

LEGAL PROTECTION FOR REFUGEES WITHOUT IDENTITY FROM COUNTRY OF ORIGIN

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Abstract

Currently refugee issues have become a concern for every country. It was marked by the existence of the 1951 Refugee Convention to overcome this problem. However, Indonesia is not a party to that Convention, there is no article mention about refugees' permits in Immigration Law. To grant their own status are the authority of UNHCR through their representatives who are placed in the Immigration Office. When refugees are crossing the countries without carrying identity cards these refugees are arrested by the State security apparatus. The method used in this study is a normative juridical research method. The results of this study indicate that the permits for refugees is not known in the Immigration Act, it does not mean that Indonesia can expel refugees to their home countries. Where refugees must be protected by all countries.

Keywords

Legal protection, placement, refugees, refugee status

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Introduction

In Indonesia there are many names for the term 'refugee'. At least the term that refers to refugee quoted from the media. There are illegal immigrants, asylum seekers, illegal migrants, true refugees and ordinary migrants, refugees, the designation of boat people, migrant, and vulnerable people and vulnerable groups (Wagiman, 2012).

Changes in the territorial status of a country have an impact on the country's sovereignty over the region, specifically the juridical impact on state sovereignty including the citizenship problem of the population residing in the region (Oksep Adhayanto, 2014). Article 8 Paragraph (1) Law Number 6 of 2011 concerning Immigration, states that everyone who enters or exits Indonesian territory must have a valid and valid travel document.

There are still many arrests of foreigners in Indonesia who adhere to the immigration law so that the mention of refugees is not known to immigrants who do not have evidence as holders of identity as refugees so they are often interpreted as illegal immigrants. Based on Article 1 paragraph (1) of the Director General of Immigration Regulation Number IMI-1489.UM.08.05 of 2010 concerning Handling of Illegal Immigrants, it is explained that illegal immigrants are foreigners who enter and/or are in Indonesian territory not in accordance with the laws and regulations.

Based on Director General of Immigration Regulation Number IMI-0352.GR.02.07 concerning the handling of illegal immigrants who declare themselves as asylum seekers or refugees can be seen in Article 1 paragraph (1) which states that asylum seekers are foreigners who claim to be asylum seekers or possess cards asylum seekers issued by the United Nations High Commission for Refugees (UNHCR) in Indonesia, as well as Article 1 paragraph (2) which mentions refugees as foreigners who have refugee cards from representatives of the United Nations High Commissioner for Refugees in Indonesia.

Whereas based on Article 28G paragraph (1) of the 1945 Constitution states that everyone has the right to personal, family, honor, dignity and property protection under his authority, and has the right to security and protection from fear of doing or not doing something which is a human right. In addition, in Article 28G paragraph (2) of the 1945 Constitution states that everyone has the right to be free from torture or treatment which demeans human dignity and has the right to obtain political asylum from other countries.

Regarding people who fled from their countries to other countries are called immigrants, but there are no rules that explain clearly. Immigrants are those who come with economic motives or are looking for a better life in another country are distinguished from those who are expelled or forced to come because their security is threatened and it is difficult to survive in their country.

Therefore Indonesia feels the need to regulate the problems of foreigners in Indonesia. The principle of governance, service delivery or entry and exit of people to and from

the territory of Indonesia needs to be regulated in order to guarantee the benefits and protect various national interests of Indonesia (Koeminatmanto Soetoprawiro, 1996).

This is where we are required to build a law that is able to accommodate existing interests, namely between the interests of "nation state" and "united nation" (Firdaus, 2011). It is not strategic if we choose one of these two interests because Indonesia will be torn apart from the roots of its Indonesian values if we hold on to international interests, as well as if Indonesia accommodates the United Nations more.

The existence of these indications shows that the first examination of the arrival of refugees to Indonesia can be seen emphasizing more on written permission in the form of documents based on the Immigration Act. Based on Article 1 paragraph 13 of Law 6 of 2011 concerning Immigration, the Immigration Document is a Republic of Indonesia Travel Document, a Residence Permit issued by an Immigration Officer or an official of foreign service.

Meanwhile, if it is seen from the external factors, many of these refugees who do not have documents because their own country is experiencing war conflicts and juridical factors that cause the refugees cannot take care of other needs, either Passport or refugee identity as a written document. But that does not mean that the authority possessed by the government/region can give as many permits as possible without considering other aspects. This is what often happens differences between the government and academics or activists.

