

History of International Refugee Immigration Law in Indonesia

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ABSTRACT

This article provides an overview of Indonesia's historical involvement with international refugee immigration law, focusing on its relationship with the UNHCR and its handling of refugee crises. Despite not ratifying the 1951 Refugee Convention, Indonesia has internal regulations for refugees and a history of providing protection to political asylum seekers. The article highlights the need for new laws to regulate immigration and refugee flow, particularly in light of the Rohingya crisis, and emphasizes the necessity for stronger and more specific laws to address rights of refugees in Indonesia.

Keywords: *Refugee, Refugee in Indonesia, Indonesia Law*

ABSTRAK

Artikel ini memberikan gambaran tentang keterlibatan historis Indonesia dengan hukum imigrasi pengungsi internasional, dengan fokus pada hubungannya dengan UNHCR dan penanganannya terhadap krisis pengungsi. Meskipun tidak meratifikasi Konvensi Pengungsi 1951, Indonesia memiliki peraturan internal untuk pengungsi dan sejarah memberikan perlindungan kepada pencari suaka politik. Artikel ini menyoroti perlunya undang-undang baru untuk mengatur imigrasi dan arus pengungsi, terutama mengingat krisis Rohingya, dan menekankan perlunya undang-undang yang lebih kuat dan lebih spesifik untuk menangani hak-hak pengungsi di Indonesia.

Kata Kunci: *Pengungsi, Pengungsi di Indonesia, Hukum Indonesia*

A. INTRODUCTION

International Displaced Person or IDP is one of the serious problems in International relations. For example in the 20th Century, it was recorded that when major conflict happens refugee crisis will follow. The best example of this will be what happens in World War 1 and World War 2. During World War 1 Refugee Crisis happen which causes around 400.000 people to flee Belgium to Holland in the first 3 months of the war and peaked in September 1915 with 1,85 Million Refugees¹.

But what happens next in the next World War or World War 2 will be more gruesome. According to Peter Gatrell, the Refugee in World War 2 counted for as much as 175 Million (Gatrell, Forced Migration during the Second World War:An Introduction 2000).² The number alone struck horror regarding World War 2. After World War 2 ended, International Community created United Nations on 24 October 1945 or UN, one of the early Agenda of the UN is about Refugee, which is proven by the existence of the 1951 Refugee Convention and The Founding of the United Nations High Commissioner for Refugees (UNHCR).

Around 147 Parties already signed the Convention and its protocol which is bound to

¹ Gatrell, Peter. "Forced Migration during the Second World War:An Introduction." www.gale.com. 2000. <https://www.gale.com/intl/essays/peter-gatrell-forced-migration-second-world-war-introduction> (accessed June 30, 2023).

² *Ibid*

applicates the Convention. Although that is not always the case, because some countries which not ratified the Convention still do the obligation regarding the 1951 Refugee Convention although they are not bound by the convention.

One of these examples is Indonesia which is active in helping refugees that enter its territory, one of the famous examples of this was when Indonesia prepare a shelter for Vietnamese on Galang Island during the War in Vietnam. The Big Question then is how Indonesia regulate the immigration of refugee? The reason regarding this case becomes interesting because Indonesia did not sign the 1951 Refugee Convention, especially regarding the immigration of the refugees in Indonesia and its history of handling refugee immigration. So this article will take the title is *History of International Refugee Immigration Law in Indonesia*. The concern will be on the History of Refugee Immigration in Indonesia.

B. PROBLEM QUESTION

How is Indonesia handle refugee immigration law in history and today?

C. RESEARCH METHOD

The objective of this research is to analyse Indonesia's legal framework regarding refugees, with that, aims the research will be conducted with the Normative-Juridical method, Focusing on studying law or legislation regulating the issue as primer sources, another same research in the past as secondary resources, and legal or religious scholar doctrine and view as the tertiary resources.

D. RESULTS AND DISCUSSION

1. Indonesia Law History Regarding International Refugee and Asylum Seekers

Until today Indonesia still did not officially sign 1951, although Indonesia had very active involvement with UNHCR in some refugee crises, for example, Indonesia helped to give transit for International Refugee from Syria, Afghanistan and Neighboring state Myanmar before the Refugee continue to 3rd State. UNHCR Official Website stated that Indonesia had (lihat website UNHCR), its show how Indonesia had active involvement in Refugee Crises. According to the official website of UNHCR Indonesia Indonesia hosts more than 13,100 persons of concern to UNHCR, including 9,991 refugees and 3,158 asylum-seekers. Most of the persons of concern to UNHCR in Indonesia are from Afghanistan (57%), Somalia (10%) and Myanmar (5%).³

This is not the first time Indonesia handle a refugee crisis Indonesia ever handled the Vietnam refugee during Vietnam War on Galang Island with peaked at 10.000 Refugees at that time.⁴ When the refugee crisis happen Indonesia become the destination or transit for Vietnam Refugee, At That time Indonesia still did not have sufficient laws regarding Refugee, so under the Soeharto Era, The President of Indonesia created Presidential Regulation (*Keputusan Presiden*) 38/1979 about Coordination of the Resolution of the Vietnamese Refugee Problem in Indonesia.

