

THE SITUATION OF INTERNATIONAL REFUGEE IN INDONESIA: A LEGAL PERSPECTIVE

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Abstract

This paper discusses the issue of refugees from an international law perspective. It is known that Indonesia is not a party to either the 1951 Refugee Convention as well as the 1967 Protocol, but mostly as transit country house a number of refugees running away from conflict areas in Myanmar, the Middle East and Afghanistan. This legal research employs a juridical normative method. By tracking down and analyzing all relevant legal sources it is revealed that Indonesia's treatment of refugees is based on the general obligation to protect and honor human rights (on the basis of international minimum standard). It is further recommended that Indonesia should actively support the global compact on refugees.

Keywords:

Indonesia, refugees, human rights

Abstrak

Tulisan ini mengurai permasalahan pengungsi dari sudut pandang hukum internasional. Diketahui bahwa Indonesia tidak terikat Konvensi Pengungsi 1951 maupun Protokol 1967, namun kebanyakan sebagai negara transit, menampung dan mengurus sejumlah pengungsi yang melarikan diri dari wilayah konflik di Myanmar maupun Timur-Tengah termasuk Afghanistan. Penelitian ini merupakan telaahan hukum dan sebab itu menggunakan metoda yuridis normatif. Dari penelusuran hukum yang dilakukan ternyata titik tolak pengelolaan pengungsi di Indonesia adalah kewajiban Indonesia untuk melindungi dan menghormati hak asasi manusia (berdasarkan international minimum standard). Beranjak dari ini pula dapat direkomendasikan bagi Indonesia untuk berperan aktif dalam memajukan *global compact on refugee*.

Kata kunci:

Indonesia, pengungsi, hak asasi manusia.

Introduction

Sometimes a country is in conflict, both internal and international conflicts. Conflict threatens the security of an individual and that of his/her family. Threats to security force people to leave their countries and seek asylum in other countries, in order to save themselves and their families. A person who finds himself/herself in such circumstances is known in international law as an asylum seeker or international refugee. Asylum seekers and international refugees are particularly vulnerable to inhumane treatment when they arrive at the borders of a country. This is because the situation of their arrival is not the same as that of other tourists. They are not equipped with the appropriate documentation (passport and visa) required of a person entering a territory that is not his/her country of origin. As did the Rohingya refugees from Myanmar who entered the territory of Indonesia.

The relatively high number of conflict-affected countries (domestic conflicts and conflicts with other countries) has increased the flow of asylum seekers and international refugees. This directly affects the destination countries of asylum seekers and international refugees as well as the transit countries and countries that are only temporarily crossed.

The main reference regarding the definition of the notion of international refugees¹ is the 1951 Convention Relating to the Status of Refugees, i.e. the section that defines the criteria used to determine whether an individual may be considered a refugee. The article in the 1951 Refugee Convention that defines the term 'refugee' forms the basis of determining whether a person is eligible to be granted refugee status. In the article, it is stipulated that in order to obtain refugee

¹ Other than the definition contained in the 1951 Convention, the definition of 'refugees' is also contained in other international instruments of human rights, such as the Organization of Africa Union Refugee Convention, the 1984 Latin American Cartagena Declaration, as well as the UN special organ that deals with refugees, i.e. United Nations High Commissioner for Refugees (UNHCR). UNHCR, the 1951 Refugee Convention Questions & Answers, Jakarta: UNHCR Indonesia, 2007, p. 5; Compare also with the definition put forward by Enny Soeprapto, Hak Asasi Manusia dan Pengungsi, Jakarta: Rajawali Press, 2002, p. 18; Kadarudin, Keterkaitan Antara Stateless Persons, Pencari Suaka dan Pengungsi, *Jurnal Pengembangan Ilmu Hukum "Gratia"*, Volume VIII Nomor 1 April 2012, p. 105; and also UNHCR, Pengenalan tentang Perlindungan Internasional, Melindungi Orang-Orang yang Menjadi Perhatian UNHCR, Jakarta: UNHCR Indonesia, 2005, p. 53

status, a person must have reasonable fear because of his/her race, religion, nationality, membership within a particular social group or political opinion possessed, is outside his/her national/former residence, and cannot or do not wish, because of his fear, to gain protection from or return to that country.

Alexander Betts and Gil Loescher in their article entitled Refugees in International Relations explains that refugees are people who cross international borders in order to flee human rights abuses and conflicts,² while Achmad Romsan, *et.al.* wrote in their book entitled Introduction to International Refugee Law that people can also become refugees due to manmade disasters, such as armed conflict, change in political regime, suppression of fundamental freedom, harassment, human rights violations, etc. People may become refugees in a country because of political differences.³ When a person's freedom as a citizen becomes constrained and some restrictions are placed on his or her rights such that his/her security is threatened, whether intentional or unintentional, by the state apparatus, he/she is permitted to flee from his/her country and request asylum in another country.

The international community's must continue to show commitment in opposing any form of gross human rights violation, be it crimes against humanity, genocide or other crimes, which can make unborn children become refugees.⁴ However, in practice there are always obstacles, both in terms of the political will of countries and the willingness of a state to respect universal human rights. There should be neutrality in dealing with events that cause displacement of people by

² Alexander Betts and Gil Loescher (Ed.), *Refugee in International Relations*, New York: Oxford University Press, 2011, p. 1; People may become refugees in a country because of political differences, See Achmad Romsan, *et.al.*, *Pengantar Hukum Pengungsi Internasional: Hukum Internasional dan Prinsip-Prinsip Perlindungan Internasional*, Bandung: Sanic Offset bekerjasama dengan UNHCR Jakarta, 2003, p. 35; Compare with Iin Karita Sakharina and Kadarudin, *Pengantar Hukum Pengungsi Internasional, Perbedaan Istilah Pencari Suaka, Pengungsi Internasional, dan Pengungsi Dalam Negeri*, Yogyakarta: Deepublish, 2017, p. 11

³ Achmad Romsan, *et.al.*, *Id.*

⁴ Kadarudin, *Penanganan Pemerintah Indonesia Terhadap Pengungsi Rohingya Menurut Konvensi 1951. Jurnal Hukum Internasional "Jurisdictionary"*, Vol. VI Nomor 1. Juni 2010, p. 114; The legal framework underpinning refugee protection is composed of international refugee law, international human rights law and, in certain circumstances, international humanitarian law and international criminal law. UNHCR, *An Introduction to International Protection, Protecting Persons of Concern to UNHCR*, Geneva: UNHCR, 2005, p. 25

emphasizing reason and respect for the universal values of human rights, so that every action taken is acceptable to all parties.⁵ Human rights' values are guaranteed by humanitarian efforts of handling asylum seekers and international refugees.

