

## Problematics of Implementation of International Legal Policies Related to Refugees: Ratification of The 1951 Convention and the 1967 Protocols

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### ABSTRACT

International migration in its implementation cannot be denied as a form of advantage as well as a threat to people in all corners of the world, one of which is related to its correlation with refugees. However, in studies on international migration there is often confusion when relating it to the concept of international refugees due to misconceptions which ultimately conclude that the concept of international migration is not a strong concept. This regulatory concept ultimately places international refugees in reference to the 1951 convention which is then regulated in regulation uu number 6 of 2011 concerning immigration. This journal will discuss all the problems faced by refugees as a form of migrants who need legal protection in their implementation. On the other hand, it is also discussed about how the course of immigration law certainly has a correlation with the protection of refugees because after all the perspective of international law is that when someone has entered their territory everything will be returned to regulation in their area, regarding how jurisdiction carries out its principles in responding to the challenges of refugee problems. The result of the discussion on this matter is the relationship between immigration law and refugees by knowing the reasons from Indonesia, which until now has not been able to ratify the 1951 convention and the 1967 protocol, which are explained in a concise and clear manner.

### ABSTRAK

Migrasi internasional dalam implementasinya tidak dapat dipungkiri menjadi salah satu bentuk keuntungan serta ancaman terhadap masyarakat di seluruh penjuru dunia salah satunya terkait korelasinya dengan pengungsi. Namun, dalam studi kajian migrasi internasional sering terjadi kerancuan ketika mengkaitkannya dengan konsep pengungsi internasional disebabkan karena adanya miskonsepsi yang pada akhirnya menyimpulkan bahwa konsep migrasi internasional bukan merupakan konsep yang kuat. Konsep pengaturan ini pada akhirnya nemenpatkan pengungsi internasional dalam rujukan konvensi 1951 yang kemudian diatur dalam regulasi uu nomor 6 tahun 2011 tentang keimigrasian. Dalam jurnal ini akan membahas mengenai segala problematika yang di hadapi oleh pengungsi sebagai salah satu bentuk migran yang membutuhkan adanya perlindungan hukum dalam implementasinya. Di sisi lain, turut dibahas mengenai bahaimana jalannya hukum keimigrasian yang tentunya memiliki korelasi dengan perlindungan akan pengungsi karena bagaimanapun juga perspektif dari hukum internasional bahwa ketika seseorang telah memasuki wilayahnya semua akan dikembalikan kepada regulasi di wilayahnya, mengenai bagaimana yurudiksi menjalankan prinsipnya dalam menjawab tantangan problematika pengungsi. Hasil dari pembahasan mengenai hal ini adalah keterkaitan huku keimigrasian dengan pengungsi dengan mengetahui alasan dari indonesia yang sampai saat ini belum dapat meratifikasi konovensi 1951 serta protokol 1967 yang dijabarkan secara padat dan jelas.

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## I. INTRODUCTION

Talking about international refugees is a topic that is not easy to raise and discuss in more depth without being followed by an initial understanding of the terms that exist in international migration. The two terms, migration and international refugees are seen as mutually exclusive when both are used in a presentation of experience so that it is necessary to place the position of international migration at the center of the discussion relating to international refugees.

International migration has been scheduled as an important political issue in various country policies in the international world, especially by countries that are affected by directly by world migration activity. In addition, this was also on the agenda of countries that were included in a group with a combination of several regions and globally which collaborated and also responded and pursue international migration. Because, it is undeniable that international migration can pose a threat to countries and the global community several times, but what must be known is that international migration on the other hand is also able to have a positive impact on several related countries. Based on data submitted by the International Organization for Migration (IOM), in 2014, there were 232 million migrants globally. The largest number of destination countries are a number of countries in Europe, namely as many as 72.4 million people, in Asia as many as 70.8 million, in North America as many as 53.1 million, and in Africa as many as 18.6 million people. Meanwhile, these migrants are known to come from countries namely, Asian countries as many as 92.5 million, from European countries as many as 58.4 million, from Latin American countries 36.7 million, and from African countries as many as 31.3 million. (IOM, 2014; 1-2).

