

# The Human Rights Protection for International Refugees in Indonesia

Arfah Tjolleng\* Alma Manuputty Aswanto Muhammad Ashri  
Graduate School, Hasanuddin University, South Sulawesi, Indonesia

## Abstract

The refugees in various parts of the world are victims of conflicts in their country and they are in a weak position both economically and weakly from the juridical aspect. The research is a normative legal research, and it is classified into a descriptive research. The results shows that the non-refoulement principle is a basic aspect of refugee law and has been developed to be the norm of jus cogens and the international customary law. However, normatively, the legal instruments of refugees have been owned by Indonesia; just the handling of refugees is still not maximized. Indonesia is bound by the principle of non-refoulement because in addition to being preemptory norm or jus cogens and international customary law, the principle of non-refoulement has become the norm of ergo omnes, as well as Indonesia has ratified the Convention of Anti-Torture, IV Geneva Convention and the International Covenant on Civil Rights and Politics, all of which contain the consequences that Indonesia adhering to the principle of non-refoulement. Therefore, Indonesia should ratify the 1951 Convention on the status of refugees so that the handling of illegal immigrants can be resolved quickly.

**Keywords:** General Election, Election System, Indigenous Peoples, Noken

## 1. Introduction

Refugees are a group of people who are forced to leave their homes, friends and relatives as causes of the fear that threatens their personal safety and family lives.<sup>1</sup> This is due to the increasing intensity of armed conflict in the early 20<sup>th</sup> century in several countries in various regions of the world causing massive refugee. Refugees identified as a classic problem that in the civilization of mankind as a result of fear that is very threatening to their safety. The threat can be caused by natural disaster or because disaster as a domestic problem of a country, so it does not attract much attention of a country. Then the problem of refugees extends to the question of countries in certain regions only and the last is considered a common problem of mankind.<sup>2</sup>

The majorities of refugees are very poor and cannot earn their livelihood and improve their lives without any protection from the country they are in. Their departure was also forced, and consequently they did not take the much needed travel documents as they walked across the border of their country to go to other countries. This very difficult and alarming situation inspired the definition of refugees.<sup>3</sup>

The vulnerabilities of social, economic and political in countries<sup>4</sup> in certain regions such as Africa, Latin America or Southeast Asia, particularly in the Indo-China region, lead to armed, especially non-international. Boat man is a form of early 20<sup>th</sup> century refugees born in Southeast Asia region.<sup>5</sup> These refugees will be interest when it associated to the human rights because they are a group of people who are vulnerable to inhumane treatment both in their home country and country where they are displaced. They also have the same right to be treated equally as other citizens, because it associated to the issue of refugees and human rights, there are several international human rights instruments that can be used as a basis for protection against the refugees.<sup>6</sup> The Universal Declaration of Human Rights on 10 December 1948 has organized several articles relating to refugees.<sup>7</sup>

<sup>1</sup> Usmawadi. (2003). *Pengantar Hukum Pengungsi Internasional (Hukum Internasional dan Prinsip-Prinsip Perlindungan Internasional)*, The Council of United Nations of Refugees Affairs Regional Representatives of Jakarta, Indonesia, UNHCR Representatives Indonesia, page 115.

<sup>2</sup> World War I and II are examples of the results of a civilization of mankind, which has caused misery to the mankind, the great exodus of populations crossing the territory of a country has inspired the need for international regulation. The 1951 Convention on Refugee Status and the 1967 Protocol on the Status of Refugees were one concerns of the international community, especially in Europe at the time to the resolution of refugee problems.

<sup>3</sup> Joly, D. (1966). *Heaven or Hell: Asylum Policies and Refugee in Europe*, London: Mac Millan Press, [www.elsam.or.id/di](http://www.elsam.or.id/di) accessed on 5 January 2015

<sup>4</sup> Irwansyah. (2017). "Research-Based Environmental Law: The Debate Between Ecology Versus Development", *Sriwijaya Law Review 1* (1), 44-66

<sup>5</sup> *Office for the Coordination of Humanitarian Affairs* (OCHA) (Kantor Perserikatan Bangsa-Bangsa Untuk Koordinasi Urusan Kemanusiaan).

