

# ALSA INDONESIA LEGAL OPINION

The Protection and the Fulfillment  
of Rights of Refugees in Indonesia  
during the Pandemic



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**LEGAL OPINION**  
***ALSA LOCAL CHAPTER***  
**UNIVERSITAS PADJAJARAN**

## **Stuck in Indefinite Transit: The Lack of Attention to Refugees as a Vulnerable Group During the COVID-19 Pandemic**

Eishia Norika, Nathania Abigail Hanson, and Muhammad Raihan Faiqy

**Universitas Padjadjaran**

### **I. BACKGROUND**

During the Coronavirus Disease (“**COVID-19**”) Pandemic, refugees became one of the groups affected by the spread of the virus. In July 2020, several refugees in Kodim Kalideres, Jakarta Barat tested positive for COVID-19. Apparently, this happened due to several factors such as a lack access to clean water and a narrow living space in the refugee camp, which made it difficult to practice health protocols. One of the conditions to obtain health facilities and social assistance programs in Indonesia is to have a National Identity Card (KTP) or Family Card (KK) or a residence permit for immigrants (KITAS or KITAP). Unfortunately, since Indonesia has not ratified the 1951 Refugee Convention (“**1951 Convention**”) and the 1967 Protocol Relating to the Status of Refugees (“**1967 Protocol**”), it’s quite troublesome to gain such access since refugees’ status in Indonesia is uncertain to begin with. On the contrary, the government seems too dependent on their cooperation with International Organization of Migration (“**IOM**”) and United Nations High Commissioner for Refugees (“**UNHCR**”) regarding the handling of refugees during the COVID-19 Pandemic.

### **II. LEGAL ISSUES**

1. The Inadequacy of Indonesia’s Legal Framework in Upholding Refugees’ Basic Rights During the COVID-19 Pandemic
2. The Fulfillment of Refugees’ Right to Health in Accessing Indonesia’s Health Facilities During the COVID-19 Pandemic

### III. SOURCE OF LAW

1. The 1945 Constitution of the Republic of Indonesia
2. Law of the Republic of Indonesia Number 6 of 2011 concerning Immigration
3. Law of the Republic of Indonesia Number 37 of 1999 concerning International Relations
4. Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights
5. Law of the Republic of Indonesia Number 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social, and Cultural Rights
6. 1966 International Covenant on Economic, Social, and Cultural Rights
7. The Presidential Regulation Number 125 of 2016 concerning the Handling of Foreign Refugees

### IV. LEGAL ANALYSIS

#### 1. The Inadequacy of Indonesia's Legal Framework in Upholding Refugees' Basic Rights During the COVID-19 Pandemic

As mentioned above, Indonesia is not a party to the 1951 Convention and the 1967 Protocol. In consequence, refugees within Indonesia can only stay temporarily until they are settled to a third country or voluntarily repatriated to their countries of origin.

Furthermore, as a transit country which is also a member of the United Nations, Indonesia is morally responsible for implementing general statements of human rights.<sup>1</sup> These values are stated in the 1945 Constitution of the Republic of

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<sup>1</sup> Sri Badini Amidjojo, '*Perlindungan Hukum Terhadap Pengungsi Berdasarkan Konvensi Jenewa 1951*' (Badan Pembinaan Hukum Nasional Departemen Kehakiman dan HAM 2006).[1].

Indonesia (“**1945 Constitution**”), where everyone has the right to live in physical and spiritual prosperity, to have a place to live, to have a good and healthy environment, and the right to obtain health services.<sup>2</sup> Initially, there were only 3 Articles in the Law of the Republic of Indonesia Number 37 of 1999 concerning International Relations which regulates the handling of refugees in Indonesia.<sup>3</sup> Nevertheless, eventually the Government established the Presidential Regulation Number 125 of 2016 concerning the Handling of Foreign Refugees (“**Presidential Regulation**”) as a guideline for dealing with refugees and asylum seekers in Indonesia.

Arguably, the Presidential Regulation can fill the legal void regarding the handling of refugees in Indonesia.<sup>4</sup> Nonetheless, the presidential regulation is not a strong legal framework. There is a debate about the existence and position of the Presidential Regulation in the hierarchy of laws and regulations, considering that the legal system in Indonesia is heavily influenced by the civil law tradition which often appears as if the law is identical to the statutory regulations made by the State.<sup>5</sup> Presidential regulation is a policy rule that has legal relevance, not a directly binding law.<sup>6</sup> Hence, there’s an absence of a strong legal framework in upholding the basic rights of refugees.

The inadequacy is bound to cause confusion regarding the responsibilities of the relevant government agencies assigned to deal with matters involving refugees. Consequently, the fulfilment of refugees’ rights is hardly achieved since they are not accorded with any legal status. As the government starts to reduce consequences of the pandemic with the intention to return normalcy to a certain degree, refugees will still didn't get their basic rights such as: not being able to

<sup>2</sup> The 1945 Constitution of the Republic of Indonesia, Art 28H.

<sup>3</sup> Law of the Republic of Indonesia Number 37 of 1999 concerning International Relations, Arts 25, 26, 27.

<sup>4</sup> Mardian, S., ‘*Kajian Yuridis Perlindungan Pengungsi di Indonesia setelah Berlakunya Peraturan Presiden RI No.125 tahun 2016 tentang Penanganan Pencari Suaka dan Pengungsi dari LN*’, (2017) 2 Journal Diversi.[474].

<sup>5</sup> Jimly Asshiddiqie, ‘*Agenda Pembangunan Hukum Nasional Di Abad Globalisasi*’ (Balai Pustaka 1998).[74].

<sup>6</sup> Philipus M. Hadjon,[et.,al.], ‘*Pengantar Hukum Administrasi Indonesia*’ (Gajah Mada University Press 1993).[152].

work, gain access to formal education, and have freedom of mobility. Verily, it's eminent to know that many refugees in Indonesia have the skill and resources that can also be a part of the solution.<sup>7</sup> In fact, recently during the pandemic, some of the refugee women in Medan are producing face masks to be distributed to vulnerable Indonesians.<sup>8</sup> If there is a clear legal framework regarding the legal framework for the certainty of refugees' status, *mutatis mutandis*, the basic rights of refugees will gradually be upheld.

## 2. The Fulfillment of Refugees' Right to Health in Accessing Indonesia's Health Facilities During the COVID-19 Pandemic

In Indonesia, refugees' right to health is protected under both international and domestic protection.

With regard to the international protection, provision relating to the protection of refugees' right to health within international conventions is a matter of a legally binding international obligation. The provision of Article 12(1) of the International Covenant on Economic, Social and Cultural Rights ("ICESCR") contains the right to health which protects the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>9</sup> The United Nations Committee on Economic, Social and Cultural Rights emphasized that this Article includes the protection of refugees' right to health by ensuring that they have equal access to health care and health services.<sup>10</sup> Indonesia is bound to this

<sup>7</sup> The Jakarta Post, 'Govt urged to include refugees in national COVID-19 response' (The Jakarta Post, 2020) <<https://www.thejakartapost.com/news/2020/06/20/govt-urged-to-include-refugees-in-national-covid-19-response.html>>, accessed 21 January 2021

<sup>8</sup> Mitra Suryono, 'Alongside the Government of Indonesia, partner organizations and sister UN agencies, UNHCR ensures that refugees are not left behind in COVID-19 response' (UNCHR, 2020) <<https://www.unhcr.org/id/en/12397-alongside-the-government-of-indonesia-partner-organizations-and-sister-un-agencies-unhcr-ensures-that-refugees-are-not-left-behind-in-covid-19-response.html>> accessed 21 January 2021.

<sup>9</sup> International Covenant on Economic, Social and Cultural Rights (opened for signature 19 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), Art 12(1).

<sup>10</sup> UNCESCR 'General Comment 14' (2000) UN Doc E/C.12/2000/4, para 34. See also UNCESCR 'Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights' (13 March 2017) UN Doc E/C.12/2017/1, para 12.

obligation since the ICESCR has been ratified.<sup>11</sup> Hence, the realization of this right shall be taken by Indonesia, as one of the State Parties, for the prevention, treatment, and control of infectious disease such as the COVID-19 Pandemic.<sup>12</sup>

Additionally, refugees' right to health may also be protected under the domestic laws of the country of refugee. For instance, Article 28H and 34 of the 1945 Constitution provides that everyone within Indonesia's jurisdiction has the right to receive health services and Indonesia is responsible to provide such services.<sup>13</sup> Article 26 of the Presidential Regulation provides a more specific legal certainty about refugees' right to health by governing the duty of the relevant regency or municipal government to provide shelter for refugees that are in close proximity to a healthcare facility.<sup>14</sup> Furthermore, refugees that are affected with infectious disease must be referred to a hospital or any available health facilities and must be provided with health services.<sup>15</sup>

Despite having these protections towards the right to health of refugees within Indonesia's legal framework, Indonesia has failed to fully realize such protections. These refugees are suffering from a lack of adequate health facilities in Indonesia as they do not have access to healthcare services, and they cannot go to the hospital due to the inability to afford medication.<sup>16</sup> Although some of the refugees are registered under the protection of UNHCR and IOM, however, they only receive minimum healthcare facilities limited to emergency conditions.<sup>17</sup> Moreover, it should be highlighted that since March 2018, the IOM has ceased to

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<sup>11</sup> Law of the Republic of Indonesia Number 11 of 2005 regarding the Ratification of the International Covenant on Economic, Social and Cultural Rights.

<sup>12</sup> ICESCR, Art 12(2).

<sup>13</sup> Constitution of the Republic of Indonesia 1945, arts 28H, 34.

<sup>14</sup> Heru Susetyo, 'Lost in Transit: Refugees stranded in a legal vacuum in Indonesia' (Kaldor Centre, 2020) <<https://www.kaldorcentre.unsw.edu.au/publication/lost-transit-refugees-stranded-legal-vacuum-indonesia>> accessed 15 January 2021.

<sup>15</sup> Presidential Regulation Number 125 of 2016 concerning the Handling of Foreign Refugees, Arts 25f, 27(4).

<sup>16</sup> JN Joniad, 'Comment: Impossible to self-isolate, Refugees in Indonesia fear coronavirus outbreak' (SBS, 2020) <<https://www.sbs.com.au/news/dateline/comment-impossible-to-self-isolate-refugees-in-indonesia-fear-coronavirus-outbreak>> accessed 18 January 2021.

<sup>17</sup> *ibid.*

provide funding to assist new arrivals of refugees.<sup>18</sup> The DKI Jakarta Provincial Government also stopped providing basic necessities to refugees on the land of the former West Jakarta Kalideres Kodim and handed over the responsibility to UNHCR.<sup>19</sup> Nevertheless, the UNHCR has a limited capacity to provide a sustainable funding to be able to uphold refugees' right to health as the COVID-19 posed further challenges.<sup>20</sup>

## **V. CONCLUSION**

As of now, Indonesia does not have a rigorous legal framework to uphold refugees' rights by not being a State Party to the 1951 Convention and the 1967 Protocol. Even by adopting the Presidential Regulation, it has been proven to not be enough in providing adequate protection towards refugees' rights since it only governs technical issues.

In the event of COVID-19 Pandemic, the fulfillment of refugees' right to health is the most crucial. In spite of having numerous provisions relating to the protection of the right to health within its legal framework, Indonesia has neglected its obligation to fully realize refugees' right to health by not ensuring and providing sufficient healthcare services. Indonesia has only relied on the help of Non-Governmental Organizations. Even though the UNHCR and IOM are specialized agencies responsible for taking actions in the sphere of refugees, they have a limited capacity to provide sustainable healthcare facilities.

## **VI. RECOMMENDATION**

- a. The government must grant status to refugees in Indonesia by ratifying the 1951 Convention.

