

Indonesia's Responsibility as a Non-Party to the 1951 Convention and 1967 Protocol on the Status of Refugees in its Protection

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Abstract

Under ordinary circumstances, someone who enters other countries shall be provided with travel documents and required visa as entry permit. On the other hand, if they enter to the territory of another country because of feeling well-founded fear, such as their safety are threatened; and the country of their origin occurs social unrest or war. Therefore, the person may not have complete travel documents and visas. Movement of people who want to enjoy the protection of another country because they feel unsafe in their own country can be filed a request for refugee status. International refugee problem (Refugee) has existed since 1921, the prior international community responded to such events to the preparation of the 1951 Convention and the 1967 Protocol on the Status of Refugee. Nowadays, many countries have ratified them. In both these legal instruments, these contained provisions on international protection standards to international refugees for the states parties. For the countries that are not a party to the Convention and the Protocol, such as the Indonesian state, is not bound to the provisions of these legal instruments. Indonesia as well as other countries that have not ratified, then they have only a moral obligation or humanitarian responsibility. Based on the principle of humanity in the entire country, although they have not yet ratified, there is no a reason to refuse in protecting the refugees.

Keywords: humaniterian principle, protect, refugee, state.

1. Introduction

Conflicts and wars that occur in the international community cause to insecurity for the people of that country (M. I. Lubis, 2017; Vian, 2020). This problem creates the people's desire to move or take refuge in a place that can make them feel safe. The flow of displacement initially only occurred in one region of the country. Then, because there was massive displacement, refugees developed into a general problem, including international security, humanitarian, and economic problems (Pham et al., 2022; Salih et al., 2022; Simanjuntak et al., 2021). This refugee problem has been studied internationally since 1921, with the initiative to help refugees in Europe by the National League of Nations (LBB), including in that year, the Office of the High Commissioner for Russian Refugees was established; in 1933, the establishment of the High Commissioner for Refugees from Germany; in 1938, the establishment of the High Commissioner and Intergovernmental Refugee Committee; in 1947, the establishment of the International Refugee Organization; and in 1951, the establishment of the United Nations High Commissioner for Refugees (UNHCR, 2005b). This becomes the evidence that the international community is very responsive to the complexity of the refugee problem (Beshir, 2017; I. Lubis et al., 2022; M. I. Lubis, 2017).

The common understanding that is often expressed regarding international refugees is that people who are outside their country of origin or place of residence have a legitimate fear that their safety will be disturbed as a result of their ethnicity, religion, nationality, and membership of a particular social group or the political opinions they hold. This is unable or unwilling to obtain protection for an individual from his country of origin or return there because he is concerned about his safety (Baldinger, 2015). The presence of international refugees in Indonesia began with the existence of Vietnamese refugees called boat people (*manusia perahu*). They were placed on Galang Island, Batam. Then, Galang Island was later used by the Indonesian government as a shelter for refugees from Indo-China starting in 1979 (Romsan, 2003).

The city of Makassar began to become a destination for foreign citizens from various countries experiencing conflict to seek asylum. Based on United Nations data High Commissioner for Refugees (UNHCR) Representative of Eastern

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Indonesia in 2010, recorded 84 asylum seekers and 27 of them have been given places in various locations, the rest were still waiting legality status from UNHCR. The East Indonesia UNHCR, Nuryasni, stated that Indonesia is not actually a destination country for asylum seekers, but is a transit country before crossing to Australia (Administrator, n.d.). Data from the United Nations High Commissioner for Refugees (UNHCR) in Indonesia mentioned the number of refugees coming to Indonesia has increased slightly in recent years. This cause is the condition of the refugee's country of origin, which is still experiencing conflict, namely a conflict that occurs in the refugee's home country, such as Myanmar, Afghanistan, and Syria. As of June 2015, there were 13,188 people recorded, which 5,277 were refugees and 7,911 were asylum seekers. (Administrator, n.d.). Until the end of December 2020, the total number of refugees in Indonesia was recorded at 13,745 people from 50 countries, and more than half of the population came from Afghanistan (UNHCR, 2005b).