Discussions about asylum seekers and international refugees are closely linked to international human rights because, as noted above, asylum seekers and international refugees are highly vulnerable to inhumane treatment both in their home countries and the countries where they are displaced to. They are very poor and do not have travel documents. Their departure to other places or countries is not of their own personal desires but because they are forced to, due to the absence of a guarantee of safety in their country of origin. Apart from the fact that violations of the human rights of asylum seekers, refugees,⁶ and their families who are also displaced constitute an abandonment of their rights as human beings, they also suffer from psychological violence and discriminative acts.

Asylum seekers and international refugees constitute a critical issue in inter-state relations, as international refugees can occur in every country, resulting from conditions that make a person prefer to move from their home country to another country. The conditions in question are unsafe conditions for a person or group if they remain in the territory of their country of origin, so for the sake of security and safety, the person or group chooses to move from the territory of the country of origin to another state's territory that is safer for them.⁷ The action of the United Nation High Commissioner for Refugees (UNHCR) is urgently needed by international refugees, including those in a transit country or

⁵ Kadarudin and Husni Thamrin, Rohingya dan Tantangan Negosiasi UNHCR Terhadap Negara-Negara Utama Pemberi Suaka, Suatu Kajian Hukum Pengungsi Internasional. Proceedings at the National Symposium of International Law Teachers Association (Asosiasi Pengajar Hukum Internasional/APHI), with the theme, International Law in Contemporary World Geopolitics: Perspectives and Experience of Indonesia, Bukittinggi on September 7-8, 2017, Faculty of Law, University of Andalas, p. 145

⁶ Iin Karita Sakharina, Pengungsi dan HAM. *Jurnal Hukum Internasional*, Volume I Number 2. November 2013. International Law Department, Faculty of Law, Hasanuddin University, Makassar, p. 198

⁷ Kadarudin, Hubungan Indonesia dengan Prinsip Non-Refoulement dalam Perspektif Hukum Internasional, *Jurnal "Amanna Gappa"*, Volume 20 Number 2 June 2012. Faculty of Law, Hasanuddin University, Makassar, p. 138

those already in their destination country but has not gained status.⁸ UNHCR is one of the institutions that provide hope for asylum seekers and international refugees in their bid to improve their situation in the future, so asylum seekers and international refugees are sustained by hope while living at refugee points provided by a country.

Indonesia is one of the countries that welcome asylum seekers and international refugees. It has become a transit country and has provided venues to serve as international refugee locations in several areas, including a Special Province of Aceh, North Sumatra Province, South Sulawesi Province, West Java Province, and the Special Capital Region of Jakarta. These actions constitute universal respect and fulfillment of human rights. Despite the fact that there are still some shortcomings in handling these issues, the willingness of the state in accepting asylum seekers and international refugees voluntarily is an exemplary state action, since the state basically has an obligation to respect, protect and fulfill their human rights.

Despite the fact that asylum seekers and international refugees are well received by the Government of the Republic of Indonesia, there is no guaranty that their behaviour will be acceptable to the public. In this regard, several societal problems have been caused by asylum seekers and international refugees, such as fights among refugees, homicides, possession of weapons by refugees, and protests. The frequent demonstrations by refugees in Makassar are due to UNHCR's prolonged search for a third country (the final destination of international refugees); one of the protesting refugees has even been granted international refugee status for more than 7 years but has not received any clarity regarding his departure to the destination country. This shows that UNHCR's performance in placing international refugees in their destination countries is not yet maximized. The Government of the Republic of Indonesia should take a stand

⁸ Iin Karita Sakharina, *et.al.*, Keterlibatan Pemerintah Daerah dalam Menangani Pencari Suaka dan Pengungsi Internasional di Indonesia. Proceedings at the National Symposium of International Law Teachers Association (Asosiasi Pengajar Hukum Internasional/APHI), with the theme, International Law in Contemporary World Geopolitics: Perspectives and Experience of Indonesia, Bukittinggi on September 7-8, 2017, Faculty of Law, University of Andalas, p. 126

on the performance of the UNHCR, because Indonesia is one of the countries directly affected by the flow of refugees, as a transit country. The increasingly massive arrival of asylum seekers/refugees can result in the accumulation of international refugees, thus potentially disrupting the tranquility of the surrounding community.

The number of asylum seekers entering Indonesia is growing continuously. UNHCR data show this increasing trend of asylum seekers from year to year. Indonesia shelters refugees because of the culture of its citizens, who are well-known for their friendly and tolerant nature. The fact that Indonesian citizens are able to tolerate the presence of foreigners is the main factor responsible for the arrival of asylum seekers. Although Indonesia is only used as a transit, it is important to point out that for the short period that the refugees are in Indonesia, adequate shelter and safety is ensured. Due to the above reason and the geographical location of Indonesia, it receives many refugees.

Based on the above explanations, the following problems will be discussed in this paper: What is the situation of international refugees in Indonesia? What are the problems in the refugee areas in Indonesia? What are the solutions to the problem in the refugee areas in Indonesia?

Research Method

This research is a normative law research,⁹ which employs the statute approach¹⁰ and the conceptual approach.¹¹ The data used are secondary data in the form of primary legal materials (international and national law instruments) and secondary legal materials (books, journals, research reports, and news media both print and online) obtained through literature study. The collected legal

⁹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta: Rajawali Pers, 2011, p. 14

¹⁰ Bambang Sunggono, *Metodologi Penelitian Hukum*, Jakarta: Rajawali Pers, 2012, p. 98-99

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, 2010, p. 96

materials were analyzed qualitatively¹² and presented descriptively in order to answer the problems highlighted in this paper.

