



COMPLEX CHALLENGES IN HANDLING REFUGEES IN INDONESIA: THE DILEMMA OF RATIFYING THE 1951 REFUGEE CONVENTION

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Abstract:

This article is a conceptual article created with the aim of analyzing the problems faced by the Indonesian government concerning refugees and identifying challenges in implementing the 1951 Refugee Convention and its 1967 Protocol. The results of the discussion indicate that addressing the refugee issue in Indonesia is highly complex. Although ratifying the 1951 Refugee Convention and its Protocol can substantially protect the human rights of refugees, its implementation in Indonesia faces various challenges caused by several factors, such as the high population density in Indonesia and the absence of laws governing local integrity, leading to difficulties in granting equal rights between refugees and Indonesian natives. Refugees must meet specific requirements according to the Republic of Indonesia Law No. 12 of 2016 on citizenship to have the same rights as Indonesian citizens. Additionally, from an economic perspective, refugee migration impacts Indonesia's financial budget. The aspects of security and social culture are essential considerations, as an increasing number of refugees may cause conflicts with the indigenous population and threaten Indonesia's cultural identity. Although the 1951 Refugee Convention provides standard rights for refugees, the Indonesian government finds it challenging to ratify it due to various obstacles, such as religious differences, marriage laws, labor absorption, and budget limitations. Therefore, the Indonesian government needs to carefully consider before ratifying the 1951 Refugee Convention. Thus, in addressing this complex situation, choosing to act as a transit country and providing protection within its capacity is a wise step in facing this refugee issue.

Keywords: Non-Refoulement; Refugee Protection; International Refugees.

Abstrak:

Artikel ini merupakan artikel konseptual yang dibuat dengan bertujuan untuk menganalisis problema yang dihadapi pemerintah Indonesia terkait pengungsi dan mengidentifikasi tantangan dalam penerapan Konvensi Pengungsi 1951 dan Protokolnya tahun 1967. Hasil pembahasan menunjukkan bahwa penanganan isu pengungsi di Indonesia sangat kompleks. Meskipun meratifikasi Konvensi Pengungsi 1951 dan Protokolnya dapat melindungi hak asasi manusia para pengungsi secara substansial, namun penerapan konvensi tersebut di Indonesia menghadapi berbagai tantangan yang disebabkan oleh beberapa faktor seperti Kepadatan penduduk Indonesia yang tinggi, Tidak adanya aturan hukum yang mengatur integritas local yang menyebabkan sulitnya pemberian hak-hak yang sama antara pengungsi dengan penduduk asli Indonesia. Pengungsi harus memenuhi syarat-syarat tertentu sesuai dengan Undang-Undang No. 12 Tahun 2016 tentang kewarganegaraan Republik Indonesia jika ingin memiliki hak-hak yang sama dengan warga negara Indonesia. Selain itu dari segi ekonomi, migrasi pengungsi berdampak pada anggaran keuangan Indonesia. Aspek keamanan dan sosial budaya menjadi perhatian penting, di mana jumlah pengungsi yang semakin besar dapat menimbulkan konflik dengan penduduk asli dan mengancam identitas budaya Indonesia. Meskipun Konvensi Pengungsi 1951 memberikan standar hak-hak bagi pengungsi, Pemerintah Indonesia merasa berat untuk meratifikasinya. Berbagai kendala seperti perbedaan agama, hukum perkawinan, penyerapan tenaga kerja, dan keterbatasan anggaran menjadi

hambatan dalam meratifikasi konvensi tersebut. Oleh karena itu, Pemerintah Indonesia perlu mempertimbangkan secara matang sebelum meratifikasi Konvensi Pengungsi 1951. Sehingga dalam menghadapi kondisi yang kompleks ini, pilihan menjadi negara singgah dan memberikan perlindungan sesuai kapasitasnya adalah langkah bijaksana dalam menghadapi isu pengungsi ini.

