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COOPERATION OF INDONESIA WITH RELATED INSTITUTIONS ON THE HANDLING OF REFUGEES

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ABSTRACT:

Background: Indonesia has established cooperation with global institutions on the handling of refugees. The cooperation still continues until now. However, this cooperation needs to be enhanced due to several growing problems related to the process of handling refugees.

Aim: This study aims to find out the urgency of Indonesia's cooperation with other institutions on the matter of the handling of refugees.

Method: The study is a normative legal study by examining the principles of law and systematic law in the existing legislation through statute approach and conceptual approach.

Result: Since Indonesia is not a state party to the 1951 Geneva Conventions and/or the 1967 New York Protocol, the handling of refugees in Indonesia is the result of cooperation with institutions concerning the handling of refugees. Some institutions that have contributed to the handling of refugees are the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and the International Committee of Red Cross (ICRC).

Conclusion : Cooperation between Indonesia and the three institutions has been established and realized in some concrete terms whether it is in the form of an agreement between the two parties or collaborative activities; nevertheless, the cooperation needs to be strengthened again.

INTRODUCTION

The problem of refugees has arisen since humans were engaged in conflict and war because the refugees were essentially the victims of violence or those who fled from war occurring in their territory or country (Proudfoot, 1956). Historically, refugees began to emerge during World War I (1914-1918) (Thierrée et al., 2020). At that time, an estimated 1-2 million refugees left Russia and fled to various countries in Europe or Asia (Jaeger, 2001).

The 1951 Geneva Convention definitively states refugees are any person identified as refugees under the arrangements of 12 May 1928 and 30 June 1928 or under the 28 October 1933 and 10 February 1938 Conventions, Protocol 14 September 1939 or the Constitution of the International Refugee Organization (Mahieu & Van Caudenberg, 2020). In addition, the term refugee is also defined by everyone as a result of events that took place before January 1, 1951 and as a result of fear of persecution because of race, religion, nationality, politics (Prayitno, 2011). After the enactment of the international convention, Protocol Relating to the Status of Refugees 1967 Helton, (1993) (hereinafter referred to as the New York 1967 Protocol) was made, which removes time limits and applies to refugees "without any geographic restrictions" (Rosenne, 1970). In its development, the international regulation on refugees is better known as the 1951 Convention and Protocol Relating to the Status of Refugees (hereinafter referred to as the 1951 Geneva Convention and the 1967 New York Protocol) (Lim, 2021).

Based on the report of the United Nations High Commissioner for Refugees (UNCHR) based in Geneva, that every minute in the world, there are approximately 20 people who are forcibly displaced as a result of conflict or unfair treatment based on race, religion, politics or belief. In Southeast Asia, until 2015, it was recorded as a haven for 500,000 refugees scattered throughout the region and 25,000 of them left the Bay of Bengal (Patnogie, 1996). In 2017, there were 86,972 people who were refugees and were waiting for resettlement. The number will increase if there is no proper handling of it.

Inseparable from the problem of refugees, a number of developing countries experience similar challenge like Indonesia. The number of foreign refugees who came to Indonesia has increased in the last few years. Until June 2015, there were approximately 5,277 foreign refugees in Indonesia. With an ever-increasing number, Indonesia has established a regulation regarding the handling of foreign refugees. In 2016, Presidential Regulation Number 125 of 2016 concerning Foreign Refugee Handling was adopted. Although a regulation has been established at the national level as a reference for the government in handling the refugees, cooperation with international organizations is still considered to be less than optimal and needs to be enhanced.