One of the basic international agreements related to handling refugees is the 1951 Convention on the Status of Refugees, which contains general principles of international law, especially humanitarian principles (M. I. Lubis, 2017; Razy, 2023; Siregar et al., 2019). Sigit Riyanto, stated that because the general principles of international law regarding refugees essentially originate from and are an affirmation of international customary law, the legal instruments contained therein are binding on any country, including Indonesia, without considering whether the country concerned has become a party or not to the convention (Riyanto, 2004). During the time, this refugee convention has shown its role beyond the ideological barriers of the cold war, as evidenced by 144 countries having ratified it out of 193 countries registered with the UN (UNHCR, 2004).

It can be said that the problem of refugees in Indonesia is very complicated. As stated by H. Haryo Sasongko (Director of Immigration Foreign Cooperation), several of them are first, Indonesia has not ratified the 1951 Convention and the 1967 Protocol concerning the Status of Refugees. Second, Indonesia is a stopping place for refugees before heading to their destination country. Third, refugees from Afghanistan, the Middle East, Africa, Sri Lanka, Myanmar; not all of them went through the Immigration Checkpoint (TPI) but entered by non-regular means of transportation and they were found on beaches or other islands in Indonesia. The four protective treatments actually exist in the basic practice of Law No. 39 of 1999 concerning Human Rights. For reasons of human rights, customs and religion as the basis for protection, however, there is no law regarding refugees. Fifth, there is no Task agency Force or task force that specifically handles refugee issues. Last, there is no Indonesian government budget in the State Budget/APBN for handling refugees.

2. Research Methods and Materials

This type of research uses normative legal research methods which is used in legal research conducted by examining existing literature. In this normative legal research, the statute approach is used by looking at consistency and suitability of law. While the secondary legal materials were in the form of books, legal journals, papers, and articles. The collection technique in this research used library research. The legal material analysis technique was descriptive qualitative, namely sourced from legal material analyzed or commented by the author based on theory, statutory regulations, and legal principles on the issues to be studied.

3. Results and Discussion

3.1. Standards for the Protection and Handling of Refugees Based on the 1951 Convention and the 1967 Protocol Concerning the Refugees Status

3.1.1. Protection Standards

Article 1A(2) of the 1951 Convention states that a refugee is a person who:

“due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, being outside his country and unable, due to such fear, or unwilling to obtain protection from that country; or a person who does not have citizenship and is outside the country of habitual residence as a result of certain events, is unable, or because of his fear, does not want to return to his country.”

This provision contains five criteria that must be met to determine a person's refugee status, including: First, a well-founded fear. The person must have a strong reason to return to their country. This fear consists of a subjective element that the person really feels afraid of and an objective element that can be seen from the conditions in their country of origin, where there are many human rights violations.

Second, persecution. The basic concept of persecution is not contained in the refugee convention, but UNHCR stated in the book "Introduction to International Protection" explains the definition of persecution as a series of serious violations of a person's human rights or a form of serious harassment that is often, but not always, carried out systematically or repeatedly (UNHCR, 2005a). Acts of persecution can also be carried out by the government, if the government facilitates, encourages or tolerates acts of persecution by non-government elements, such as military organizations. Likewise, if the government does not want to provide protection against persecution carried out by non-government elements.

Third, race, national religion, membership in a particular social group or political opinion. Race includes all ethnic groups, while religion relates to freedom of belief under a set of human rights, including changing religions. Nationality here is not limited to citizenship alone, but includes membership in a particular ethnic, religious, cultural or linguistic group. A social group is a group of people who have the same characteristics. Meanwhile, political opinion includes having beliefs or expressing opinions regarding everything related to the state, government or community policy. All of this is often the reason for persecution and even murder if a violent conflict occurs.

Fourth, being outside the country of nationality/former place of residence. A person can become a refugee after being outside his or her country for reasons not stated in the convention, if there are political changes in the country of origin or personal circumstances that would result in persecution if he or she returns.

