

Reconstruction of Immigration Control Arrangements for Refugees

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ABSTRACT

The increasing number of asylum seekers and refugees to Indonesian territory causes social disturbances, political security, and order in society. Their presence can be exploited by human smuggling networks, human trafficking, drug trafficking, and international terrorist networks. This can have an impact and various problems in Indonesia, primarily surveillance. However, Immigration Supervision according to Law Number 6 of 2011 concerning Immigration does not regulate the authority of Immigration in supervising the entry and exit of refugees. For this reason, this paper discusses the Reconstruction of Immigration Supervision Arrangements for Refugees with the main question, namely, how is the mechanism for the immigration control function of refugees in Indonesia's status as a transit country. To answer this problem, the researcher uses normative research methods. The study results indicate that there are laws and regulations by the agreement of transit countries. It can be seen how far Indonesia can participate in the refugee problem. Furthermore, related to the structure of involvement in the supervision of refugees, it must involve the Directorate General of Immigration of the Republic of Indonesia, the Supervision and Action section in maintaining the territorial sovereignty of the Republic of Indonesia, and the supervisory function within the scope of Human Rights and Sovereignty.

Keywords: *Immigration, Reconstruction, Refugees.*

1. INTRODUCTION

Indonesia is one of the countries that has not ratified the convention on refugees or asylum seekers, namely the 1967 Protocol 1951 Convention on the Status of Refugees, so that Indonesia is not obliged to be involved in handling refugees and asylum seekers, as stipulated in the refugee convention that Indonesia's involvement in handling refugee problems, temporary nature, in this case, Indonesia's status as a transit country, Indonesia's position is a country that participates in handling refugees and asylum seekers only temporarily, as the term category of country, in the flow of migrant arrivals, where Indonesia places a position in a transit country or transit country So that the authority and involvement of UNHCR for refugees in Indonesian territory are appropriate.

The number of arrivals of asylum seekers and refugees to Indonesia to date is 14,016 people. This number is not comparable to the number of settlements or placements to recipient countries (Australia), including voluntarily repatriated and deported from Indonesian territory. In the last two years, there has been a significant decline in refugees placed in third countries.

If it was around 1,000 people per year in previous years, now the number of refugees is 500 or even 200 people per year. With the increasing number of asylum seekers and refugees into the territory of Indonesia, it begins to cause concern and discomfort. It has the opportunity to cause social disturbances, political security, and even order in society. Their existence is very vulnerable in terms of status, economy, and psychology, so they have the opportunity to be exploited by human smuggling networks, human trafficking, drug trafficking, including international terrorism networks. This can have an impact and various problems in Indonesia.

As one of the countries that recognize and respects human rights, as stated in the Preamble to the 1945 Constitution, Indonesia also looks at the 1951 Convention regarding the status of refugees. Therefore, Indonesia handed over the handling of refugees to UNHCR. Therefore, Indonesia does not have the authority to determine whether a person or group of people who request refugee status are recognized as refugees. This authority is exercised by UNHCR, considering that Indonesia is not a country with the 1951 convention and the 1967 protocol. Apart from this constitutionally, the handling of asylum seekers and

refugees has not yet been regulated explicitly by law. Handling asylum seekers and refugees are only the first steps in the context of inspection and shelter.

2. METHODS

How is the reconstruction of immigration control for refugees from abroad in Indonesia based on the description above? The research method used is normative legal research. The results show that the Government of Indonesia has issued Presidential Regulation No. 125 of 2016 concerning the Handling of Overseas Refugees. The Government has a reference standard for dealing with asylum seekers and refugees and Immigration supervision.

3. RESULT AND DISCUSSION

With the issuance of Presidential Regulation No. 125 of 2016 concerning the Handling of Overseas Refugees, the handling has been carried out by government agencies. The handling is carried out by the Indonesian National Army (TNI), the Indonesian National Police (POLRI), Ministries and non-Ministries in the field of maritime affairs, Immigration (Rudenim), and Regional Government (PEMDA). According to the Presidential Regulation, Rudenim has the function of Immigration supervision. Immigration supervision is carried out when found, at the shelter and outside the shelter, dispatched to the destination country, voluntary repatriation, and deportation. Presidential Regulation No. 125 of 2016 concerning Handling of Refugees from Overseas but the legal instrument is considered not comprehensive enough in dealing with this problem, such as the issue of claims of foreign asylum seekers to obtain recognition of refugee status even though this country is not a destination country but as a transit country.

The issuance of Presidential Regulation No. 125 concerning the Handling of Refugees from Outside was raised in the Asia Pacific region in the Bali process agreement, namely the cooperation of Central Asian and surrounding countries to handle refugee and migration cases in the region. The Bali Process is a collaboration that is almost similar but also relates to the issue of smuggling and human trafficking, which the Indonesian Government organized in August 2013, which was attended by 13 countries in addition to the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM). The Government's responsibility and attitude towards refugees are sole because it upholds human rights values.