Considering that Indonesia is not a country ratifying the 1951 Geneva Convention and the 1967 New York Protocol and does not have the capacity to determine refugee status, Indonesia cooperates with UNHCR. Based on the attachment to Resolution 428 (V) of the United Nations General Assembly adopted on December 14, 1950, the General Assembly called upon Governments to co-operate with the UNHCR in the performance of his functions concerning refugees falling under the competence of His office (Srirahayu, 2020). This was also re-emphasized in the provisions of the UNHCR Statute (Assembly, 1950). (hereinafter referred to as the UNHCR Statute) in article 1 which states that UNHCR is assisting the governments of countries in the context of handling refugees. In addition to UNHCR, Indonesia also collaborates with the International Organization of Migration (hereinafter referred to as IOM) which focuses on migration issues, the International Committee of Red Cross (hereinafter referred to as ICRC) which focuses on protection issues, and other institutions that pay special attention on the issue of refugees.

The urgency regarding Indonesia's cooperation with related institutions in handling refugees in Indonesia is that refugees are entitled to basic rights in accordance with what is mandated in the Universal Declaration of Human Rights and other international instruments relating to the issue of refugees. To realize or achieve the objectives in accordance with the mandated, constructive cooperation is needed between institutions that are in direct or indirect contact with the refugee issue. In finding permanent solutions for refugees in order to reduce the number of refugees that might increase in the future, this study aims to find out the urgency of Indonesia's cooperation with other institutions related to the handling of refugees.

METHOD

This type of research used in legal research is normative legal study. According to (Peter, 2006). legal study is a process that leads to the answer to legal issues by examining the rules, principles, and legal doctrines particular, this study discusses collaboration between Indonesia and related institutions in refugee handling.

The approaches used in this study were the conceptual approach and the statute approach. The conceptual approach originates from the doctrines that develop in the science of law to find ideas about legal understandings, legal concepts, and legal principles. On the other hand, the case approach is an approach by examining relevant cases (Prayitno, 2011).

The primary legal sources, which are the binding material consisting of basic norms or rules, were the Presidential Regulation Number 125 Year 2016 on the Handling of Foreign Refugees and other relevant national regulations as well as international conventions such as the 1951 Geneva Convention, 1967 New York Protocol , The UNHCR Statute and the 1948 Universal Declaration

of Human Rights and other international conventions relating to legal issues discussed in this study.

RESULTS AND DISCUSSION

International and National Legal Arrangements On Refugees According to International Law Provision

The 1951 Geneva Convention is the main foundation for international protection initiated by the United Nations and has been followed by several countries in the world. This convention was formed based on article 14 of the Universal Declaration of Human Rights 1948, which states and recognizes the right to seek asylum from persecution in other countries. In the process, the 1951 Geneva Convention began to be adopted by many countries on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless and started to take effect on April 22, 1954 that was after 90 (ninety) days from the day of deposit or deposit of the ratification or the sixth accession (Rachman, 2018).

The 1951 Geneva Convention was supplemented with the 1967 New York Protocol, which is an independent instrument. According to Riyanto (2004), the objective of a independent instrument is that the state may participate as a state party of the 1967 New York Protocol without having to be a participant in the Geneva Convention 1951. This protocol eliminates the time limit and geographical limits of the definition of refugees stipulated in the 1951 Geneva Convention. With the 1967 New York Protocol, the number of countries participating in the Protocol has increased by more than 100 countries (Kagan, 2006).

The definition of refugees according to the experts Alexander Betts dan Gil Loescher is people who cross international borders in order to flee human rights abuses and conflict. Refugees are prima facie evidence of human rights violations and vulnerability. People who are persecuted and deprived of their homes and communities and means of livelihood are frequently forced to flee across the borders of their homes countries and seek safety abroad (Betts & Loescher, 2011).

According to Alexander Betts and Gil Loescher, the refugees exist as a result of human rights violations and they were forced to flee across the borders of their home countries. This was done because their lives could be threatened if they were still in their home country. According to Malcom Proudfoot, refugees were forced to move to another place because of a condition that required them to do so. Malcom explained in his definition that there are some conditions or occurrences that trigger the fleeing as follows:

- a) persecution, forced deportation, or expulsion of Jews and political resistance to the ruling government;
- b) the transfer of ethnic population back to their country of origin or new territory as a result of war or agreement;

- c) arbitrary rearrangement of the borders of sovereign states before the war;
- d) massive displacement of civilians due to terror attacks from the air and under pressure or threat or withdrawal of troops in large parts of Europe;
- e) forcible removal of residents from coastal areas or defense areas under military orders,
- f) deportation of forced labors to support Germany in war;

There is a similarity to the definition of refugees, that is the fact that refugees are forced to move across national borders for events that occurred in their home country threatening their lives. In addition to the similarity, there are differences in the definition of these experts related to events that occur so that a person or group of people can be considered as refugees. Alexander Betts and Gil Loescher put more emphasis on events that were broader in scope.

