thus, unconditional hospitality is not possible. The relationship between host and guest should therefore be regulated, including the rights and obligations of both. For example, the guest should "behave correctly"; what does this mean? Should the guest follow all the rules made by the host? To what extent should the guest determine his/her own activities at home (in the shelters)? The interviews revealed that CSOs, IOM and local governments held regular meetings to decide the activities and programmes they delivered to the Rohingya during their stay in the shelters. Unfortunately, as disclosed by interviewee I-7, for example, training or empowerment sessions attended by Rohingya women always ended up unsuccessful, as they refused to follow up training activities (e. g. sewing) in the shelter.[715] The unequal status between the host (as provider) and the guest (as receiver) might also have shaped the relationship between host and guest.

An uneasy relationship between the Acehnese as the majority ethnic group and some groups of ethnic minorities is revealed in research by Barter and Bowen. Barter argues that Aceh's ethnic minorities resisted Acehnese secessionism, which received Acehnese majority support.[716] The reasons behind these ethnics minority groups' resistance can be compared to Acehnese resistance to the Indonesian majority in terms of, for example, economic exploitation, migration, outside support, and mostly ethno-nationalism against threatening majorities.[717] Similarly, Bowen reveals that Gayo communities do not agree with the proposal of living under Acehnese domination in a separate country, or in the highly autonomous special province of Aceh.[718] The findings of the two authors is underlined by the fact that ethnic minority groups prefer to choose MP candidates representing national political parties over candidates from a local Acehnese political party (Partai Aceh).[719]

---

[715] I-7 (n 621)
[716] There are four ethnic minority groups: Malays, Javanese, Gayo, and Alas. Shane Joshua Barter,' Between a Rock and a Hard Place: Second-Order Minorities in the Aceh Conflict, Asian Ethnicity' (2015) 16(2) 165
[717] Barter (n 759)
[718] Bowen (n 286) 25
[719] Agus Setyadi,' Perolehan Kursi Turun Caleg Partai Aceh Dinilai Kurang Pengaruh' (-kursi-turun-caleg-partai-aceh-dinilai-kurang-pengaruh (The Number of Seats in Parliament Decreases, Candidate of Acehnese Political Party Lack of Influence) detik.com (Jakarta, 16 Mai 2019) <https://news.detik.com/berita/d-4551885/perolehan-kursi-turun-caleg-partai-aceh-dinilai-kurang-pengaruh> accessed 1 June 2021

In the context of tackling Rohingya refugees in the shelters, the host was not only the local people of Aceh (CSOs and local government) who managed the shelters; the central government, UNHCR and IOM were mainly in charge in controlling the shelters. Therefore, the shelters might not be called "a home" while subject to Indonesian immigration control. Only a few months after the Rohingya's arrival in the shelters, immigration control was loosened so that they could leave the shelters for a while after reporting to security staff. Nevertheless, some fundamental rights, such as the right to work, were not granted, resulting in boredom on the part of the Rohingya. As Missbach argues, the disappearance of the Rohingya from the shelters could be perceived as personal choice (i.e. they headed to Malaysia). [720] Their refusal to stay any longer in the shelter was possibly due to the limited hospitality offered by the actors in the shelters.

We can conclude that in order to prevent hospitality turning into hostility, conditional hospitality should take into account unconditional hospitality as its ethical and moral basis, prioritising human rights above security aspects. Putting in another way, Indonesia should – if it does not ratify the Refugee Convention – enact national law that ensures refugee protection.

F. Conclusion

The chapter has presented the occurrence of the Rohingya refugee crisis in Aceh, especially with regard to the rescue and aid provided by fishermen and other actors in the field. In the first phase of crucial aid, fishermen I interviewed, and participants in FGs rescued the passengers (the Rohingya refugees and Bangladeshi immigrants) unconditionally. Although their sailing licences were confiscated, they told me that that would not stop them from doing the same in the future. This contention is compatible with the fact that Rohingya refugees have been rescued before (in 2009, 2011, 2012 and 2013, and after the crisis in 2017 and 2020). Similarly, local inhabitants spontaneously provided basic needs for the passengers without having been asked to do so by the local authorities.

The second phase of aid was the time of the Rohingya refugees' temporary stay in North Aceh and Langsa. During this phase, actors from different backgrounds (IOM, UNHCR, local governments and CSOs) worked together in the shelters to provide for the needs of the Rohingya.

One of two main roles of UNHCR in refugee protection is the provider of protection. One of the tasks given is to design and manage the camp or shelter for

[720] Missbach (n 467)

the refugees. Due to the lack of funding, the CSOs have taken over UNHCR's responsibility for building the shelters in North Aceh and the city of Langsa.

Due to the lack of a national framework in handling the refugees, a local law (regent and major decree) was issued for the formation of a taskforce for handling the Rohingya refugees. As there were some weaknesses in the decrees, the handling of Rohingya refugees was shaped at the discretion of local government, power relations between the actors, and organisational culture. Taking these elements into account, conflicts and harmonies between actors inevitably occurred during the Rohingya refugees' stay in Aceh.

The conflicts between actors took place when both UNHCR and IOM were perceived as dominant and arrogant in handling the Rohingya refugees. Since refugee protection has always been the responsibility of UNHCR and IOM in Indonesia, the involvement of CSOs created tension, especially between the CSO members on one side, and UNHCR and IOM staff on the other. UNHCR and IOM staffs are bound by international standards, while CSOs work under the guidance of their respective organisations. In North Aceh, as the head of the taskforce was unable to succeed in leading the management of the refugees, the conflict between actors inevitably continued to occur.

This conflict was relatively solved in the City of Langsa through the leadership of both the Mayor of Langsa and the head of the city's refugee taskforce, and their implementation of the "Langsa Convention". Through this initiative, the taskforce treated all the actors without discrimination. However, coupled with the local governments' lack of experience, the diminution of IOM's and UNHCR's roles in providing basic needs for the Rohingya refugees contributed to reduced rights for the refugees, as the sanitation and cooking facilities were in poor condition.

As described in the l third section, the Rohingya's flight from Myanmar to find safe places in neighbouring countries in the spring of 2015 was very hard and distressing. Nevertheless, most of the Rohingya refugees disappeared from the shelters within less than a year of their arrival in Aceh. This phenomenon raised concerns about the presence of smugglers in persuading the Rohingya refugees to join their relatives or friends in Malaysia. Besides, despite the efforts made by the actors to provide the needs of the Rohingya, the constraints the Rohingya refugees faced in living in the shelters might have also been a determinant factor in pushing them to proceed on another perilous journey to Malaysia.

The constraints Rohingya refugees faced in living in the shelters, and the absence of a right to work might have been determinant factors in pushing them into another perilous journey, to Malaysia. Besides the limited resources that the actors

could deliver to the Rohingya, these impediments might explain the limits of hospitality in refugee protection in Aceh.

Chapter 6

Legal Pluralism and the Practice of Refugee Protection

A. Introduction

This chapter relates back to arguments in Chapters 4 and 5 about the background of the case study and a series of rescues of Rohingya refugees by different actors. It explores the motivations and legal perspectives of the actors involved in rescuing and helping the Rohingya refugees, and analyses the actions they have taken. Therefore, this chapter aims to document the multiple accounts of the actors, and their plural and complex perspectives on the law. It also investigates how these accounts manifest into actions or measures, and how the law was employed to protect the Rohingya refugees.

The second section draws the perspectives of actors in general, in light of their accounts and definitions of the law. Multiple accounts that drove actors to take part in handling the crisis are divided into two areas: what I call "non-legally driven" and "legally driven" accounts. Interestingly, many actors' views about law is far from being solely "legalistic", but plural, as they include *adat* law and *sharia*. Actors' diverse backgrounds, such as their occupation, education, and the experience of working in refugee matters, become the factors that shape their perspectives. At the same time, the commonality that many actors hold, such as their cultural background (as Acehnese), become determinant factors that cause multiple accounts and their plural perspectives on the law.

The third section draws the perspectives and actions of local inhabitants and fishermen. Their multiple accounts and plural definitions about law reflect their bonds with *adat* and religion in their daily lives. The fieldwork that for most of the time, the fishermen spend their days sailing the sea, while the local inhabitants are very attached to their communities. As both *adat* law and *sharia* give practical guidance on how to behave to others, including towards their guests, both the fishermen's and the local inhabitants' hospitality responses towards the Rohingya refugees reflected their collective obedience towards obligatory norms emanating from *adat* law and *sharia*. *Adat law* and *sharia* have been preserved and passed on through families and their communities over generations.

The fourth section depicts the perspectives of local government organisations and the measures they have taken in providing assistance to the

Rohingya refugees. Local government personnel had a variety of accounts, and similarly, their understandings about law were also plural and complex. This fact highlights their awareness of the special autonomy that Aceh holds in implementing *adat* and *sharia* in its territories. This reality is coupled with their personal beliefs in the importance of these two laws in their lives. The norms within these two laws obliged them to serve the Rohingya refugees best. Given these facts, the efforts of local government in managing the Rohingya refugees can be understood as -echoing one of the IOM interviewees- “beyond their duty”.

The fifth section draws the perspectives of CSOs and their actions. The accounts given were multiple. However, most non-Acehnese interviewees gave only one account, while most Acehnese interviewees delivered multiple accounts. Regarding conceptions of law, the CSOs delivered complex and plural definitions. These answers, on the one hand, were shaped by their life experience as Acehnese people who highlighted *adat* and *sharia*. On the other hand, the accounts reflect the interviewees’ experiences in working on advocacy and refugee issues, and their educational backgrounds. CSOs built the shelters in North Aceh and the City of Langsa. In addition, they initiated programmes and activities aimed at fulfilling the needs of the Rohingya refugees, as well as empowering them. The efforts put in by many Acehnese volunteers who tirelessly worked 24 hours in the shelters highlighted the importance of *adat* law and *sharia* on their accounts. In addition, their experience in humanitarian affairs also shaped their response to the Rohingya refugees.

The sixth section draws the perspectives of senior staffs of central government, a Member of Parliament, and a senior staff member of an international organisation on their measures and actions. In contrast to the other actors, the account and their perceptions about law were state-oriented. Their motivations were shaped by the consequences of ratifying a great number of human rights instruments. Many highlight law as a set of rules emanating from states. This perspective shaped the way they managed the crisis, entrusting the UNHCR and IOM to conduct their tasks. Meanwhile, UNHCR, as was its traditional role, was tasked to initiate and conduct the resettlement to the third countries, and IOM’s main duty was to provide logistics and any basic needs.

The last section summarises the central finding of the thesis on the role of customary law and customary law of the sea in protecting refugees. This section also relates to a broader context of refugee protection in South East Asian and South Asian states, where the customary communities don’t play significant roles in protecting refugees. These states leant on their rescue and aid to UNHCR IOM or to some extent CSOs.

B. Actors' Perspectives: Motivation and Definitions of Law

1. What Drove the Actors to Take Part in Refugee Protection?

As explained in the methodology section of Chapter 1, I used NVivo software to aid in description and analysis of the actors' ideas of law. After thoroughly reading the transcriptions, coding them, and creating the categories of the data set manually, I put these codes and categories into NVivo. One of the categories of the dataset is about the motivations of the actors for aiding the Rohingya refugees.

I found the coding process very challenging. It was preceded by reading and understanding the transcripts – not only the explicit meaning of the transcripts, but also to comprehend the implicit meaning of what the interviewees had said. Regarding the coding process on the accounts of the motivations of the actors, I made an effort to grasp the ideas on their accounts thoroughly during the course of interviews; this sometimes could not be found through their direct answers to questions, but implicitly through their answers to further questions.

Here are two examples illustrating these difficulties. I put a question about what drove interviewees to help the Rohingya refugees. One interviewee answered that, due to the media, their organisations were actively involved in the crisis. In this context, I concluded that the media itself was not his motivation, but rather a factor that triggered his organisation's response to deliver aid. This is different from a context where the media, for example, became a tool for the interviewee to make himself of herself popular. Another example was when I asked another interviewee a similar question, but could not get a direct answer. However, from his explanations during the interview process, the interviewee gave an interesting insight into his willingness to sacrifice his own life in order to help the Rohingya refugees to achieve *syahid* (die in God's way). Therefore, religion became an account of his answer.

Through reading and understanding the transcripts thoroughly, I calculated seven accounts that triggered the actors in providing aid for Rohingya refugees. Surprisingly, their accounts are multiple, as many interviewees gave more than one account. In other words, on average, every interviewee gave more than one account that motivated them to provide help to the Rohingya refugees. Before going onto the fieldwork, I presumed that the actors were motivated by humanity. Common sense would seem to dictate that humanity is a reason behind this crucial aid; being human id enough reason for us to help those who desperately need help.

Furthermore, I differentiate actors' motivations (as described in the table below) into two categories. First, "non-legally driven motivations" which are personal, humanity, and professional accounts, and second, "legally driven motivations", which are religious, *adat* law, *adat* law of the sea, and human rights law accounts. I qualify the latter as "legally driven motivations" since these accounts, to some extent, show the actors' commitment to not breaking the obligations or rules emanating from religion, custom, and state. In addition, I categorised account numbers 4, 5, 6 and 7 as legally driven motivations, since the approach of legal pluralism used in the thesis does not take into account only state law, but also *sharia* and *adat* law.

The descriptions of the accounts are presented in the table below:

Table 4
Interviewees' Accounts in Providing Aid to Rohingya Refugees

	Accounts	Overview from the Interviews	Actors/ Interviewees
1.	Personal account	The actors emphasised how the suffering of the Rohingya refugees reminded them of some critical situations in their past (e.g., refugees in Malaysia, conflicts with central governments/involvement in GAM)[721]	CSO staff, senior staff member of local government and local inhabitant
2.	Humanity	The desire to aid those in need without considering the victim's backgrounds (e.g., national, ethnic, and religious backgrounds)[722]	Local inhabitant, fisherman, CSO staff, senior staff member of local government
3.	Professional account	The actors' responded due to call from their employer (e.g. rescuing the Rohingya refugees, managing illegal migrants) or their organisation's interests in humanitaty affairs[723]	Fishermen, CSO staff, senior staff member of local government, senior staff member of an international organisation, and senior staff member of central government
4.	*Sharia* account	The actors regarded obligations to aid the Rohingya refugees as regulated by Islamic precepts and	CSO staff, local inhabitants, senior staff member of

[721] I-6, I-8, I-10, I-11, I-12, I-16 and I-17.
[722] I-2, I-7, I-8, I-9, I-10, I-11, I-12, I-13, I-16, I-17, I-21, I-26, I-29, I-30 and I-32.
[723] I-3, I-6, I-15, I-16, I-7, 1-18, 1-19, 1-23, I-28, I-30 and I-33.

		some of them raised the concern of being sinners if they ignored the Rohingya refugees. Some mentioned simply that the Rohingya refugees were Muslims.[724]	local government, a fisherman, and a member of parliament.
5.	*Adat* law account	Many interviewees perceived that an obligation to honour the guests emanates from *adat* law[725]	Local inhabitant, senior staff members of local government and a CSO staff member.
6.	*Adat* law of the sea	Fishermen observe a rule that whoever falls into trouble in the sea, the fishermen must take them into their custody[726]	Fishermen
7.	Human rights law accounts	Despite having not yet ratified the Refugee Convention, the government is obliged to welcome and accept the Rohingya refugees temporarily due to Indonesia's commitment through having ratified the Human Rights conventions[727]	CSO staff member and senior staff members of central government

One interesting finding outlined in the table above is that many actors across various backgrounds are motivated by multiple accounts. Senior staff members of local government, for example, are motivated not only by their professional account, but also by *adat* law and religious accounts. Thus, except for the *adat* law of the sea account being highlighted only by fishermen, the other six accounts represented the actors' aspirations across different professions or backgrounds. As discussed in Chapter 4, *adat* law of the sea is specifically related to fishermen working at sea, including this rule on marine rescue.

The following discussion is about the actors' conception of the law. Their perception is plural and complex. Their views, to some extent, are shaped by their life experience, especially in the context of Aceh, where *adat law* and *sharia* have become part of their lives.[728] In addition, with regard to the plural views of other actors, these are shaped either by their professions or their knowledge, as many of them, especially from CSO and local government backgrounds, hold master's degrees.

---

[724] I-8, I-10, I-13, I-15, I-20, I-21, I-23, I-30, I-32 and I-34.
[725] I-7, I-12, I-16, I-21 and I-23.
[726] I-15 and I-21.
[727] I-1, I-27 and I-35.
[728] Kurdi (n 502) 37, 41.

2. *What is the Law?*

Looking back on the fieldwork interview process, the most difficult question to pose to the interviewees was about their perception of the law. One of the *panglima laots* refused to answer it, as he felt that he did not have the competence to respond to the question. In addition, one of the fishermen I interviewed said he had never heard of the word "law"; however, he knew "*adat* law". Therefore, I had to illustrate the word for him. Nevertheless, from the views on law highlighted by interviewees, their perception of the law can be seen as plural.

Through the same process as for analysing interviewees' motivations in aiding the Rohingya refugees, I thoroughly read the transcriptions, coded them and created the categories of the data set manually, then put the codes and categories into NVivo. One of the categories of the data set is about the interviewees' perception of the law. I extracted ten perceptions of the law from the interviewees, as presented in the table below:

Table. 5

Interviewees' Perceptions of the Law

No	Perception about Law	Overview from the Interviewees	Actors
1.	Law as a set of rules	Rules to follow and obey which do not necessarily emanate from states[729]	Local government, a local inhabitant, CSO staff and a senior staff member of an international organisation
2.	Law as *sharia*	Law created by God to obey. Some interviewees associate the law as *sharia* applied in Aceh[730]	Fishermen, local inhabitants, senior staff of local governments and CSO staff
3.	Law as *adat* law	Unwritten law, which is made by the society and binding for them[731]	A local inhabitant, senior staff of local government, CSO staff and a senior staff member of central government
4.	Law as *adat* law of the sea	Law of the sea, which is regulated by Aceh fishermen. Some interviewees also linked the creation of this law to the reign of the	Fishermen, a senior staff of member of local government and CSO staff

[729] I-5, I-7, I-8, I-16, I-23, I-30 and I-33.
[730] I-4, I-5, I-7, I-8, I-9, I-14, I-17, I-18, I-20 and I-34.
[731] I-1,I-3, I-4, I-5,I-7,I-8, I-10, I-11,I-12, I-14,I-16,I-17,I-21.I-22.I-23,I-26,I-28,I-29,I-30 and I-34.

		Sultanate of Iskandar Muda[732]	
5.	Law as human rights	Universal values which are acknowledged by many as instruments of either soft or hard law[733]	CSO staff
6.	Law as rules issued by the state	Made through the political process in the state and binding on the society[734]	Senior staff of central government, a senior staff member of local government, CSO staff and a local inhabitant
7.	Law as police	Law is associated with punishment from the state[735]	A fisherman
8.	Law as international law	Law which is created by states and international organisation. Some interviewees associated international law with the Refugee Convention, UNHCR, and IOM[736]	a Member of Parliament, CSO staff, a senior staff member of central government and a senior staff member of local government
9.	Law as justice	The aim of law is to bring justice into society[737]	A CSO staff member and a senior staff member of local government
10	Law as a tool of social engineering	Law that makes changes in society [738]	A CSO staff member

From the table above, I conclude that definitions of the law from several interviewees were complex and plural. The definition is complex, meaning that the law they perceive does not only comprise the rules of the state, but also includes other spectrums like justice and a tool of social engineering. In the same vein, their definitions of the law are plural, as many interviewees addressed not only state law

[732] I-1, I-3, I-4, I-5, I-6, I-15, I-17, I-24 and I-25.
[733] I-1, I-8, I-16 and I-28.
[734] I-1, I-3, I-4, I-5, I-6, I-7, I-8, I-9, I-13, I-14, I-17, I-18, I-19, I-26, I-27, I-32, I-34 and I-35.
[735] I-21.
[736] I-1, I-3, I-8, I-9, I-17, I-18, I-27 and I-32.
[737] I-2 and I-22.
[738] I-28.

but included *sharia* and *adat* law. I argue that this complexity reflects the diversity of the actors who took part in handling the Rohingya refugees, including their educational backgrounds (e.g. many of them have obtained master's degrees).

From the discussion above, I conclude that the accounts of the actors in rescuing and providing aid to Rohingya refugees were multiple, as many people gave more than one account. In the same vein, their definitions of the law are also plural and complex. Plural, as they include state law, *adat* law and *sharia*. Complex as they include other spectrums of meaning, for example a tool of social engineering.

I argue that the differences between legally driven motivations (e.g. *sharia* obligation, and rules of *adat* law of the sea), and their perceptions about the law (e.g. that *adat* law is made by the *adat* community) are blurred. This blurriness was shaped by the fact that laws (*adat* law and *sharia*) are close parts of their daily lives, guiding their behaviour. Therefore, it is not surprising that, when asked about their motivations and their perceptions about the law, many gave quite similar answers.

C. Perspectives of Fishermen and Local Inhabitants and Their Actions

After highlighting multiple accounts that drove the responses of the different actors and their conceptions about law, the next discussion is to nail down these perspectives into each cluster. As explained in Chapter 5, there were two phases to the reception of the Rohingya refugees in Aceh: first, the rescue by the fishermen and local inhabitants who gave crucial aid on land.

The second phase was the temporary stay of the Rohingya refugees in Aceh. At this point, actors from different backgrounds worked together in managing the Rohingya refugees in the shelters. The actors were senior staff members and officials from local government organisations, senior and regular staff of international organisations, staff and volunteers of CSOs, and local inhabitants. Included in this second phase was the influence of central government through the presence of immigration officials and other central government institutions in the field.

Each cluster attempts to represent people from relatively the same background and/or occupation. The aim is to capture their ideas about the law in relation to their actions, and link these with their backgrounds and/or occupations; for example, the possibility of a faith-based organisation shaping the account of its staff member (interviewee). I acknowledge limitations within the categories created, since each interviewee might have plural motivations. Thus, where interviewees hold plural accounts, plurality exists in plurality (plural accounts of participants in plural accounts of a category). Despite these pluralities, I have attempted to identify similarities to be drawn from each category. Again, the sections do not suggest that

the narrative within each category represents all actors participating in protecting refugees during the incidents, as the number of actors interviewed is relatively small.

Based on the explanation above, I classify the actors into four clusters: fishermen and local inhabitants; local government; CSOs; and another cluster comprising those who work for central government institutions, the Indonesian Parliament, or an international institution.

Fishermen and local inhabitants were at the forefront in aiding the Rohingya refugees. In general, I employed different strategies in interviewing these types of actors. Asking fishermen and local inhabitants about their motivation was not easy, since some of them do not speak the Indonesian language. In addition, since most of the interviewees either had never received formal education or were educated only to primary school level, I tried my best to use simple language to help them understand my questions. Before starting the interviews, I started the conversation on their daily lives, their relations with their neighbours, and unforgettable moments they had encountered in their lives.[739]

1. Local Inhabitants and Fishermen: Motivations

Table 6.

Motivations of Local Inhabitants and Fishermen

No	**Interviewee**	**Personal account**	**Humanity Account**	**Professional account**	***sharia* account**	***adat* law account**	***adat* law of the sea account**	**Human rights law account**
1.	**I-12**	**V**	**V**			**V**		
2.	**I-13**		**V**		**V**	**V**		
3.	**I-15**			**V**	**V**		**V**	
4.	**I-20**			**V**	**V**			
5.	**I-21**		**V**				**V**	

Looking at the responses of the local inhabitants (I-12 and I-13) and fishermen (I-15, I-20 and I-21) on their motivations in rescuing the Rohingya

[739] I also asked the interviewees about their experiences in dealing with conflict within their neighbourhood and community. The strategy I employed in delivering questions, especially towards the fishermen and local inhabitants, was inspired by the work of Patricia Ewick and Susan S. Silbey in interviewing ordinary people in order to know their perceptions about law. See: Ewick and Silbey: (n 68) 21, 50.

refugees, as described above, interestingly, all interviewees delivered more than one account. Since the personal account was mentioned, *adat* law, *sharia*, humanity concerns, and *adat* law of the sea were the interviewees' more popular sources of inspiration for providing aid. In line with some interview findings, the combination of *sharia*, humanity, and *adat* law of the sea, gathered from Focus Group (FG)-2 and FG-4 – both attended by the fishermen and local inhabitants – also occurred in FG-1 and FG-3, attended by *panglima laot,* local inhabitants, CSOs and senior staff of local government.

Humanity and *sharia* accounts inspired fishermen and local inhabitants; however, the critical question is whether these accounts are contradictory. Humanity accounts do not take into consideration the different backgrounds of the helpers or of the victims, as highlighted by one of the interviewees:

> *"Whoever" means that we don't need to see if he belongs to any religious affiliate which is different from ours*.[740]

On the other hand, those driven by the *sharia* account consider religion as the reason to rescue Rohingya refugees, as described by one of the participants of FG-4, and in an interview with a fisherman:

> *Those people who were under the water said* Allahu akbar *(God the greatest); why don't we help them, right?*[741]
>
> *We're in the same religion*.[742]

To observe compatibility between humanity and religious accounts, in order to develop my question on the motivation of interviewees, I posed a further question that, if the Rohingya refugees were not Muslim, would religion still be the basis of the rescuers' actions. One of the participants of FG 4-3 answered:

> Sharia *obliges us to help others in need of help. According to the* sharia*, all creatures must help one another. It is in the holy book (Quran) but I forget the verse.*[743]

In the same vein, one of the participants of FG 1-4 answered:

> *Well, the religious background is so strong. Religion teaches the Acehnese that if we save one's life, in Allah's (God's) eyes it seems that we have saved the whole people living on Earth, isn't that so? On the contrary, if we kill someone, Allah will see it as if we have done mass killing on Earth.*[744]

---

[740] FG4-1 (n 554).
[741] FG4-1 (n 554).
[742] I-20 (n 560).
[743] FG4-3 (n 551).
[744] FG1-4 (n 620). It is stipulated in the Quran, Chapter 4 (*Al Maidah*) Verse 32: "If anyone saves a life it would be as if he saved the life of the whole humanity", Halim (n 288) 441.

During the interviews, it was revealed that Acehnese fishermen also had the experience of rescuing Thai fishermen who were not Muslim.[745] The interviews and the norms stipulated in the verse of the Quran above highlight the importance of protecting humankind as a whole.

The next accounts were *adat* law of the sea and subsequently, professional accounts. Rescuing the Rohingya refugees is a call of duty for the fisheries community. One of the fishermen mentioned as follows:

> *This has been the regulation among fishermen. Whoever is found dead at sea, no matter if they were Muslims or not, we must bring them to the beach. The sea has its own rule. Whoever falls into trouble in the sea, we must take them into our custody.*[746]

In the same vein, participants of FG-2 explained:

> *We call it the law of the sea. We (the fishermen) went to the sea and brought some rice. We gave the Rohingya refugees the rice. We didn't go out to the sea anymore that day.*[747]

Fishermen and local inhabitants who live near the seashore are aware, and bound to the existence of, the law of the sea in Aceh. Of three fishermen interviewed, two mentioned the *adat* law of the sea as their motivation.

As depicted in Chapter 5, the fishermen in both North Aceh and in the City of Langsa, were on the front line rescuing the Rohingya refugees. As drawn on the above table, the response of all fishermen I interviewed was inspired concurrently by *sharia* and *adat* law of the sea. In addition, two interviewees with *panglima laot* and two FGs attended by fishermen and local inhabitants have given more insight into the *adat* law of the sea.

All fishermen and *panglima laot* explained that it is imperative for fishermen to rescue people in distress at sea. Moreover, if the fishermen find a drowned body drown, they must bring the corpse to land.[748] Not only human beings: fishermen must also rescue animals endangered at sea.[749]

In line with the fishermen, two local inhabitants interviewed also mentioned *adat* law as their motivation:

---

[745] I-21 (n 550).
[746] I-15 (n 563).
[747] FG2-3: (n 542)
[748] I-25: interview with a *panglima laot* (Aceh Besar, 13August 2018, FG 1-2: participant is a *panglima laot* (North Aceh, 2 August 2018) and I-15: (n 563)
[749] FG4-2: a fisherman (City of Peurlak, 9 August 2018), I-14 (n 708), I-15 (n 563), 1-17: (n 558)

> *If they come here for the second time, if there is another group of refugees coming here, we will do the same thing. We would bring the refugees here*.[750]

> *Before the Rohingya refugees crisis, the community here was solid in helping the stranded immigrants. So, the people and the village apparatus helped them to prepare and clean this place.*[751]

Besides *adat* law and *adat* law of the sea, religious account was also highlighted by the interviewees:

> *It's because they're also Muslim. So, we must help fellow Muslims.*[752]

As *adat* law of the sea, *adat* law and *sharia* consecutively became the account of fishermen and local inhabitants, this important finding could be understood as their perception about law encompassing these three types of law. The following discussion outlines this narrative.

2. *Fishermen and Local Inhabitants: Definitions of Law*

Table.7

Perception of Law of Local Inhabitants and Fishermen

No	Interviewee	Law as a set of rules	Law as *sharia*	Law as *adat* law	Law as *adat* law of the sea	Law as human rights law	Law as rules issued by the state	Law as police	Law as inter-national law	Law as justice	Law as a tool of social engineering
1.	I-12			V							
2.	I-13						V				
3.	I-15				V						

[750] I-12: interview with one of the leaders of Gampong Sago village (North Aceh, 4 August 2018).
[751] I-13: interview with a local inhabitant (North Aceh, 4 August 2018).
[752] I-13 (n 751).

4.	**I-20**		**V**								
5.	**I-21**			**V**				**V**			

According to the table above, out of two local inhabitants (I-12 and I-13) and three fishermen (I-15, I-20 and I-21), four in total gave only one definition of law. They viewed law as either *adat* law, *adat* law of the sea, *sharia*, or rules used by state. Only one interviewee gave a plural understanding of law, seeing it as comprising *adat* law and law as police.

A local inhabitant interviewee saw law as:

> *The custom of the villagers. The custom in the understanding of all the villagers. These customs were made by all villagers.*[753]

A fisherman described law as:

> *Law is religious law (Islam). I learn a book from an* ulama *(Islamic scholar) to understand the Quran.*[754]

Both of the interviewees above are aware of the existence of law that emanates from their own society, and that is also made by them. Most of the interviewees' understanding of law is related to custom (*adat* law) and religion (*sharia*). Those two Islamic elements have been part of their lives for centuries and are still relevant, since religion and custom both have a special position among Acehnese people.[755] One local inhabitant (I-13) viewed the law as rules made by the state. However, his standpoint is closely related to his status as a leader of a village, so he acts both as a senior community figure, and as a state representative at the lowest village level.

Through the lens of legal consciousness literature, I would like to discuss participants' perceptions of the law and link these with their actions in rescuing the Rohingya. As has been discussed in Chapter 4, Directorate Immigration Decree No IMI.1409.IM.08.05 on the handling of illegal immigrants categorised every person entering Indonesian territory without valid documents as an illegal immigrant. As a result, the Indonesian apparatus had deterred the Rohingya boats from entering Indonesian territory in 2015.

I asked fishermen for their opinion about the state's view of their actions in rescuing the Rohingya refugees. One of the FG participants responded: "I would

[753] I-12 (n 750).
[754] I-20 (n 560).
[755] Salim (n 451).

think that the state would view it as a violation. But despite the restriction or prohibition from the state, we would still rescue the refugees".[756]

Legitimising their actions, another participant explained:

> *In short, we just want it this way. At least once in our lifetime, we had just rescued some people who were in danger, and we were sure it was one of the good deeds in the eyes of the religion.*[757]

For FG-2, religious and humanitarian considerations should prevail over state law. Two other fishermen of the FG-2 echoed this view of their colleagues, adding that they did not regret rescuing the Rohingya, despite the severe consequences in loss of income and having their licences confiscated for a week. This finding aligned with one of the narratives of legal consciousness put forward by Halliday and Morgan: that it represents an expression of collective rejection of the authority of state law.[758] Fishermen I interviewed believed in a higher transcendent law above state law, generating a powerful legal consciousness of dissenting collectivism.[759] Despite being refused entry on to the land by Indonesian joint officers, the Rohingya refugees' dramatic rescue by Acehnese fishermen in June 2020 vividly indicated a legal consciousness of dissenting collectivism, as some fishermen went head to head against the officers.[760]

3. Fishermen and Local Inhabitants: Actions

The following discussion is on the experience of fishermen and some local inhabitants who intensively took part in providing aid for the Rohingya refugees, and also on how *adat* law of the sea, *adat* law, and *sharia* were used in protecting the Rohingya refugees.

