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The Urgency of Indonesia in Ratifying the Convention Relating to The Status of 1951 Refugees and 1967 New York Protocol to Determine the Status of Refugees in Indonesia

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ABSTRACT

Refugee is one of the problems that needs more attention, especially for the hosted country which has ratified The Convention Relating to The Status of 1951 Refugees and 1967 New York Protocol or countries that have not ratified it. However, it should be remembered that based on the principle of non-refoulement, a country may not expel or return asylum seekers until they get status as refugees who must be protected by the receiving country. The purpose of this paper is to provide an analysis and description of the issue of granting refugee status in Indonesia considering that Indonesia still needs to unify and ratify the Convention Relating to the Status of 1951 Refugees and 1967 New York Protocol. The research method used in examining the problem is legal comparison with functional methods and micro approaches (Source of Norms). The benefits of Indonesia ratifying the Convention Relating to the Status of the 1951 Refugees and the 1967 New York Protocol the determination of refugee status will be fully transferred to Indonesia's rights without depends on the United Nations High Commissioner for Refugees (UNHCR) as a United Nations main aspect that specifically deal with refugees.

Keywords: *Asylum Seekers, Refugee, The Convention Relating to The Status of the Refugees 1951 and 1967 New York Protocol*

INTRODUCTION

Refugee is a person who flees from his original country due to the fear felt by a person regarding their race, religion, nationality, membership in certain social groups or political opinions that are outside his country of citizenship and do not ask for protection from the country of origin and are not related to return to the country of origin with these reasons.¹ Granting refugee status to asylum seekers is guaranteed under Article 14 of the 1948 Universal Declaration of Human Rights which recognizes the right for people to seek asylum from persecution in other countries, this is clearly and unequivocally regulated under the United Nations Convention on the Status of Refugees adopted in 1951 and the Protocol Concerning the Status of Refugees of 31 January 1967 are the main foundations of international protection of refugees.²

The refugee problem is one of the problems that needs more attention, especially for the host country which has ratified The Convention Relating to The Status of the Refugees 1951 and the 1967 New York Protocol or countries that have not ratified it. However, it should be kept in mind that based on the Non-Refoulement Principle, it is not permissible for a country to expel or return asylum seekers until they get status as refugees or refugees themselves who must be protected by the receiving country.³ The refugee issue that currently happening is a very complicated problem to be faced by the world community, of course also the United Nations which is trying its best to protect and grant asylum seekers status as refugees, therefore, the United Nations High Commissioner for Refugees (UNHCR) was formed as a United Nations main aspect which specifically deal with refugees.

Based on the explanation above, this research has a purpose for the urgency of Indonesia in ratifying The Convention Relating to the Status of 1951 Refugees and 1967 New York Protocol to determine the status of refugees.

RESEARCH METHODOLOGY

The research method used in this research is comparative legal research within the micro approach, the approach focuses on the Sources of Norms. Micro

¹ Hafifa Siddiq, Ahmad Elhaija, and Kenneth Wells, "An Integrative Review of Community-Based Mental Health Interventions Among Resettled Refugees from Muslim-Majority Countries," *Community Mental Health Journal* (June 25, 2022), <https://link.springer.com/10.1007/s10597-022-00994-y>.

² Loura Hardjaloka et.al Bahar, "Studi Perbandingan Ketentuan Perlindungan Pencari Suaka Dan Pengungsi Di Indonesia Dan Negara Lainnya (Comparative Study on Asylum Seeker and Refugees Protection Regulation in Indonesia and Other Countries)," *Jurnal Legislasi Indonesia* 12, no. 1 (2015): 1–31, <https://e-jurnal.peraturan.go.id/index.php/jli/article/download/371/253>.

³ Ayub Torry Satriyo Kusumo, "Perlindungan Hak Asasi Manusia Pengungsi Internasional," *Yustisia Jurnal Hukum* 1, no. 2 (May 2, 2012), <https://jurnal.uns.ac.id/yustisia/article/view/10642>.

approach has 6 approaches, however the micro approach used in this research is the Sources of Norms micro approach.