Fifth, unable or does not want to obtain protection from their country. The reason that refugees often use is that they cannot receive protection from their country of origin because its government is carrying out persecution. A person who refuses to seek protection from his or her country may be classified as a refugee if his or her unwillingness is caused by a well-founded fear of persecution.

In the exceptions article, there are two groups of exceptions to international protection under the Refugee Convention, including: The first group, namely people who do not need international protection. The regulations are in Articles 1D and 1E of the Refugee Convention. These both articles explain the situation of someone who has met the requirements to obtain refugee status according to the inclusion article but is rejected on the grounds that they do not need international protection. These provisions apply to: first, people who have received protection or assistance from UN agencies other than UNHCR. Second, people who are deemed not to need international protection because they have received protection from the government of the country they currently live in and have obtained the same rights and obligations as other citizens of that country. The second group, namely people who are not entitled to international protection. The provisions for the exclusion of this person are contained in Article 1F of the Refugee Convention. This provision used if there are serious reasons that:

- 1) Committing crimes against peace, war crimes or crimes against humanity;
- 2) Committing serious non-political crimes outside the country of refuge before being admitted to that country as a refugee;
- 3) The defendant was guilty of committing acts contrary to the aims and principles of the United Nations (UN).

In further explanation, UNHCR emphasized that a person should not be automatically excluded because the head of his family is deemed to meet the requirements of Article 1F. Each family member has the right to receive individual consideration of his or her eligibility for refugee status.

The provisions for terminating international protection are contained in Article 1C of the Refugee Convention. This article explains that a person's refugee status will end if he:

- a. Voluntarily accept protection from the country of one's nationality;
- b. Voluntarily regaining citizenship after losing it.
- c. Obtaining a new citizenship after enjoying the protection of that country;
- d. Voluntarily resettle in the country he left out of fear of persecution;
- e. Cannot refuse protection from that country because the conditions that resulted in him receiving refugee status have disappeared;
- f. Does not have citizenship but cannot refuse protection from the country where he resides because the conditions that gave him refugee status have disappeared.

3.2. Refugee Handling Standards.

3.2.1. Procedure for Determining Status as a Refugee

In response to the increasing flow of asylum seekers and refugees, several countries have established efforts to control this flow by limiting physical access. For example, the government implements visa requirements, imposes sanctions on airlines and services that carry foreigners and are not equipped with complete travel documents or personal documents. Even though UNHCR does not have authority over immigration, it collaborates with governments and other organizations, such as the International Organization for Migration or IOM (International Organization on Migrations); to ensure that refugee protection is not disrupted by legal efforts to limit the flow of people across borders.

The Executive Committee (ExCom) Conclusion No. 8 (XXVII) 1977 concerning the determination of refugee status emphasizes several basic standards that need to be confirmed to ensure the creation of fair and efficient procedures. These standards include:

- a. All officers involved in the asylum process must have adequate skills, including a good understanding of the principle of *non-refoulement*;
- b. Asylum seekers must have clear information about the procedures involved and receive all necessary assistance such as an interpreter to explain their case;
- c. Asylum seekers should be able to contact UNHCR if they request;
- d. There must be a right to submit a separate appeal/application or judicial review if the asylum application is rejected;
- e. Asylum seekers should be allowed to stay in the country concerned until their case is resolved, including during the appeal/judicial review process, unless the application submitted is clearly abusive.

The procedure for determining refugee status is distinguished based on the number of refugees entering a country's territory. This treatment is the treatment of individual refugees, group refugees and large-scale refugees. Acceptance of individual refugees includes:

- a. Entry procedures: the authorities of the country where the individual seeks asylum are (i) responsible for assessing the person's asylum application or should another country be authorized (ii) the country will determine whether the asylum application has received approval from another country (called the "first country of asylum"), or (iii) whether the individual can be transferred to a third country that is willing to examine their asylum application, that respects the principle of non-refoulement and will provide protection if the application is granted (the so-called "safe third country" concept);
- b. Deadline for submitting an application;
- c. Speed up procedures for applications that are deemed to be clearly baseless or abusive (according to the definition of ExCom Conclusion No. 30 (XXXIV, 1983), namely if the application comes from a citizen whose country of origin is considered a safe country, so that the applicant does not face the risk of persecution.

