

Juridical Review of the Refugees in Indonesia from the Human Rights Side and the Private Protection

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ABSTRACT--*The emergence of conflicts within a country as well as conflicts between countries lead to warfare which results in the occurrence of fear because it causes many casualties and loss of property. This has triggered many people to flee to flee their countries without bringing enough supplies or documents to countries that are considered safe, including to Indonesian territory. Article 9 of the Universal Declaration of Human Rights, among others, states that every person has the right to live and maintain life, because that right is one of the many human rights possessed by every human being.*

Refugees entering Indonesia are increasingly creating difficulties for the Government, because Indonesia has not ratified the 1951 Convention and the 1967 Protocol, so it has no obligation to take care of refugees. With the issuance of Law Number 37 of 1999 concerning Foreign Relations, one of the considerations being in the framework of participating in carrying out world order, which is based on independence, lasting peace and social justice, then Article 27 paragraph (2) of the Act becomes the basis for President to issue Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Overseas. With the issuance of Presidential Regulation No. 125 of 2016 concerning Handling of Refugees from Abroad, the Indonesian Government is committed to taking care of refugees entering Indonesia.

Keywords: *refugees, human rights, legal protection*

I. INTRODUCTION

In the past people left one country to enter another country due to various backgrounds, for example to look for a better life, to trade, to spread religion and so on.

In its development, with many conflicts in one country, conflicts between countries and wars, all of which are frightening with many casualties, even property, cause many people to leave their country to go to other countries to save themselves.

Those who are victims of conflict will look for a safe country that can be used as a place of residence, therefore people from conflict countries enter another safe way. Increasingly the number of people leaving their conflicting countries. They not only entered the closest countries, but also entered countries far from theirs.

The refugees are forced to flee without knowing whether the country to be visited will provide a sense of security and adequate security for their lives or not,

because for those who are important is to save themselves and their families from the threat of danger.

The increasing number of refugees attracts international attention. The United Nations sees that the existence of refugees is a very serious problem amid the issue of Human Rights.

December 10, 1948 The United Nations declared the Universal Declaration of Human Rights as a form of protection for international human rights which includes the rights attached to every person without differences in color, religion, gender and others with the aim that each Humans are recognized humanity, because basically human rights are owned by everyone without any difference.

Horizontally this difference must be addressed with the appreciation that basically all humans have human rights inherent in themselves from birth, during life and live their lives, until later buried at the time of death, even a death row inmate also has rights that must be respected.

Whereas vertically, basically every state must protect the human rights of everyone who is within its sovereign territory, as the implementation of its duties and responsibilities towards all people within its territory, regardless of whether that person is a citizen or not.

For the people, legal protection is a universal concept, which is adopted and determined by the state which declares itself to be a rule of law.

A state of law must be able to provide equal legal protection to its citizens without distinction.

The implementation of legal protection of a country is different from other countries because there are constitutional mechanisms that must be fulfilled to carry out these legal protections and of course to what extent legal protection is given by the state to every person who is in his sovereign territory and enforcement.

Related to the geographical location between the continents of Asia and the continent of Australia, as well as being between the Pacific Ocean and Indian Ocean, Indonesia has a very important meaning for people traveling across two continents or two oceans, including being a strategic place as an entry point for the refugees from the Asian continent who are going to the continent of Australia.

Increasingly more and more refugees are entering Indonesian territory, making the Indonesian Government

encounter difficulties in handling it, even though Indonesia has no interest whatsoever in the presence of these refugees.

II. FINDINGS AND DISCUSSION

The law is made to be a tool or means to regulate the rights and obligations of legal subjects, namely people and legal entities, so that legal subjects can carry out all their obligations properly, so that later these legal subjects can obtain their rights in accordance with applicable regulations.

The law also has a function to protect legal subjects.

Law here is also used to prioritize the concept of law that is instrumental (tool), which is a tool for forming legislation (Government in a broad sense) that is operationalized as a means of controlling society and as a means of stabilizing the development patterns that exist in society. Then the legal task is to guarantee the creation of legal certainty through legal protection and enforcement.

Sudikno Mertokusumo said that the law functions as the protection of human interests. In order for human interests to be protected, the law must be implemented. The implementation of the law can take place normally, peacefully, but can also occur due to violations of the law. Violation of the law occurs when certain legal subjects do not carry out the obligations that should be carried out or because they violate the rights of other legal subjects. Legal subjects whose rights have been violated must have legal protection.