Results and Discussion

International Refugees' Situation in Indonesia

International refugee law provides that not all persons or groups who move from one country to another are immediately categorized as international refugees.¹³ Many people or groups migrate from their country illegally.¹⁴ Illegal here means becoming an illegal immigrant by entering the territory of a country (which is not one's own country) in a way that is inconsistent with the rules of international law.¹⁵

The problem of refugees is the most complicated issue facing the world community today. Many discussions have been done at the United Nations (UN) to continue to seek for more effective ways to protect and help these highly vulnerable groups. A number of people have called for increased cooperation and coordination among agencies that provide assistance. Others point to the gaps in international regulations and call for further drafting of standards in this field.¹⁶ How complicated is the problem (whether it is the problem brought by the refugees from their countries of origin or the problem to be faced by refugees in the transit country or destination country) associated with refugees?¹⁷ A state's acceptance of asylum seekers and international refugees is a form of respect for universal human values. Nevertheless, there are still some countries that are

¹² Matthew B. Miles and A Michael Huberman, *Analisis Data Kualitatif*, Buku Sumber Tentang Metode-Metode Baru, translated by Tjetjep Rohendi Rohidi, Jakarta: UI-Press, 2009, p. 15; See also the article on "beberapa catatan sekitar metode penelitian kualitatif" in Soejono and Abdurrahman, *Metode Penelitian Hukum*, Jakarta: Rineka Cipta, 2003, p. 26

¹³ Kadarudin, *Supra* note 7., p. 138-139, because in the 1951 Convention those who only meet the criteria of Article 1 who may become a refugee.

¹⁴ *Id.*

¹⁵ *Id.* Like illegal immigrants entering Indonesia, the immigrants come from Afghanistan, Sudan, Somalia, Korea, and China, read more on <https://www.merdeka.com/khas/beda-nasib-imigran-di-indonesia.html> and <https://news.detik.com/berita/d-3442963/14425-imigran-ilegal-penuhi-indonesia-ini-langkah-pemerintah>

¹⁶ *Id.*

¹⁷ Iin Karita Sakharina, *et.al.*, *Supra* no 8

unwilling to respect universal human values, as evidenced by the refusal of their border authorities to accept persons seeking asylum.

The international community has a role to play in opposing all forms of gross violation of human rights, be it crimes against humanity, genocide or other crimes. These crimes could lead to unborn children becoming refugees.¹⁸ Indonesia to date (April 2018) is one of the countries that have not ratified the Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1967. These instruments are facilitated by UNHCR¹⁹ and deal with accepting the arrival (transit) of asylum seekers and international refugees before being placed in a third country (destination country). Indonesia is not bound by these two main instruments of refugee protection, because it has not yet ratified them. Therefore, Indonesia has no direct responsibility to grant protection to asylum seekers and international refugees. As Indonesia has not ratified the Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1967, the government authorizes UNHCR to carry out the mandate of protection of asylum seekers and international refugees and to address refugee issues in Indonesia.²⁰

Each state is normally responsible for ensuring that the rights of its citizens are respected. The need for international protection, therefore, only arises when this national protection is denied or is otherwise unavailable. At that point, the primary responsibility for providing international protection lies with the country in which the individual has sought asylum. All states have a general duty to

¹⁸ Kadarudin, *Supra* no 4, p. 114; The legal framework underpinning refugee protection is composed of international refugee law, international human rights law and, in certain circumstances, international humanitarian law and international criminal law. UNHCR, *An Introduction to International Protection - Protecting Persons of Concern to UNHCR*, *Supra* no 1., p. 25

¹⁹ UNHCR is an organ of the United Nations which has the mandate of international refugees. UNHCR operates a Refugee Status Determination (RSD) procedure, which begins with the registration of asylum seekers. After registration, UNHCR will conduct individual interviews with each asylum seeker, accompanied by a competent translator. This process gives rise to a reasonable decision that determines whether a person's purchasing status request is accepted or rejected and gives each individual a chance (one time) to request an appeal if the request is rejected. See History of UNHCR at <http://www.unhcr.org/id/sejarah-unhcr> accessed on March 30 2018

²⁰ Iin Karita Sakharina, *et.al.*, *Supra* no 8.

provide international protection as a result of obligations based on international law, including international human rights law and customary international law. States that are parties to the 1951 Convention Relating to the Status of Refugees and/or its 1967 Protocol have obligations in accordance with the provisions of these instruments.²¹

Among the countries receiving large numbers of asylum seekers and refugees, such as Malaysia, Thailand and Australia, Indonesia is severely affected by mixed population movements. After the decline in numbers in the late 1990s, the number of arrivals of asylum seekers in Indonesia increased again in 2000, 2001 and 2002. Although the number of arrivals subsequently declined again from 2003 to 2008, the trend of arrivals increased in 2009, with a total of 3,230 people seeking protection through UNHCR. Currently, the majority of such asylum seekers come from Afghanistan and Somalia. (Data on asylum seekers enrolled in UNHCR from year to year: 385 in 2008; 3,230 in 2009; 3,905 in 2010; 4,052 in 2011; 7,223 in 2012; 8,332 in 2013; 5,659 in 2014; 4,426 in 2015; 3,112 in 2016). The protection provided by UNHCR begins by ensuring that refugees and asylum seekers are protected from refoulement (i.e. protection from forced repatriation to their place of origin where their lives or freedoms are in danger). Further, refugee protection covers the process of verifying the identity of asylum seekers and refugees, so that they can be registered and individual documentation issued. Registered asylum seekers may then apply for refugee status through an in-depth assessment procedure by UNHCR, referred to as the Determination of Refugee Status or Refugee Status Determination (RSD).²²

This procedure provides for individual asylum seekers to be interviewed in their native language by an RSD staff and assisted by an expert translator, who will assess the validity of the proposed protection request. Next, the asylum seeker will be informed of the decision made, i.e. whether the refugee status is granted or not, along with the reason. If the request for protection is denied, the procedure of RSD