Basically, a person can obtain refugee status if he meets the conditions in the 1951 Geneva Convention and the 1967 New York Protocol. However, for some regions that already have their own and more specific arrangements in that region, the stipulation is based on that regional regulation. This is because the regional regulation has been adjusted to the common problems of refugees in the region. In practice, it is still advisable to cooperate with UNHCR in determining the status in accordance with the mandate of the UNHCR Statute.

The Handling of Refugees Based On the 1951 Geneva Convention and the 1967 New York Protocol

The process of determining or determining refugees is carried out by the state if the country is a party to international instruments such as the 1951 Geneva Convention and the 1967 New York Protocol and regional instruments such as the OPA Convention and the Cartagena Declaration. Basically, there is no uniform international arrangement regarding procedures for determining refugee status, but in practice, the authorities responsible for refugee issues are expected to remain based on international and regional instruments as mentioned earlier. In determining refugee status, the following criteria can be used (Rachman, 2018) :

- a) Subjective Factors: factors that determine whether inside someone lies fear or worry about persecution. The fear is assessed from fear of the demands of his country and his threatened freedom.
- b) Objective Factors: the conditions of origin of the refugees, the facts about whether there is actually persecution of certain people. 78 The persecution occurred due to racial, religious or other differences as regulated in the 1951 Geneva Convention and the 1967 New York Protocol.

Presidential Regulation Number 125 Year 2016 on The Handling of Overseas Refugees

Presidential Regulation Number 125 of 2016 is the first regulation governing the handling of refugee problems in Indonesia. However, it should be

understood that the Presidential Regulation is not a form of ratification by Indonesia towards international instruments on refugees, namely the 1951 Geneva Convention and the 1967 New York Protocol. Ratification itself is one of the ratification processes stipulated in the Vienna Convention on the Law of Treaties 1969 (referred as the Vienna Convention of 1969). In Indonesia, the ratification of international or regional instruments is through the enactment of a law or Presidential Regulation (Romsan et al., 2003).

As previously explained that Indonesia is not a country ratifying the 1951 Geneva Convention and the 1967 New York Protocol, Indonesia is not bound by the rights and obligations stipulated in these international instruments (Pitsuwan and Parameswaran, 2015). Even so, Indonesia remains bound to international principles which are customary international law and are specified in both the Convention and Protocol instruments. To implement international principles regarding refugees and as a basis for Indonesia's reference to deal with the increasing number of refugee problems each year, Presidential Regulation Number 125 of 2016 concerning Handling Overseas Refugees was legislated.

In the Presidential Regulation, it is explained that there are several domestic agencies which will later work together to handle refugees in Indonesia. In the case of search and assistance as stated in Article 7, the agencies that will be involved are the Indonesian National Army (TNI), the Indonesian National Police, the Ministry that carries out affairs in the field of transportation, the agency that carries out affairs in the field of sea security and safety or the so-called Maritime Security Agency, and ministries / non-ministerial government agencies that carry out tasks in water territory of Indonesia. Then, in Article 10, it is stated that the Ministry of Justice and Human Rights has contributed to the handling of refugees, especially the immigration section that oversees the Immigration Detention House or RUDENIM.

There is also the role of the Ministry of Foreign Affairs as stated in Article 15 in the context of handling refugees related to the field of foreign relations and foreign policy. In addition to the domestic agencies that will be involved, this Presidential Regulation also mandates that Indonesia cooperates with relevant international organizations such as UNHCR and IOM to handle the refugee problem in Indonesia as outlined in Article 2.