When determining refugee status, asylum seekers who face risks, such as children who are victims of torture or sexual violence; women in certain circumstances, elderly people, and people experiencing psychological disorders need special consideration. Female asylum seekers accompanied by their husbands are informed privately of their right to apply for asylum independently at any time and obtain legal advice before making such an application.

It should be ensured that female asylum seekers and refugees are interviewed by a female expert accompanied by an interpreter who is sensitive to cases, such as sexual violence. If the woman's husband is denied asylum, the wife must be given the opportunity to assert her own right to request refugee status.

Unaccompanied children or separated from their families should not be confronted with too detailed questions in the receiving country. Once people have been identified, an expert companion or advisor must be appointed to assist them in each stage of the determination procedure and expert staff must conduct interviews with them.

If a person's application for refugee status is rejected after a fair process, the order reserves the right to expel the person. The prohibition on returning persons facing torture, inhuman or humiliating treatment or punishment under international human rights law applies to persons fleeing situations of widespread violence or events that seriously disturb public order. Thus, the government may not reject someone for the exception that the author stated in the previous sentence.

A country's government may provide complementary protection in the context of procedures for determining an individual's refugee status following an examination of the particular circumstances of the asylum seeker. This protection provides special humanitarian status or additional status under national law. There are also countries that grant this status as an administrative consideration.

Group refugees are granted prima facie refugee status if after obtaining this status, new evidence is found that invalidates the refugee status validity of one of the refugees in the group, an examination of the individual case will be carried out to determine whether the prima facie refugee status needs to be cancelled.

Temporary protection is often provided to refugees in large-scale flows. This short-term emergency response delays the process of determining refugee status. Once the situation in the country of origin improves so that the asylum seeker can return to their country of origin, the temporary refugee status is revoked.

In order to determine status as a refugee, two groups of refugees are distinguished, namely convention refugees and mandate refugees. Convention refugees will be provided by countries participating in the 1951 Convention with assistance from UNHCR. Meanwhile, refugee mandates are given to countries that are not party to the convention, but are still under the protection of UNHCR. They are called mandated refugees as their designation as refugees is carried out based on UNHCR statutes.

3.3. Treatment of International Refugees

Convention 195 stipulates the rights, fundamental freedoms, obligations and protection of refugees in 3 (three) articles on the main principles of asylum, which are closely related to immigration aspects, namely Articles 31 to 33, money includes:

Article 31: Refugees who are illegally in the country of refuge

- 1) States shall not impose penalties on refugees, for their illegal entry or presence, who come directly from territories where their lives or freedom are threatened within the meaning of Article 1, enter or remain in the territory of Contracting States without permission, provided they immediately report themselves to local agencies and provide appropriate reasons for their illegal entry or presence.
- 2) Contracting States shall not impose restrictions on the population movement of the refugees in question except that such restrictions will only apply until their status in that country is validated or they receive permission to enter another country.

Article 32: Expulsion

- 1) Contracting States shall not expel refugees who are unlawfully present in their territory except for reasons of national security or public order.
- 2) The expulsion of such refugees will only be carried out as an implementation of a decision reached in accordance with due legal process. Unless compelling national security reasons require otherwise, the refugee will be admitted, present evidence to clear himself, as well as the right to appeal.
- 3) Contracting States will give such refugees a reasonable period of time to seek legal entry into another country within the given period. Contracting States reserve the right to implement within that period the measures they deem necessary.

Article 33: Prohibition of expulsion or return (*refoulement*).