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<sup>18</sup> Asher Hirsch, 'After the Boats Have Stopped: Refugees stranded in Indonesia and Australia's containment policies' (Refugee Council, 2018) <[https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Indonesia\\_brief.pdf](https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Indonesia_brief.pdf)> accessed 24 January 2021.

<sup>19</sup> Susetyo (n 13).

<sup>20</sup> UNHCR, 'Indonesia Fact Sheet' (UNHCR, 2020) <<https://www.unhcr.org/id/wp-content/uploads/sites/42/2020/08/Indonesia-Fact-Sheet-July-2020-FINAL.pdf>> accessed 25 January 2021.

- b. The government must include refugees in their COVID-19 Pandemic response programs.
- c. The government needs to carry out further outreach on regulations relating refugees to local government agencies, especially those close to refugee problems such as: Aceh, Makassar, Medan, Tanjung Pinang, Kupang and West Java.



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Heru Susetyo, 'Lost in Transit: Refugees stranded in a legal vacuum in Indonesia' (Kaldor Centre, 22 July 2020) <<https://www.kaldorcentre.unsw.edu.au/publication/lost-transit-refugees-stranded-legal-vacuum-indonesia>> accessed 15 January 2021.

JN Joniad, 'Comment: Impossible to self-isolate, Refugees in Indonesia fear coronavirus outbreak' (SBS, 1 April 2020) <<https://www.sbs.com.au/news/dateline/comment-impossible-to-self-isolate-refugees-in-indonesia-fear-coronavirus-outbreak>> accessed 18 January 2021.

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International Covenant on Economic, Social and Cultural Rights

1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR)

The Presidential Decree Number 125 of 2016 concerning Treatment of Refugees from  
Overseas



**LEGAL OPINION**  
***ALSA LOCAL CHAPTER***  
**UNIVERSITAS BRAWIJAYA**

## Indonesia's Responsibility to Protect and Fulfill the Rights of The Refugees During COVID-19 Pandemic

Kevin Akbar Sanabil, Muhamad Hanif Renanda, and Qiyamullail Nuzhul Islam  
**Universitas Brawijaya**

*"No one puts their children on a boat unless the water is safer than the land"*  
- Warsan Shire

### 1. Background

It is the responsibility of States to protect their citizens' rights, and when their government is unable or unwilling to do so, individuals may face such severe threats that they are forced to flee their country and seek safety elsewhere. If this happens, another nation has to step in to ensure that the basic rights of the refugees are respected. This condition is known as 'international protection'.<sup>1</sup> People who have fled war, violence, conflict, or persecution and have crossed an international border to find safety in another country are known as refugees.<sup>2</sup> They are forced to flee and seek protection from other countries in the hope that there will be a restoration of the rule of law in their own countries so they can come back home one day.

The handling of the refugees in Indonesia is carried through coordination between the Indonesian government and UNHCR in Indonesia and/or other international organizations related to refugees.<sup>3</sup> In 1979, Indonesia worked with UNHCR to give refugees temporary shelter while trying to send them back to their

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<sup>1</sup> N. Frances, K. Judith, *A guide to international refugee protection and building state asylum systems* (Inter-Parliamentary Union and United Nations High Commissioner for Refugees 2017).[15].

<sup>2</sup> UNHCR, 'What is Refugee?' (UNHCR Website, 2020)  
<https://www.unhcr.org/what-is-a-refugee.html#:~:text=Refugees%20are%20people%20who%20have,possessions%2C%20jobs%20and%20loved%20ones> accessed 21 January 2021.

<sup>3</sup> Presidential Regulation No.125 of 2016 concerning the Handling of Refugees from Abroad, Article 2 (1).

countries if possible or transfer them to third countries, in other words, position itself as a transit country.<sup>4</sup> Until now, this practice has become a common practice in Indonesia. Another reason why Indonesia chooses to position itself as a transit country is due to the fact that Indonesia is not a resettlement country based on the mandate of the 1951 Convention concerning the Status of Refugees and its 1967 Protocol. Furthermore, the government of Indonesia continues to struggle to fulfill the fundamental rights of refugees, such as housing and employment.<sup>5</sup>

In late 2019, COVID-19 had emerged and quickly became a pandemic. This only means that protection and fulfillment of the rights of refugees are more important than ever to be maintained by States. There are many challenges faced in dealing with refugees in Indonesia during this hard time of the pandemic. For example, the waiting period for refugees to get a third country to accept them is getting longer. Even before the pandemic, some refugees stayed in Indonesia for more than ten years, and now that most countries are closing their borders, refugees became Indonesia's full responsibility for the time being. The pandemic has become more severe now, and a question then arose. How can Indonesia fulfill the rights of the refugees now, knowing that they were already struggling even before the crisis? This question poses an important point not just because it is the mandate of the constitution but also because as a part of global society to honor human rights as a core principle, we have the obligation to save those who are in need of protection.

## **2. Legal Issues**

- a. Indonesia Obligations to Protect and Fulfill the Rights of Refugees
- b. The Handling of Refugees in Indonesia During COVID-19 Pandemic

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<sup>4</sup> Presidential Decree No.38 of 1979 concerning Coordination of Completion of Vietnamese Refugees Problem in Indonesia. Article (3).

<sup>5</sup>Yahya Sultoni, Setyo Widagdo, Herman Suryokumoro, 'The Reason of Indonesia Not Ratified Refugee Convention 1951 and Legal Protection For Refugees in Indonesia' (2017) Law Faculty of Brawijaya University.

### **3. Legal Basis**

- a. The 1945 Constitution of the Republic of Indonesia
- b. Law No. 37 of 1999 Concerning Foreign Relations
- c. Law No. 6 of 2011 Concerning Immigration
- d. President Regulations No. 125 of 2016 Concerning the Handling of Refugees from Abroad
- e. The 1951 Convention Relating to the Status of Refugees
- f. The 1967 Protocol Relating to the Status of Refugees

### **4. Analysis**

#### **A. Indonesia Obligations to Protect and Fulfill The Rights of Refugees**

As a constitutional state, Indonesia regards human rights as its core principle as it's explicitly enshrined in its constitution. Furthermore, Indonesia has ratified several international treaties concerning fundamental rights, such as ICCPR, ICPED, CEDAW, and CAT. Indonesia has also enacted Law No.39 of 1999 concerning Human Rights which was heavily influenced by the Universal Declaration of Human Rights.<sup>6</sup> Thus, it evokes an obligation for Indonesia to maintain and protect the refugees in the name of human rights which followed with the enactment of article 28 G paragraph 1 of the 1945 Constitution, Law No. 37 of 1999, and Presidential Regulations No. 125 of 2016.

Despite the fact that Indonesia is a non-party to neither The 1951 Convention nor its 1967 Protocol, Indonesia is bound to a provision stated in both treaties, that is the non-refoulement principle that prohibits States from transferring or removing refugees from their jurisdiction where there is substantial reasoning

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<sup>6</sup> El Muhtaj Majda, *Hak Asasi Manusia dalam Konstitusi Indonesia: Dari UUD 1945 sampai dengan Perubahan UUD 1945 Tahun 2002* (2nd ed.) (Kencana 2005).

that they would be at risk of irreparable harm upon return.<sup>7</sup> It is due to the fact that the non-refoulement principle has become an international norm that binds all states including those who have not yet become a party to the 1951 Convention or its 1967 Protocol as *ius cogens*.<sup>8</sup> UNHCR also stated that nations' practices have overwhelmingly indicated that they accept the principle of non-refoulement as binding thus, implicitly confirming their acceptance of the principle.<sup>9</sup>

One of the views agreeing to the idea that Indonesia is bound to the Customary International Law, in particular the principle of non refoulement, is the doctrine of monism which regards International Law as superior.<sup>10</sup> There is also a provision in Presidential Regulations No. 125 of 2016 stating that “the handling of refugees must regard the internationally accepted norms and Indonesian refugee law”.<sup>11</sup> This provision can only mean that Indonesia regards internationally accepted norms, including non-refoulement principle, as a valid legal basis and can be enforced along with domestic law as is confirmed with the monist views stated previously.

All the aforestated laws and the international legal provisions are to ensure that the protection and the fulfillment of the rights of the refugees in Indonesia are according to standard. Thus, it is within the interest of Indonesia to protect these refugees despite not being party to both the 1951 Convention and its 1967 Protocol. In addition to that, the protection of refugees is also a common state practice that is in line with the declaration of human rights. Therefore, protecting refugees is an

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<sup>7</sup> OHCHR, ‘The Principle of Non-Refoulement Under International Human Rights Law’ (OHCR Website, 2020).

<https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> accessed 25 January 2021.

<sup>8</sup> Jean Allain, ‘The jus cogens Nature of Non-Refoulement’ (2001) SSRN Electronic Journal.

<sup>9</sup> UNHCR, ‘Advisory Opinion on the Exterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the status of refugees and its 1967 protocol’ (2007) UNHCR.[7].

<sup>10</sup> Kusumaatmadja, M. & Agoes, E.R, *Pengantar Hukum Internasional* (Center for wawasan nusantara studies, law and development in cooperation with PT. Alumni 2003)

<sup>11</sup> Presidential Regulation No.125 of 2016 concerning the Handling of Refugees from Abroad, Article 3.



*erga omnes* obligation, that is a universal obligation that every state is bound to, and shall extend to them the protection of the law.<sup>12</sup>

## **B. The Handling of Refugees in Indonesia During COVID-19 Pandemic**

Until mid-July of 2020, there were at least 13,500 refugees in Indonesia.<sup>13</sup> These refugees mainly stay at a refugee camp and are the responsibility of the Indonesian government along with UNHCR and other international organizations. Unfortunately, there has been dissension between the Indonesian government and UNHCR lately. In 2019, the Indonesian government recommended UNHCR to start a burden-sharing in taking care of the refugees who were supposed to stay only for transit yet ended up abandoned in West Jakarta. Indonesian government claimed that UNHCR turned a blind eye to these refugees.<sup>14</sup> This problem becomes more serious because of the situation of the pandemic. Moreover, many refugees faced numerous health-related concerns even before the COVID-19 pandemic, such as infectious outbreaks caused by a lack of essential health care and social services.<sup>15</sup> Many human rights organizations raised the alarm about the plight of refugees and asylum seekers,<sup>16</sup> which should be a wake-up call for the Indonesian government to take the problem more seriously.

Another problem that refugees faced during the COVID-19 Pandemic in Indonesia is the limited access to healthcare and sanitation facilities, especially for

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<sup>12</sup> Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962). Paragraph 33.

<sup>13</sup> UNHCR, 'Pengungsi di Indonesia' (UNHCR Website, 2020) <https://www.unhcr.org/id/> accessed 19 January 2021.

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<sup>15</sup> Sharara, S. L., Kanj, S. S, 'War and infectious diseases: challenges of the Syrian civil' (2014) X *PLoS Pathogens*.

<sup>16</sup> Margaret Evans. 'Aid workers brace for impact of coronavirus in refugee camps' (CBC News, 2020) <https://www.cbc.ca/news/world/aid-workers-brace-for-impact-of-coronavirus-in-refugee-camps-1.5506172> accessed 23 January 2021.

refugees who have not been identified by UNHCR.<sup>17</sup> Furthermore, IOM has stopped their aid to refugee camps in Indonesia. Hence, these unidentified refugees have to fight for their lives on their own during the COVID-19 pandemic.<sup>18</sup> These problems occur because there are no provisions concerning the status and empowerment of refugees in Indonesia. Until now, the Indonesian government still relies on UNHCR in granting the status of refugees. Thus, the refugees who have not yet been identified by the UNHCR are being scattered with no legal certainty.

There are short-term and long-term solutions to the aforementioned problems. For the long-term solution, the Indonesian government can ratify the 1951 Convention and its 1967 protocol with the intent to have the authorities for granting a status for refugees and a legal basis to empower them. For the short-term solution, the Indonesian government can improve their diplomacy towards the resettlement countries in order to accelerate the refugees' transit stay in Indonesia. Furthermore, the Indonesian government can enact presidential regulations or other provisions to regulate the handling of refugees during COVID-19 pandemic.