Kata Kunci: *Non-Refoulement; Perlindungan Pengungsi; Pengungsi Internasional.*

A. Introduction

Internal conflicts within a country related to ethnic, religious, social, and economic differences can lead to serious divisions within the nation, causing discomfort and oppression among its citizens. In the end, this can result in the occurrence of civil wars. (Humaedi, 2014) Such conflicts often involve various conflicting groups, creating instability and uncertainty in the daily lives of citizens. In such uncomfortable situations experienced by the population of a country, many of them choose to leave their homeland in search of safety, known as "seeking refuge in another country" or becoming "refugees." These refugees seek protection and a safe place to avoid the dangers and threats they face in their country of origin. The phenomenon of displacement commonly occurs when prolonged internal conflicts fail to find a resolution, resulting in an unstable and hazardous situation for the population. (Torry Satriyo Kusumo, 2012)

In addition to being caused by internal conflicts, refugees are also significantly driven by other factors, such as occurrences of invasion from one country to another, as in the case of Russia and Ukraine. (Hidriyah, 2022) During the Russian invasion of Ukraine, many Ukrainian citizens sought refuge in other countries to find protection and safety from the conflict and violence engulfing their nation. This refugee phenomenon reflects the significant negative impact of the invasion on the lives of civilians, forcing them to abandon their homes and homeland to safeguard themselves and their families from real dangers and threats. The displacement illustrates the gravity of the situation in Ukraine and emphasizes the need for international attention and action to provide assistance and protection for the refugees affected by the conflict. (Kumara, 2020)

The refugee wave has become a significant issue in the present time, requiring serious attention. Based on data released by the United Nations High Commissioner for Refugees in March 2021, there were 10.184 million refugees and 3.313 million asylum seekers, including 3.545 children in families and 73 unaccompanied children or adults in need of care. (UNHCR, 2021) Considering the current global conditions with conflicts and the pandemic causing worsening economies, resettlement countries are reducing or temporarily halting the admission of refugees. On the other hand, countries that had committed to providing assistance to refugees have also seen a decline in their support.

In Indonesia itself, the number of recorded refugees and asylum seekers is approximately 13,700 individuals, with 7,600 of them originating from Afghanistan (Hazaras ethnic minority), while the rest come from Somalia, Iraq, Myanmar, Sudan, Sri Lanka, Yemen, Palestine, Iran, Pakistan, Eritrea, and Ethiopia. As experienced by these refugees and asylum seekers, who have spent several months aboard overloaded boats lacking adequate equipment or navigation tools, they have been found in dire conditions with limited food and water supplies, health issues, and other hardships. They fall under the category of persons in distress, and it is only appropriate that they are rescued. (Heru Susetyo, 2022)

If the lives of distressed refugees, as mentioned above, are not promptly rescued, it would be a violation of international law concerning the principle of non-refoulement, which is a critical principle in international refugee law. This principle states that states shall not force or return an asylum seeker or refugee to their country of origin or to any other country where their life or freedom may be at risk, or where they may face inhuman or degrading treatment. The principle of non-refoulement is widely recognized as a fundamental and essential principle in providing protection to asylum seekers and refugees. It has been acknowledged in various international legal instruments, including the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees. (Henry Gurinda, 2019)

By applying the principle of non-refoulement, states are obliged to provide legal protection to asylum seekers and refugees, ensuring that they are not forced to return to their country of origin or any other country where their safety may be at risk. This principle also safeguards asylum seekers and refugees from deportation or expulsion that could threaten their lives and security. The non-refoulement principle demonstrates international commitment to respecting human rights and providing protection to those facing serious threats to their lives and freedom in their home countries. Through the application of this principle, it is hoped that asylum seekers and refugees can seek proper protection in their destination countries and no longer face the dangers and insecurity they experienced in their home countries. (Yulianto, 2020)