<sup>6</sup> The instrument of international human rights is the UNs Charter, *Universal Declaration of Human Right 1948*, *International Covenant on Civil and Political Rights (ICCPR)*, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*

<sup>7</sup> See Articles 9, 13, and 14 the Universal Declaration of Human Right 1948

In the aspect of religious, human rights is a gift of God as a consequence of human existence and human being as God's creation. Rights are natural, in the sense that nature creates and inspires reason and knowledge, and rights are owned by human beings in a state of nature and then brought into society. In some cases of refugees as we know in religious teachings, such as the Prophet Musa, the hijrah of Prophet Ibrahim, Prophet Muhammad SAW and his companions from Mekkah to Medina and some places other than to spread Islam also because of the insecurity to remain in where they come from.<sup>1</sup>

In the national context, the Indonesia's experience in dealing with refugee problems began with the arrival of Vietnamese boatmen around 1976, and the territory of Timor-Timor that chose independence from Indonesia. On 9 July 2011 a Malaysian flagged ship Alicia GT 200 carrying 87 citizens of Sri Lanka captured in the waters of Galang Baru Batam with destination to New Zealand. The authorities considered the vessel to violate the territorial waters of Indonesia.<sup>2</sup>

So far, the government of Indonesia has not had a national mechanism to deal with refugees and asylum seekers. At the field level, our government officials often experience confusion in dealing with refugees and asylum seekers whose numbers continue to increase from year to year. They are seen as illegal immigrants who violate Indonesian immigration law. They were detained by the Indonesian immigration authorities at the Immigration Detention House (*Rumah Detensi Imigrasi (Rudenim)*) that spread over 13 locations.

The government of Indonesia cannot determine its own status because the Indonesia is not a party to sign and ratify the 1951 Convention or 1967 Protocol on the status of refugees. This situation becomes complicated because UNHCRs status determination can take a very long time. This has impacted the burden on the State budget to meet the basic needs of refugees and asylum seekers. By the ratification of these human rights instruments, the issues of human rights are not subject to the domestic jurisdiction of a country. Although international treaty law had provided some solutions such as the use of "reservation".<sup>3</sup>

The International Refugee Law is still newly which is marked by the ratification of *the 1951 Convention Relating to the Status of Refugees* after the First World War. The development of *Refugee Law* increasingly exists with the universal scope of the ratification of *the 1967 Protocol Relating to the Status of Refugees*. It coupled with the desire of the international community in certain parts of the world to regulate the problem of refugees.

As described on above background, the main issue to be identified of the protection of human rights to international refugees is the tendency that Indonesia as a non-participant country to the 1951 Convention and its 1967 Protocol is very cautious in providing protection to refugees. Sometimes their arrival is also infiltrated by human traffickers, weapons and drugs, besides Indonesia as an international community must respect the principles of human rights by becoming party and ratify the International Refugees Convention so that Human Rights Protection becomes the main issue in this research, because the refugees in various parts of the world are victims of conflicts in their country and they are in a weak position both economically and weakly from the juridical aspect, raising concerns for national and international authorities to provide the necessary protection by the refugees who have to leave their country as causes of widespread and systemic violence.

## 2. Method of Research

The research is a normative legal research, and it is classified into descriptive research aims to describe a reality in the life of a nation and a state, and to identify problems and to justify the situation, in this case the human rights protection for international refugees. In accordance with the use of secondary data in this research, the data collection is done by collecting, reviewing and processing systematically the literature materials and related documents. Secondary data both concerning primary, secondary and tertiary legal materials are derived from literature materials, by considering the principle of updating and relevance.

## 3. The Protection of Human Rights for Refugees: Between Ideality and Reality

In principle, the protection of refugees is the responsibility of every country.<sup>4</sup> Refugees are an issue that always arises in every human development. It can come from a fear that is very threatening to their safety.<sup>5</sup>

<sup>1</sup> As mentioned in the verse below, although the Qur'an more emphasis on "people who need help. Surah Ibrahim (XIV) verse 35 and Surah Al-Taubah (IX) verse 6

<sup>2</sup> Rindang Napitupulu (Director of Cross-Border and Immigration Foreign Affairs), A Perspective of Refugee in Indonesia, Lecture in Refugee Status Determination Event, Bali, 29-01 December 2001.

<sup>3</sup> Reservation (requirement) is a one-sided statement filed by a country at the time of expressing its consent to be bound by a treaty, but not to be bound by certain articles of the treaty. Parthiana, I.W. (2003). *Pengantar Hukum Internasional*, Bandung: Mandar Maju, p. 229

<sup>4</sup> Riyanto, S. (2004). *The Urgency of Refugee Legislation in Indonesia and Prevent Obstacles*, Indonesian Journal of International Law, 2 (1).