- 1) No party state will expel or return (*refouler*) refugees in any way to the borders of territories where their life or freedom will be threatened because of their race, religion, nationality, membership of a particular social group or politics.
- 2) However, the benefits of this provision may not be claimed by refugees, where there are reasonable grounds for considering them to be a danger to the security of the country where they are located or because of have been sentenced by a final decision for a very serious crime, they are a dangerous to the people of that country.

Besides the protection principle, which is closely related to immigration aspects, for example you must be allowed to enter a country's territory, even if do not use official documents, such as a passport or visa (Kusumaatmadja et al., 2015), which is not possible under normal circumstances, refugees also enjoy obligations that arise as a consequence of participation as a state party. In detail, the obligations of state parties to the Refugee Convention include the following:

- 1) The right to freedom of religion and free access to courts (Articles 4 and 16 paragraph (1), this clause cannot be the object of reservation for the state party.
- 2) The right to freedom of movement includes the right to choose a place of residence by refugees within the territory of the state (Article 26).
- 3) The right to obtain proof of identity (Article 27) and obtain travel documents, so that refugees can travel to other countries for study, looking for work, medical or for resettlement purposes.

- 4) Other rights that have a direct impact on the lives of refugees, such as the right to work (Articles 17, 18, and 19), housing rights (Article 21), access to formal education (Article 22), government assistance (Article 23), and labor regulations and social security (Article 24).
- 5) Ease of obtaining citizenship by refugees, either through assimilation or citizenship, in terms of time and costs (Article 34).
- 6) Besides registering births, deaths and marriages, the reunification of families separated from each other must be facilitated and assisted.
- 7) In relation to the obligations of state parties, the principle of reciprocity for refugees does not apply.

3.4. Handling International Refugees in Indonesia

3.4.1. Policy Regulations on Handling Refugees

Government policies specifically regarding foreigners are called immigration policies (RI, 1992). Immigration law stipulates procedures for people entering and leaving Indonesian territory, the legal presence of foreigners and provisions for both criminal and administrative actions for violations of these legal norms. Selective immigration policy) is currently adopted. This means that only foreigners who are useful, able to contribute to national economic, social and intellectual development and provide multi- assets, and added value to Indonesia can be granted entry permits.

The problem of refugees is a humanitarian problem that occurs in various countries, increasing awareness and the desire of the international community to create regulations that accommodate this problem. Even though there are international regulations regarding refugees, countries also need legal steps to make regulations in accordance with those determined by the international community, one of the steps is to ratify the Convention and Protocol on the Status of Refugees. Indonesia, as one of the countries that has ratified the International Covenant on Civil and Political Rights, has not yet ratified the Convention and Protocol. This means that Indonesia is not legally bound by the obligation to provide protection to refugees and asylum seekers in the country's territory in accordance with all provisions of the convention.

However, from a human rights aspect, the Indonesian state has an obligation to protect refugees as the domestic provisions related to Human Rights. In the Republic of Indonesia Constitution 1945, there is Article 28 G paragraph (2) which reads: "every person has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country."

In Law No. 37 of 1999 concerning Foreign Relations, in Article 25: (1) the authority to grant asylum to foreigners rests with the President with due regard to ministerial considerations. (2) The application of the authority in paragraph (1) is regulated in a Presidential Decree. Meanwhile, in Article 26: "the granting of asylum to foreigners is carried out in accordance with national legislation and considering customary law and international practice." Furthermore, Article 27 states: "The President determines policies regarding refugees from abroad by taking into account the Minister's considerations."

In Law No.39 of 1999 concerning Human Rights, it is contained in Article 28:

- (1) Everyone has the right to seek asylum to obtain political protection from another country.
- (2) The rights as intended in paragraph (1) do not apply to those who commit non-political crimes or acts that are contrary to the goals and principles of the United Nations.

Regarding the refugee problem, the relevant implementing regulations are: Presidential Decree No.38 of 1979 concerning coordination for the Resolution of the Vietnamese Refugee Problem in Indonesia and Presidential Decree No.3 of 2001 concerning the National Coordinating Body for Disaster Management and Refugee Management.