The rescue of the Rohingya refugees in 2015 was discussed in Chapter 5. It is interesting to note that the fishermen have repeatedly rescued the Rohingya refugees - in 2009, 2011, 2012 and 2013. Lastly, after the Rohingya refugee crisis in 2015, the fishermen continued to rescue Rohingya refugees stranded in the Andaman Sea in 2018 and 2020. Their persistent responses were fuelled not only by their

---

[756] FG4-3 (n 551).
[757] FG4-2 (n 749).
[758] Halliday and Morgan (n 389).
[759] Halliday and Morgan (n 389).
[760] Antara News, 'Aceh Fishermen Rescue Rohingya Refugees Though Denied Entry into Land' (Jakarta, 25 June 2020) <https://en.antaranews.com/news/151311/aceh-fishermen-rescue-rohingya-refugees-though-denied-entry-into-land> accessed 20 May 2021.

personal motivations, but also by their obligations to their communities, as each fisherman is a part of a fishery community. At the lowest level of fishery communities is the port level, headed by the *panglima laot lhok* (the traditional marine leader in a sub-district).[761]

Through fishery communities, *adat law* of the sea is strengthened, as the *panglima laot lhok* leads the court, and imposes sanctions on anyone who breaks the rules. For not helping those distressed at sea, for example, the fishermen will forfeit income through being prohibited from sailing for three days.[762] However, according to the experiences of the *panglima laot lhok* and the fishermen interviewed, no fishermen has been punished for breaking this rule.[763] This is one of the characteristics of *sharia* and *adat* law of the sea, as discussed in Chapter 4: sanctions are enforced through the court at the level of village and fishery communities.[764]

Besides the obligation to help those in distress at sea, *adat* law of the sea contains other rules aimed at maintaining harmony between humans and nature, while concurrently ensuring that *sharia* or other obligations are also appreciated.[765] These are reflected by other rules put in place, such as prohibition on the use of dangerous fishing gear, and a prohibition on sailing on Fridays (this runs from Thursday night until Friday afternoon).[766] Friday is a time when Muslims are obliged to pray in congregations in the mosque or similar places. However, the enforcement of *adat* law of the sea regarding fishing access is weak in some Aceh regions, such as Haloban.[767]

It is difficult to separate the Acehnese fishery community from the religious community, as this fishery community is also a part of a religious community. When asked why fishermen were forbidden to sail on Fridays, one participant answered that not only did they need to partake in Friday prayers, but the law also encouraged fishermen and their families to study their religion.[768] Therefore, it is no surprise that,

---

[761] I-5: interview with a scholar from UIN Ar Raniry, Banda Aceh (Banda Aceh, 29 July 2018), I-23: interview with a member of CSO (Banda Aceh, 12 August 2018), and FGD 4-3: a fisherman from Langsa (City of Peurlak, 9 August 2019).
[762] I-5 (n 761) and FG4-3 (n 551).
[763] FG4-3 (n 551).
[764] I-4: interview with a scholar from the University of Syiah Kuala, Banda Aceh (Banda Aceh, 29 July 2018).
[765] Prayudi Budi Utomo, ‘The Role of Traditional Knowledge in Fisheries Management: A Study Case of *Panglima Laot* (Sea Commander) in the Aceh Province of Indonesia’ (MSc Dissertation, World Maritime University 2010) 49, 55 <https://commons.wmu.se/all_dissertations/431/> accessed 19 October 2019.
[766] I-11 (n 591) and I-25 (n 748).
[767] Barbara Quimby, ‘Emerging Customs: Small-scale Fishing Practices in Aceh, Indonesia’ 59 (2005) Applied Geography 125.
[768] I-14 (n 665).

when asked about the motives behind the response in helping the Rohingya refugees, a fisherman said he would be committing a sin if he had not helped them [769] An Acehnese fisherman, then, has double identities or more; he is not only a fisherman, but also a Muslim fisherman who lives in Aceh. Fortunately, rather than creating conflicts, common norms emanating from *adat* law and *sharia* encouraged fishermen to rescue the Rohingya refugees. Therefore, multiple accounts were a driving force behind the fishermen rescuing the Rohingya refugees.

The *adat* law of the sea is preserved are two ways, according to the interviewees and participants of FG. The first is through the fishermen's families and upbringing. Most of the fishermen I interviewed, and those who attended FG 2 and FG 4, were born from fishery families. Fishermen's fathers very often trained their sons to sail from an early age, and as well as allowing them to learn sailing, this encouraged the sons to behave well as fishermen.[770] From this narrative, it is concluded that *adat* law of the sea is passed on through families.

I argue that *adat* law of the sea has also been preserved within fishery communities because those communities have become an information channel for fishermen, keeping them abreast of current affairs in fishery communities, including the rules they should obey. It is in the hands of the *panglima laot* to socialise the rules of fishing within fishery communities.[771]

Regarding the actions taken by local inhabitants, in the village of Lapang sub-district near the buildings where the Rohingya refugees stayed for a month, *geuchik* (the head of the village) helped the North Aceh local government to receive and organise aid coming spontaneous from many cities and regencies in Aceh.[772] Even before the arrival of the Rohingya refugees, this village had experience of welcoming refugees, as described by I-13:

> *Before the Rohingya refugee crisis, the community here was solid in helping stranded immigrants. So, the people and the village apparatus helped them to prepare and clean this place*.[773]

In the same vein as the above story, a local inhabitant described the next phase, when the Rohingya refugees were moved into the shelters. By bringing food, clothing, and other basic supplies, local inhabitants continued to visit the refugees. In order to prevent unwanted items, the security personnel limited the numbers of

---

[769] I-21 (n 550).
[770] FG2-1 (n 540).
[771] I-4 (n 764) and FG4-3 (n 551).
[772] I-13 (n 751).
[773] I-13 (n 751).

local inhabitants and restricted their visiting hours.[774]

Local inhabitants found ways to continuously provide aid to the Rohingya refugees. One common method was to become a volunteer for one of the organisations registered in the shelters. On her own initiative, a local inhabitant was helping the Rohingya refugees in the shelter. At the first attempt, her offer was refused: here are some highlights of her story shared with FG-3:

> *I helped under my own name, together with a friend. We went there (to the shelter) to see what we could help with because the attention (on the arrival of the Rohingya refugees) was huge. I was rejected but I returned. Students from Samudera University came wearing alma mater jackets, with a truck loaded with donations. I borrowed their alma mater jacket and joined them. I did not know what to do so I went to the public kitchen organised by the Office of Social Services. I focused my contribution around the public kitchen, such as peeling potatoes and carrots, as well as distributing rice, approximately for a month.*[775]

After having been refused once, she did not give up in finding a way to help the Rohingya refugees. It was obvious that at the beginning of the Rohingya refugees' stay in the shelters, security was tightened, and only those affiliated to an organisation registered through local government could enter and help the Rohingya refugees on a daily basis.[776] FG4-3 managed to get in, at the same time convincing the committee that she could help every day.[777]

After a month of this dedication, she was recruited by one of the managers of an international CSO to join their volunteer team, allowing her to formally help the Rohingya refugees without hesitation. It was common for local inhabitants who individually wanted to help to be recruited by the CSOs working on the ground. One local inhabitant I interviewed refused to accept a reward from the organisation he worked for temporarily, as he said he did it for the sake of God.[778]

A local inhabitant who participated in FG-1 revealed another strategy for locals to get involved in the shelter. She was not a part of any organisation, but got involved, as her husband was a volunteer for one of the CSOs. She helped to buy whatever the Rohingya refugees needed during their stay in Lapang, and at the shelter in Blang Ado, Aceh.[779] One experience she could not forget was when she

[774] Minutes of meeting of North Aceh taskforce, provided by North Aceh Government (8 July 2015).
[775] FG3-4: local inhabitant, City of Langsa (City of Langsa, 8 August 2018).
[776] I-18 (n 641).
[777] FG4-3 (n 551).
[778] I-8 (n 602).
[779] FG1-3(n 589).

persisted in helping to buy 100 kites for the Rohingya refugee children, and did not manage to get the kites until 11p.m.[780] She said that her fatigue paid off, as the Rohingya refugee children were happy playing with the kites the next day.[781] She added that her sister also took part informally in teaching the Rohingya refugees, as she had a teacher's licence.[782] After a few weeks, her sister was recruited as an ACT volunteer teacher for the Rohingya refugees in the shelters.[783] She was a favourite teacher in the shelter, as she taught the children of Rohingya refugees with patience and care, and tried to fulfil their needs.[784]

As described in the table above, the responses of the local inhabitants were based on the accounts, one of which was *adat* law. All local inhabitants in both FGs revealed *adat* law from their account. Their responses were based on the *adat* norms that they abided with, which they usually called "*pamulia jamee*" (respecting the guest). The Rohingya refugees were guests of the Acehnese, even though they were not deliberately invited.[785] Culturally, *pamulia jamee* is manifested through a traditional dance "*Ranu Tampuan*", a dance to welcome and respect guests who arrive.[786]

Pamulia jamee is practised in Acehnese daily life. The most common form is when people receive a guest in their own house. They would treat their guest to their utmost hospitality. Regarding this, one of the participants explained:

> *Whenever guests drop by, we must serve them the best we can. We give them fish – any fish will be served on the table, although at the very same time we only served "salted fish" (cheaper fish) for our own family. But, well, that's the real character of the Acehnese. Guests may not leave before they eat what we serve them.*[787]

In the same vein, another interviewee explained that if an Acehnese raised chickens or ducks as their source of income, it is their obligation -if they have no other proper food- to slaughter them to cook and serve to their guest. They consider this action as normal.[788]

---

[780] FG1-3 (n 589).
[781] FG1-3 (n 589).
[782] FG1-3 (n 589).
[783] FG 1-1: senior staff member of North Aceh Government, North Aceh (North Aceh, 2 August 2018).
[784] Chaerol Riezal et al., 'Dance *Ranup Lampuan*: Exploration Genius Aceh Movement and Expression. Female Body Beauty Values in Culture *Pemulia Jamee*' 2018 5(5) International Journal of Multicultural and Multireligious Understanding 146.
[785] I-7 (n 621).
[786] I-24: interview with chairman of Acehnese *Adat* Council, Banda Aceh (Banda Aceh, 13 August 2018).
[787] FG1-3 (n 589).
[788] I-16: interview with a CSO volunteer in East Aceh (East Aceh, 6 August 2018).

During my fieldwork, I experienced *pamulia jamee* at least three times. First, when a fisherman could not be interviewed in his own house for some reason, I was asked to meet him and his family at a local restaurant. There, I was served delicious food, and the fisherman asked me to eat anything I wanted. At the end, he insisted on paying for the food I ordered.

My next experience happened when I visited the Rohingya refugee shelter in Blang Ado, North Aceh. Finding no more Rohingya refugees staying in the shelter, I was surprised to discover that some Acehnese families had occupied the shelter, and asked me to visit their very modest houses. I visited one family. The wife looked happy and served what was probably the only food she had.

My third experience was spending four nights in the house of a *panglima laot*. I remember very well that the wife of the *panglima laot* always served me delicious food, cooking very early in the morning after dawn. Before leaving the house, I offered her some money, but she refused, telling me that what she had done was for the sake of God. My experiences showed how culture and the religion mix in the people's daily lives.

Pamulia jamee as one of norms of *adat* law has also been strengthened by an old Acehnese axiom, as one of the FG-1participants explained:

> *"*Pesom gasin peudeuh kaya*", meaning "hide your poverty, then you'll look rich". Show people that we are capable of serving guests, although in reality we are not rich. That has become something special among the Acehnese. It has been implanted in us.*[789]

In this context, it can be understood why the Acehnese have done their utmost for the Rohingya refugees, despite limited resources. *Pamulia jamee* has become an important rule of *adat* law, as it obliges the Acehnese to give their utmost when serving a guest. There were some explanations of how *pamulia jamee* had been preserved and maintained. One of the FG-1 participants explained:

> *Pamulia jamee was implanted in ourselves, as it was our ancestors' heritage. Our ancestors kept it that way and passed it on to the next generation.*[790]

It is common practice in an Acehnese household for parents to show and teach their children how they should treat a guest. For example, the husband might ask his wife and/or children to serve food, and the guests are always given priority.[791]

---

[789] FG1-3 (n 589).
[790] FG1-1 (n 575).
[791] FG1-1 (n 575) and FG1-3 (n 589).

This cultural practice has been preserved through practice, and concurrently through the *Ranu Tampuan* dance (a dance to welcome a guest). I asked further why they keep this element of *adat* law preserved, and received an unpredicted response:

> *The guest will be given priority. That's the Islamic way; that's the way the Prophet Muhammad applied when he served guests. The Prophet would prioritise whoever needed the food, even though he himself didn't have much food to share. So, there is no difference between what the Prophet taught us and what we have practised in our own society.*[792]

Similarly, a senior local government staff member explained that *pamulia jamee* (honouring the guest) is not just a choice, but is rather an obligation originating from Islam.[793] The Acehnese believe in the Prophet's declaration (*hadith*) that, by honouring their guests, they will receive a blessing from God, and this blessing can be manifested in many forms, including their health.[794] Another participant from FG-3 pointed out that the Rohingya refugees were associated with the "*muhajirin*", the people (including the Prophet Muhammad) who migrated from Mecca to Medina to escape oppression by the Quraish tribes.[795]

Regarding the norms emanating from Islam, one of the *hadith*s (the second source of *sharia* after the Quran) of the Prophet Muhammad stated: "Let the believer of God and the Day of Judgment honour his guest". Interestingly, in Islam, the hospitality relationship is not only between the guest and the host, but also the guest, the host and God.[796] Therefore, honouring the guest is not only a duty towards the guest, but also an obligation to God, since the act of honouring a guest is a manifestation of the host's belief in God.[797] In an Islamic context, the guest is not necessarily Muslim, but could belong to different faith or be a non-believer.

Another recognition of the rights of the guest is revealed in the Quran, *surah* 59: verse 9: "..they give them preference over themselves, even if they too are poor: those who are saved from their own souls' greed are truly successful".[798] The background of the revelation of this verse was the hospitality offered by the Prophet Muhammad's companion Abu Talhah and his wife Ummu Sulaim to a guest who

[792] FG1-1 (n 575).
[793] I-24 (n 786).
[794] FG1-3 (n 589).
[795] FG3-3: (n 578).
[796] Michelle Rebidoux, Book Review (2019) 60(3) Heythrop Journal 518.
[797] Aisha Stacey, 'Treating Guests in Islamic Way' (25 August 2014) <https://www.islamreligion.com/articles/10662/treating-guests-islamic-way/> accessed May 2020.
[798] Halim (n 288) 366.

had migrated from Mecca to Medina to flee the oppression of the Meccan people.[799] Abu Talhah's family entertained his guest by serving dinner, although they had only very little food. While the guest ate dinner, the family pretended to be eating, and in the dim lamplight, the guest did not see that they were pretending. They went to bed hungry that night. Prioritising the needs of the guest over the host, as highlighted in the verse above, is in line with what has been discussed on the Acehnese axiom.

> *The generosity of the Acehnese was recognised by the Rohingya refugees they helped, as the latter were amazed by the sincerity of the Acehnese in giving anything they had, despite the refugees' status as uninvited guests*.[800]

From the above discussion, considering the actions of fishermen and local inhabitants towards the Rohingya refugees, I argue that *pamulia jamee* is not only - as put forward by Missbach - a reflection of acehnesse's hospitality, [801]but also as legal obligation, which mainly emanate from *adat* law and *sharia*. These multiple motivations originate from the Acehnese's persistent understanding that the law includes *adat* law, *adat* law of the sea, and *sharia*. *Adat* law and *sharia* are as not only static norms, but are also more of living laws that direct their behaviours. The way the fishermen and local inhabitants responded to the crisis is a manifestation of their characteristics and beliefs, which give *adat* as well as *sharia* such importance in their lives.[802]

It is revealed in this discussion that *pamulia jamee* is part of the *adat* rules rooted in Islam. *Pamulia jamee* was implemented in the era of the Prophet Muhammad, in the context of the migration of the Prophet from Mecca to Medina. It is also highlighted that the aim of this deed is not to receive material compensation from other human beings, but rather spiritual rewards as followers seek the blessing of God.

---

[799] Ibnu Kathir, 'Interpretation of Surat 59 Verse 9: Selflessness of the Ansar' <http://m.qtafsir.com/Surah-Al-Hashr/Selflessness-of-the-Ansar> accessed 2 May 2020. Ibnu Kathir (1300-1373) was a Muslim theologian and historian who was one of the prominent intellectual figures of the 14th century in Syria. As a scholar, he is best known for his 14-volume history of Islam and his book/*kitab* '*al jami*', an alphabetical listing of the companions of the prophet Muhammad and the sayings of each, thus reconstructing the chain of authority for each *hadist* (second source of Islam). The Editors of Encyclopaedia Britannia,'Ibn Kathir Muslim Scholar', <https://www.britannica.com/biography/Ibn-Kathir> accessed 3 May 2020.
[800] Amnesty International Report: (n 471).
[801] Due to the limited resources, the hospitality of the non-state actors including the Acehnesse is not unlimited. Missbach (n 467).
[802] Salim (n 379)1, 21.

D. Perspectives on Local Governments and its Actions

1. *Local Governments: Motivations*

Table 8.

Motivations of Local Government

No	Interviewee	Personal Account	Humanity Account	Professional Account	*Sharia* Account	*Adat* law account	*Adat* law of the sea account	Human rights law account
1.	I-7		V	V	V	V		
2.	I-17	V	V	V	V			
3.	I-22			V		V		

From the table above, it is revealed that humanity, professional, religious and *adat* law accounts are the most common motivations among three interviewees of local governments. . Although personal account was mentioned, human rights law, and *adat* law of the sea, are not part of their organisational motivations. The table also shows that all of the interviewees hold multiple motivations regarding their aid to Rohingya refugees. The humanity element is one of the accounts highlighted by two interviewees:

> *The most important thing to do was to give them the best service we could. It's humanity, I think.*[803]

> *Humanity is the strongest motivation.*[804]

It was because of the "call of duty" that the interviewees were involved in looking after the Rohingya refugees, as mentioned by two interviewees:

> *When the Rohingya refugees came, we approached them right away. We contacted them directly. One of the tasks that we had carried out previously was taking care of prisons and prisoners. We looked after female prisoners and we empowered them by teaching them skills. Sometimes we were assigned to handling religious activities among them. When we were faced with the Rohingya refugee cases, we knew right away who would be given the task to handle and take care of the women and the children.*[805]

> *But if you ask me if this adds more jobs to us, then the answer is, "Yes!". This one is adding more jobs and responsibilities to us. And it is not*

[803] I-7 (n 621).
[804] I-17 (n 556).
[805] I-7 (n 621).

> *regulated yet if we are the ones who would take care of the refugees before the release of Presidential Regulation No 125 Year 2016*.[806]

The interviewees' responses to the Rohingya refugee crisis could be understood since I-7 was a senior staff member at the Office of Empowerment and Protection of Women and Children in North Aceh Government. Therefore, she assumed that her responsibility, given by the Mayor of North Aceh, was to protect women and children in North Aceh. Similarly to her, I-17 was a (de facto) head of the taskforce of the City of Langsa, and I-22 mentioned that his position within the Government of Langsa dictated that he engage with the Rohingya refugees in Aceh.[807] However, this was not the only motivation that they had; as, for example, I-7 emphasised, there was also the importance of *adat* and *sharia* accounts in her organisational acts:

> *However, when they arrived here, we didn't think too much of it. We just welcomed them and helped them the best we could*.[808]

On another occasion during the FG1, she described the cause of the *adat* law as follows:

> *According to local wisdom, pamulia jamee means that we respect and honour our guests, whoever they are; although they are disappointing and annoying, when they keep coming, we must act naturally – we accept them with open arms. No problem.*[809]

Besides *adat* law, *sharia* was also an account mentioned by two interviewees:

> *It is a religious duty and we had been taught to have a sense of humanity since we were kids*.[810]

> *Whoever came to you in peace, especially when they had similarities in religious beliefs and views, and also norms. Besides, extending help and giving donations are considered good deeds, and the best worship in Islam.*[811]

The upcoming narration on the conception of law among senior staff members of local governments confirms that both *adat* and *sharia* have been influential and effective in local government activities. I argue that their awareness of the implications of the special autonomy of Aceh, under which *adat* and *sharia*

[806] I-17 (n 556).
[807] I-22 (n 572).
[808] I-17 (n 556).
[809] FG1-1 (n 575).
[810] I-7 (n 621).
[811] I-22 (n 572).

are important elements within local government, was coupled with their personal beliefs in the importance of these two laws in their lives. Therefore, it is hard to draw a line between the role of local government senior staff as components of the state apparatus, and their membership of religious and *adat* communities. In this context, multiple accounts of local government staff can be understood, as their conception of the law has shaped their behaviour and motivation in doing or not doing something.

2. *Local Governments: Definitions of Law*

Table 9.

No	Interviewee	Law as a set of rules	Law as *sharia*	Law as *adat* law	Law as *adat* law of the sea	Law as human rights law	Law as rules issued by the state	Law as police	Law as intern-ational law	Law as justice	Law as a tool of social engineering
1.	**I-7**	**V**	**V**	**V**			**V**				
2.	**I-17**		**V**	**V**	**V**		**V**		**V**		
3.	**I-22**			**V**						**V**	

Perception of Law of Local Governments

Reading the table, the perception of senior staff of local governments of the law is very plural. All of the interviewees defined law as *adat* law. In addition, two out of three interviewees also viewed law as *sharia* and rules issued by the state. The rest of the answers also mentioned law as international law, *adat* law of the sea, law as a set of rules, and law as justice.

> *I am just an ordinary person who doesn't know much about law. I think we have already been there. We followed the law. I think that's all I know about law. It is the rule that we must follow and obey. Here*

> *in Aceh we know the so-called* sharia*. So, in terms of law, we would refer to the state law and* sharia.[812]

When the local government senior staffs were asked about what the law is, the following first answer describes the law as state law:

> *The first thing to remember when we talk about the law is that we have to follow and obey. And that's also what is in the mind of the officials in the government. The law is to obey; not to break*.[813]

As part of the Indonesian government, the interviewees' first understanding of the law as state law is not astonishing. When performing their tasks as government officials, they should abide by state law, so they are aware of its presence. Moreover, they have a duty to ensure that people other than themselves must obey the state law.[814]

However, the interviewees' understanding about law were not only as state law, but also as non-state law emanating from custom and religion. In the context of Aceh, this view is comprehensible. Implementing a MoU between the Indonesian Government and GAM, Act No 11 of 2006 on the Governance of Aceh recognised the autonomy of Aceh and made reference to religious and *adat* laws as the Acehnese way of life.[815] With regard to *sharia*, one of the interviewees stated:

> *Here in Aceh we know the so-called* sharia*. So, in terms of law, we would refer to the state law and* sharia*, but we would prefer Islamic over others. Although we do not apply all the law of* sharia*, at least we apply more than other provinces*.[816]

In the same vein another senior staff member of local government highlighted:

> *There are four specialities of Aceh: the first is the implementation of Islamic* sharia *(law) in totality; the second is the speciality in customs and culture; the third is the speciality in education; and the forth is the speciality in religion. So, those four specialities are accepted and regulated by the government, and Acehnese* adat *law has already been there among them for 500 years*.[817]
>
> *They need to know and understand the culture of the local community, the* adat *law they preserve, the norms and ways of life they run daily*.[818]

---

[812] I-7 (n 621).
[813] I-17 (n 556).
[814] I-22 (n 572).
[815] Before the MoU, as an effect of the 1999 Indonesia reforms, the provinces, including Aceh, were given greater autonomy than before. Act No 44 of 1999 on Aceh Governance, and Act No 18 of 2001 on the Special Autonomy of Aceh Province, were passed, and Aceh was able to implement *sharia* and uphold its culture. However, these acts were considered insufficient, as some interests of the Acehnese people, such as economic development and political justice, were not yet accommodated (Commentary on Act No 11 of 2006).
[816] I-7 (n 621).
[817] I-17 (n 556).
[818] I-7 (n 621).

> *We found out that the* adat *law, the local wisdom, is far more effective for handling problems that cannot be solved by the positive law. The positive law simply cannot reach those problems. That's my opinion.*[819]
>
> *Therefore, the central government had already given authority to the Aceh people to implement their local law (*adat *law) so that the people of Aceh can make their consensus in putting it into their courts*[820].

3. *Local Governments: Actions*

The accounts or motivations and their understanding about law were manifested into measures and actions taken by senior government officials and their staffs in handling the crisis. Central government -represented in Aceh by the Office of Immigration- was unable to give solutions related to placing the Rohingya refugees, since there was no detention house in Aceh province and, at the same time, the detention house in the nearest province, in the city of Medan, North Sumatera, was over its capacity. Local governments stepped up to find places for the Rohingya refugees to stay. For that reason, both North Aceh and the City of Langsa took measures to implement their intentions.

In the first place, the local governments made regulations for managing the Rohingya refugees in Aceh. The Regent of North Aceh and the Mayor of the City of Langsa enacted decrees to give authority to senior staff members in North Aceh regency and the City of Langsa to manage the refugees. In practice, besides assigning heads of taskforces, the Regent and the Mayor appointed the Office of Social Services, Office of Health Services, and Office of Women Empowerment as the backbones or front-liners for the local governments.

Regarding the logistics, such as food distribution, on the first day of the rescue the burden was leant on local inhabitants. The North Aceh Government, for example, was not allowed to disburse funds for refugee matters.[821] The only thing that the local governments could do was give the Rohingya refugees and the Bangladeshi migrants access to health checks; for example, local government provided healthcare access to some Rohingya refugees and Bangladeshi migrants who were severely ill.[822] The Office of Health Services made sure that this happened.

[819] I-17 (n 556).
[820] I-22 (n 572).
[821] Minutes of North Aceh Taskforce, North Aceh Government (13 May 2015).
[822] Minutes of North Aceh Taskforce, North Aceh Government (27 May 2015).

In addition to the Office of Health Services, the Office of Social Services organised distribution and logistics, including food for the Rohingya refugees, as explained by one staff member of Social Services in FG-3 in the City of Langsa:

> *Coincidentally, when the Rohingya refugee crisis happened, I was there to participate, representing the Office of Social Services. We took care of logistics matters specifically. That is, to receive aid, and handle the public kitchens – the meals and beverages for refugees. So, we were also under the command of the taskforce team, and we focused on the logistics and consumption matters*.[823]

The following narrative indicates how the attitude of the Major of Langsa towards the law can be considered as 'against the law'[824] with reference to the placement of the Rohingya refugees in state enterprise buildings, as highlighted by one of the interviewees:

> *This decision violated the Act No 17 of 2008 related to Sailing as the area in a port or harbour is dedicated only for loading and discharging activity; and none other than that.*[825]

In line with this, and with no other choice, North Aceh local government also put their credibility in danger by using four new buildings owned by the central government in the fish market auction area of Lapang, North Aceh, for about one month.[826]

The Mayor of Langsa and North Aceh local government had difficulty in finding places in a short time to accommodate Rohingya refugees and Bangladeshi migrants. It was admitted by the interviewees that their decision was unlawful. Their decisions can be considered as resistance that entails a consciousness of being less powerful in a relation to the power of central government.[827] With regard to the relation between central and local government, the Mayor of Langsa and the North Aceh government understood that the refugees were tackled at the hands of central government; however, their actions represent a claim for justice and an attribution of responsibility for an unfair situation – in this regard, an unfair situation faced by the Rohingya.[828]

---

[823] FG3-1: staff member of City of Langsa Government (City of Langsa, 8 August 2018).
[824] Ewick and Silbey (n 68) 48
[825] I-17 (n 556).

[826] I-9 (n 547), I-11 (n 591), and I-12 (n 750)
[827] Ewick and Silbey (n 68) 183
[828] Ewick and Silbey (n 68) 183

In contrast to typical Indonesian bureaucracy that always puts legality and formality above all, these two local governments tackled the crisis in ways beyond what any other local government across Indonesia would do.[829] The senior staffs of the two local governments put themselves at risk, as explained previously, and concurrently used their creativity and intelligence to solve the challenges they faced. The following example illustrates these views.

The difficulty that local government faces is not only in dealing with the Rohingya refugees due to cultural differences, but also the interdiction against using government budgets. Local government, therefore, had to find a way to provide aid to the Rohingya refugees without violating the law. One of the strategies they used was to actively find and collect donations from any possible source. One North Aceh local government senior staff member used her personal network to raise money for the refugees. One source was a private bank where an interviewee's relative worked:

> *I remember so well that for Rohingya refugees we gave them super facilities, luxurious items. On Ied celebration day, we gave them new clothes. We packed the clothes for each family. We had never done it before even to our own people. However, we did it for strangers from Rakhine State! We asked for a donation from BNI Syariah (a bank). We bought the clothes; we put them in boxes; we packed them neatly to be distributed among the Rohingya refugees. It was so luxurious in our view. In short, I know very well how we distributed the packages – they were luxurious, believe me*.[830]

Similarly to what had been carried out by North Aceh local government, the Mayor of the City of Langsa also used his network in inviting CSOs to take part in tackling the Rohingya crisis in the City of Langsa.[831] These two senior staffs found many ways to solve the problems faced. It is most likely that if the senior staffs from other provinces in Indonesia had been given the same challenges, they would not have taken similar measures, as they would only have worked or taken measures on a legal or formal basis.[832]

The senior staffs of the two local governments also sacrificed their time in managing the Rohingya refugees. Both I-7 and I-17 revealed that often they worked late, including visiting the shelters at night if problems occurred.[833]

---

[829] Nurdiana Gaus et al, "State Bureaucracy in Indonesia and its Reforms: An Overview" (2017) 40(8) International Journal of Public Administration 658.
[830] I-7 (n 621).
[831] I-30: (n 604).
[832] Gaus et al (n 876).
[833] I-7 (n 621) and 1-17 (n 599).

One factor that might explain the cause of such big efforts made by the senior staffs of the local governments was the influence of the Muslim religion practised in their daily lives, as described by one of the interviewees:

> *We are Muslims and we have obligations as Muslims. We pray five times a day. We recite the Quran. That's us – Muslims. What have I learned from my life was the necessity of religion. If you want to live a happy and comfortable life, you must consider the importance of religion, not other things*.[834]

The importance of religion was recognised not only by this interviewee - who was responsible for managing women's and children's affairs in the shelter- but was also institutionalised and internalised in the office where she worked. This is one of her explanations:

> *In our office, we had a programme that could elevate our spirituality. We pray in congregation; we read the Quran together; we studied Islam together. That's the culture thought by our leader, Mrs. K. She taught us to live a simple life and to live on the basis of a God's cause (sincerity) when carrying out our jobs*. [835]

It is interesting the way Mrs. K administered her office. The workplace is not solely a place where officials implement rules and policy set by the government, but is also a place where the officials' personalities as Muslims were shaped. The aims of this approach were to get blessings from God, and to be able to deliver the best service to the people in need. [836] Therefore, the virtue of sincerity underlines the importance of good behaviour respectively towards God (in a vertical dimension) and humans (in a horizontal dimension).[837] However, it is not clear whether the approach to administering the office taken by Mrs. K was also taken up in other offices in North Aceh, or even across Aceh.

It could be concluded that professional obligations, past life experiences, *adat* law and *sharia* accounts have driven the responses or actions of senior officials and staff of local government. All of these accounts reaffirmed that senior staffs and their staff in local government possessed multiple identities (e.g., as part of the Muslim and customary communities) in the context of their understanding of law. These identities did not clash with one another, but instead reinforced the staffs' obligation to protect the Rohingya refugees.

---

[834] I-7 (n 621).
[835] I-7 (n 621).
[836] I-7 (n 621), and see also: Mohammad Ghozali and Nor Azzah Kamri, 'Kepribadian Islam dan Profesionalisme Dalam Pekerjaan' (Islamic Personality and Professionalism at Work: A Theoretical Analysis) (2017) 23(2) Jurnal Syariah 255.
[837] Ghozali and Kamri (n 836).

The way senior staffs and staff of local governments responded to the Rohingya refugee crisis shows that they worked beyond their limits, described by one interviewee from IOM as “beyond their obligation”.[838] This reality would hardly be found in any other province in Indonesia, where senior staffs and staff of local government are positioned solely as parts of the apparatus of the state, and where the influence of religion or culture on their workplace is very limited or insignificant.

From the explanation above, I argue that the multiple status (as government agency, as Muslims, and as members of the *adat* community) carried by these local government senior staff contribute to their multiple accounts in providing aid, and to their understanding of law. It is important also to highlight that their behaviour or actions in handling the Rohingya crisis were very much shaped by *sharia*, *adat* law and humanity accounts, rather than the state law account, as their decisions breached state rules with regard to accommodating the Rohingya in buildings owned by central government.

E. Perspectives of CSOS and their Actions

1. *CSOs: Motivations*

Table 10.

Motivations of CSOs

No	Inter-viewee	Background Acehnese (A) or non-Acehnese (Non A)	Personal Account	Humanity account	Professional Account	Sharia account	*adat* law account	*adat* law of the sea account	Human rights law account
1.	**I-1**	**Non A**							**V**
2.	**I-2**	**Non A**		**V**					
3.	**I-3**	**Non A**			**V**				
4.	**I-6**	**A**	**V**		**V**				
5.	**I-9**	**A**		**V**					
6.	**1-10**	**A**		**V**		**V**	**V**		

[838] I-33 (n 632).

7.	1-11	A	V	V			V		
8.	1-16	A	V	V	V		V		
9.	1-18	A			V				
10.	1-19	A			V				
11.	1-23	A		V	V	V	V		
12.	1-28	A			V				
13.	1-29	Non A		V					
14.	1-30	Non A		V	V	V			
15.	1-31	Non A							
16.	I-34	Non A				V			

The table above highlights how professional, humanity, religious and *adat* accounts were the most favoured accounts among CSOs who had the experience of helping the Rohingya refugees and were also interviewed. Other accounts, not including *adat* law of the sea account, were also mentioned. Despite the diversity of the highlighted accounts, more non-Acehnese senior staff of CSOs reported that their acts were motivated by only one account.

In general, CSOs involved in the refugee issues divide into two types: first, those focused on advocacy, with the objectives of influencing government decision-making processes and increasing refugee protection, and secondly, those who concentrate on emergency situations, and so help out with basic aid such as food, shelter, and clothing.[839] In the context of the Rohingya refugee crisis, the first type was represented, for example, by *Suaka*, Human Rights Working group (HRWG) and the Jesuit Refugee Service (JRS), while the second type was represented by, for

[839] Kathryn Libal and Scott Harding, 'Humanitarian Alliances: Local and International CSO Partnerships and the Iraqi Refugee Crisis' (2011) 9(2) Journal of Immigrant and Refugee Studies 162 and I-28: interview with chairman of CSO Asylum (Jakarta, 21 August 2018)

example, ACT, *Dompet Dhuafa*, and *Human Initiative*. However, in reality, there exists a third type of CSO (e.g. Geautanyoe Foundation and Paham Indonesia) whose focus is on advocacy, but which, due to the necessity to intervene further, also got involved in providing logistics, and other essential needs.[840]

Furthermore, the CSOs that took part on handling the Rohingya refugee crisis in Aceh worked on international (e.g. JRS and Save the Children), national (e.g. Suaka, HRWG, Paham Indonesia, *Dompet Dhuafa* and ACT) and local (e.g. Geautanyoe) scales. I interviewed staff and volunteers of CSOs from all these levels and, interestingly, at every level, there were always Acehnese people working either as staff or volunteers of the CSOs. Interestingly, this reality contributes to the various accounts of the actors.