The concept of international migration sometimes provides an understanding that causes confusion for most international relations researchers when it is associated with the concept of international refugees. These two terms, namely International Migration and International Refugees, are different things between the two. King (2012; 9) says international refugees are a part of the study of international migration with studies in international relations. King, stated that There are three main groups or discussion materials that are studied within the scope of international migration, namely migrants who are temporary labor migrants, migrants with permanent status as permanent residents (settlers/migrants), and refugees (refugees). In short, King said that there are two reasons that become the basis for individuals and groups of people to migrate across the national borders of their country of origin, namely economic and political reasons. Furthermore, there are two statuses within migrants, namely there are migrants with internal vs. international, temporary vs. permanent, and regular vs. irregular migration (King, 2012; 8-9). In another review, there is an expert who states that international migration is not only done for socio-political reasons as Huysmans put forward. Huysmans conveys this reason by relating it to the concept of insecurity (lack of confidence) in international migration. In addition, a person's decision to migrate internationally does not just have an impact and become a threat to other parties related to migration activities. Insecurity in this discussion is an event that is formed socially and politically. Therefore, so as not to disturb the establishment, social and political measures can be overcome as well (Huysmans, 2006; 2).

Based on these explanations and explanations, it can be understood that international migration is actually not a strong concept but a concept that can be classified in the weak category because it has various interpretations. The diversity and complexity of the meaning of the concept of international migration is undeniably caused by various criticisms submitted by other international migration studies, one of which is in Arango's writings in his book, "Theoris of International Migration." In the

book, Arango said that in terms of approaching international migration, one cannot only use one theory, but use more than that. This concept does not have sufficient theorization to be stated as strong because the activity of migration itself tends to be dominant in differences between one concept and another when an assessment is carried out related to the motives for migration and the differences in these motives are very likely to occur between migration from one region to another. Arrangements regarding international refugees are regulated by referring to the 1951 convention.

The 1951 Convention on the Status of Refugees describes the explanation of a refugee as an individual who, by reason of fear of persecution, is caused reasons of race, religion, nationality, membership of certain social groups and membership of certain political parties, are outside the country of their nationality and do not want protection from that country. In short, this can be interpreted that refugees are individuals who are forced to sever ties with their nationality due to fear and experience persecution. It is this based fear that then becomes the difference between refugees and other types of migrants, no matter how tough the situation and conditions are, as well as other people who need humanitarian assistance.

Providing protection to refugees is basically the responsibility of every country. The issue of providing protection to asylum seekers and refugees has actually become an international debate and problem. Countries have long accepted and provided protection for citizens who are victims of oppression or violence in their country of origin. This has become a tradition that has been formed in an international convention on refugees, namely the 1951 Convention Relating to the Status of Refugees. This convention states various arrangements regarding the rights and obligations of refugees. In addition, this convention also regulates the various obligations of the countries participating in the convention. However, in fact the convention has not been ratified by Indonesia until now.

Judging from its geographical location, Indonesia no doubt has a very strategic location flanked by two continents, namely Asia and Australia and two oceans, namely the Indian and Pacific Oceans. So this is the cause of Indonesia being in a cross position, which means it has something to do with the economy and the seasonal climate in Indonesia. Indonesia's position, which is located between two oceans and two continents, makes Indonesia a strategic place for the movement and transit of foreign refugees from the Asian continent, most of whom go to the Australian continent.

Indonesia has been a place of transit or transit since 1999, especially in terms of movement by Middle Eastern people who are predominantly inclined towards Christmas Island in Australia. Judging from the existing laws and conventions, Indonesia does not have any interests related to refugees. Indonesia, which has not ratified the 1951 Convention and 1967 Protocol, causes the Government of Indonesia to not have the authority and authority to be able to grant status to refugees or "Refugee Status Determination" (RSD), this is what later led to the emergence of problems regarding refugees that were determined by UNCHR (the UN agency that deals with refugee matters) in accordance with the mandate it received based on the 1950 UNHCR Statute. Even though the handling of refugees in Indonesia was fully instructed by UNCHR while Indonesia was not delegated the authority to participate in solving refugee problems, but Indonesia should have a fixed method for refugees transiting Indonesian territory, either in the form of laws and regulations related to this matter or other legal methods. Through this method, it is hoped that it will be able to increase the stability of the country's security and prevent the emergence of problems related to refugees.

In Indonesian law, the regulations regarding refugees in Indonesia are regulated in the Immigration Law. For foreigners whose existence is not wanted by the Indonesian state, the foreigner is considered to have violated the law in Indonesian immigration so that immigration can refuse entry to the foreigner. In practice, the prosecution of refugees in Indonesia has not been fully strengthened by Law Number 6 of 2011 concerning Immigration because the law dealing with refugees has not yet covered the problem of handling refugees.