In addition to the Human Rights Principles, there is also the principle of Indonesian sovereignty, which allows the Government to make regulations related to the traffic in and out of foreigners into Indonesian territory and regarding the supervision of foreigners in Indonesia. Foreign citizens who come to Indonesia are obliged to respect the applicable positive law. Based on the

principle of sovereignty, the state has other rights in the form of power, namely:

1. Exclusive power to control domestic affairs
2. The power to receive and expel foreigners
3. The privileges of diplomatic representatives in other countries
4. Full jurisdiction over crimes committed in its territory

Indonesia has the power to determine whether to accept or reject foreign nationals who want to enter Indonesian territory, where the sovereignty of the Indonesian state in regulating the entry of foreigners into Indonesian territory in Article 8 Paragraph (1) of Law Number 6 of 2011 concerning Immigration is stated, "Everyone who enters or leaves the Indonesian Territory is required to have a valid and still valid Travel Document." In Paragraph (2), it is formulated, "Every Foreigner who enters the Indonesian territory is required to have a valid and valid Visa unless otherwise stipulated by Law This law and related agreements, as for the handling of refugee issues are also regulated in Article 25, Article 26, and Article 27 of Law No. 37 of 1999 concerning Foreign Relations, which are stated as follows:

In analyzing the problem of how to reconstruct refugee control arrangements in Indonesia, in this study, we quote the opinion of Hans Kelsen explaining that the state is a subject of international law (an international person) because the state is a subject of international legal rights and obligations. Indonesia as a subject in international law has responsibility for refugees based on one of the general principles recognized by civilized nations, namely *jus cogens*, which implies that every act of the nation in carrying out its obligations must protect humanity in the realm of protecting human rights, including in international customary law, namely with the recognition that human rights law is part of customary international law.

The concept of a state of law that Indonesia owns is Pancasila being one of the concepts that were born from the recognition of the Indonesian state of its position in carrying out international problems, on the concept of a state of law Pancasila, of course, the soul contained in it rests on three principles, namely; the principle of harmony, the principle of propriety and the principle of harmony, all of which reflect the philosophical values of Pancasila. Pancasila is used as a source, foundation, filler, controller, and barometer in Indonesia's design, formation, renewal, replacement, implementation, and enforcement. In applying the concept of a constitutional state based on Pancasila, there is also the principle of state sovereignty, which is the supreme power of a state and an essential characteristic of a state over a specific territorial area, namely the territory of the Indonesian state. Within the scope of authority.

4. CONCLUSION

As a transit country, Indonesia does not have a legal umbrella for comprehensive supervision and handling of

refugees because the Immigration Law does not regulate the supervision of refugees. Therefore, the suggestion is to reconstruct immigration control arrangements by amending or perfecting law number 6 of the year 2011 concerning Immigration and the improvement of Presidential Regulation Number 125 of 2016 concerning handling refugees from abroad. The second conclusion is that, in the current immigration control of refugees, only consider their human rights, not commitments from countries of origin, transit, and destination, so they become the basis for the flow of settlement of the refugee problem.

REFERENCES

- [1] Arif, Moh. *Keimigrasian di Indonesia Suatu Pengantar*, (Jakarta, Pusat Pendidikan dan Latihan Pegawai Departemen Kehakiman, 1997).
- [2] Dewansyah, Bilal *HalRev, Hasanudi Law Review*, Perkembangan Politik Hukum dan Kebutuhan Hukum Keimigrasian Indonesia: Menjawab Sebagian, Melupakan Selebihnya, Vol 1 ISSUE 2, 2015, ISSN: 2442-9880, e-ISSN: 2442-9899, Makasar 2015
- [3] Hamidi, Jazim dan Charles Christian, *Hukum Keimigrasian Bagi Orang Asing*
- [4] Achmad Romsan, Pengantar Hukum Pengungsi Internasional: Hukum Internasional dan Prinsip-prinsip Perlindungan *Internasional*, UNHCR Regional Representation Jakarta in Republik Indonesia (Bandung: Sanic Offset, 2003).
- [5] Direktorat HAM dan Kemanusiaan Kementerian Luar Negeri RI, *Penanganan Pencari Suaka dan Pengungsi, Dalam Konteks Hukum dan Kebijakan*, Cetakan Pertama 2015.
- [6] Rosmawati, Kajian Jurnal Ilmu Hukum, *Perlindungan Terhadap Pengungsi/Pencari Suaka Di Indonesia (Sebagai Negara Transit) Menurut Konvensi 1951 Dan Protokol 1967* (2015).
- [7] Guy S. Goodwin Gill (1978), International Law and Movement, of Person Between States,Oxford: Clarendon Press, hlm 3, Dalam Bilal Dewansyah, *HalRev, Hasanudi Law Review*, Perkembangan Politik Hukum.
- [8] Hans Kelsen. *General Theory of Law and State*, hlm 250,
https://books.google.co.id/books?id=D1ERgDXEbkC&pg=PR11&hl=id&source=gbs_selected_page_s&cad=2#v=onepage&q&f=false, diakses 12 Juni 2021.
- [9] Manan, Bagir “*Hukum Keimigrasian dalam sistem hukum nasional*” makalah disampaikan pada rapat kerja nasional Keimigrasian, Departemen Hukum dan Perundang-undangan, Jakarta 14- 15 Januari 2000.
- [10] Santoso, M Iman *Perspektif Imigrasi dalam United Nation Convention Against Transnation Organized Crime*, Jakarta, PNRI, 2007.
- [11] Santoso, M Iman, *Perspektif Imigrasi Dalam Migrasi Manusia*, Pustaka Reka, Bandung: 2014
- [12] Pemberton, Jo -Anne *Sovereignty: In-terpretation*. Hampshire-New York: Palgrave Macmillan: 2009.
- [13] Torpey, John *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 2000), hlm 6, Dalam Harison Citrawan, Sabrina Nadilla, Model Kontrol Keimigrasian dalam Mencegah Tindak Pidana Terorisme di Indonesia, Lentera Hukum, Volume 6 Issue 1 (2019), pp. 69-94 ISSN: 2355-4673 (Print) 2621-3710 (Online) doi: 10.19184/ejlh.v6i1.9819 © University of Jember, 2019 Published online 28 April 2019,
- [14] Wiramiharja, Saleh. *Langkah-langkah Baru Menunjang Peningkatan Profesionalisme Keimigrasian*” Pintu gerbang no. 45Dirjend Imigrasi, Jakarta, 2002