<sup>5</sup> Isra, S., Ferdi, F., & Tegnan, H. (2017). Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia. *Hasanuddin Law Review*, 3(2), 117-140. doi: <http://dx.doi.org/10.20956/halrev.v3i2.1081>

International refugee law is designed only to provide a back-up source of protection to seriously at-risk persons. Its purpose is not to displace the primary rule that individuals should look to their state of nationality for protection, but simply to provide a safety net in the event a state fails to meet its basic protective responsibilities.<sup>1</sup>

Have to recognize that globally, the issues of refugee are not only individual but also international between the home country and the host country or the asylum provider. Therefore, a law is required not only with regard to the legal status and protection of refugees, but covers the whole law which includes the collective solutions and responsibilities of all countries.

In the Islamic law' perspective, in fact it has been noted the Medinas' Charter compiled by the State of Islam in the time of the Prophet Muhammad SAW contained the protection of human rights as it is known in modern times. The protection of human rights in the Qur'an is not only requires that people need to communicate with each other, but also affirm that all human beings are independent and equal.<sup>2</sup>

يَتَأْتِيهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۗ إِنَّ  
أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَىٰكُمْ ۗ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ ﴿١٣٠﴾

*“O mankind, in fact we created you from a man and a woman, and made you nation and tribe so that you may know each other. Verily the most honorable among you by Allah is the most pious among you. Allah is knower and recognize.”*

Human right for refugees is a gift of God as a consequence of human existence and human being as God's creation. Rights are natural, in the sense that nature creates and inspires reason and knowledge, and rights are owned by human beings in a state of nature and then brought into society.

In the context of national law, Indonesia became one destination of Rohingya' peoples because Indonesia is a predominantly Moslem country expected to be a safe place for Rohingyas. The spread of Rohingya's people in Indonesia is not directly through Myanmar to Indonesia. Some of them have been living in Malaysia for years, but because they cannot get an education in Malaysia, they move to Indonesia in the hope of getting better education and life. There are also some who accidentally stranded in Indonesia although their main purpose for sailing is Malaysia or Australia. In addition, many of them are lied by *Tekong* that they will be delivered to Australia, but only arrived in Indonesia.<sup>3</sup>

Not many Indonesians know about Rohingya ethnic. Let understand the case, the term “Rohingya” also feels strange to the ears. But the last few years, the word “Rohingya” suddenly crowded the media in Indonesia. The trigger is a sad news about violence and the genocide of Rohingya Muslims in Arakan Rakhine, Myanmar. Precisely, at the beginning of June 2012 when there was a conflict between the non-Muslim Arakanese and the Muslim Arakanese (Rohingya). This conflict as result of information that there was rape of non-Muslim women by Muslim men in Arakan and continuing with retaliation by non-Muslims, ten Rohingya men were massacred while on a bus in Thandwe to Yangon, then conflict between the two groups was inevitable.

In the spreading of their arrival in Indonesia, Rohingya peoples were stranded in several parts of Indonesia either because they were stranded and then captured or deliberately surrendered to Indonesian immigration authorities whose territories were geographically close to Malaysia or Myanmar. The hungry Rohingya condition did make them deliberately surrender themselves to the Immigration authorities in the hope of getting food.

In every conflict that occurs in the countries of the world, women and children are always victims. Physical limitations sometimes become one of the obstacles, so they cannot resist the oppression that is not addressed to them. One of them is a woman and a child of Rohingya. Seen from its history, Rohingya is an ethnic who has long been a target by his own country. The country with a strong desire to make various efforts to clean up Myanmar from Rohingya.

Based on data obtained by the PIARA (*Pusat Informasi dan Advokasi Rohingya Arakan*) team from a visit to the Rohingya shelter a total of 603 Rohingya refugees were stranded in Indonesia in some areas. Below is a comparison of the numbers between Rohingya men, women and children in Indonesia.

<sup>1</sup> Hathaway, J.C. (1999). *Crisis in International Law*. *Indian Journal of International Law*, 39. Michigan: Michigan Law School.

<sup>2</sup> Al-Qur'an Surat Al- Hujurat (49) verse 13.