The Important point regarding this presidential decree is Indonesia's active

³[https://www.unhcr.org/indonesia.html#:~:text=Indonesia%20hosts%20more%20than%202013%2C100,%25\)%20and%2S,Ami Heppy. Ini Fakta dan Keindahan Pulau Galang, Dari Tempat Pengungsi Vietnam Sampai Jadi RS Covid-19. April 22, 2022. <https://regional.inews.id/berita/ini-fakta-dan-keindahan-pulau-galang-dari-tempat-pengungsi-vietnam-sampai-jadi-rs-covid>](https://www.unhcr.org/indonesia.html#:~:text=Indonesia%20hosts%20more%20than%202013%2C100,%25)%20and%2S,Ami%20Heppy.%20Ini%20Fakta%20dan%20Keindahan%20Pulau%20Galang,%20Dari%20Tempat%20Pengungsi%20Vietnam%20Sampai%20Jadi%20RS%20Covid-19.%20April%2022,%202022.%20https://regional.inews.id/berita/ini-fakta-dan-keindahan-pulau-galang-dari-tempat-pengungsi-vietnam-sampai-jadi-rs-covid)

⁴[https://www.unhcr.org/indonesia.html#:~:text=Namun%2C%20jumlah%20pengungsi%20Vietnam%20terus,tempat%20untuk%2010.000%20pengungsi%20Vietnam. \(accessed 06 30, 2022\).0Myanmar%20\(5%25\). \(accessed 07 01, 2023\).](https://www.unhcr.org/indonesia.html#:~:text=Namun%2C%20jumlah%20pengungsi%20Vietnam%20terus,tempat%20untuk%2010.000%20pengungsi%20Vietnam.%20(accessed%2006%2030,%202022).0Myanmar%20(5%25).%20(accessed%2007%2001,%202023).)

Coordination with UNHCR regarding Vietnamese refugees which is stated in Article 3 of Presidential Regulation 38/1979:

The Minister of Foreign Affairs is in charge of maintaining relations with the "United Nations High Commission for Refugees", with recipient countries, candidates recipients and other foreign relations, to expedite and for the smooth settlement of Vietnamese refugees residing in Indonesia.

Which is the *De facto* starting relation between Indonesia and UNHCR relation. It is also important to note that in Article 4 of Presidential Decree 38/1979 President of Indonesia ordered necessary action of Indonesia officials regarding the refugee crisis, Article 4 stated that:

The Minister of Home Affairs and/or the Head of the Region concerned is in charge of: strive that the handle the Vietnamese refugee problem in the regions, including the implementation of the construction of Vietnamese refugee shelter facilities/facilities that, can run smoothly and do not cause burdensome burdens for local people.

It's can be said that although Indonesia didn't have sufficient bills regarding International refugees at that time, Indonesia still has proper attention to the issue. Before talking further it's important to sneak peek at Indonesia's law hierarchy. Indonesia's law hierarchy was under Law of the Republic of Indonesia No. 12 of 2011 Concerning Making Rules, especially in Article 7 and Article 8.

Article 7 of Republic of Indonesia No. 12 of 2011 Concerning Making Rules stated that:

(1) Types and hierarchy of Rules consist of:

- a. Constitution of the Republic of Indonesia of 1945;*
- b. People's Consultative Council Decree;*
- c. Law/Government Regulation in place of Law;*
- d. Government Regulation;*
- e. Presidential Regulation;*
- f. Province Regulation; and*
- g. Regency/Municipality Regulation.*

(2) The power of Rules is under the hierarchy as intended in paragraph (1).

While Article 8 rules about:

Other kinds of Rules as intended in Article 7 paragraph (1) covers the regulations stipulated by the People's Consultative Agency, House of Representatives, Regional Representatives Council, the Supreme Court, the Constitutional Court, the State Audit Board, the Judicial Commission, Bank of Indonesia, the Minister, agency, institution, or same level commission established by Law or Government on the instruction of Law, Provincial Regional House of Representatives, Governor, Regency/Municipality Regional House of Representatives, Regent/Municipal Government, the Village Head or the equivalent. (2) Rules as intended in paragraph (1) are recognized and have the force of binding all ordereby higher Rules or established based on authority.