Moreover, this research also uses functional method, the functional method in legal comparative is comparing several legal systems on several countries. Functional method is a way to observe the problems practically to resolve conflicts of interest in different societies on legal systems by identifying different rules or concepts as a reference for solving the same problem. It can be understood that the functional method in comparative law becomes a standard for dealing with a problem in a country by identifying the rules for solving the same problem. In connection with the problem of Indonesia's urgency in ratifying The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 to determine the status of refugees in Indonesia, the use of the functional method can be a good step to analyze based on its function, especially the legal rules of The Convention Relating to the Status. of the Refugees 1951 and the 1967 New York Protocol in countries that have ratified the 1951 Refugees Convention and the 1967 New York Protocol.

RESULTS AND DISCUSSION

Basically, the asylum seekers leave their home countries to get refugee status which divided into 2 types: Refugees due to natural disasters (Natural Disasters), this is based geographically in a country that is experiencing a very severe natural disaster and requires protection from other countries and refugees. Due to Man Made Disasters, in general, displacement is caused by man-made events that are felt by someone who has reasons for race, religion, nationality, membership in certain social groups or political opinions that are outside their country of citizenship and do not ask for protection from their country of origin. and does not relate to returning to the country of origin for these reasons.⁴

Based on its geographical location, Indonesia is located between the continents of Asia and the continents of Australia and is adjacent to the Pacific Ocean and Indian Ocean. It can be said that Indonesia is in a strategic position for the movement and transit of international refugees from the Asian continent, most of whom go to the Australian continent as the main destination for asylum seekers. In the process of seeking protection in these other countries, refugees are entitled to protection from the host country. Indonesia is one of the countries that have to deal with the problems of foreign asylum seekers and refugees who enter and live in the territory of Indonesia. Although not a destination country, with the consequence of its geographical location, the country of Indonesia is the last

⁴ Ibid.

stopover for the waves of asylum seekers and refugees to their destination countries.⁵

Efforts to provide protection to asylum seekers who stop in Indonesia have become a problem which until now has not given asylum seekers status as refugees as a form of protection based on international law, this is because Indonesia has not ratified The Convention Relating to The Status of The Refugees 1951 and Protocol New York 1967 on international refugees. With or not ratifying the 1951 Convention and the 1967 Protocol, of course, Indonesia does not have the authority to grant refugee status because the granting of status is in the hands of UNHCR, this is a legal consequence and the consequences that are carried out by Indonesia when it does not ratify the 1951 Convention and the 1967 Protocol.

In addition, although Indonesia has not ratified the Convention Relating to The Status of The Refugees 1951 and the New York Protocol 1967 concerning international refugees, in fact asylum seekers continue to arrive in Indonesia considering Indonesia's strategic geographical location to stop in Indonesia. However, it should be understood that based on Human Rights, Indonesia must comply with the Non-Refoulment Principle where the Non-Refoulment Principle is a state principle that is not justified when expelling or repatriating asylum seekers and refugees and Indonesia must consider human rights which prohibit expulsion and are obliged to not to return or extradite a person to a country where that person's life or safety is seriously in danger.⁶

If you consider the urgency or unification for Indonesia to ratify the Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 concerning International Refugees in Indonesian national law, it is very important considering that Indonesia is a state of law, which is the characteristics of a state of law such following below:

1. The existence of recognition and protection of human rights,
2. The existence of a judicial institution based on equality before the law,
3. The administration of the state is based on the rule of law.