## **5. Conclusion & Recommendations**

Even though Indonesia is bound to the principle of non-refoulement to accommodate refugees, Indonesia still needs an additional legal basis concerning the status and empowerment of refugees from abroad because the current law is not enough to cover the issues, especially in this time of the pandemic.

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<sup>17</sup> UNHCR, 'UNHCR increases refugees resilience amid unpredictability of COVID-19 pandemic' (UNHCR Press Release, 2020). <https://www.unhcr.org/id/wp-content/uploads/sites/42/2020/06/Press-Release-Assistance-Distribution-ENGLISH-FINAL.pdf> accessed 27 January 2021.

<sup>18</sup> Lembaga Ilmu Pengetahuan Indonesia (LIPI), 'Kerentanan Pengungsi pada Masa Pandemi COVID-19 di Indonesia' (LIPI Website, 2020). <http://www.politik.lipi.go.id/kolom/kolom-1/politik-internasional/1384-kerentanan-pengungsi-pada-masa-pandemi-covid-19-di-indonesia> accessed 27 January 2021.

1. Recommends the Indonesian government to ratify The 1951 Convention with its 1967 Protocol in establishing legal certainty in protecting and fulfilling refugees' rights.
2. Further recommends the Indonesian government to issue policies regulating the empowerment of refugees during pandemics.
3. Urges local governments to participate in the implementation of Presidential Regulations No.125 of 2016 to protect and fulfill the rights of refugees in Indonesia as its mandate.

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<https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> accessed 25 January 2021.

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Presidential Decree No.38 of 1979 concerning Coordination of Completion of Vietnamese Refugees Problem in Indonesia

Presidential Regulation No.125 of 2016 concerning the Handling of Refugees from Abroad

The 1951 Convention Relating to the Status of Refugees

The 1967 Protocol Relating to the Status of Refugees

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# LEGAL OPINION *ALSA LOCAL CHAPTER* UNIVERSITAS SRIWIJAYA

## **The Basis for Protecting and Fulfilling Refugees Rights in Indonesia During the Pandemic**

Fahri Muhammad, Muhammad Luthfan Arsyi Mawarid and Samar Gandhi  
Universitas Sriwijaya

### **I. Introduction**

The fear experienced by refugees towards their own country makes them prefer to go to seek the protection of other countries from persecution. As a country that upholds humanity, Indonesia strives to provide protection and fulfillment of the rights of asylum seekers. But when it refers to international customs, countries that are not party countries must comply with it. In fact, Indonesia has authorized the United Nations High Commissioner for Refugees (hereinafter abbreviated as UNHCR) to carry out its refugee protection mandate and to address the refugee problem in Indonesia since 1975. In the mandate of Article 2 of Peraturan Presiden Nomor 125 Tahun 2016 tentang Penanganan Pengungsi dari Luar Negeri states that "The handling of refugees is carried out based on cooperation between the central government and the United Nations through the High Commissioner for Refugee Affairs in Indonesia and/or international organizations".

During the COVID-19 pandemic, refugees became one of the most vulnerable groups, because it was difficult to get access to social and economic assistance. Hoping to live independently by doing informal activities because they cannot work formally. However, when there is a policy of prohibition to travel somewhere makes this group no income. And unable to meet their living needs during the pandemic, so had no choice but to surrender, because the requirement to get such assistance must have documents that require to become An Indonesian citizen. Therefore, in this Legal Opinion the author wants to discuss the basic rights of refugees that must be fulfilled and in providing assistance without discriminating against refugees.



## II. Rule

1. Universal Declaration of Human Rights.
2. International Covenant on Economic, Social and Cultural Rights.
3. International Covenant on Civil and Political Rights.
4. New York Declaration for Refugees and Migrant.
5. Peraturan Presiden Nomor 125 Tahun 2016 tentang Penanganan Pengungsi dari Luar Negeri.

## III. Analysis

### a. The obligation of the state in respecting, protecting, and fulfilling the rights of refugees

UNHCR has the function of international protection, which is to guarantee respect, protection, and fulfillment of the basic rights of refugees, including the responsibility to seek asylum and to ensure that no one is afraid of persecution. This concept of protection, provided by UNHCR by emphasizing the development of international legal instruments for the benefit of refugees and ensuring that they are treated in accordance with the provisions of international legal instruments, specifically relating to the right to work, social security, as well as the right to obtain or utilize travel facilities.<sup>1</sup> While the IOM internationally is assisting the governments of various countries in the world in developing and implementing policies, legislation and mechanisms of migration administration.<sup>2</sup>

Erika Feller argues that Refugee protection also embraces the safeguarding of basic human rights placed in particular jeopardy in refugee situations i.e. the right to life, liberty and security of person, the right to be free from torture and other cruel or degrading treatment, the right not be discriminated against, and the right of access to the basics necessary for survival i.e. food, shelter, medical

<sup>1</sup> Achmad Romsan, 'Pengantar Hukum Pengungsi Internasional: Hukum Internasional dan Prinsip-Prinsip Perlindungan Internasional' (UNHCR, 2003).[71-72].

<sup>2</sup> *Ibid.*[193].

assistance, as well as, at a later point, for self-sufficiency i.e. a livelihood, education, health care.<sup>3</sup>

In Indonesia's own positive law, the regulation on foreign refugees in Indonesia is stipulated in the Peraturan Direktur Jenderal Imigrasi (Perdirjenim) Nomor IMI-0352. GR.02.07 Tahun 2016 tentang Penanganan Imigran Ilegal yang Menyatakan Diri sebagai Pencari Suaka dan Pengungsi and Peraturan Presiden Nomor 125 Tahun 2016 tentang Penanganan Pengungsi dari Luar Negeri. Peraturan Presiden Nomor 125 Tahun 2016 itself is more regulated about the technical handling of refugees found in the territory of Indonesia. While in Perdirjenim Nomor IMI-0352. GR.02.07 is also regulated regarding the rights of refugees, especially regarding the right to stay of refugees in Indonesia. However, there are no other more specific rules governing the rights of refugees in Indonesia. But in general the obligation of the state in respecting, protecting, and fulfilling the rights of refugees has been accommodated with the existence of the Perdirjenim.

#### **b. Equality in obtaining assistance during pandemics**

The imbalance in providing refugee facilities that are in shelters and not in shelters is a major problem in the country's obligations as a provider of refugee protection and fulfillment. Whereas it is very clear in Article 14 Section (1) of the Universal Declaration of Human Rights state that "Everyone has the right to seek and to enjoy in other countries asylum for persecution".

This is exacerbated when a pandemic occurs, the zero income of vulnerable groups living outside the shelter because it is prohibited to work formally.<sup>4</sup> So there is no other way to survive than to get compassion from passer-by on the street. Instead of getting social assistance, they get nothing because to get social assistance

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<sup>3</sup> Erika Feller. The Evolution of the International Refugee Protection Regime. [Journal Law and Policy. Geneva: UNHCR 2001].[3].

<sup>4</sup> Surat Pernyataan Pengungsi Seperti yang Tercantum dalam Lampiran Peraturan Direktorat Jendral Imigrasi Nomor:IMI-1489. Um.08.05 Tahun 2010 tentang Penanganan Imigran Legal Date 17 September 2010.

must complete the documents, such as identity cards, population master numbers and so on.<sup>5</sup>

If referring to article 1 of the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights state that "All peoples have the right of self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". In the provisions of these two instruments of human rights give recognition to groups such as refugees can demand his right to self-determination.

Based on the problems that are being experienced during the pandemic, one of the obligations that the country granting asylum to refugees must fulfill is equality and non-discrimination.<sup>6</sup> As stated in Article 2 Section (1) International Covenant on Civil and Political Right state that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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".

In Indonesia itself, the implementation of providing equality in obtaining assistance during the pandemic for refugees is difficult to achieve. Because according to The Directorate General of Immigration Agung Sampurno, the existence of foreign refugees Indonesia does not have a legal umbrella that can be the basis for the fulfillment of their rights in Indonesia. In addition, 13 detention houses spread across Indonesia itself are not designed to accommodate refugees numbering hundreds of people or more so that it has implications for meeting the needs of refugees in Indonesia.<sup>7</sup>

<sup>5</sup> Article 9 Verse (1) Peraturan Bupati Balangan Nomor 37 Tahun 2020 tentang Petunjuk Teknis Penyaluran Bantuan Kas Sosial dalam Penanganan Dampak Penyakit Virus Corona 2019.

<sup>6</sup> Ayub Torry Satriyo Kusumo, 'Perlindungan Hak Asasi Manusia Pengungsi Internasional' (2012) 1 Yustisia. [175].

<sup>7</sup> Norman Edwin Elnizar, 'Ada Masalah Regulasi Penanganan Pengungsi di Indoneisa', (Hukum Online.com, 2017) <https://www.hukumonline.com/berita/baca/lt597853eb3280a/ada-masalah-regulasi-penanganan-pengungsi-di-indonesia/>>accessed 31 January 2021.

According to The Manager of Refugee Learning Center, Sikandar Ali, during the pandemic some refugees in Indonesia survive by relying on the help of communities such as the IOM.<sup>8</sup> This indicates the vulnerable existence of refugees in Indonesia during the pandemic.

#### **IV. Conclusion and recommendation**

##### **1. Conclusion**

- a. Based on Article 2 Section (1) Peraturan Presiden Nomor 125 Tahun 2016 tentang Penanganan Pengungsi dari Luar Negeri, The Government mandates UNHCR and IOM to deal with refugee issues. Although the government has made efforts to fulfill the right of refugees have not received sufficient legal protection to fulfill their rights.
- b. Inequality in taking care of the needs of refugees during the pandemic who live in shelters and who do not remain a major problem. Although they have the right to continue their life, those who live outside the shelter not allowed to work formally, the country granting asylum must provide equality and non-discrimination so that they can continue their life.

##### **2. Recommendation**

The Indonesian government must pay more attention to the clarity of the legal umbrella for foreign refugees in Indonesia so that the rights and obligations of these refugees can be properly fulfilled. It is not just a reminder, but the government must also take action because during an emergency such as a pandemic this will greatly affect the spread of this virus. To overcome this, the government can make laws that better regulate the rights of refugees in Indonesia so that the government has benchmarks and targets in fulfilling the rights of refugees in Indonesia.

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<sup>8</sup> Muhammad Radityo Priyasmoro, 'Cerita Pencari Suaka Bertahan Hidup di tengah Pandemi Corona di Indonesia', (liputan6.com, 2020), <https://www.liputan6.com/news/read/4283708/cerita-pencari-suaka-bertahan-hidup-di-tengah-pandemi-corona-di-indonesia>>accessed 31 January 2021.

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Peraturan Bupati Balangan Nomor 37 Tahun 2020 tentang Petunjuk Teknis Penyaluran Bantuan Kas Sosial dalam Penanganan Dampak Penyakit Virus Corona 2019.

Surat Pernyataan Pengungsi Seperti yang Tercantum dalam Lampiran Peraturan Direktorat Jendral Imigrasi Nomor:IMI-1489. Um.08.05 Tahun 2010 tentang Penanganan Imigran Legal.



**LEGAL OPINION**  
***ALSA LOCAL CHAPTER***  
**UNIVERSITAS DIPONEGORO**

**THE CHALLENGES OF FULFILLING HUMAN RIGHTS FOR  
REFUGEES IN INDONESIA DURING THE PANDEMIC: IN THE  
CONTEXT OF NON-SIGNATORY COUNTRY OF THE 1951 REFUGEE  
CONVENTION**

Rizky Ramadhan Ryadenata, Dian Qonita Aristawati, and Fatasya Prakasita

**Universitas Diponegoro**

**Background**

There was an action by Iraqi refugees in front of the United Nations High Commissioner for Refugees (UNHCR) office in Jakarta. The background for their action was to demand certainty regarding clarity of status and social security while they are in Indonesia and demand that they be immediately sent to Australia, Canada, and the United States.<sup>1</sup> Problems related to the certainty of status like that often recur every year. That is why the issues to be raised in this legal opinion is the refugee or international asylum in the context; the persons who cross national borders.