²¹ UNHCR, *An Introduction to International Protection - Protecting Persons of Concern to UNHCR*, Self-Study Module 1, Geneva: UNHCR, 2005, p. 12

²² UNHCR in Indonesia, see <http://www.unhcr.org/id/unhcr-di-indonesia> accessed on March 30 2018

allows an opportunity for re-submission (appeal). For those who get refugee status, UNHCR will find one of three possible long-term solutions: placement in a third country, voluntary repatriation (if the conflict in the area of origin has ended) or local integration. The search for a viable long-term solution for every refugee is a process that involves consideration of the individual and family circumstances. The solution sought is a solution that suits the needs of each refugee. Currently, UNHCR has more than 60 staff in Indonesia. At the end of March 2017, there were 6,191 registered asylum seekers in UNHCR Jakarta: Afghanistan (42%) and Somalia (14%), while there were 8,279 registered refugees in UNHCR Jakarta: Afghanistan (57%), Myanmar (10%), and Somalia (7%).²³

UNHCR on many occasions has suggested that there is a growing trend of asylum seekers from time to time,²⁴ due to conflict in the country of origin, life-threatening human rights violations suffered by individuals and their families, and personal rejection as citizens.²⁵ Based on UNHCR data, it should be realized that 25% of the total number of people enrolled by UNHCR in Indonesia are children; 465 children came alone or separated from their families. Most refugees in Indonesia come from Afghanistan (57%), Myanmar (8%) and Somalia (7%). After going through a series of mechanisms, the status of asylum seekers may change to international refugees or not (illegal immigrants). When a person or group of people is subsequently classified as illegal immigrant(s), then immediately, UNHCR implements the repatriation process to their home country.

²³ Id.

²⁴ Data from UNHCR said that, currently, there are at least 13,188 people in Indonesia who they are concerned about. Among these, 5,277 are refugees and 7,911 are asylum-seekers. Most of them fled from violations of human rights in their countries of origin, such as Afganishtan, Myanmar, Somalia, Iran and Iraq. See CNN, UNHCR: Jumlah Pengungsi di Indonesia Meningkat, see <https://www.cnnindonesia.com/nasional/20150728204221-20-68699/unhcr-jumlah-pengungsi-di-indonesia-meningkat/> accessed on March 30 2018

²⁵ It is estimated that there are currently 12 million stateless people around the world. To address the protection issues faced by stateless people, especially those who are not refugees, the international community has adopted the 1954 Convention on the Status of Stateless Persons. See UNHCR, *Melindungi Hak-Hak Orang-Orang Tanpa Kewarganegaraan, Konvensi 1954 tentang Status Orang-Orang Tanpa Kewarganegaraan*, Jakarta: UNHCR, 2010, p. 2

Those identified as refugees will receive protection as long as UNHCR seeks a long-term solution, which is usually placement in other countries. To this end, UNHCR is closely linked with countries that have the potential to receive refugees. At the end of March 2017, 6,191 asylum seekers and 8,279 refugees were registered at UNHCR Jakarta on a cumulative basis.²⁶ Many countries, bodies, and organizations provide international protection for humanitarian reasons. Therefore, an organized cooperation is required between states, agencies and organizations in providing such international protection.²⁷ At the end of 2016, the President of the Republic of Indonesia signed the Regulation of the President of the Republic of Indonesia Number 125 Year 2016 on the Handling of Refugees from Abroad. The Presidential Regulation contains the main definitions and regulates the detection, holding and protection of asylum seekers and international refugees. Various provisions in the Presidential Regulation are expected to be implemented soon. This will make the Government of Indonesia and UNHCR work more closely, including in the field of joint registration for asylum seekers²⁸ and international refugees.

If the request for protection is denied, the procedure in RSD allows an opportunity for re-submission (appeal). For those who get refugee status, UNHCR will look for one of three possible long-term solutions: third-country placements, voluntary repatriation (when conflicts in the origin are over) or local integration. However, the latter solution does not apply in Indonesia, because the government does not grant permanent residence permits to refugees to live in Indonesia. Placement in third countries so far is still the only solution for the majority of refugees in Indonesia.²⁹

In the international legal system, the concept of *jus cogens*, often referred to as the peremptory norm of international law, is a legal provision that has been accepted and recognized by the international community, and the provisions of

²⁶ History of UNHCR, Supra no 19.

²⁷ Iin Karita Sakharina and Kadarudin, *Hukum Pengungsi Internasional*, Pustaka Pena Press, Makassar, 2016, p. 44

²⁸ UNHCR in Indonesia, Supra no 22.

²⁹ Id.

such laws cannot be overridden by other legal provisions.³⁰ The Non-Refoulement Principle is one of the principles that have become jus cogens in international refugee law.³¹ The concept 'refugee' is relevant when the migration of an individual or a group of persons becomes problematic.³² Thus, the state and UNHCR are the main actors with an obligation to provide international protection for refugees. As earlier, mentioned, the protection provided by UNHCR begins by ensuring that refugees and asylum seekers are protected from refoulement (i.e. protection from forced repatriation to their place of origin where their lives or freedoms are in danger or).³³ A Special Province of Aceh, North Sumatra Province, South Sulawesi Province, West Java Province, and Jakarta Capital City Special Region are areas in Indonesia that accommodate a considerable number of refugees entering Indonesia.