The concept of the rule of law includes four basic demands: 1) demands for legal certainty which are the immediate needs of the community; 2) demands that the law must apply equally to all residents and citizens; 3) there must be democratic legitimacy, namely that the process of making or enacting the law must include and obtain the people's consent; and 4) the rule of law is a demand of reason, namely upholding the dignity of people and society.

Besides that, there are a number of general principles that apply in the rule of law, namely: 1) the protection of human rights; 2) the existence of democratic state institutions; 3) the existence of an orderly law; and 4) free judicial authority;

The law aims to regulate the association of human life peacefully. Peace between people is maintained by law by protecting human interests such as honor, freedom of life and property from those who attempt to fight the law to commit acts that violate human rights.

Humans were created by God Almighty as the highest being who is endowed with reason and reason. With this gift, humans develop themselves, both physically and spiritually, to realize their desires. Every human being has his own will, feelings and thoughts.

Every human being has the same human rights, namely the right to life, then the various rights he has to

develop himself throughout his life, the right to be buried when he dies, even a death row inmate has the right to life.

Human rights are the basic rights of all human beings without any difference considering the basic rights are gifts from God.

Humans are biological creatures, but also social creatures. As biological creatures and social creatures, scholars claim that humans have the essence of life, the essence of human life in society is to maintain survival.

When Indonesia was hit by the issue of human rights violations, some Indonesians and the international community had the impression that Indonesia was less sensitive to human rights issues.

With the consideration that human rights are basic rights that are inherently inherent in human beings as a gift from God Almighty that is universal, every human being has an obligation to respect human rights from one another and the State has an obligation to implement the General Declaration of Rights. human rights that have been established by the United Nations, then issued Law Number 39 of 1999 concerning Human Rights on September 23, 1999.

According to Article 1 paragraph 1 of Law Number 39 of 1999 concerning Human Rights, the understanding of human rights is a set of rights inherent in the nature and existence of humans as God's creatures and is a gift that must be respected, upheld and protected by the State, the law, the Government and everyone for the sake of honor and protection of human dignity.

In Article 1 number 7 of the Law, the National Commission on Human Rights (KOMNAS HAM) is regulated, which is an independent institution that is at the same level as other state institutions that function to carry out studies, research, counseling, monitoring, and mediation of Human Rights Human.

With the emergence of this issue the government anticipated it by taking various steps, namely issuing Presidential Decree Number 455 / M of 1993 concerning the National Commission on Human Rights.

Based on the Decree on December 22, 1993 the National Human Rights Commission (Komnas HAM) was formed which aims to:

- 1) Assist in developing conditions conducive to the implementation of human rights in accordance with Pancasila, the 1945 Constitution, and the UN Charter, and the Universal Declaration of Human Rights.
- 2) Increase the protection of human rights in order to support the realization of national development goals, namely the development of Indonesian people as a whole and the development of Indonesian society as a whole.

The human rights protection, enforcement and promotion program is a national program of the Indonesian people, so that it is regulated in various laws and regulations.

However, what still needs to be implemented is to establish a mechanism that specifically promotes,

monitors and reviews the implementation of this national program continuously.

Entering the reform era, changes were made to the 1945 Constitution by the MPR.

In 2000 the second amendment was made by the MPR to answer the challenge of the issue that Indonesia was not sensitive to human rights issues that occurred in Indonesia, namely by adding 1 (one) new chapter in the 1945 Constitution, namely Chapter XA.

Chapter XA regulates human rights, which consists of articles 28A to 28 J, in which there are various human rights owned by everyone.

When in the Fourth Paragraph of the Preamble of the 1945 Constitution which is then elaborated in Article 27 to Article 31 the elaboration of human rights is still limited, with the development in the life of the Indonesian people coupled with the influence of the development of the implementation of international human rights the addition of Chapter XA to the Constitution 1945 mentioned above.

Looking at what is regulated in Articles 28 A to 28 J of the 1945 Constitution, more and more diverse human rights are regulated therein. From this it is clear that there are developments in theory and practice concerning the recognition and protection of human rights in Indonesia.

Previously, based on the 1945 Constitution before being amended, every citizen had the same rights and position in the law (the principle of equality before the law), the right to work, to associate and gather, to express thoughts verbally and in writing, to embrace their respective religions and worship according to their religion and beliefs, rights and obligations to participate in the defense of the state, the right to teach.