Refugees are included in the vulnerable group because refugees are faced with or are in an uncertain situation such as how long they are in that place when they get refugee status.<sup>2</sup> The uncertainty of this condition results in the fulfilment of human rights. Regarding that, we have to ease their burden and the state's duty to guarantee human freedoms by these particular conditions, which becomes a reference for applying the principle of non-refoulement. Considering the

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<sup>1</sup> **Internet**

Sandro Gatra, 'Pencari Suaka dari Irak Unjuk Rasa di Depan Kantor UNHCR' <https://megapolitan.kompas.com/read/2019/09/05/15010861/pencari-suaka-dari-irak-unjuk-rasa-di-depan-kantor-unhcr> accessed 6 January 2021

<sup>2</sup> **Journal**

Rahayu, Kholis Roisah, and Peni Susetyorini, 'Perlindungan Hak Asasi Manusia Pengungsi dan Pencari Suaka di Indonesia' (2020) 49 Masalah-Masalah Hukum. [203]

importance of these problems, this legal opinion was compiled based on our team's opinion and research from data and facts related to the title above.

### **Problem Identification**

From the problems described in the background above, the legal issues to be raised are:

1. Indonesia's obligation as a country that has not ratified the 1951 refugee convention in accepting refugees from across countries.
2. Indonesian government policy towards fulfilling rights and handling refugees during the Covid-19 outbreak.

### **Legal Basis**

In examining and reviewing this legal opinion, the legal instruments or legal frameworks used as reference are derived from Indonesia's National Law and International Law, namely:

1. The 1945 Constitution of The Republic of Indonesia
2. Law No. 39/1999 about Human Rights
3. The Presidential Regulation No.125/2016 about Handling of Refugees from Abroad
4. The Directorate General of Immigration Regulation No. IMI-0352.GR.02.07-2016 about the Handling of Illegal Migrant Claiming to be Asylum-seeker or Refugee
5. Universal Declaration of Human Rights (UDHR)

### **Analysis**

In the perspective of international law, based on state sovereignty, which is the country's highest power, the state may accept or reject according to the country's interests. This is a consideration because refugees can be feared to disturb national



stability, the economy, or peace and comfort. In this sense, the state has the right to reject or accept based on consideration as a form of protection from foreign interference. However, from the point of view of human rights, it is contradictory. Article 13 of the UDHR states, "*Everyone has the right to freedom of movement and residence within the borders of every country.*" Referring to UDHR, of course, refugees refusal includes actions that violate human rights and the principle of non-refoulement. There is no reason for countries that have not ratified the convention to refuse refugees from entering their country.

From these two perspectives, both must be considered to be the basis for accepting or rejecting refugees entering the country.<sup>3</sup> The human rights aspect is the most considered reason for receiving refugees to their country, even though the country has not ratified the 1951 Refugee Convention. Besides human rights, refugees also have the obligations stated in article 2 of the 1951 Convention, namely "*Every refugee has duties to the country in which he finds himself, which requires in particular that the conform to its law and regulations as well as to measures taken from maintenance of public order.*"

According to data from the UNHCR Indonesia Monthly Statistical Report, in Indonesia, there were around 13,623 refugees in 2020 coming from 45 countries. This may be quite concern, but on the other hand, Indonesia has done everything possible considering that Indonesia itself did not ratify the 1951 Refugee Convention. However, the standing position of Indonesia in responding to the issue of refugees is still weak. This is because our country has only a few regulations that specifically regulate the fulfillment of refugee rights. In Indonesia, immigration law does not contain provisions specifically applicable (*lex specialis*) for asylum seekers and refugees. The absence of immigration procedures governs the efforts to handle them. Director General of Immigration has issued the Director General Immigration Letter No. F-IL.01.10-1297-2002, which has been replaced by

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<sup>3</sup> **Article**

Venkat Pulla, "As Humanity copes through a Pandemic", Special Edition of IJICC, UK, 2020, [https://www.ijicc.net/images/Vol\\_14/Iss\\_6/PUL000\\_Pulla\\_2020\\_Introduction\\_R.pdf](https://www.ijicc.net/images/Vol_14/Iss_6/PUL000_Pulla_2020_Introduction_R.pdf) accessed 14 January 2021

regulation the Directorate General of Immigration Regulations No.IMI-1489.UM.08.05-2010 concerning the Handling of Illegal Immigrants. The regulation became the only legal basis for the immigration officials at the immigration checkpoint to give it special treatment against foreigners who define themselves as asylum seekers or refugees.<sup>4</sup> This obstacle resulted in many refugees coming to Indonesia due to inadequate government policies, and many refugees who transit without knowing the time limit of their stay.

However, it is seen that Indonesia has a strong commitment to protecting refugees, including through The Presidential Regulation No.125/2016 about Handling of Refugees from Abroad, The 1945 Constitution of The Republic of Indonesia (Article 28 I paragraph 4 jo Article 28 G paragraph 2), as well as a Regulation of the Directorate General of Immigration. No.IMI-0352.GR.02.07-2016 concerning Handling of Illegal Migrant Claiming to be Asylum-seeker or Refugee, which in Article 2 paragraph (3) foreigners who are in Indonesia take care the first opportunity, namely carrying out security and data collection, contacting UNHCR, representatives of the foreign countries concerned, and so on, where it makes them feel protected enough to transit in Indonesia.

As much as possible, the Indonesian Government's policies must pay attention to maintaining good relations between the Indonesian state and the government of foreign countries from the origin of refugees. The practice of fulfilling the rights of refugees has been carried out, as in the case that occurred in Semarang. One of the ways to fulfill the rights of refugees is by providing access for refugees who live in shelters to obtain the fulfillment of the right to health at local Community Health Center in the relevant area, thereby enabling them to cooperate with the education office so that refugee children can go to school.<sup>5</sup>

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<sup>4</sup> **Book**

Syahrin, Eksodus Warga Negara Tiongkok: Antara Kebijakan dan Penyelundupan (Check Point 2016). [31]

<sup>5</sup> **Journal**

During this pandemic, the country could restrict the refugees who entered their territory to protect all country citizens because the refugees can carry the covid-19 virus. This is linked with the Constitution's mandate in the fourth paragraph's preamble, in which Indonesia is obliged to protect its citizens and homeland. This problem can technically be overcome with a tight guard when refugees or asylum seekers enter Indonesian territory. They must be immediately evacuated to be quarantined first and check whether the refugees are exposed to the virus. Recently, to prevent an increase in the number of people with Covid-19 and the emergence of new clusters, the Indonesian Government implemented a policy of limiting the arrival of the expatriate, refugees, or asylum. However, it feared this step will cause the refugees who are still floating in the sea to be infected with the spread of the Covid-19 virus originating from the land because they are vulnerable and weak.

## **CONCLUSION**

Refugees are like us, have hopes and aspirations. If their fundamental rights are fulfilled, they can contribute to their communities and the country where they are. Under the UDHR, both asylum seekers and refugees have the same right to receive protection. Thus, there have been several international legal instruments, regional agreements, and even internal regulations in each country's protection framework, such as in Indonesia. Pandemic challenges the global health system and tests our common humanity. Seeing the varied situations and conditions of refugees during COVID-19, starting from the transit country to the receiving country, they have their own attitude according to each country's circumstances. One of them is to provide access for refugees who live in shelters to get the fulfillment of health rights at the local public health center in the area concerned and enabling them to cooperate with the educational institutions.

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Teu Meryesca Wicaksari, 'Kerja Sama Kantor Detensi Imigrasi dan International Organization For Migration: Studi Kasus Perlindungan Pengungsi dan Pencari Suaka Anak di Rumah Detensi Imigrasi Semarang' (2018) 4 Journal of International Relations. [385]

## **SUGGESTION**

Regarding these problems, the authors suggest that the government can ratify the 1951 Refugee Convention, of course, by considering Indonesia's capabilities in international instruments. It is intended that refugees can obtain certainty of their status through the government by asking the destination country for clarity, helping to meet their needs and that refugees can continue to live normally and consistently based on the values of social justice, the principles of a sovereign state, and human rights, by adjusting current pandemic conditions and adhere to health protocols.

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[https://www.ijicc.net/images/Vol\\_14/Iss\\_6/PUL000\\_Pulla\\_2020\\_Introduction\\_R.pdf](https://www.ijicc.net/images/Vol_14/Iss_6/PUL000_Pulla_2020_Introduction_R.pdf)  
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# LEGAL OPINION *ALSA LOCAL CHAPTER* UNIVERSITAS JEMBER

## The Absence of Law on Refugees and Asylum Seekers during Pandemic

Aisyah Amini, Brilliant Prawira Arifarat and Fatimah Zulfa Salsabillah

Universitas Jember

### I. LEGAL ISSUE

The issue of refugees and asylum seekers is still an international problem faced not only by destination countries but also their neighboring countries and transit countries. Meanwhile, domestic problems in their origin countries also become a highlight why many of their residents choose to flee to seek protection in other countries. Their goal to leave their home countries is indeed to seek and obtain new and decent life rights for their future<sup>1</sup>. They usually go to countries that are much more developed and especially those that have ratified the 1951 Convention on Refugees<sup>2</sup>. Even during the COVID-19 pandemic, where almost all human activities in the world had to be temporarily stopped, the movement of refugees was never stopped.

The COVID-19 pandemic period is undeniably a difficult time for all human beings in the world, including refugees and asylum seekers in Indonesia. Indonesia itself is not a country that participated in ratifying the 1951 Convention. But that does not make Indonesia free from the issue of refugees. Indonesia is one of the main transit countries for those who wish to go to Australia<sup>3</sup>. According to UNHCR data in July 2020, there were 10,278 refugees and 3,375 asylum seekers with a combined total of 13,653<sup>4</sup>. In which 28% were children, and the rest were adults in Indonesia. Currently, they have

<sup>1</sup> Liputan 6, "Nasib Pengungsi: Terlunta-lunta di Indonesia, Ditolak Negeri Impian" <https://www.liputan6.com/global/read/4019232/nasib-pengungsi-terlunta-lunta-di-indonesia-ditolak-negeri-impian>, accessed on Jan, 27<sup>th</sup> 2021

<sup>2</sup> Kumparan, "JK: Tujuan Pengungsi Rohingya Bukan ke Indonesia Tapi Negara Maju", <https://kumparan.com/kumparannews/jk-tujuan-pengungsi-rohingya-bukan-ke-indonesia-tapi-negara-maju/full>, accessed on Jan, 27<sup>th</sup> 2021

<sup>3</sup> UNHCR, "UNHCR di Indonesia", <https://www.unhcr.org/id/unhcr-di-indonesia>, accessed on Jan, 27<sup>th</sup> 2021

<sup>4</sup> UNHCR, "Indonesia Facts Sheet July 2020", <https://www.unhcr.org/id/wp-content/uploads/sites/42/2020/08/Indonesia-Fact-Sheet-July-2020-FINAL.pdf>, downloaded on 14<sup>th</sup> of January 2021

to wait even longer to be placed back in third countries because almost all countries in the world limit the activity of individuals entering and leaving their country. Especially with the case of COVID-19 infection in Indonesia which is quite high will affect the clarity of their status to be resettled in third countries. Recipient countries will think twice about accepting those from countries with high cases of COVID-19 infection for fear of threatening their national safety, especially for health problems. This then creates the possibility that their presence in Indonesia will last much longer, and the Indonesian government must be prepared to deal with this in this difficult time of the pandemic.

From the problems described above, the legal issue to be raised is:

1. What about Indonesia's positive legal instruments in fulfilling and protecting refugee human rights during a pandemic?

