

Regulation of International Refugees and the Handling Model by Unhcr

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Abstract

The state has a responsibility to protect its citizens, if the government does not want or is unable to protect their citizens, these citizens can at any time experience serious violations of their rights, so that individuals are forced to leave their homes, even their families to seek safety in other countries (become an international refugee). Because clearly the government of the country of origin of the refugees no longer protects their human rights, then the international community came in to ensure that these human rights were respected. Legal arrangements use international instruments, legal arrangements using regional instruments, and legal arrangements using national instruments. In the international context it is regulated in the 1951 Refugee Status Convention and the 1967 Refugee Status Protocol. At the regional level, there is no specific regulation governing international refugees. In Indonesia, the special regulation concerning international refugees is the Presidential Regulation of the Republic of Indonesia Number 125 Year 2016 on Handling of Refugees from Abroad. Second, the model of international refugee handling by UNHCR based on the framework and objectives of the organization is asylum, non-extradition, non refoulement, non-intervention, and partnership and community service.

Keywords: regulation, international refugee law, handling models, UNHCR

I. Introduction

Every right has an obligation. Therefore, besides having human rights owned by humans, there are also obligations that must be fulfilled by every human being, namely obligations that must be carried out for the sake of carrying out or upholding human rights. In using human rights, everyone is obliged to pay attention to, respect, and respect human rights that are also owned by others, so that no human rights conflict with each other. So for the sake of balance that must be established, every human being must have a sense and act in a balanced manner between the rights he has and the obligations he must carry out as well as possible, this is not only true for fellow human beings, but also for the state besides having the rights that must be obtained from the citizens, they also have obligations that must be carried out to everyone as their citizens. Human rights and state rights along with the obligations that must be carried out by humans (both as citizens and as human beings in essence) and the country is then universally confirmed, in the international world the affirmation is known as the Universal Declaration of Human Rights.

Based on the General Declaration of Human Rights established by the General Assembly of the United Nations in Resolution Number 217 A (III) on December 10, 1948, there were several arrangements that were closely related to each other. The General Declaration of Human Rights stipulates that 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'.¹ Then 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty'.²

Arrangements in other articles in the Universal Declaration of Human Rights are regulated 'Everyone has the right to life, liberty and security of person'.³ Then 'Everyone has the right to recognition everywhere as a person before the law'.⁴ and 'All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination'.⁵ Furthermore, it is also regulated that 'No one shall be subjected to arbitrary arrest, detention or exile'.⁶ and 'Everyone has the right to seek and to enjoy in other countries asylum from persecution'.⁷

¹ see <http://www.un.org/en/documents/udhr/> as well as in the following articles in this Universal Declaration of Human Rights

² Article 2 the Universal Declaration of Human Rights

³ Article 3 the Universal Declaration of Human Rights

⁴ Article 6 the Universal Declaration of Human Rights

⁵ Article 7 the Universal Declaration of Human Rights

⁶ Article 9 the Universal Declaration of Human Rights

⁷ Article 14 point 1 the Universal Declaration of Human Rights

Every country is obliged to uphold and implement the rights owned by everyone, so that there is no reason for the state to avoid or not exercise the rights of its citizens or the rights of foreign citizens who visit or are in their country. Conversely, anyone who does not receive respect, recognition and protection of the human rights that he has can only move, the transfer of places can be from one region to another (not across national borders)¹, and can also move from one country to another. For the transfer of places that do not cross national boundaries it is commonly referred to as Internally Displaced Persons (IDPs),² while the transfer of a person from one country to another due to his lack of respect, recognition and protection of human rights is commonly referred to as a refugee (international).³

The increasing international communication and transportation networks, the easier it is for people to move between countries and continents. Almost all countries in the world encourage the arrival of international tourists for business, family or tourism purposes. Many countries also provide opportunities for non-citizens who are elected to immigrate permanently.⁴ Not only that, the transfer of someone from a country (country of origin) to another country can also be caused by other things, such as the violation of their rights in their home country, the threat of security of their lives and their families, or not being recognized by a country where he comes from, these things can happen by anyone and at any time.