In determining the status of refugees in Indonesia, the government assigns the authority to to UNHCR. This is because Indonesia is not a country ratifying the 1951 Geneva Convention and the 1967 New York Protocol, which results in the inability of Indonesia to create its own system to determine the status of refugees in its territory. Presidential Regulation Number 125 of 2016 concerning Handling of Foreign Refugees does not regulate the determination of the status.

Refugees who are in Indonesia have certain obligations. The obligations of refugees are regulated in several articles, which are Article 30 and Article 36 of Presidential Regulation Number 125 of 2016. In Article 30, it is explained that refugees must comply with the rules and regulations imposed at the shelter. Refugees are prohibited from violating the code of conduct and if violated, sanctions will also be regulated in the Presidential Regulation. In addition, refugees are also required to report themselves to the Head of the Local Immigration Detention House in accordance with Article 36. This aims to carry out monitoring process by the immigration authorities.

Cooperation between Indonesia and other institutions concerning Refugees

The Cooperation Between Indonesia and UNHCR

The cooperation between Indonesia and UNHCR has been formed since 1979 through the 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 which was signed on June 15, 1979. In essence, the agreement stated that UNHCR is allowed to open a regional office in Indonesia and assist Indonesia in dealing with the problem of refugees in Indonesian territory.

In 2015, Indonesia and UNHCR re-established a partnership, which in this case, Indonesia was represented by the Indonesian National Commission on Human Rights (Komnas HAM). Both parties signed a Memorandum of Understanding to improve advocacy and other steps designed to protect the human rights of refugees and other parties that are under the mandate of UNHCR in Indonesia. Then, both parties, UNHCR and Indonesia, also formed a network of institutions to coordinate the handling of people smuggling, refugees and asylum seekers. The network of institutions is called the Coordination Desk for the Handling of People Smuggling, Refugees and Asylum Seekers (P2MP2S).

The Cooperation Between Indonesia and IOM

IOM has been present in Indonesia since 1979, and in the same year, the UNHCR Indonesia regional office was established. IOM also participated in handling Vietnamese refugees in 1979 together with Indonesia and UNHCR (Husain et al., 2020).

The development of cooperation between Indonesia and IOM is continuously carried out by both parties. This is evidenced by the collaboration between IOM Indonesia and Indonesia at several Bilateral High Level Immigration Meetings between Indonesia and other countries such as Korea and Thailand. The latest collaboration with IOM and Australia is the holding of the 6th (sixth) Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crimes (hereinafter referred to as Bali Process) in March 2016.

This meeting was first held in February 2002 at the conference "Regional

Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crimes in Bali. The outcome of the meeting in March 2016 was an agreement to establish a regional mechanism to accelerate the handling of irregular migration issues and mix migration, including asylum seekers and refugees.¹⁵⁶ Other recent collaboration between IOM and Indonesia is in the form of immigrant care management training activities and the socialization of Presidential Regulation No. 125 of 2016 which was held in July 2017 at RUDENIM Kupang.

The Cooperation Between Indonesia and ICRC

The ICRC first entered Indonesia in 1940, but there was no formal collaboration formed between the two parties. Over time, the ICRC had made two agreements with Indonesia until 1978; the first one was in 1977 regarding the Prisoners' Visit. Then, the agreement between the two parties in 1987 was stipulated in the form of an agreement between the Government of the Republic of Indonesia and the International Committee of the Red-Cross on the Establishment of the ICRC Regional Delegation in Jakarta. After signing this agreement, ICRC Indonesia began its humanitarian mission in Indonesia.