In the Director General of Immigration Regulation Number IMI-1489.UM.08.05 of 2010 concerning Handling of Illegal Immigrants as an elaboration of higher regulations, also Circular Letter Number: IMI-1504.IL.02.10 dated 21 September 2010 concerning the Implementation of Handling of Illegal Immigration, is explained in detail regarding illegal immigrants, the provision of immigration measures against illegal immigrants, and the treatment of illegal immigrants, who declare themselves seeking asylum or refugee protection.

Based on the previous explanation of the regulations regarding illegal immigrants seeking asylum or applying for refugee status, Indonesia does not have a specific law that regulates the handling of international refugees. Indonesia only has a Director General of Immigration Regulation regarding Handling Illegal Immigrants.

The Director General of Immigration's regulation was formed based on the consideration that in its development, the arrival and presence of foreigners as illegal immigrants who then declared themselves as asylum seekers (asylum). The

increasing number of seekers and refugees in Indonesia has had an impact in the fields of ideology, politics, economics, socio-culture, national security, and immigration vulnerability. Therefore, it is necessary to have arrangements that provide equality and uniformity of direction in immigration handling and treatment.

In this regulation, it is stated that illegal immigrants are foreigners and/or being in Indonesian territory does not comply with the provisions of statutory regulations. Illegal immigrants who are known to be in Indonesia are subject to immigration action, if the illegal immigrant declares his immigration to seek asylum and/or for certain reasons cannot be deported and the status of his residence permit while he is in Indonesia cannot be questioned if he has obtained Attestation. Letter or certificate as an asylum seeker from UNHCR or refugee status from UNHCR.

Illegal immigrants who are allowed to stay in Indonesia are required to comply with the provisions of laws and regulations and fill out a statement letter in a predetermined format. Supervision of their placement is the responsibility of the head of the immigration office where the Immigration Detention Center is located.

Even though national legal instruments at the top level show a desire to provide protection to asylum seekers and refugees, they are still limited to normative provisions that are not yet cooperative at the bottom level because the implementing regulations have not been made in detail. As a result, the officers on duty have no practical guidelines, except for the Director General of Immigration's regulations as limited guidance for immigration officers when accepting illegal arrivals of foreigners.

3.5. *Handling International Refugees and Humanitarian Issues*

Indonesia is recognized by the international community as a country that really cares about humanitarian issues, starting with the arrival of boat people from Vietnam in the 1970s. Indonesia began signing an MoU with UNHCR in 1975, namely: *“Agreement between the Government of The Republic of Indonesia and the United Nations High Commissioner for Refugees Regarding the Establishment of the Office of the UNHCR Representative for Indonesia.”* This is the beginning, where Indonesia is not legally bound by legal regulations for refugees, but is morally bound to protect refugees.

The Indonesian government has tried to uphold international human rights by never rejecting illegal immigrants who enter and declare themselves to be applying for refugee and/or asylum seeker status. For example, Indonesia has established a special policy towards international refugees originating from Australia as follows:

“Refugees who have a UNHCR refugee status card are only given a time limit of 4 weeks in Rudenim. After the allotted time is up, the immigrants will be taken by the Australian government or transferred to another country.

However, if the Australian government denies this regulation, the Indonesian government will deport them to Australia.

Meanwhile, immigrants who do not have refugee card status from UNHCR are given a maximum time limit of 32 weeks. Guarantees for the existence of these immigrants were provided by the Australian government to the Indonesian government” (RI, 2009).

Even though it is only mentioned for refugees heading to Australia, the government always uses similar procedures to handle refugees heading to other countries (even for refugees who do not have a specific country of destination). The Indonesian government is collaborating with UNHCR Jakarta in carrying out procedures for determining refugee status, using standard procedures carried out by UNHCR, namely as follows:

1) Arrival, involving Indonesian immigration officers

These arrivals basically have to pass through an immigration checkpoint, but what often happens is that asylum seekers and/or refugees cross through Indonesian waters outside the Immigration Checkpoint (TPI) in a stranded condition, or because they are carried away by the current. Immigration Checkpoints (TPI) in Indonesia are divided into two parts, namely: air TPI and sea and land TPI.