Furthermore, protection for asylum seekers or refugees carries a binding legal force (*jus cogens*) that requires every country, whether it has ratified the 1951 Convention or not, to uphold fundamental principles. These principles include the prohibition of expulsion or refusal of entry to refugees and asylum seekers within their jurisdiction, whether they have been recognized by the UNHCR (United Nations High Commissioner for Refugees) or have not yet obtained official status from the UNHCR. (Linderfalk, 2020)

The 1951 Convention falls under the category of the non-refoulement principle, a principle derived from customary international law and possessing a binding legal force (*jus cogens*) for all countries, whether they have ratified it or not, to provide basic rights and protection as prescribed by the legal rules. The non-refoulement principle can be regarded as a developing legal norm mutually agreed upon by states as part of established international legal practices. (Kondoy, 2020)

The 1951 Convention is a multilateral treaty with numerous member countries, serving as law-making that formulates legal norms for the international community. This indicates that the 1951 Convention is an international agreement that includes binding customary international law for every country. Therefore, even if not all countries ratify it, they are still obligated to provide assistance to refugees, even if only as transit countries.

In the context of the Republic of Indonesia, in 2016, it enacted Presidential Regulation No. 125 of 2016 concerning the Handling of Foreign Refugees. This does not mean that Indonesia has ratified the 1951 Convention on the Status of Refugees. Instead, the Presidential Regulation serves as guidance for handling asylum seekers and refugees who seek refuge within Indonesia's jurisdiction. (Syahrin, 2019), As a refugee-receiving country, the presence of refugees not only poses humanitarian challenges but also has significant impacts on security, economy, and socio-political balance. This is even more critical during a pandemic crisis, as international aid for refugees decreases,

and more countries close their borders to large numbers of refugees, such as Australia, the United States, and other major countries. (Gilbert & Loescher, 1994)

As a dignified country, refugees who have crossed international borders and entered a sovereign territory deserve attention, especially during sudden mass migrations. The increasing number of refugees and asylum seekers in Indonesia can lead to various impacts, both currently and in the future. These include ideological, economic, legal, socio-cultural, national security, and potential immigration impacts. Based on the aforementioned problem background, the author formulates the guiding problem for this article: Why has Indonesia not ratified the 1951 Convention on the Status of Refugees and what are the influencing factors.

B. Discussion

1. Analysis of Refugee Criteria Based on International Law

Refugee Criteria according to the 1951 UN Convention are as follows: 1. Being outside their country of origin/nationality. 2. Having a well-founded fear of persecution. 3. Due to reasons of religion, race, nationality, membership in a particular social group, or political opinion. 4. Being unable or unwilling to avail themselves of the protection of their country of origin. Refugees should not be equated with immigrants, as immigrants leave their country of origin for various reasons unrelated to persecution. Immigrants usually move to another country for economic purposes, where they receive legal protection from their country of origin, both while abroad and upon their return. (Rachman, 2018)

Article 1 (F) of the 1951 Convention excludes refugee status for those who have committed/been involved in the following prior to seeking asylum in a host country: 1. Crimes against peace, war crimes, crimes against humanity. 2. Serious non-political crimes. 3. Any actions contrary to or inconsistent with the principles of the United Nations. *In essence, an asylum seeker may also refer to themselves as a refugee, but their request for protection has not yet been considered. An asylum seeker who seeks protection in another country will undergo the Refugee Status Determination (RSD) process, which begins with refugee registration and continues with an interview conducted by UNHCR. During this interview, the reasons behind the decision, whether accepted or rejected, will be identified. If rejected, the asylum seeker still has the opportunity to appeal for international protection.*

It can be concluded that an asylum seeker is not automatically a refugee and, therefore, may not receive protection from UNHCR. However, the refugee status according to the 1951 Convention becomes the responsibility of UNHCR. All countries, even those that have not ratified the 1951 Convention, are obliged to provide standard refugee protection. The Refugee Convention of 1951, based on the Universal Declaration of Human Rights in 1948, recognizes the rights of refugees and asylum seekers to be protected from persecution in the host country, and assigns responsibility to countries that have ratified the Convention to provide the rights of refugees as stipulated in several articles of the 1951 Refugee Convention. (Fakhri, 2004)

Based on the provisions of the 1951 Convention, refugees have fundamental rights as human beings that deserve and need protection. If any country refuses the arrival of refugees, let alone forcibly repatriates them to their country of origin, it would be in violation of International Law and a denial of the international community's commitment to contributing to the resolution of refugee issues.