International Refugee Problems in Indonesia

The search for a new country by refugees must of course be regarded as a human right.³⁴ As asylum seekers and international refugees enter a new territory (Indonesia), they or their families must comply with the applicable laws and regulations at both the central and regional levels where they live. However, when asylum seekers and international refugees are well received by the local government and local communities, there is no assurance that the behaviour of these refugees will conform to the minimum acceptable standard of the

³⁰ Sigit Riyanto, Prinsip Non Refoulement dan Relevansinya dalam Hukum Internasional, *Jurnal Mimbar Hukum*, Volume 22, Number 3, October 2010, p. 441

³¹ Kadarudin, *Supra* no 7, p. 138-139

³² Prakash Amritlal Shah, *Refugees, Race and the Legal Concept of Asylum in Britain*, London: Cavendish Publishing Limited, 2000, p. 1

³³ The key protection in the refugee convention is non-refoulement, the obligation of states not to return a refugee to a place where he will face the risk of being persecuted. Michelle Foster, *Protection Elsewhere: The Legal Implications of Requiring Refugees to seek Protection in Another State*. Michigan Journal of International Law Volume 28, 2007, p. 226; Non refoulement principles that reflect minimum protection based on humanitarian reasons. Jun Justinar, Prinsip Non Refoulement dan Penerapannya di Indonesia, *Jurnal Hukum Internasional "Opini Juris"*, Volume III, September-December 2011, Jakarta: Directorate General of Law and International Treaty, Ministry of Foreign Affairs of the Republic of Indonesia, p. 19-20; see also Sir Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non Refoulement*, United Nations High Commissioner for Refugees, 20 June 2001, p. 20 - 21

³⁴ Sukanda Husin, UNHCR dan Perlindungan Hak Azasi Manusia, *Jurnal Hukum FH Universitas Andalas*, Number 7 Year V/1998, p. 27

community where they live. This is evident in the fact that several problems that are directly related to the presence of asylum seekers and international refugees arise in the community.³⁵ In general, there are two international refugee problems in Indonesia, namely external problems and internal problems. External problems are the problems that are not directly caused by international refugees, while internal problems are the problems that are directly caused by international refugees.

External problems are as follows: 1) Inadequate regulation, 2) changes in the policies of the main countries that provide asylum, 3) facilities in poor support areas, and 4) social problems. On the other hand, internal problems are as follows: 1) fights, 2) killings, 3) storing of sharp weapons, and 4) demonstrations, all carried out by refugees.

1. Inadequate Regulation

The nature of Indonesia's national legal framework relating to asylum seekers, refugees, and stateless persons shows that they are all treated as illegal immigrants and are under the threat of being put into the Immigration Detention House (Rudenim). They are also under the threat of deportation. UNHCR operates in Indonesia with the approval of the Government of the Republic of Indonesia. The Director General of Immigration of Indonesia issued an instruction in 2010 (No: IMI-1489.UM.08.05) stating that persons seeking asylum or refugee status should be referred to UNHCR to follow the process of determining their status and that "the status and presence of foreigners holding Attestation Letters or ID cards issued by UNHCR, as an Asylum Seeker or Refugee, must be respected". Persons who do not have these documents risk being admitted to the Immigration Detention Center, subject to fines and/or deportation. Although UNHCR operates in Indonesia with permission from the Indonesian government, its capacity is very

³⁵ Iin Karita Sakharina, *et.al.*, Supra no 8

limited due to the increasing number of asylum seekers seeking assistance in Indonesia. UNHCR has 60 staff in Indonesia.³⁶

The only Indonesian national law that addresses the handling of foreign refugees is the Law of the Republic of Indonesia Number 37 Year 1999 on Foreign Relations. Article 27 of the Law on Foreign Relations states that the President sets the policy on refugee problems from abroad with due regards to the Minister's considerations. It was only during the time of President Joko Widodo that a derivative rule of the Act was issued, namely the Regulation of the President of the Republic of Indonesia Number 125 Year 2016 on the Handling of Refugees from Abroad, endorsed by President Joko Widodo. This Presidential Regulation provides the basis for the services that immigration officers provide to the refugees. The immigration in Indonesia upholds the Law of the Republic of Indonesia Number 6 Year 2011 on Immigration. Presidential Regulation 2016 adds refugee handling authority to the Director General of Immigration. Under the Immigration Act, the activities of the immigration are restricted to issues related to the traffic of persons entering or leaving the territory of Indonesia and to supervision in order to maintain the sovereignty of the state. Such services include only law enforcement, state security, and community welfare facilitation. Obviously, the handling of refugees is a different from its previous mandate, due to the humanitarian service that should be rendered to the refugees.³⁷

The policy of addressing the problem of transit migrants in Indonesia is not sufficient. This has encouraged many refugees to spread to several areas, including Cisarua and Bogor. For the reckless, they are even willing to become 'boatmen' controlled by the human smuggling network. The problem is that there is no legal framework that can guarantee the safety and welfare of refugees from the period they enter the country to time when a sustainable solution would be found. The only legal product that can be referred to is the Presidential Regulation of the

³⁶ Suaka: Indonesian Civil Society Network for Refugee Rights Protection, Masalah Pelindungan, see <https://suaka.or.id/public-awareness/id-masalah-perlindungan/> accessed on March 30 2018

³⁷ Hukum Online, Ada Masalah Regulasi Penanganan Pengungsi di Indonesia, see <http://www.hukumonline.com/berita/baca/lt597853eb3280a/ada-masalah-regulasi-penanganan-pengungsi-di-indonesia> accessed on March 30 2018

Republic of Indonesia Number 125 Year 2016 on the Handling of Refugees from Abroad, but it does not address the issues facing refugees. The toughest problem is the prolonged solution. During the waiting period, the refugees almost have no guarantee to their welfare. The most basic is the right to livelihood. Food, housing, education, health, livelihood and so on are not guaranteed. The presidential regulation does not answer it all. It only addresses the procedures to handle refugees on land and at sea, i.e. how to perform the rescue and how to put the refugees in the shelter.³⁸

2. Changes in the policies of the main countries of asylum-providers

The political adviser to Bangladesh's Prime Minister, Sheikh Hasina, said that the proposals about refugee shelters are "unrealistic" because the United States and Europe are reluctant to accept more Rohingya refugees. Some Australian immigration center officials in Papua New Guinea are mounting increasing pressure on asylum seekers to voluntarily return to their respective countries. The pressure is in the form of offering them a large sum of money. Canada, Australia, and the United States are the main states of asylum for Rohingians who came to Bangladesh from Myanmar before Dhaka suspended the program around 2012. The Bangladeshi government official said the program is feared to encourage more people from Myanmar to use Bangladesh as a transit country to seek asylum in western countries. Canada has stated that it will accept those who evacuate themselves because of terror, war and fear of being persecuted. The willingness was declared by Canadian after refugees from seven Muslim-majority countries were denied entry into the United States, for four months, based on President Trump's order. However, a district judge in the United States subsequently suspended Trump's order.³⁹ This policy of President Trump is