As mentioned earlier, many staff members of CSOs highlighted the professional account of their organisation's motivations as guiding their commitment to comply with their duty, as highlighted by a senior staff member of a CSO: "*We're human rights activists, we handle human rights issues all this time, but we saw that the concern towards the refugees was so less...*"[841]

In line with the above view, an interview with a senior staff member of a CSO summarised:

> *Because we are humanitarian institution, we run this organisation in the name of humanity*.[842]

From my fieldwork, I argue that many CSOs' focus on the emergency situation during the Rohingya refugee crisis was shaped by Islam.[843] This stance is evidenced by the main revenue source of these organisations, which is *zakat* (Muslim charity). The influence of religion on refugee-serving organisations/CSOs has a long[844] history in the context of Indonesia, and the growing influence of Islam on charity organisations or refugee-serving CSOs dates back to the Indonesian political turmoil ("reformation") in 1998. There has been a significant growth in these organisations/CSOs, mainly after the disastrous 2005 tsunami, marking a higher

---

[840] I-6 (n 740) and I-34: interview with one of the leaders of a national CSO (15 September 2018).
[841] I-34 (n 840).
[842] I-16 (n 788).
[843] This is reflected by the narration that emerged in the interviews, for example I-2: "*Let Allah (God) help our matters. If we want to get blessed, let's help humanitarian matters*" and I-30: "*Who would care about the Rohingya refugees? We would. The Muslim world would* I-2 (n 594) and I-30(n 604).
[844] Elisabeth Feris, 'Faith-Based and Secular Humanitarian Organisations' (2005) 858(87) International Review of the Red Cross 311.

consciousness among Indonesian Muslims on how to apply their religion to their lives, including on how they spend their money.[845]

Indonesian Muslims' increased awareness about practising their religion – especially during the month of Ramadhan, which coincided with the arrival of the Muslim Rohingya refugees in 2015 – has been used by CSOs to boost their revenues, as admitted by one of the interviewees:

> *We are going to maximise the use of* zakat *(Muslim charity). Helping those in need is the mandate given to* Dompet Dhuafa*. That's why we declared that we are going to help these Rohingya refugees – because* Dompet Dhuafa *is a humanitarian institution, and* zakat *is our financial source*.[846]

The intention to increase financial sources, especially from Muslim countries, was admitted by another of the interviewees, who added: "*There were national and international donors. There were 17 countries who were involved from the Middle East, Turkey, South Africa, Pakistan and others*.[847]

Financial advantages gained from the involvement of CSOs in the Rohingya refugee crisis made an impact on relations between CSOs. ACT closed access to other humanitarian organisations by dominating the work of setting up the shelter in North Aceh, while competition among organisations in the City of Langsa were minimised through the role of the head of the taskforce. [848]

Since the platforms of many of the CSOs that got involved were inspired by Islam, it is not surprising that religion became one of the motivations, as described by one of the senior CSO staff members: "*We could see that the Rohingya refugees were Muslims, so there was a kind of religion-based sentiment involved.*"[849]

Similar to this view, two CSO volunteers who were Acehnese also saw an obligation to help the Rohingya refugees, as both were Muslim:

> *In terms of the community of Aceh, including me perhaps, the bond of faith (Islam)*.[850]
>
> *Fellow Muslims Rohingya refugees, they are Muslims. So, their rights must be fulfilled well*.[851]

[845] Amalia Fauzia, 'Islamic Philanthropy in Indonesia: Modernization, Islamization and Social Justice' (2017) 10(2) Austrian Journal of South-East Asian Studies 223.
[846] I-30 (n 604).
[847] I-2 (n 594).
[848] I-30 (n 604) and I-17 (n 556).
[849] I-34 (n 840).
[850] I-23 (n 761).
[851] I-10 (n 600).

It is worth examining the relationship between the organisation's platform and the motivations of its member staff in providing aid to the refugees.[852] From the above narrative, it can be drawn that some FBO staff members were also personally motivated by their Islamic belief in protecting refugees. There is merit in exploring whether their beliefs have an impact on the way they treat the Rohingya Muslims. In this regard, as FBO staff members and Rohingya Muslims adhere to different Islamic jurisprudence (the former follow Syafi'i Islamic jurisprudence, while the latter follow Maliki), it is important to look at whether the former persuade or even enforce their views over the latter. In a broader context, if the FBO staff members and the refugees come from different religious or political backgrounds, the possibility of FBO staff members proselytising the refugees might need more attention, as the relationship between both parties is unequal.[853] It is beyond the scope of this research to answer these questions, but they need attention within further research, especially regarding the role of FBO organisations in refugee protection.

Some view that this religion-based sentiment could be paradoxical, since it might create negative sentiment towards non-Muslim communities in Indonesia, and crush the national sense of solidarity.[854] However, from experience in the field and in interviews, I never came across negative sentiments towards Buddhist communities in Aceh or in wider Indonesia.

Another interesting point to highlight is about *adat* law and personal accounts of CSOs who got involved. Not only fishermen, local inhabitants, and senior staffs of local governments, but two CSO volunteers who originally come from Aceh also mentioned *adat* law as their account. One of them highlighted:

> *There is an obligation that also becomes our culture, honouring the guests – the term pamulia jamee. So if a guest arrives, we must honour them, as taught by our custom. They are guests for us*.[855]

With regard to personal accounts, three Acehnese interviewees highlighted their personal experience; two of them state:

> *We have always been in conflict. We know the feeling of being chased, escaping overseas – crossing the sea first, for example. Perhaps those become a special touch for Aceh people*.[856]

---

[852] Elena Fiddian-Qasmiyeh,' Introduction: Faith-Based Humanitarianism in Contexts of Forced Displacement' (2011) 24(3) Journal of Refugee Studies 439

[853] Fiddian-Qasmiyeh (n 852)

[854] Siti Alyuna Pratisti et al 'When Solidarity is Trampled by Religious Sentiment: Outlining Indonesian Muslim Solidarity toward Rohingya Refugees' (2019) 23(1) Jurnal Ilmu Sosial dan Ilmu Politik 1.

[855] I-23 (n 761).

[856] I-6 (n 740).

I've always been a victim of the conflict. I have to give my empathy to them. I really feel it – the moment I have to run from my own home. Those things that made them still have an empathy, because they've always felt that.[857]

The presence of Acehnese who became volunteers in CSOs added more multiple accounts to CSOs' motivations. Reading the data on the table above, *adat* law and religious accounts were highlighted by many interviewees who were Acehnese, and have been living in Aceh for long time, or for the rest of their lives.

2. *CSOs: Definitions of Law*

Table 11.

Perception of Law of CSOs

No	Interviewee	Law as a set of rules	Law as *sharia*	Law as *adat* law	Law as *adat* law of the sea	Law as human rights law	Law as rules issued by the State	Law as police	Law as inter-national law	Law as justice	Law as a tool of social engineering
1.	I-1			V		V	V		V		
2.	I-2						V			V	
3.	I-3			V	V		V		V		
4.	I-6				V		V				
5.	I-9		V				V		V		
6.	I-10			V							
7.	I-11			V	V						

[857] I-16 (n 788).

8.	**I-16**	**V**		**V**		**V**					
9.	**I-18**		**V**				**V**		**V**		
10.	**I-19**						**V**				
11.	**I-23**	**V**		**V**							
12.	**I-28**			**V**		**V**					**V**
13.	**I-29**			**V**							
14.	**I-30**	**V**		**V**							
15.	**I-31**										
16.	**I-34**		**V**	**V**			**V**				

In line with the response of local government, the majority of CSO staffs' understanding about law were the most diverse. From sixteen interviewees only four gave one single definition of law, and one interviewee did not respond. When asked about the law, many interviewees responded rapidly in defining state law, as highlighted:

> *The law is a binding regulation from our country, right, and our state. That's it.*[858]

However, their answers did not stop at defining law as state law; many highlighted law as *adat* law, as shown below:

> *Law can also be produced by a non-state organ which has a universal quality but it functions as a specific tool. The best example is the* adat *law. This kind of law is perhaps not formally written, but it is regulating people and functioning legally like the written law. All kinds of law should be viewed equally.*[859]

Ten out of sixteen interviewees were conscious of another law that is unwritten and emanates from the people, and that is *adat* law. Some interviewees

[858] I-19 (n 656).
[859] I-28 (n 839).

concluded that this law should not be underestimated.[860] Most of the interviewees who included *adat* law in their definition of law were originally from Aceh. There were some accounts:

> *There are* adat *laws.* Adat *law that applies in the society. There are no written sanctions, but it is binding on the community.*[861]
>
> *Because, it's not talking about who wins and loses. The* adat *law is talking about how to settle it and reach a peace. Living in the community peacefully*.[862]

These two interviewees were aware of *adat* law, the unwritten law that originates from their society and is obeyed by them. Another point to note is that the deliberation process prevails through the mechanism of dispute settlement within *adat* law. This characteristic is in line with the discussion in Chapter 3.

Interestingly, some CSO senior staff members view the law in a more critical ways, for example perceiving law as justice, and as a tool of social engineering. With regard to the latter, I-28 said: "*But, in fact, the law is the power tool, the tool for ruling, to secure political, economic, and social interests for a certain group*".[863]

I-23 had been engaged in defending the rights of ordinary people who had suffered from violations mostly conducted by the state. Therefore, the way he perceived law was shaped by his daily working experience as a public lawyer.

It is most likely that the more complex and diverse perceptions of law expressed by the CSO staff members has been shaped by their life experience, especially those who live in Aceh, most of whom highlighted *adat* and *sharia*. Besides, the interviewees' experiences of working in advocacy and on refugee issues, and their educational backgrounds, were also influential.[864] Surprisingly, only one out of 16 interviewees had a high school diploma, whereas nine people had completed their bachelor's degree, five had master' s degrees, and one had a doctorate. Five of the 16 had bachelor's degrees in law.

3. CSOs: Actions

Regarding the response to the Rohingya refugee crisis, CSOs have taken on a big role, establishing the shelters and providing programmes or activities that none

---

[860] I-34 (n 840).
[861] I-23 (n 761).
[862] I-11 (n 591).
[863] I-28 (n 839).
[864] Prior to interview time, I asked each interviewee to fill out a survey. The first part of the survey is about the interviewee's background, including educational background. I put the data into NVivo.

of the state actors were able to implement. As explained previously, CSO activities covered two areas, first, advocacy or policy functions, and second, any activity relating to the betterment of the Rohingya refugees, including logistical support, establishing shelters, and building capacity for the Rohingya refugees.

With regard to refugee protection advocacy, one of the directors of a CSO based in Jakarta said that on several occasions his organisation had proposed input on the presidential bill to be delivered to central government via the Ministry of Foreign Affairs.[865] Unfortunately, a few months before the adoption of the bill, discussions were held on crucial changes, but his organisation was not invited. These meetings eliminated articles from the earlier draft that, to some extent, had recognised important rights of refugees.[866] Another advocacy measure in which the other CSO was taking part was in defending the Rohingya refugees charged with criminal offences. [867]

As explained in Chapter 5, the CSOs built the shelters for the Rohingya refugees in two locations. First, in the north of Langsa, one shelter was built by ACT, while the other shelters in the city were collaboratively established by four organisations. The first two CSOs were *Dompet Dhuafa* and *Human Initiative*, and the others were *Peduli Muslim*, *Rodja* TV and *Majelis Taklim As Sunni* (As Sunni Muslim Assembly).[868] All of these organisations are widely known to be inspired by Islam and humanitarian concerns.

Not only CSOs or Islamic organisations were involved. There were also Christian CSOs, like the Sheep Foundation, which took part in publishing a book on the experiences of those who worked on the ground.[869] JRS Indonesia has been advocating for refugees; one of its staff members is also an adviser for the Mayor of the City of Langsa.[870]

I argue that the involvement of CSOs in the decision-making process within local governments in Aceh reveals another layer of complexity. One interviewee acknowledged that in the past, an adviser to the Regent of North Aceh was also an activist in a CSO.[871] Relations between local government and many CSOs are in harmony in such cases, but, conversely, in many cities or regencies in Indonesia,

[865] I-28 (n 839).
[866] I-28 (n 839).
[867] I-34 (n 840).
[868] Report of the City of Langsa Government, '*Laporan Relokasi Imigran*' ('Report on Relocation of Immigrants') (City of Langsa, August 2015).
[869] I received the book from the head of the City of Langsa taskforce. Unfortunately, I could not interview one of the chairpersons who had experience during the crisis, as she was occupied with her work.
[870] I-30 (n 604).
[871] I-6 (n 740).

relations between local government and CSOs are not in harmony, as the latter have often been judged to be troublemakers.

As previously mentioned, a variety of CSOs took part in refugee protection, and were also organising different programmes and activities. For example, while IOM focused on physical health, another CSO, such as Médecins Sans Frontières (MSF), could see a gap and run a programme to boost the mental health of the Rohingya refugees.[872] While IOM taught the Rohingya refugees English, *Dompet Dhuafa* also taught the Indonesian language.[873] An Acehnese volunteer experiencing difficulties in teaching Indonesian launched an initiative to learn the Rohingya refugees' language so that he could teach the refugees Indonesian using their own language as an introduction.[874] The interviewee explained how he learned the Rohingya refugees' language:

> *I learned from a Rohingya refugee who understood English. I asked him about the tenses. Asking about this, I learned from them there. A few of them can speak Malay. At that time, when I spoke with their language, they were so enthusiastic; they were surprised. At that time if I met them, it was like meeting my siblings. They liked communicating with me. Every day I spent almost 24 hours at the shelter.*[875]

The effort to learn the language paid off, as the interviewee was able to conduct basic conversations with the Rohingya refugees. This approach not only made it easier to teach the Indonesian language to the refugees, but also earned the respect of the Rohingya:

> *They were against me at the first time. So, I started to ask them to play together, such as playing football. I did it to make them gradually want to listen to my commands. Then, I asked them again tomorrow to play football, but, by using Rohingya refugee language. When they played and suddenly got mad to their friends, I said, "don't say those things or I won't play with you guys any longer." Finally, they adjusted themselves to not saying those things anymore.*[876]

The Rohingya refugees often spoke to the interviewee about their complaints, or anything about their experience living in the shelters. The interviewee spent day and night in the shelter, so could interact intensively with the Rohingya refugees. This enabled him to learn their language quickly. In the course of time, supported by *Dompet Dhuafa*, he published an Indonesian-Rohingya dictionary.[877]

---

[872] FG3-3 (n 578).
[873] I-18 (n 641).
[874] I-18 (n 641).
[875] I-18 (n 641).
[876] I-18 (n 641).
[877] I-18 (n 641), 1-30 (n 647and I-29: (n 577)

After the arrival of the Rohingya refugees in Aceh in 2018, the interviewee was asked by the Immigration Office in Aceh to become a translator.

Another idea from CSOs to empower the Rohingya refugees- just months before they finally all disappeared from the shelters -was to train them to farm and raise chickens.[878] In the same vein, a CSO representative suggested during a meeting with local and central government that they could train Rohingya refugees in the shelters.[879]

Besides originating from CSOs, programmes at the shelters were also created through a deliberation process coordinated by the head of the City of Langsa taskforce. One of the agreed activities was "foster parenting". This programme involved asking for volunteers from CSOs to look after the mental needs of Rohingya refugee teenagers who arrived in Aceh without their parents. Every volunteer was responsible for looking after six to eight teenagers. This approach strengthened the relationships between the volunteers and teenagers as the former built trust among the latter. Even though some Rohingya refugee teenagers resettled in the US and Canada, they kept in touch with their respective foster parents, and shared the experience of their stay in North America.[880]

From the explanation above, I argue that CSOs have tried to meet the needs of the Rohingya refugees during their stay in Aceh through programmes and activities they initiated, or through the deliberation process that was put in place. These actions, and the way staff or volunteers of the CSOs worked on the ground were shaped not only by their responsibilities as humanitarian workers or activists; especially for senior staff members and volunteers with an Acehnese background, their responses were also shaped by an upbringing that appreciated *adat* law and *sharia*, and their past life experiences under oppression.

F. Perspectives of *Other Actors*

1. Senior Central Government Staff Members, A Member of Parliament, and An IOM Senior Official : Their Motivation

Table 12.

Motivations of Senior Central Government Staff Members, A Member of Parliament, and An IOM Senior Official

[878] I-11 (n 591) and I-17 (n 556).
[879] Minutes of North Aceh Task Force, North Aceh Government (10 September 2015).
[880] I-9 (n 547).

No	Interviewee	Personal Account	Humanity Account	Professional Account	*Sharia* Account	*Adat* law account	*Adat* law of the sea account	Human rights law account
1.	I-26		V					
2.	I-27							V
3.	I-32				V			V
4.	I-33			V				
5.	I-35							V

In relation to interviewing three senior central government staff members and a senior IOM official, I initially sent letters to the chair of each institution. Each chairperson assigned representatives (all of them senior staff within each organisation) who had experience in handling the Rohingya or in refugee matters. Therefore, their participation in the interviews represents their institutions. Several questions I posed were about the roles of their organisations in the Rohingya crisis in Aceh. However, I should also acknowledge that some interview questions sought their personal reflections; for example, their motivation in taking part in refugee protection, and their perceptions of the law. Therefore, these answers – as will be discussed later – represent their personal views, and not those of their institutions.

From the chart above, it is revealed that humanitarian and human rights law accounts are the most common narratives guiding senior staff of central government and members of the Indonesian parliament (I-26, I-27, I-32 and I-35). In addition, a senior official of IOM (I-33) was motivated by professional account. Interestingly, among five interviewees, only one (a Member of the Indonesian Parliament)

declared support towards the Rohingya refugees driven by more than one account (religious and humanitarian accounts).[881] This MP was a member of the Prosperous Justice Party, whose platform is inspired by Islamic values.[882]

Two of the interviewees highlighted that it was an Indonesian Government obligation not to send Rohingya refugees back to a country where they were persecuted; both interviewees cited the Human Rights Convention:

> *We contain these refugees for the sake of humanity. We had ratified the Convention of Human Rights, so we do this on the basis of human rights aid. We are not obliged to let them stay as long as they wish*.[883]
> *We treat those refugees in a very good manner – much better than those countries which have already ratified and signed the Refugee Convention – maybe because Indonesia has ratified the Convention on Human Rights. And we have to be consistent in our honourable deeds*.[884]

Indonesia is not a state that is party to the Refugee Convention; however, it has become party to major international human rights instruments.[885] These include the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 12 (2) of ICCPR stipulates the right of asylum, and Article 7 of the CAT stipulates the *non-refoulement* principle. Referring to the human rights conventions, these two senior central government figures were aware of *the non-refoulement* obligation. However, on the spot, the Indonesian Navy prevented the Rohingya entering Indonesian territory (this will be discussed later).

2. *Senior Central Government Staff Members, a Member of Parliament, and an IOM Senior Official : Definitions of Law.*

Table 13.

Perception of Law of Central Government, Member of Parliament, and International Organisation Migration

[881] I searched online news about support for the Rohingya refugees delivered by Indonesian MPs. Few Indonesian MPs paid attention to the Rohingya refugee issues. A small number gave support, including I-32.
[882] Yon Machmudi, *Islamising Indonesia* (ANU Press 2008) 73, 76.
[883] I-35 (n 663).
[884] I-27: Interview with head of sub-division of Security, Directorate General of Immigration, (Jakarta, 14 September 2018).
[885] Hikmahanto Juwana, 'Human Rights in Indonesia' (2006) 4 Indonesian Journal of International Law 27.

No	Interviewee	Law as a set of rules	Law as *sharia*	Law as *adat* law	Law as *adat* law of the sea	Law as human rights law	Law as rules issued by the state	Law as police	Law as inter-national law	Law as justice	Law as a tool of social engineering
1.	**I-26**			**V**			**V**				
2.	**I-27**						**V**				
3.	**I-32**						**V**				
4.	**I-33**	**V**									
5.	**I-35**						**V**				

Law as rules issued by the state is the most common answer among senior staff in central government, and an interviewed MP. In addition, they also defined the law as a set of rules, and *adat* law.

Despite the recognition of *adat* law from one interviewee, it is obvious that these interviewees' perception on law is very much state-oriented, as highlighted by I-26:

> *Law is norms and regulations that should be obeyed. It was created to be obeyed so that our life is in good order. Well managed. That's law made by legislation, the House of Representatives*.[886]
>
> *But in reality, they were breaking the law, violating our law. We had to impose our positive law on them and therefore they were sent to detention houses*; *we contained them there before sending them back to their country*.[887]

Indonesian government officials' understanding about law as solely state law emanates from the legalistic or positivist approach that influences the apparatus, enforcement and scholarship of law in Indonesia.[888] This positivist approach emerges from the proponents of a pure law approach that argues that law or legal rules can be

---

[886] I-26 (n 565).
[887] I-27 (n 884).
[888] M Yahdi Salampessy, 'The Leiden Legacy: Concepts of Law in Indonesia' (2014) 4 Indonesian Law Review 385.

found only in legal sources, not from non-law sources.[889] In an Indonesia context, legal sources can be found only in *Pancasila* as the source of all sources of law, followed by the highest law, which is the Indonesian Constitution, down to the lowest, which is local regulation/*Perda*/*Qanun*.

3. *Senior Central Government Staff Members, a Member of Parliament, and an IOM Senior Official : Actions*

The following discussion explores how ideas manifest into measures or actions. Regarding central government measures, these were shaped by Indonesia's not being party to the Refugee Convention. Therefore, very often in their interviews, senior central government staff often refer to the existing regulations, mainly Act No 5 of 2011 on Immigration Law, and the Directorate Immigration Decree No IMI.1409.IM.08.05, on the handling of illegal immigrants.[890] On the other hand, IOM's and UNHCR's measures were based on their mandate to provide logistics, to conduct RSD, and to find resettlement for refugees to third countries.

It is revealed in previous discussions that the resp

onse of central government was based on their understanding of the law as rules emanating from the state. This understanding of law manifests in the ways senior central government staff took measures during the Rohingya refugee crisis, prioritising legal aspects over the humanitarian cause.[891] This approach was reflected, for example, through the use of the apparatus that prevented the Rohingya refugee boats from entering Indonesian waters. This action reflects the Indonesian Navy's belief that one of its duties is to ensure security at sea, as regulated in Act No 34 of 2004 on Indonesian Armed Forces.[892] Due to pressure from the national and international communities, the Indonesian Government was eventually willing to host the Rohingya for one year maximum.[893]

After their rescue by the fishermen, the Rohingya refugees and Bangladeshi migrants were brought to the nearest port/land in Aceh. The arrival of a thousand people on a large boat would unavoidably attract the attention of Indonesian security. Therefore, the North Aceh Immigration Office, the Indonesian Army and the police were mobilised during the rescue.[894]

---

[889] Adriaan Bedner, 'Indonesian Legal Scholarship and Jurisprudence as an Obstacle for Transplanting Legal Institution' (2013) 5(2) Hague Journal on the Rule of Law 253.
[890] I-26 (n 565), I-27 (n 884) and I-35 (n 663).
[891] I-28 (n 839).
[892] Thom (543).
[893] Reliefweb (n 617).
[894] Thom (n 543).

The army and police officers came pouring down the beach. Seeing them on the beach made all the refugees panic. Some were running away so quickly because they had this trauma already – a long-term trauma. They saw our TNI (armed forces) were fully uniformed, and they freaked out. But when they saw us, they were a little bit friendly.[895]

Stirring the Rohingya refugees' memories of the oppressive military forces in Myanmar, the presence of fully uniformed Indonesian security personnel caused male Rohingya refugees to hide in the forest around a village near the port:

The refugees themselves were running to the forest and we were asked by Pak Geuchik (the chief of the village) to find them and bring them back together. Some of the refugees hiding in the forest were scared of getting caught and tortured, as they had experienced back in their own country.[896]

After the Rohingya refugees were placed in permanent shelters, surveillance continued.[897] This situation was coupled with the central government stance, represented by the Coordinating Ministry for Political, Legal, and Security Affairs of Indonesia (*Menkopolkam*). During the meeting with the local governments in Aceh, the senior staff highlighted the necessity to employ security forces in the shelters, referring to Act No 6 of 2011 on Immigration in handling the Rohingya refugees.[898] This stance is further explained by one of the interviewees:

We had only the Act No 6 of 2011, which stated that anybody who gets inside the territory of the Indonesian Republic without any clearance or legal documents, he or she will be arrested. Only the Act of Immigration clearly stated that.[899]

In line with this, one of the interviewees also highlighted:
There wasn't any back then. The national law was titled the Law on Immigration. That is, I've got to be honest, I admit it was holding back instead. Because their perspective was from the aspect of the immigration law. The Rohingya refugees are not violators of immigration documents, but they are illegal immigrants.[900]

Despite priority being given to security measures, aid – such as tents, food, and blankets costing IDR 611 million, or about GBP 30,000 – was delivered to the shelters by the Ministry of Social Affairs.[901] These were standby aid supplies kept to

[895] I-9 (n 547).
[896] I-12 (n 750).
[897] I-18 (n 641) and 1-19 (n 699).
[898] I-26 (n 565).
[899] Minutes of Taskforce of North Aceh Government (13 May 2015).
[900] FG3-3 (n 578).
[901] Minutes of Taskforce of North Aceh Government (27 May 2015).

respond to any natural catastrophe that might hit Indonesia. The initiative taken by the Ministry of Social Affairs can be seen as a consequence of some CSOs' active lobbying of the Minister. Also, the Minister has a background as an activist in one of the biggest religious organisations in Indonesia.[902] Not long after the arrival of the Rohingya refugees, she visited the Rohingya refugees, and was one of very few senior central government figures to have done so.[903]

Another important measure by central government was to allow the Rohingya refugees to stay in the shelter for a maximum of one year. The underlying reason for this policy was to let the UNHCR proceed with arranging resettlement to a third country within a year, as highlighted by one of the interviewees, a senior central government staff member:

> *Yes, it is in line with our main duty. We provide shelters. That's all. We couldn't do more. What could we do? The policy is from UNHCR. We are only a country for temporary shelters. We also urge UNHCR to act quickly (to resettle the Rohingya refugees).*[904]

As discussed in Chapter 2, as non-state party to the Refugee Convention, Indonesia has granted UNHCR the authority to fulfil its refugee protection mandate, which encompasses the Rohingya refugees.[905] This stance confirms the contention by senior central government staff that Indonesia was not responsible for looking after the Rohingya refugees, and local government actions to welcome the Rohingya refugees was beyond its obligation.[906]

In the course of managing the Rohingya refugee crisis, as discussed in Chapter 4, Indonesia ratified a new regulation, Presidential Regulation No 125 of 2016 on the handling of refugees from abroad. Despite the legal recognition of refugees in Indonesia, this decree was not, in essence, intended to grant the refugees protection, but rather focuses on the search-and-rescue mechanism for refugees stranded in boats. One key aspect of this decree that is not yet clear concerns which institution leads in the issues. Surprisingly, three different central government interviewees gave different answers – each assumed a different institution was responsible; one of them mentioned the Directorate of Immigration, while the others cited the Coordinating Ministry for Political, Legal, and Security Affairs of Indonesia, and the Ministry of Foreign Affairs.[907]

---

[902] I-23 (n 761).
[903] I-23 (n 761).
[904] I-26 (n 565).
[905] UNHCR Indonesia, 'UNHCR in Indonesia' <https://www.unhcr.org/id/en/unhcr-in-indonesia> accessed 17 April 2020.
[906] I-34 (n 840).
[907] I-26 (n 565), I-27 (n 884) and I-35 (n 663).

The next discussion explores the idea of law that manifests in the actions taken by the actors within an international organisation, in this case IOM. A senior IOM official, who was in the front line of the crisis, stated that the organisation's response to the crisis was due to its interest in migration issues, including migrants and internally displaced persons (IDP).[908] Therefore, IOM's involvement in this crisis is motivated similarly to its involvement in any other crisis, including the tsunami that affected Aceh in 2005.[909] As with senior staff members of central government, the law the actor understood was the framework or the rules emanating from the state.[910]

It is widely recognised by the interviewees or actors from different backgrounds that IOM's main role was providing basic needs for the Rohingya refugees, including logistical and health support.[911] One of the interviewees explained:

> *They were leading in logistics management. Psycho-social education.*[912]

Since local governments did not have the authority to disburse their budgets, they asked the IOM to reimburse the money they had spent, as explained by one of the senior local government officials:

> *For instance, supposing there was a Rohingya refugee who underwent surgery because his bone is broken, then the government would pay the hospital first for the expenses. Later this payment would be taken care of by the IOM. Our financial administration did not sanction donations in the form of cash to people from outside this country. Everything was covered.*[913]

At the beginning of the crisis, an IOM representative on the ground highlighted that IOM would be responsible for expenses for the logistics of providing resources such as food, water and electricity.[914] IOM would also pay for the honorarium of the security officers, including Indonesian Army troops deploye\d on the ground, and any other incidental expenses.[915] In addition, an IOM senior staff member affirmed that IOM was also concerned with the safety of unaccompanied migrants.[916]

---

[908] I-33 (n 632).
[909] I-33 (n 632).
[910] I-33 (n 632).
[911] I-3: interview with the head of a division of an international CSO via Skype, and I-7 (n 621).
[912] I-19 (n 656).
[913] I-17 (no 556)
[914] Minutes of North Aceh Task Force, North Aceh Government (27 May 2018).
[915] Minutes of North Aceh Task Force, North Aceh Government (27 May 2018).
[916] Minutes of North Aceh Task Force, North Aceh Government (27 May 2018).

However, IOM's non-involvement in building shelters for the Rohingya refugees was unusual. IOM has always taken the lead in accommodating refugees, after signing a regional cooperation arrangement (RCA) with Indonesia and Australia in 2000.[917] As discussed in Chapter 4, under the RCA, Indonesian authorities intercept irregular migrants who are determined to reach Australia.[918] In accommodating those who have been in the process of applying for refugee status, and who subsequently have been granted that status by the UNHCR, IOM – mostly funded by the Australian government – financed the Indonesian Government in building accommodation for refugees, including 13 detention centres and 42 community housing projects across Indonesia.[919]

IOM's performance during the Rohingya refugee crisis in Indonesia was shaped by the Australian government's stringent policies. First, Australia no longer accepts refugees from Indonesia wanting to be resettled in Australia who arrived after July 2014.[920] This policy has implications for the Rohingya refugees in Aceh in 2015, as no Rohingya refugees resettled in Australia.

Secondly, the Australian government's decision to cut IOM funding in 2015 has affected IOM's performance since.[921] For example, IOM has put in place a policy for not allocating any budget to provide logistics for refugees arriving in Indonesia after March 2018. This policy affected the treatment of 79 Rohingya refugees who were stranded in Aceh in 2018. IOM's non-participation with the 2018 Rohingya refugees arrival created a new burden for local government, which had difficulties in providing the refugees with basic needs.[922]

As all the interviewees from central government acknowledged the significant help provided by IOM,[923] these current developments of IOM policy will inevitably affect future treatment of refugees in Indonesia.

---

917 Taylor and Rafferty-Brown (n 59).

918 Following this measure, IOM conducts "case management and care" and transfers those seeking asylum to the UNHCR. Taylor and Rafferty-Brown (n 59).

919 Hirsch and Doig (n 562) Until recently, more and more refugees have been released from detention centres and moved to community houses: UN Migration Agency Facilitates Release of Refugees from Indonesian Detention Centres,' <https://indonesia.iom.int/news/un-migration-agency-facilitates-release-refugees-indonesian-detention-centres> Accessed 3 March 2020.

920 Refugee resettlement to Australia: What are the facts? Parliament Australia, <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/RefugeeResettlement#_Toc461022122> Accessed 3 April 2020.

921 I-26 (n 565).

922 I-27 (n 884) have shown the IOM letter to the Directorate of Immigration about this new policy.

923 I-26 (n 565) and I-34 (n 840).

As explained in Chapter 2, since Indonesia is not a party to the Refugee Convention, UNHCR has held a subsidiary protection role in managing refugees in Indonesia since the 1980s.[924] Therefore, normatively, UNHCR has taken over the state's role, with its main function to protect refugees and identify durable solutions for them. This includes carrying out the RSD, resettlement, and any other solutions that ensure the livelihood of the refugees in hosting countries.[925]

The activities that the UNHCR accomplished during the refugee Crisis in Aceh were highlighted by many interviewees. In addition, the minutes of coordinating meetings between local government and other actors confirmed UNHCR's involvement. One focus group participant underlined UNHCR's main activities as follows:

> *What we know is that UNHCR had a very determinant role. Their role began from the identification of the Rohingya refugees and the resettlement of the Rohingya refugees*.[926]

Another interviewee commented:

> *They're more like giving a status – their status to be documented. They worked in the field to document them. That's for the database, for what countries, who will get asylum. That's their job. If you ask about accompaniment, they didn't do that here*.[927]

> *One of the challenges UNHCR face was to get the RSD done in reasonable time*.[928]

Regarding UNHCR's performance in Aceh, some interviewees highlighted their concerns about how the RSD process was accomplished:

> *The people from IOM and UNHCR kept coming and going and kept changing persons. Maybe their duty was different from one to another, so that's why I confronted him. "We would like to take the data from them," said Mr. Chriss (head UNHCR representative in Indonesia) Oh, yes! Right after the interview, he would relocate the refugees to the third country. That's in accordance with the convention. "How long do you need to complete your task?" He didn't and couldn't answer the question. At that time, I was tough with him, I continued confronting him, "If you don't have any target then you should leave and you can't work here". This was somewhat different from what they were used to facing. But later on, he proved his words true that he had finished all the interviews in eight months*.[929]

[924] UNHCR Indonesia, 'Refugee Status Determination' <https://www.unhcr.org/id/en/refugee-status-determination> Accessed 16 April 2018.
[925] UNHCR Indonesia (n 924).
[926] I-17 (n 556).
[927] I-11 (n 591).
[928] Taylor and Rafferty-Brown (n 59).
[929] I-17 (n 556).

Despite the absence of regulation of the timescale for the RSD process to be carried out,[930] local governments were satisfied with UNHCR's accomplishment in finishing the RSD process in eight months.[931] Taking into account the significant number of Rohingya refugees who disappeared from the shelters within a few months of their arrival (i.e., from 982 people to 212 in seven months), there was concern over the length of the RSD process. If the RSD process had been carried out faster, the UNHCR may have proposed third countries to resettle more Rohingya refugees earlier, and more Rohingya refugees might have been resettled.

From the discussion above, I argue that the responses of central government and international organisations (UNHCR and IOM) to the Rohingya refugee crisis were possibly shaped by the accounts and the perspectives of law of key persons in the field (senior staff members of respective organisations). Interestingly, all senior central government staff expressed a positivist definition of law (i.e. law as rules made by states), and therefore reported that measures put in place concerning the Rohingya refugees were based on the immigration regime. However, one distinct measure put forward by a single minister who chose to deliver aid to the Rohingya refugees revealed the dynamics within central government.