No one wants him to become an international refugee (forced to become an international refugee, because of his fear that his life feels threatened, because the protection of his country no longer gets him), but it can happen at any time, because no one can guarantee that his life will be safe forever, and no one who can guarantee that his human rights will always be respected both by fellow human beings, as well as by the state (both by the country where his citizenship is listed, as well as other countries where he visits). When this happens, the person is entitled to protection, the protection is in another person or country when his human rights are violated by fellow human beings, and he is also entitled to international protection (from other countries which is not his citizenship status) when their human rights are violated by their own country.

The state has a responsibility to protect its citizens, if the government does not want or is unable to protect their citizens, these citizens can at any time experience serious violations of their rights, so that individuals are forced to leave their homes, even families to seek safety in other countries (become an international refugee). Because it is clear that the government of the country of origin of the refugees no longer protects their human rights, then the international community has entered to ensure that these human rights are respected.⁵

When talking about protecting international refugees using a historical approach, long before the Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights were made and, international instruments regarding the protection of international refugee rights were agreed upon by countries through the General Assembly of United Nations in the form of conventions referred to is the 1951 Convention Relating to the Status of Refugees,⁶ not only that, 16 (sixteen) years afterwards also made an additional protocol to complement the rules in the 1951 Refugee Convention which specifically regulates the treatment, respect, protection and fulfillment of the rights of international refugees, the protocol referred to is the 1967 Protocol Relating to the Status of Refugees.⁷ Similarly, the Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights, the 1951 Refugee Convention and the 1967 Refugee Protocol from a legal standpoint also bind countries, so that if examined according to international legal sources, the position of the convention⁸ and protocol¹ is hard law. Based on the explanation, the problems that will be examined in this

¹ In Indonesia, the transfer of places can be from one location to another, from one village to another, from one sub-district to another, from one district to another, and also from one province to another.

² IDPs are people/groups of people who are forced/forced to flee/leave their homes/where they used to live, especially as a result of/in order to avoid the impact of armed conflict, vulnerable situations characterized by widespread violence in general, violations Human rights, natural disasters, or human-caused disasters (such as fires, floods, etc.), and those that do not cross nationally recognized national borders.

³ Refugee is a person who has reasonable fear because of race, religion, nationality, membership in a particular social group or political opinion that he has, is outside his national state / former place of residence, and cannot or wants due to his fear, obtain protection from his country or return to his country. In order to maintain the consistency of writing, the next mention of the author still uses the term international refugees (so as not to obscure their meaning as refugees we usually know in Indonesian terms).

⁴ Kate Jastram and Marilyn Achiron, *Perlindungan Pengungsi, Buku Petunjuk Hukum Pengungsi Internasional Bagi Anggota Parlemen Nomor 2-2001*, Translated by Enny Soprpto and Rama Slamet, Jakarta: Komisariat Tinggi Perserikatan Bangsa-Bangsa untuk Urusan Pengungsi bekerjasama dengan Uni Antar-Parlemen, 2001, p. 46

⁵ *Ibid.*, p. 10

⁶ It was agreed at the UN General Assembly session on 28 July 1951 and listed in Resolution Number 429 (V), and came into force on 22 April 1954. Unlike the Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights, the 1951 Refugee Status Convention has not been ratified by the Government of the Republic.

⁷ This protocol was signed by the President of the UN General Assembly and the UN Secretary General on 31 January 1967 and listed in Resolution Number 2198 (XXI), and entered into force on 4 October 1967. Similar to the 1951 Refugee Convention, the 1967 Refugee Protocol has not ratified by the Government of the Republic of Indonesia.

⁸ The Convention is used as a naming for multilateral agreements involving a large number of countries as participants of the agreement, conventions generally are open to the international community to participate as parties. In addition, international legal instruments negotiated on the initiative and agreed upon through international organization forums are generally also given the name convention. Muhammad Ashri, *Hukum Perjanjian Internasional, Dari Pembentukan Hingga Akhir Berlakunya*, Makassar, Arus Timur, 2012, p. 15; The Convention also includes documents used by officials of international institutions. T. May Rudy, *Hukum Internasional 2*, Bandung: Refika Aditama, 2009, p.

paper are What are the international refugee law arrangements at the global, regional, and national levels of Indonesia? and What is the model for handling international refugees by UNHCR?