<sup>3</sup> Aryanto, H. (2013). *Menjumpai Rohingya Di Bumi Indonesia*, PAHAM (Pusat Advokasi Hukum dan Hak Asasi Manusia), Jakarta, page 21

**Table 1.** Comparison of Rohingya refugees in several regions in Indonesia

No.	Region	Men	Women	Children	Amount
1	Rudenim	31	5	9	45
2	Rudenim Tanjung Pinang (Batam, Serang, louksemawe)	69		4	73
3	Langsa	39	10	14	63
4	Louksemawe 99	99	6	14	121
5	Sabang (2009)				193
6	Idi Rauyek (2009)				173
7	Pulau Aceh	64	5	5	74
	<b>Total</b>	<b>402</b>	<b>26</b>	<b>46</b>	<b>633</b>

Source: Primary data, 2017 (*edited*)

Table 1 indicate that the ratio of children with displaced adults is 46:402 or equal to 1:10 (10%), while the ratio of women and men is 26:402 (0.5%). Although their numbers do not reach nearly half of men, but in terms of emotional maturity and readiness in facing the life, children should not be victimized and women also need more preparation to be ready to live in refuges or shelters that are sometimes unfriendly to women.

Children and women are the subject of law that has the same rights as human beings in general. In refugees or shelters, they do not get these rights because of conditions that do not allow them to get them. For children, what is thought of is how to live comfortably with various activities that can be played happily with their small friends. Go to school in the morning by their parents replaced by gunshots or riots outside the house accompanied by sobs that sounded faint from a distance.

Different with women, the limitations of place cause them to join other refugees, whereas as a woman especially Moslem, they have *aurat* which is forbidden in their religion to be shown to other men. In addition, the need of women for cleanliness and comfortable living will be more urgent if they are pregnant or breastfeeding. This affects the condition of children born later. In addition, the emotion laid out conditions that do not support in the end cause women sometimes cannot educate children well that ultimately produce an individualized and uneducated generation.

The condition of the women and children of Rohingyas in the refuge is in fact becoming a trigger for the countries of the world that need more effort to find a solution to this problem. They are the assets of a civilization because of its presence to be a determinant of whether or not a nation. This means that responsibility for them is not only for the country in which they are now, but for all countries that claim to uphold human rights especially from the UNs Security Council to pressure the Government of Myanmar to hasten peace and acknowledge their existence.

The problem of Rohingyas is the problem of women and children, meaning that the completion of Rohingyas becomes a new hope for us for a safe life and apart from the shackles of fear and threats that negate peace. So, after the many years of conflict that have experienced by Rohingyas, a rainbow of hope will come as a reward for the patience and sacrifice that has been offered up.

#### 4. The Application of Human Rights Protection for International Refugees

Nowadays, the crisis of refugee has become the center of international public attention, especially the refugees that exist is one of the consequences of the denial of humanity basic values in *the Universal Declaration of Human Rights* (UDHR). As has been mentioned by UDHR that every individual has attached to him/her a right, in which they can express everything that exists without any distinction from race, sex, language, religion, political-view, and nationality status by remain pay attention to the provisions under which state jurisdiction applies and those rights are recognized by the provisions of international law.<sup>1</sup>

The 1951 Convention stipulates the right, fundamental freedoms, obligations and protection of refugees.<sup>2</sup> In addition, there are principles of protection such as entry into the country territory without official documents such as passports and visas.<sup>3</sup> The basis of government policies in dealing with illegal immigrants is due to the fact that illegal immigrants nowadays, illegal immigrants are a sensitive, multidimensional, and politicized issue. Indonesia does not accommodate the presence of illegal immigrants and does not prepare to accommodate or provide leeway as accommodator for illegal immigrants.

The situation of a country that is far from the ideal impression makes people living in countries with such political and economic conditions, decided to make efforts to get out of their home country. This action in general and in accordance with the provisions of international law is quite possible to do, since every individual

<sup>1</sup> *Universal Declaration of Human Rights* Art. 2

<sup>2</sup> Regional Office of the UN High Commissioner for Refugees, 1999, *Conventions and Protocols on the Status of Refugees*, Jakarta, pages 20-22

<sup>3</sup> Starke, J.G. (1989). *Pengantar Hukum Internasional*, 9<sup>th</sup> edition, Aksara Persada Indonesia, Jakarta, page 349

has the right and freedom to be able to determine the livelihood as long as it does not violate the legal interests of other individuals and in accordance with applicable international general rules. In fact people in a country attach to them a right and the consequences by which they may choose to stay or even move from their home country to another country.<sup>1</sup>