With regard to IOM, as one senior staff member highlighted, the account in response to the Rohingya is part of their duty. It can therefore be understood that the extent of the work that can be carried out by IOM is constrained by the policy of the main donor – in this regard Australia. In the same vein as with IOM, UNHCR's response to the Rohingya refugee crisis was business as usual, focusing on RSD and finding third countries to resettle the Rohingya. Beyond their routine tasks, their response depended on the donor. As there was no allocation to make shelters for the Rohingya, UNHCR could not participate in shelter making.

G. Local People's Account: The Importance of Customary law and Customary Law of the Sea

I would like to explore essential aspects from the narratives presented in the previous discussion, especially regarding the central finding of this thesis, which concerns the role of customary law in protecting refugees. Among the 35 actors from

[930] UNHCR's procedure stipulates that the RSD decision must be made within two months maximum after the RSD interview. UNHCR, 'Procedure Standards for Refugee Status Determination under UNHCR's mandate', (2003). This procedure is under revision. <file:///H:/articles/unhcr%20rsd%20mechanism.pdf> accessed 25 April 2020.

[931] I-17 (n 556).

different backgrounds I interviewed, 29 had experience of rescuing and providing aid to the Rohingya, and out of the 17 who were local people, three were fishermen, two were local inhabitants, three were staff members of local government, and nine were staff members of CSOs.

I would like to revisit the account of local people with reference to customary law. As previously discussed in the introduction and in the methodology chapter, I acknowledge that the data set presented is relatively small, so the findings should not be regarded as representing the views of all or a majority of actors participating in the rescue and providing aid. However, the findings are also discussed and evaluated in light of other sources, such as in the interview with an Aceh customary law expert and literature on the matter.[932]

Among all interviewees and FGs, the customary law of the sea account was revealed to be the motivation for the fishermen interviewed (I-15 and I-21), and who attended FG-2 and FG 4. Similarly, as discussed in Chapter 3, customary law at sea prevails, especially the norms that oblige people to help those in distress at sea. Fishermen I interviewed and participants in FGs indicated that this norm has been passed down through generations of fisheries families. Likewise, Panglima laots (the sea commanders), the customary law expert I interviewed, and the literature I cited, confirm the existence of norms that oblige fishermen to rescue those in distress at sea.[933] In addition, this norm is institutionalised within the fishery communities. Those who break the rule are subject to sanctions from the fishery community.

With regard to the customary law account, the findings reveal that only local (Acehnese) people aspire to this account. The *pamuliaa jamee* norm obliges them to honour guests. Based on narratives presented throughout the sections, the customary account – along with other accounts – is shown to be a driving force among local actors in rescuing and providing aid to the Rohingya. I am not suggesting that the views of local people I interviewed, including fishermen, represent those of the majority of actors participating in protecting the Rohingya. What I am trying to suggest is that the consistency of, or similarities in, the narratives given by those participants show, to some extent, the importance of customary law in protecting refugees.

As discussed previously, most Asian countries are not party to the Refugee Convention. In addition to this, many of them lack national arrangements to protect refugees, and therefore refugees must lean on international agencies

[932] For example, Mansur (n 382) 204, Missbach (n 467)
[933] 1-14: (n 735), I-34: (n 840), Mansur (n 47), Abdulllah et al (n 549) and Wilson and Linkie (n 506)

such as UNHCR for their protection. In Malaysia, for example, the government considers the Rohingya and other refugees to be UNHCR's affair, not theirs.[934]

Policy towards refugees in, for example, Malaysia, Indonesia and Thailand can be understood as a push-back response to Rohingya refugees entering their respective territories in May 2015[935]. This response is distinct from that of local people in Aceh where, conversely, fishermen rescued the refugees, and local people spontaneously provided for their basic needs. There are at least two explanations for the response of local people differing from that in any other region in South East Asia; first – as discussed in the course of the thesis – the existence of *Panglima Laot* obliges all fishermen in Aceh to rescue those in distress at sea, and similarly the *pamulia jamee* norms represent an obligation for the Acehnese to welcome guests.

H. Conclusion

This chapter has documented the accounts of the actors who rescued and provided assistance to the Rohingya refugees and also documents their perspectives on the law. Their accounts manifested into actions and measures in managing the Rohingya refugees.

From the discussion above, in contrast with my presumption before starting fieldwork, I conclude that the accounts of the actors in rescuing and providing aid to Rohingya refugees were multiple, as many people gave more than one account. These accounts could be classified into two types: "legally driven motivations" (e.g. *adat* law of the sea accounts) and "non-legally driven motivations" (e.g. personal accounts).

I argue that the actors' background, mainly Acehnese, shaped their accounts and responses to the crisis, as they hold more than one identity. Acehnese fishermen, for example, were also not only members of the fishery community, but also members of the religious community, as it is common for them to take part in religious activities or congregations in their neighbourhood. Similarly, to fishermen, senior local government staff are not only a part of the state apparatus, but are also a part of *adat* communities, as they obey *adat* law. However, the accounts of many non-Acehnese actors were mostly shaped by their roles or professional backgrounds.

---

934 Alice Nah, '*The ambiguous authority of a "surrogate state": UNHCR's negotiation of asylum in the complexities of migration in Southeast Asia' (2019) 35 (1 and 2) Revue Europeene des Migrations Internationales, 63,86*

935 Kneebone (n 53) and Missbach (n 467).

I observe that many interviewees' definitions of law are plural and complex. Plural as it was not only about the rules emanating from the state (state law), but includes law originating from *adat* law and *sharia*. The definition they put forward was also complex, as it included other spectrums such as justice, and tools of social engineering. I highlight also that some actors' responses were shaped by their educational background (e.g. many of them have obtained master's degrees).

On the other hand, the legal accounts and state-oriented definitions of law that were highlighted by senior central government staff have also shaped their actions or measures taken in handling the Rohingya refugees. This is because state law did not officially recognise refugees and, therefore, considered them to be illegal migrants. Central government measures in response to the Rohingya refugees prioritised a security approach over a humanity one.

The chapter also examines the regard of the actors -with this regard fishermen of FG-4 and also two senior local government staff members-towards law. The fishermen understood their rescue to the Rohingya is against the (state) law, however, their didn't show their regret conversely, they were proud of what they have done as they were doing correct things inspired by higher transcendent law to state law. Their collective disobedience of state law could be qualified, as theorised Halliday and Morgan as an expression of collective rejection of the authority of state law. Similarly, two senior local government staff members were aware on the mistakes they were making by violating the state law however, in their opinion, their actions represent a claim for Rohingya to get access to justice.

I argue that the difference between legally driven motivations (e.g. *sharia* obligation, rules of *adat* law of the sea) and perceptions about law (e.g. *adat* law is made by *adat* community) are blurred. I argue that this blurriness was shaped by the role of law (especially *adat* law, *adat* law of the sea and *sharia*) in the actors' lives. Law is a close part of their daily life, as a guide in directing their behaviour.

From the findings above, I conclude that the role of law, especially *adat* law (including *adat* law of the sea) and *sharia*, are very significant in shaping the actors' response to the Rohingya refugee crisis. Importantly, the obligatory norm to rescue those found in distress at sea has been preserved for a long time, as norms have been passed on through families, and are maintained by the fishery communities. Similarly, the norm of *pamulia jamee* (rules of honouring the guest), inspired by *sharia*, has been preserved and passed down within *adat* communities. Also, a verse of the Qur'an (verse 4:32) saying that if anyone saves a life it would be as if he saved the life of the whole of humanity, has also been mentioned as a source of motivation for interviewees/participants.

Chapter 7
Refugee Protection in Aceh: TWAIL, and Approaches to Legal Pluralism

A. Introduction

This chapter relates back to arguments in Chapters 2 and 3. Chapter 7 centres on the important and interesting moments I came across during interviews, and I will unpack these into two different areas: evidence of some (neo)colonialism, and the complexity of legal pluralism. These data were tested against the theories set out in Chapters 2 and 3 -TWAIL ideas, and and some approaches to legal pluralism.

The first section links some of the findings with TWAIL ideas on the continuing legacy of colonial history, mainly (neo)colonialist aspects of the refugee regime, and the discourse of human suffering in refugee protection. For that reason, this section analyses Peterson's notion on the embedded (neo) colonialist characteristics of the inernational refugee regime (UNHCR): first, by its "othering" of CSOs and other actors; and secondly, by its failure to recognise -or its undermining of -laws (religious and customary) other than its law (international law). The enduring colonialist traits of the regime also show in its organisational norms in managing the Rohingya. This section shows how the crucial role was taken by local actors in the account of *adat* law and *sharia*. It also discusses Baxi's ideas on how the oppression that the Acehnese experienced fuelled their actions in making the voice of the suffering Rohingya heard.

The second section investigates the application of legal pluralism approaches put forward by Menski, Benda-Beckmann and Benda-Beckmann, and Arskal in the context of refugee protection in Aceh.. It analyses the position of the legal subject in Menski's theory. The position of legal subject is important because when people encounter a condition of legal pluralism, they do not necessarily and spontaneously become passive recipients of the law they belong to. Likewise, local actors are not passively pulled by the corners of the kite, but more actively negotiate an equilibrium. This is similar to Benda-Beckmann and Benda-Beckmann's thoughts about the contestation of state law, *adat* law and *sharia* and the results of this contestation. This is clearly shown by the application of right to work for the Rohingya refugees. In addition, this section also discusses the relationship between *adat* law and *sharia*.

B. TWAIL, the International Refugee Regime, and Refugee Protection in Aceh

This section seeks to discuss findings in light of one of the prominent TWAIL ideas, the continuing legacy of colonial histories. To further understand the link to the study findings, this section explores the idea of embedded (neo)colonialist characteristics of the international refugee regime through its superior attitude in neglecting the contributions of local actors, and its rules in refugee protection. In addition, this section also relates personal accounts of interviewees in rescuing the Rohingya, and their efforts in protecting the Rohingya, to the seminal ideas of Upendra Baxi on the importance of making the voice of the Rohingya heard, and of ameliorating their condition.

1. The International Refugee Regime and (Neo)Colonialism

I address the narrative of UNHCR's and IOM's othering of their fellow actors, especially CSOs, involved in refugee protection. This attitude accompanies UNHCR's and IOM's ignorance of the local wisdom in Aceh, which is significantly influenced by religion and culture. The way these two organisations have perceived themselves can be understood in the light of TWAIL ideas, especially those put forward by Peterson that relate the international refugee regime to (neo)colonialism. Making this connection involves taking into consideration the continuing legacy of colonial history within the refugee regime.

The main idea of historical emphasis is to not look at any problem or issue as ahistorical or to separate the law from the historical context within which it was developed.[936] Within this context, some TWAIL scholars suggest there is interdependence between international law and colonialism.[937] For this reason, it might be worth highlighting the historical background of the naissance of the Refugee Convention, and of colonialism. As discussed in Chapter 1, since Eurocentric ideas are so embedded in the Refugee Convention, only a few Asian countries are state parties to the Refugee Convention. [938]

In line with this idea, Peterson links the international refugee regime to colonialism in his analysis of UNHCR's privileging policy towards European refugees over any other refugees fleeing Soviet persecution in the 1950s.[939] He argues that the international refugee regime is characterised not only by its

---

[936] Mickelson (n 177).
[937] Anthony Angie, 'The Evolution of International Law: Colonial and Post-Colonial Realities' (2006) 27 Third World Quarterly 739 and Okafor (n 199).
[938] Davies (n 22) and Kneebone (n 53).
[939] Peterson (n 101).

humanitarian or intergovernmental response to displacement, but is also informed deeply by histories of colonialism, racial exclusion, and Western constructions of non-Europeans as others.[940] Similarly to Peterson's idea, Gatrell reveals the denial of UNHCR of the rights of Muslim refugees in Europe during the Cold War period.[941]

Connecting Peterson and Gatrell's ideas to the Rohingya refugee crisis, I bring up UNHCR's and IOM's attitudes in "othering" their fellow institutions, and in underestimating the role of *adat* law and sharia in their efforts to manage the Rohingya. I present two examples that relate to these attitudes; first, questioning the rules on the separation of male and female Rohingyas, and secondly, the prohibition of the practice of child marriage between Rohingyas.

UNHCR and IOM staff members arrived at the beginning of the Rohingya refugee crisis. Nevertheless, at that time, they were not alone, since many CSOs and other organisations were also aware of the crisis. Through CSOs' own initiatives and at the invitation of local governments,[942] CSOs were taking part in providing significant aid to the Rohingya, both in North Aceh and City of Langsa.

However, CSOs' involvement was neither expected nor wanted by UNHCR and IOM. One interviewee, a senior local government staff member, described UNHCR and IOM staff members' rejection of CSO involvement:

> *But as far as I know, there were organisations (UNHCR and IOM) who would demand the CSOs get away from the shelter, since they considered that the latter had no right to be there; while they thought that they had more rights to be there*.[943]

There was no regulation prohibiting the involvement of CSOs in protecting refugees. However, neither UNHCR nor IOM agreed to their presence, as they felt that CSOs were not entirely helpful due to their lack of knowledge about refugee protection.[944] Inevitably, disputes took place between the actors, and the local governments were on the CSOs' side. This is because they recognised the contribution of the CSOs, who built the shelters and helped local governments to manage the Rohingya.[945] One senior local government official argued:

[940] Peterson (n 191).
[941] Peter Gatrell, 'The World-Wide Web of Humanitarianism: CSOs and Population Displacement in the Third Quarter of the Twentieth Century' (2016) 23 (1-2) European Review of History: Revue Européenne d'Histoire 101.
[942] I-30 mentioned that he was called by the advisor of the Mayor of Langsa to get involved in helping the Rohingya. I-30 (n 604).
[943] I-7 (n 621).
[944] I-33 (n 632).
[945] I-7 (n 621), and I-17 (n 556).

But Aceh was unique. There were no CSOs that could play such roles abroad. This reality made UNHCR and IOM upset. They thought that they were the only ones capable of tackling the refugees. That is what put us into a sharp argument. Until then we talked to a CSO which was close to us, and they said it couldn't be that way.[946]

"Othering" other actors was rooted in the superior attitude that only UNHCR and IOM were legitimate and capable of managing refugees in Indonesia. Since there was a lack of national legal framework to handle the Rohingya problems, the only valid ground for them was international law. This attitude suggests an ignorance of the influence of *adat* law and sharia in handling the Rohingya, as highlighted by one of the interviewees:

As we have discussed, we were also faced with the involvement of the foreign organisations like UNHCR and IOM. They didn't respect us at all. Our law was put aside and they seemed to be ignorant. They (UNHCR and IOM) kept asking, "Why were the refugees separated between men and women in the shelter?"[947]

The above example -questioning the practice of separation of men and women- shows UNHCR and IOM staff members' denial of the role of customary and religious law in Acehnese life, including in tackling refugee issues. As mentioned previously, Aceh has some extent been given autonomy to apply sharia. As has been discussed, one of the regulations promulgated was *Qanun* (a provincial or local regulation) No 6 of 2014 on Islamic Criminal Law. This *Qanun* prohibits *ikhtilat* (intimacy between an unmarried couple).

On the other hand, the second example below shows the use of *adat* law and *sharia* to solve problems on the ground, while there was no solution provided by international or state laws. In this case, I highlight the practice of child marriage between the Rohingya while staying in Aceh.

It is cultural practice for many Rohingya to get married at a young age.[948] Many of the stranded teenagers wanted to marry. Some CSOs arranged marriages between the Rohingya, including underage girls.[949] At the inclusion of these girls, UNHCR questioned the practice of child marriage.[950] In the same vein, Indonesian Immigration also refused the practice of underage marriage, because marriage law

---

[946] I-7 (n 621).
[947] FG1-2: a head of *panglima laot* of North Aceh (Aceh, 8 August 2018).
[948] Susan Hutchinson, 'Gendered Insecurity in the Rohingya Crisis' (2018) 72(1) Australian Journal of International Affairs 1.
[949] I-7 (n 621).
[950] I-7 (n 621).

No 1 of 1977 lays down a minimum age for marriage of 19 for the groom and 16 for the bride.[951]

In response to this refusal, the local governments supported the CSOs' decision by facilitating the marriages and also by sending Acehnese *ulama* to sanction the marriages in an Islamic manner. Discussing child marriage, one of the elite local government officials said:

> *The number of Rohingyas kept adding. They delivered more babies here. They got married here. We don't know how many couples had been married. This made big news in the international world because we put into marriages those girls whom they would think as underage. They were just 16 and 14 years old. UNHCR said no to this kind of marriage. The UNHCR banned the marriage after they phoned the (UNHCR) headquarters*.[952]

Both UNHCR and central government finally left the decision in local government's hands, since they did not agree on the practice, but had no solution to propose.[953] Local government might not have agreed with the Rohingya's request, as recognition of marriage in Aceh also abides by state law,[954] however they decided to allow the refugees to marry not solely to prevent the breach of *Qanun* No 6 of 2014, but also to let the Rohingya practise their own culture and beliefs, believing that ignoring their culture and beliefs would create conflict between them. Local governments and CSOs took the initiative to allow and support these marriages rather than to ignore or forbid them.

A senior local government staff member, and participant in FGD-1 on the local government background, acknowledged the CSOs' contribution to handling the Rohingya:

> *The institutions who took care of all these problems were these CSOs. It was you, all of you who are attending this focus group discussion, who are taking charge of handling those problems of the refugees. While the UN (UNHCR) and IOM were not as diligent as you are; frequently they came here (to the shelters) at 11 or 12, or even at noon.*[955]

---

[951] Articles 6 and 7 of the Marriage Law forbid under-21s from marrying without their parents' consent. Lindsey and Butt (n 306) 449.
[952] I-7 (n 621).
[953] I-7 (n 621).
[954] According to Article (57-62) Act No 1 of 1974 on Marriage, the recognition of a marriage by the state must fulfil two conditions, first, the couple must be married in a religious ceremony, and, second, it must be registered with the state. In effect, the religious ceremony prevents the couple's relationship from being seen as illicit sex, but registration is a prerequisite of state recognition. Lindsey and Butt (n 306) 449.
[955] FG1-1 (n 575).

While many CSO volunteers were present at all hours of the day or night, the UNHCR and IOM staffs regularly came to the shelters late. Since the international staffs spent far less of their work time than CSO volunteers in the shelters, the productivity of the CSO was affected. In a similar vein, one of the CSO volunteers commented on the way the data of the Rohingya were managed:

> *I had some arguments with the UNHCR because of the poor data of the number of Rohingya refugees who remain in the shelters. I had some arguments too with IOM; they blamed us for keeping incomplete data and other sorts of things. They asked us to keep updating the data like how many refugees who escaped from the camp. But in reality, we had done our job well and they didn't.*[956]

The statement above confirms UNHCR's and IOM's othering of other actors in managing the Rohingya, since, according to Peterson, the international refugee regime is characterised by the Western construction of non-Europeans as others. Without full capacity to tackle the Rohingya's plight, neither international agency was able to build the shelters and manage the Rohingya on their own, but still the involvement of CSOs who took over the responsibility was underappreciated.

The interviews with key persons from the local governments and CSOs who managed the Rohingya left an impression that they were upset, because they were not being entirely respected as the main actors in the refugee protection. In the city of Langsa, as explained in Chapter 6, this superiority was relatively reduced due to the strong leadership of the head of the taskforce, but in North Aceh the issue remained. Taking these facts into consideration, it is not surprising that both local government bodies were at the CSOs' side most of the time.

The fact that UNHCR and IOM staff were Indonesian nationals did not guarantee harmony between the actors, as the agencies' personnel perceived themselves as the guardians of UNHCR's and IOM's rules and regulations. They enforced their organisations' regulations in the field, although, in reality, UNHCR's and IOM's regulations were not always able to solve problems on the ground. Contrarily, both *adat* law and *sharia* were relevant, as both laws offered the principal guidance for local actors in managing the Rohingya. This is also coupled with the fact that the Rohingya were also Muslims, living their lives according to their *adat* law and *sharia*.

Linking colonialism with the international refugee regime, both Peterson and Gatrell highlight the characteristics of colonialism embodied within the

[956] FG1-5 (n 627).

UNHCR, which privileged European refugees over other refugees. The colonialism attitude is confirmed by this research in the way UNHCR and IOM disregarded others who got involved in managing the Rohingya during the crisis, and also undermined the role of *adat* and *Islamic* laws in tackling problems on the ground.

2. History of Oppression: Understanding Human Suffering in Refugee Protection

a). Giving the Voice to the Rohingya: Common Ground between the Acehnese and the Rohingya

The current discussion identifies a relationship between personal accounts of the interviewees under the oppression that connects to their experience in rescuing the Rohingya. The discussion can then be understood in the light of one of Upendra Baxi's seminal ideas on the importance of human suffering in human rights discourses. Baxi critiques that many of the discourses of human rights have been played out by human rights entrepreneurs and technocrats, who often treat human rights issues as a "commodity".[957] It is not surprising that these discourses are also used for personal or political gain. Therefore, he suggests that vulnerable and poor people should be the main authors and beneficiaries of human rights.[958]

The voice of the vulnerable and poor in human rights discourse is important, since their experience allows them to address genuinely their needs and concerns in human rights. Likewise, the oppression that the Acehnese endured became capital that augmented their awareness of the Rohingya's suffering. In line with this, one of the key aspects of human rights put forward by Baxi is the experience and struggle of individuals, so the ultimate aim of human rights discourse is to give voice to human suffering, and to ameliorate it.[959]

The Acehnese have undergone difficult past experiences under the oppression of Dutch colonialists, and then the Indonesian government as the result of the secessionist movement. These oppressions resulted in the displacement of many Acehnese to Malaysia and other countries.[960] After the peace agreement with the Indonesian government in 2005, a large number of Acehnese came home to Aceh, and many of them contested local elections.[961] Two of these returnees were

[957] Tamara Relis, Book Review 2011 33(2) Human Rights Quarterly 509.
[958] Relis (n 957).
[959] Baxi (n 184) 33, 95.
[960] Nah and Bunnell (n 481).
[961] Missbach (n 467).

the Regent of North Aceh and the Mayor of the City of Langsa whose regions were affected by the Rohingya crisis in Aceh in 2015.

Interviewees were asked why they were taking part in rescuing the Rohingya. One member of a local CSO responded by connecting his people's difficult experiences with the Rohingya's situation of being persecuted. It was actually because they felt a similar experience, as he highlighted:

> *I've been a victim of conflict. I have to give my empathy to them. I really feel it, that moment when I had to run from my own home.*[962]

In the same vein, three interviewees responded:

> *Well, maybe because we have the same concerns, the same destiny. Both of us had undergone a very traumatic conflict. This conflict made the Acehnese easy to put themselves on the refugees' shoes. We understood how they felt and we could easily be touched by them.*[963]

> *Moreover, we could see the history of these Rohingya. They were occupied, oppressed, intimidated, more or less like us, the Acehnese.*[964]

> *We know the feelings of being chased, of escaping overseas. Crossing the sea first, for example.*[965]

The above interviewees were Acehnese who were respectively the chairman of a local CSO, a village leader, a GAM activist, and a volunteer of an Aceh branch of the Indonesian Red Cross. Like them, the Mayor of the City of Langsa and the North Aceh Regent were also past victims of state oppression, and for that reason they did not think twice about receiving the Rohingya while central government abstained.[966] Interviewees and local leaders had the experience of being oppressed, and this made it easy for them to develop empathy towards the Rohingya. Moreover, the assistance they had received from national and international communities during the tsunami would feed their efforts, which reflected their gratitude.[967]

The effort that the Acehnese and local government put into rescuing and helping the Rohingya attracted widespread attention. Only a few days after the local governments applied their discretion to receive the stranded Rohingya and the

[962] I-11 (n 591).
[963] I-12 (n 750).
[964] I-8 (n 602).
[965] I-6 (n 740).
[966] I-17 (n 556), and FG3-3 (n 578)
[967] Craig Thorburn, 'Livelihood Recovery in the Wake of the Tsunami in Aceh' (2009) 45(1) Bulletin of Indonesian Economic Studies 85.

Bangladeshi immigrants, the public –national and international – took notice, and eventually central government announced its acceptance of receiving the Rohingya for one year. Local governments have tried their utmost to make the Rohingya's voice heard, not only by the Indonesian people, but also by the international community. Some dismissed this gesture as a strategy to get public support as local elections were approaching.[968] However, this was the first time that Indonesian local governments had established a policy to receive the Rohingya, and they may have realised the consequences of doing so.

b) Ameliorating the Rohingya's Condition: From Urgent Aid to Local Integration Plan

As well as giving a voice to human suffering by rescuing the Rohingya, the local governments and the Acehnese have also tried to ameliorate the condition of the Rohingya. The first of these efforts was through the immediate action taken by local government after the Rohingya's arrival. The second was the effort local governments and local actors made to make the Rohingya feel convenient Finally, local government employed local integration plans for the Rohingya.

Immediately after the Rohingya and the Bangladeshi immigrants arrived on 10 and 15 May, local governments moved rapidly to identify those who needed help. In order to ensure the survival of the Rohingya, unprecedented efforts were employed by the local governments in giving access to health offices.[969] On that day, out of 825 people stranded, 316 received intravenous fluids and 41 were hospitalised at the general hospital of the City of Langsa (RSUD Kota Langsa).[970] As there was no budget for the treatment of Rohingya and Bangladeshi immigrants, local governments used their discretionary power to open access to healthcare for them. Similarly, local inhabitants provided food for the Rohingya. Interestingly, every house was obliged to feed at least five people, so a village could feed all of the stranded people.[971] The rapid actions both from local governments and local inhabitants showed that, for them, the lives of the Rohingya mattered.

The Rohingya received attention not only in terms of their physical health, but also on their wellbeing. Soon after the Rohingya settled into the shelters, programmes and activities were established, under the direction of local

[968] Missbach (n 510).
[969] I-7 (n 621), and I-17 (n 556).
[970] The City of Langsa Government (n 846).
[971] FG2-8: (n 568).

governments, to make the Rohingya feel at home. This was not easy during the first few months, since the immigration regulations prohibited the Rohingya from going outside the shelters.[972] To overcome the boredom, the children of Rohingya, for example, were encouraged to take part in sports, such as football, and arts activities, such as singing and painting.[973] Concerning the food that the Rohingya consumed daily, taskforce members involved the Rohingya women in preparing their meals adjusted to their taste.[974] Giving them the flexibility to choose what they wanted would eventually increase their level of trust in the Acehnese. Rohingya women were also trained to increase skills such as sewing. However, despite all these activities, one of the interviewees found that it was challenging to keep their mood up.[975]

Along with ameliorating the condition of the Rohingya, local governments and other actors who got involved worked to make the Rohingya's voice be heard. One of the activities initiated was an Acehnese and Rohingya cultural festival. The festival was held in the shelters, and showcased Acehnese and Rohingya foods, traditional dances, traditional clothes exhibitions and other fun activities for both Rohingya and Acehnese children who lived near the shelters.[976] These activities allowed the Rohingya to express their feelings, their talents and their cultural identity as the Rohingya. They had great importance in the Rohingya's unfavourable situation. Attended by both Rohingya and Acehnese, the activities attracted wide attention from the Acehnese, and were transmitted by the private Indonesian broadcaster *Insan* TV.[977]

With regard to the local integration plan, one important finding revealed in the focus groups was the intention of local governments in North Aceh and the City of Langsa to welcome the Rohingya during their stay in Aceh.[978] The North Aceh Regent, for example, had proposed several hectares of neglected local government land be used by the Rohingya for planting.[979] Local authorities were aware that it was hardly possible for the Rohingya to be repatriated to their country of residence, and similarly, they had little chance of being resettled in third countries. In conversations throughout focus groups 1 and 3 about local integration, most participants welcomed these ideas from the local governments with open arms. I noted only one participant who expressed disagreement with the plans, due to

[972] I-18 (n 641).
[973] I-9 (n 547), and I-18 (n 641).
[974] FG3-3 (n 578), and I-7 (n 621).
[975] I-7 (n 621).
[976] Wijaya and Subiyono (n 672) 64, 70.
[977]Wijaya and Subiyono (n 672)) 67.
[978] FG1-6 (n 691).
[979] FG3-2 (n 638).

poverty in Aceh.[980]

To sum up, the narrative of the rescue of the Rohingya by the Acehnese people and local governments attracted widespread attention from national and international communities. Neither of these communities undermined the efforts of the Acehnese, and the local governments raised awareness of the fate of the Rohingya and ameliorated it. In effect, the Acehnese, who mostly still live in poverty, and their local governments became the real authors of human rights. In line with what Baxi suggests, the vulnerable and poor were placed in the centre of human rights discourses, both as authors and recipients of human rights, with their experience enabling them to understand the concerns and the needs of the suffering.

The failure of local governments to adopt local integration for the Rohingya was a symptom of the complexity of legal pluralism; the role of both international and national or state laws was more determinant in deciding the future of the Rohingya. The effects, as discussed in Chapter 4, were for some Rohingya to be resettled to a third country, while many of them disappeared from the shelters. Regardless of their failing to host the Rohingya permanently, the local governments and the Acehnese made the Rohingya's voice be heard, similarly to what Baxi described as "to give the voice to human suffering and ameliorate it".

C. Refugee Protection Through the Lens of Legal Pluralism Approaches

This second section analyses research findings through the lens of legal pluralism approaches. It elaborates the position of the legal subject in Menski's theory, and relates it to key findings of the research. In addition, this section concurrently explores the autonomy of law in relation to the overlap between *adat* and Islamic laws, the role of subject law in legal pluralism, and lastly the contestation between state law and, international law and sharia with reference the application of right to work.

1. Legal Pluralism and Subject of Law

The first test of Menski's theory concerns the position of the legal subject in a situation where legal pluralism occurs. The position of the legal subject is pertinent because when people encounter circumstances of legal pluralism, they do not necessarily and spontaneously become passive recipients of various laws.[981] Similarly, they may be active actors who consciously adopt or obey a particular

---

[980] FG3-2 (n 638).

[981] Salim (n 379) 26.

law.[982] Based on Arskal's study on the application of legal pluralism in the Aceh courts, for example, it is revealed that some Christian defendants have voluntarily agreed to having their case ruled on by a *sharia* (Islamic) court rather than by a general court.[983] Thus, sharia can also apply to a person who is not a part of the specific religious community.

Menski does not discuss the position of the legal subject in his theory. However, reading his definition of law, it is likely that he assumes implicitly that a person is predominately affected by one law. He defines law as follows:[984]

a body of rules *or* a set of rules	made by applying in	a state a particular country
a system of norms a set of norms	developed by applying to	a certain group of people a particular social group
a body of rules *or* a set of norms	laid down by applying to	God a religious community

Menski's definition of law comprises three important aspects: elements of law (body of rules), the origins or sources of law (state, custom, and religion), the legal entity and legal subject. Acknowledging these three sources of law, he believed that they are universal.[985] Since the contribution of international law has been

[982] AR Jackson and Dorota A. Gozdecka, 'Caught Between Different Legal Pluralisms: Women Who Wear Islamic Dress as the Religious "Other" in European Rights Discourses' (2011) 43 (64) The Journal of Legal Pluralism and Unofficial Law

[983] As has been discussed previously, non-Muslims who have committed a criminal act (e.g. selling alcohol) that is prohibited under both *Qanun* No 6 of 2014 and KUHP can choose to be charged under either this *Qanun* or the KUHP. Salim (n 379) 85, 89, and Siregar (n 510).

[984] Menski (n 250) 179.

[985] Menski (n 338).

significant in many aspects of people's life, Menski later added international law as one of the sources of law.[986]

Understanding the position of the subject of law in light of the above definition, as mentioned previously, it seems that Menski assumes that the subject of law is a passive recipient of law(s), or a passive actor; therefore they obey the law they belong to, as Menski highlights - for example: "(customary) law is a set of norms applying to a particular social group" or "a (religious law) is a set of norms applying to a religious community". From the definitions above, it can be concluded that Menski suggests a connection between the subject of law and the law that they belong to. Therefore, a member of a religious community mainly abides by the law of that religious community, whereas a villager mainly abides by *adat* law.

In order to discuss the subject of law in the context of my research, I posit two interesting findings that support the stance in which the subject of law is an active actor who consciously adopts or obeys a particular law. Both a fisherman and a leader of a village answer not to the law they belong to- respectively, *adat* law of the sea and *adat* law- but to *sharia*. A fisherman, asked about his motivation to help the boat people, did not mention *adat* law of the sea as his reference, but instead Islamic law:

> *We could not ignore them according to the religion. We couldn't be like that because they would die. We would bear the sin of those people*.[987]

In contrast to fishermen motivated by the law of the sea, this interviewee mentioned his connection to the religion.

Similarly to the explanation above, connection to religion was also shown by I-13: "…it is because of humanity, Islam, right?"[988] Interestingly, I-13 was one of the leaders of a village, bearing the responsibility of preserving the implementation of customary law at village level.

In reality, the relationship between the subject of law and the law(s) is more complex than Menski described in his definitions of law. By complex, I mean that in a situation where legal pluralism has great importance in people's lives -and is concurrently recognised officially by the local government- the subject of law navigates their own choice of what law to obey. Therefore, In the context of Aceh, the complexity of this relationship can be explained by at least two points. The first

[986] Menski (n 338).
[987] I-20 (n 560).
[988] I-13 (n 751).

is multiple identities that might characterise a person; the second is the position of *sharia* in Acehnese society.

In Aceh, as discussed in Chapter 6, it is normal for a person to have more than one identity. In the example of the fisherman above, it is clear that he does not belong only to his fishery community, but that he also belongs to a religious community, since he held a Muslim identity and practised the religion. Therefore, I was interested to hear more about the fisherman's reference to religion. I asked him who had taught him this knowledge. He explained that he received the lesson from his late parents, and concurrently from the Quran, as he regularly attended religious lessons in his neighbourhood.[989]

This showed that despite his membership of the fishery community, this fisherman displayed strong attachment and obedience to religion. He was afraid of committing sin. In addition, by following the rules of Islam, he believed that he would get a peaceful life.[990] His belonging to a religion was shaped by his regular attendance at Islamic classes, so the values and norms he received were internalised. This example does not reflect all fishermen, since there are Acehnese fishermen who do not take part in Islamic classes, or who practise their religion as revealed through the interviewees and focus groups. However, in the context of Aceh, it is not surprising that a fisherman is also a devoted Muslim.

