

The Urgency of the 1951 International Convention Ratification in Fulfilling the Rights of Refugees in Indonesia

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ABSTRACT

Indonesia has not yet ratified the International Convention in 1951. However, the Government still allows the refugees to enter Indonesian territory. The Government of Indonesia is working with UNHCR and IOM to deal with refugees. In handling refugees, so far there are no laws and regulations issued by the Indonesian government. Refugees have rights that must be fulfilled which is listed in the International convention in 1951. The research method used in this paper is an empirical study. The results show that due to the unratified the 1951 International Convention, refugees in Indonesia had difficulty in fulfilling their rights. The recommendation in this study is the Indonesian Government must immediately ratify the International Convention in 1951 into a Law so that the fulfillment of the refugee's rights will be easy to be realized.

Keywords: *ratification, International Convention in 1951, the rights of refugees*

1. INTRODUCTION

Geographically located in a strategic position on the world map, Indonesia has become a place for refugees to enter with various motives. This causes the territories of this country face two big polemics in addressing the problem of refugees. The first relates to the issue of sovereignty of a country, while on the other hand it is confronted with human rights issues. [1]

Indonesia continually is among countries that received a large number of asylum seekers and refugees such as Malaysia, Thailand, and Australia. Data on the arrival of asylum seekers who registered at UNHCR from year to year: 385 in 2008; 3,230 in 2009; 3,905 in 2010; 4,052 in 2011, 7,223 in 2012; 8,332 in 2013; 5,659 in 2014; 4,426 in 2015; 3,112 in 2016. End of the year 2017, data shows as many as 13,840 refugees were cumulatively registered with UNHCR and they came from Afghanistan (55%), Somalia (11%) and Iraq (6%). At present, there are around 13,800 refugees registered at the UNHCR office in Indonesia. UNHCR noted that until 2018 in Indonesia there were 9,795 refugees. [2]

As a recipient country, Indonesia is obliged to provide shelter, food, medicine and a decent living for refugees, even though Indonesia is not a country that ratified the UN Convention in 1951 on refugees and the Protocol in 1967, therefore Indonesia is not obliged to accept refugees in the territory of the country. However, this refugee problem has been accepted by the UN Assembly as a resolution and all UN member states are

directed to provide international protection and seek permanent solutions to the refugee problems. [3]

The obstacle confronted by Indonesia in dealing with the refugees is the country does not yet have clear regulations regarding the handling of international refugees. As a country that has not ratified the 1951 International Convention and 1967 Protocol regarding the Refugee Status, Indonesia does not have obligations and authority to take international action against immigrants entering Indonesia. The implication, Indonesia can only accommodate these immigrants until the maximum time limit of 10 (ten) years without being able and not having the right to take further action related to the status of immigrants in the territory of Indonesia. [4]

Although Indonesia has not ratified the 1951 International Convention and the Additional Protocol in 1967, in other international treaties, Indonesia declared its full support for the basic principles of human rights. This was stated in the UN Charter and recorded in the 1948 Universal Declaration of Human Rights as a standard of shared achievement for all people and nations.

The Indonesian government always collaborates in handling the problem of the refugees entering Indonesia. Regarding cases of refugee applications in Indonesia, consider that Indonesia has not ratified the Refugee Convention in 1951, the Indonesian government fully delegated these issues to UNHCR. Furthermore, the agency conducts a series of permanent procedures for determining the status of applicant refugees. UNHCR identifies according to their protection needs. The UNHCR

will grant a residence permit to the refugees with the approval of the Government of Indonesia until they obtain their placement. In carrying out its duties, UNHCR carries out cooperation with its partners who have representatives in Indonesia. Assistance provided by UNHCR to refugees includes food, health, counseling, and other necessary needs. [5]

The issue to be discussed in this research is the extent of the urgency of the 1951 International Convention on Refugees and the 1967 Protocol to fulfill the rights of refugees.

2. METHOD

The method used in this research is normative legal research. The data were collected through library research by reviewing documents, journal articles, and current literature that is relevant to the query which will be investigated to present the solution for the problems. By analyzing how the urgency of the Refugees International Convention in 1951, it is very important to be ratified into law so that the rights of refugees can be fulfilled.

3. DISCUSSION AND RESULT

The opening of the Refugee International Convention in 1951 stated that the country was required to provide protection for the basic rights of refugees and provide freedom without discrimination.

According to the UN Convention in 1951 article 1 regarding refugee's status :

“ A refugee is someone who has been forced to flee his or her country because of persecution, war, or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries”.

Based on the definition above, it can be concluded that the refugee aims to secure themselves because of life-threatening dangers, due to man-made disasters. Displacement can be carried out within the scope of one country or another caused by political conflict.

The 1951 Refugee Convention and its 1967 Protocol are in principle almost the same. There are three main points which are the contents of the convention, such as:

1. The basic understanding of Refugee, it is important to know in order to determine the status of a refugee. This determination is decided by the country where there is a representative who works with UNHCR to handle the problem of refugees from the United Nations.
2. Legal status, rights, and obligations of refugees in the country where the refugees are located.
3. The implementation of the agreement, especially concerning administration and diplomatic relations.