## **II. LEGAL BASIS**

1. Law No. 37 of 1999 concerning Foreign Relations
2. Republic of Indonesia Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad
3. 1951 UN Convention
4. 1967 Protocol on the Status of Refugees

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## **III. ANALYSIS**

The issue of refugees and asylum seekers is regulated in the international legal framework issued by the United Nations through the 1951 Convention and 1967 Protocol which have been ratified by several countries. These legal frameworks discussed the legal status of refugees, their rights and obligations, and the implementation of conventions by



countries with refugees in them<sup>5</sup>. In the process, the UN gave the authority to UNHCR to handle the issue, which usually collaborated with other international organizations engaged in the humanitarian sector in matters of life insurance and resettlement in the third countries<sup>6</sup>. These institutions usually have representative offices in countries where there are refugees, including Indonesia.

By not ratifying the 1951 Convention, Indonesia does not have the obligation and responsibility to administer and accept the refugees and asylum seekers. Nor should it be a destination country because they can not get their rights and obligations to live here<sup>7</sup>. There are still various considerations that make Indonesia take this position. Among them are Article 17 concerning the Right to Work and Article 21 concerning the Right to Own a House<sup>8</sup>. These two articles are difficult to implement because Indonesia itself is still grappling with the problem of unemployment, as of August 2020 the unemployment rate increased by 2.67 million people to 9.77 million people. Furthermore, Article 21 also feels hard to implement when many Indonesian citizens are still in poverty and homeless. Other considerations are also regarding Article 22 concerning the Right to Receive Education. Article 22 is a consideration because it is feared that it will create social disparities when many school-age Indonesians have not yet received their rights. All of these considerations refer to the inability of Indonesia to accommodate an additional population considering Indonesia is still a developing country<sup>9</sup>.

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<sup>5</sup> ELSAM, 2014, "Perlindungan Pengungsi (Refugee) Menurut Hukum Internasional": 3

<sup>6</sup> Sakharina, Iin K. 2020, "Perlindungan Negara Bagi Pengungsi Pada Masa Pandemi Global COVID-19: Kajian Hukum Internasional", *Al-Azhar Islamic Law Review*, 2(2) : 70

<sup>7</sup> Sihombing, Herlina Y. 2019, "Kebijakan Indonesia dalam Perlindungan Pencari Suaka dan Pengungsi Pasca Kebijakan Turn Back the Boat Pemerintahan Tony Abbott", *Journal of International Relations*, 5(4): 600

<sup>8</sup> Sultoni, Yahya, dkk, 2014, "THE REASON OF INDONESIA NOT RATIFIED REFUGEE CONVENTION 1951 AND LEGAL PROTECTION FOR REFUGEES IN INDONESIA", *Kumpulan Jurnal Mahasiswa Fakultas Hukum*: 8-9

<sup>9</sup> Sultoni, Yahya, dkk, 2014, "THE REASON OF INDONESIA NOT RATIFIED REFUGEE CONVENTION 1951 AND LEGAL PROTECTION FOR REFUGEES IN INDONESIA", *Kumpulan Jurnal Mahasiswa Fakultas Hukum*: 8-9

So far, the legal basis used by Indonesia regarding them refers to Law Number 6 of 2011 concerning Immigration, especially in Article 1 paragraph (9), Article 10, and Article 13 which regulates foreigners handled by the Directorate General of Immigration assisted by UNHCR and IOM<sup>10</sup>. Thus, refugees and asylum seekers are categorized as foreigners who enter illegally because they are not supported by immigration documents. The steps taken are also immigration measures in the form of 'detention' for a maximum of 10 years in Immigration Detention Centers (IDC) spread across 13 cities in Indonesia. The difference is the detaining means providing a shelter so that it is easy for UNHCR to collect data. Although they are in IDC, they are still treated according to the international human rights norms. Indonesia, though it has not ratified the 1951 Convention, continues to apply the principles contained in it such as non-refoulment, non-expulsion, non-discrimination, and also not committing criminal offenses for refugees in Indonesia<sup>11</sup>.

Presidential Regulation No. 125 of 2016 is another positive legal instrument in dealing with the issue of refugees and asylum seekers in Indonesia. This legal instrument is an explanation of the previous regulation in Law No. 37 of 1999 concerning Foreign Relations. This regulation also contains the rights granted to refugees such as welfare in terms of getting clean water, eating and drinking, health services and cleanliness (Article 26 (12)), and receiving special treatment for those with special needs with facilities provided by relevant international organizations (Article 27 (1))<sup>12</sup>

However, it is unfortunate that the legal instruments related to refugees and asylum seekers in Indonesia have not formulated regulations when special situations occur, such as pandemics. Likewise, the various

<sup>10</sup> Rahayu, dkk, 2020, "PERLINDUNGAN HAK ASASI MANUSIA PENGUNGSI DAN PENCARI SUAKA DI INDONESIA", *Masalah-Masalah Hukum*, 49(2) : 210

<sup>11</sup> Sultoni, Yahya, dkk, 2014, "THE REASON OF INDONESIA NOT RATIFIED REFUGEE CONVENTION 1951 AND LEGAL PROTECTION FOR REFUGEES IN INDONESIA", *Kumpulan Jurnal Mahasiswa Fakultas Hukum*: 8-9

<sup>12</sup> Sihombing, Herlina Y. 2019, "Kebijakan Indonesia dalam Perlindungan Pencari Suaka dan Pengungsi Pasca Kebijakan Turn Back the Boat Pemerintahan Tony Abbott", *Journal of International Relations*, 5(4): 606

policies related to handling COVID-19 issued by the government did not specifically mention their fate. The Indonesian government issued the regulations on social restrictions but did not provide better solutions for those who were prevented from work. This condition is due to one of the policies of the Indonesian government that has been reluctant to provide shelter for refugees since August 31, 2019<sup>13</sup>. During this pandemic, they only relied on assistance from UNHCR Indonesia such as distributing masks and hand sanitizers, cash assistance in the form of additional funds to 1000 refugees, and to 5000 other refugees who live independently and do not have access to support themselves, also establish communication regarding prevention, symptoms, necessary actions and where to seek help with partners at the local level, but still adhere to health protocol policies just like other Indonesian citizens. UNHCR is also working with a local partner, Mapanbumi in Medan, to utilize the human resources of female refugees to produce cloth masks and distribute them to those in need<sup>14</sup>. Although there is no specific policy for them during the pandemic, UNHCR Indonesia Representative Ann Maymann said that the Indonesian government had taken a perfect stance by providing full access to health facilities and services without discrimination<sup>15</sup>.

Those several forms of assistance channeled through local partners are a form of implementation of Presidential Regulation no. 125 of 2016. This policy is substantially related to the shelter policy. So it can be comprehended that the role of sub-national actors in fulfilling the human rights of international refugees during a pandemic is mostly played by local

<sup>13</sup> UNHCR, "UNHCR in Indonesia" <https://www.unhcr.org/id/en/unhcr-in-indonesia> (UNHCR 2019) accessed on 15th of January 2021

<sup>14</sup> UNHCR, 2020, "Bersama Pemerintah Indonesia, Mitra Kerja/ Organisasi dan Badan PBB Lainnya, UNHCR Pastikan Pengungsi Tidak Tertinggal Dalam Respon COVID-19" <https://www.unhcr.org/id/12357-bersama-pemerintah-indonesia-mitra-kerja-organisasi-dan-badan-pbb-lainnya-unhcr-pastikan-pengungsi-tidak-tertinggal-dalam-respon-covid-19.html>, accessed on Jan, 27th 2021

<sup>15</sup> UNHCR, 2020, "UNHCR tingkatkan ketahanan pengungsi di tengah pandemi COVID-19 yang tidak menentu", <https://www.unhcr.org/id/wp-content/uploads/sites/42/2020/06/Press-Release-Distribusi-bantuan-pengungsi-Bilingual-FINAL.pdf>, accessed on Jan, 27th 2021

governments. The understanding and experience in building interactions with IDPs have provided local governments a more significant capacity and credibility to handle the aid distribution process compared to other stakeholders. However, this regulation is still insufficient in terms of the protection of human rights for asylum seekers. The rights of asylum seekers, such as education and decent work, are not regulated. Furthermore, this presidential regulation only contains rules related to the authority of the Indonesian government in terms of placing and managing documents from the transit country to the destination country and the elaboration of the rights and obligations of refugees while in Indonesian territory<sup>16</sup>. It even does not accommodate the time limit the refugees stay in Indonesia. This time limit is quite crucial to control the capacity.

#### **IV. CONCLUSION**

Indonesia has several regulations governing the existence of refugees and asylum seekers, although it did not ratify the 1951 convention, also guidelines for handling Covid-19. But in those regulations and guidelines, not one mentions the handling of refugees and asylum seekers when face with a critical situation such as a pandemic.

#### **V. RECOMMENDATIONS**

- a. The government must reviewed the guidelines for handling COVID-19 and added provisions regarding refugees.
- b. The government implemented COVID-19 prevention outreach that can be understood by refugees.
- c. Include refugees in government programs for social assistance.

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<sup>16</sup> Muraga, A. R. 2020. Analisis Hukum Internasional Terhadap Pemenuhan Hak Pencari Suaka Dan Pengungsi Di Indonesia Menurut Konvensi Jenewa Tahun 1951 Tentang Status Pengungsi. *Lex Privatum*, 8(3)

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**LEGAL OPINION**  
***ALSA LOCAL CHAPTER***  
**UNIVERSITAS AIRLANGGA**



## **HOW INDONESIA ENSURE THE FULFILLMENT OF THE EDUCATION RIGHTS OF ROHINGYA REFUGEE CHILDREN DURING THE COVID-19 PANDEMIC**

Dzaka Ananda Hidayat, Naya Aulia Zulfa dan Zaizafun Lathifah  
**Universitas Airlangga**

### **I. LEGAL ISSUES**

1. What were the efforts of the Indonesian government in ensuring the fulfilment of the education rights of Rohingya refugee children during the Covid-19 pandemic?
2. How is the 1989 Child Rights Convention enacted in fulfilling the education rights of Rohingya child refugees during the Covid-19 pandemic?

### **II. LEGAL BASIS**

1. The Law Number 11 of 2005 on The Ratification of International Covenant on Economic, Social and Cultural Right (International Covenant on Rights of Economic, Social and Cultural)
2. The Presidential Decree Number 36 Year 1990 on Ratification of The Convention on The Rights of The Child (Convention on Children's Rights)
3. The Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Abroad
4. The Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 17 of 2017 concerning Admission of New Students to Kindergarten, Elementary School, Middle School First, Senior High Schools, Vocational High Schools or Other Equivalents

### **III. ANALYSIS**

1. **The Efforts of The Indonesian Government in Ensuring The Fulfilment of The Education Rights of Rohingya Refugee Children During The Covid-19 Pandemic**

Indonesia as the host country of refugee, must continue to provide protection and fulfill the rights of the refugees. Even though the country has not yet ratified the Convention relating to the Status of Refugees 1951 (Convention 1951) and Protocol relating to the Status of Refugees 1967 (Protocol 1967), the Indonesian State continues to apply the principles in the 1951 Convention and 1967 Protocol. There are currently around 13,500 refugees registered with the UNHCR office in Indonesia, around 28% are children.

The right to education is guaranteed in Article 13 of the ICESCR which has been ratified by Law Number 11 of 2005. Moreover, the rights of children for education are also set up by art 28-29 of the Convention on the Rights of the Child. Basically, the right to education can be accepted by refugees in any condition, as stated in Article 23 of The Guiding Principles on Internal Displacement or the guiding principles for internally displaced persons.<sup>1</sup> In granting educational rights, the State of Indonesia collaborates with IOM (International Organization for Migration).