Indonesia's efforts and commitment to refugee-related issues are reflected in the implementation of Presidential Regulation 125/2016 concerning the handling of refugees from abroad, which is a fulfillment of Article 27 of Law No. 37 of 1999 on foreign relations. This Presidential Regulation aims to fill the legal vacuum in regulating refugees and asylum seekers in Indonesia, as mandated in Article 28G of the 1945 Constitution of the Republic of Indonesia. Presidential Regulation 125/2016 establishes guidelines for refugees and asylum seekers, with a focus on their rescue and the protection of their dignity and honor, and provides political asylum for those facing threats in their home country. Furthermore, the issuance of this Presidential Regulation also involves the establishment of a National Task Force for Handling Refugees, which aims to coordinate various aspects such as shelter, demonstrations, education, and other issues requiring synergy in handling refugees in Indonesia.(Irawan, 2017)

2. The Challenges of Handling Refugees from Abroad.

The complexity of Indonesia's refugee-related issues is substantial. While ratifying the 1951 Convention and its 1967 Protocol substantially protects the human rights of refugees, the author believes that it may encounter the following challenges:

- a) Population Density As of June 2021, Indonesia's population stands at approximately 272,229,372 individuals, with 137,521,557 males and 134,707,815 females. Meanwhile, the timing and number of refugees already in or expected to enter Indonesia, such as those from Afghanistan, are uncertain. Conflicts in Afghanistan prompt refugees to permanently settle in countries that are willing to accept them, due to the prolonged duration it takes for the UNHCR to find solutions for their departure to their intended destination.
- b) Legal Aspects The Indonesian government lacks legal regulations governing local integrity, which could provide equal rights between refugees and native Indonesians. To enjoy the same rights as Indonesian citizens, refugees must meet certain conditions outlined in Law No. 12 of 2016 on Indonesian Citizenship, including: a) Being at least 18 years old or married b) Residing in Indonesia for five (5) consecutive years or ten (10) non-consecutive years when submitting the application c) Having physical and mental health d) Proficient in the Indonesian language and acknowledging the Pancasila foundation and the 1945 Constitution of Indonesia e) Not having been sentenced to imprisonment of one year or more f) Not holding dual citizenship g) Having a job or regular income h) Paying citizenship fees to the state treasury
- c) Economic Aspects The impact of migration not only affects Indonesia's financial budget but also exacerbates economic conditions, leading to unemployment and housing problems in the recipient country.
- d) Security and Socio-Cultural Aspects An increase in the number of refugees may lead to conflicts between refugees and native populations, threatening cultural identity. For example, the majority of native Indonesians practice mainstream Sunni Islam and oppose temporary marriages (contract marriages). On the other hand, refugees and asylum seekers from Afghanistan follow Shia Islam, which allows contract marriages, posing

potential risks to our security and social-cultural aspects.