Based on the characteristics of rule of law, Indonesia should carry out the mandate of the Universal Declaration of Human Rights, known as customary international law to provide protection to asylum seekers and refugees to obtain status and protection that is definitely considered from the aspect of human rights.⁷

⁵ Yusnarida Afriandi, Fadli & Eka Nizmi, "Kepentingan Indonesia Belum Meratifikasi Konvensi 1951 Dan Protokol 1967 Mengenai Pengungsi Internasional Dan Pencari Suaka," *Jurnal Ilmu Hubungan Internasional* 5, no. 2 (2014), <https://transnasional.ejournal.unri.ac.id/index.php/JTS/article/view/2325/2286>.

⁶ J.M. Atik Krustiyati, "Kebijakan Penanganan Pengungsi Di Indonesia: Kajian Dari Konvensi Pengungsi 1951 Dan Protokol 1967," *Law Review* 12, no. 2 (2012): 171–192, [http://repository.ubaya.ac.id/3344/7/Atik Krustiyati_Kebijakan Penanganan Pengungsi_2012.pdf](http://repository.ubaya.ac.id/3344/7/Atik%20Krustiyati_Kebijakan%20Penanganan%20Pengungsi_2012.pdf).

⁷ Dewa Gede Sudika Mangku, *Pengantar Hukum Internasional*, ed. Ni Putu Rai Yulianti, 1st ed. (Klaten: Lakeisha, 2021).

The efforts made by the current Indonesian government, although not yet a member state of the 1951 Refugee Convention and the 1967 protocol, still consider the basic principles of the 1951 Refugee Convention and the 1967 protocol, namely not to return (nonrefoulement), not to expel (no expulsion), not to differentiate (non-discriminatory). In addition, the Indonesian government issued a rule of law through Presidential Decree number 125/2016 concerning on Refugees from Overseas. However, Presidential Decree Number 125 of 2016 concerning Refugees from Overseas only provides technical directions to handle it, it cannot provide refugee status to asylum seekers considering that Indonesia has not ratified the 1951 Refugee Convention and the 1967 protocol, and the authority to grant this status is still with UNHCR as the United Nations High Commissioner in terms of international refugees.

Negative impact of Indonesia not ratifying the 1951 Refugee Convention and the 1967 protocol, especially with regard to providing certainty of refugee status to asylum seekers is that in the event of an international refugee flow there are several asylum seekers who are ridden by other interests or have a criminal record in their country of origin which will have an impact on stability and Indonesian security. In addition, to ratify the 1951 Refugee Convention and the 1967 protocol to prevent refugees from committing criminal acts from their country of origin, for example cases of human trafficking, narcotics, war crimes, or other crimes in order to avoid extradition.

Furthermore, to avoid this negative impact does not occur in Indonesia, there is a need for unification and ratification of Indonesian national law to determine refugee status for asylum seekers by considering the negative impacts that arise and guaranteeing human rights as a country that ratifies the Convention on Human Rights. Because of this negative impact, Indonesia can refuse asylum seekers who are felt based on their life records have committed a national or international crime who are staying in Indonesia in order to get protection from the crimes they have committed. Furthermore, to grant the refugee status of asylum seekers that Indonesia determines itself can provide a positive contribution to the state budget considering that if Indonesia has not ratified the 1951 Refugee Convention and the 1967 New York Protocol on international refugees, the Indonesian government will bear operational costs by reducing the APBN and APBD allocated for refugees.

Furthermore, there are other positive impacts if Indonesia ratifies the 1951 Refugee Convention and the 1967 New York Protocol on international refugees, Indonesia will receive international assistance and cooperation related to strengthening national capacity in handling refugees. This can make good international cooperation to encourage a comprehensive resolution of refugee problems. Then from here, the burden of at least the problems of asylum seekers, especially to get refugee status, is guaranteed to be better and supported by the international community working on refugee issues. In addition, with international

cooperation with the ratifying members of the convention, Indonesia can determine optional policies that can be taken by Indonesia to accept or reject refugee status from asylum seekers.