In fact, there are several administrative requirements which have become a barrier for refugee children to attend public schools. One of the administrative requirements is explained in Article 8 of the Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 17 of 2017 concerning the Admission of New Students.<sup>2</sup>

Administrative requirements, such as birth certificates and domicile certificates, cannot be obtained by the refugees due to questionable citizenship status. Rohingya people are not recognized as “Rohingya”, but as Bangladeshis, so

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<sup>1</sup> Abdul Rozak, ‘Perlindungan Hak Atas Pendidikan Bagi Pengungsi Internal : Studi Kasus Pendidikan Anak Korban Kekerasan Terhadap Warga Syiah Sampang’ ( 2019 ) 2 Yuridika.[1897].

<sup>2</sup> Natasya Rizki Asti dan Sri Lestari Rahayu, ‘Pemenuhan Hak Pendidikan Anak Bagi Pencari Suaka yang Transit di Indonesia Sembari Menunggu Status Pengungsi’ (2019) 5 Belli Ac Pacis.[5].

they are not entitled to receive Myanmar citizenship.<sup>3</sup> The absence of citizenship status means that the refugees cannot issue their birth certificates or domicile certificates. Apart from administrative documents, another barrier for refugee children to attend school is different languages. This cause some children are unable to attend public schools and tend to involuntarily take home schooling. For refugees who are not accepted to attend public schools, they receive education from home-schooling and all are funded by IOM.<sup>4</sup> The minimal number of refugee children who can attend public schools or home schooling is due to the limited distance.

However, during the Covid-19 pandemic, the Indonesian government postponed and temporarily closed formal and non-formal education activities, so the alternative used was distance learning which was delivered through the free online education platform, such as broadcast lessons on radio and tv. Furthermore, the Ministry of Education has also collaborated with three telecommunications operators in order to provide free internet to all students in Indonesia including refugees.<sup>5</sup> In order to fulfill the right to education for Rohingya child refugees in Indonesia, Indonesia has provided refugee children access to national schools through the Ministry of Education Circular No. 75253 / A.A4 / HK / 2019 issued in July 2019.<sup>6</sup> The Indonesian state, in collaboration with IOM, continues to make efforts so that Rohingya refugee children can go to school through their respective residences. IOM continues to provide educational support for refugee children and

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<sup>3</sup> Shaila Ticken, 'Ketidadaan Kewarganegaraan Pada Anak-Anak Rohingya sebagai Bentuk Kekerasan Struktural Berbasis Etnis (Studi Kasus Anak-Anak Pengungsi Rohingya di Community Housing Wisma YPAP Medan)' (2013) 9 Jurnal Kriminologi Indonesia.[51-65].

<sup>4</sup> Natasya Rizki Asti dan Sri Lestari Rahayu, *Op.Cit.*[6].

<sup>5</sup> UNHCR, 'Supporting Continued Access to Education during Covid-19: Emerging Promising Practices' (UNHCR, 2020) <https://www.unhcr.org/5f06d92e4.pdf>> Accessed 26 January 2021.

<sup>6</sup>UNHCR, 'Fact Sheet UNHCR' (UNHCR, 2020) <https://www.unhcr.org/id/wp-content/uploads/sites/42/2020/08/Indonesia-Fact-Sheet-July-2020-FINAL.pdf>> Accessed 26 January 2021.

adults by providing internet data packages to access online learning platforms and free education channel on national TV TVRI. Refugee children and adults participate in online learning sessions delivered by local schools, NGO partners, service providers, and volunteer refugee teachers.<sup>7</sup>

## **2. The Implementation of the 1989 Convention on the Rights of the Child in Fulfilling the right to Education for Rohingya Refugee Children During the Covid-19 Pandemic Child**

The government must pay attention to equal protection of children including protection for child refugees. These refugee children need special attention given the vulnerability they have.<sup>8</sup> Indonesia's role in the fulfillment of children's rights has been proven by ratifying the 1989 Convention on the Rights of the Child (CRC) on August 25, 1990 through Presidential Decree Number 36 of 1990 (State Gazette of 1990 number 57). Furthermore, Indonesia also set up the law Number 23 of 2002 to ensure protection for children. Subsequently, the law was amended and replaced by Law Number 35 of 2014. This law stipulates that the government, local governments, and other state institutions are responsible for "Special Protection" for children, which is regulated in Article 59 paragraph (2). Children who are qualified to receive special protection according to Article 60 of this Law are children in emergencies such as children who are refugees, victims of riots, victims of natural disasters, and in situations of armed conflict. Although Indonesia is not a country that has not ratified the 1951 Refugee Convention and the 1967 Protocol,

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<sup>7</sup> International Organization for Migration, 'Laporan Covid-19 IOM Indonesia' (IOM UN Migration, 2020) <https://indonesia.iom.int/sites/default/files/Laporan%20Situasi%20COVID-19%20IOM%20Indonesia%20-%208%20September%202020.pdf>> Accessed 20 January 2021.

<sup>8</sup> Fita Erdiana. 'Perlindungan Hukum Bagi Pengungsi Dari Konflik Bersenjata di Republik Demokratik Kongo Menurut Hukum Pengungsi Internasional', (2009) Tesis Universitas Sebelas Maret.[101].

Indonesia still has to be responsible for protecting the rights of refugee children under Article 22 of the CRC.<sup>9</sup>

Since refugee children are vulnerable subjects, education can protect them from child labor, sexual exploitation, child marriage, and forced recruitment into armed groups. Furthermore, education empowers them with the knowledge and skills to live productively and independently.<sup>10</sup> By education, the host state can secure their future as it can empower learners and equip them with values, knowledge and skills that are based on and instil respect for democracy, human rights, social justice, cultural diversity, gender equality and environmental sustainability.<sup>11</sup>

Indonesia enacted Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Abroad. This regulation is part of the government's efforts in dealing with refugee problems, although there are no specific provisions governing the education of refugee children in the Presidential Regulation.<sup>12</sup>

The state is obliged to guarantee that every service agency and facility conforms to the standards made by competent children's institutions as stipulated in Article 3 paragraph (3) of the CRC. As long as Covid-19 has not ended, the Indonesian government must continue to pay attention to proper education access for child refugees, such as providing tools to support online learning, as well as improving teacher quality.

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<sup>9</sup> M. Riadhussyah, S.H; Dhiana Puspitawati, S.H., LL.M., Ph.D.; Dr. Hanif Nur Widhiyanti, S.H., M.Hum. 'Perlindungan Hukum bagi Pengungsi Anak di Indonesia Menurut Hukum Internasional', (2020) Jurnal Universitas Brawijaya.[19].

<sup>10</sup> U. Refugees, 'Action for the Rights of Children (ARC): Foundations-International Legal Standards' (UNHCR, 2020) <https://www.unhcr.org/3e37e5ba7.pdf> >Accessed 21 January 2021.

<sup>11</sup> UNESCO, 'UNESCO Education Strategy 2004-2021' (UNESCO, 2014) <https://unesdoc.unesco.org/ark:/48223/pf0000231288>>Accessed 27 January 2021.

<sup>12</sup> F.B. Anggoro, 'Polemik Menyekolahkan Pengungsi Anak di SD Negeri Pekanbaru, (Antara News, 2020)>Accessed 29 April 2021.

#### **IV. CONCLUSION**

That child refugees who come to Indonesia still get the education that the government is obliged to provide as it is an obligation not only for Indonesia, but also for every country. Indonesia provides education for them even in small number in public school because of the administrative requirement issue and collaborating with IOM to ensure for the rest can access education.

Although Indonesia has not ratified the 1951 convention and the 1967 protocol, it is not an obstacle for the Indonesian government to continue providing the best education for child refugees in the midst of the Covid-19 pandemic so that child refugees become eligible to get education that will make them live independently and protect them from other things that will cause negative problems in the growth of refugee children considering that they are still vulnerable and must be protected by all parties.

#### **V. RECOMMENDATION**

Even though we are in the amid of the Covid-19 pandemic, the government must also pay attention to the education of child refugees by ways that also comply with health protocols by learning it online somewhere, with a joint concept but remains aloof, besides there are also ways of providing learning facilities which are not electronic-based learning platform but it is beneficial for the growth and development of children displaced.

Collage students or other institutions can also contribute to fulfilling the rights of refugee children to get learning even though during Covid-19, in such cases as real work lectures, such as working with a village where there are many refugee children, and they as teachers who will teach them later so that the lives of child refugees will also be better.

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**LEGAL OPINION**  
***ALSA LOCAL CHAPTER***  
**UNIVERSITAS HASANUDDIN**

## ***Quo Vadis?* Indonesian Commitment on Protection and Fulfillment of Child Refugees Right to Education in Pandemic**

Nurul Habaib Al-Mukarramah H. Irfan, Muhammad Arfan Arif, and Nurul  
Fadhilah Hubulo  
**Universitas Hasanuddin**

### **I. Introduction**

Human rights are incorporated in the State Constitution of Republic of Indonesia 1945 (1945 Constitution), Indonesia is committed to the Universal Declaration on Human Rights (UDHR) 1948. The Indonesian government have ratified the United Nations Convention on the Right of the Child (UNCRC) through Presidential Decree No. 36 Year 1990 on Ratification of Convention on the Right of the Child (PD 36/1990) as the primary baseline of the responsibility of Indonesia to obey the obligations set forth in the convention in terms of protection and the fulfillment of rights of child refugees.

Indonesia has not ratified the Convention Relating to the Status of Refugees 1951 and New York Protocol 1967 on the status of refugees (in consequence), the author does not utilize these conventions as the legal basis). Nevertheless, Indonesia is a committing country in the New York Declaration for Refugees and Migrants 2016 which represents the support of Indonesia to the protection and fulfillment of refugees' rights.

Various sectors have been severely affected due to the COVID-19 pandemic, predominantly in the formal education sector. The drastic transformation of the learning system on formal education triggers challenges to the students, and teachers. Child refugees are groups vulnerable to unprotection of rights and its fulfillment of such rights by the Indonesian government, especially in respect of formal education. Due to the pandemic era, the rights of Indonesian citizens are difficult to fulfill which adds more complexities in fulfilling and protecting the child refugees.

## II. Problems

1. How does the protection of child refugees' right to education be regulated in the domestic law of Indonesia?
2. How is the continuity and the fulfillment of child refugees' right to education by Indonesia in the pandemic era?

## III. Legal Basis

1. State Constitution of the Republic of Indonesia 1945 (1945 Constitution)
2. Universal Declaration on Human Rights (UDHR) 1948
3. Presidential Decree No. 36 Year 1990 on Ratification of Convention on the Right of the Child 1989 (PD 36/1990)
4. International Health Regulations (Third Edition) 2003
5. New York Declaration for Refugees and Migrants 2016
6. Presidential Regulation No. 125 Year 2016 on the Treatment of Refugees and Asylum Seeker from Abroad.
7. Letter of Ministry of Education and Culture No. 4 Year 2020

## IV. Analysis

### 1. Protection of Child Refugees Right to Education Regulated in The Domestic Law of Indonesia

A child should be protected, and the right to education is the fundament of human rights as mandated in the 1945 Constitution. Country entitled as the state of law (*rechtsstaat*) shall protect human rights, including child refugees. Several major problems faced by Indonesia, including education issues.

Specified in the article 27 paragraph (3) point d Presidential Regulation No. 125 Year 2016 on the Treatment of Refugees and Asylum Seeker from Abroad, children are categorized as refugees with special needs. The right of child refugees is elucidated in article 27 paragraph (4) point b that child refugees shall be treated based on the principle of the best interest of the child. Moreover, article 22 of PD

36/1990 further explained that child refugees shall be treated equally within the international or domestic regulation, child refugees also shall receive protection and humanitarian support in the enjoyment of the rights set forth in PD 36/1990 such as the right to education included as the best interest of the child.<sup>1</sup>

Article 28 of PD 36/1990 mentioned that each child has the right to access a free and quality of formal education. The discipline implemented in schools should be in full respect of the rights and dignity of children.<sup>2</sup> Due to this, Indonesia shall implement the good faith principle that this obligation must be fulfilled.<sup>3</sup>

Indonesia as the ratifying country should implement the obligations mandated in PD 36/1990. Indonesia must protect the principle of best interests of the child containing the right to education as incorporated in PD 36/1990 as one of the fundamentals of human rights, including child refugees.