The rights and obligations of refugees listed in the 1951 International Convention as follows:

1. States Parties to the Convention may not treat the refugees based on discriminatory politics in terms of race, religion or national origin or color and they have the freedom to practice their religion and to access the education for their children in the place where they are accommodated (Articles 3 and 4).
2. Regarding the personal status of refugees, it is regulated in accordance with the law where they live, including the status of residence and recognition of the rights relating to marriage. (article 12).
3. The refugees have the same rights in terms of owning property rights both movable and immovable and storing it as another person. They can also transfer their assets to the country where they will reside (Articles 13, 14 and 30).
4. States parties to the Convention must recognize the freedom of refugees to associate and establishing associations including trade associations as long as they are non-profit and non-political (Article 15).
5. The refugees who have a legal case and they want to resolve it through a judicial institution, in this case, they must be considered equal to other citizens so that they have the freedom to file their claims in the court where they are facilitated. More than that if necessary they should be given legal assistance (Article 16).
6. Refugees who have been permanently placed in a country and recognized according to law, they have the right to get a job and establish a trading company and other free work, where this free work must be compatible with the recognized regulation, such as a signed certificate. The point is to find out what kind of expertise they have so that they can be placed in a suitable job (articles 17, 18 and 19).
7. Every refugee will receive the same treatment as other citizens for the right to obtain primary school education. Therefore, every refugee has the right to exempt certain education costs, including the right to obtain scholarships (Article 22).
8. Each refugee is given the widest possible freedom to choose which region or province they will stay in as long as the choice is still in the territory of the country where he is placed (Article 26).
9. Every refugee will be able to enjoy rights to social welfare, such as the right to work, housing, to get paid from the work they do (Articles 20 and 22).
10. Every refugee has the right to identity and travel documents out of the territorial country where he is placed except for reasons of security and public interest. Travel documents issued under international treaties will be recognized by the participating countries of the Convention (Articles 27 and 28).
11. The refugees who have been permanently resettled in a country will not be evicted to the areas where their lives will be threatened. There will be no punishment for refugees who enter unauthorized entry, unless the national security requires otherwise, such as committing chaos where they live (articles 31, 32 and 33).

Aside from the refugee rights mentioned above, the Convention also outlines refugee's obligations as stated in Article 2 of the Convention "Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for maintenance of public order."

Refugees urgently need international protection for their survival, bearing in mind that they no longer receive protection from their home countries. Every country has the rights and obligations in dealing with refugee issues which are basically humanitarian issues, while still considering respect for the sovereignty of the country.

The situation in Indonesia related to the problem of refugees is dilemmatic. Indonesia, which is not a state party, does not have a comprehensive legal instrument regarding refugees. However, from the beginning until now it has had to face the problem of claims of foreign asylum seekers to obtain recognition of refugee status, even though Indonesia is not a destination country.

At the same time along with the universal tendency, Indonesia must adopt a standard of treatment that upholds human rights, especially after Indonesia has a national legal instrument with a human rights dimension. For example MPR Decree No. XVII / MPR / 1998 which contains the Charter of Human Rights, the 1945 Constitution of the Republic of Indonesia (1945 Constitution), Law No. 39 of 1999 concerning Human Rights, Law No. 37 of 1999 concerning Foreign Relations, ratification Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with Law No. 5 of 1998 concerning the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Law No. 1 of 1979 concerning Extradition and Presidential Decree Number 125 of 2016 concerning Handling of Refugees from Abroad.

In dealing with the refugees residing in Indonesia, the Government issued a Presidential Decree of the Republic of Indonesia (*Perpres*) Number 125 of 2016. In this *Perpres*, the rights of refugees cannot be explicitly protected by law and only focus on handling the administrative affairs of refugees and regulating refugee shelters while in Indonesia. The provision of refugee shelter facilities for refugees is carried out by UNHCR and IOM (Article 26). These rules will hamper the process of fulfilling the refugee's rights as listed in the 1951 International Refugee Convention.

The Convention in 1951 and the Protocol in 1967, are the tools of the International Human Rights Instruments. The existence of international instruments is one aspect of advancing the protection of human rights. This is due to the condition that the state has a large role in voicing national interests during the negotiation process and the preparation of an international human rights instrument and during the process of transforming the instrument into binding national law through ratification. [6]

Human Rights have a universal value which means it does not recognize the limits of space and time. This

universal value is translated into various national legal products to protect and uphold human values. [7]

The Refugee Convention in 1951 is *ius cogen*, so all countries including those who have not ratified are obliged to uphold refugee protection standards that have become part of general international law. In terms of substance, the 1951 Refugee Convention and the 1967 Protocol are international human rights instruments. The existence of such international instruments is one aspect of advancing human rights protection.

This is due to the condition, that the state has a large role in voicing national interests during the negotiation process and the preparation of an international human rights instrument and during the process of transforming the instrument into binding national law through ratification or accession. Each country has the right and obligation to deal with refugee issues which are basically humanitarian issues, while still considering respect for the sovereignty of the country.

4. CONCLUSION

The Indonesian government has not ratified the 1951 International Convention regarding Refugees into a Law. Consequently, the fulfillment the rights of refugees is difficult to be achieved. The arrangements listed in *Pepres* (president regulation) Number 125 of 2016 only govern the administrative process and placement of Refugees while in Indonesia. Therefore, it is difficult for Indonesia to fulfill the rights of refugees. Laws are urgently needed to regulate legal protection for refugees and also expected to fulfill the refugee's rights.

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