Indonesia's consideration of granting refugee status by ratifying the Unification of the Convention Relating to the Status of the Refugees 1951 and 1967 New York Protocol on International Refugees in national law is urgently needed in order to determine the direction of policy and determination of refugee status in Indonesia more clearly in the future. Besides that, it also gives Indonesia space in determining the classification of refugees to obtain their refugee status and holds international cooperation between countries that have ratified the Convention Relating to the Status of the Refugees 1951 and the 1967 New York Protocol on International Refugees.

The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 are sources of international law in the form of Hard Law and Soft Law where these legal sources serve as a reference for resolving refugee problems. It should be understood that although The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 can become an international custom, which means that all countries must respect this convention, but by sticking to the principles of this convention, namely: non-refoulement, do not expel (no expulsion), do not distinguish (non-discrimination).⁸

However, customary international law is not a solution to solving problems regarding refugee status in Indonesia, given that the granting of refugee status can only be granted by a country that has ratified The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 so that the need for unification or adoption into law is necessary. Indonesia's national government to enforce the convention. With Indonesia ratifying The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967, Indonesia can sort out who is included in the definition of a refugee and not just anyone who enters Indonesia. With regard to ratification, of course, efforts must be made by the Indonesian government to transform it and make it into national law. This is based on the provisions of Article 11 of Republic Indonesia 1945 Constitution which explains that "President with approval House of Representatives declares war, makes peace and treaties with other countries" can be interpreted that the application of legal and applicable sources of international law is through the unification of international treaties. In the Indonesian constitution, it is not clear whether Indonesia adheres to dualism or monism, which is also clearly seen based on the continuation of Article 11 of the 1945 Constitution of the Republic of

⁸ Seline Trevisanut, "The Principle of Non-Refoulement and the De-Territorialization of Border Control at Sea," *Leiden Journal of International Law* (2013), https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2341012_code1386848.pdf?abstractid=2341012&mirid=1.

Indonesia concerning international agreements, namely Law Number 24 of 2000 concerning International Agreements.⁹

However, based on article 9 Paragraph (2) of Constitution Number 24/ 2000 concerning International Agreements which states that the Ratification of international agreements by the Government of the Republic of Indonesia is carried out as long as required by the international agreement and the Ratification of international agreements as referred to is carried out by Law or Presidential Decree. This means that in Indonesian national law, international law can be said to be legally binding if it has been ratified or unified into Indonesian national law if it has been adopted into national law, not as customary international law, considering that Indonesia, both constitutionally and the applicable law, has not clearly provided the position and the position of customary international law as a recognized source of law if it is not ratified and unified into Indonesian national law.¹⁰

The importance of unification or ratification of The Convention Relating to the Status of the Refugees 1951 and the New York Protocol of 1967 concerning refugees to Indonesian national law in order to give status to asylum seekers to become refugees is said to be legally binding and also aims to provide the maximum possible protection to asylum seekers and refugees. refugees in Indonesia and knowing the identities of refugees and asylum seekers so that it can be seen whether the asylum seekers really are people who deserve to be given refugee status and have no bad intentions that can disrupt national security stability.¹¹

If it analyzed based on a micro approach that focuses on Sources of Law (Sources of Norms), it can be analyzed that the granting of refugee status in Indonesia is urgent because the granting of status to refugees can only be granted if they have ratified the Convention Relating to the Status of the Refugees 1951. and the 1967 New York Protocol, of course, Indonesia has not been able to grant refugee status to asylum seekers and can have a negative effect on Indonesia as a sovereign country because on one hand Indonesia must not violate the principles of this convention, namely: non-refoulement, do not expel (no expulsion), do not differentiate (nondiscrimination) and on the other hand Indonesia is faced with the threat of asylum seekers who at times may be one of them aiming not as a refugee but as espionage from other countries or people who have committed criminal acts. national or transnationals who fled to Indonesia.

One of the countries that have ratified the 1951 Refugees Convention and the 1967 New York Protocol is Australia, where Australia has accommodated

⁹ Damos Dumoli Agusman, *Hukum Perjanjian Internasional : Kajian Teori Dan Praktik Indonesia* (Bandung: Refika Aditama, 2014).