In UNs' Charter are explicitly mentioned the objectives that must be socialized related to the vision of the United Nations as the parent of international organizations of the world, one of which is to foster international cooperation related to the resolution of international issues on the economic, social, cultural and humanitarian sectors as well as improvement awareness of respect for human rights values as the main foundation without distinction of sex, language and religion.<sup>2</sup>

The United Nations further clarifies the importance of cooperation among member states by orienting to several objectives, includes (i) the development of a high standard of decent living, the provision of employment, as well as the improvement of economic and social conditions, (ii) the provision of solutions to issues of international economy, health, and socio-cultural cooperation, and (iii) respect and adherence to human rights and fundamental freedoms regardless of race, gender, language and religion.

In *the International Covenant on Civil and Political Rights* (ICCPR) is implicitly mentioned that every individual has the freedom to not be subjected to inhumane abuses, this is the basis for citizens who undergo the execution of the government of a country so that they are given the right to leave their country.<sup>3</sup> The effect of the deprivation of basic rights by a power will have impact widely on the fulfillment of the individual's basic needs in his/her life, not only on the level of fate or freedom of opinion in public, but at the level of self-defense not to be cruelly treated by a power. The denial of these aspects of respect for human values has resulted in the emergence of a refugee crisis in various parts of the world.

Government policy concerning foreigners is called as immigration policy.<sup>4</sup> Under the policy, the government sets certain criteria on requirements and how foreigners can be granted visas and residence permits. In determining or providing refugee status it is necessary a very clear policy and procedure in the receiving State, where the status of the refugees provided will actually provide the safety of the refugees as *legitimate migrants*.

Ultimately, refugee protection is a shared responsibility. Only by cooperation and complementing one power with another, each country and international organization can provide the effective protection that the refugees expect. When a person enters another country and appeals to the ruler of that country to provide shelter, they are referred to as an *asylum seeker*. Asylum is the preservation of protection within a territory of the country to persons from other countries who come to the country concerned. As to avoid any pursuit or major danger, asylum covers various aspects including the principle of non-refoulement, permission to remain in the territory of the country of asylum and treatment according to general humanitarian standards.<sup>5</sup> But getting an entry permit to the country of asylum is very difficult. They may be individually rejected on the border because they do not have complete identity documents. Officers at the corrupt border may ask for money or if woman asylum seekers are required to have sexual intercourse before admission.

Often in some countries imposed deadlines until so long in one country can then apply for asylum, if the asylum seeker cannot contact the government authorities within a certain time limit, he or she is at risk of being deported as an illegal immigrant. In order to determine whether an asylum seeker may be considered a refugee according to the 1951 refugee convention or under national/international laws concern human rights, several countries makes procedures for determining the status of refugees. Important to be noted that person can be called as refugees if the criteria according to the 1954 convention and met the national or international laws concerns the human rights. This case can occur before the formal status determined. The acknowledgment of refugee status needs to be declared. The declaration states that a person is refugee. On other hand, the person cannot to be refugee because confession, but he/she is known because he/she is a refugee.

UNHCR suggests that a government may enforce quick, flexible and liberal procedures or means because it is difficult for refugees to complete the document and prove the pursuit. Sometimes carrying out status determination procedures on behalf of the government; for example, if a country is not a member of an international refugee agency or if the government authorities request UNHCR assistance.

The procedure for determining the status of refugees whether conducted by government authorities or UNHCR, involved long interviews with prospective refugees. Detailed information was obtained during the interview, as well as information about a persons' home country, then established according to the criteria

<sup>1</sup> UDHR Art. 13 (1) All individuals have the right and freedom to physically move beyond the boundaries of state territory (2), all individuals have the right to leave the country, including their home country, and even to return to their country again.

<sup>2</sup> UN Charter Art. 1(3)

<sup>3</sup> *International Covenant on Civil and Political Rights* (ICCPR) Art. 7, UDHR Art.5

<sup>4</sup> International Law and Refugees Issues, interview with Director of Human Rights Cooperation Ir. Arry Ardanta, M.Sc, Thursday, July 2, 2015, Department of Justice and Human Rights.

