

# Legal Protection for Refugees in Indonesia in the Perspective of National and International Law

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Abstract: Protection of refugees is needed in view of humanity and with regard to the concept of human rights. Refugee protection can be seen in the perspective of national law and the perspective of applicable international law. Indonesia has not ratified international agreements on refugees. But the reality is that Indonesia also faces problems with the entry of refugees. The handling of refugees in the international order was carried out, among others, by UNHCR. The Indonesian government needs to cooperate with UNHCR in handling refugees. Introduction.

## 1 INTRODUCTION

The handling of refugees in Indonesia has experienced difficulties due to several factors. Even though Indonesia is the main country of refugees as a transit country, especially, to Australia. Some obstacles become obstacles to handling refugees in Indonesia. These constraints include:

The ratification of the 1951 Convention on the determination of refugee status and the 1967 protocol has not been ratified.

Until now Indonesia has not become a party to the 1951 Geneva Convention on refugees and the 1967 protocol. The parties to the 1951 Convention have responsibility and authority in determining the status and survival of refugees and their implications. Thus, it is no longer the authority of UNHCR in handling refugee problems. The position of Indonesia as a State not a ratification of the 1951 convention caused Indonesia to have no obligation to deal with the problem of refugees. Under these conditions, Indonesia has not issued a provision that has juridical powers for refugees and asylum seekers and the Indonesian government does not have more involvement than as a temporary transit country and helps find a place for refugees until they are dispatched to the destination country offered or repatriated.

By not being a party to the 1951 Convention and the 1967 Protocol, the Indonesian government also does not have the authority to provide refugee status determination or what is commonly referred to as the "Refugee Status Determination" (RSD), so the

regulation of issues regarding refugees is determined by UNHCR (the UN deal with refugees) in accordance with the mandate it receives under the UNHCR Statute of 1950. This authority is carried out considering that Indonesia is not a party to the Convention in 1951. All countries including those that have not ratified the Convention on refugees must uphold refugee protection standards that have become part of general international law because the convention has become *jus cogens*, and no refugee can be returned to an area where his life or freedom is threatened.

Indonesia does not have a legal umbrella for handling refugees in Indonesia. Whereas from day to day the number of refugees entering Indonesia is increasing. The absence of specific legal regulations regarding refugees causes a legal vacuum in dealing with refugees. At the practical level the absence of this legal instrument has led to confusion and overlapping authority among institutions that have an interest in dealing with issues relating to refugees and asylum seekers in Indonesia.

With the absence of operational legal instruments to be a reference for interested institutions to anticipate refugee problems and seek asylum it is clear that the refugee legal instrument needs to be institutionalized in the national legal system in Indonesia.

## 2 METHODOLOGY

This paper uses the normative juridical method. Normative legal research method or literature law research method is a method used in legal research conducted by examining the library materials in the form of applicable legal norms contained in the legislation or judgment decisions.

Normative juridical research methods are used in this paper to analyze national and international legal norms that regulate refugee protection.

## 3 RESULT AND DISCUSSION

### 3.1 Lack of Adequate Legal Protection in Indonesia

The refugee problem in Indonesia is still positioned from the point of view of immigration so that the issue of refugees is only seen from an immigration perspective. Immigration positive law in Indonesia does not contain provisions specifically applicable (*lex specialis*) for asylum seekers and refugees. For example there is no specific immigration administration procedure.

There are no provisions regarding temporary residence permits, shelters, handling mechanisms and evaluation processes. Law No. 9 of 1992 concerning immigration designed in the late 1980s has not made human rights an important consideration as a standard in it.

### 3.2 National Law Instrument Regarding Refugee Problems

Indonesia is a country that is not a participant of the 1951 Convention and the 1967 Protocol and legislation in force in Indonesia does not yet specifically highlight the problem of refugees. Even so, the Indonesian government cannot escape the problem of refugees residing in Indonesia. In addition, Indonesia is an active member of the United Nations (UN) Indonesia has the responsibility and the law in upholding the values of Human Rights (HAM) for both Indonesian citizens and other nations. We can see this from the 1945 Constitution of the Republic of Indonesia (RI 1945 Constitution), the second principle of Pancasila which reads "just and civilized humanity" and the fourth paragraph of the opening of the 1945 Constitution of 1945 along with its amendments and also the Law The Republic of Indonesia No. 39 of 1999 concerning Human Rights

clearly shows that the government of the Republic of Indonesia has an appreciation of the protection, enforcement, fulfillment and promotion of human rights.