¹⁰ Ibid.

¹¹ Krustiyati, "Kebijakan Penanganan Pengungsi Di Indonesia: Kajian Dari Konvensi Pengungsi 1951 Dan Protokol 1967."

more than 700,000 people during the second world war and the number is increasing every year. Even the number of refugee arrivals to Australia has an indicator value of 83.46% per year which means that Australia is a country that contributes greatly to providing protection for refugees who feel threatened by their country of origin. The increasing number of refugees who continue to arrive in Australia has made Australia establish a policy to determine whether the asylum seeker is really the person seeking protection regarding issues of race, religion, nationality, membership in a particular social group or political opinion in their country of origin and not illegal immigrants or illegal immigrants. persons who have committed crimes who have fled in cases of national crimes or war crimes. In addition, Australia provides determination, rights and refugee status to asylum seekers as a form of Australia's compliance with the 1951 Refugees Convention and the 1967 New York Protocol.

Australia as a country that has ratified The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 has become a favorite country for asylum seekers because Australia is one of the developed countries that can provide protection and extermination of life for refugees so that their rights are protected. get by refugees can be realized properly and legally Australia becomes a state party which means Australia can grant refugee status to asylum seekers. However, this process also needs to go through screening and data collection of the names of potential refugees, because in a certain procedure Australia wants to give that status really deserves to get status and anticipates that they are not criminals from other countries who ask for protection or illegal immigrants who want to find work without clear status and documents.

Australia as a country that has ratified The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 of course applies various articles that have been regulated in the convention where the articles in the convention focus on human rights. The rights obtained by refugees in Australia are: the right to live, the right to education, the right to work and wages, the right to refugee status and citizenship, the right to an identity and marriage registration, birth and death, the right to obtain travel documents and refugee and resettlement passports and so on. Based on The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 refugees in Australia also get proof of identity and status from Australia as a receiving country, which means Australia can provide a policy on these refugees. In addition, the positive thing about granting rights to refugees is a good faith made by Austria to respect human rights principles, namely not to return (nonrefoulment), not to expel (no expulsion), not to differentiate (no discrimination).

The Australian Government as a party to The Convention Relating to the Status of the Refugees 1951 and the 1967 New York Protocol certainly does not remain silent and accepts asylum seekers for granted, but the Australian Government provides conditions for becoming refugees, this is done by the

Australian Government to ensure that asylum seekers are not someone who commits a common crime who only flees to ask for protection, someone who commits a crime against humanity, someone who commits war crimes, someone who commits a crime against peace (crimes against peace). The actions taken by the Australian Government are of course recognized by international law, especially those carried out for reasons of national security and sovereignty.

Australian government has the right to determine eligibility for refugees by registering and selecting the eligibility of asylum seekers who enter Australia. Australia. Under international law, the actions taken are allowed because the actions taken by Australia are a step of firmness and consistency by the Australian government in dealing with refugees by balancing human rights and the protection of their own citizens.

Various efforts by the Australian government to determine eligibility (Eligibility Determination) so that those who come to Australia are not people who have committed national and international crimes who just want not to be held accountable for their actions and avoid illegal immigrants whose status only wants to find work not for special reasons in The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967. Thus, the efforts made by the Australian government by issuing legal regulations, namely the Migration Act and Regulation and Mandatory Detention Legislation as a form of firmness by the Australian government to see whether asylum seekers who come to Australia are really people who deserve to be granted refugee status.

The Migration Act And Regulation and Mandatory Detention Legislation are the legal basis for the Australian Government to establish various Border Protection rules by establishing DIAC (The Department of Immigration And Citizenship) to solve the problem of Illegal Asylum that wants to disrupt Australia's security and form an Expert Panel on Asylum Seeker which aims to conduct cooperation between other countries that can accommodate one another and provide legal certainty for refugees if asylum seekers who according to Australia are not refugees are not qualified as refugees. It can be interpreted that the issue of reporting refugee status in Australia is more clear in addition to emphasizing human rights principles by granting refugee status to asylum seekers, but on the other hand the Australian government makes national legal rules as a form of The Convention Relating to the Status of the Refugees 1951 and the New York Protocol. 1967.