<sup>5</sup> Hafid, A.S. (2004). Pengungsi dalam Rangka Kebijakan Keimigrasian Indonesia Kini dan Yang Akan Datang, *Jurnal Hukum Internasional*, 2 (1).

contained in the 1951 refugee convention. The deep fear of persecution due to the existence of tribe, religion, citizenship, members of particular or political groups<sup>1</sup>. Regional conventions or other relevant declarations (e.g the OAU convention and Cartagena declaration) and national laws of the country. If a persons' case is determined in accordance with these criteria, he/she will have evidence that he/she is a refugee legally recognized and guaranteed his/her rights as a refugee under the refugee convention and other human rights laws and agreements. The convention explicitly also explains that there is no right to get international protection as refugees.

In Indonesia, asylum seekers are placed at immigration offices or in immigration detention centers, because they are illegally admitted or asylum seekers. They were placed there until their status was decided. Detentions that may last for weeks, months or even years are often carried out by the State to direct abuse of the observed rights to the asylum system by false asylum applicants. But this may also affect the determination of actual asylum seekers (*authentic*) to get asylum in the Indonesian state. In many instances, asylum seekers do not provide information about their rights in detention, may not seek legal counsel, and are sometimes denied or given limited access to submit to the UNHCR.

The State is responsible for refugees within its territory or in their extra territorial responsibilities. States are prohibited from taking any action both judicial and administrative, forcing refugees to leave and go to border areas where there is a threat to their life.<sup>2</sup> It is not necessary for refugees to be in a country where it faces a threat to their life. Basically, in article 33 (1) mentions that the State has a responsibility to avoid situations where, as a consequence of behavior, refugees are forced to go to the border areas in which there is a threat of their life. The words "in any way" indicate that various acts and omissions intended to be covered by article 33.<sup>3</sup> Therefore, depending on the particular situation of refugees, the State may have negative or positive liabilities.

Negative liability is a liability where the State is obliged to refrain from doing anything. It includes prohibition of expulsion, deportation, extradition, or generally coercion for displacement of refugees. Positive liability refers to the obligation which the State needs to take action to prevent refugees from returning or going to the border areas where the refugees are threatened.

The importance of instruments of human rights protection and for refugees has been explicitly acknowledged by the Executive Committee<sup>4</sup> and by States Parties to the Refugees Convention and/or Protocols in their declaration as adopted in 2001 commemorating the fiftieth anniversary of the Refugees Convention.<sup>5</sup> Specific references to other restrictions on refoulement shall be made by the Executive Committee, in particular Article 3 of the Convention against Torture and Other Cruel, Inhuman and Degrading Dignity or Punishment.<sup>6</sup>

The convention mentions people who can no longer utilize the protection of their own country; they have rights and deserve international refugee protection. Consequently, a person as a refugee may, under certain circumstances, claim the rights set forth in the Refugee Convention. The prohibition of refoulement contained in the Refugees Convention is part of a series of rights specifically formulated and codified to ensure protection for those who can no longer receive protection from their own country.

The adoption of the Refugee Convention as a form of communal state responsibility has been done to fill the gap where national protection fails. Although less clear, the prohibition of refoulement from common human rights norms is equally part of the concept of asylum. Although this prohibition is not part of a series of rights that are explicitly formulated and adopted to create protected status and protection regimes for persons in need of international protection, they do not form the distinctive right of persons to be protected from resignation when they can no longer take advantage of their own state protection and require the protection of the country where

<sup>1</sup> Lauterpacht and Bethlehem, (2003). *The Scope and content of The Principle of Non Refoulement*, International Legal Standard for the Protection from Refoulement, Intersentia.

<sup>2</sup> Robinson 1953, pp. 137-138; Goodwin-Gill 1996, p. 122; Hathaway 2005, page. 319

<sup>3</sup> Hathaway 2005, page. 338

<sup>4</sup> EXCOM Conclusion No. 81 (XLVIII), 1997, para. (e); EXCOM Conclusion No. 84 (XLVIII), 1997, para. (a); EXCOM Conclusion No. 87 (L), 1999, para. (a) and (h); EXCOM Conclusion No. 95 (LIV), 2003, para. (I), in which the Executive Committee 'notes the complementary nature of international refugee and human rights law as well as the possible role of the United Nations human rights mechanisms in this area'; and EXCOM Conclusion No. 103 (LVI) 2005, preamble and paras. (c) and (m), in which the Executive Committee underlined the value of regional instruments, including the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa, the 1984 Cartagena Declaration on Refugees, and the asylum legislation adopted by the European Union. See also the EXCOM Agenda for Protection, 26 June 2002, UN doc. A/AC.96/965/Add.1, Goal 1.