2) Application and registration involves UNHCR officers

After the arrival of illegal immigration is discovered by the immigration authorities, an inspection will be carried out. Immigrants who claim to be applying for asylum or requesting refugee status will be reported to UNHCR officers in Indonesia. If the incident occurs in an area outside Jakarta, it will be reported to the UNHCR representative in the region, then the UNHCR officer is obliged to report the results of the data collection to the UNHCR center located in Jakarta.

3) Phase 1 interview is conducted by representatives from UNHCR.

- 4) Case analysis
- 5) Suggestions to reject or admit
- 6) Case review
- 7) The decision whether to reject or accept an application for refugee status.
 - 7a. If rejected, it means they are given another opportunity to appeal.
 - 7b. If accepted and recognized, it means that UNHCR and countries of asylum are thinking about ways to implement sustainable solutions that include: repatriation, local integration, and resettlement.

Because UNHCR carries out the entire process of determining refugee status, there are important documents for refugees and asylum seekers provided by UNHCR. In the Director General of Immigration Regulation Number IMI-1489.UM.08.05 of 2010 concerning Handling of Illegal Immigrants, Indonesia made several regulations to support and form the adoption of procedures made by UNHCR, including:

"Article 2 paragraph (2): in the event that illegal immigrants as intended in paragraph (1) express a desire to seek asylum and/or for certain reasons cannot be subject to deportation, coordination with international organizations that handle refugee issues and/or UNHCR to determine their status."

Article 3 paragraph (2): Illegal immigrants as referred to in paragraph (1), can be placed in certain places with the facilities of international organizations that handle refugee issues or UNHCR and their whereabouts must be reported by UNHCR to the Director General of Immigration. Meanwhile, Article 3 paragraph (3): Regarding illegal immigrants as intended in paragraph (2):

- a. Must comply with the provisions of laws and regulations and fill out a statement letter in the format as stated in the Attachment to this Regulation of the Director General of Immigration; and
- b. Supervision of placement is the responsibility of the Head of the local Immigration Office.

From the statement above, it means that the Indonesian government provides rights and obligations to refugees. The right that the author means is that the Indonesian government provides placement and supervision of refugees and is the responsibility of the Head of the local Immigration Office. The Indonesian government also implements the obligation for foreigners to comply with existing Indonesian national regulations.

However, in one of the articles of the Director General of Immigration's regulations, especially Article 6, it is explained that: "everything related to the residence and living costs of illegal immigrants while they are in the process or under the protection of UNHCR, is not the burden/responsibility of the Immigration Office, regional office Ministry of Law and Human Rights, or Directorate General of Immigration."

Therefore, the Indonesian government only provides a place (in this case the complete Rudenim along with the regulations therein), regarding financing for seeking asylum and refugees is the responsibility of UNHCR and IOM as partner institutions. The Indonesian government, through the Ministry of Law and Human Rights, also requires foreigners who apply for refugee status to fill out a Refugee Declaration Form.

The government appeals to related parties through Circular Letter No. IMI-1504.IL.02.10 of 2010 concerning the Implementation of Handling Illegal Immigrants, to:

"carry out intensive coordination with international organizations that handle refugee issues and/or the United Nations High Commissioner for Refugee (UNHCR) domiciled in Indonesia, and carries out duties and functions which include:

- a. Make effective the formation and implementation of the work of regional People Supervision Coordination Teams (Sipora) at both provincial and district/city levels;
- b. Intensifying coordination with related agencies at both provincial and district/city levels;
- c. Optimizing the use of budget allocations for regular supervision of foreigners and within the Sipora team in accordance with the Budget Implementation List (DIPA) for each Regional Office of the Ministry of Law and Human Rights, Immigration Office and Immigration Detention Center; and
- d. Prepare the Work Plan and Budget (RKA) regarding the activities of supervising foreigners carefully, precisely and accurately by submitting Terms of Reference (KAK) and Detailed Budget (RAB) in the DIPA of each Regional

Office of the Ministry of Law and Human Rights, Immigration Office and The latest date for Immigration Detention Centers every year is at the end of September before the definitive ceiling for the current year is issued."