From those explanation, it clearly explained that the refugee must be protected by all countries, this is a form of protection of human rights both nationally and internationally.

Research Method

This study uses a normative juridical research method. This method focuses on research on library data which is secondary data. Secondary data has a very broad scope including laws and regulations, literature books, legal journals, newspapers, magazines, internet to official documents issued by the government. Preparation of this writing is descriptive analytical, which describes the data or images carefully as possible about the object of the problem (Soejono Soekanto dan Sri Mamudji, 2003). Furthermore, the data collection technique used is the study of documents on instruments that have a direct link to handling the arrival of refugees from their home countries to Indonesia. The data analysis method used in this study is a normative analysis method, because this research departs from legislation.

Discussion

1. Regulation of Granting Permits for Refugees in Indonesia

Foreigners who enter Indonesia by not having documents and not entering through an immigration checkpoint by illegal means come from a conflict or war country. The

warring parties adhere to and apply International Humanitarian Law to every international armed dispute or non-international armed dispute (Ambarwati, et., al., 2012).

Stated that according to their nature, things that are part of the permit decision can be made in written form. Then, added that as a written decision the permit generally contained the following (Ridwan HR, 2014).

a. The authority

In the permit stated who gave it, usually from the head of the letter and the signatory to the permit will state who gave the permit. In general, making rules will designate the competent organization in the licensing system, the most armed organization regarding the relevant material and tasks, and almost always related are the organization of government.

In this case regarding the granting of status to refugees carried out by UNHCR or the full name of the UN High Commissioner for refugee affairs is the UN agency granted authority by the United Nations to deal with the problem of refugees.

b. The addressee

Permits are intended for interested parties. In this case, only the interested party usually applies for permission to apply for it. In certain cases, decisions about permits are also important to interested parties. So that, the government as the licensor must also consider third parties who may have links with the use of these permits.

By giving permission, the authorities allow people who request it to take certain actions which are actually forbidden to pay attention to the public interest that should have supervision (Lutfi Efendi, 2004). In accordance with the provisions of Article 1 paragraph (1) Law Number 6 Year 2011 concerning Immigration states that Immigration is a matter of traffic of people entering or leaving the territory of the Republic of Indonesia and its supervision in order to maintain the upholding of state sovereignty.

With the existence of human rights violations to refugees, this gives birth to responsibility for the state that has carried out acts of expulsion, oppression and not giving rights to refugees in the form of protection and so on in the principle of refoulement.

c. Dictum

Decisions that include permits, for reasons of legal certainty, must contain as clear as possible the description of what for the permit was given. This part of the decision, where the legal consequences caused by the decision, are called dictums, which are the contents of the decision. At least this dictum consists of definite decisions, which contain the rights and obligations intended by the decision.

d. Provisions, Restrictions, and Conditions

Provisions are obligations that can be linked to favorable decisions. There are many provisions in permits in the practice of State Administrative Law. For example in the disturbance law provisions such as the following:

- 1) Provisions for purpose with the purpose of realizing certain objectives, such as preventing soil contamination);
- 2) Provisions for facilities (obligation to use certain facilities);
- 3) Provisions of instruction (obligation for permit holders to give written instructions to personnel in the institution);
- 4) Provisions for measuring and registering (measurements to assess the level of danger or interference).

Restrictions on permits make it possible to practically circle further permissible actions. Restrictions are formed by designating boundaries in time, place or in other ways. For example, permits in the environment can be restricted to permits for a certain period, for example 5 years.

Besides that, the decision contains conditions that can cause certain legal consequences for an event in the future that are uncertain. In a decision containing a permit, deletion requirements and suspension conditions can be included.

e. Giving reasons

Giving reasons can contain things such as mentioning the provisions of the law, legal considerations, and setting facts. The mention of the provisions of the law provides a handle on all concerned, the organs of the authorities and those concerned, in assessing that decision.

f. Additional notifications

Additional notification may contain that the addressing is indicated as a result of violations of the provisions in the permit, such as sanctions that may be given for non-compliance. These notices may be clues as to how to act in submitting subsequent requests or general information from government organs related to their current or future policies.

By binding to actions on a licensing system, lawmakers can pursue various objectives of the permit, as follows (Lutfi Efendi, 2004):

- a. The desire to direct / control certain activities;
- b. Prevent environmental hazards;
- c. Protect certain objects;
- d. Divide objects, land or limited areas; and
- e. Directing using selection of certain people and activities.