Therefore, the author wants to examine more deeply through this title to analyze and gain an understanding regarding the reasons for the 1951 Convention on Refugees which has not been ratified because Indonesia is a place commonly used for transit by refugees and this affects the stability of several aspects of governance. Therefore, the author wants to focus on the Problems of Implementing Legal Policies regarding Refugees, namely the Ratification of the 1951 Convention and the 1967 Protocol.

## II. RESEARCH METHODS

### **Approach**

This writing uses qualitative research methods supported by a normative juridical approach focusing on in-depth issues studied from various literature and accompanied by research discussions by providing a paradigm which is then reflected from the point of view of a reality based on existing regulations and laws. On the other hand, all data was obtained using descriptive analytical research methods, namely analyzing the substance of the law and relating it to the existing reality so as to describe how the procedure was carried out.

### **Method of collecting data**

In this study using qualitative research methods by using research from the data specified in the title and involving previous notes in it. This research was conducted by collecting data using the library study method from journals that did not exist before or other literature that supports the research title. The data is then the data received is analyzed and processed so as to produce a new output with the same discussion. This method is also supported by observation by observing existing realities and information circulating in the immigration environment. This observation is supported by video and pictorial data which support the existing theory.

### **Data Analysis Techniques**

The data analysis technique in this study is qualitative, namely by analyzing from predetermined sources and correlated with existing titles. This technique is carried out by exploring phenomena naturally and combined with trusted sources. On the other hand, research related to international law with refugees uses constant comparative analysis techniques by combining problems with existing theories. This theory is used in finding comparisons of the problems being researched from the start of the research to completion.

## III. RESULT AND DISCUSSION

### **Problems faced by Refugees**

Refugees are a person or group of people who leave their administrative area for reasons of disaster, calamity or even conflict to go to a new area which they think is better than their previous administrative area. Refugees can be distinguished from asylum seekers, in this case a refugee is someone who has been registered and has been recognized by UNHCR as a refugee, while an asylum seeker is someone who has not been registered and has not been recognized as a refugee by UNHCR (United Nations High Commissioner for Refugees).

Displacement is a human migration that is different from others, because this migration is a migration that is vulnerable, so that in its implementation it requires a strong legal protection mechanism. Many refugees do not have complete travel documents so they are vulnerable to experiencing unpleasant actions, such as rape, discrimination, abuse and forced repatriation by the destination country. Therefore, it is necessary to enforce legal protection for refugees, so that refugees can later be treated like citizens in general.

In general, countries in the world agree on the protection of human rights for refugees, but in reality this is the opposite. This is due to the many factors that affect a country in accepting refugees to enter their country, so that these refugees often have difficulty reaching third countries or destination countries. In this case, the State of Australia once refused the entry of boat people refugees who came from Asian countries such as Bangladesh, Sri Lanka and Myanmar to enter Australian territory by paying a sum of 5000 Australian dollars to the captain of the ship to direct their boat to the territorial waters. Indonesia. This case shows that Australia has violated the principle of non-refoulement against refugees. Non-refoulement is a principle that obliges a country to be able to accept refugees into its territory and treat them well without discriminating.

Judging from the many problems faced by refugees, it is necessary to have a clear and accurate regulation. The proper regulations to help resolve refugee problems have been contained in the 1951 refugee convention and 1967 protocol. These regulations are international standard regulations regarding refugee protection and explain what are the rights and obligations of refugees. The main objective in establishing the 1951 convention refers to the availability of a rule that can guarantee the protection of a number of people who are in a very vulnerable or vulnerable situation.

Regarding the rights and obligations received by refugees and asylum seekers, it has been explained in the 1951 convention, namely as follows: (a) The right to non-discrimination described in article 3, (b) The right to freedom of religion described in article 4, (c) Property rights described in article 8 and al 13, (d) Right to personal status described in article 12, (e) Right to Industrial Art Works described in article 14, (f) Right to associate described in article 15, (g ) The right of access to court described in Article 16, (h) The right to work described in Articles 17 and 19, (h) The property right described in Article 21, (i) The right to education described in Article 22, (j) The Right to Public Assistance described in article 23, (k) Administrative Assistance described in article 25,(l) Freedom to move and the right to have travel documents described in articles 26 and 28.