³⁸ Febi Yonesta when interviewed by tirto.id, Kebijakan Trump Soal Pengungsi Membahayakan Indonesia, see <https://tirto.id/kebijakan-trump-soal-pengungsi-membahayakan-indonesia-cqgx> accessed on March 30 2018

³⁹ Kompas, UNHCR Ingin Negosiasikan Rohingya dengan AS, Kanada, dan Eropa, see <http://internasional.kompas.com/read/2017/02/17/06304521/unhcr.ingin.negosiasikan.rohingga.dengan.as.kanada.dan.eropa> accessed on March 30 2018

controversial. Previously, under the leadership of Barrack Obama, America even ran a resettlement program for refugees, including those previously housed in Indonesia. Resettlement is one of the final solutions to refugee problems. In addition to resettlement, local integration and voluntary repatriation are the options set forth in the UNHCR guide book.⁴⁰

The assistance offered by UNHCR to Rohingya refugees and other refugees will not be effective without the support of states, be it a refugee transit country or a refugee destination country, particularly the major destination countries of asylum seekers, such as Canada, the United States and Australia. Although in practice it is often constrained, mainly by state policies that often change in line with the change in leadership or regime, UNHCR always tries to conduct intensive talks with states in accordance to its mandate. However, despite the efforts of UNHCR, it would be best for every country not to discriminate nor infringe on the rights of its citizens, as this could be a potential for new flows of refugees.⁴¹ The global political situation is not on the side of migrants. The United States, under the leadership of President Donald Trump, issued a policy on immigration under the pretext of countering security and terrorism, affecting the plight of refugees around the world, including those living in Indonesia. There is a buildup of transboundary refugees who are now awaiting the acceptance of a third country. A close look at the previous policy of the United States shows that after Australia refused to accept refugees, the United States was receiving the most refugees across the border from Indonesia; 790 refugees were accepted by the United States in 2016, followed by Australia (363 refugees) and Canada (95 refugees).⁴²

3. Poor facilities in support areas

Indonesia has 13 Immigration Detention Houses. Bear in mind that the Immigration Detention House is not a refugee shelter. It is where immigration offenses are handled. It has been recognized by the immigration authorities that

⁴⁰ Kadarudin and Husni Thamrin, *Supra* no 5

⁴¹ *Id.*

⁴² Febi Yonesta, *Supra* no 38.

there is no provision for the Immigration Detention House to accommodate refugees. The implication is that the government has no place to accommodate refugees. In the event of an emergency, the government can accommodate them in local government-owned areas, but after that, the immigration must temporarily take charge. After been temporarily housed in the Immigration Detention House, there is actually a possibility of placing them outside the Immigration Detention Center as long as there is a guarantee, but the government is not willing to provide the guarantee. Therefore, in practice, there are homestays rented by international organizations working with the immigration authorities, such as International Organization for Migration (IOM), to provide shelter for refugees outside the Immigration Detention Houses. But beyond that, there are also so-called independent shelters or self-cultivated shelters.⁴³

4. Social problems

In addition to technical issues, the immigration authorities are also concerned about the long-term impact of refugees. If there is a legal vacuum in the handling of refugees, it will cause social problems and affect the security of the state. The Presidential Regulation of the Republic of Indonesia Number 125 Year 2016 on the handling of refugees from abroad only regulates a small part of the process, i.e. the first emergency response. Issues related to prevention, repatriation, and who is fully responsible are not well regulated. For how long can they stay in Indonesia? UNHCR itself cannot guarantee that the identification process and verification will be completed in a day, a month, a year or ten years. Also, no standard operational procedure exists. A number of social problems are caused by the presence of the refugees. For example, dozens of Nigerian refugees use pocket money from UNHCR or other donor agencies for drug abuse. Also, some young refugees become gigolos in Batam; some impregnate the daughters of locals, and some even sleep with people's wives. Many of them are still in their productive age, but most of their activities are just eating and sleeping. In terms of

⁴³ Id.

national security, it is important to be cautious because of the possibility of a foreign spy or member of an international terrorist network posing as a refugee in order to spread his ideology. There is also the possibility of refugees bringing in diseases that could cause an epidemic in Indonesia, since refugees also have the right to mobility and interact with local residents.⁴⁴

5. Fights among refugees

On Wednesday, September 9, 2015, refugees from Afghanistan and Sudan in temporary shelters in Makassar, South Sulawesi, clashed. The cause of the clash was a reprimand from an Afghan citizen against a Sudanese who was about to cook in a shelter. The Head of Public Relations Bureau of Immigration Directorate of the Ministry of Justice and Human Rights, Heru Santoso, said the Afghans felt that the dining room would be dirty if the Sudanese keep cooking in the room. However, the reprimand was rejected by the Sudanese citizen supported by his colleagues. As a result, other Afghans got angry. They then supported their colleague until there was a commotion. Seven Sudanese nationals and five Afghans were injured. Seven people were immediately taken to the Regional General Hospital of Daya in Makassar, while the five wounded Afghans were admitted to the Awal Bross Hospital. The case of the clash has been handled by Makassar police and immigration. Given that the Sudanese are in the minority compared with the citizens of Afghanistan, 21 Sudanese citizens were transferred from Wisma Bugis I to the Immigration Office of Makassar.⁴⁵

In Aceh, two Rohingya refugees fought with axes at a temporary shelter in Blang Adoe Village, Kuta Makmur Sub-district, North Aceh. The fight involved M (22 years) and S (24 years old). The Chief of Kuta Makmur Sector Police, Erpansyah, said that the fight started when M came home after taking the rice in the soup kitchen. After taking the rice, M was about to return to his barracks. Apparently in front of the mushala, S was waiting with an axe. At that moment, S