If it compared with Indonesia, Indonesia has not ratified The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 so that Indonesia has not been able to grant refugee status to asylum seekers and granting refugee status requires a long process. It is necessary to remember that because Indonesia has not become a party to The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967, the one who can determine the status of refugees is the United Nations High Commissioner for Refugees

(UNHCR) as a special institution tasked with finding the recipient country's location and granting it refugee status. The granting of refugee status begins with the registration or registration of asylum seekers after which the asylum seekers will be interviewed to find out how far the refugees feel and the truth of the data and which country they are going to. If the interview has been completed, then the United Nations High Commissioner for Refugees (UNHCR) will determine whether the refugees are eligible or not to become refugees and provide information on whether the asylum seeker's application to the country of destination is accepted or rejected. other countries that can accommodate themselves so that their rights can be fulfilled.

However, the process carried out by the United Nations High Commissioner for Refugees (UNHCR) to find countries that are willing to accept it because it takes time for the United Nations High Commissioner for Refugees (UNHCR), not to mention if the country of destination for asylum seekers rejects it. Therefore, this is a good step for Indonesia to ratify or unify The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 and become a state party. It is important for Indonesia to do this to provide full protection for asylum seekers by considering human rights. In addition, granting status to asylum seekers can make it easier for Indonesia to filter asylum seekers who come to Indonesia so that asylum seekers who come to Indonesia are not someone who has committed national and international crimes who do not want to be held accountable for their actions and avoid illegal immigrants coming to look for them. work not for special reasons in The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967. In addition, when compared to Australia, Australia can be more assertive in providing regulations regarding restrictions on refugees who come with the intention of damaging security and defense. It is urgent because Indonesia has not ratified the convention and the data is still being provided to the United Nations High Commissioner for Refugees (UNHCR), this makes Indonesia unable to go further in regulating Indonesia's rights in maintaining sovereignty or further efforts to protect asylum seekers coming to Indonesia. It is clear that the efforts and legal rules made by Indonesia are only basic principles which legally constitute customary international law and do not go further to resolve the problems of asylum seekers in Indonesia who come continuously without any clear acknowledgment from the authorities. Government of Indonesia to determine refugee status for asylum seekers.

CONCLUSION

If Indonesia ratifies the conventions The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 then Indonesia will be able to filter the actual asylum seekers and be able to distinguish which asylum seekers are actually criminals and just want to hide from punishment for crimes which he

had already done by fleeing to another country. Therefore, there is an urgency so that Indonesia can immediately ratify The Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 so that Indonesia can register and accept refugees who will be accepted by Indonesia as a form of Indonesia's concern for human rights. This is because as long as Indonesia has not ratified the Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967, Indonesia cannot know the extent to which the reason the refugees fled from their country because this stage depends on the United Nations High Commissioner for Refugees. (UNHCR) to determine refugee status and find a recipient country and can take a very long time, causing uncertainty about the fate of asylum seekers who really need protection from Indonesia but Indonesia is not a party state.

The benefits of Indonesia on ratifying the Convention Relating to the Status of the Refugees 1951 and the New York Protocol 1967 the determination of refugee status will be fully transferred to Indonesia's rights without being dependent on the United Nations High Commissioner for Refugees (UNHCR) as a United Nations organ specifically to deal with refugees. Therefore, Indonesia as a sovereign country can determine what rights should be given to refugees and what obligations refugees must comply with so that the policies issued by the Indonesian government become more extensive and binding where the policy can create a program or procedure for accepting asylum seekers. legally and not illegally as a form of Indonesia, it is necessary with refugees by prioritizing human rights and not overriding state sovereignty.

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