In the field of immigration, there are several types of licensing, including (Jazim Hamidi dan Charles Christian, 2015):

1. Visit residence permit

Visit residence permit is a residence permit for government duties, socio-cultural activities, or business. In accordance with the provisions of Article 50 paragraph (1) of Law Number 6 of 2011 concerning Immigration, it is said that the visit permit is given to foreigners who enter the territory of Indonesia on a visitor visa or a newborn child in the territory of Indonesia and at the time of birth the father or mother visit.

Based on article 38 of Law number 6 of 2011 concerning immigration, it is stated that a visitor visa is given to foreigners who travel to Indonesia in the context of government, education, social cultural, tourism, business, family, family, journalistic, or transit trips. to other countries.

2. Limited residence permit

Limited residence permit is a permit granted to foreigners who are fulfilling immigration requirements and other conditions regulated by Government Regulations. Immigration permit regarding this limited stay according to its name is given with a limited time limit. Limited residence permit can be dropped due to:

- a. Relinquish the right of a limited residence permit;
- b. On his own accord;
- c. Located outside the territory of Indonesia and has exceeded the time of re-entry permit into the territory of the Republic of Indonesia; and
- d. Due to immigration actions;
- e. Permanent residence permit.

This permit is given to foreigners to live in the territory of the Republic of Indonesia as long as they fulfill immigration requirements. This permanent residence permit is valid for 5 (five) years as long as the person concerned still resides in the territory of the Republic of Indonesia.

Based on article 159 paragraph (4) Government Regulation Number 31 of 2013 concerning Implementing Regulation of Law Number 6 Year 2011 concerning Immigration, permanent residence permits for foreigners can be canceled because the person concerned:

- a. Proved to commit a criminal act against the state as stipulated in the legislation;
- b. Conducting activities that endanger state security or should be suspected of being dangerous for public security and order;
- c. Breaking the integration statement;
- d. Employ foreign workers without a work permit;
- e. Providing incorrect information in submitting a permanent residence permit application;

- f. Subject to immigration administration measures; and
- g. Disconnection of Marriage A foreigner who legally marries an Indonesian citizen because of a legal divorce with an Indonesian citizen due to divorce and/or court decisions, except for marriages that are 10 years or older.

There are various types of immigration permits that can be transferred to other statuses, but some are not transferred. The transferable status is as follows:

1. Visit permit is a limited residence permit;
2. Limited stay permit is a permanent residence permit on the basis of the request concerned provided that they have been in Indonesia for at least 3 consecutive years, starting from the time a limited stay permit is granted.

This means that in this case the placement of refugees in Indonesia is not in the category of forms of permits that can be given by refugees in Indonesia. So that, it should even though the authority of the refugee's permission is at UNHCR but in the arrangement of the shelter implementation is under the supervision of immigration. Hence, an institution should be formed specifically to deal with refugees so that the immigration duties do not become overlapping and become even more numerous.

The background of the occurrence of refugees can be grouped into two types, namely (Fadli Afriandi, 2016):

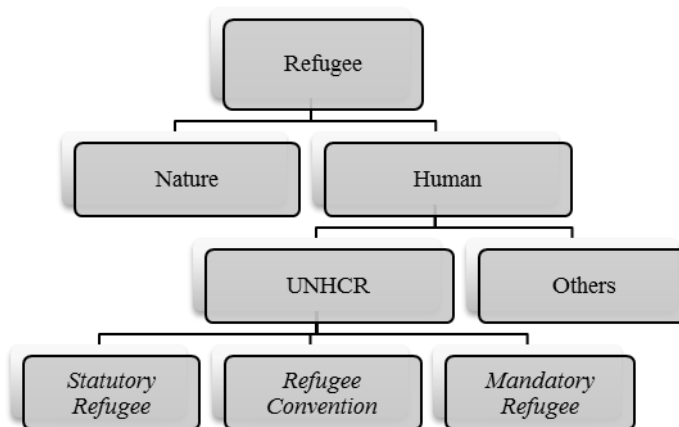
1. Refugees due to natural disasters (Natural Disaster)

In principle, these refugees are still protected by their home countries to go out to save their lives and these refugees can still ask for help from the country of origin of the refugees;

2. Refugees due to disasters made by humans (Man Made Disaster)

Refugees referred to here are refugees who leave their country because they avoid demands (persecution) from their country. Usually this is due to political reasons which are then forced to leave the country of residence. These people no longer receive protection from the government of their home country.