### **Problems in the Implementation of International Law related to refugee protection**

With the implementation of the values contained in the 1951 convention, of course it will provide even better human rights protection for refugees and asylum seekers. However, on the other hand there are different perspectives regarding refugees, especially for destination countries. For them, the ever-increasing arrival of refugees can affect the economic and political stability of a country, so that it can threaten national security. What is done by the state is a form of repressive action or prevention of something that could endanger the sovereignty of the country.

In the perspective of international law, every country has the principle of state sovereignty in determining every rule over its territorial area. In the context of international relations, state sovereignty means that a country has supreme authority over its territory within the borders of the country concerned. Thus, the state can determine policies for every foreigner who enters or leaves its territory. In this case, even though there is an internationally recognized principle of non-refoulement, in practice many countries still adhere to the principle of sovereign state.

In terms of state sovereignty, a state has exclusive rights in determining its powers, as follows: (a) has full power to control domestic affairs, (b) has the power to accept and expel foreigners, (c) has the right to open diplomatic representation in other countries, (d) has full legal authority over its territory.

This is what pushes the territorial boundaries of a country to always be attached to the jurisdiction that has been determined by the government of the country concerned. However, apart from being contrary to the principle of state sovereignty, refugees are also a consideration for receiving countries because they have the potential to cause other problems in the receiving country. An example is the increase in the flow of refugees from Sudan to Ethiopia which has given rise to new problems, namely

conflicts caused by large numbers of heterogeneous refugees congregating in the same place. Thus it can threaten national security and disrupt order in Ethiopia.

### **Reasons Indonesia has not ratified the 1951 Convention and 1967 Protocol**

Indonesia itself has not ratified the 1951 convention and 1967 protocol. Basically, Indonesia is not a member country of the 1951 convention and 1967 protocol, so Indonesia did not sign any approval decisions regarding the handling of refugee status at the convention held in Geneva in July 1951.

Ratifying the 1951 convention and 1967 protocol can assist the government in resolving existing problems, but Indonesia's reasons for not ratifying these regulations can be seen from many things. The problems faced are as follows: (a) There are many requirements that must be met, (b) The emergence of many domestic problems as a result of the ratification of the 1951 convention and 1967 protocol in Indonesia, (c) Indonesia's ability to implement mechanisms for handling refugees and asylum seekers is still a problem, (d) There are problems related to social and economic security, (e) there is a legal vacuum that regulates refugees and asylum seekers based on positive law in Indonesia resulting in a weakening of coordination between agencies, (f) culture shock which can potentially lead to conflict in society, (g) has the potential to cause new marriages between local residents and refugees, whose children from the marriage will become a burden because they were not taken with them during repatriation.

However, in practice, Indonesia is still trying to act humanely towards refugees and asylum seekers who wish to transit in its territory. This can be seen from the stipulation of Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Abroad.

This Presidential Decree explains the fulfillment of the rights obtained by refugees and asylum seekers, starting from their protection to the freedom granted. In fact, this Presidential Decree also discusses the special attention given by the Indonesian government to vulnerable people who are in an emergency situation. However, the drawback of this Presidential Decree is that there is no protection for the human rights of refugees in terms of obtaining education and employment, but this regulation also does not prohibit this.

In addition, this Perpres also does not stipulate absolute authority in an agency to regulate refugee issues and there is a long bureaucracy in coordinating refugees, thus this condition creates difficulties in solving problems related to refugees and asylum seekers in Indonesia.

Even so, Presidential Regulation number 125 of 2016 is considered better than previous regulations, seen from its partiality in fulfilling human rights for refugees and asylum seekers, one of which can be seen from the application of the non-refoulement principle to refugees and asylum seekers. , apart from that, this regulation tries its best to be adapted to Indonesia's ability to achieve minimum international standards regarding the mechanism for dealing with refugees.

## **IV. CONCLUSION**

Oriented to the dynamics of problems with the implementation of international refugee migration has always been an interesting paradigm to observe and study comprehensively starting from mechanisms to protection measures. Considering that along with the trend of increasing international refugees have unstable dynamics towards certain phenomena.

Based on the principle of the state which is guided by the fulfillment of human rights, it is appropriate that the recognition of the equal and inalienable rights of all members of society give respect to human dignity as this is also in line with the urgency of the 1951 Convention. Providing guarantees for the protection of international refugees who explaining the rights and obligations received by refugees and asylum seekers was the main goal in establishing the 1951 convention. cultural values that apply and are widely followed by the people of Indonesia.