II. Research Method

The type of research used is the type of normative legal research, using a legal and conceptual approach.² Data collection techniques are conducted through library research by studying and reviewing a number of national legal rules and international agreements, textbooks, research papers, legal journals, legal dictionaries, and then analyzed descriptively.

III. Results and Discussion

A. International Refugee Law Arrangements

Regulations regarding international refugees can be seen from three perspectives, namely legal arrangements using international instruments, legal arrangements using regional instruments, and legal arrangements using national instruments. In the international context it can generally be based on the 1948 Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights, but specifically regulating international refugees is only regulated in the 1951 Refugee Convention and 1967 Refugee Protocol. At the regional level, arrangements are generally contained in the ASEAN Declaration of Human Rights 2012, but there are no specific arrangements that regulate international refugees. In Indonesia, the regulation regarding handling foreigners is the Law of the Republic of Indonesia Number 6 Year 2011 concerning Immigration, Government Regulation of the Republic of Indonesia Number 31 Year 2013 concerning Implementation Regulations of the Republic of Indonesia Number 6 Year 2011 concerning Immigration, and Circular of Director General of Immigration Number F-IL.01.10-1297 Year 2002 concerning Handling of Foreigners who declare themselves As Asylum Seekers or Refugees, and special arrangements regarding international refugees only exist in Presidential Regulation of the Republic of Indonesia Number 125 Year 2016 concerning Handling of Refugees from Overseas.

Under international refugee law, international responsibility is imposed on the state and UNHCR.

1. Responsibility for International Protection for the State

Every country is responsible for ensuring that the rights of its citizens are respected. Therefore, international protection is only needed if national protection is not provided or does not exist. At that time, the main responsibility for providing international protection lay in the country where individuals sought asylum. Every country has a general duty to provide international protection as an obligation based on international law, including international human rights law and international customary law. Countries that are participants/signatories to the 1951 Convention concerning the Status of Refugees and/or the 1967 Protocol have obligations as stated in these rules.³ Because protecting refugees is a duty and responsibility of the state, cooperation between countries and UNHCR is very important.⁴

2. Responsibility for International Protection for UNHCR

As mentioned above, UNHCR also has a responsibility to provide international protection to refugees. Indeed, UNHCR is the only international organization that has special authority to protect refugees at the world level. Under the laws and resolutions of the general assembly and ECOSOC, and together with the 1951 Refugee Status Convention, the responsibilities of the High Commissioner are mainly related to several groups of people referred to as "people who are of concern to the UNHCR". These include refugees, asylum seekers, returning/returning refugees, citizens without a state, and for certain circumstances, who are displaced in their own country (internally displaced). Thus, UNHCR's authority is broader than the obligation of participating countries in the 1951 Refugee Status Convention and/or 1967 Protocol. In addition, participating countries can also be responsible for refugees or asylum seekers according to the devices on which

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¹ The protocol is used for international agreements whose material is narrower than treaty or convention. The use of the protocol is divided into various forms, namely:

- a. *Protocol of Signature*
- b. *Optional Protocol and Additional Protocol*
- c. *Protocol based on framework treaty*
- d. *Protocol to change international agreements*
- e. *Protocol as a complement to the previous agreement.* See Muhammad Ashri, *Ibid.*, p. 16 *et seq.*

Judging from its form, the Refugee Protocol 1967 is the Protocol as a complement to the previous agreement (Refugee Convention 1951).

² Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Prenadamedia Group, 2005, p. 35

³ UNHCR, *Pengenalan tentang Perlindungan Internasional, Melindungi Orang-Orang yang Menjadi Perhatian UNHCR*, Switzerland: Komisariat Tinggi PBB untuk Urusan Pengungsi, 2005, p. 11

⁴ Kadarudin, *Penanganan Pemerintah Indonesia Terhadap Pengungsi Rohingya Menurut Konvensi 1951*, *Jurnal Hukum Internasional 'Jurisdictionary'*, Vol. VI, No. 1 June 2010, p. 114

they belong, based on international or national.¹

There are nine forms of UNHCR authority in providing protection for refugees as mandated by the statute, the forms of authority are as follows:²

1. Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments there to;
2. Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;
3. Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;
4. Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;
5. Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;
6. Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;
7. Keeping in close touch with the Governments and inter-governmental organizations concerned;
8. Establishing contact in such manner as he may think best with private organizations dealing with refugee questions;
9. Facilitating the coordination of the efforts of private organizations concerned with the welfare of refugees.

B. Model of International Refugee Handling by UNHCR

The model of handling international refugees by UNHCR based on the framework and objectives of the organization is as follows:

1. Asylum

Asylum (protection), in the 1967 Territorial Asylum Declaration which was ratified by the UN General Assembly which showed an international consensus that acknowledged that giving asylum is an act of peace and humanity that should not be considered an unfriendly act by any country, and noted that the responsibility to evaluate refugee status requests are located on the shoulder in the country where the individual submitted the application.³

Legal basis for asylum applications due to fear or threats to personal safety from torture/torture. When comparing with the refugee definition/definition, the additional reason for the asylum application is “enough reason/evidence that the person concerned is at risk” for a reason that has been determined by international law. The reasons include racial, religious, national, membership in a social group or political group. In addition, the person concerned does not get the guarantee or protection he should have in his country.⁴

2. Non-Extradition

Non-extradition is a prohibition to carry out a formal process whereby a country or group of international refugees is held by a country to be subsequently submitted to the country of origin, due to a request from the government of origin of the international refugee.

3. Non-Refoulement

No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.⁵

4. Non-Intervention

Based on the general principle in international law, each country has sovereignty over people, objects, and events that occur or occur within its territorial boundaries, or better known as “territorial sovereignty”. Therefore, a country may not take actions that are a manifestation of its sovereignty (act of sovereignty) within the territory of another country, except with the consent of

¹ *Ibid.*, p. 11-12

² Article 8 of the UNHCR Statute

³ UNHCR (2005), *Op.Cit.*, p. 27. But it should be stressed here that asylum is not something that can be claimed by a person as a right, someone's rights are limited to seeking asylum, giving or refusing asylum is the right of states based on their sovereignty, Sulaiman Hamid, *Lembaga Suaka Dalam Hukum Internasional*, Jakarta: Rajawali Pers, 2002, p. 89

⁴ Wagiman, *Hukum Pengungsi Internasional*, Jakarta: Sinar Grafika, 2012, p. 93

⁵ See Article 33 of the 1951 Refugee Convention

the country concerned. If there is a country that carries out such an action without the consent of the country where the action is taken, it will be seen as interference or intervention in another country's internal problems, which clearly contradicts international law.¹

5. Partnership and Community Service²

Most refugees leave their homes with little or no property. Those who can bring part of their ownership will soon run out. UNHCR works closely with its partners to ensure that the psychological social needs of refugees and those of the UNHCR are met.

IV. Conclusion

Based on the explanation, the author can conclude 2 things: First, regulation regarding international refugees can be seen from three perspectives, namely legal arrangements using international instruments, legal arrangements using regional instruments, and legal arrangements using national instruments. In the international context, it is regulated in the 1951 Refugee Convention and the 1967 Refugee Protocol. At the regional level, there is no specific regulation regulating international refugees. In Indonesia, the special regulation concerning international refugees is the Presidential Regulation of the Republic of Indonesia Number 125 of 2016 concerning Handling of Refugees from Abroad. Second, the model of international refugee handling by UNHCR based on the framework and objectives of the organization are (1) asylum, (2) non-extradition, (3) non refoulement, (4) non-intervention, and (5) partnership and community service.

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¹ I Wayan Parthiana, *Ekstradisi dalam Hukum Internasional Modern*, Bandung: Yrama Widya, 2009, p. 36

² See UNHCR's Tasks and Activities at <http://www.unhcr.or.id/>