## **2. Continuity and Fulfillment of Child Refugees Right to Education by Indonesia in Pandemic Era**

In the pandemic era, the human rights mandated in UDHR shall be continued. However, the continuity of child refugees' right to education is questioned throughout pandemic era which positioned the country in state of emergency after the World Health Organization (WHO) declared COVID-19 as global pandemic. In article 3 International Health Regulation, as the international law instrument on the treatment of refugees in pandemic binding the whole WHO members including Indonesia stated that the fulfillment of human rights should be considered even in a state of pandemic circumstance. Indonesia shall fulfill the mandate in the New York Declaration for Refugees and Migrants, specifically on the right to education for child refugees as stated in point number 32, 81, and 82. In consequence, the country must concentrate on the fulfillment of rights of refugees in every circumstance. Which is in line with Ronald Dworkin's justice theory, that justice

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<sup>1</sup> Natasya Rizki Asti and Sri Lestari Rahayu, 'Pemenuhan Hak Pendidikan Anak Bagi Pencari Suaka yang Transit di Indonesia Sembari Menunggu Status Pengungsi (Ditinjau dari The United Nations Convention on The Right of Childs 1989)' (2019) 5(1) Belli Ac Pacis. [1-8]

<sup>2</sup> UNICEF, 'Konvensi Hak Anak: Versi Anak Anak', (UNICEF, 28 October 2018) <https://www.unicef.org/indonesia/id/konvensi-hak-anak-versi-anak-anak> accessed 15 January 2021

<sup>3</sup> Amir Ilyas and Muhammad Nursal, *Kumpulan Asas-Asas Hukum* (Jakarta : Rajawali Pers, 2016).[89]

can only be seen through how the government ensures equal concern and respect for each human life and every citizen within full respect to human rights as its primary measure.<sup>4</sup>

Indonesian children faces another obstacle after the release of Letter of Ministry of Education and Culture No. 4 Year 2020 in point 2 which transformed the education system from offline to online, this policy affects 577 child refugees registered in public schools from the total of 3.822 child refugees registered in Indonesia by July 2020.<sup>5</sup> However, the difficulty on finding publication or regulations and initiatives from the government which considers the fulfillment of child refugees' right to education in the pandemic era have minimized the acknowledgement of the public on the urgency of fulfillment on rights of refugees, only 3 publications in online media which focuses on refugees rights.<sup>6</sup> International Organization of Migrants (IOM) have put effort in supporting access to education for child refugees' right to education by providing internet data to access online learning sessions facilitated by partners, providers, and voluntary refugee teachers.<sup>7</sup>

The government should deeply concerned about the continuity of fulfillment of child refugees' right to education in line with Indonesia's commitment to the New York Declaration on Refugees and Migrants. The lack of initiatives of the government to maintain synergy with organizations on refugees to cooperate in facilitating access to education for child refugees are the primary obstacle in the fulfillment of child refugees' right to education in the pandemic era as mandated in PD 36/1990.

<sup>4</sup> Ronald Dworkin, *Justice for Hedgehogs* (Harvard University Press 2011). [327-351]

<sup>5</sup> UNHCR, 'Figures at A Glance, Indonesia', (UNHCR, 2019) <https://www.unhcr.org/id/en/figures-at-a-glance> accessed 15 January 2021

<sup>6</sup> Tri N Pudjiastuti, 'Kerentanan Pengungsi pada Masa Pandemi COVID-19 di Indonesia', (LIPI, 2020) <http://www.politik.lipi.go.id/kolom/kolom-1/politik-internasional/1384-kerentanan-pengungsi-pada-masa-pandemi-covid-19-di-indonesia#:~:text=Pada%20masa%20pandemi%20COVID%2D19%2C%20pengungsi%20menjadi%20salah%20satu%20kelompok,UNHCR%2C%2025%20April%202020> accessed 21 January 2021

<sup>7</sup> IOM, 'Laporan Respons COVID-19 IOM Indonesia'. (IOM, 2020) <https://indonesia.iom.int/sites/default/files/Laporan%20Situasi%20COVID-19%20IOM%20Indonesia%20-%208%20September%202020.pdf> accessed 13 January 2021

## **V. Conclusion**

### **1. Summary**

PD 36/1990 reaffirms that the child refugees must be given protection and fulfillment to their rights and must be treated according to the principle of the best interests of the child. Education is a human right, and also incorporated in the principle of best interests of the child. Consequently, Indonesia is liable in fulfilling and protecting the rights to education of child refugees in good faith principle.

During pandemic era, the continuity of the fulfillment of child refugees' right to education shall be considered by Indonesia as committing country to the New York Declaration for Refugees and Migrants. Despite the lack of information and publication regarding this issue and the absence of government policy in terms of protecting the fulfillment of child refugees' right to education, organizations such as IOM are pulling effort on fulfilling the child refugees' access to education. Nevertheless, lack of synergy between government and organizations relating to child refugees in order to fulfill the child refugees right to education in the pandemic era is the main issue.

### **2. Suggestion**

Indonesia as ratifying country shall protect child refugees' right to education as mandated in 1945 Constitution and PD 36/1990 based on the best interest of child principle. Meanwhile, the initiatives from government in case of guarding the continuity on fulfillment of child refugees' right to education in the pandemic era is necessary.

The synergy between the government of Indonesia with organizations pertaining to refugees should be strengthened in order to ensure the fulfillment and protection of child refugee's right to education is optimally implemented.

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13 January 2021



# LEGAL OPINION *ALSA LOCAL CHAPTER* UNIVERSITAS GADJAH MADA

## **Solutions to Fulfill the Hindrance Faced by the Refugees in Fulfilling Their Rights During the Pandemic of COVID-19 in Indonesia**

Putri Fitriani, Richard Akira Feliciano, dan Rr Kunti Dewi Adriane K.W

**Universitas Gadjah Mada**

### **I. LEGAL ISSUES**

Indonesia is not a state party to the 1951 Convention on Refugees. However, the rights of everyone to seek and enjoy asylum are guaranteed under the Universal Declaration of Human Rights (“UDHR”).<sup>1</sup> The main problem is concerning the limited facilities possessed by Indonesia. For instance, during this Pandemic, most of the refugees are not provided with the necessary facilities to prevent the infection of coronavirus. One of the examples is the situation in Kalideres Emergency Shelter, where the refugees are so excessive and forced to live in a cramped situation.<sup>2</sup> Clean water is also limited, such as the condition of water in the refugee camps of the former Kodim Building, which only flows for 10 hours per day.<sup>3</sup>

Good supporting facilities are one of the bases to fully implement the health protocols. Otherwise, for example, there are 2 out of 196 refugees who have been tested positive for coronavirus.<sup>4</sup> Thus, it is highly likely that the refugees’ area will become a new cluster for the coronavirus which can spread to the local community.

Moreover, disproportionate refugee protection among States is important to take into account. Most refugees fled towards the developing country instead of developed, causing disproportionate protection among States.<sup>5</sup> As a result, the refugees’ rights cannot be fully achieved because of the States’ limitations.

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<sup>1</sup> Article 14(1) of UDHR.

<sup>2</sup> Mohammad Bernie, ‘Nasib Tanpa Tujuan Pencari Suaka di Tengah Pandemi COVID-19’ *Tirto* (tirto.id, 2020) < <https://tirto.id/nasib-tanpa-tujuan-pencari-suaka-di-tengah-pandemi-covid-19-eMkY> > accessed 10 January 2021

<sup>3</sup> Bonfilio Mahendra Wahanaputra Ladjar, ‘Dua Orang Pencari Suaka di Kalideres Positif COVID-19’ (Kompas.com, 2020) < <https://megapolitan.kompas.com/read/2020/07/27/21202931/dua-orang-pencari-suaka-di-kalideres-positif-covid-19?page=all> > accessed 11 January 2021.

<sup>4</sup> Ibid.

<sup>5</sup> UN Refugee Agency, ‘1 percent of humanity displaced: UNHCR Global Trends report’ (UNHCR, 2020) < <https://www.unhcr.org/news/press/2020/6/5ee9db2e4/1-cent-humanity-displaced-unhcr-global-trends-report.html> > accessed 25 January 2021.

Also, with regards to financial matters, Indonesia is referred to as a '*transiting country*' for refugees.<sup>6</sup> However, the refugees that set foot to Indonesia are prohibited to work.<sup>7</sup> Even though they are permitted to work, language barriers and qualifications will also be a problem for the refugees.<sup>8</sup> Resulting in higher dependency on Non-Governmental Organizations and the compassion of the local people.

Lastly, during the Pandemic, many countries enact a policy of travel restrictions.<sup>9</sup> These matters impact the resettlement of the refugees towards the country that accepts the resettlement. Because, if one country receives more than its capability, the refugees will suffer more. Especially, during this Pandemic situation that the virus could easily transmit from one to another.

1. Underlying Problems Faced by Indonesia in Handling the Refugees as a Non-State Party of the 1951 Convention of the 1951 Convention; and
2. Necessary Measures to fulfill the Refugees' Rights During the Pandemic of COVID-19.

## II. LEGAL BASIS

1. 1945 Constitution of the Republic of Indonesia;
2. Law No.36 Year 2009 on Health;
3. Presidential Regulation No.125 Year 2016 on Handling of Refugees from Abroad;

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<sup>6</sup> Arie Afriansyah, 'Indonesia and the Global Compacts on Refugees and Migration', (2018), 30 IJRL. [685].

<sup>7</sup> Director General of Immigration regulation No. IMI-1489.UM.08.05 Year 2010 dated 17 September 2010; Danu Damarjati, 'UNHCR Harap Indonesia Izinkan Pengungsi Cari Pemasukan' (detiknews, 2019) < <https://news.detik.com/berita/d-4412648/unhcr-harap-indonesia-izinkan-pengungsi-cari-pemasukan> > accessed 14 January 2021.

<sup>8</sup> OECD/UNHCR, 'Hiring refugees - What are the opportunities and challenges for employers?' (2016) OECD 4 < <https://www.oecd.org/els/mig/migration-policy-debates-10.pdf> > accessed 14 January 2021.

<sup>9</sup> Liliana Lyra Jubilit, 'Challenges to refugee protection in the time of COVID-19' (UNSW Law, 25 June 2020) < <https://www.kaldorcentre.unsw.edu.au/publication/challenges-refugee-protection-time-covid-19> > accessed 14 January 2021.

4. Minister of Health Regulation No.84 Year 2020 on the Implementation of Vaccinations in the Control of Coronavirus Disease (COVID-19) Pandemic;
5. Director General of Immigration Regulation No.IMI-1489.UM.08.05 Year 2010 dated 17 September 2010; and
6. The 1951 Convention relating to the Status of Refugees.

### III. ANALYSIS

#### 1. Necessary Measures to Fulfill the Refugees' Rights During the Pandemic of COVID-19

The enactment of a national instrument is needed to provide a legal certainty towards the refugees' rights. The scope of the national instrument includes but is not limited to: (1) Permission to work with certain limitations; and (2) Refugee temporary stay permit card. Additionally, the Government should deploy the COVID-Task-Force to organize and supervise the refugees' camps by also collaborating with local and international organizations.

Firstly, permission to work with certain limitations, the area of work for the refugees will be limited. The limitation aims to give equal opportunity for Indonesian nationality in search of work. The limitation is extended to informal work under regular surveillance. During this Pandemic, the refugees' movement will be limited to fully implement the purpose of social-distancing. And most importantly to prevent a terrorist posing as a refugee.<sup>10</sup> Besides, the refugees can also support the medical personnel by making home-made masks.<sup>11</sup> However, the clinical feasibility of the masks has to be checked by an authorized body.