In line with the fisherman is another example, I-13, one of the leaders of a *gampong* (village) who cites Islam as the basis of his reason to help. Interestingly, village leaders in Aceh have an obligation to ensure the application of *adat* law. For example, they become "judges" who decide on a wide range of cases, including private cases (e.g., disputes in marriage and seclusion) and criminal cases (e.g., petty theft, defamation, a quarrel in a market) at village level. Therefore, the heads of villages and their apparatus also function to preserve the implementation of *adat* law at the closest-knit and lowest level of the *adat* community.

The interviewee's Islamic views were also shaped by the Islamic activities that have become part of village activities. I-13 explained that there was routine Islamic teaching after *Maghrib* (fourth prayer) for about 30 minutes every day in *Meunasah*.[991] This teaching discussed basic religious principles such as *tauhid* (the concept of monotheism in Islam), the practice of worshipping God, and *akhlak* (muslim moral or characters)[992]. I-13 himself attended most lessons, and at least 30

[989] I-20 (n 560).
[990] I-20 (n 560).
[991] I-13 (n 751).
[992] I-13 (n 751).

villagers attended the lessons daily. Islamic values and norms have constantly been internalised in I-3, and have shaped the way of life and thinking for I-3 and other villagers.

Besides the multiple identity that a subject of law/actor can have, the relationship between the subject of law and the law(s) is also shaped by how Islamic law is viewed in the eyes of the Acehnese. Islam becomes the identity of the Acehnese. According to Salim, there are at least three historical causes for the Acehnese firmly to consider their identity to be as Islamic devotees.[993] First, Aceh was the first region in Indonesia to embrace Islam. Second, the first Muslim kingdom in Indonesia was founded in Aceh in the thirteenth century. Third, the long history of implementation of Islamic law begun in the sixteenth and seventeenth centuries under Acehnese sultanates.

After the sultanate, the 30-year fight of the Acehnese, led by Acehnese *ulamas*, against the Dutch colonial power resulted in the toughest war that the colonialists had faced in East India. This war made the Acehnese even more militant, as the *ulamas* fuelled the war as a holy war. There were ways to raise the Acehnese's spirit, mainly through storytelling (*hikayat*), with the most famous tale *hikayat perang sabil* (the fight against the colonial power in God's way).[994] This contributed to the expression of self-determination through the declaration of the Islamic state of Aceh from 1930 to 1960. One of the interviewees told a joke that despite not practising the religion (i.e., not praying five times), an Acehnese might kill a person who called him a disbeliever.[995]

It is concluded that Menski's ideas about the relation between the subject of law and the law(s) in the light of his definition of law might describe a general concept of law; however, in the context of Aceh, they do not capture the complexity between the subject of law and the law(s). Under his definition of law, Menski suggests that the subject of law is a passive recipient of law, or a passive actor, so the subject of law would mainly obey the law he or she belongs to.

The case of refugee protection in Aceh shows that the subject of law is an active actor who can obey a certain law which is not necessarily the law s/he belongs to. This is also similar to Arskal's study on the application of legal pluralism in the Aceh courts where some Christian defendants have voluntarily agreed to having their case ruled on by a *sharia* court rather than by a general court. The multiple identities

---

993 Salim (n 451).
994 Reid (n 181).
995 I-4: (n 764).

of an actor, and also the position of Islamic law in the lives of the Acehnese, contribute in this context to the complex relationship between the subject of law and the law(s).

2. *Relation between* **Adat** *Law and* **Sharia**

With regard to interconnectedness, Benda-Beckmann and Benda-Beckmann state that the relationship between *adat* law, *sharia* and state law and other normative orders can be expressed in political and ideological statements as "complementary, equivalence, or superiority of the different orders of the different social organisation".[996] In the context of refugee protection in Aceh, I argue that the relationship between *adat* law and *sharia* can also be described as overlapped, especially with regard to the norms of *pamuliaa jamee* and the norms of customary law of the sea.

the overlapping of *adat* law and *sharia* are also reflected through an institution called *Meunasah*. This institution was created during the Sultanate of Iskandar Muda (1607-1636).[997] Interestingly, *Meunasah* is currently a centre of *adat* and religious activities in the *gampong* village. Until now, activities conducted in *Meunasah*, include *pengajian* (islamic teaching), deliberation of village issues, dispute resolution between villagers ("village court"), and early religious education for children.[998] Thus, as explained above by the interviewees, Islamic teaching is carried out every day and night in *Meunasah*.[999] The importance of *Meunasah* is described in an expression in the Acehnese language: *Tip-tip gampong na Meunasah. Na nyang peugah, nan Meunasah nama mula* (there is always a *Meunasah* in each *gampong* in Aceh; if there is no *Meunasah*, *Gampong* will not be considered to exist).[1000] Besides overlapping, the relationship between *adat* law and *sharia* in the context of refugee protection can be seen as the superiority of *sharia* over *adat* law.

Furthermore, the prevalence of *sharia* over *adat* law can be explained through the aphorism or *hadih maja* in the Acehnese language: "*hukom and adat,*

---

[996] Von Benda-Beckmann and von Benda-Beckmann (n 402)

[997] Muhsinah Ibrahim, '*Dayah, Mesjid Meunasah Sebagai Lembaga Pendidikan dan Lembaga Dakwah di Aceh*' (Dayah, Mosque and Meunasah as Educational Institution and Preaching Institute) (2014) 20(2) Journal Al Bayan 21.

[998] Ibrahim (n 1047).

[999] I-13 (n 751).

[1000] Badruzzaman Ismail, '*Fungsi Meunasah Sebagai Ikon Budaya Adat Aceh* (*Meunasah* as an Icon of *Adat* Aceh)' <https://maa.acehprov.go.id/news/detail/fungsi-meunasah-sebagai-ikon-budaya-adat-aceh1>accessed 20 June 2020.

lagee zat and sifeut" ("the relationship between *sharia* and *adat* is similar to the link between the substance of something and its characteristic").[1001] This aphorism indicates that *adat* law is accepted if it is not against Islamic law;[1002] in other words, Islamic law prevails over *adat* law.

Regarding the superiority of Islamic law over *adat* law, one of the examples given by one of the interviewees was on the sea festivity celebrations. This celebration is carried out once in every three years by fishing communities as an expression of gratitude to God.[1003] In this festival, in asking for protection and plentiful catches of fish from the "sea of God", they usually offer a buffalo head to the sea. This practice is considered as *shirk* (associating the one God with a sea god). The action of offering a buffalo head into the sea has been abolished, especially since the tsunami calamity.

After the tsunami, the celebration is still allowed, but the fishermen changed some aspects of the activities which are not compatible with Islamic norms and values. They no longer offer a buffalo head to the sea, but cook it instead, and invite orphans to dine with them. They added Islamic activities by praying together in the *Meunasah*.[1004] The prevalence of *sharia* over *adat* law can be understood as the continuation of Islamisation within Aceh communities which happen to be both top-down and bottom-up at the same time.[1005]

Only under Dutch colonial power was the relationship between *adat* law and *sharia* -and their institutions- in conflict. In order to gain power in Aceh, the Dutch colonists employed an approach called "*devide et impera*" (divide and conquer). The Dutch colonial forces would gain power by breaking up the relationship between *adat* and religious leaders to the detriment of *ulama* (Islamic jurists) and *sharia*, in order to conquer Aceh.[1006]

The relation between *adat* law and *sharia* was strengthened after the Peace Agreement. One of the strategies put in place was to formalise both institutions. For example, *adat* and Islamic rules and institutions are implanted in Acts (e.g., Act No 11 of 2006 on the Autonomy of Aceh) and *Qanun* or local laws (e.g., *Qanun* No 10 of 2008 on *adat* institutions).

[1001] Salim (n 451).
[1002] Mansur (n 506), 40.
[1003] I-4 (n 764).
[1004] I-4 (n 764).
[1005] R Michael Feener, *Sharia and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh Indonesia* (Oxford University Press 2013) 256. and I-4 (n 764)
[1006] Salim (n 378).

Some parties perceived that the implantation of some *adat* and *sharia* rules into positive law such as *Qanun* (local law) is a way to achieve more blessings from God, and to hinder or mitigate calamities. Some perceptions had arisen that the calamities Aceh had faced were divine retribution for the sins of the people.[1007] Therefore, people are directed to live their lives in accordance with both laws. The top-down approach to socialising the norms and values of Islamic laws was conducted by institutions such as the State *Sharia* Agency and Wilayatul Hisbah (municipal *sharia* police).[1008] However, some believe that ideas about how to implement Islamic law concurrently come from ordinary people, whose aspirations are shaped by the local *ulamas* of *Dayah*, who live all over Aceh .[1009] *Dayah* are secondary level Islamic boarding schools which produce thousands of Acehnese alumni each year.[1010]

Formalisation of *adat* and Islamic institutions make the prevalence and superiority of *sharia* over *adat* law even more obvious. For example, Article 3 of *Qanun* Aceh No 10 of 2008 on *adat* institutions stipulates that the function of the *adat* Council, an autonomous *adat* institution at provincial and city/regency level, is to preserve *adat* law, enforce its implementation, and also to ensure that implementation of *adat* law is not against Islamic law.[1011]

To sum up, Menski views that in a situation where legal pluralism occurs, each law remains autonomous. However, in the context of Aceh, the relationship between *adat* law and *sharia* is more nuanced. The primacy of *sharia* over *adat* law and the existence of overlapping *adat* and Islamic norms proves that even though they are autonomous, they are inseparable.

3. *The Practice of Refugee Protection in Aceh: Beyond the Law(s)*

Before discussing the practice of refugee protection in the light of research findings, and connecting them to Menski's ideas, especially regarding the relationship between laws, it is helpful to review the important elements of Menski's kite model:

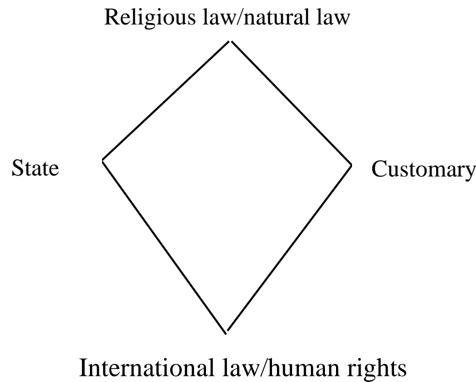
> ... four different types (manifestations) of law, namely (1) at the top, natural laws in the form of ethics and values, which may be religious

---

[1007]Feener (n 1005) 256.
[1008]Feener (n 1005) 275.
[1009] I-4 (n 764).
[1010] Hasbi Amiruddin, *Aceh dan Serambi Mekah (Aceh and the Veranda of Mecca)*, (Yayasan Pena 2006) 24, 28.
[1011] Fauza Andriyadi, 'Reposisi Majelis Adat Aceh dalam Tata Pemerintahan Aceh Pasca Qanun No.10 Tahun 2008' (Reposition of Acehnese *Adat* Council in Acehnese Local Government According to *Qanun* No 10 of 2008) (2018) 7(2) Right: Jurnal Agama dan Hak Azasi Manusia.

> and/or secular; (2) on the right hand side, socio-cultural and socio-economic norms, and thus mainly people's customs and ways of doing things; (3) on the left hand side, state law and its various kinds of rules, which may of course not have been made by the state, but were accepted by it on various grounds of expediency from the other corners and (4) in the bottom corner, international law and the various forms of human rights, collectively perceivable as new natural laws..[1012]

His theory can be explained by the following diagram



Menski shows that the laws coexist in a given context. By including customary and religious/natural laws in the four corners of law in his "kite model" theory, Menski has connected theory and practice.[1013] Menski admits the presence of customary law and religious laws in a given context (e.g., in marriage law), showing that the law is not only the law "by the book" (state and international laws), but also "the law in action" (customary and religious laws), since the latter has been effective in people's lives. Regarding this issue, Menski criticises the decision of the Indian Law Commission to propose a common legal minimum age of 18 for marriage, as he views this decision as failing to consider cultural or religious norms applicable in India. [1014]

Furthermore, Menski stresses that in order to prevent any conflict in society, recognition of the four corners is a must, while the domination of any one corner should be valid only in exceptional circumstances.[1015] To discuss this, I link the idea to the context of refugee protection in Aceh, especially in the context of religious freedom for the Rohingya.

The right to religious freedom is recognised by state and international law, as well as Islamic law.[1016] Article 28 E (1) of the Indonesian Constitution of 1945

[1012] Menski (n 250) 179.
[1013] Menski (n 357).
[1014] Menski (n 357).
[1015] Menski (n 250) 179.
[1016] However, some Islamic law scholars view the right of freedom of religion in Islam as limited, since in some Muslim countries (e.g. Saudi Arabia), apostacy is penalised by state

stipulates that every person shall be free to choose and to practise the religion of his or her choice, while Article 4 of the Refugee Convention stipulates that "… The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children." Similarly, even Islam recognises the right to practise religions other than Islam.[1017]

Since the freedom to practise religion is recognised by international, state and Islamic law, the implementation of these norms could in practice be examined through the celebration of religious ceremonies by the Rohingya in Aceh. Muslims world-wide celebrate the birth of the Prophet (Muhammad). In North Aceh, FG-1 and I-9 were upset because IOM staff prohibited them from holding this ceremony.[1018] On the other hand, the Rohingya were obliged to attend the celebration of New Year's Eve. A participant of FGD-1 from the North Aceh branch of the Indonesian Red Cross expressed his disappointment as follows:

> *Another example is like what I told you yesterday. We usually commemorate Maulid (the birthday of the prophet) and other religious days. But they insisted on forbidding the people who would like to celebrate the moment. While on the other hand, when it comes to international day, for example, New Year's Eve, the refugees were asked to celebrate it altogether. My question is: Why do we have to celebrate or commemorate international days and at the same time they forbid the celebration of Maulid and other Islamic holidays? Well, that's enough from me.*[1019]

Similarly to the participant above, I-9 highlighted his regret at the ignorance of international organisation staff about his ideas:

> *The example is, well, what can I say, the example is they are Muslim. Here, it is also almost 100% Muslim, with the life and culture of Muslims. It means that there is some sort of religious activities, such as Maulid. On the other hand, we celebrated world colour day. Where in that day, people will do some paintings. Actually, it won't be a problem here. But, when it comes to the local wisdom, there is Maulid and the same as we celebrate 1 Muharram (Islamic New Year). The Rohingya are Muslims, so it's better for them to also have it. There isn't. But, that's it. They are supposed to have it ….*[1020]

---

law. since the act of disbelief amounts to an insult to the Muslim community as a whole and, more importantly, to God. Jeroen Temperman, 'Blasphemy, Defamation on Religions and Human Rights Law' (2008) 26(4) Netherlands Quarterly of Human Rights 517.

[1017] This norm is stipulated in the chapter *Al Kafiirun* (Disbeliever) 109 verse 6: "to you is your religion and to me, my religion". Halim (n 288) 441.

[1018] I-9 (n 547).

[1019] FG1-6 (n 691).

[1020] I-9 (n 547).

There was an attempt to celebrate religious activities through asking for permission from an organisation's international staff. Unfortunately, this effort was not successful because the international staff explained to I-9 that religious observance was not one of their priorities.[1021]

Regarding this, participants in FG-1 and I- 9 showed their disappointment, since there was no support from international organisation staff for religious observance for the Rohingya. Even though celebrating *Maulid* or other religious ceremonies might not be as important as ritual obligations -such as prayer five times a day- it is undeniable that celebrating *Maulid* or any other religious ceremony is a part of the right to practise religion. I am not 100 percent sure that either UNHCR or the IOM limited the practice of religion, but I got the impression from participants in FG-1 and FG-3 that neither organisation was accommodative. I still remember their upset expressions on their faces.

Despite the recognition of religious freedom in national law, international law, and *sharia*, conflict can still occur, as there are factors beyond the existing norms that affect the implementation of religious freedom. The actors, in this case IOM and UNHCR, played a dominant role in putting aside the implementation of religious freedom, as recognised by the Refugee Convention. Similarly, research into the distribution of third-country resettlement slots in Kampala, Uganda, revealed UNHCR staff undermining "soft law" in global migration management. In this case, UNHCR staff favoured informal and forbidden practices, such as choosing a person for resettlement in a third country based on personal impressions, and accepting money for resettlement exchanges for their own personal benefit.[1022]

The non-compliance of UNHCR staff to their organisation's rules, and also their superior attitude towards refugees and other actors have been highlighted in research.[1023] In order to overcome this situation, as discussed in Chapter 2, the need to hold UNHCR to account as an implementer of the Refugee Convention is pertinent. Despite the non-legally binding status of Excom (a yearly meeting of donors and third countries), it can recommend that UNHCR improve its

---

[1021] I-9 (n 547).

[1022] Kristin Bergtora Sandvik, 'Blurring Boundaries: Refugee Resettlement in Kampala – Between the Formal, the Informal, and the Illegal' (2011) 34(1) Political and Legal Anthropology Review 11.

[1023] Wigney Barbara, 'The State of UNHCR Organization Culture,' UNHCR Evaluation, Policy Analysis Unit, May 2005 <https://www.unhcr.org/428db1d62.pdf> accessed 17 June 2020.

performance. However, Excom's recommendations on UNHCR tend to address general performance issues, without criticising specific actions or operations.

Many interviewees highlighted that it is not possible to hold UNHCR and IOM to account, as they are international organisations.[1024] However, some interviewees stressed the importance of using routine forums between UNHCR and CSOs to express their inputs and concerns.[1025] In addition, some interviewees suggested the use of formal mechanisms through the Indonesian government.[1026]

With regard to the supervision of their staff, both UNHCR and IOM have internal mechanisms through their inspector general office to receive complaints.[1027] However, it is not clear if local staff (who are not part of the UNHCR and IOM headquarters staff) could be included in these complaints. Moreover, there is no information on how to register complaints on UNHCR or IOM websites that cover the organisations' representation in Indonesia. Besides the question of supervision of UNHCR and IOM and their staffs, many interviewees agreed that these organisations should change the way they work, for example by respecting local customs and local people, and by being able to work with CSOs.[1028]

Testing Menski's theory, the above example shows that the implementation of legal pluralism has more nuances than he anticipated. Menski postulates that harmony will be attained if there is no conflict between norms of the four corners (international, national, customary and religious laws). However, based on my research, even in a situation where the norms are compatible with one another, conflict can still occur, as the role of actors – in this case UNHCR and IOM – was significant in weakening the Rohingya's enjoyment of the right to religious freedom.

4. *Actors' Contestation Over the Right to Work*

As discussed in Chapter 3, through their research into inheritance and property rights at the Nagari level, the Benda-Beckmanns shape our understanding of the relationship between *adat*, religion and state. They argue that *adat* and law

[1024] I-6 (n 740), I-19 (n 656) and I-10 (n 600).
[1025] I-28 (n 839).
[1026] I-7 (n 621), I-18 (n 641) and I-34 (n 840).
[1027]UNHCR, IGO Online Complaint Form <https://www.unhcr.org/igo-complaints.html > accessed 15 June 2020, and I-33 (n 632).
[1028] I-2 (n 594), I-23 (n 761) and I-28 (n 839). Report on activities of the Inspector General's Office in 2019 highlights three main categories of misconduct complaints related to: (i) fraud with financial implications (19 per cent); 1 (ii) sexual exploitation and abuse (15 per cent); 2 and iii) refugee status determination and resettlement fraud (13 per cent) committed by UNHCR staff members. ExCom,' Report on activities of the Inspector General's Office' Geneva, 7-11 October 2019) <https://www.unhcr.org/uk/5d5e89ea7> accessed 10 October 2020.

have been negotiated and formulated by the actors (e.g. *adat* and religious leaders) at the Nagari level. Using the lens of this approach I discuss the application of the right to work among refugees in the shelters in North Aceh and Langsa.

In the course of the thesis, I discuss how the lives of the Rohingya in the shelters are constrained by rules predominantly emanating from state law (the Directorate Immigration Decree No IMI.1409.IM.08.05 on the handling of illegal immigrants). In general, refugees are prohibited from working and their activities in the shelters is restricted. On the other hand, most of the actors understand that the right to work is recognised equally by international law and *sharia*. The interviewees from CSOs, central government and IOM are aware of the divergence of the rules of state law on one side, and international law and *sharia* on the other. As discussed in Chapter 5, this fact uncovers the limit of hospitality that the actors could offer to the Rohingya.

At the beginning of the Rohingya's stay in the shelters, interviewees from CSOs and local governments realised that it would not be possible to allow the Rohingya to leave the shelters.[1029] This could create tension between CSOs and local governments on the one hand, and with central government and international agencies on the other. Aware that the Rohingya were unhappy and bored in the shelters, the actors were trying to contest the Rohingya's application for the right to work. They realised that they could not treat the Rohingya in the same way as the Acehnese, as the latter could freely exercise their right to work; however, they were aware of the jobs that many Rohingya used to carry out as peasants in their country of residence, Myanmar. [1030]

As also discussed in the last section, local governments in Langsa and North Aceh, predominantly backed by CSOs, initiated programmes to teach the Rohingya how to grow plants and vegetables, and to raise chickens or farm cattle in Aceh.[1031] FG3-3 of local government explained that one of the reasons why the training was conducted was to prepare the Rohingya who wanted to live in Aceh. Similarly to an "inheritance consensus", which occurred as a result of contestation of some inheritance rules between *adat* law and *sharia*, local governments and CSOs challenged the prohibition of right to work for the Rohingya, and tried to negotiate and formulate the right

[1029] For example, I-10 (n 600) I-28 (n 839) I-30 (n 604) FG3-3 (n 578) and FG1-4 (n 620)
[1030] Khan: (n 452)
[1031] I-17 (n 556) I-7 (n 621) and FG3-3: (n 578)

to work for the Rohingya so that they could be employed as peasants. There were at least three reasons for this proposal: first, many Rohingya worked as peasants in their resident country, Myanmar; and second, this job would not create a burden for the state, since resources for planting were not used by the local governments (e.g., neglected local government lands). Training programmes were put in place; however, this plan was not successfully realised as there was no support from central government.

From the discussion above, we can conclude that the application of the right to work in a shelter setting in Aceh could be examined through the lens of the legal pluralism approach put forward by Benda-Beckmann and Benda-Beckmann. In a situation of legal pluralism, the actors negotiate and formulate the law in question. In this regard, the state law has clearly prohibited the right to work for the Rohingya; however local actors contested the absence of the right for the Rohingya. As a result, they negotiated and formulated the right to work for the Rohingya as the right to be a peasant in Aceh. However, this proposal could not be implemented as central government did not agree with the idea that the Rohingya should be allowed to stay in Indonesia.

D. Conclusion

This chapter analyses findings through the lens of TWAIL ideas and some approaches of legal pluralism. In connecting TWAIL ideas on historical emphasis to some of my findings, I have come to think critically about the role of the international refugee regime. As discussed above, the regime is characterised by (neo)colonialism in the way it others the CSOs and local actors, and concurrently undermines the roles of both customary and religious laws in managing the Rohingya in Aceh. Many local actors perceived the UNHCR and IOM as being unable to work with them, as they recognised only their own rules in managing the Rohingya. Paradoxically, their rules were not always able to solve problems (e.g., child marriage) that the Rohingya faced. On the other hand, local actors navigated through *adat* law and *sharia* to deal with the difficult situation they faced.

In line with the above analysis, rescue and help were offered by the Acehnese people and by local government personnel who shared with the Rohingya similar experiences as an oppressed people. This can be interpreted in light of Baxi's ideas on the importance of discourses of human suffering in the human rights arena,

and, concurrently the projection of vulnerable and poor people as the real authors and beneficiaries of human rights. As Baxi anticipates, the efforts of the Acehnese and local governments to raise awareness of the Rohingya's situation attracted the attention of a broader public, including the international community. This was initially undermined by the Indonesian Navy. Despite the failure to adopt local integration as a way to ameliorate the Rohingya's condition, local governments and the Acehnese made the voice of the Rohingya heard, in line with what Baxi highlighted in human rights discourses: "to give the voice to human suffering and ameliorate it".

Despite TWAIL scholars' critique of international law and its regimes, as highlighted in Chapter 2, the scholars have not been able to propose effective alternative solutions to the problems facing the international refugee regime -for example, finding a long-term solution for the Rohingya. Nevertheless, the TWAIL scholars' critique could be a starting point for creating a more just and responsive international refugee regime.

As has been discussed, I have chosen legal pluralism approaches to be tested against the case of refugee protection. First, Menski's theory introduced a plurality-focused definition of law that recognises three main sources of law: state, religion/ethics/morality, and society. Furthermore, the implementation of the right to work in the shelters of North Aceh and Langsa can be examined through the lens of the legal pluralism approach put forward by Benda-Beckmann and Benda-Beckmann. Similarly to the "inheritance consensus" in Minangkabau, as a result of contestation between state law, and international law and *adat* law on the right to work, the actors negotiated and formulated the right to work for the Rohingya as the right to be a peasant in Aceh As they were aware, it was not possible to claim the right to work for the Rohingya, and the complete interdiction on the Rohingya being productive in their lives was also not a choice. Lastly, the relationship between *adat* law, *sharia* and state law can be described as "complementary, equivalence, or superiority". However, the findings show that the relationship between *sharia* and *adat* law in the context of refugee protection in Aceh overlap.

Despite some underlying questions, I argue that some of the legal pluralism approaches presented are relevant to the discipline of refugee law. First, the coexistence and interaction of four sources of law, as put forward by Menski, is applicable in the context of Indonesia and other countries where religious and customary law are still effective and influential in people's everyday lives. Secondly, furthermore, Benda-Beckmann and Benda-Beckmann theorise the relationship between state law, *sharia* and *adat* law, and importantly this relationship causes

contestation between them; therefore they negotiate and formulate the law in question.

Chapter 8
Conclusion

The only person in my life that ever repeatedly questioned my patriotism was a senior central government staff member I interviewed. Having asked him about Indonesia's policy on refugees, he questioned me back about whether I prefer the wellbeing of refugees to that of the Indonesian people. The next challenge ahead is how to improve the attitude and the policy of the Indonesian Government towards refugees. As a lecturer, besides contributing knowledge, I think my next step should be to strengthen the network between academia and those who care about the fate of refugees in Indonesia and the Southeast Asian region.

(Reflection after the completion of thesis writing)

A. Introduction

In concluding this thesis, I highlight four points as the contribution of my thesis to refugee studies literature. First, I have developed novel empirical findings from an under-studied case study. Secondly, the empirical findings suggest an approach that is distinct from what is suggested within current (dominant) approaches to international protection, particularly in the SE region. Thirdly, my findings have implications for broader socio-legal scholarship, in particular the elaboration of TWAIL's critique, and our understanding of how legal pluralism works in practice. And fourthly, these findings and conclusions point to a range of further research opportunities to further test and elaborate analyses of the subject. In order to conclude each of these points, I will elaborate upon each of these points below:

B. Rohingya Refugee Crisis in Aceh: Under-Studied Case Study

Part of my contribution to the refugee literature is identifying and conducting an under-explored case study. When I started my study, there were few written studies on the Rohingya, specifically their experience in Aceh. I would like to frame the literature I found in two ways, first, academic analyses that see the rescues as exceptional and necessarily limited and secondly practitioner research that focuses primarily on the hardship of the journey. The first was Missbach's article on the facet

of hospitality: Rohingya refugees' "Temporary stay in Aceh".[1032] This article explores the Rohingya refugee crisis of 2015 and reveals two sides of hospitality, first is a spontaneous friendly welcome and secondly, the gradual increase of tensions at the same time. In the course of the time, there has been more scholarship conducting research about Rohingya in Aceh that I am part of[1033]. Contrast to the media coverage, the attention of these research is still low.

The limited resources available to the fishermen and local inhabitants did not determine or affect their offers of help, as helping the Rohingyas was for them part of their legal obligation.[1034] When they were asked whether they would still welcome the Rohingya in the future, they responded that they would do so happily.[1035] As have discussed in chapter 7, during the Covid-19 pandemic, Hundreds of Rohingya refugees stranded at sea were rescued by Acehnese fishermen both in June and September 2020.[1036] However, as McNiven and Missbach state, hospitality was not unlimited, due to the limited resources the states could offer, uneasy relations between hosts and guests during the Rohingya's stay in the shelters, and immigration controls over the shelters – all of which contributed, to some extent, to turning hospitality into hostility.

With regard the research that focuses on the hardship of the journey, I higlighted the research that was conducted by Amnesty International, based on interviews with Rohingya refugees.[1037] It uncovers the harshness of their journey, and their unpleasant experiences in the hands of the traffickers on the boats. For that reason, this research is aimed at reporting human rights violations suffered by the Rohingya during the incidents they experienced in the course of their journey.

With regards to my research, -as my substantial contribution will be discussed in part D is the implications of its finding for socio legal scholarship, -the focus of this study is the experience of those taking part in the rescue and providing aid. Understanding the location of these occurrences-Aceh- is very important. As discussed in Chapter 4, Aceh's strategic position at the entrance to the Strait of Malacca has contributed to commercial and cultural exchange with diverse societies of the world, for example Gujarat in India.

Aceh's location made it the first region within Indonesia and its neighbouring countries to accept Islam. Moreover, as has been discussed in chapter

[1032] Missbach: (n 467)
[1033] For example, Gleeson (n 54)
[1034] I-7: (n 621), I-24: (n 786) FG1-3: (n 632)
[1035] FG3-4 (n 775) and FG4-3 (n 551)
[1036] The Guardian: (n 485) and Voanews: (n 57)
[1037] Amnesty International: (n 471) and Thom: (n 543)

4, the Acehnese Sultanate became the producer of both sharia and adat law.[1038] Therefore, in the context of Aceh, the identity of the Acehnese is closely connected to *adat* and to their religion, Islam.[1039] Unsurprisingly, *adat* law and *sharia* have become their living law. Taking these facts into account, my research was understudied as it explores the use of the customary (*adat*) law in protecting the refugees in Aceh. The findings reveal that the role of *adat* law – both mainstream *adat* law and the *adat* law of the sea – was significant.

In addition, the findings represent an attempt to contextualise refuge protection within a landscape of legal and political features in Aceh; they reveal connections between the history of the Acehnese people's oppression under the Dutch and under Indonesian central governments, and their response to the Rohingya refugee crisis. This will be elaborated in the next section.

The findings suggest that we cannot underestimate the location itself, in which the refugees are stranded, then are rescued and helped by mainly local people. A study in a specific context into the protection of Rohingya refugees in a specific region such as Aceh adds a contribution in the literature. Taking into consideration that most of the world's refugees -around 90%- are situated in states that are not party to the Refugee Convention, and that these states, mostly Asian countries, are still very much connected to both their culture and religion, my study is worthy of attention. As has been discussed in chapter 3, in many of these countries, customary law and religious law have become their living law.

C. Distinct Approach to the Current Approach in Refugee Protection

The second contribution of my research, based on the empirical findings, is to suggest a different approach to those currently dominating the field of international protection. As discussed in Chapter 1, in dealing with the global problems of refugee protection, much refugee scholarship has been dedicated to ensuring that states comply with norms set out in the Refugee Convention, the 1967 Protocol, and other human rights instruments. These studies highlight "top-down" protection, suggesting that refugee protection originates from states or other legitimate bodies.

As discussed in Chapter 1, some research I cited highlights the significance of "local law" or a "bottom-up" approach in refugee protection. McConnachie reveals the ability of the Karen refugee community to maintain its harmonious life

[1038] De Beaulieu (no 456).
[1039] Salim: (n 494).

and to avoid conflicts in its camps in Thailand in spite of regulations put in place by the Thai Government. Likewise, Nah examines the Asian Pacific Refugee Rights Network, under which local civil society actors participate in norms entrepreneurship on refugee protection.[1040] In addition, Jones argues the importance of the development of local standards (law of asylum) to uphold refugee protection in South-East Asian countries.[1041]

In addition, the empirical findings reveal that people's understanding of the law is plural and complex. Moreover, the main driving force behind people protecting refugees is neither international nor national law. I argue that their plural and complex definition about law as a result of the importance of sharia and *adat* law in local actor's daily lives and concurrently reflects the diversity of the actors who took part in protecting the Rohingya refugees.

As discussed above, the people's perception of the law, as several interviewees make clear, is plural and complex (Chapter 6). Plural, as their definitions of law are not only "a set of rules emanating from states" but include *adat* law and *sharia*.[1042] Here are two examples of the definition about laws from a local inhabitant and a senior local government staff member:

> *The law the custom of the villagers. The custom in the understanding of all the villagers. These customs were made by all villagers.*[1043]
>
> *I am just an ordinary person who doesn't know much about law. I think we have already been there. We followed the law. I think that's all I know about law. It is the rule that we must follow and obey. Here in Aceh we know the so-called* sharia.[1044]

In the same vein, the definition of law is complex, as they perceive it to be not only the rules of the state, but also something that includes other spectrums, like justice, or a tool for social engineering, as highlighted by the I-28:

> "*But, in fact, the law is the power tool, the tool for ruling, to secure political, economic, and social interests for a certain group.* [1045]

These plural and complex definitions of law were mostly highlighted by local people, and actors from CSO backgrounds who had high levels of education-bachelor's degrees and above- and experience in advocacy.

[1040] Nah (n 64)
[1041] Jones (n 65)
[1042] I-7: (n 621) and I-22: (572).
[1043] I-12 (n 750).
[1044] I-7 (n 621).
[1045] I-28: (n 839).

As mentioned previously, the findings revealed that the predominant driving force was neither international law nor national law. I classified "non-legally driven accounts" that include personal, humanitarian, and professional accounts, whereas other, "legally driven", accounts comprise *sharia*, *adat* law, *adat* law of the sea, and human rights. Furthermore, the accounts of most actors were multiple- many interviewees highlighted more than one account that drove their actions in protecting the Rohingya refugees. These findings also revealed that multiple accounts were the result of multiple identities. For example, a fisherman could be a devout Muslim as well, or a senior local government official might be bound by *adat* law. International law was highlighted as a driving force by only senior central government staff, and staff members of two CSOs.

Interestingly, the multiple accounts delivered by most actors I interviewed, turned out to be powerful motivating forces behind local actors' persistent actions to give protection to the Rohingya refugees. The findings revealed that only local actors aspired to rules emanating from *adat* law, *adat* law of the sea, and *sharia*. *Adat* law and *adat* law of the sea have been effectively used to protect the Rohingya in two ways: during the first phase of the rescue by the fishermen, and in the second phase, as discussed in the Chapter 5, with the immediate help of Acehnese people on the shore, and through the assistance they provided in the shelters.