Of the two types of refugees above, international law only regulates second type refugees as law refugees, while refugees due to natural disasters are not regulated and protected by international law. In the following chart, the differences between the two types of refugees appear.

UNHC Refugee Classification (Fadli Afriandi, 2016)

Explanation:

1. Statutory Refugee is the status of a refugee with international agreement before 1951. Statutory Refugee is intended for refugees from a particular country who do not get diplomatic protection from their home country;
2. Convention Refugee is refugee status based on the 1951 Convention and the 1967 Protocol. Here refugees are in a state party or convention participant;
3. Mandate Refugee determines refugee status not from the 1951 Convention and 1967 Protocol, but based on mandate from UNHCR. Here refugees are in countries that are not participants in the convention or not state parties. In this case, the party that is given the authority to determine refugee status is UNHCR itself and is not a country where refugees come.

Then after registration, UNHCR is assisted by translators who are competent in conducting interviews with the asylum seekers. The interview process is able to bring up the reasons behind the decision whether refugee status can be granted or rejected. An asylum seeker is then given one chance to appeal against his request for international protection which was previously refused (Fadli Afriandi, 2016).

In its recommendations, UNHCR stated that the separation of regulations between the Immigration Act and (Draft) law on Asylum Seeker Protection needs to be done. This distinction into two separate laws is based on the different nature of refugee protection when compared to general rules in immigration. Although the main problem raised in this case concerns citizenship rather than immigration, this opinion carries weight as a precedent in the demands submitted to review immigration decisions (Orlando David Gestuvo, n.d.).

As a transit country and not a state party at the 1951 and 1976 protocols, Indonesia has no basis so that financial accountability can be requested both in international law and national regulations, so that Indonesia cannot be involved in handling refugee problems and hand over handling refugees by UNHCR (Sri Badini Amidjojo, 2004).

Although Indonesia is only a transit country and is not a party to the 1967 and protocol conventions of 1967, Indonesia must be able to take sides and choose a position in carrying out its responsibilities as a country in the Declaration of Law and Human Rights, to provide protection and services to refugees coming to Indonesia.

The existence of foreign refugees in Indonesia is considered quite alarming because it occurs continuously. Meanwhile, Indonesia must also treat immigrants or refugees well because this is a matter of humanity. Foreigners need to be considered because they are likely to face problems in their country. Their unavoidable existence is sometimes a burden on the community and the local government. Local governments must provide shelter for these foreigners. However, as a friendly country, Indonesia still needs to pay attention to the immigrants or refugees.

By giving permission, the authorities allow people who request to take certain actions which are actually prohibited to pay attention to the public interest which should have supervision (Lutfi Efendi, 2004). In accordance with the provisions of Article 1 Paragraph (1) of Law Number 6 Year 2011 concerning immigration, it is stated that immigration is a matter of traffic of people entering or leaving the territory of the Republic of Indonesia and its supervision in order to maintain the upholding of state sovereignty.

With the existence of human rights violations to refugees, this raises responsibility for the state which has carried out acts of expulsion, oppression and not giving rights to refugees in the form of protection and so on in the principle of *refoulement*.

2. Legal Protection for Refugees for Stay Permits Awarded in Indonesia

The 1951 Convention on the Status of Refugees was designed at the end of World War II and the definition of refugees formulated was focused on people who were outside their home country and became refugees because of events that occurred in Europe before January 1, 1951. Regarding the problem of refugees increasing in the late 1950s and early 1960s, expanding the scope of time and geography in the 1951 Convention was deemed necessary. Therefore, the development needs to be designed and agreed upon by an additional protocol to the convention on refugee status, namely Protocol 1967 (Sigit Rianto, 2004).

Law No. 6 of 2011 concerning immigration does not recognize the term asylum seekers or refugees. In short, the law only regulates the validity of legal and illegal immigrants. The terminology of asylum seekers and refugees entering Indonesian territory must be interpreted not based on legal travel documents and immigration documents, and not to pass the designated immigration checkpoint, so that in the end they will be categorized as illegal immigrants.