This is important to understand because even today Indonesia still uses the Presidential Regulation or 6th in the Indonesian Law Hierarchy today to rule about a refugee in Indonesia. After the reformation, Indonesia had a major change, especially regarding the view on Human Rights. There are many significant points regarding the Indonesia Reformation, which are including but are not limited to the Addendum and Amendment of the Indonesia Constitution 1945, Expanding Province Autonomy and the birth of a new state body. One of the major changes in Indonesia's Constitution is the expanding protection of Human Rights in the Constitution. One of the most renowned changes can be found in Article 28 of the Indonesian constitution which expands to 28 J. Which are the main concern was the expansion

regarding Social-Political rights in Indonesia including freedom of speech. Before the Amendment, Article 28 of the Indonesian constitution stated "Freedom of association and assembly, expressing thoughts verbally and in writing and so on is stipulated by law".⁵

But, after the Amendment and addendum of Indonesia's constitution, Article 28 is expanded into 11 Articles, Article 28 until Article 28 J which expands the protection of Human Rights in Indonesia under a new expanded Chapter, Chapter XA which is more focused on the expansion of protection of human right in Indonesia including wider approach on International Refugee and Asylum Seeker.

Loura Hardjaloka stated that after the reformation of 1998, Indonesia had some implicit laws regarding Refugees or Asylum seekers which can be found in Indonesian Constitution, Indonesia Bills and Indonesia government Regulations and even in the now semi-defunct People's Consultative Council Decree (Ketetapan MPR/ TAP MPR).⁶ To be more specific, Indonesia's right to seek Asylum is ruled in Article 28 G verse 2 which stated that:

Every person shall have the right to be free from torture or inhumane and degrading treatment and shall have the right to obtain political asylum from another country While in People's Consultative Council Decree Number XVII/MPR/1998 About Human Rights especially Article 24 Chapter VII regarding Human Security of Human Rights Carter stated that:

Everyone has the right to seek asylum to obtain political protection from the other state.

Also, it is a rule in Bill 37/1997 Regarding Foreign Affairs, especially in Article 27 Verse 1 and 2 which stated that:

The President sets a policy on the issue of refugees from abroad by taking into account the Minister(1), The main points of the policy as referred to in paragraph (1) regulated by Presidential Regulation. (2)

Which further explain in the Explanatory of Bill 37/1997 Regarding Foreign Affairs, especially for Article 27 verse 1 which is stated :

The problem faced by refugees is a problem for humanity, so the handling is carried out as far as possible to avoid disturbing good relations between Indonesia and the country of origin of the refugee. Indonesia provides its cooperation to the competent authorities in looking for a solution to the refugee problem.

After that, it can be found too in Bill 39/1999 Regarding Human Rights, especially in Article 28 verses 1 and 2 which stated :

Everyone has the right to seek asylum to protect the politics of other countries(1). The rights as referred to in paragraph (1) do not apply to those who commit non-political crimes or acts that are contrary to the aims and principles of the United Nations.

The Application regarding all the Laws above can show when Indonesia handle Refugee Crisis, especially when handling Transit Refugee from the Syrian War, Afghanistan War and Myanmar Refugee Crisis who sought Asylum in Australia. Then Indonesia uses Presidential Regulation Number 125/2016 Regarding Handling of Refugees from Abroad, Which in general gave the Indonesian authority a guideline regarding handling International refugees in Indonesia's territory including the immigration Process.

⁵ Wulandari, Trisna. detik.com. 09 13, 2021. <https://www.detik.com/edu/detikpedia/d-5721614/makna-pasal-28-dalam-uud-1945-untuk-hak-asasi-manusia> (accessed July 02, 2022).

⁶ Hardjaloka, Loura. "Comparative Study on Asylum Seeker and Refugees Protection Regulation in Indonesia and Other Countries." e-Journal Legislasi Indonesia 12, no. 1 (March 2015): (pdf) 20-21.