In regard to the rules of the *adat* law of the sea, these were invoked by the fishermen in rescuing the refugees. These rules guide the steps to be carried out in rescuing people in distress. One important rule is that if Acehnese fishermen find an individual or several people in distress at sea, they must rescue them immediately. The findings reveal that, in both North Aceh and the City of Langsa, fishermen spotted two boats nearly sinking due to their damaged engines.[1046] It is a common procedure, applied on the ground, that Acehnese fishermen who witness a sinking boat and/or people in distress at sea, report it to the *panglima lhok* (the sea commander in sub district).

Rescue is not a choice, but rather an obligation, as sanctions will be imposed if they do not carry it out.[1047] Therefore, this help is not only a personal choice, but also an obligation towards their fishery community. The fishermen rescued the Rohingya refugees and brought them ashore. Obligation also applies to searching for the corpse of a fisherman or any person believed to have drowned at sea, until a day after they went missing.[1048] Moreover, after a corpse is found, fishermen must bring

---

[1046] FG2-1: (n 540) and FG2-3 (n 542)
[1047] Abdullah *et al*. (n 549) and I-5: (n 761) and FG4-3: (n 551).
[1048] Abdullah *et al*. (n 549), I-25: (n 748), FGD 1-2: (n 736) and I-15: (n 563).

it to the land. Introduced during Iskandar Muda's Sultanate in the 16th century, *adat* law of the sea has been preserved through the fishing community and passed down by their families through the generations.

1. The Use of 'Pamulia Jamee' Norm

With regard the use of *adat* law, an important rule obeyed by the local people is *pamulia jamee*, which literally means "honouring the guest". As mentioned previously, contrary to other resources in the literature,[1049] one of my findings in exploring widespread local participation was that *pamulia jamee* is treated as a legal obligation. This norm has been preserved through the people's family upbringings, and in consistent *adat* practice.

Pamulia jamee has become part of Acehnese culture, as it is commonly applied in the population's daily lives, especially when they receive guests in their own houses. I highlight again an explanation from one of the participants to describe *Pamulia jamee:*

> *Whenever guests drop by, we must serve them the best we can. We give them fish- any fish will be served at the table, although at the very same time we only serve "salted fish" (cheaper fish) for our own family. But, well, that's the real character of the Acehnese. Guests may not leave before they eat what we serve them.*[1050]

This norm obliges the Acehnese to give the best even though it means they have to make sacrifices. When I asked the participants about the meaning of "guest" -should it include those who arrive uninvited?- they anonymously agreed that the meaning of guest includes every person who come to the Acehnese. When I specified the question to the Rohingya, they said that the Rohingya refugees were also considered as guests. This is similar to my experience. As discussed in chapter 6, I spent a few days living in a *panglima laot*'s house, and was treated like a queen. The wife of the *panglima Laot* happily served me delicious food three times a day, and would not let me to help her with household chores.

The implementation of the *pamulia jamee* norm was first seen during the immediate gathering of local people to help on the shore. Without having been commanded by any governmental institution, local inhabitants spontaneously set up and ran community kitchens for feeding the refugees. Local inhabitants not only fed

---

[1049] Missbach: (n 467)
[1050] FG1-3: (n 632).

them, but also let them clean themselves in their respective houses, and gave them proper clothes.

The norm of *pamulia jamme* was also applied by senior local government staff members in the ways they tried their utmost to handle the Rohingya refugees in Aceh. In trying to achieve this goal, they were keen to use their discretionary powers to overcome any problems. Moreover, they also breached state rules, for example, using unoccupied central government buildings to accommodate the Rohingya refugees. I compared these officials to staff from other provinces in Indonesia, and it is most unlikely that they would have taken the same measures, as they would obey only national law.

The findings also revealed that many CSO volunteers who were Acehnese, or who lived in Aceh, aspired to an *adat* law account. As for senior staff, the volunteers would work beyond their responsibilities, as they chose to spend day and night in the shelters, often 24 hours a day, so that they would be available if the Rohingya needed help. One volunteer said that he did not want to be paid by the CSO that had hired him. Despite the closure of the shelters, it has been revealed that the volunteers kept in touch with the Rohingya refugees who were in Malaysia or been settled in the US or Canada.

2. The source of Pamulia Jamee Norm

Pamulia jamee has become a legal obligation to the local people, and, interestingly, the findings underlined that its origin is Islam.[1051] Some participants explained that the *pamulia jamee* has been practised since the era of the prophet Muhammad, when the *muhajirin* (those who migrated from Mecca to Medina, including the prophet himself) were treated very well by the *anshar* (those who accepted them) as they were fled to Medina as an oppressed people. This story has been told by several interviewees and some participants in the FGs.

I have also explored the meaning of *pamulia jamee* in Islam through secondary sources. First, I found a verse in the Quran (Chapter 59:9) that recognises the noble act showed by the *anshar* as they prioritised the *muhajirin* over themselves. Secondly, the *hadith* (a secondary source of *sharia*) highlights how hospitality (honouring a guest) is not only a duty towards the guest, but also an obligation to God, as the act of honouring the guest is a manifestation of belief in God.

The example of the *pamulia jamee* norm shows how *adat* law and *sharia* overlap. *Pamulia jamee* is recognised in these non-state-made laws. As a result, it

[1051] I-24: (n 786) and FG1-3: (n 632).

affects the treatment of Rohingya refugees in Aceh, as the Acehnese believe that honouring a guest is an obligation emanating from *adat* law as well as from *sharia*. The norm of *pamulia jamee*, or honouring the guest, is not only about the obligation to receive guests, but includes treating them well, and letting them stay for as long as they need.

Besides *pamulia jamee*, with regard to *sharia*, there is another rule that has been referred to by the interviewees, a verse of the Quran (verse 4: 32) which states that if anyone saves a life, it is as if he saved the life of the whole of humanity. The interviewees believed that saving even only one Rohingya was important, as this reflected how one life is as precious as many lives.

3. *Significant role of CSOs*

Besides focusing on non-state made law that makes this thesis distinct from the mainstream of refugee scholarship, I also highlight some unusual roles taken by the actors during the Rohingya refugee crisis. As described in Chapter 2, there are two main roles for UNHCR in refugee protection: supervisor of the Refugee Convention and its 1967 Protocol, and a provider of protection and support for refugees. In regard to the provider-of-protection role, this mandate was given in the course of the agency's work, and one of the tasks it was given is to design and manage camps or shelters for refugees.

Unlike situations where UNHCR practises this common role, in the context of the Rohingya refugee crisis, UNHCR refused to take responsibility for building a shelter, as it did not have funding for this. As has been discussed that Global South countries have given their contributions through some ways, for example, CPA (in response to Vietnamese refugees), their funding to UNHCR and Australia's aid through IOM. However, with regards the Rohingya crisis in Aceh and SE Asian region, Global North countries have not contributed significantly in handling the crisis. Unexpectedly, a CSO in North Aceh and several CSOs in the City of Langsa had initiative and the funding to build shelters for the Rohingya refugees. This reality is completely different to what has been understood by refugee scholarship; CSOs have taken over UNHCR's responsibility for building the shelters.

In addition, CSOs also filled gaps through programmes and activities they initiated in the shelters. I will discuss an example of such CSO initiatives: IOM was responsible for teaching the Rohingya refugees the English language in a shelter in Langsa. However, IOM's approach to teaching was not successful, as they used English as an introduction. One of the interviewees who was also a volunteer received a complaint from a Rohingya who could not understand it. As the volunteer

was spending a lot of time with the refugees, he had been learning the Rohingya language for few months, and could therefore take the initiative to teach English to the Rohingya by using their own language as an introduction.

Theoretically, as discussed in Chapter 2, Indonesia is not a party to the Refugee Convention, therefore, UNHCR has been given the mandate of governing the protection of refugees. However, this was not the case on the ground. Local governments were the leaders in managing the Rohingya refugees in Aceh. As there were no definite rules in place for this task, the City of Langsa applied what was dubbed the "Langsa Convention" -unwritten rules to guide the actors in handling the Rohingya. The essence of the Langsa Convention covered three important points: equality between the actors involved, the use of resources owned by local government in response to the needs of the refugees, and the fulfilment of basic rights for the Rohingya.

With regard to the role of central government, this has changed over time; it was opposite to majority of actors made at the beginning of the crisis, and became insignificant over the course of the situation. As has been discussed, before the boats were finally rescued by the fishermen, the Indonesian Navy had sent them into Malaysian territory. As national and international communities supported and praised the rescue carried out by fishermen and local inhabitants, the central government gave permission for the Rohingya to stay in Aceh for a year.

During the time the Rohingya stayed in Aceh, central government focused on security aspects to ensure the application of its immigration regime. This reflects their obedience towards the immigration rules that still consider the Rohingya as illegal immigrants. Therefore, as discussed in Chapter 6, it is not surprising that the perception of law for all central government senior staff is were state-oriented/formal.

From the discussion above, the findings suggest that the dominant approach to refugee protection is not correct. Refugee protection in Aceh was not mainly shaped by international law or national law, but rather by *adat* law and *sharia*. The multiple accounts that the local people hold manifest into actions or measures that strengthened refugee protection on the ground.

D. The Implications of the Findings for Broader Socio-Legal Scholarship

Part of the contribution of this research are the implications of its findings for socio-legal scholarship, in particular the elaboration on TWAIL's critique, and the understanding of how legal pluralism works in practice. With regard to TWAIL's critique, two issues were addressed. First, the findings affirm the continuing legacies

of colonial history. In other words, the past colonial era continues to shape the current international refugee regime. Secondly, the emphasis on human suffering, as put forward by Baxi. Concerning the understanding of legal pluralism in the practice of refugee protection, I have tested the findings against legal pluralism approaches.

1. Further developing of TWAIL's Critique

Connecting the international refugee regime to colonialism, as discussed in Chapter 3, Peterson argues that the past colonial era continues to shape the current international refugee regime. The findings suggest that the current regime maintain its colonial characteristics in two ways: first, by "othering" the CSOs and other local actors, and secondly, by undermining the roles of *ada*t law and *sharia* in refugee protection. On the contrary, these living laws contributed to solving the problems on the ground.

Basically, the CSOs were not prohibited by Indonesian law from taking part in refugee protection in Indonesia. However, despite their significant contribution (e.g. in building the shelters), they were not completely accepted in the shelters by staff members of both UNHCR and IOM. Conversely, staff members of UNHCR and IOM underestimated CSOs' involvement as the international agencies' duty was to protect the refugees. However, the findings revealed that the CSOs' role was significant, as described by one of their senior staff members in North Aceh:

> *But Aceh was unique. There were no NGOs that could play such roles abroad. This reality made UNHCR and IOM upset. They (UNHCR and IOM) thought that they were the only ones capable of tackling the refugees. That is what put us into a sharp argument. Until then, we talked to an NGO which was close to us, and they said it couldn't be that way.*[1052]

The UNHCR's and IOM's superiority towards CSOs became one of the problems in North Aceh that shaped relations between the actors, worsened by the head of the shelter not being fully responsible for the shelter management. In the context of the City of Langsa, the leadership of the (de facto) head of shelter could mitigate the dominance of the UNHCR and IOM over other actors that got involved in the shelters.

The superiority of IOM and UNHCR towards other actors can be understood through Glen Peterson's idea that the international refuge regime is not shaped only by its humanitarian response to population displacement; it is also deeply informed by continuing legacies of colonial history, one of which is the Western construction of non-Europeans as "others".

[1052] I-7: (n 621).

The superiority of the UNHCR and IOM raised questions on how to hold both to account (Chapters 2 and 7). The non-compliance of UNHCR and IOM staff to their own rules, and also their attitude of superiority towards the refugees or other actors, have been highlighted not only by this research, but also through previous researches. In order to overcome this situation, the need to hold UNHCR to account as an implementer of the Refugee Convention, for example, is pertinent. However, many interviewees doubted UNHCR and IOM would be held to account, as they are international organisations. Therefore, it would not be easy for the actors to supervise them, where some interviewees recommended the use of a forum between UNHCR representatives in Indonesia and NGOs to address concerns and inputs.

The findings reveal that, besides being arrogant, UNHCR member staffs have underestimated the implementation and roles of both *adat* law and *sharia* in solving problems on the ground. UNHCR staff also questioned the local governments' policy of separating men and women refugees into different shelters in North Aceh.

Furthermore, UNHCR staff considered that only international law or state law applied in the shelters, as revealed by one of interviewees with regard to UNHCR's refusal to facilitate child marriage between the Rohingyas:

> *The number of Rohingyas kept increasing. They delivered more babies here. They got married here. We don't know how many couples got married. This made big news in the international world, because we put into marriages those girls whom they would think of as under age. They were just 16 and 14 years old; UNHCR said no to this kind of marriage*.[1053]

UNHCR disagreed with the local governments, which had facilitated the Rohingyas' child marriages, as these marriages did not accord with international law's minimum age for marriage. However, UNHCR had no solutions other than to leave the problems to local governments to resolve. UNHCR ignored the fact that either *adat* law or *sharia* could regulate the problem their own way. Underestimating the role of *adat* law and *sharia*, UNHCR counted only on international law and its regulations in handling the refugees. This is in line with TWAIL's ideas on the continuation of the colonial legacy within the international refugee regime, mainly through its Eurocentric mindset.

TWAIL's second idea, explored in Chapter 7, was based on Baxi's theories on the importance of human suffering in human rights discourse, which suggest that vulnerable and poor people are concurrently the main authors and beneficiaries of

[1053] I-7 (n 621).

human rights. As a result, the experiences and struggles in their lives suggest that they should address their human rights concerns so that they can ameliorate them.

Contextualising Baxi's idea to the Rohingya refugee crisis, the findings showed that local people's past experience under Dutch colonial and Indonesian central government oppression, and their displacement in Malaysia, became driving forces in rescuing and providing aid to the Rohingya. Similarly to what Baxi suggests, local people have not only given their help, but have also improved the conditions of the Rohingya in Aceh. Due to the impossibility of any repatriation option, local people, including the local governments, have suggested the Rohingya stay permanently in Aceh.

2. Refugee Protection Through the Lens of Legal Pluralism Approaches

As has been discussed, I have chosen legal pluralism approaches to be tested against the case of refugee protection. First, Menski's theory introduced a plurality-focused definition of law that recognises three main sources of law: state, religion/ethics/morality, and society. Furthermore, the implementation of the right to work in the shelters of North Aceh and Langsa can be examined through the lens of the legal pluralism approach put forward by Benda-Beckmann and Benda-Beckmann. Similarly to the "inheritance consensus" in Minangkabau, as a result of contestation between state law, and international law and *adat* law on the right to work, the actors negotiated and formulated the right to work for the Rohingya as the right to be a peasant in Aceh As they were aware, it was not possible to claim the right to work for the Rohingya, and the complete interdiction on the Rohingya being productive in their lives was also not a choice. Lastly, the relationship between *adat* law, *sharia* and state law can be described as "complementary, equivalence, or superiority". However, the findings show that the relationship between *sharia* and *adat* law in the context of refugee protection in Aceh overlap.

Menski explored the law(s) in significant detail; however, he did not discuss the position of a legal subject in a situation where legal pluralism occurs. As discussed in Chapter 3, it is most likely that subjects of a law mainly abide by the law they belong to. However, the empirical findings suggest that people (legal subjects) themselves negotiate. When they encounter circumstances of legal pluralism, they do not necessarily and spontaneously become passive recipients of

various laws.[1054] Similarly, they may be active actors who consciously adopt or obey a particular law.

The findings revealed that both a fisherman and a leader of a village were motivated not by the law they belong to or abide by -*adat* law of the sea and *adat* law- but by Islamic law. A fisherman, interviewed on his aspirations to rescue, did not mention *adat* law of the sea as his reference, but instead *sharia*, saying:

> *We could not ignore them according to the religion. We couldn't be like that because they would die. We would bear the sin of those people*.[1055]

In contrast to other fishermen that were motivated by law of the sea, this interviewee mentioned his connection to religion. Despites his membership of the fishery community, he demonstrated his obedience to religion. He refused to commit "sin". Furthermore, by following the rules of Islam, he believed that he would have a peaceful life.[1056] His belonging to religion was shaped by the fact that he regularly attended Islamic classes, so the values and norms he received were internalised. As discussed in Chapter 7, this example does not reflect the majority of fishermen, since there are Acehnese fishermen who did not take part in Islamic classes, or practise their religion as revealed through the interviewees and FGs. However, in the context of Aceh, it is not surprising that a fisherman is also a devoted Muslim.

Similarly, the connection to religion was also highlighted by one of the leaders of a village in North Aceh: "*It is because of humanity, Islam, right?*"[1057] As discussed in Chapter 7, as a village leader, his responsibility is to preserve the implementation of *adat* law at the village level. Interestingly, leaders of a village in Aceh are obliged to ensure the application of *adat* law and to preserve it. For example, they are given a mandate by *Qanun* law to decide on a wide range of cases that includes private cases (e.g., disputes in marriage and on seclusion) and criminal cases (e.g., petty theft, defamation, and quarrels in a market) at village level. Similarly to the fisherman above, this interviewee's Islamic view was also shaped by the fact that Islamic activities have become part of village activities. He explained that there was routine Islamic teaching after *Maghrib* (the fourth prayer) for about 30 minutes each day in *Meunasah* (village meeting hall).

Furthermore, due to the significant influence of international law, Menski revised his triangle of legal pluralism into his kite model. He recognised that these

---

[1054] Salim: (n 451).
[1055] I-20: (n 560).
[1056] I-20: (n 560).
[1057] I-13: (n 751).

four law(s) coexist and interact (legal pluralism) in a given context. In order to prevent any conflict in the society, he argued that the recognition of all four corners is a must, while the domination of any one of the corners should be valid only in exceptional circumstances.[1058] Therefore, Menski argued, harmony could be attained between the four corners (laws) if none of the corners dominated. However, the findings suggest that the harmony between the corners is not completely shaped by the rules that coexist, but also by the roles of the actors.

Despite some underlying questions, I argue that the above legal pluralism approaches are relevant to the discipline of refugee law. First, the coexistence and interaction of four sources of law, as put forward by Menski, are applicable in the context of Indonesia and other countries where religious and customary law are still effective in and influential on people's everyday lives. Furthermore, Benda-Beckmann and Benda-Beckmann's view on the relationship between state, religion and custom, especially with regard to the contestation that resulted from those relationships, is significant; their research, in the context of Minangkabau, suggests that such contestation resulted in what is called "heritance consensus", whereas in the context of refugee protection, the actors offered a new concept of the right to work for the Rohingya which was limited to the peasantry. Lastly, echoing Arskal on the overlapping relationship between *adat* law and *sharia*, more relationships could take place in the type of situation of legal pluralism that Benda-Beckmann and Benda-Beckmann note as "complementary, equivalence and superiority".

E. The Direction for Future Research

This research revealed the importance of both *adat* law and *sharia* in protecting the Rohingya in Aceh. The research was conducted in the context of Aceh, which historically, politically, and sociologically is not similar to any other province in Indonesia. However, research into a similar situation, where legal pluralism occurs in a hosting state like Indonesia (i.e., not party to the Refugee Convention, and lacking national laws on refugees), might be conducted in order to reveal or confirm more about the use of law(s) other than state law. This research, however, does not

[1058] Menski (n 250) 185, 190.

suggest that state law is no longer important, or that it could be replaced by other law(s). Instead, it informs us that "bottom up" protection is effective in protecting refugees.

Besides conducting research about legal pluralism on refugee protection, future research could be conducted on the role of philanthropic religious institutions/CSOs in protecting refugees. This research revealed that despite the absence of regulation on the role of third parties (like CSOs) in managing refugees, the philanthropic background role of the CSOs was important. This research was aimed at investigating their sustainability (in terms of financial support they receive), and their agenda in protecting refugees.

Since many CSOs taking part in refugee protection are FBO, research might examine FBO and the motivations of its member staffs in providing aid to the refugees; as noted by Qasmiyeh, member staffs might proselytise the refugees they help, as the relationships between them are unequal. Future research might also examine the possibility of Indonesian communities – individually and collectively – taking part in refugee protection, given the fact that many refugees, including the Rohingya, live outside the detention or community houses funded by IOM.

In addition, one of the problems is the complexity of implementing legal pluralism on the ground, exacerbated by the absence of effective supervision of international agencies (i.e., the UNHCR and IOM). Therefore, future research might be conducted into the supervision of international agencies (e.g., the UNHCR and IOM) in countries non-signatory to the Refugee Convention. This research was also aimed at analysing the role of these organisations in protecting (or not) the refugees, and looked at the possibility of supervision of these organisations.

As this thesis could not interview senior UNHCR officials or staff who had experience of the Rohingya refugee crisis, future research would be important in order to get their views on the involvement of other actors involved in crises, and in the Rohingya refugee crisis itself.

In addition, future research that compared the incidents in 2015, 2018 and 2020 would be important in order to map the similarities and differences between these three incidents. Similarly, this future research reveals the impact of the Covid-19 pandemic in handling the Rohingya refugee crisis in Aceh; it is aimed at improving the response to future incidents.

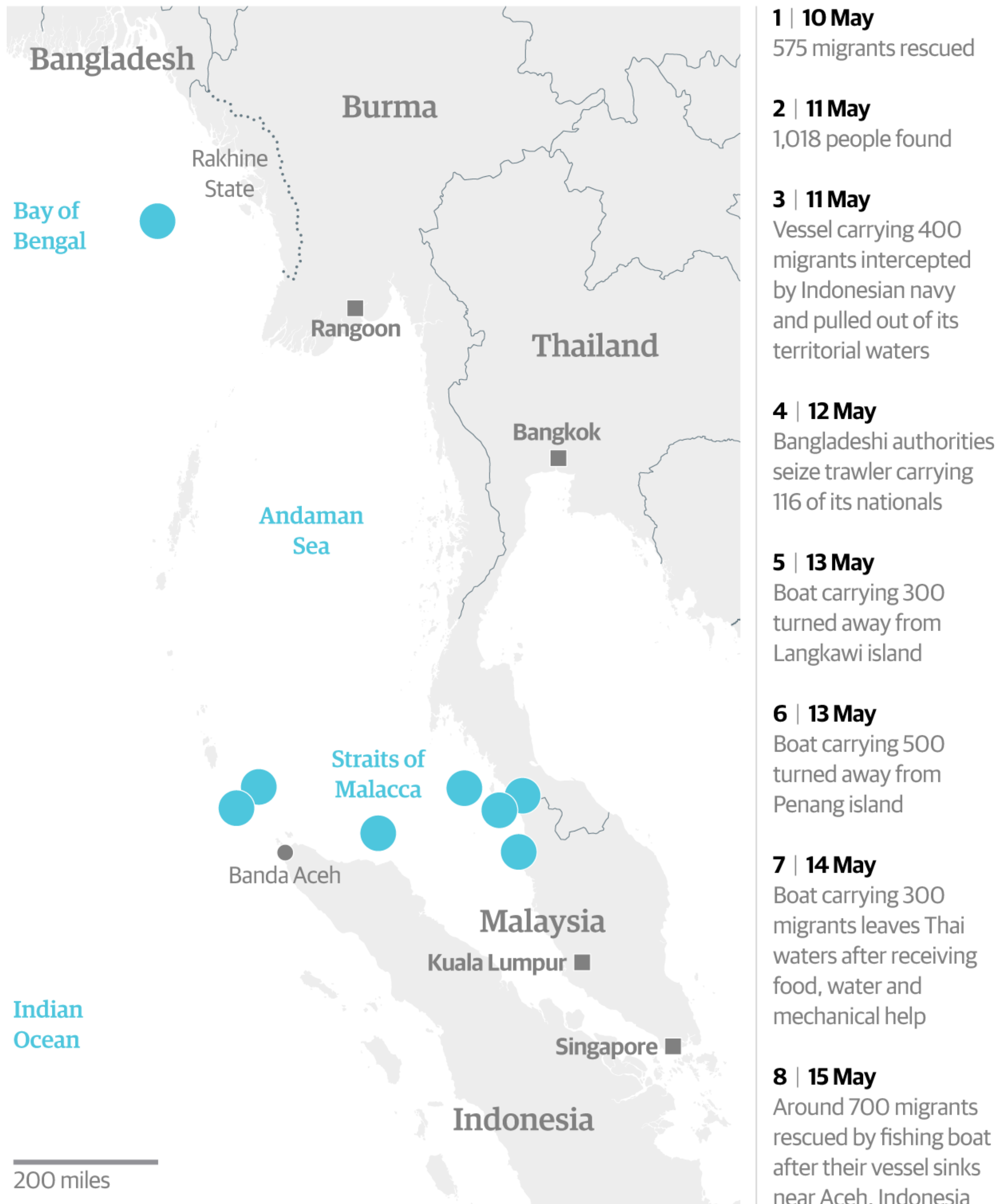
Lastly, as a response to the arrival of the Rohingya in 2015, the Government have adopted the Presidential Decree in 2016 (Chapter 4). It is important to evaluate the implementation of this decree in the context of this research. The regulation has not been fully implemented. On the other hand, refugees (including the Rohingya)

had been kept stranded on boats in Aceh in 2017 and in 2020. A review is important in the context of the above explanation on the importance of defining NGOs' rights and obligations in refugee protection. Similarly, due to the persistence of central government in adopting an Act on refugees, future research about the possibility of adopting local law (*Perda* or *Qanun*) in protecting refugees might be important to examine.

This thesis research has been a journey that has brought me to the first-hand experience of the role of the custom and religion in welcoming the 'uninvited guest', which is the Rohingya refugees in Aceh. Similarly, this research also witnessed the central government's reluctance on protecting the refugees as they assumed the protection of one refugee will sacrifice one Indonesian at the same time. Taking into consideration these points, I argue that there would be a need to develop a local Indonesian scholarship that draw upon local perspectives and traditions on forced migration. Hopefully, I would be part of those who taking part into this goal.

Appendices

Appendix 1: Aceh Map



Source: the Guardian.Com

Appendix 2

Interview Guide for Participants

This is the interview guide for participants; most of them had experience in refugee protection during the 2015's Rohingya Refugee Crisis.

The following questions are intended as a guide. If needed, the researcher will ask follow-up questions and to clarify responses. All interviews should be audio-recorded and English transcript produced which makes reference to these questions.

The interview guide is organised into clusters of questions. Each cluster will have a theme, which will generally be the same for each participant.

A. **Experience in response to the Rohingya Refugees Crisis:**

1. Would you please tell me about your role during the 2015's Rohingya Refugee Crisis? What did you do? What the challenges have you faced in helping Rohingya refugees? What did you do to overcome it?
2. Would you please tell me about your organisation's experience during the 2015's Rohingya Refugee Crisis? What did your organisation do? What the challenges have your organisation faced in helping Rohingya refugees? What did your organisation do to overcome it?
3. What are the role of the IOM during the 2015's Rohingya Refugee Crisis? Would you please tell me about your experience working together with them?
4. What are the role of UNHCR during the 2015's Rohingya Refugee Crisis? Would you please tell me about your experience working together with them?
5. What are the role of central government during the 2015's Rohingya Refugee Crisis? Would you please tell me about your experience working together with them?
6. What are the role of local government during the 2015's Rohingya Refugee Crisis? Would you please tell me about your experience working together with them?
7. What are the role of CSO's during the 2015's Rohingya Refugee Crisis? Would you please tell me about your experience working together with them?
8. What are the role of fishermen and local inhabitants during the 2015's Rohingya Refugee Crisis? Would you please tell me about your experience working together with them?

B. The ideas of the Law and the Role of law in response to the Refugees Crisis

9. Why did you get involved in refugee protection during the 2015's Rohingya Refugee Crisis? For what reasons that you participate in refugee protection during the 2015's Rohingya Refugee Crisis?
10. Why did your organisation get involved in refugee protection during the 2015's Rohingya Refugee Crisis? For what reasons that your organisation participate in refugee protection during the 2015's Rohingya Refugee Crisis?
11. In your opinion, what drives fishermen and local inhabitants to give refugee protection?

12. What do you understand about law? How would you define it?
13. Do you think that law can also be defined broadly/more complex? If yes, can you please explain it?
14. What do you think the law will consider to fishermen's help towards Rohingya refugees?
15. What do you think about the role of local law (Qanun), national law, international law and international regulations in response to the 2015's Rohingya Refugee Crisis?

C. Autonomy and Law

16. How do you think that the status of Aceh has affected your organisation in response to the Refugee Crisis?

D. Supervision of International Agencies

17. Are you aware of the activities of UNHCR in Indonesia? What are their activities? Should UNHCR strengthen their role in refugee protection in Indonesia? If yes, in what ways it can be done?
18. Are you aware of the activities of IOM in Indonesia? What are their activities? Should IOM strengthen their role in refugee protection in Indonesia? If yes, in what ways it can be done?

E. Long-term Solutions for Rohingya Refugee

19. Has there any solution been made for Rohingya refugees? If yes, what do you think about it?
20. What do you think the most viable solution for Rohingya refugees?
21. What do you think the role of developed countries in protecting refugee?

F. Possible Avenue for Future Refugee Protection

22. What should the actors do the government, International Organisations, NGOS and local inhabitants do to better protect the refugees?
23. Do you think that local government should make a local law (Perda) to better protect refugee?