If the development of human rights is grouped it can be explained, that in the first group in a vertical relationship between the people and the government there are civil rights, for example the right to self-determination, to live, not to be put to death, not to be tortured, not to be detained arbitrarily authority, and the right to a fair, independent and impartial trial and political rights, namely the right to express or express opinions, to gather and associate, to obtain equality before the law, the right to choose and be elected.

In the second group there are basic rights in the social and economic fields, which include the right to work with all the rights that surround it, namely regarding the protection of wages, working hours, health and safety. And human rights in the field of culture which includes the right to enjoy scientific progress, and copyright.

With the advancing development of the era the desire for human rights in the field of development has emerged, a third group of human rights has emerged, namely the right to obtain a healthy environment, to obtain adequate housing, to obtain adequate health services.

In horizontal relationships, there are also rights that must be protected, so the third group's human rights appear, namely the rights of consumers in dealing with

producers. During this time consumers as the party in need is in a weak position. To protect the consumer's rights, Law No. 8 of 1999 concerning Consumer Protection was issued.

In 1975 for the first time Indonesia experienced an influx of refugees from Vietnam as a result of a civil war which resulted in many Vietnamese fleeing to other safe countries.

What is meant by refugees according to the Indonesian Big Dictionary is a person or group of people who are forced or forced out of their homes for an uncertain period as a result of the adverse effects of disasters.

These refugees came out of their country by boarding a wooden boat without sufficient provisions or important documents.

Initially the Vietnamese people entered several islands in the Riau Islands region. Then because of the increasing number of United Nations High Commissioner for Refugees (UNHCR) and the Government of Indonesia agreed to place the refugees on one island to facilitate handling. Therefore, these refugees were placed in Sijantung Village on Galang Island, an island that is included in the Batam city government area in the Riau Islands as a temporary shelter until they are received by a third country or returned to their country.

Because of the large number of refugees, UNHCR has built various facilities, namely hospitals, places of worship, refugee camps, schools, UNHCR offices, even prisons and tombs.

UNHCR is a world body under the United Nations established in Geneva on December 14, 1950 which aims to protect and provide assistance to refugees at the request of a government or the United Nations to assist these refugees in the process of relocating their settlements to new places.

In Indonesia UNHCR was established in 1979 with headquarters in Jakarta and representative offices in the cities of Medan, Tanjung Pinang, Surabaya, Makassar, Kupang and Pontianak.

The existence of refugees in Indonesia ended in 1996 with the receipt of refugees by a third country and also because someone returned home to his country.

Actually, Indonesia does not have the authority to address the refugee problem, because Indonesia has not ratified the 1951 Convention On The Status Of Refugee (henceforth will be called the 1951 Convention) and the Protocol Relating to the status of Refugees 1967 (henceforth will be called the 1967 Protocol).

The 1951 Convention is a multilateral agreement that defines refugee status and establishes the individual rights to asylum and the responsibilities of the state that grants asylum.

The 1951 Convention on refugee status defines refugees as "people who are caused by reasonable fears of persecution, caused by reasons of race, religion, nationality, membership in certain social groups and political parties outside their national state and do not want protection from that country.

The 1951 Convention was the main foundation for international protection of refugees which at first was limited to people who left their country due to events that took place before January 1, 1951 and took place in the European region.

Next, the 1967 protocol was established which eliminated these limitations and made the 1951 convention universal in scope.

The convention is an instrument of status and is based on rights and is supported by a number of basic principles, especially non-discrimination, prohibition of the imposition of punishment and prohibition of expulsion or non-refoulement.

Looking at some of the sounds of the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which is to participate in carrying out world order based on independence, eternal peace and social justice, Indonesia has obligations like countries other existing in this world to protect every person who is in the territory of Indonesia, both their own citizens and foreign nationals who are in the territory of Indonesia, of course in this case including refugees.

With the completion of the problem on Galang Island, it does not mean that the refugee problem has stopped. From year to year refugees come to Indonesia from conflicting countries.

Political instability and prolonged conflict in several countries, for example countries in the Middle East, West Asia, East Asia and South Asia, caused many of its population to leave these countries to countries considered safe. To go to the country they wanted, it was not uncommon for them to enter other countries that were not their destinations, including entering Indonesia, because the ship they were traveling in was stranded or foundered in Indonesian waters.

Indonesia in 1999 had experienced the entry of hundreds of thousands of refugees from Timor-Leste.

These refugees entered Indonesian territory as a result of violence perpetrated by pro-integration militias in the territory of Timor-Leste.

According to the Indonesian Big Dictionary evacuating is to go away (get rid of) yourself from danger or save yourself (to a place that feels safe).