2. The Immigration Process of International Refugees in Indonesia

The Application regarding all the Laws above can show when Indonesia handle Refugee Crisis, especially when handling Transit Refugee from the Syrian War, Afghanistan War and Myanmar Refugee Crisis who sought Asylum in Australia. Then Indonesia uses Presidential Regulation Number 125/2016 Regarding Handling of Refugees from Abroad, Which in general gave the Indonesian authority a guideline regarding handling International refugees in Indonesia's territory including the immigration Process. When countries become the ratifier and conduct accession to The 1951 Convention regarding Refugees, The Countries had unified right and obligations regarding the immigration process of International Refugees which is specifically stated in Articles 25,26, 27 and 28 of Chapter V regarding Administrative Measure for Refugee Document and Immigration, in the case of Article 25 of The 1951 Convention stated that:

- 1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority*
- 2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.*
- 3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.*
- 4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.*
- 5. The provisions of this article shall be without prejudice to articles 27 and 28.*

From the above article, it can be understood that the member countries of this convention had obligation to help the document and immigration process of the international refugees, it is further explained in Articles 27 and 28, in which Article 27 stated that:

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Besides providing Identity Papers to any refugee who needed them, The contracting states also had obligation to take care of the travel document of the refugee which it's stated in Article 28 which is stated that:

- 1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.*
- 2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.*

But the big question then is about How countries didn't ratify the convention yet? Ideally under the Vienna Convention Law of Treaties 1969 especially Article 38 any State should be obligated to Peremptory Norm although not a member of the International

Convention.

This is then the step taken by Indonesia, Indonesia did not Ratify The 1951 Convention but had internal regulations regarding Refugees. The history of Indonesia's International refugee law can be dated from 1956 when Indonesia still become Indonesia Republic Union (*Republik Indonesia Serikat*) take in the shape of the Circular Letter of Prime Minister of Indonesia Number 11/RI/1956 regarding Protection of Political Asylum, especially in Article 1 which is stated:

"To political fugitives, who enter and are in the territory of Indonesia will be given protection based on human rights and freedoms human beings, following customary international law."

After Indonesia return to Unitary State Form, there was no new law until Vietnam Refugee Crisis in 1976 or Soeharto Era New Order, People's Consultative Council Decree Number XVII/MPR/1998 About Human Rights in Early Reformation and Today's Presidential Regulation Number 125/2016 Regarding Handling of Refugees from Abroad which is already explained before, but there is some specific point regarding the handling of Refugee Immigration in Indonesia and it is the refugee Classification of the International refugee and its handling in Indonesia.

The classification is the refugee who enters Indonesia not instantly by legal counted as refugees, but under Indonesia Immigration Law No 6/2011 regarding Immigration they will count as Illegal Immigrant. The reason behind this is because Article 83 verse 1 stated that Indonesia can detain illegal Immigrants in the Immigration Detention House with the exemption of special conditions for the detainee including sick and Pregnant. These things ever become polemic, because seen as inhuman and degrading to human dignity.⁷ but then Indonesia agree to change the way it approaches refugees by Adopting UNHCR Beyond Detention 2019 in its policy to create Alternative Detention, which resulted in the creation of Presidential Regulation Number 125/2016 Regarding the Handling of Refugees.⁸

Although there is a great improvement regarding the immigration handle of the refugees, Presidential Regulation Number 125 of 2016, which is supposed to handle refugees in Indonesia, cannot provide a solution to the problem of protection in terms of economic, social, and cultural rights of the refugees, especially for independent refugees who do not get assistance from UNHCR and Indonesia Government.⁹

The implementation of the alternative to detention as stipulated in the Presidential Regulation in practice still has not been able to protect all refugees because the use of shelters is not able to accommodate all refugees living in the Indonesian territory (Wicipto Setiadi 2019). This is due to the limited number of accommodations and shelters that can be provided by UNHCR, IOM, and other institutions. They are only able to accommodate and provide basic needs facilities to 8,688 refugees. There are still 5,145 refugees living in the Indonesian territory who are forced to live independently¹⁰

According to Wicipto Setiadi and Mario Johannes Siagian's research actually, there is no problem for the Refugees to live independently, but the problem occurs when the Refugees are trapped in a void of law because there is no law forbidding the refugees to work, but there is no Law to allow them to work either.

⁷ UNHCR. "Beyond Detention 2014-2019." 2014: 5.

⁸ Wicipto Setiadi, Mario Johannes Siagian. "The Implementation of Alternatives to Detention to Handle." PADJADJARAN Journal of Law 6, no. 1 (2019).

⁹ Yuliana Primawardani, Arief Rianto Kurniawan. "'Penanganan Pengungsi dari Luar Negeri oleh Petugas.'" Jurnal Ilmiah Kebijakan Hukum 12 (2018): 183.