Glossary

Hukum Adat/ Adat law: Customary law

Darul: State

Dayah: Religion-based education institution

Gampong: Village

Hadith: The record of the traditions or sayings of the prophet Muhammad

Imuem chiek: Religious leader of a district

Imuem meunasah: Religious leader of a village

Imam mukim: The district leader

Kadi: Judges in family law

Keutchiks: Village leaders

KUHP (Kitab Undang-Undang Hukum Pidana): Indonesian Criminal Code

Mahkamah Syariah Islam: Sharia Court

Majelis Permusyawaratan Rakyat (MPR): People's Consultative Assembly

Majelis Permusyawaratan Ulama: Consultative Council of *Ulama*/Islamic scholars

Meunasah: A centre of *adat* and religious activities in the *gampong*/village

Musyawarah: Consultation process

Pamulia jamee: Honouring the guest

Pancasila: The official philosophical foundation of the Indonesian state. It consists of two Sanskrit words: *panca* meaning five and *sila* meaning principles

Panglima laot lhok: Traditional marine leader in a sub-district

Panglima Laot: Sea (traditional) marine leader

Pawing glee: The leader in forestry

Penghulu: The administrator of marriage

Peradilan Adat Gampong: Village Adat Court

Peradilan Adat Laot Lhok: (Adat Court of the Sea) in sub-district level

Peradilan Adat Laot Kab/Kota (*Adat* Court of the Sea) in regency level

Peradilan Adat Mukim: Adat Mukim Court /sub-district level

Qanun: Local law in Aceh which is made by local parliament and local government

Riba: *usury*

Sharia: Islamic law

Ulubalangs: Territorial chiefs

Ulama(s): Islamic scholar(s)

Bibliography

Primary Resources

International Regulation

League of Nations, '*Convention of 28 October, 1933 Relating to the International Status of Refugees*' Treaty Series Vol. CLIX No. 3663 <http://www.refworld.org/docid/3dd8cf374.html> accessed 8 July 2020

UNHCR 'The Statute of the UNHCR', <https://www.unhcr.org/3b66c39e1.pdf> accessed 14 July 2020

UNHCR, 'The Refugee Convention' <https://www.unhcr.org/uk/1951-refugee-convention.html> accessed 15 October 2020

UNHCR, 'The New York Declaration for Refugees and Migrants" < http://www.unhcr.org/584689257.pdf> accessed 30 October 2018

United Nations Treaty Collection, 'Constitution of the IRO', <https://treaties.un.org/doc/Treaties/1948/08/19480820%2007-01%20AM/Ch_V_1p.pdf> accessed 10 July 2020

United Nations,' Vienna Convention on the Law of Treaties of 1969' < https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf> accessed 17 October 2018

Indonesia Regulation

Aceh Provincial Government, *Qanun* No 6 Tahun 2014 tentang Hukum Jinayat (*Qanun* No 6 of 2014 on Criminal Law) <https://www1-media.acehprov.go.id/uploads/Qanun_Aceh_Nomor_6_Tahun_2014_tentang_Hukum_Jinayat.pdf> accessed 12 November 2020

Aceh Provincial Government, *Qanun No 10 Tahun 2008 tentang Lembaga Adat'* (*Qanun* No 10 of 2008 on *Adat* Institutions) Aceh Provincial Government (Banda Aceh, 2008) <https://www1-media.acehprov.go.id/uploads/qanun_aceh_no_10_tahun_2008.PDF> accessed 12 November 2020

Dewan Syariah Islam (Sharia Council), '*Qanun* No 10 Tahun 2002 tentang Peradilan Syariah Islam' *(Qanun* No 10 of 2002 on the Sharia Court) <http://dsi.acehprov.go.id/wp-content/uploads/2017/02/*Qanun*-Propinsi-Nanggroe-Aceh-Darussalam-Nomor-10-Tahun-2002-Tentang-Peradilan-Syariat-Islam.pdf> accessed 12 November 2020

Komisi Informasi Pusat Republik Indonesia (Information Commission of Republic of Indonesia) Undang-Undang No.48 Tahun 2009 tentang Kekuasaan Kehakiman (Act No 48 of 2009 on Judicial Powers) Komisi Informasi (Commission of Information) <https://komisiinformasi.go.id/?p=1807> accessed 10 November 2020

Ministry of Foreign Affairs', 'Undang-Undang No 37 Tahun 1999 tentang Hubungan Luar Negeri' (Act No.37 of 1999 On Foreign Affairs) <https://pih.kemlu.go.id/files/UU-No.37.1999_-tentang-Hubungan-Luar-Negeri.pdf> accessed 19 October 2018

Majelis Permusyawaratan Ulama, '*Qanun* No 2 Tahun 2009 tentang Majelis Permusyawaratan Ulama' (*Qanun* No 2 of 2009 on the Consultative Council of Ulama) <https://mpu.acehprov.go.id/index.php/ news/read/2014/04/28/6/mpu-aceh-bahas-penerapan-qanun-aceh-nomor-2-tahun-2009.html> accessed 12 November 2020

Mayor of Langsa Decree No 327/460/2015 on the Formation of Taskforce for Handling Asylum Seekers in the City of Langsa

North Aceh Regent Decree No 100/442/2015 related to the change in North Aceh Regent Decree No 100/355/2015 on the Formation of Taskforce for Handling Asylum Seekers in North Aceh Regency

The Constitutional Court of the Repiblic Indonesia, 'The 1945 Constitution of the Republic of Indonesia' <https://www.mkri.id/public/content/infoumum/regulation/pdf/uud45%20eng.pdf> assessed in 10 October 2019.assessed in 10 October 2019

Official Publication

BPPS Aceh, 'Jumlah Penduduk Provinsi Aceh Menurut Kabupaten Kota Tahun 2017-2019' (Acehnese Population 2017-2019) Aceh Civil Registry Office, (Banda Aceh, 2019) < https://aceh.bps.go.id/statictable/2020/02/24/247/jumlah-penduduk-provinsi-aceh-menurut-kabupaten-kota-tahun-2017-2019-.html> accessed 10 November 2018

IOM Report, 'Bay of Bengal and Andaman Sea Crisis'<https://www.iom.int/sitreps/bay-bengal-and-andaman-sea-crisis-response-situation-report-august-2016> accessed 16 August 2019

The City of Langsa Government, '*Laporan Relokasi Imigran*' ('Report on Relocation of Immigrants') (City of Langsa, August 2015)

The Office of the High Commissioner for Human Rights, 'Report of the Independent International Fact-Finding Mission on Myanmar' (OHCHR, 12

September 2018) <https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf> accessed 19 October 2018
UNHCR Indonesia, ‘Response to the Rohingya Refugees Situation in Aceh and North Sumatera’<https://www.refworld.org/docid/58208e224.html> accessed 9 August 2019

UNHCR Indonesia, ‘UNHCR in Indonesia’ (December 2019) <https://www.unhcr.org/id/en/unhcr-in-indonesia#:~:text=At%20the%20end%20of%20December,the%20population%20are%20Afghan%20refugees>Accessed 15 October 2020

UNHCR report, ‘UNHCR Indonesia: Response to the Rohingya Refugees Situation in Aceh and North Sumatera’ <https://www.refworld.org/docid/58208e224.html> accessed 16 August 2019

UNHCR Global Report 2019, <https://www.unhcr.org/globalreport2019/#:~:text=The%20number%20of%20people%20of,million%20people%20to%2043.5%20million.> accessed 09 November 2020

UNHCR, ‘Global Compact on Refugees’, <https://www.unhcr.org/5c658aed4.pdf>

UNHCR, ‘South-East Asia: Irregular Maritime Movements, January-November 2014’ (UNHCR, 30 November 2014) (UNHCR<www.unhcr.org/53f1c5fc9.html> accessed 29 November 2018

UNHCR, ‘UNHCR Calls for Solidarity, Support and Solutions for Rohingya Refugees Ahead of an Urgent Donor Conference’ (20 October 2020) <https://www.unhcr.org/uk/news/briefing/2020/10/5f8d7c004/unhcr-calls-solidarity-support-solutions-rohingya-refugees-ahead-urgent.html> accessed 10 November 2020

UNHCR,’ Myanmar’ (September 2019) <https://reporting.unhcr.org/sites/default/files/UNHCR%20Myanmar%20Fact%20Sheet%20-%20September%202019.pdf> accessed 10 November 2020

United Nations, UN Charter <https://www.un.org/en/sections/un-charter/un-charter-full-text/> Accessed 17 October 2018

Secondary Resources

Books

Abdullah MA *et al*., *Selama Kearifan adalah Kekayaan: Eksistensi Panglima laot dan Hukom Adat Laot di Aceh* (the Wisdom is Our Richness: the Existence of *Panglima Laot* and *Ada*t Law in Aceh) (Kehati Indonesia Biodiversity Foundation 2006)

Amiruddin H, *Aceh dan Serambi Mekah* (*Aceh and Veranda of Mecca*) (Yayasan Pena 2006)

Andrea Bianchi A, *Legal Pluralism* (Oxford University Press 2016)

Andrei M, *Positive Law and Objective Values* (2001 Clarendon Press)

Anghie A, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2004)

Auda J, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (The International Institute of Islamic Thought: 2009)

Baxi U, *The Future of Human rights* (Oxford University Press 2009)

Betts A and Paul Collier, *Refuge: Transforming a Broken Refugee System* (Penguin Random House 2017)

Bowen JR, *Islam, Law and Equality in Indonesia* (first published 2003, Cambridge University Press 2006)

Braun V and Victoria Clarke, *Successful Qualitative Research: A Practical Guide for Beginners* (Sage Publications 2013)

Chanock M, *Law, Custom and Social Order* (Cambridge University Press 1985)

Chetail V, 'Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations Between Refugee Law and Human Rights Law' in Ruth Rubio-Marin (ed.), *Human rights and Immigration* (Oxford University Press 2014)

Creswell JW, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (Sage Publications 2013)

de Beaulieu A, '*Memoires d'un Voyage aux Indes Orientales 1619-1622: Un Marchand Normand a Sumatra*' (Memory of Journey to East Indies: 1619-1622: Normandy Merchant in Sumatra) (Maisonneuve and Larose, 1996)

Galligan DJ, *Law in Modern Society* (Oxford University Press 2007)
Ewick P and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998)

Fasseur C, 'Colonial Dilemma: Van Vollenhoven and the Struggle Between *Adat* Law and Western Law in Indonesia' in W.J. Momsen and J.A. de Moor (eds.), *European Expansion and Law: The encounter of European and Indigenous Law in 19th and 20th-Century Africa and Asia* (Berg Publishers 1992)

Feener RM, ‘The Acehnese Past and its Present State of Study’ in R. Michael Feener *et al*., *Mapping the Acehnese Past* (KITLV Press, Leiden 2011)

----, *Sharia and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh Indonesia* (Oxford University Press 2013)

Flick U, *An Introduction to Qualitative Research* (first edition 1998, Sage Publications 2014)

Fuller LR, *The Morality of Law* (Yale University Press 1969)

Galletta A, *Mastering the Semi-Structured Interview and Beyond: From Research Design to Analysis and Publication* (New York University Press 2013)

Gatrell P, *The Making of the Modern Refugee* (Oxford University Press 2015)

Goodwin-Gill G and Jane McAdam, *The Refugee in International Law* (first published 1983, Oxford University Press 2007)

Halim MASA, *The Quran, a New Translation* (Oxford University Press 2008)

Halliday S and Patrick Schmidt, *Conducting Law and Society Research: Reflections on Methods and Practices* (Cambridge University Press: 2009)

Hart HLA, *The Concept of Law* (first published 1961, Oxford University Press 2012)

Hathaway JC and Michelle Foster, *The Law of Refugee Status* (First published 1991, Cambridge University Press 2014)

Hooker MB, *Legal Pluralism: An Introduction to Colonial and neo-colonial Laws* (Clarendon Press 1975)

Hurgronje CS, *The Acehnese* (A.W.S. O’Sullivan and R.J. Wilkinson (eds.) Vol 1, Martino Publishing 2007)

Iskandar T, ‘Aceh as a Crucible of Muslim-Malay Literature’ in R. Michael Feener, Patrick Daly and Anthony Reed (eds.), *Mapping the Acehnese Past* (KITLV Press Leiden 2011)

Janmyr M, *Protecting Civilians in Refugee Camps: Unable and Unwilling States, UNHCR and International Responsibility* (Martinus Nijhoff Publishers 2014)

Jones M, ‘Moving Beyond Protection Space: Developing a Law of Asylum in South East Asia’ in S. Kneebone and others (eds.), *Refugee Protection and the Role of Law: Conflicting Identities* (Routledge 2014)

----, ‘The Governance Question: the UNHCR, the Refugee Convention and the International Refugee Regime’ in James C Simeon (ed.), *The UNHCR and the Supervision of International Refugee Law* (Cambridge University Press 2013)

Kelsen H, *Pure Theory of Law* (The Law Book Exchange 2001)

King VT, *Sociology of Southeast Asia: Transformations in a Developing Region* (Nias Press: 2008)

Kurdi M, *Aceh Di Mata Sejarahwan: Rekonstruksi Sejarah Sosial Budaya* (Aceh in the Eyes of an Historian: Social History Reconstruction) (Naskah Aceh 2016)

Leue HJ, ‘Legal Expansion in the Age of the Companies: Aspects of the Administration of Justice in the English and Dutch settlements of Maritime Asia C.1600-1750’ in W.J. Momsen and J.A. de Moor (eds.), *European Expansion and Law: The encounter of European and Indigenous Law in 19th and 20th-century Africa and Asia* (Berg Publishers 1992)

Lindsey T and Simon Butt, *Indonesian Law* (Oxford University Press 2018)

Loescher G and James Milner, ‘UNHCR and the Global Governance of Refugees’ in Alexander Betts (ed.), *Global Migration Governance* (Oxford University Press 2011)

Loescher G, *The UNHCR and World Politics: a Perilous Path* (Oxford University Press 2001)

Machmudi Y, *Islamising Indonesia* (ANU Press 2008)

Mansur TM, *Hukum Adat: Perkembangan dan Pembaharuannya di Indonesi*’ (*Adat* Law: Its Development and Reformation in Indonesia) (Percetakan Bandar 2017)

McConnachie K, *Governing Refugees: Justice, Order and Legal Pluralism* (Routledge 2014)

McNevin A and Antje Missbach, ‘Hospitality as a Horizon of Aspiration (or, What the International Refugee Regime Can Learn from Acehnese Fishermen)’ (2018) 31 (3) Journal of Refugee Studies.

Menski W, *Comparative Law in a Global Context: The Legal System of Asia and Africa* (Cambridge University Press 2006)

Missbach A, ‘The Aceh War (1873-1904) and the Influence of Christian Snouck Hurgronje’ in Arndt Graf *et al*., *Aceh History, Politics and Culture* (ISEAS: 2010)

Momsen WJ and J.A. de Moor (eds.), *European Expansion and Law: The encounter of European and Indigenous Law in 19th and 20th-century Africa and Asia* (Berg Publishers 1992)

Morison WL, *John Austin* (Stanford University Press 1982)

M. Zieck, 'UNHCR and States Collaborate to Provide Protection and Humanitarian Assistance to Those in Concern: Article 35 of the 1951 Convention/Article II of the 1967 Protocol' in A. Zimmermann (ed.), *The 1951 Convention relating to the Status of Refugees and its 1967 Protocol: A Commentary* (Oxford University Press 2011)

Otto JM, *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden University Press 2011)

Penner JE and E. Melissaris, *McCoubrey and White's, Textbook on Jurisprudence* (first published 1993, Oxford University Press 2018)

Reyntjens F, 'The Development of the Dual Legal system in Former Belgian Central Africa (Zaire-Rwanda-Burundi)' in W.J. Momsen and J.A. de Moor (eds.), *European Expansion and Law: The encounter of European and Indigenous Law in 19th and 20th-century Africa and Asia* (Berg Publishers 1992)

Ritchie J et al, *Qualitative Research Practice* (Sage Publications: 2005)

Roxström E and Mark Gibney, 'The Legal and Ethical Obligation of UNHCR' in Nuklaus Steiner and others (eds.), *Problems of Protection: The UNHCR, Refugees, and Human Rights* (New York, Routledge 2003)

Salim A, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism* (Edinburgh University Press 2015)

Santos BdS, *Toward a New Legal Common Sense* (Butterworth 2002)

Sheep Foundation, *Rohingya Refugees Drama in Aceh* (Sheep Foundation, 2016)

Siddiqi MJ, *Riba, Bank Interest and the Rationale of its Prohibition* (Islamic Research and Training Institute 2004)

Tamanaha B, *A General Jurisprudence of law and Society* (first published 2001, Oxford University Press 2006)

Twining W, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge University Press 2009)

----, *Human Rights, Southern Voices: Francis Deng, Abdullahi An-Na'im, Yash Ghai and Upendra Baxi* (Cambridge University Press 2009)

Tyson AD, *Decentralization and Adat Revivalism in Indonesia* (Routledge 2010)

von Savigny FK, *Of the Vocation of Our Age for Legislation and Jurisprudence* (Arno Press: 1975)

Ware A and Costas Laoutides, *Myanmar's Rohingya Conflict* (Oxford University Press 2018)

Webley L, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M. Kritzer (eds), *Qualitative Approaches to Empirical Legal Research* (Oxford University Press 2010)

Wijaya R and Andreas Subiyono, *Rohingya Refugee Drama in Aceh* (Yayasan Sheep Indonesia: 2016)

Worsley P, *The Three Worlds: Culture and World Development* (Weidenfeld & Nicolson 1984)

Ziegert KA, *Introduction to Eugen Ehrlich, Fundamental Principles of the Sociology of Law* (Transaction Publishers 2002)

Journals

Aleinikoff TA, 'State-Centered Refugee Law: From Resettlement to Containment' (1992) 14 MICH. J. INT'L L.

Alfian THI, 'Aceh dalam Bingkai Negara Kesatuan Republik Indonesia' ('Aceh Under the Republic of Indonesia') (1999) 4(2) Jurnal Ketahanan Nasional Gajahmada University

----, 'The Emerging Universal Legal Systems' 3 (1) 2001 International Law Forum du Droit International

Andriyadi F, 'Reposisi Majelis Adat Aceh dalam Tata Pemerintahan Aceh Pasca Qanun No.10 Tahun 2008' (Reposition of Acehnese *Adat* Council in Acehnese Local Government According to *Qanun* No 10 of 2008) (2018) 7(2) Right: Jurnal Agama dan Hak Azasi Manusia

Angie A, 'The Evolution of International Law: Colonial and Post-Colonial Realities' (2006) 27 Third World Quarterly

Azmi AS, 'Ahl al Hadith Methodologies on Qur'anic Discourses in the Ninth Century: A Comparative Analysis of Ibn Hanbal and al Bukhari' (2017) 4(1) Online Journal Research in Islamic Studies

Baderin M, 'Understanding Islamic Law in Theory and Practice' (2009) 9 LIM

Barichello SE, 'Refugee Protection and Responsibility Sharing in Latin America: Solidarity programmes and the Mexico Plan of Action' (2015) 20 (2) The International Journal of Human Rights

Barnet M, ‘UNHCR and the Ethnics of Repatriation’ (2001) 10 Forced Migration Review

Barnett L, ‘Global Governance and the Evolution of the International Refugee Regime’ (2002) 14 International Journal of Refugee Law

Barutciski M, ‘Observations on ExCom’s 60th Session (2009): Does UNHCR Need (More) ExCom Conclusions?’ (2012) 2(27) Refuge Canada’s Journal on Refugees

Bedner A, ‘Indonesian Legal Scholarship and Jurisprudence as an Obstacle for Transplanting Legal Institution’ (2013) 5(2) Hague Journal on the Rule of Law

Berger L, ‘*Sharia*, Islamism and Arab Support to Democracy’ (2019) 2 (26) Democratization

Berkowitz D, Katharina Pistor and Jean-Francois Richard, ‘The Transplant Effect’ (2003) 51 The American Journal of Comparative Law

Bett A and Jean-Francois Duriex, Convention Plus as a Norm-Setting Exercise (2007) 20(3) Journal of Refugee Studies

Betts A, ‘The Global Compact on Refugees: Towards a Theory of Change?’ (2018) 30 (4) International Journal of Refugee Law

----, ‘The Normative of the Global Refugee Regime’ (2015) 29(4) Ethics and International Affairs

Berg M L and Fiddian-Qasmiyeh E,’Introduction to the Issue Encountering Hospitality and Hostility’ Migration and Society 1 (2018) 6

Bowen JR, ‘Narrative Form and Political Incorporation: Changing Uses of History in Aceh’ (1989) 4(31) Indonesia Comparative Studies in Society and History

Burns P, ‘The Myth of Adat’ (1989) 21 Journal of Legal Pluralism and Unofficial Law

Cameron JT, ‘Custom as a Source of Law in Scotland’ (1964) (27) The Modern law Review

Campbell EH, ‘Urban Refugees in Nairobi: Problems of Protection, Mechanisms of Survival, and Possibilities for Integration’ (2006) 19 Journal of Refugee Studies

Carpi E and Senoguz H. P, ‘Refugee Hospitality in Lebanon and Turkey. On Making ‘The Other’’ (2019) 57 (2) International Migration

Cerar M, ‘The Relationship Between Law and Politics’ (2009) 15(1) Annual Survey of International & Comparative Law

Chambert-Loir H, ‘Sharia in 17th Century Aceh’ (2017) (94) Archipel

Cheng S, ‘Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience’ (2011) 25(1) Journal of Refugee Studies

Chiba M, ‘Other Phases of Legal Pluralism in the Contemporary World’ (1998) 11(3) Ratio Juris

Chimni BS, ‘Third World Approaches of International Law: A Manifesto’ (2006) 8(1) International Community Law Review

----, ‘Global Compact on Refugees: One Step Forward, Two Steps Back’ (2018) 30(4) International Journal of Refugee Law’

----, ‘The Geopolitics of Refugee Studies: A View from the South’ (1998) 11 Journal of Refugee Studies

Davies S, ‘Asian rejection’ (2006) 52(4) Australian Journal of Politics and History

Derrida J, ‘The Principle of Hospitality’ (2005) 11(1) Parallax 9

Dugard J, Book Review 107(2) The American Journal of International Law

Elliott V, ‘Thinking about the Coding Process in Qualitative Data Analysis’ (2018) 11(23) The Qualitative Report

Embree AT, Book Review (1996) 3 (28) A Quarterly Journal Concerned with British Studies

Fagbongbe M, ‘The Future of Women’s Rights from a TWAIL Perspective’ (2008) 10 International Community Law Review

Fallon SM, ‘Justice for All: American Muslims, Sharia Law, and Maintaining Comity Within American Jurisprudence’ (2013) 36 B C Int’l & Comp L Rev

Fauzia A, ‘Islamic Philanthropy in Indonesia: Modernization, Islamization and Social Justice’ (2017) 10(2) Austrian Journal of South-East Asian Studies

Feris E, ‘Faith-Based and Secular Humanitarian Organisations’ (2005) 858(87) International Review of the Red Cross

Fiddian-Qasmiyeh Elena,’ Introduction: Faith-Based Humanitarianism in Contexts of Forced Displacement’ (2011) 24(3) Journal of Refugee Studies 439

Fikri HK, ‘Fungsi Hadits terhadap Al Quran’ (Function of *Hadith* towards Al Quran) (2015) 12(2) Journal UIN Malang

Fitria, ‘Perlindungan Hukum bagi Pengungsi di Negara Ketiga: Praktek Indonesia’ (‘Legal Protection of the Refugees in the Third Country: Indonesia Practice’) (2015) 2(1) Padjajaran Jurnal; Ilmu Hukum

Foster M and Jason Pobjoy, 'a Failed Case of Legal Exceptionalism? Refugee Status Determination in Australia's "Excised" Territory' (2011) 23(4) International Journal of Refugee Law

Foster M, 'Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in another State' (2007) 28 MICH. J. INT'L L.

Fresia M, 'Building Consensus Within UNHCR's Executive Committee: Global Refugee Norms in the Making' 27 (4) (2014) Journal of Refugee Studies

Frydman B and William Twining, 'A Symposium on Global Law, Legal Pluralism and Legal Indicators' (2015) 47 (1) The Journal of Legal Pluralism and Unofficial Law

Fukurai H, 'Fourth World Approaches to International Law (FWAIL) and Asia's Indigenous Struggles and Quests for Recognition under International Law' 5(2018) Asian Journal of Law and Society

Fuller C, 'Legal Anthropology: Legal Pluralism and Legal Thought Author' (1994)10(3) Anthropology Today

Gallie M, 'Les Theories Tiers-Mondistes du Droit International (TWAIL): un Renouvellement? (Third World Approaches to International Law: A Renewal?)' (2008) Etudes Internationales

Gathii JT, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011) 3 Trade L & Dev

Gatrell P, 'The World-Wide Web of Humanitarianism: CSOs and Population Displacement in the Third Quarter of the Twentieth Century' (2016) 23 (1-2) European Review of History: Revue Européenne d'Histoire

Gaus N et al, "State Bureaucracy in Indonesia and its Reforms: An Overview" International Journal of Public Administration 2017 40 (8)

Ghozali M and Nor Azzah Kamri, Kepribadian Islam dan Profesionalisme Dalam Pekerjaan (Islamic Personality and Professionalism at Work: A Theoretical Analysis) (2017) 23(2) Jurnal Syariah

Gleeson M, 'Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman Sea Crisis' (2017) 1 Antropologi Indonesia

Glynn I, 'The Genesis and Development of Article 1 of the 1951 Refugee Convention' (2011) 25 (1) Journal of Refugee Studies Convention and Protocol Relating to the Status of Refugees' <https://www.unhcr.org/uk/3b66c2aa10> accessed 5 July 2020

Goodwin-Gill GS, 'Editorial: "The International Protection of Refugees: What Future?" (2000) 12 (2) International Journal of Refugee Law

Griffith J, 'What is Legal Pluralism?' (1986) 18 The Journal of Legal Pluralism and Unofficial Law

Halliday S, 'After Hegemony: The Varieties of Legal Consciousness Research' (2019) 28(6) Social & Legal Studies 859, 878

Halliday S and Morgan B, 'I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination' (2013) 66 Current Legal Problems 1, 32

Hassan L, 'Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States' (2000) 13(2) Journal of Refugee Studies

Hathaway J and Alexander R Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivised and Solution-Oriented protection' (1997) 10 UNSW Harvard Human Rights Journal

Hathaway JC, 'A Reconsideration of the Underlying Premise of Refugee Law' (1990) 31 Harvard International Law Journal

----, 'The Evolution of Refugee Status in International Law: 1920-1950' (1984) 33 Int'l & Comp LQ

Heirbaut D, 'Europe and the People without Legal History: On the Need for a General History of Non-European Law' (2000) 68 Tijdschrift voor Rechtsgeschiedenis

Helton AC, 'Forced Displacement, Humanitarian Intervention, and Sovereignty' (2000) 20 SAIS Review of International Affairs

Hertogh M, 'A "European" Conception of Legal Consciousness: Rediscovering Eugen Ehrlich' (2004) 31 Journal of Law and Society

Hertough M and Kurkchiyan M, 'When politics comes into play, law is no longer law: images of collective legal consciousness in the UK, Poland and Bulgaria' (2016) 12(4) International Journal of Law in Context 404, 419

Hillier HC, 'Muhammad Iqbal on Al-*Fiqh*: Towards a Natural Law Jurisprudence' (2010) 12 J Islamic L & Culture

Hirsch AL and Cameron Doig, 'Outsourcing Control: the International Organization for Migration in Indonesia' (2018) 5 (22) The International Journal of Human Rights

Hocke JP, 'Note on International Protection' (1986) 20(4) The International Migration Review
Hutchinson S, 'Gendered Insecurity in the Rohingya Crisis' (2018) 72(1) Australian Journal of International Affairs

Ibrahim M, '*Dayah, Mesjid Meunasah Sebagai Lembaga Pendidikan dan Lembaga Dakwah di Aceh*' (Dayah, Mosque and Meunasah as Educational Institution and Preaching Institute) (2014) 20(2) Journal Al Bayan

Jackson AR and Dorota A. Gozdecka, 'Caught Between Different Legal Pluralisms: Women Who Wear Islamic Dress as the Religious "Other" in European Rights Discourses' (2011) 43 (64) The Journal of Legal Pluralism and Unofficial Law

Jacobsen K, 'The Forgotten Solution: Local Integration for Refugees in Developing Countries' UNHCR Working Paper 45/ 2001 <http://www.unhcr.org/uk/research/working/3b7d24059/forgotten-solution-local-integration-refugees-developing-countries-karen.html> accessed 15 November 2017

Janmyr M, 'No Country of Asylum: Legitimizing Lebanon's Rejection of the 1951 Refugee Convention' (2017) 29(3) International Journal of Refugee Law

Joarder MAM and Paul W. Miller,' The Experiences of Migrants Trafficked from Bangladesh' (2014) 653The Annals of the American Academy of Political and Social Science

Juwana H, 'Human Rights in Indonesia' (2006) 4 Indonesian J Int'l L

Kagan M, 'Frontier Justice: Legal Aid and UNHCR Refugee Status Determination in Egypt' (2006) 19 (1) Journal of Refugee Studies

Kawamura A, 'Rethinking legal pluralism and Asian law in the face of globalization' (2016) 48 (3) The Journal of Legal Pluralism and Unofficial Law

Kinchin N, 'The Implied Human Rights Obligations of UNHCR' (2016) 28 (2) International Journal of Refugee Law

Kleinhans, Martha-Marie and Roderick A Macdonald, 'What is a Critical Legal Pluralism?' (1997) 12 (2) Canadian Journal of Law and Society

Kneebone S, 'Australia as a Powerbroker on Refugee Protection in Southeast Asia: The Relationship with Indonesia' (2017) 33(1) Refuge

----, 'Comparative Regional Protection Frameworks for Refugees: Norms and Norm Entrepreneurs' (2016) 20 (2) The International Journal of Human Rights

Krafess J, 'The Influence of the Muslim Religion in Humanitarian Aid' (2005) 87(858) International Review of the Red Cross

Kreike E, 'Genocide in the Kampongs? Dutch Nineteenth Century Colonial Warfare in Aceh Sumatra' (2012) 3(4) Journal of Genocide Research

Lewa C, 'Asia's New Boat People' (2008) 1(30) Forced Migration Review

Libal K and Scott Harding, 'Humanitarian Alliances: Local and International CSO Partnerships and the Iraqi Refugee Crisis' (2011) 9(2) Journal of Immigrant and Refugee Studies

Lomo ZA, 'Protecting Civilians in Refugee Camps: Unable and Unwilling States, UNHCR and International Responsibility by Maja Janmyr' (2015) 28(4) Journal of Refugee Studies

Maragia B, 'Almost there: Another way of Conceptualizing and Explaining NGOs' Quest for Legitimacy in Global Politics' (2002) 2 Non-State Actors and International Law

McConnachie K, 'Refuge Protection and the Art of the Deal' (2017) (9) Journal Human Rights Practice

McGoldrick D, 'Accommodating Muslims in Europe: From Adopting Sharia Law to Religiously Based Opt Outs from Generally Applicable Laws' (2009) 4(9) Human Rights Law Review

Megret F and Florian Hoffman, 'The UN as a Human Rights Violator? Some Reflections on the United Nations' Changing Human Rights Responsibilities' (2008) 25 (18) HUM. RTS. Q

Menski W, 'Flying Kites in a Global Sky: New Models of Jurisprudence' (2011) (7) Socio-Legal Review

----, 'Judicial Passivism in the Public Interest' (2006) 1 (10) Bangladesh Journal of Law

----, 'Shah Bano, Narendra Modi and Reality Checks about Global Understandings of Indian Law' (2011) 1 Nirma U L J 7

Merry SE, Book Review (1991) 25(4) Society Review

----, 'Legal Pluralism' (1988) 22(5) Law & Society Review

Michaels R, 'The Re-State-ment of Non-State Law: The State, Choice of Law, and the Challenge from Global Legal Pluralism' (2005) 51 Wayne L. Rev

Mickelson K, 'Rhetoric and Rage: Third World Voices in International Legal Discourse' (1998) 16(2) Wisconsin International Law Journal

Mickelson K, 'South, North, International Environmental Law, and International Environmental Lawyers' (2000)11 Yearbook of International Environmental Law

Mignolo WD, 'The Global South and World Dis/Order' (2011) 67(2) Journal of Anthropological Research

Misbach A, 'Waiting on The Island of "Stuckedness": Managing Asylum Seekers in Detention Camps in Indonesia from the Late 1970s to the Early 2000s' (2013) 6 Austrian Journal of South-East Asian Studies

----, 'Facet of Hospitality: Rohingya Refugees' "Temporary Stay in Aceh"' (2017) (104) Indonesia

----, 'Indonesia: Facets of Hospitality: Rohingya Refugees' "Temporary Stay in Aceh"' 2017 (104) Cornell University Press

----, 'The Acehnese Diaspora After the Helsinki Memorandum of Understanding: Return Challenges and Diasporic Post-Conflict Transformations' (2011) 12(2) Asian Ethnicity

----, 'Waiting on the Islands of 'Stuckedness'. Managing Asylum Seekers in Island Detention' (2013) 6 (2) ASEAS

----, ‘Waiting on the Islands of “Stuckedness”. Managing Asylum Seekers in Island Detention Camps in Indonesia from the Late 1970s to the Early 2000s’ (2013) 6(20) Austrian Journal of South East Asian Studies

Moore SF, ‘The Semi-Autonomous Social Field as an Appropriate Subject of Study’ (1973) 7(4) Law & Society Review, and John Griffith, ‘What is Legal Pluralism?’ (1986) 18 The Journal of Legal Pluralism and Unofficial Law

Müller M, ‘In Search of the Global East: Thinking between North and South’ (2020) 25(3) Geopolitics

Nah A M and Tim Bunnell, ‘Ripples of Hope: Acehnese Refugees in Post-Tsunami Malaysia (2005) 2 (26) Singapore Journal of Tropical Geography

Nah A M, ‘Networks and norm entrepreneurship amongst local civil society actors: advancing refugee protection in the Asia Pacific region, The International Journal of Human Rights’ (2016) 20(2) 223, 240

---,’ The ambiguous authority of a ‘surrogate state’ : UNHCR’s negotiation of asylum in the complexities of migration in Southeast Asia’ (2019) 35 (1 and 2) Revue Europeene des Migrations Internationales, 63,86

Natarajan U, John Reynolds, Amar Bhatia & Sujith Xavier, ‘Introduction: TWAIL: On Praxis and the Intellectual’ (2016) 37 (11) Third World Quarterly

Nelken D, ‘Eugen Ehrlich, Living Law, and Plural Legalities’ (2008) 9 (2) Theoretical Inquiries in Law

Nethery A and Carly Gordyn, Australia-Indonesia Cooperation on Asylum-Seekers: A Case of ‘Incentivised Policy Transfer’ (2014) 68(2) Australian Journal of International Affairs

Nielsen L B , ‘Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment’ (2000) 34 (4) Law & Society Review 1055, 1090

O’Byrne K, ‘Is there a Need for Better Supervision of the Refugee Convention’ (2013) 26 (3) Journal of Refugee Studies

Okafor O, ‘The International Criminal Court as a Transitional Justice Mechanism in Africa: Some Critical Reflection’ (2015) 9 International Journal of Transitional Justice

----, ‘Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both’ (2008) 10 Int'l Comm L Rev

----, ‘Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective’ (2005) 43 Osgoode Hall LJ

Örücü E, Book Review (2003) 66 Bulletin of the School of Oriental and African Studies, University of London,

Pallis M, ‘The Operation of UNHCR's Accountability Mechanisms’ (2005) 37 N.Y.U. J. Int'l. L. & Pol

Peterson G, 'Sovereignty, International Law, and the Uneven Development of the International Refugee Regime' (2015) 49 (2) Modern Asian Studies

----, 'The Uneven Development of the International Refugee Regime in Post war Asia: Evidence from China, Hong Kong and Indonesia' (2012) 25 Journal of Refugee Studies

Pratisti A, Taufik Hidayat and Deasy Silvya Sari, 'When Solidarity is Trampled by Religious Sentiment: Outlining Indonesian Muslim Solidarity toward Rohingya Refugees' (2019) 23(1) Jurnal Ilmu Sosial dan Ilmu Politik

Prins J, 'Adat Law and Muslim Religious Law in Modern Indonesia' (1951) 1 Die Welt des Islams

Purkey AL, Book Review 2014 30(2) Refuge

Quimby B, 'Emerging Customs: Small-scale Fishing Practices in Aceh, Indonesia' 59 (2005) Applied Geography

Ramasamy P, 'Globalization and Transnational Migration: The Malaysian State's Response to Voluntary and Forced Migration' (2006) 1 (15) Asian and Pacific Migration Journal

Rebidoux M, Book Review (2019) 60(3) Heythrop Journal

Reid A, 'War, Peace and the Burden of History in Aceh' 2004 5(3) Asian Ethnicity

Reinisch J, 'Internationalism in Relief: The Birth (and Death) of UNRRA' (2011)

Relis T, Book Review 2011 33(2) Human Right Quarterly

Riach G and Zoe James, 'Strengthening the Rule of Law on the Margins: Experiences from Za'atari Refugee Camp, Jordan' 2016 20(4) The International Journal of Human Rights

Richardson S, 'Sue and Miriam McMullan, Research Ethics in the UK: What Can Sociology Learn from Health?' (2007) 41(6) Sociology

Riezal C et al., 'Dance *Ranup Lampuan*: Exploration Genius Aceh Movement and Expression. Female Body Beauty Values in Culture *Pemulia Jamee*' 2018 5(5) International Journal of Multicultural and Multireligious Understanding

Salampessy MY, 'The Leiden Legacy: Concepts of Law in Indonesia' (2014) 4 Indon L Rev

Salim A, 'Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh' (2010) 61 Journal of Legal Pluralism and Unofficial Law

----, 'Sharia from Below in Aceh (1930s-1960s): Islamic Identity and the Right to Self-Determination with Comparative Reference to the Moro Islamic Liberation Front (MILF)' (2004) 32 (92) Journal of Indonesia and the Malay World

Sandvik KB, 'Blurring Boundaries: Refugee Resettlement in Kampala – Between the Formal, the Informal, and the Illegal' (2011) 34(1) Political and Legal Anthropology Review

Saunders C, Book Review (2007) 124 (1) South African law Journal

Schloenhardt A and Colin Craig, 'Turning Back the Boats: Australia's Interdiction of Irregular Migrants at Sea' (2015) 27 Int'l J Refugee L 536

Sharafi M, 'In Many Rooms since Galanter: De-Romanticizing Legal Pluralism through the Cultural Defense' (2008) 71(2) Law and Contemporary Problems

Sharpe M, 'The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions' (2012) 58:1 McGill LJ

Sheehan MM, 'The European Family and Canon Law' (1991) 6(3) Continuity and Change
Siregar KB, 'Lessons Learned from the Implementation of Islamic Shari'ah Criminal Law in Aceh, Indonesia' 24(1) (2008/2009) Journal of Law and Religion

Snyder FG, 'Colonialism and Legal Form: The Creation of Customary Law in Senegal' (1981) 49 J. Legal Pluralism

Southwick K, 'Preventing Mass Atrocities Against the Stateless Rohingya in Myanmar: A call for Solutions' (2015) 68(2) Journal of International Affairs

Stein BN, 'Durable Solutions for Developing Country Refugees' (1986) 20 (2) The International Migration Review

Stevens D, 'Rights, Needs or Assistance? The Role of the UNHCR in Refugee Protection in the Middle East' 20(2) (2016) The International Journal of Human Rights

Sulistiyanto P, 'Whither Aceh?' (2001) 3 (22) Third World Quarterly
Sum K, 'A New Comprehensive Plan of Action: Addressing the Refugee Protection Gap in Southeast Asian through Local and Regional Integration' (2011) 1(1) Oxford Monitor of Forced Migration

Sunter AF, 'TWAIL as Naturalized Epistemological Inquiry' (2007) 20 Can. J. L. and Jurisprudence

Suprapto E, 'Promotion of Refugee Law in Indonesia' (2004) 1 (2) Indonesian Journal of International Law

Susetyo H and Paul Chambers, 'Repatriation for Rohingya Asylum Seekers in Indonesia: a Durable but Almost Impossible Solution' (2020) Asian Affairs: An American Review

Sztucki M, 'The Conclusions on the International Protection of Refugees Adopted by the Executive Committee of the UNHCR Programme' (1989) 1 (3) International Journal of Refugee Law

Tamanaha BZ, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2008) 30(3) Sydney L. Rev

Taqwaddin H and Teuku Alvisyahrin, 'Role of Community and Communal Law in Aceh in the Great Sumatra Earthquake and Tsunami Recovery: A Case Study in Lambada Lhok Village, Aceh Besar' (2014) 2(21) Journal of International Cooperation Studies

Taylor S and Brynna Rafferty-Brown, 'Difficult Journeys: Accessing Refugee Protection in Indonesia' (2010) 36 Monash University Law Review

Taylor S and Brynna Rafferty-Brown, 'Difficult Journeys: Accessing Refugee Protection in Indonesia' (2010) 36 Monash U. L. Rev.