3.6. *Indonesia's Advantages and Obstacles in Accessing the 1951 Convention and the 1967 Protocol*

UNHCR Jakarta (UNHCR, 2010) conveys several advantages for the Indonesian state if it is willing to accede the 1951 Convention and the 1967 Protocol, that accession will strengthen Indonesia's national interests as follows:

1) Formalization of the protection that has been given to refugees de facto

For several years, the Indonesian Government has responded very well to people in need of international protection, including refugees, through implementing the principles and standards set out in the 1951 Convention and the 1967 Protocol. Accession will therefore be in line with Indonesia's interests and will strengthen its legal basis, which has de facto implemented a number of protection standards for refugees.

2) Strengthening Indonesia's International Image in the Realm of Human Rights

Accession to the 1951 Convention will strengthen Indonesia's position on the UN Human Rights Council as a member country that continues to contribute to efforts to uphold international human rights, including refugee issues.

3) Establishment of a Comprehensive Migration Management System

Accession will facilitate the development of a comprehensive migration management system at the national level for the registration, eligibility, identification and documentation of persons seeking international protection in Indonesia. A comprehensive system will help Indonesia to differentiate efficiently between refugees and illegal immigrants and other people who do not need protection.

However, on the other hand, immigration practitioners and academics have provided a lot of consideration to the impact if Indonesia ratifies it. These considerations include:

- 1) It will cause social jealousy towards refugees because they receive free humanitarian assistance in the form of housing and living expenses, while local residents still live in conditions of deprivation.
- 2) Assimilation between male asylum seekers and/or refugees and local women causes social problems, including local women becoming pregnant, then the men being resettled. At such times, the woman and her womb are not taken with the man (Havid, 2004).
- 3) By binding itself to this legal instrument, the country concerned is bound by certain obligations. This entanglement is often seen as an additional burden for the state (in this case Indonesia).
- 4) By becoming a country participating in the convention, it will become a pull factor for the entry of refugees and/or asylum seekers into the host country (Indonesia). In reality, the influx of refugees and/or asylum seekers into a country is not solely due to the availability of legal instruments regarding refugees, but is related to several factors, such as regional political and economic stability, geographical location, and practices of human rights violations in the region (Riyanto, 2004).

4. Conclusion

Based on the previous description, we can conclude that UNHCR has set standards for the protection and treatment of refugees. These standards are based on the 1951 Convention and the 1967 Protocol concerning Refugee Status, which determine the limits for someone to be declared a refugee. This international protection creates rights and obligations for refugees and also for the countries they enter. These standards include providing priority protection to women and children.

The Indonesian state provides protection and treatment for refugees based on humanitarian principles because it has signed the *"Agreement between the Government of the Republic of Indonesia and The United Nations High Commissioner for Refugees Regarding the Establishment of the UNHCR Representative for Indonesia"*, which causes Indonesia to be morally bound to participate in providing protection for refugees. The signing was followed by the creation of several rules and policies related to the implementation of protection and handling of refugees. However, Indonesia's position as a transit country in handling refugees has unclear norms, which results in handling not being carried out well. Both international law and Indonesian national law show that there are no norms of protection for transit countries in their position as countries that participate in hosting refugees. Internationally, it must be regulated that UN members are obliged to channel their funds to UNHCR in the future and then the UNHCR Institution distributes

refugee management funding needs to the transit countries in question. This can prevent the dichotomy problem between refugee protection on the one hand and transit national interests on the other hand. Reduced funding allocations for local communities will cause social jealousy, which can trigger conflicts between refugees and local communities.

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