¹⁰ Wicipto Setiadi, Op.cit

Actually under The 1951 Refugees Law Chapter III Article 17 until 19 already rule about the right of the refugees to gain Wage and Employment but because of the absence of law in Indonesia that things becomes impossible because Indonesia was not a member of the Convention, one of the options possible then is to surrender to Detention Center.¹¹

E. CLOSING

1. Conclusion

Indonesia is not yet Signed or Ratified The 1951 Refugees Convention, Although Indonesia yet ratified the Convention it is noted in history that Indonesia has already proactively helped the Refugees crisis like Vietnam Refugees Crisis and the Modern Era Refugees crises like Mynamar and Afghanistan, Although already sufficient Indonesia Law Product is not in its maximum potential because Indonesia only uses Presidential Regulation in the International Refugees Crisis.

Besides the newest Indonesia product regarding International refugees had immigrational disadvantages for the refugees, notably the use of detention houses, the issue had been worked out by the International Governmental Body and the Indonesia Government but it did not sufficiently protect the right of the economy for the refugees to gain wage and employment that created a limbo for the refugees.

2. SUGGESTION

Indonesia need new law regarding Refugee and Immigation. Regarding todays Rohingya Case, Indonesia need more specific and stronger law that regulate Immigation and refugee to control Refugee Flow In Indonesia

REFERENCE

Journal :

- Hardjaloka, Loura. "Comparative Study on Asylum Seeker and Refugees Protection Regulation in Indonesia and Other Countries." *e-Journal Legislasi Indonesia* 12, no. 1 (March 2015): (pdf) 20-21.
- Wicipto Setiadi, Mario Johannes Siagian. "The Implementation of Alternatives to Detention to Handle." *PADJADJARAN Journal of Law* 6, no. 1 (2019).
- Yuliana Primawardani, Arief Rianto Kurniawan. "'Penanganan Pengungsi dari Luar Negeri oleh Petugas.'" *Jurnal Ilmiah Kebijakan Hukum* 12 (2018): 183.

Law and Act :

- The 1951 Refugee Convention
Vienna Convention the Law of The Treatis 1969
Indonesia Constitution 1945
People's Consultative Council Decree Number XVII/MPR/1998 About Human Rights
Presidential Regulation Number 125/2016 Regarding the Handling of Refugees
Presidential Regulation 38/1979 about Coordination of the Resolution of the Vietnamese Refugee Problem in Indonesia.
Law of the Republic of Indonesia No. 12 of 2011 Concerning Making Rules
Indonesia Immigration Law No 6/2011
Bill 37/1997 Regarding Foreign Affairs

¹¹ *Ibid*

The 1951 Refugee Convention
Vienna Convention the Law of The Treatis 1969
Indonesia Constitution 1945
People's Consultative Council Decree Number XVII/MPR/1998 About Human Rights
Presidential Regulation Number 125/2016 Regarding the Handling of Refugees
Presidential Regulation 38/1979 about Coordination of the Resolution of the Vietnamese
Refugee Problem in Indonesia.
Law of the Republic of Indonesia No. 12 of 2011 Concerning Making Rules
Indonesia Immigration Law No 6/2011
Bill 37/1997 Regarding Foreign Affairs

Internet

- Gatrell, Peter. "Forced Migration during the Second World War:An Introduction." *www.gale.com*. 2000. <https://www.gale.com/intl/essays/peter-gatrell-forced-migration-second-world-war-introduction>
- S, Ami Heppy. *Ini Fakta dan Keindahan Pulau Galang, Dari Tempat Pengungsi Vietnam Sampai Jadi RS Covid-19*. April 22, 2022. <https://regional.inews.id/berita/ini-fakta-dan-keindahan-pulau-galang-dari-tempat-pengungsi-vietnam-sampai-jadi-rs-covid-19#:~:text=Namun%2C%20jumlah%20pengungsi%20Vietnam%20terus,tempat%20untuk%2010.000%20pengungsi%20Vietnam>.
- UNHCR. "Beyond Detention 2014-2019." 2014: 5.
—, *Indonesia*. n.d.
[https://www.unhcr.org/indonesia.html#:~:text=Indonesia%20hosts%20more%20than%2013%2C100,%25\)%20and%20Myanmar%20\(5%25\)](https://www.unhcr.org/indonesia.html#:~:text=Indonesia%20hosts%20more%20than%2013%2C100,%25)%20and%20Myanmar%20(5%25)).
- Wulandari, Trisna. *detik.com*. 09 13, 2021. <https://www.detik.com/edu/detikpedia/d-5721614/makna-pasal-28-dalam-uud-1945-untuk-hak-asasi-manusia> (accessed July 02, 2022).