Taylor S et al, 'Difficult Journeys: Accessing Refuge Protection in Indonesia' (2010) 36(3) Monash University Law Review

Temperman J, 'Blasphemy, Defamation on Religions and Human Rights Law' (2008) 26(4) Netherlands Quarterly of Human Rights

Tholens S, 'Which and Whose Authority? EU Support to Security Governance in Aceh' (2012) 2(21) European Security

Thom G, 'The May 2015 Boat Crisis: the Rohingya refugees in Aceh' (2006) 8(2) UTS ePress

Thorburn C, 'Livelihood Recovery in the Wake of the Tsunami in Aceh' (2009) 45(1) Bulletin of Indonesian Economic Studies

Trubek D, `Where the Action Is: Critical Legal Studies and Empiricism' (1984) 36 Stanford Law Rev. 575, 592

Twining W, 'Normatif and Legal Pluralism: A Global Perspective' (2010) 20(3) Duke Journal of Comparative & International Law

Vandevoordt R ' The Politics of Food and Hospitality: How Syrian Refugees in Belgium Create a Home in Hostile Environments' (2017) 30(4) Journal of Refugee Studies

van Kessel G, 'Global Migration and Asylum' (2001) 10(13) Force Migration Review

Von Benda-Beckmann F and Keebet von Benda- Beckmann, 'Myths and Stereotypes About *Adat* Law: A Reassessment of Van Vollenhoven in the Light of Current Struggles over *Adat* Law in Indonesia' 167 (2011) Bijdragen tot de Taal-, Land- en Volkenkunde

---, 'Islamic Law in a Plural Context: The Struggle Over Inheritance Law in Colonial West Sumatera, Journal of the Economic and Social History of the Orient 55 (2012) 771, 793

---, , 'The Dynamics of Change and Continuity in Plural Legal Orders' (2006) 38 The Journal of Legal Pluralism and Unofficial Law 1, 44

---, Temporalities in property relations under a plural legal order: Minangkabau revisited' (2014) 46(1) The Journal of Legal Pluralism and Unofficial Law 18,36

Von Benda-Beckmann K, 'Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra' (1981) 117 J. Legal Pluralism

Von Benda-Beckmann and Turner B, 'Legal pluralism, social theory, and the state' (2018) 50 (3) The Journal of Legal Pluralism and Unofficial Law 255, 274

Wall P, ‘A New Link in the Chain: Could a Framework Convention for Refugee Responsibility Sharing Fulfil the Promise of the 1967 Protocol?’ (2017) 29(2) International Journal of Refugee Law

War AR, ‘Peace and the Burden of History in Aceh’ (2004) 5(3) Asian Ethnicity

Wilson C and Matthew Linkie, ‘The Panglima Laot of Aceh: a Case Study in Large-Scale Community-Based Marine Management After the 2004 Indian Ocean Tsunami’ (2004) 4 (46) Oryx

Woldemariam SB, Amy Maguire & Jason von Meding, ‘Forced Human Displacement, the Third World and International Law: A TWAIL Perspective’ (2019) 20 Melb J Int’l L

Woodman GR, Book Review (2013) 38 (52) The Journal of Legal Pluralism and Unofficial Law

Zarni M and Alice Cowley, ‘The Slow-Burning Genocide of Myanmar's Rohingya’ (2014) 23 Pac. Rim L. & Pol’y J

Zieck M, ‘Doomed to Fail from the Outset? UNHCR’s Convention Plus Initiative Revisited’ (2009) 21(3) International Journal of Refugee Law

Web Resources

Aceh Provincial Government, ‘*Profil Majelis Adat Aceh*’ (‘Profile of *Adat* Aceh Assembly’) <https://maa.acehprov.go.id/pages/profil> accessed 16 October 2018

Aceh Provincial Government, ‘Di Aceh Laut Tidak Dipunggungi, Laut adalah Etalase Kami’ (Banda Aceh, 17 October 2017) <https://acehprov.go.id/news/read/2017/10/17/4633/di-aceh-laut-tidak-dipunggungi-laut-adalah-etalase-rumah-kami.html> accessed 30 November 2018

ACT, ‘Rohingya Refugees’ <https://act.id/Rohingya refugees/> accessed 15 August 2019
Alfarez JE, (Opiniojuris, September 2010) <http://opiniojuris.org/2010/09/28/my-summer-vacation-part-iii-revisiting-twail-in-paris/> accessed 20 September 2020

Agus Setyadi, ‘Urus Rohingya Rogoh Rp 90 Juta/Bulan, Pemprov Aceh Mengeluh’ (Spending 90 million (equivalent to USD5,000) per month. Acehnese Provincial Government Complains) detik.com (Jakarta, 13 December 2018) <https://news.detik.com/berita/d-4341878/urus-rohingya-rogoh-rp-90-jutabulan-pemprov-aceh-mengeluh> accessed 25 May 2021

Agus Setyadi,’ Perolehan Kursi Turun Caleg Partai Aceh Dinilai Kurang Pengaruh’ (-kursi-turun-caleg-partai-aceh-dinilai-kurang-pengaruh (The Number of Seats in Parliament Decreases, Candidate of Acehnese Political Party Lack of Influence) detik.com (Jakarta, 16 Mai 2019) <https://news.detik.com/berita/d-4551885/perolehan-kursi-turun-caleg-partai-aceh-dinilai-kurang-pengaruh> accessed 1 June 2021

Alterman JB and Shireen Hunter, ‘The Idea of Philanthropy in Muslim Contexts, The Centre for Strategic and International Studies’ (CSIS Washington, 22 February 2004) <http://www.mafhoum.com/press7/188C31.pdf> <http://www.mafhoum.com/press7/188C31.pdf > accessed 15 September 2020

Amnesty International Report, ‘Deadly Journeys: The Refugee and Trafficking Crisis in Southeast Asia’ (October 2015) <https://www.amnesty.org/en/documents/ASA21/2574/2015/en/> accessed 10 February 2020

Amnesty International Report, ‘This is Breaking People, Human rights Violations at Australia’s Asylum Seeker Processing Centre on Manus Island, Papua New Guinea’ (2013)

Amnesty International, ‘Deadly Journey: The Refugee and Trafficking Crisis in Southeast Asia’ *Amnesty International* (London, October 2015) https://www.amnesty.org/download/Documents/ASA2125742015ENGLISH.PDF accessed 17 October 2020

Andrew & Renata Kaldor Centre for International Refugee Law, ‘The Australia-United States Refugee Resettlement Deal’ Kaldocentre (Sydney, March 2020) <https://www.kaldorcentre.unsw.edu.au/sites/default/files/Factsheet_Australia-US%20resettlement%20deal_24%20March%202020...pdf > accessed 20 October 2020
Antara News, ‘Aceh Fishermen Rescue Rohingya Refugees Though Denied Entry into Land’ (Jakarta, 25 June 2020) <https://en.antaranews.com/news/151311/aceh-fishermen-rescue-rohingya-refugees-though-denied-entry-into-land> accessed 20 Mei 2021

Banki Susan, ‘Refugee Integration in the Intermediate Term: A Study of Nepal, Pakistan and
Kenya’, New Issues in Refugee Research’ UNHCR Working Paper108/2004 <http://www.unhcr.org/416b98b94.pdf> accessed 10 November 2017

Barbara W, ‘The State of UNHCR Organization Culture,’ UNHCR Evaluation, Policy Analysis Unit, May 2005 <https://www.unhcr.org/428db1d62.pdf> accessed 17 June 2020

BBC, ‘Racism against black people in EU 'widespread and entrenched' BBC (London, 28 November 2018) < https://www.bbc.co.uk/news/world-europe-46369046> accessed 20 September 2020

BBC, ‘The Indonesian Villagers Saving Migrants’ *BBC* (London, 20 May 2015) <https://www.bbc.co.uk/news/world-asia-32807799> accessed 17 October 2018

Bergman D, ‘In Bangladesh, Human Traffickers Rely on Silence and Extortion’ *Aljazeera* (Doha, 10 June 2015) <http://america.aljazeera.com/articles/2015/6/10/In-Bangladesh-human-traffickers-rely-on-silence-and-extortion.html> accessed 10 November 2020

Betts A, ‘Institutional Proliferation and the Global Refugee Regime’ (2009) 7(1) Symposium 53, and UNHCR Statute of the Office of the UNHCR,’ <https://www.unhcr.org/4d944e589.pdf> accessed 2 October 2018

Betts A, ‘State Fragility, Refugee Status and “Survival migration”’, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/fragilestates/betts.pdf > accessed 2 November 2020

Bhaumik S, ‘Thailand “Deported” Burmese Rohingya’ *BBC* (London, 14 February 2011) <https://www.bbc.co.uk/news/world-south-asia-12445480> accessed 12 October 2018

CNN Indonesia, ‘Kebaikan Warga Aceh yang Mengharukan’ (‘The touching kindness of the Acehnese’) *CNN Indonesia* (Jakarta, 21 May 2015) < https://www.cnnindonesia.com/internasional/20150521134315-107-54780/kebaikan-warga-aceh-yang-mengharukan> accessed 14 November 2020

Cragg AK, ‘*Hadith*’ (Britannica) <https://www.britannica.com/contributor/Albert-Kenneth-Cragg/638> accessed 16 September 2020

Crawford N et al,’ The Comprehensive Refugee Response Framework Progress in Rwanda’ Humanitarian Policy Group (HPG) (HPG Working Paper, September 2019) < https://www.odi.org/sites/odi.org.uk/files/resource-documents/12936.pdf> accessed 2 November 2020

Crips J, ‘The Local Integration and Local Settlement of Refugees: A Conceptual and Historical Analysis’ UNHCR Working Paper No. 102/2004 <http://www.unhcr.org/407d3b762.pdf > accessed 10 October 2017

----, ‘New York Declaration on Refugees: A One-Year Report Card’ <https://www.newsdeeply.com/refugees/community/2017/09/18/new-york-declaration-on-refugees-a-one-year-report-card> accessed 10 November 2017

Encyclopaedia Philosophy, ‘Legal Positivism’ <http://www.iep.utm.edu/legalpos> accessed 10 September 2017

European Council on Refugees and Exiles, ‘Global Refugee Forum: EU MS Pledge 30,000 Resettlement for 2020, MEPs Urges More Ambition’ (Brussel, 20 December 2019) https://www.ecre.org/global-refugee-forum-eu-ms-pledge-30000-resettlement-for-2020-meps-urges-more-ambition/

European Commission, ‘The EU and the Refugee Crisis’ <file://userfs/ff618/w2k/Downloads/NA0417265ENN.en.pdf> accessed 8 November 2017

Fan L*, ‘Aceh Unfinished Recovery’,* <http://www.thenewhumanitarian.org/feature/2014/12/26/aceh-s-unfinished-recovery> accessed 8 August 2019

Fortín A,‘The Meaning of “Protection” in the Refugee Definition’ 12 (4) (2000) International Journal of Refugee Law

UNHCR, ‘Global Compact of Refugees’ <https://www.unhcr.org/5c658aed4.pdf> accessed 1 November 2020

Hamzah F, 'Immigration Law Moves from "The Wall" to "The Gateway" *the Jakarta Post* (Jakarta, 14 April 2011) <http://www.thejakartapost.com/news/2011/04/14/immigration-law-moves-%E2%80%98-wall%E2%80%99-%E2%80%98-gateway%E2%80%99.html> accessed 13 November 2018

Harvey C, 'Sharing Responsibility for a World in Crisis' (Oxford Human Rights Hub, 10 January 2017) <http://ohrh.law.ox.ac.uk/sharing-responsibility-for-a-world-in-crisis/> accessed 25 October 2017

Holloway K and Lilianne Fan, 'Dignity and the Displaced Rohingya in Bangladesh' (HPG Working Paper, August 2018) <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12362.pdf> accessed 19 September 2018

Hovil L, '"Local Integration" in Elena Fiddian-Qasmiyeh and Others' (The Oxford Handbook of Refugee and Forced Migration Studies, 2014) Oxford Handbook Online, 490 <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-042> accessed 16 October 2017

Hukum online, 'Presidential Decree No 28 of 1979' (hukumonline.com) <file://userfs/ff618/w2k/Downloads/KEPPRES_NO_38_1979.PDF> accessed 12 November 2018.

Human Rights Watch, 'Perilous Plight: Burma's Rohingya Take to the Seas' HRW (New York, 26 May 2009) <https://www.hrw.org/report/2009/05/26/perilous-plight/burmas-rohingya-take-seas> accessed 11 October 2018.

Human Rights Watch, 'Southeast Asia: Accounts from Rohingya Boat People Denial of Rights in Burma, Bangladesh, Lead to Trafficking and Dangerous Sea Voyages' *Human Right Watch* (New York, 27 May 2015) <https://www.hrw.org/news/2015/05/27/southeast-asia-accounts-rohingya-boat-people>, accessed 15 August 2019.

Human Rights Watch, 'The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma's Arakan State' *HRW* (New York, 31 July 2012) <https://www.hrw.org/report/2012/07/31/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan> accessed 13 October 2018

Human Rights Watch, 'The Government Could Have Stopped This" Sectarian Violence and Ensuing Abuses in Burma's Arakan State' *HRW* (New York, 2012) <https://www.hrw.org/sites/default/files/reports/burma0812webwcover_0.pdf > accessed 16 October 2018

Ika, '150 Bangladeshi to be Deported from Aceh' The Jakarta Post (Jakarta, 3 August 2015) <https://www.thejakartapost.com/news/2015/08/03/150-bangladeshis-be-deported-aceh.html> accessed 14 November 2020

Imran MA, 'Pengungsi Rohingya refugees Diangkut ke Malpores Aceh Timur' (Rohingya Refugees are Transported to Police Sub-District of East Aceh)

Irish Centre for Human Rights, *Report on Crimes against Humanity in Western Burma: The Situation of the Rohingyas,* Irish Centre for Human Rights (Galway, 2010) <http://burmaactionireland.org/images/uploads/ICHR_Rohingya_Report_2010.pdf> accessed 18 October 2018

Ismail B, '*Fungsi Meunasah Sebagai Ikon Budaya Adat Aceh* (*Meunasah* as an Icon of *Adat* Aceh)' <https://maa.acehprov.go.id/news/detail/fungsi-meunasah-sebagai-ikon-budaya-adat-aceh1> accessed 20 June 2020

Kanapathi S, 'Refugees in PNG "limbo": "How much longer can our will survive?" *RNZ Co* (New Zealand, 22 November 2019) https://www.rnz.co.nz/international/pacific-news/403886/refugees-in-png-limbo-how-much-longer-can-our-will-survive accessed 11 October 2020

Kathir I, 'Interpretation of Surat 59 Verse 9: Selflessness of the Ansar' <http://m.qtafsir.com/Surah-Al-Hashr/Selflessness-of-the-Ansar> accessed 2 May 2020

Khan HM, 'Interpreting Migrant Culture: Beginner's Notes in Anthropology (Study Case the Rohingya)' (panel paper at Anthropology Graduate Colloquium, Ku Leuven, April, 2017) <https://www.researchgate.net/profile/Helal_Khan/publication/316857681_Interpreting_Migrant_Culture_Beginner's_Notes_in_Anthropology_Study_Case_-_the_Rohingya_2017/links/592d65d7aca272fc55a5d810/Interpreting-Migrant-Culture-Beginners-Notes-in-Anthropology-Study-Case-the-Rohingya-2017.pdf> accessed 15 August 2018

Lee Y, 'Report of the Special Rapporteur on the Situation of Human Rights in Myanmar' (OHCHR, 23 March 2015) <https://www.ohchr.org/en/hrbodies/sp/countriesmandates/mm/pages/srmyanmar.aspx> accessed 29 November 2018

Lukito R, 'Sacred and Secular Laws: A Study of Conflict and Resolution in Indonesia' (DPhil Thesis, McGill University 2006) < https://escholarship.mcgill.ca/concern/file_sets/d217qv126?locale=en> accessed 18 October 2018

Marbun Z, 'Government to Deport 19 Stranded Bangladeshi from Aceh' Republika.co.id (Jakarta, 7 June 2015) <https://www.republika.co.id/berita/en/national-politics/15/06/07/npkbxj-govt-to-deport-19-stranded-bangladeshis-from-aceh> accessed 14 November 2020

Mathew P and Tristan Harley, 'Refugee Protection and Regional Cooperation in Southeast Asia: A Fieldwork Report' (March, 2014) <https://openresearch-repository.anu.edu.au/bitstream/1885/11662/1/Mathew%20%26%20Harley%20Refugee%20protection%202014.pdf> accessed 20 October 2020

Miller SD, ‘High Hopes: The Global Compact for Refugees and Improving Responsibility Sharing’ RLI Blogs (London, 27 February 2019) <https://rli.blogs.sas.ac.uk/2019/02/27/high-hopes-the-global-compact-for-refugees-and-improving-responsibility-sharing/> accessed 1 November 2020

Milner J, ‘Towards Solutions for Protracted Refugee Situations: The Role of Resettlement’, Annual Tripartite Consultations on Resettlements, 29 June 2007, <: http://www.unhcr.org/46934d4f2.pdf> accessed 1 August 2017

Missbach A, ‘Stalemate: Refugees in Indonesia: Presidential Regulation No 125 of 2016’ *Centre for Indonesian Law, Islam and Society’ (CILIS)* (Melbourne, Policy Paper of (CILIS) Melbourne Law School, 2016) <https://law.unimelb.edu.au/__data/assets/file/0006/2777667/CILIS-Paper-14_Missbach-et-al_final.pdf> accessed 10 October 2018

Mukhlis, ‘Imigran Rohingya Tempati Shelter Baru’ (‘Rohingya Refugees Contained in New Shelter’) Antaranews (Jakarta, 19 March 2016) <https://www.antaranews.com/berita/550903/imigran-Rohingya-tempati-shelter-baru> accessed 15 November 2020

Munir-Asen K: ‘(Re)negotiating Refugee Protection in Malaysia: Implications for Future Policy in Refugee Management’ (discussion paper No. 29/2018 Deutsches Institut für Entwicklungspolitik (DIE) <https://www.econstor.eu/bitstream/10419/199549/1/die-dp-2018-29.pdf> accessed 10 November 2020

Makau W. Mutua and Anthony Anghie, ‘What Is TWAIL? 94 Proceedings of the ASIL Ann. Meeting 31 (2000).

Nawangwulan M, ‘Pengungsi Rohingya Diminta Keluar dari Penampungan di Langsa’ (‘Rohingya Refugees are Asked to Empty the Temporary Containment’) Tempo.co (Jakarta, 28 June 2015) <https://nasional.tempo.co/read/679101/pengungsi-Rohingya refugees-diminta-keluar-dari-penampungan-di-langsa/full&view=ok> accessed 17 November 2020

----, ‘Pengungsi Rohingya Tinggalkan Gudang di Pelabuhan Langsa’ (‘Rohingya Refugees Leave the Warehouse in Langsa) Tempo.co (Jakarta, 28 June 2015) <https://nasional.tempo.co/read/679105/pengungsi-Rohingya-tinggalkan-gudang-di-pelabuhan-langsa/full&view=ok> accessed 17 November 2020

Nebehay S, ‘U.N. says it has credible reports that China holds million Uighurs in secret camps’ (Reuters, 10 August 2018) < https://www.reuters.com/article/us-china-rights-un-idUSKBN1KV1SU> accessed 19 September 2020

Newland K, ‘Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations short of Mass Influx’, discussion paper prepared for UNHCR expert meeting on international cooperation to share burdens and responsibilities <http://www.unhcr.org/4ef332d29.pdf> accessed 10 November 2017

Nicholson F and Judith Kumin, ’A Guide to International Refugee Protection and Building State Asylum System’ UNHCR and the Inter-Parliamentary Union <https://www.unhcr.org/3d4aba564.pdf> accessed 5 November 2020

Parliament Australia, Refugee resettlement to Australia: What are the facts? <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/RefugeeResettlement#_Toc461022122> accessed 3 April 2020

Parry RL, ‘Tales of Horror from Malaysia’s Camps’ (*Independent*, 2 May 1998) <https://www.independent.co.uk/news/tales-of-horror-from-malaysias-camps-1162011.html>

Peters E and Melodie H. Eichbauer, ‘canon law’ <https://www.oxfordbibliographies.com/view/document/obo-9780195396584/obo-9780195396584-0033.xml> accessed 28 October 2020

Piper M et al, ‘Refugee Resettlement: 2012 and Beyond’ UNHCR Research Paper No 253/2013 <http://www.unhcr.org/510bd3979.pdf> accessed 2 July 2020

Quintana TO, ‘Report of the Special Rapporteur on the Situation of Human Rights in Myanmar’ (OHCHR, 2 April 2014) <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/.../A-HRC-25-64_en.doc> accessed 29 November 2018

Rachmah RA and Zico Efraindo Pestalozi, ‘Hidup yang terabaikan: Laporan Penelitian Nasib Pengungsi Rohingya refugees di Indonesia’ (‘An Abandoned Life: The Fate of Rohingya Refugees in Indonesia’) (Suaka Report, 2016) <https://suakaindonesia.files.wordpress.com/2016/12/suaka-laporan-penelitian-pengungsi-Rohingya refugees-2016-ind.pdf> accessed 17 August 2019

Ragozin L, ‘ Annexation of Crimea: A masterclass in political manipulation’ Aljazeera (Doha, 16 March 2019) <https://www.aljazeera.com/opinions/2019/3/16/annexation-of-crimea-a-masterclass-in-political-manipulation/> accessed 19 September 2020

Ratwatte I, ‘UNHCR Welcomes the Life-Saving Disembarkation of 300 Rohingya Refugees in Indonesia’ *UNHCR* (Geneva, 7 September 2020) <https://www.unhcr.org/uk/news/press/2020/9/5f55eeb54/unhcr-welcomes-life-saving-disembarkation-300-Rohingya refugees-refugees-indonesia.html> accessed 16 November 2020

Reliefweb, ‘Joint statement: Ministerial Meeting on Irregular Movement of People in Southeast Asia’ <https://reliefweb.int/report/myanmar/joint-statement-ministerial-meeting-irregular-movement-people-southeast-asia> accessed 10 August 2019

Santoso NW and Susi Moeimam, ‘De Koloniale Staat (Negara Kolonial) 1854-1942; Gids voor het archief van het Ministerie van Koloniën; De Indonesische archipel Desember’, Den Haag National Archief 2009) <https://adoc.pub/de-koloniale-staat-negara-kolonial.html> accessed 6 September 2018

Schlein L, ‘Nightmare Ends for Hundreds of Rohingya Refugees Stranded at Sea’(Voanews, 8 September 2020) <https://www.voanews.com/east-asia-pacific/nightmare-ends-hundreds-rohingya-refugees-stranded-sea> accessed 10 September 2020

Shapiro SJ, ‘The Hart-Dworkin Debate: A Short Guide for the Perplexed’ Public Law and Legal Theory (Working Paper Series Working Paper No. 77, March 2007

University of Michigan Law School)
<https://law.yale.edu/system/files/documents/pdf/Faculty/Shapiro_Hart_Dworkin_Debate.pdf> accessed 9 August 2018

Shianto V, 'Employing Refugees in Indonesia: Is it Possible?' *Jakarta Post* (Jakarta, 11 June 2018)
<http://www.thejakartapost.com/academia/2018/06/11/employing-refugees-in-indonesia-is-it-possible.html> accessed 21 June 2018

----, 'Refugees in Indonesia: Is it Possible?' *the Jakarta Post* (Jakarta, 11 July 2018) http://www.thejakartapost.com/academia/2018/06/11/employing-refugees-in-indonesia-is-it-possible.html accessed 21 October 2018

Simanjuntak H, 'Hundreds of Myanmarese Rohingya Sheltered in Aceh Sports Hall' The Jakarta Post (Jakarta 12 May 2015)
<https://www.thejakartapost.com/news/2015/05/12/hundreds-myanmarese-rohingya-sheltered-aceh-sports-hall.html> accessed 20 October 2020

Stacey A, 'Treating Guests in Islamic Way' (25 August 2014)
<https://www.islamreligion.com/articles/10662/treating-guests-islamic-way/> accessed May 2020

Sukma R, 'Security Operations in Aceh: Goals, Consequences, and Lessons Policy' (Washington DC
East-West Center 2004) <https://www.eastwestcenter.org/publications/security-operations-aceh-goals-consequences-and-lessons> accessed 5 September 2018

Suryono M, 'UNHCR In Indonesia' <https://www.unhcr.org/id/en/unhcr-in-indonesia> accessed 2 November 2020

Tay AK *et al*. (2018), 'Culture, Context and Mental Health of Rohingya Refugees: A Review for Staff in Mental Health and Psychosocial Support Programmes for Rohingya Refugees' (UNHCR, 2018) <https://www.unhcr.org/5bbc6f014.pdf> accessed 9 September 2020

Tempo.co (Jakarta, 20 May 2015) <https://dunia.tempo.co/read/667958/pengungsi-Rohingya refugees-diangkut-ke-mapolres-aceh-timur> accessed 15 November 2020

The Guardian, '"We helped out of Solidarity": Indonesian Fishermen Come to Aid of Boat Migrants' *The Guardian* (London, 18 May 2015)
<https://www.theguardian.com/world/2015/may/18/solidarity-indonesian-fishermen-boat-migrants-aceh> accessed 17 October 2018

----, 'Hundreds of Rohingya Refugees Rescued from Boats off Indonesian Cost' *The Guardian* (London, 10 May 2015)
<https://www.theguardian.com/world/2015/may/10/hundreds-of-Rohingya refugees-refugees-rescued-from-boats-off-indonesian-coast> accessed 15 November 2020

----,' France and Germany unite against Iraq war' The Guardian (London, 22 January 2003) <https://www.theguardian.com/world/2003/jan/22/germany.france> accessed 19 September 2020

The Editors of Encyclopaedia Britannia, ‘Iskandar Muda’ Britannica <https://www.britannica.com/biography/Iskandar-Muda> accessed 25 October 2018

The Editors of Encyclopaedia Britannia,’Ibn Kathir Muslim Scholar’, <https://www.britannica.com/biography/Ibn-Kathir> accessed 3 May 2020

The Jakarta Post, ‘Australian Navy Drives Boat People into Indonesian Waters’, *Jakarta Post* (Jakarta), 6 January 2014 <https://www.thejakartapost.com/news/2014/01/06/australia-navy-drives-boat-people-indonesian-waters.html>

Tobing DH, ‘A year of Jokowi’s Refugee Decree: What has Changed?’ *the Jakarta Post* (Jakarta, 12 January 2018) <http://www.thejakartapost.com/academia/2018/01/12/a-year-of-jokowis-refugee-decree-what-has-changed.html> accessed 20 October 2018

Tribunnews, ‘Cadangan Minyak Aceh Capai 100 Juta Barel’ (The Reserve of Aceh’s Natural Gas attain 100 million Barrel) *Tribbunews* (Aceh, 10 April 2018) <http://aceh.tribunnews.com/2018/04/10/cadangan-minyak-aceh-capai-100-juta-barel> accessed 30 November 2018

United Nations Human Rights Office of the High Commissioner,’ Protocol relating to the Status of Refugees’ <https://www.ohchr.org/Documents/ProfessionalInterest/protocolrefugees.pdf> accessed 10 July 2020

UN Migration Agency Facilitates Release of Refugees from Indonesian Detention Centres,’ <https://indonesia.iom.int/news/un-migration-agency-facilitates-release-refugees-indonesian-detention-centres> accessed 3 March 2020

UN Office on Drugs and Crime, ‘Migrant Smuggling in Asia: Current Trends and Challenges’ UN Office on Drugs and Crime (Bangkok, 28 April 2015) available at https: <https://reliefweb.int/report/world/migrant-smuggling-asia-current-trends-and-related-challenges-enmy> accessed 14 August 2019

UNHCR Indonesia, ‘Refugee Status Determination’ <https://www.unhcr.org/id/en/refugee-status-determination> accessed 16 April 2018

----, ‘UNHCR in Indonesia’ <https://www.unhcr.org/id/en/unhcr-in-indonesia> accessed 17 April 2020

UNHCR Turkey, ‘Refugees and Asylum Seekers in Turkey’ <https://www.unhcr.org/tr/en/refugees-and-asylum-seekers-in-turkey> accessed 9 July 2019

UNHCR, ‘Agenda Protection’ <http://www.unhcr.org/uk/protection/globalconsult/3e637b194/agenda-protection-third-edition.html> accessed 9 November 2017

----, ‘Bringing the New York Declaration to Life Applying the Comprehensive Refugee Response Framework (CRRF)’ <https://www.unhcr.org/593e5ce27> accessed 7 November 2020

----, 'Burundi Regional Refugee Response Plan' <https://www.unhcr.org/uk/partners/donors/5c330c444/burundi-2019-2020-regional-refugee-response-plan-december-2018.html> accessed 6 November 2020

----, 'Executive Committee' <http://www.unhcr.org/uk/executive-committee.html> accessed 20 July 2020

----, 'Figures at a glance' < https://www.unhcr.org/uk/figures-at-a-glance.html> accessed 10 September 2020

----, 'Inspector General Offices' <http://www.unhcr.org/uk/inspector-generals-office.html> accessed 10 November 2017

----, 'Procedure Standards for Refugee Status Determination under UNHCR's mandate', (2003). This procedure is under revision. <file:///H:/articles/unhcr%20rsd%20mechanism.pdf> accessed 25 April 2020

----, 'Refugee Status Determination' <http://www.unhcr.org/uk/refugee-status-determination.html> accessed 10 November 2017

----, 'The State of the World's Refugees' < https://www.unhcr.org/afr/3ebf9bad0.pdf> accessed 1 July 2020

----, IGO Online Complaint Form <https://www.unhcr.org/igo-complaints.html > accessed 15 June 2020, and I-33 (n 9)

---, Papua New Guinea, <file://userfs/ff618/w2k/Downloads/UNHCR_UPR25_PNG_E_Main.pdf> accessed 10 October 2020.

----,' States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html> accessed 15 July 2019

---, 'Convention Plus Targeting of Development Assistance for Durable Solutions to Force Displacement' <http://www.unhcr.org/uk/protection/convention/437d9f152/convention-plus-targeting-development-assistance-durable-solutions-forced.html> accessed 16 November 2017

UNHCR ExCom, 'ExCom Conclusion No. 106 (LVII) 2006' <http://www.unhcr.org/publ/PUBL/3d4ab3ff2.pdf> accessed 1 November 2017

---,'Excom Conclusion on Refugee Without an Asylum Country No. 15 (XXX) (1979) <http://www.unhcr.org/uk/excom/exconc/3ae68c960/refugees-asylum-country.html> accessed 15 November 2017

---, 'ExCom Conclusion on The International Protection of Refugees No. 65 (XLII) (1991) <http://www.unhcr.org/uk/excom/exconc/3ae68c404/general-conclusion-international-protection.html> accessed 10 November 2017

United Nations, ‘Growth in United Nations membership: 1945-present’ <https://www.un.org/en/sections/member-states/growth-united-nations-membership-1945-present/index.html> accessed 21 October 2020

Utomo PB, ‘The Role of Traditional Knowledge in Fisheries Management: A Study Case of *Panglima Laot* (Sea Commander) in the Aceh Province of Indonesia’ (MSc Dissertation, World Maritime University 2010) 49, 55 <https://commons.wmu.se/all_dissertations/431/> accessed 19 October 2019

Varagur K, ‘“They are our brothers”: Rohingya refugees find rare welcome in Aceh’ (*Guardian*, 25 May 2018) <https://www.theguardian.com/world/2018/may/25/they-are-our-brothers-rohingya-refugees-find-rare-welcome-in-aceh> accessed 20 October 2020

Violeta Moreno-Lax, ‘The Interdiction of Asylum Seekers at Sea Law and (mal)practice in Europe and Australia’: https://www.unhcr.org/5a0574597.pdf accessed 10 November 2019

World Bank Press Release, ‘World Bank Announces $2.2 Billion Scale-up in Support for Refugees and Host Communities at First Global Refugee Forum’ World Bank (Geneva, 17 December 2019) <https://www.worldbank.org/en/news/press-release/2019/12/17/world-bank-announces-us22-billion-scale-up-in-support-for-refugees-and-host-communities-at-first-global-refugee-forum> accessed 7 November 2020

Zamzami Y, ‘Indonesian Fishermen Discover 94 Rohingya Refugees Adrift at Sea’ *Associated Press* (New York, 24 June 2020) <https://abcnews.go.com/International/wireStory/indonesian-fishermen-discover-94-Rohingya refugees-adrift-sea-71423364> accessed 16 November 2020.