⁴⁴ Hukum Online, Supra no 37

⁴⁵ Jawa Pos, Pengungsi Afghanistan dan Sudan di Makassar Bentrok, September 11, 2015 Edition, see <http://www.jawapos.com/read/2015/09/11/3470/pengungsi-afghanistan-dan-sudan-di-makassar-bentrok> accessed on March 30 2018

hit the head of M with the axe; this occurred on Sunday, April 22, 2016. Hearing the commotion, other Rohingya residents immediately ganged up against the perpetrator who hit the victim with an axe. As a result, S suffered deep wounds of 3 centimeters in the left temple and 1 centimeter in the right temple. The victim M suffered a 5-centimeter wound on his head as well as bruises on his back and left hand. The police came to the scene of the incident and took the axe to the mapolres as evidence. The two Rohingya residents involved in the fight were treated at the Kuta Makmur Health Center.⁴⁶

6. Killing

A group of Burmese Muslims attacked their Buddhist compatriots at a detention center in Medan on Friday, April 5, 2013, after they heard about communal violence in their homeland, police said. The Local Police Chief, Endro Kiswanto, said that the Muslims attacked their Buddhist buddies early Friday at the Belawan immigration detention center in North Sumatra Province. The incident, Endro was quoted as saying by the AFP news agency, started after detainees learned of the violence between the two groups recently in Myanmar that left at least 43 people dead and many homes and mosques destroyed. They saw a number of photos of the violence in Myanmar, including a number of buildings on fire, and were angered. Eight people were already dead when the police arrived at the detention center early on Friday and 15 others were wounded. The prisoners fought using sharp pieces of wood. Those killed were beaten to death with wood.⁴⁷

⁴⁶ Kompas, Dua Pengungsi Rohingya Berkelahi di Penampungan, April 24, 2016 Edition, see <http://regional.kompas.com/read/2016/04/24/17104671/Dua.Pengungsi.Rohingya.Berkelahi.di.Penampungan> accessed on March 30 2018

⁴⁷ Kompas, Pengungsi Myanmar Baku Bunuh di Medan, 8 Tewas, April 5, 2013 Edition, see <http://internasional.kompas.com/read/2013/04/05/13581150/Pengungsi.Myanmar.Baku.Bunuh.di.Medan.8.Tewas> accessed on March 30 2018

7. Storing sharp weapons

The Rohingya refugee shelter in Medan City, North Sumatra Province, was ransacked by a joint team of the police, immigration, UNHCR and IOM. While conducting a search at the Beraspati inn, Jalan Jamin Ginting, Medan Tuntungan, the joint team found a sharp weapon that was later confiscated.⁴⁸

8. Demonstration

On July 2017, a demonstration of hundreds of Rohingya residents at the UN representative office in Makassar, South Sulawesi Province, took place. The demonstration was chaotic, and the refugees engaged in mutual forceful push when they entered the UN office.⁴⁹

UNHCR and the Government of Indonesia were very worried about these incidents that occurred in some refugee areas (international refugees) in Indonesia, because if they continue, it will affect the perception of local communities, which will threaten the continued presence of asylum seekers and international refugees in the refugee area. If the local people are fed up with the conduct of asylum seekers and international refugees in their area, they may decide to evict them from their place. This will make it difficult for local governments to protect asylum seekers and international refugees in the future.⁵⁰

Solutions for International Refugee Problems in Indonesia

The cooperation between the government of Indonesia and UNHCR has been in place since 1979. UNHCR, acting under the authority of the General Assembly, will have the function of international protection, under the auspices of the United Nations of the refugees who fall within the scope of this statute and search for permanent solutions to the problem of refugees by assisting the government. Subject to the approval of the concerned government, private

⁴⁸ Liputan 6, Pengungsi Rohingya Ketahuan Simpan Senjata Tajam, April 5, 2013 Edition, see <https://www.liputan6.com/regional/read/2910282/pengungsi-rohingya-ketahuan-simpan-senjata-tajam> accessed on March 30 2018

⁴⁹ BBC Indonesia, Status Kependudukan Tidak Jelas, Pengungsi Rohingnya Demo, July 26, 2017 Edition, see <https://www.cnnindonesia.com/tv/20170726235924-412-230591/status-kependudukan-tidak-jelas-pengungsi-rohingnya-demo/> accessed on March 30 2018

⁵⁰ Iin Karita Sakharina, *et.al.*, Supra no 8

organizations are to facilitate the voluntary repatriation of refugees or their assimilation in new national communities. The activities of the High Commissioner shall be wholly nonpolitical; the activities will be humanitarian and social and involve refugee groups or categories in general. The High Commissioner shall follow the policy instructions given to him by the General Assembly or the Economic and Social Council. The Economic and Social Council may decide, upon hearing the opinion of the High Commissioner on the subject concerned, to form an advisory committee on refugees, comprising representatives of member states and non-member states of the United Nations. The selection by the Economic and Social Council will be on the basis of real concern and devotion of these countries to the solution of the refugee problem.⁵¹ The contents of the general provisions of the UNHCR statute serve as the basis and reference of UNHCR in carrying out its main duty of providing protection for refugees.⁵²

As explained earlier, issues regarding international refugees are categorized into two aspects in Indonesia, namely external problems and internal problems. To solve both problems, the author proposes the following as the right solutions:

1. Organizing International Refugee Regulation

A special regulation governing asylum seekers and international refugees is absolutely necessary. This regulation will not only regulate certain sections of the Presidential Regulation of the Republic of Indonesia Number 125 Year 2016 on the Handling of Refugees from Abroad but will also regulate issues related to the process of bringing the refugee situation to a sustainable solution, so that in the future there are standards used by state apparatus to deal with international refugees. This will ensure that the rights of international refugees are not ignored during the data collection process, the placement at the point of refuge, and after the waiting period when being moved to the third country (the primary destination country of the asylum).

⁵¹ Chapter 1 Number 1 through 4 of the UNHCR Statute

⁵² Kadarudin and Husni Thamrin, *Supra* no 5

2. Increase the Number of Community Houses and Independent Shelters

Currently, an estimated 14,405 foreign refugees and asylum seekers reside in Indonesia. A total of 1,946 people lives in immigration detention houses spread across 13 regions; two thousand people are handled by the community houses, and the rest are allowed to independently take care of their needs by staying under Immigration supervision⁵³ (independent shelter). Essentially, the Immigration Detention House is not a place for international refugees; the Immigration Detention House is only for immigration offenders.

