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LEGAL RESPONSIBILITY OF THE INDONESIAN GOVERNMENT IN HANDLING REFUGEES THROUGH COLLABORATION WITH UNHCR

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Abstract

Indonesia, despite not being a party to the 1951 Refugee Convention and the 1967 Protocol, has become a key transit country for refugees due to its strategic geographical position. In response to humanitarian challenges, the Government of Indonesia has developed cooperation with the United Nations High Commissioner for Refugees (UNHCR) to provide legal protection and essential services for refugees. This research aims to examine the legal responsibilities of the Indonesian government in refugee handling through collaboration with UNHCR, analyzing both domestic and international legal frameworks. Utilizing a normative juridical method, this paper explores the regulatory basis, implementation practices, and legal challenges in Indonesia's refugee management policy. Findings indicate that, despite the absence of ratified international refugee instruments, Indonesia upholds key legal principles such as non-refoulement and delegates refugee status determination to UNHCR under Presidential Regulation No. 125 of 2016. The collaboration facilitates essential protection mechanisms, but significant legal and institutional limitations persist.

Keywords: Refugees, UNHCR, Indonesia, International Law, State Responsibility, Human Rights

INTRODUCTION

The issue of refugees is certainly not a new one. Refugees have existed since around the 20th century. This problem first emerged during the Russian war (at the time of the Russian Revolution), when large numbers of refugees from Russia fled to Western Europe. According to Malcolm Proudfoot, refugees are a group of

people who are forced to move to another place that is considered safer due to persecution, forced expulsion, or political conflict with the ruling government.

The United Nations held the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons

based on General Assembly Resolution No. 429 (V). This meeting resulted in the adoption of the Convention Relating to the Status of Refugees of 1951 (hereinafter referred to as the 1951 Refugee Convention), which came into force on April 22, 1954.

The refugee crisis remains a pressing international concern, affecting over 100 million people globally as of 2023 (UNHCR, 2023). Although Indonesia is not a signatory to the 1951 Refugee Convention and the 1967 Protocol, its geographical position as an archipelagic state situated between conflict-prone regions has made it a frequent destination and transit point for asylum seekers. Most notably, Indonesia has served as a sanctuary for Rohingya refugees fleeing persecution in Myanmar and Bangladesh.

Indonesia is a country with a strategically advantageous geographical location, as it lies between the continents of Asia and Australia, as well as between the Indian Ocean and the Pacific Ocean. This geographical position makes Indonesia a strategic transit point for asylum seekers heading to the continents of Australia and America.

While Indonesia lacks a formal refugee legal framework aligned with international treaties, the state demonstrates its humanitarian commitment through Presidential Regulation No. 125 of 2016 on the Handling of Foreign Refugees. This regulation, together with strong cooperation with UNHCR, has formed the foundation of Indonesia's refugee policy. This study investigates the extent of legal responsibility assumed by the Indonesian government within this collaboration and assesses its alignment with international norms.

The urgency of Indonesia's cooperation with relevant agencies in handling refugees within its territory lies in the fact that these foreign refugees are entitled to fundamental rights as mandated by the Universal Declaration of Human Rights and other international instruments related to refugee issues. To realize or achieve the goals outlined in these mandates, constructive collaboration is required among institutions that are directly or indirectly involved in refugee matters. This is especially crucial for finding permanent solutions for refugees, with the aim of reducing the number of refugees that may increase in the future.

PROBLEM STATEMENT

This study addresses the following research questions: what are the legal frameworks both international and national governing Indonesia's collaboration with UNHCR in handling refugees?

RESEARCH METHODOLOGY

This research applies a normative juridical approach, examining secondary legal sources including international treaties, Indonesian statutes, academic journals, and UNHCR operational guidelines. This method is complemented by a statute approach: analyzing key instruments like the 1951 Refugee Convention, 1967 Protocol, and Presidential Regulation No. 125 of 2016. Conceptual approach: Employing Constructivist Theory, International Treaty Theory, and the doctrine of State Responsibility in International Law. Case approach: Focusing on Rohingya refugee handling in Aceh as an applied case study.

RESULTS AND DISCUSSION

Legal Framework Governing Indonesia-UNHCR Collaboration

The main legal basis for the regulation of refugees is set out in the 1951 Refugee Convention and the 1967 New York Protocol

Relating to the Status of Refugees. The 1951 Refugee Convention is a multilateral agreement that defines the rights of refugees and the obligations of states to protect them. This convention also regulates the status of refugees and the responsibility of states to provide them with protection. The 1951 Refugee Convention provides an explanation of the conditions for refugees, namely: being located outside their country of origin or nationality; having a well-founded fear of "persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion; and, because of that fear, being unable or unwilling to obtain protection from their country of origin."

The 1951 Refugee Convention contains three main points, namely:

- a) The basic definition of a refugee, which is needed as a reference for determining whether a person belongs to the refugee category or not;
- b) The legal status, rights, and obligations of refugees in the country of asylum;
- c) The implementation of the agreement, particularly regarding administrative and diplomatic matters, especially those related to cooperation with the UNHCR in carrying out oversight of the countries where the refugees are located.