While the meaning of a refugee is a refugee. Seeing the understanding of refugees in the Big Indonesian Dictionary, the cause of the refugees is because of the danger. Hazards can be interpreted as hazards caused by natural disasters and disasters caused by human actions. Natural disasters such as volcanoes, floods, landslides and others. As for disasters caused by human actions, such as war, human rights abuse and so on. And the refugees referred to here are refugees that occur as a result of human actions.

The situation is very serious, causing the refugees out of their country without bringing property or important documents that should be taken to cross the borders of their country in order to enter the territory of other countries.

In terms of the immigration law of any country by entering a country without bringing the required documents to enter another country, these refugees are illegally entering, so that they can actually be subject to action based on the applicable laws and regulations in the field of immigration.

Related to the fourth alenia of the 1945 Constitution, specifically about participating in carrying out world order.

In order to implement and develop international relations, countries make agreements with other countries in the form of international treaties which contain rights and obligations.

Immigration regulations in force in Indonesia require everyone entering or leaving Indonesian territory to have a valid and valid Travel Document, which is an official document issued by the authorized official of a country, United Nations, or other international organization to travel between States that contain the identity of the holder.

In this case foreigners can enter or leave Indonesian territory if they have a valid and valid passport and visa that is shown at the time concerned through immigration checks. Foreigners residing in Indonesia are also required to have a residence permit.

A person who enters Indonesia without legal documents may be subject to administrative immigration actions in the form of administrative sanctions by the Immigration Officer by placing him in a detention room as a temporary shelter at the Directorate General of Immigration and the Immigration Office.

The presence of foreigners illegally in Indonesia, including refugees, requires caution and special arrangements by the Government so as not to cause problems in world relations. If based on immigration regulations it is certain that foreigners who enter illegally including refugees will be subject to administrative immigration measures.

Related to the mandate of the Fourth Paragraph of the Preamble of the 1945 Constitution, one of which is the country's goal to participate in carrying out world order based on independence, lasting peace and social justice since long ago Indonesia has conducted foreign relations, both with countries or international organizations whose purpose is in the interest of the nation and state.

The foreign relations are carried out by Indonesia with any country, meaning that it is not bound to certain countries and actively develops cooperation with other countries (free and active foreign policy).

With the consideration that Indonesia's relations with countries in international relations are maintained the issuance of Law Number 37 of 1999 concerning Foreign Relations to improve the implementation of foreign relations.

To be able to live side by side in international life, countries must have the principle of solidarity, that is, all countries must be willing to cooperate, help one another and support one another in facing common problems.

In the context of implementing and developing international relations, countries enter into agreements with other countries in the form of international treaties which contain rights and obligations.

Foreign relations are any activities involving regional and international aspects carried out by the Government at the central and regional levels, or its institutions, state institutions, business entities, political organizations, community organizations, non-governmental organizations, or Indonesian citizens.

In order to develop these foreign relations abroad, other Indonesian institutions or bodies can be established. Conversely, in Indonesia, friendship institutions, cultural institutions, and foreign cooperation institutions or institutions can also be established.

Based on the 1951 Convention the Indonesian state was not a party to the signing of the Convention and to date has not ratified it, so it is not bound to abide by it.

In the Convention there is a regulation that states parties will not impose penalties on refugees, for illegally entering other countries, even countries that are parties will provide the time and facilities needed for refugees to obtain permits enter another country. Although Indonesia did not ratify the 1951 Convention, this was already done by Indonesia at the time of the refugee case on Galang Island.

The Indonesian government does not have the authority to overcome the problem of refugees, but Indonesia takes care of the influx of refugees by making legal regulations to maintain the stability of the security of the Indonesian nation and nation.

Based on article 27 paragraph 2 of Law Number 37 of 1999 Concerning Foreign Relations, Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Abroad was issued.

With the issuance of Presidential Regulation No. 125 of 2016 concerning Handling of Refugees from Abroad, the handling of refugees by the Government has begun since the discovery of refugees, holding, handling and overseeing immigration through coordination and cooperation both with relevant agencies, and with related international organizations and Immigration.

This Presidential Regulation has been designed in such a way as to respect human rights, while maintaining security, order and upholding the country's sovereignty.

III. CONCLUSION

With the progress and development of the world, more and more foreigners enter and exit from and into a country, including Indonesia at any time. The entry and exit of foreigners under normal circumstances, for example due to official travel, education, travel, attending seminars, of course, follow the procedures applicable in the field of immigration law.