Identity refugees are categorized as illegal immigrants because they do not comply with statutory provisions. Then, if an indication is found that is not in accordance with the regulation and the foreigner claims to be an asylum seeker and refugee, the immigration authorities take care of the first opportunity in accordance with Article 2 paragraph (3) of the Director General of Immigration Regulation IMI-0352.GR.02.07 about handling illegal immigrants who claim to be asylum seekers or refugees, which includes:

- a. Carrying out handling and data collection;
- b. Contacting the representative of the relevant Foreign country;
- c. Contacting IOM for temporary shelter facilities; and
- d. Contacting UNHCR to determine its status.

In addition, the submission of asylum / refugee requests is part of human rights. This has sufficient reason for that. Article 28 of Law Number 39 of 1999 concerning Human Rights affirms that everyone has the right to seek asylum to obtain political protection from other countries. However, this asylum application is limited to fears arising from a political crime and not to the other, moreover, if the request is contrary to the objectives and principles of the United Nations. Groups that are included as being refused to accept asylum are those who are suspected of committing crimes against peace, war crimes, and crimes against humanity (Sigit Rianto, 2004).

The 1951 Convention and the 1967 Protocol substantially protected human rights for refugees. Thus the Convention is categorized as a type of human rights that needs to be protected, especially for refugees. This is distinguished by their special conditions.

Human rights law is divided into three situations, namely: first, general human rights law that applies to all people under normal circumstances. Secondly, human rights law which is applied in a war situation is known as humanitarian law. Third, human rights law is specifically applied to refugees (known as Refugee Law). This human rights law is applied to refugees because they are outside their country and no one protects them (Sigit Rianto, 2004).

The 1951 Convention on Refugees included a list of basic rights and freedoms which were greatly needed by refugees. The convention participating countries must carry out these rights and obligations. The stages that must be carried out by the state party are: first, the refugees will not be subject to punishment, as long as they immediately report themselves to the local authorities. Usually in each country there is its own process center which is not mixed with the immigration quarantine even though both are managed by the same agency which is specifically regarding foreigners (Sigit Rianto, 2004).

Secondly, there is a prohibition for states parties to return refugees or those who claim to be forced asylum seekers. This is related to the principle that absolutely must be obeyed by the state that is not returning refugees from the country of origin where he feels threatened by his safety and freedom. Besides being absolute like that there are

also those that are conditional, in the form of expulsion which means the return of the country of origin or can be any country anywhere.

States parties may only conduct evictions if they are carried out on the grounds of national security and public order. For example, these refugees terrorize some citizens of the country and then eviction can be carried out. New evictions can be enforced if the person concerned is proven to be a criminal offender from his home country or commits a crime in the destination country where he is located (Sigit Rianto, 2004).

Immigrants who come from several countries must be monitored so as not to do things that are not desirable so that later they are feared to harm themselves and the local community. In addition, foreigners who are still in a shelter location provided by the local government should not be disturbed by the local community so that they feel comfortable and the well-treated immigrants make Indonesia respected by the international community. The Ministry of Foreign Affairs has an important role in dealing with immigrants by coordinating with the Regional Government and the UNHCR Institution (Sigit Rianto, 2004).

Parties who fight in countries such as Afghanistan, Syria, Palestine do not obey and implement ways of fighting in accordance with the rules so that civilians are affected by the war. Conflict citizens and countries choose illegal ways to seek protection, in the sense that they are displaced to get a decent livelihood. However, this type of refugee is a status recognized by international and / or national law (Sulaiman Hamid, 2002). Whatever the situation, they need humanitarian assistance because refugees cannot rely on the protection of their country which should be able to protect them from actions that are considered dangerous. Therefore, a person who has been recognized as a refugee will receive defined obligations as well as rights and protection of his rights that are recognized by international and/or national law, including to be able to stay and get protection in Indonesia.

Conclusion

Provision of permits for refugees in Indonesia cannot be processed simply because the refugee residence permit is not yet known under the Immigration Act in Indonesia. The form of permit is in the Immigration Act now, namely only residence permit, limited stay permit, diplomatic residence permit, temporary residence permit and permanent residence permit. Permits for refugees can be given by Indonesia if UNHCR has approved or determined refugee status, which is indicated by the existence of IDP permit cards for data collection and recommendations that are processed in Indonesia. The form of legal protection for immigrant refugees in Indonesia refers to the Director General of Immigration Number IMI-0352.GR.02.07 pertaining to handling illegal immigrants who claim to be seeking asylum or refugees and refugees themselves as part of human rights that must be protected even if Indonesia has not ratified 1951 Convention and 1967 Protocol.

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