In the 1951 Refugee Convention, standard rights for refugees are provided, which the Indonesian government finds challenging to ratify. The Convention has established standards regarding the rights to be granted to refugees, including humane treatment at least equal to that given to other foreign nationals in the country and also requesting to be treated on par with local citizens. Treatment concerning these same rights includes, but is not limited to:(Fachrurrahman, 2016)

- a) The right to freedom of religion (Article 4);
- b) The right to access legal services (Article 16);
- c) The right to work (Article 17);
- d) The right to have housing (Article 21);
- e) The right to access education (Article 22);

If Indonesia were to ratify the 1951 Refugee Convention, it would agree to and be obligated to implement the rules stipulated in the Convention, including the aforementioned articles regarding the rights of refugees. However, the Indonesian government ultimately decides to remain as a country of temporary refuge and still finds it challenging to ratify the 1951 Refugee Convention. The basis for this consideration includes:(Yo'el, 2018)

- a) Regarding Article 4 of the 1951 Refugee Convention, which grants refugees the right to freedom of religion, the issue faced by the Indonesian government is that Indonesia only recognizes five religions and beliefs, namely Islam, Christianity, Catholicism, Hinduism, and Buddhism. It is feared that refugees belonging to other religions may cause conflicts among different religious groups. Additionally, differences in religious sects may also pose challenges, as the majority of Indonesian Muslims follow the Sunni tradition, while Afghan refugees may belong to the Shia sect (which permits temporary marriages) that is not in line with the Indonesian Marriage Law No. 1 of 1974.
- b) In Article 16, which concerns the right to access legal services, there are often cases of mixed marriages between Indonesian citizens and refugees. The problem arises because Indonesian civil law does not recognize mixed marriages. Furthermore, these marriages may not fulfill the requirements of Article 2(2) of the Marriage Law, which states that each marriage must be registered according to applicable regulations, and the spouses must have clear identities. For instance, Rohingya refugees cannot show their nationality since the Myanmar government considers them illegal immigrants. As a result, if they marry Indonesian citizens, their marriage cannot be recorded at the Civil Registry Office, and they cannot automatically become Indonesian citizens through marriage.
- c) The provision in Article 17 of the 1951 Refugee Convention grants refugees the right to work and earn wages lawfully. However, this requirement is challenging for the Indonesian government as the unemployment rate remains high, and the absorption of labor in all sectors

is inadequate. As of August 2022, the Open Unemployment Rate reached 5.86 percent.

- d) Article 21 of the 1951 Refugee Convention states the right to housing. According to this article, State Parties shall provide refugees residing lawfully in their territories with the best possible treatment regarding housing and not less favorable than that given to aliens generally under the same circumstances. This provision contradicts Indonesia's substantial external debt, which reached 394.6 billion US dollars by the end of the third quarter of 2022. Fulfilling Article 21 of the 1951 Convention would be practically impossible, considering the high poverty rate in Indonesia and the need for adequate infrastructure in many underdeveloped regions. Providing housing facilities for refugees remains challenging to implement.

C. Conclusion

The conclusion from the above discussion is that the problems faced by the Indonesian government concerning refugees are highly complex. While ratifying the 1951 Refugee Convention and its 1967 Protocol can substantially protect the human rights of refugees, their implementation in Indonesia will encounter various challenges. Indonesia's high population density poses a significant obstacle in handling refugees. The influx of refugees into Indonesia, such as those from Afghanistan, becomes an issue due to the lengthy process of finding solutions for their departure to their intended destination countries by UNHCR. The legal aspect also needs consideration. The absence of laws governing local integrity hinders the equal treatment of refugees and Indonesian natives. To enjoy the same rights as Indonesian citizens, refugees must meet certain requirements stipulated in Law No. 12 of 2016 concerning the citizenship of the Republic of Indonesia. From an economic perspective, refugee migration can impact Indonesia's financial budget and cause unemployment and housing problems in the receiving country. Security and socio-cultural aspects are also crucial considerations. An increasing number of refugees may lead to conflicts with the native population and endanger Indonesia's cultural identity. Despite the 1951 Refugee Convention providing standards for the rights of refugees, the Indonesian government finds it challenging to ratify it. This is due to various obstacles, such as religious differences, marriage laws, labor absorption, and budget limitations. In facing this complex situation, the Indonesian government needs to carefully consider before ratifying the 1951 Refugee Convention. Opting to be a country of temporary refuge and providing protection within its capacity is a wise step in addressing this refugee issue.

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