Despite not ratifying the Refugee Convention, Indonesia acknowledges several principles of customary international law chief among them, the non-refoulement principle. UN General Assembly Resolution 428 (V) recommends all member states to collaborate with UNHCR in refugee protection. At the domestic level, Presidential Regulation No. 125 of 2016 provides the legal basis for coordinating refugee assistance.

Before Presidential Regulation No. 125 of 2016 was issued regarding the handling of refugees from abroad, there was no literature or regulations governing refugees. There were also no terms for refugees or asylum seekers in Indonesian positive law. Consequently, refugees and asylum seekers were detained indefinitely at Immigration Detention Centers (RUDENIM) located throughout Indonesia. Despite not ratifying the 1951 Refugee Convention, Indonesia provided shelter for refugees because it respects human rights. Following the issuance of the regulation, the process for handling foreign refugees has become clearer. Indonesia is assisted by the UNHCR in implementing this process, which includes determining refugee status (RSD) and providing protection. This process began with the arrival of Vietnamese refugees in 1979, who were housed on Galang Island. With financial support from the international community, including countries such as the United States and Australia, the UNHCR equipped Galang Island with medical facilities, canteens, housing, and other infrastructure to provide necessary services and support for refugees until the conflict ended.

Forms of Legal Responsibility by the Indonesian Government

Indonesia has not ratified the 1951 Refugee Convention on the Status of Refugees, which obligates it to accept refugees from abroad and provide them with protection. Protection of refugees is essentially the responsibility of every country. The issue of providing protection to refugees or asylum seekers has become an international issue. For a long time, countries have been accepting and providing protection to citizens who are victims of oppression or violence in their country of origin.

The Indonesian government assumes responsibilities such as facilitating refugee status determination, providing humanitarian support, ensuring non-refoulement compliance, and engaging relevant national institutions. UNHCR's eight key protection functions are operationalized through this partnership.

The responsibility of the cooperation between Indonesia and UNHCR is to carry out eight activities in refugee protection, namely: advocacy, capacity building, fund raising, finding alternatives to camps, distributing assistance, emergency response, finding durable solutions, and protection of refugees.

In response to Indonesia's decision not to ratify the 1951 Convention Relating to the Status of Refugees, the Indonesian government has established a special provision for refugees from abroad. This provision, Presidential Regulation No. 125 of 2016, was drafted by the President of Indonesia and aims to establish standards that relevant government agencies must follow when addressing refugee issues originating from abroad in Indonesia. These provisions include requirements to provide shelter and temporary accommodations for refugees who have not yet been accommodated by district or city governments, as referenced in Article 24(2) of Presidential Regulation No. 125 of 2016.

Implementation Challenges

So far, the Indonesian government has fulfilled its responsibility by providing housing and other facilities, such as healthcare, food, and clothing, to refugees with the assistance of the Ministry of Immigration and international agencies, such as the IOM and UNHCR. However, due to the increasing number of refugees arriving in Indonesia in waves, these efforts have not yet fully met the needs of refugees, prompting our president to issue Presidential Regulation No. 125 of 2016 on the Handling of Refugees from Abroad. This regulation outlines rules for handling, accommodating, supervising, and funding refugees. However, the regulation has not been fully implemented, as it does not clearly address temporary accommodations for refugees. Considering that Indonesia currently has only 13 detention centers, each of which can accommodate only 100–200 people, and given the current number of refugees in Indonesia (approximately 14,550), this is highly disproportionate. According to researchers, therefore, the implementation of this presidential regulation has not yet been fully realized.

Although the Indonesian government has made significant efforts to handle Rohingya refugees in Aceh, it still faces challenges that affect the relevance and effectiveness of its efforts. Here are some points to consider:

- 1) Legal Basis: The government issued Presidential Regulation No. 125 of 2016 concerning the handling of refugees from abroad, which serves as a guideline for refugee management.
- 2) Cooperation with the UNHCR: The government collaborates with the UNHCR and other humanitarian organizations to provide assistance such as shelter, food, and health services.
- 3) Humanitarian Approach: Although Indonesia has not ratified the 1951 Convention Relating to the Status of Refugees, the government provides protection to refugees on humanitarian grounds.
- 4) Shelter Capacity: Shelters are often full, leaving refugees with limited access to adequate facilities.

- 5) Coordination and Budget: Budget constraints and interagency coordination issues often hinder the effectiveness of response efforts.
- 6) Rejection by Local Communities: Some local communities resist the presence of refugees, which affects social integration and acceptance.
- 7) Long-Term Solutions: There are no clear long-term solutions, such as resettlement or local integration, that can offer refugees certainty.

Challenges include the absence of a national RSD system, limited infrastructure, inadequate funding, local resistance, and legal ambiguities. The Rohingya refugee case in Aceh highlights these gaps and the compensatory role of international organizations like UNHCR and IOM.

CONCLUSION

The legal responsibility of the Indonesian government in refugee handling, while not based on binding international treaties, is actively exercised through humanitarian cooperation and adherence to non-refoulement principles. Presidential Regulation No. 125 of 2016 serves as the legal backbone, while UNHCR fills structural and legal gaps through operational assistance and refugee status assessments.

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