<sup>5</sup> Declaration of States Parties to the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, preamble, para. 3, in which the OAU Convention Governing Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration on Refugees and the development of a common European Union asylum system are explicitly mentioned, adopted at the Ministerial Meeting of States Parties, Geneva, Switzerland, 12-13 December 2001, UN doc. HCR/MMSP/2001/09, 16 January 2002 and published in Feller, Türk & Nicholson 2003, p. 81.

<sup>6</sup> EXCOM Conclusion No. 79 (XLVII), 1996 bag j ,EXCOM Conclusion No. 81 (XLVIII), 1997, bag (i); EXCOM Conclusion No. 82 (XLVII), 1997, bag. (i); EXCOM Conclusion No. 103 (LVI), 2005.

they seek asylum. In addition to their right to be protected from resignation, they may claim rights and freedoms in the home country of asylum which they are entitled to under general human rights law.

## 5. Conclusion

The principle of non-refoulement is a basic aspect of refugee law and has been developed to be the norm of *jus cogens* and the international customary law so that this principle must remain applicable in a country where refugees seek protection, even if the state is not a ratified party of the 1951 Convention. If the country rejects to process the asylum seekers who enter their country, they can be temporarily accommodated for subsequent submission to UNHCR without harm the rights attached to them as set forth in international refugee law and human rights law. In applying an exception to the principle of non-refoulement, the state must be careful in determining whether asylum seekers entering the territory can disrupt the stability of security and public order.

In the aspect of regulation, the legal instruments of refugees have been owned by Indonesia; just the handling of refugees is still not maximized. Indonesia is bound by the principle of non-refoulement because in addition to being *preemptory norm* or *jus cogens* and international customary law, the principle of *non-refoulement* has become the norm of *ergo omnes*, as well as Indonesia has ratified the Convention of Anti-Torture, IV Geneva Convention and the International Covenant on Civil Rights and Politics, all of which contain the consequences that Indonesia adhering to the principle of non-refoulement. Therefore, Indonesia should ratify the 1951 Convention on the status of refugees so that the handling of illegal immigrants can be resolved quickly.

## References

- Aryanto, H. (2013). *Menjumpai Rohingya Di Bumi Indonesia*, PAHAM (Pusat Advokasi Hukum dan Hak Asasi Manusia), Jakarta.
- Hafid, A.S. (2004). Pengungsi dalam Rangka Kebijakan Keimigrasian Indonesia Kini dan Yang Akan Datang. *Jurnal Hukum Internasional*, 2 (1).
- Hathaway, J.C. (1999). Crisis in International Law. *Indian Journal of International Law*, 39. Michigan: Michigan Law School.
- Irwansyah. (2017). "Research-Based Environmental Law: The Debate Between Ecology Versus Development", *Sriwijaya Law Review* 1 (1), 44-66.
- Isra, S., Ferdi, F., & Tegnan, H. (2017). Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia. *Hasanuddin Law Review*, 3(2), 117-140. doi: <http://dx.doi.org/10.20956/halrev.v3i2.1081>
- Joly, D. (1966), *Heaven or Hell: Asylum Policies and Refugee in Europe*, London : Mac Millan Press, [www.elsam.or.id/di](http://www.elsam.or.id/di) accessed on 5 January 2015
- Lauterpacht and Bethlehem, (2003). *The Scope and content of The Principle of Non Refoulement*, International Legal Standard for the Protection from Refoulement, Intersentia.
- Parthiana, I.W. (2003). *Pengantar Hukum Internasional*, Bandung: Mandar Maju.
- Regional Office of the UN High Commissioner for Refugees, 1999, Conventions and Protocols on the Status of Refugees, Jakarta.
- Riyanto, S. (2004). *The Urgency of Refugee Legislation in Indonesia and Prevent Obstacles*, Indonesian Journal of International Law, 2 (1).
- Starke, J.G. (1989). *Pengantar Hukum Internasional*, 9<sup>th</sup> edition, Aksara Persada Indonesia, Jakarta.
- Usmawadi. (2003). *Pengantar Hukum Pengungsi Internasional (Hukum Internasional dan Prinsip-Prinsip Perlindungan Internasional)*, The Council of United Nations of Refugees Affairs Regional Representatives of Jakarta, Indonesia, UNHCR' Representatives Indonesia.