The houses of Indonesian Immigration Detention are run by the Indonesian government, but the system does not have adequate facilities, transparent or complaining mechanisms. This has resulted in violations of human rights becoming commonplace. Several cases of harassment and human rights abuses in Indonesian Immigration Detention Houses have been documented. The documented violations include reports of asylum seekers jailed in a cell for months without being allowed to go to the common room or outdoors. Asylum seekers are held in prison facilities rather than in the Immigration Detention House; they also suffer from extortion and physical violence. Unfortunately, Indonesia does not have an independent oversight system or complaints procedure. The treatment provided is arbitrary and varies from one Rudenim to another. The practice of corruption and bribery often happens everywhere. Indonesian law states that foreigners may be detained if they enter and remain in the country without the required documents. There is no criterion about who should (or should not) be arrested, and for how long. There are regulations that permit the release of certain groups of people from the Immigration Detention Centre, such as children, handled by international organizations (such as the IOM or partner institutions of UNHCR). UNHCR reported that as of December 31, 2013, there were 1,773 people residing in Indonesian Immigration Detention Houses,

⁵³ Hukum Online, Supra no 37

including 1,137 Asylum Seekers and 636 Refugees. Of those detained, 274 were women and 297 children (87 children were unaccompanied children).⁵⁴

Immigration Detention House is a facility that is basically a temporary prison for foreigners who commit immigration violations, but they are also used to accommodate refugees. The standard operation and home detention service is like a prison for immigration criminals, ranging from iron-chambered rooms to substandard toilets. There are 13 Immigration detention houses all over Indonesia, and they are not designed to accommodate thousands.⁵⁵ The authorities should do the needful to address the issue of accommodation for refugees.

3. Training for State Apparatus Directly Handling Refugees

Immigration personnel are not trained to be social workers with the expertise of handling humanitarian issues. From the outset, immigration officers serve as part of immigration law enforcement. Regulation of the President of the Republic of Indonesia Number 125 Year 2016 on the Handling of Refugees from Abroad becomes a quick, ineffective solution concerning the issue of foreign refugee handling policy, because it puts immigration officers at the forefront of receiving refugees.⁵⁶ This also applies to the police officers and the Indonesian National Army who are involved in receiving international refugees who enter Indonesia. Therefore, adequate training should be provided in this regard.

4. Communications with the Main Destination States of Asylum Seekers should be Intensified

UNHCR's most important mandate is to protect asylum seekers wherever they are once they have earned their status as refugees. Thereafter, a long-term solution is sought: third state placement, local integration, or repatriation to the country of origin. UNHCR is not responsible for taking the decision of relocating to

⁵⁴ Suaka: Indonesian Civil Society Network for Refugee Rights Protection, Masalah Pelindungan, Supra no 36

⁵⁵ Hukum Online, Supra no 37

⁵⁶ Id.

a third country, but the country in question determines whether to accept refugees or not. In 2014, Australia closed its door to refugees. This decision relatively increased the quota of the United States with respect to third country placement. Following the release of a new policy by Donald Trump, the populations of refugees continues to increase in the transit countries. Given the negative policy of the recipient countries, it is certain that the population will soon explode.⁵⁷ This calls for increased diplomacy among concerned parties.

5. The concept of Global Compact on Refugee needs to be resolved soon

On 15 November 2017, UNHCR held Thematic Discussion on the 5th process of compiling Global Compact on Refugee in Geneva, Switzerland. The international community should take part in addressing the problem of refugee flows. The problem of refugee flows comes mostly from home countries, be it security, economic, human rights or fundamental freedom issues. Although the international community needs to continue to cope with the flow of refugees through voluntary repatriation to home countries, resettlement in third countries, as well as reintegration in transit countries, it should also seek to establish a safe, orderly and rule-based international migration path. The Bali Process plays a role in capacity building, expertise, cooperation and networking in the region. This has helped regional readiness in dealing with irregular migration, particularly refugees and asylum seekers, and has led to the establishment of a safe and orderly migration path in the Asia Pacific region. Therefore, the practice and arrangement of regional cooperation within the framework of the Bali Process can serve as a model for a comprehensive refugee handling framework and action program at the Global Compact for Refugees. There should be a meeting of UN member states and relevant international stakeholder organizations aimed at capturing the inputs of states and international stakeholders in drafting the Global Compact on Refugee, which will comprise the Comprehensive Refugee Response Framework (CRRF) and the Program of Law Action, as a supporter of CRRF

⁵⁷ Febi Yonesta, *Supra* no 38

implementation.⁵⁸ Thus, the concept of Global Compact on Refugee needs to be resolved soon.

Conclusion

First, due to Indonesia's geographic position and cultural disposition, it has become a transit country for asylum seekers and has provided venues to serve as international refugee locations in several areas, including a Special Province of Aceh, North Sumatra Province, South Sulawesi Province, West Java Province, and the Special Capital Region of Jakarta. These actions show respect for human dignity and serve as a fulfillment of human rights. This is despite the fact that there is no guaranty that asylum seekers and refugees will behave in an acceptable manner, since the presence of asylum seekers and refugees has led to some problems in the past.

Second, the problems caused by refugees could be external or internal in nature. External problems are as follows: inadequate regulation, changes in the policies of the main countries that provide asylum, facilities in poor support areas, and social problems. On the other hand, internal problems are as follows: fights, killings, storing of sharp weapons, and demonstrations, all carried out by refugees.

Third, after an in-depth analysis, the author proposes the following actions as the right solutions to these problems: organize the regulations in the field of international refugees, increase the number of community houses and independent shelters, train state apparatus handling international refugees directly, intensify communication with the main destination countries of asylum-seekers, and the quick completion of the concept of global compact on refugee.

⁵⁸ Ministry of Foreign Affairs of the Republic of Indonesia, Indonesia Desak Masyarakat Internasional Atasi Akar Masalah Arus Pengungsi, see <https://www.kemlu.go.id/id/berita/berita-perwakilan/Pages/Indonesia-Desak-Masyarakat-Internasional-Atasi-Akar-Masalah-Arus-Pengungsi.aspx> accessed on March 30, 2018

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