Nowadays immigration is multidimensional because it is related to many things in the life of the state, economy, politics and law as well as with other fields, so it cannot be seen merely as the entry and exit of foreigners.

At present there are a lot of foreigners from various countries, including refugees from various Asian countries, for example from Afghanistan, whose life and nation have been destroyed by the war over the past 40 years, resulting in large numbers of people displaced to other countries.

Unlike the case with the entry of refugees who enter illegally who need separate handling, because they cannot be subject to immigration.

The existence of these refugees in Indonesia requires supervision by the state, because it involves one of the goals of the country, which is to protect the entire nation of Indonesia and the whole of Indonesian blood.

On the other hand the state cannot ignore the existence of refugees because of the obligation to respect human rights and the 1951 Convention and the 1967 Protocol even though Indonesia did not ratify it.

REFERENCES

- [1]. Achmad R., *Pengantar Hukum Pengungsi Internasional : Hukum Internasional dan Prinsip-Prinsip Perlindungan Internasional*, Jakarta : UNHCR.
- [2]. Gatot S., *Hukum Keimigrasian Orang Asing di Indonesia*, Jakarta : Sinar Grafika, 2014.
- [3]. Sudarjo G., *Warga Negara dan Orang Asing*, Bandung : Alumni, 1984.
- [4]. Handoyo, B. dan Hesti C., *Hukum Tata Negara, Kewarganegaraan dan Hak Asasi Manusia (Memahami Proses Konsolidasi Sistem Demokrasi di Indonesia)*, Yogyakarta : Universitas AtmaJaya, Yogyakarta, 2003.
- [5]. Hutauruk, *Tentang dan Sekitar Hak-Hak Asasi Manusia dan Warga Negara*, Jakarta : Erlangga, Jakarta, 1982.
- [6]. Jazim H. dan Charles C., *Hukum Keimigrasian Bagi Orang Asing di Indonesia*, Jakarta : Sinar Grafika, 2016.
- [7]. Muladi, *Demokratisasi, Hak Asasi Manusia dan Reformasi Hukum di Indonesia*, Jakarta: The Habibie Center, 2002.
- [8]. Inauguration speech of Prof. DR. Arief H.,SH,M.S, on 4 February 2010.
- [9]. Sihar S., *Hukum Keimigrasian*, Bandung: Nuansa Aulia, 2006.
- [10]. Kurniatmanto S., *Hukum Kewarganegaraan dan Keimigrasian Indonesia*, Jakarta: Gramedia Pustaka Utama, 1994.
- [11]. Suroto, *Hukum dan Hak Asasi Manusia*, Semarang: Fakultas Hukum UNTAG, 2009.
- [12]. Wagiman, *Hukum Pengungsi Internasional*, Jakarta :Sinar Grafika, 2012.
- [13]. www.imigrasi.go.id.
- [14]. https://id.wikipedia.org/wiki/Komisioner_Tinggi_Perseri_katan_BangsaBangsa_untuk_Pengungsi
- [15]. www.unhcr.org/id/unhcr-di-indonesia
- [16]. <https://suakaindonesia.files.wordpress.com>
- [17]. <https://www.kamusbesar.com>.
- [18]. https://belajar.kemendikbud.go.id/petabudaya/Repository/Pulau_Galang

Undang-Undang Dasar 1945

Undang-Undang Nomor 37 Tahun 1999 Tentang Hubungan Luar Negeri.

Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.

Undang-Undang Nomor 24 Tahun 2000, Tentang Perjanjian Internasional.

Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia.

Undang-Undang Republik Indonesia Nomor. 6 Tahun 2011 Tentang Keimigrasian.

Peraturan Pemerintah Nomor 31 Tahun 1994 Tentang Perlindungan Orang Asing dan Tindakan Keimigrasian.

Peraturan Pemerintah Republik Indonesia Nomor 32 Tahun 1994 Tentang Visa, Izin Masuk dan Izin Keimigrasian.

Peraturan Presiden Nomor 125 Tahun 2016 Tentang Penanganan Pengungsi Dari Luar Negeri.

Peraturan Menteri Hukum Dan HAM Republik Indonesia Nomor 4 Tahun 2017 Tentang Tata Cara Pengawasan Keimigrasian.

Surat Edaran Departemen Kementerian Hukum dan HAM Republik Indonesia Dirjen Imigrasi No. IMI-1489.UM.08 Tahun 2010 Tentang Penanganan Imigran Ilegal. Konvensi 1951.

Protokol 1967.