Based on the 1951 Convention there are 3 (three) articles that explain the implementation of refugee protection, including in article 31 regarding the presence of refugees who enter illegally in the destination country, article 32 regarding expulsion and article 33 regarding non-refoulement. The problem of refugees in general is motivated by different perspectives in destination countries which consider refugees to affect the economic and political stability of a country, which of course also affects the country's national security.

In a causal perspective, there is an atmosphere of disharmony between the state and its people which encourages refugees to lead to decent livelihood opportunities by fleeing. In international law, national problems in this case state responsibility are emphasized on state sovereignty in determining the boundaries and capabilities of the state within its territory to protect these international refugees. In reality, international refugees are not necessarily cornered and ignored by destination countries because each country is one of the driving forces of humanity in responding to these refugees through efforts to deal with and deal with them. This means that every country has rights and obligations towards handling refugees on the basis of humanitarian issues, while still considering respect for the sovereignty possessed by the destination country. It is the same with the actions played by international organizations. Various juridical instruments, both national, regional and international, have been available to facilitate the response and handling of refugees. And even local community groups and individuals also play an active role in helping, assisting and dealing with refugees.

In the context of international relations, the relation of refugees from certain countries is also based on bilateral and multilateral relations which require protection and adhere to the principle of sovereign state. When there are events and conditions of instability or conditions of security uncertainty in a particular country that require refugees to decide to flee from their country. As an international legal instrument, the 1951 Convention and the 1967 Protocol have been established as instruments of international interest for refugees to obtain eligibility guarantees because basically the provisions of these conventions have become *jus cogens*. However, for the Government of Indonesia which has not become part of the 1951 Convention and the 1967 Protocol, this has resulted in the absence of authority for Indonesia to be able to determine the status of these refugees. At this time, Indonesia should not be able to unilaterally rule out the existence of international conventions that are oriented towards fulfilling human rights because along with Indonesia's commitment to Law Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia of 1999 No.165) makes this situation even more absolute. to be a guarantee of protection for refugees.

The ratification of the 1951 Convention and the 1967 Protocol must actually be carried out in the form of the reality of the law in accordance with what is the substance of the convention. The Indonesian government, by requesting the DPR's approval to form a law, cannot immediately exercise its right to amend the 1951 Convention and the 1967 Protocol because the authentication of these conventions has been agreed upon and formally implemented in several countries that have already ratified them beforehand. However, in reality, Indonesia's reason for not ratifying the convention was based on Indonesia's position at that time, which was not part of the member countries of the convention.

Apart from the juridical context, convention ratification as an administrative form of implementing and reporting on a legal instrument requires requirements and the ability to provide facilities which are quite burdensome for developing countries. This is hindered due to the lack of availability of aspects of human resources who are experts to understand, study, and analyze the substance of these legal instruments. The ability of the Government of Indonesia to implement mechanisms for dealing with refugees and asylum seekers is still a problem that has an impact on aspects of the life of the nation and state. The most important thing in dealing with refugees is the bilateral political policy between the country of origin of the refugees and the host country.

The paradigm towards refugees that must always be controlled and seen as a threat to security that disturbs the state becomes an emphasis on the rights of state rulers. In essence, the Government of Indonesia should have other perspectives that are in line to become an integrated system, so that in terms of institutional problems dealing with refugees it can be coordinated into a specific agency and focused on that matter. In reality on the ground, several areas that have always served as shelters for refugees, such as Tanjung Pinang and Jakarta, objected to taking on the additional burden of having these refugees enter their territory. The extreme disparity between the customs and culture of local communities and refugees has become a potential for internal and social conflict in Indonesia.

From an academic perspective, there needs to be a more comprehensive and serious partisanship and cooperation of the Government of Indonesia in dealing with this problem. There needs to be availability of implementation technical aspects and mechanisms, political aspects of the country where the refugees are from and also juridical aspects by establishing national legislation regarding refugees. Even though Indonesia has not ratified the 1951 Convention and 1967 Protocol, Indonesia has made efforts to fulfill the protection of human rights for refugees through the issuance of Presidential Regulation Number 125 of 2016 concerning handling refugees from abroad. Nevertheless, there is still a need for concrete administrative and substantive efforts in establishing a national juridical apparatus for refugees.

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