Indonesia and the ICRC continuously seek to improve cooperation from time to time, especially regarding the implementation of international humanitarian law in Indonesia. In 2011, Indonesia, represented in this case by the Indonesian National Army Headquarters Legal Training Agency (Babinkum Headquarters of the Indonesian National Armed Forces), formalized cooperation with the ICRC through the signing of a Memorandum of Understanding (MoU). The objective of this collaboration was to disseminate international humanitarian law among TNI (Indonesian National Armed Forces). It is hoped that TNI can have a better understanding on how international humanitarian law is applied both during military operations for war and military operations other than war. In addition to collaboration with the military, the ICRC also cooperates with academic institutions in terms of implementing international humanitarian law in Indonesia.

One of the collaborations is the signing of an agreement between Syiah Kuala University and the ICRC, which was carried out on September 4, 2015. These collaborations indirectly have implications on the existence of refugees in Indonesian territory. The protection for refugees is guaranteed not only in peacetime, but also in periods of non-peace or conflict. This refers to what has been explained previously, that refugees are entitled to protection in the event of a conflict in a country based on the Geneva Convention IV 1949

Urgency of Enhancing Cooperation between Indonesian and related institutions on the Handling of Refugees in Indonesia

Indonesia remains in good faith to handle refugees in its territory regardless of Indonesia's position that is not a state party to the 1951 Geneva Convention and/or the 1967 New York Protocol. As a transit country, Indonesia has sought to collaborate with related institutions in handling refugees. In this case, these

institutions refer to UNHCR, IOM, and the ICRC. As explained earlier, there has been some concrete evidence of Indonesia's cooperation with these institutions. Although already cooperating with several international organizations, the problem of refugees has not yet been completely resolved.

Several problems have emerged in the process of handling refugees so far in Indonesian territory. The first problem that occurs is the number of refugees which continues to increase every month. The increase in the number of refugees is not offset by an increase in the number of resettlement or placement in third countries. One cause of the increase is the length of the waiting period for the permanent resettlement process. There is no clear regulation on how long refugees have to wait, so there is an influx of refugees and an increase in the number repeats every month. Thus, a regulation is needed regarding the waiting period for refugees until they are placed in a third country formulated by Indonesia with the institutions involved.

The second problem is the use of the Immigration Detention House (RUDENIM) for refugee settlements. According to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH-11.OT.01.01 of 2009 concerning Organization and Work Procedures of Immigration Detention Houses¹⁶² Article 1, RUDENIM is a temporary shelter for foreigners who violate the laws and regulations that subject to immigration and awaiting repatriation or deportation. When considering the principle of non-refoulment and the principle of non-penalization that has been explained previously and refers to the regulation, the designation of RUDENIM as a temporary place for refugees is something that should not be done.

The third problem is that the institutions involved in handling refugees do not yet know their co-workers well. This proves that there is no strong coordination and understanding among the institutions in handling refugee problems. In addition, the two charts also do not clearly state the role of IOM in handling refugees. As for its objective, IOM is responsible for introducing more orderly migration including migration by refugees, who need international migration services.

The above problems raise the urgency for Indonesia to enhance cooperation with related institutions in handling refugees in Indonesian territory. This cooperation is not only limited to international organizations that have a direct mandate for handling refugees, but also open to other institutions that potentially take part in the handling of refugees in Indonesia. After improving cooperation, it is hoped that permanent solutions for refugees can be immediately formulated and implemented to reduce the growing number of refugees.

CONCLUSION

The international instruments governing the handling of refugees are the Geneva Convention 1951 and the 1967 New York Protocol. The handling of

refugees is carried out by international organizations such as UNHCR or a state party to the 1951 Geneva Convention and / or the 1967 New York Protocol. Considering Indonesia is not a country Parties to the 1951 Geneva Conventions and/or the 1967 New York Protocol, the handling of refugees in Indonesia is the result of cooperation with institutions relating to the handling of refugees. Some institutions that contributed to the handling of refugees are UNHCR, IOM, and the ICRC.

Cooperation between Indonesia and the three institutions has been long established and realized in concrete terms whether in the form of agreements between the two parties or activities as a result of collaboration. The cooperation still continues until now, but enhancing cooperation between Indonesia and related institutions is necessary. The improved cooperation is expected to accelerate the formulation of a permanent solution for refugees.

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