The issue of international refugees is no exception being the duty of the government, let alone those international refugees are in the territory of the Republic of Indonesia. Some laws mention the problem of handling refugees, even though there are no specific legislation that addresses refugees. Although there is no specific legal provision that addresses refugees and asylum seekers in Indonesian law, the issue of refugees has been discussed in a number of laws and regulations in Indonesia, although the issue of refugees is discussed in causing Law Number 5 of 1998.

### 3.3 Refugee Handling Mechanism.

The mechanism for handling refugees in Indonesia depends on how we see these refugees and from which point of view. So far the problem of refugees in Indonesia is only seen from the point of view of immigration. "There must not be a country that refuses, returns, extradites someone to a country where there is a strong belief / reason that he will be dangerous because of being subjected to torture." This problem was also discussed in Law No. 37 of 1999 concerning Foreign Relations in Article 25 to Article 27. Article 25 of Law No. 37 of 1999 states: 1. The authority to grant asylum to foreigners is in the hands of the President, taking into account the Minister's consideration. 2. The exercise of authority as referred to in paragraph (1) is regulated by a Presidential Decree. Article 26 of Law No. 37 of 1999 states that: granting asylum to foreigners is carried out in accordance with national legislation. As well as taking into account international law, customs and practices.

Article 26 states that: granting asylum to foreigners is carried out in accordance with national legislation. And by paying attention to laws, customs and international practices.

Article 27 of Law No. 37 of 1999 states:

1. The President determines the policy of the problem of refugees from abroad by taking into account the Minister's consideration.

2. The policy principles as referred to in paragraph (1) are regulated by a presidential decree.

Act no. 37 of 1999 concerning Foreign Relations in Chapter VI Article 25-27 which has been used as a reference in providing asylum and handling refugees, in no way explains specifically how the process of granting asylum and handling refugees must be

carried out by the Indonesian government. The regulations and laws made by the government basically cannot answer the problem of refugees in Indonesia anymore.

Indonesia is a participating country that ratifies the Convention on Civil and Political Rights. That ended with the birth of Law Number 12 of 2005 which was the endorsement of the convention. Article 12 paragraph (2) of Law Number 12 of 2005 states that: "Everyone is free to leave any country including his country".

Article 1 paragraph (9) of Law Number 6 of 2011 concerning Immigration is stipulated in the provision for foreigners that foreigners are people who are not Indonesian citizens. In the Immigration Act, a refugee or asylum seeker refers to the article that they are still in the general category, namely called and equalized as foreigners. That is why Indonesia has not yet ratified the 1951 Refugee Convention because there is still a national legal instrument concerning refugees.

#### 4 CONCLUSION

The mechanism for handling refugees in Indonesia depends on how we see these refugees and from which point of view. So far the problem of refugees in Indonesia is only seen from the point of view of immigration. The refugee problem in Indonesia has not been seen from the point of view of human rights. Refugees and asylum seekers are still compared to immigrants. Even though the definition between refugees, asylum seekers and immigrants is different from each other.

The limited capacity of UNHCR in Indonesia to deal with the increasing number of asylum seekers and the lack of places for placement in third countries results in long waiting times. The lack of information and assistance available to asylum seekers and refugees to help themselves and their families results in frustration and depression for many of the people served.

In general, the lack of access to the right to health care, education and employment resulted in refugees and asylum seekers becoming very vulnerable to health emergencies and daily life. The waiting list for assistance such as shelter and health care is very long. Without the right to work, there is no means for asylum seekers to support themselves and their families when they transit in Indonesia or when waiting for the placement process to a third country. UNHCR reported that as of December 2013, only 322 vulnerable people were served, through the services

of implementing partner institutions, Church World Service (CWS). Other civil society organizations such as Jesuit Refugee Service (JRS) in Indonesia can only provide limited assistance for food and shelter. In 2013, JRS assisted 143 people located in Bogor and Jakarta. Even for asylum seekers and refugees who have received assistance, financial assistance from UNHCR is reported to be very small.

Asylum seekers and refugees can only receive services from the International Organization for Migration.

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