Related to the aforementioned, the problems of language barriers can be tackled by providing Indonesian language lessons for refugees. For example, by opening several education camps by mirroring the implementation from the

<sup>10</sup> Juan Carlos Antunez, 'Refugees and Terrorism: The Real Threat' (2019) GESI < <https://www.seguridadinternacional.es/?q=en/print/1881> > accessed 10 January 2021.

<sup>11</sup> UNHCR staff, 'Refugees make protective masks to curb the spread of coronavirus' (UNHCR, 2020) < <https://www.unhcr.org/news/stories/2020/6/5ee72bc44/refugees-make-protective-masks-to-curb-the-spread-of-coronavirus.html> > accessed 14 January 2021.

earthquake in West Sulawesi.<sup>12</sup> The Language Development and Cultivation Body (BPPB) can be authorized to provide such lessons and assess the result. The refugees that pass the test will be shifted to the “Ready-to-Work group”. While the ones who failed will be shifted to the special business spot, which will be provided by the Government to improve the refugees’ financial independence. Further, the Government, in specifying the maximum quotas, should assess their abilities by also considering the space in the special business spot. So, the business spot can be an alternative solution if the number of refugees who failed the test is higher.

Secondly, issuing the Refugee Temporary Stay Permit Card as a means to give a certainty towards the refugees in staying in Indonesia until the resettlement occurs. The cards will grant the refugees access to conduct a business in the special spot, which will be limited to 1,5 (one and a half) years. Considering the limited capacity possessed by the IOM in providing such facilities, after this period, the refugees should have financial independence, to reduce the burden of UNHCR and IOM in Indonesia.

Subsequently, the card will also function as access to housing in Indonesia. The UNHCR argues that the facilities in the Immigration Detention Center (Rudenim) are not appropriate for the refugees to live in.<sup>13</sup> therefore, permitting access to work for the refugees could also allow the refugees to rent a place to stay. However, the place that is being rented should follow the health protocols under the surveillance of the Government. Hence, the shelter provided by both UNHCR and IOM will not exceed the capacity and the transmission of coronavirus can be prevented.

Furthermore, proportionality should prevail in setting the maximum quota for refugees. The States that have more supporting facilities in protecting the refugees should set higher quotas and *vice versa*. The States can reflect the implementation of maximum quota from the ‘Emission Trading Scheme’ in international

<sup>12</sup> Kemdikbud, ‘Sebanyak 103 Satuan Pendidikan Rusak Akibat Gempa di Sulawesi Barat’ (Kemdikbud, 2021) < <https://www.kemdikbud.go.id/main/blog/2021/01/sebanyak-103-satuan-pendidikan-rusak-akibat-gempa-di-sulawesi-barat> > accessed 24 January 2021.

<sup>13</sup> Riva Dessthanian Suastha, ‘UNHCR: Rudenim Bukan Tempat Tampung Pengungsi Asing’ (CNN Indonesia, 2018) < <https://www.cnnindonesia.com/internasional/20180405142110-106-288510/unhcr-rudenim-bukan-tempat-tampung-pengungsi-asing> > accessed 18 January 2021.

environmental law. In which, the United Nations set a quota to emit pollution for both developed and developing countries. Developing countries will receive more quotas compared to the developed countries. If the developing countries have remaining quotas, they can sell them to the developed countries.<sup>14</sup> Hence, no country receives more than what it is capable of compared to other countries that have such capability but receives less than what it should be.

Lastly, the refugees do have access to get the vaccines.<sup>15</sup> However, the amount of vaccine is limited and the priority to have the vaccine is arranged sequentially under article 8(4) of Minister of Health regulation No.84 Year 2020. In which, the refugees are categorized as the final recipient to have the vaccine. Therefore, the solution is to establish a herd community and strictly apply the health protocols near the refugee camps. The herd community is impliedly explained in article 6 of Law No.36 Year 2009, which is, “*everyone has the right to a healthy environment ...*”. Subsequently, the refugees are not obliged to have the vaccine but the community that lives in the vicinity of the refugee camps “should” get the vaccine to decrease the percentage of transmissions towards the camps.

#### IV. CONCLUSION

The problem that arises in Indonesia relating to the refugees matter is mainly caused by the limited decent service, and facility for the refugees when they are seeking protection in Indonesia. That is mainly caused by Indonesia’s current regulation that doesn’t specifically regulate the technical procedure of refugees’ matters. That continues to the worse condition of the refugees in Indonesia during the pandemic where it lacks so much of basic human rights decency.

Hence, that problem triggers the enactment of a very procedural and technical solution towards this matter.

#### V. RECOMMENDATION

<sup>14</sup> Asian Development Bank, ‘Emissions Trading Schemes and Their Linking: Challenges and Opportunities in Asia and the Pacific’ (ADB, 2015).

<sup>15</sup> Article 28H (1) of the 1945 Constitution jo. Article 4 of Law No.36 Year 2009 on Health.

1. Enact a national instrument that covers the permission to work under special circumstances with regular surveillance to give financial independence to the refugees;
2. The national instrument should also cover the period of stay in Indonesia by issuing the 'Refugee Temporary Stay Permit card'. The purpose is to limited the dependency of the refugees in receiving support by IOM. The term limiting does not merely mean limiting the refugees' rights. But beforehand, the Government will provide a special business spot for the refugees to channel their talents and skills. Therefore, the burdens that UNHCR and IOM have will decrease;
3. Grouping the refugees into two groups based on their abilities in the Indonesian language that will be assessed by the Language Development and Cultivation Body (BPPB) beforehand to tackle the problems of language barriers; and
4. Maximum quotas for the refugees should consider the business spot and the State capability. So, the refugees who failed the language test will not be neglected but shifted into the business spot.



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**LEGAL OPINION**  
***ALSA LOCAL CHAPTER***  
**UNIVERSITAS INDONESIA**

## Regulating Refugee Rights: Equity and Inclusion amidst the COVID-19 Pandemic in Indonesia

Natasya Alifia Amanda, Zalfa Ghea Tamima, and Claudia Evatania

Universitas Indonesia

### I. FACTS

1. As of April 2020, out of 14.000 refugees in Indonesia, a total of 5.000 refugees were living independently outside the Immigration Detention Centers (*Rumah Detensi Imigrasi*, or “**Rudenim**”) and those 9.000 refugees are living in the shelters provided by the government along with the United Nations High Commissioner for Refugees (“**UNHCR**”) and International Organization for Migration (“**IOM**”);
2. Those 5.000 refugees ended up living independently due to the overcapacity of the Rudenim and shelters that left no choice for them but to get out and live outside;
3. They were unable to work in the formal sector, so they relied heavily on the mercy of many people who donated, cash assistance from UNHCR, their own savings, and also from informal earnings to fulfill their basic daily necessities. However, the implementation of restrictions on activities in the form of Large-Scale Social Restrictions (*Pembatasan Sosial Berskala Besar*, or “**PSBB**”) has limited their activities, including in doing their informal work;
4. Unlike the refugees living in the Rudenim or shelters who obtained facility to support their lives, those who lived outside did not get access to any social and financial assistance provided by the government, be it in the form of food, beverages, health facilities, and cash transfers, during the Coronavirus Disease 2019 (“**COVID-19**”) pandemic;
5. The difficulty they faced in receiving assistance was because they did not have a legitimate identity card as a requirement to get direct social and financial assistance during the COVID-19 pandemic.

## II. ISSUES

1. Based on the Indonesian prevailing law, what rights are refugees entitled to during the pandemic?
2. What is the urgency and necessity to issue a specific regulation regarding refugee provisions during the COVID-19 pandemic?

## III. REGULATIONS

1. The 1945 Constitution of the Republic of Indonesia (**“the 1945 Constitution”**);
2. Law Number 12 of 2011 on the Formation of Legislation (**“Law 12/2011”**);
3. Law Number 37 of 1999 on Foreign Relations (**“Law 37/1999”**);
4. Law Number 39 of 1999 on Human Rights (**“Law 39/1999”**);
5. Presidential Regulation Number 125 of 2016 on the Handling of Refugees from Abroad (**“Presidential Regulation 125/2016”**);
6. Ministerial Decree of the Minister of Social Affairs of the Republic of Indonesia Number 54/HUK/2020 on the Implementation of Basic Needs Social Assistance and Direct Cash Assistance in Handling the Impact of Coronavirus Disease 2019 (Covid-19) (**“Ministerial Decree 54/HUK/2020”**).

## IV. ANALYSIS

### 1. The Rights that Refugees are Entitled to during the Pandemic based on the Indonesian Prevailing Law

The right for every person to seek asylum from another country is acknowledged in Indonesian 1945 Constitution.<sup>1</sup> However, in a more specific notion, refugees in Indonesia have no certainty of the rights obtained during the COVID-19 pandemic because the prevailing law is still unable to ensure the fulfillment of them. The arrangement regarding refugees is mentioned in Law 37/1999 and regulated further in Presidential Regulation 125/2016

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<sup>1</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

which states that refugees living temporarily in Rudenim and shelters have the right to obtain basic necessities in the form of clean water, fulfillment of food, beverages, clothing, health and hygiene services, and worship facilities.<sup>2</sup> However, Indonesia is not a state party to the 1951 Convention and the 1967 Protocol which is an international treaty on refugee protection. Thus, in terms of handling refugees, the Indonesian Government is assisted by UNHCR.<sup>3</sup>

Indonesia does not yet have *lex specialis* or specific regulation governing refugee-related matters during the pandemic. Therefore, all their rights in Presidential Regulation 125/2016 as stated previously also apply in the COVID-19 pandemic situation as long as it has not been amended or revoked.<sup>4</sup> Meanwhile, for refugees living independently due to the overcapacity of the Rudenim and shelters, there is no regulation to guarantee their rights in receiving social and financial assistance during the pandemic. But that should never be a justification for the government to ignore their presence because Indonesia is a country that recognizes and upholds human rights based on the second principle of Pancasila "Good and civilized Humanity".<sup>5</sup> Humanitarian values in Article 28H paragraph (1) of the 1945 Constitution also affirm that "everyone" has the right to live prosperously and mentally; live and get a healthy environment; and deserve health services, in which case refugees are included in the term "everyone". Indonesia has also ratified the Universal Declaration of Human Rights ("UDHR") which stands as an international treaty on Human Rights through Law 39/1999. This law, precisely in Articles 11, 40, and 62, points out that everyone has the right to fulfill their basic needs; live and have a decent life; and obtain health insurance for each child according to his/her needs.<sup>6</sup>

<sup>2</sup> Peraturan Presiden Nomor 125 Tahun 2016 tentang Penanganan Pengungsi dari Luar Negeri.

<sup>3</sup> M. Suryono, 'Penentuan Status Pengungsi' (UNHCR Indonesia, 2020) <https://www.unhcr.org/id/penentuan-status-pengungsi> accessed 29 January 2021.

<sup>4</sup> Maria Farida Indrati, *Ilmu Perundang-Undangan: Proses dan Teknik Pembentukannya* (Kanisius 2007).[138].

<sup>5</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

<sup>6</sup> Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia.

## 2. The Urgency and Necessity to Issue a Specific Regulation regarding Refugee Provisions during the COVID-19 Pandemic

The urgency and necessity to issue a specific regulation arises from the legal void regarding refugee provisions. As a country with a civil law legal system, the distinctive feature of Indonesia is the heavy presence of the written code of law.<sup>7</sup> Indonesia relies a lot on statutes that regulate the legal procedures and provisions on what is allowed and what is prohibited. In terms of refugees, there is article 27 of Law 37/1999 stating that the President shall determine a policy regarding refugees from abroad with regard for the consideration of the Minister.<sup>8</sup> Moreover, this law also mandates the President to set forth the principles of the policy in a Presidential Decree.<sup>9</sup> Regarding this, there has not been any Presidential Decree issued, which then creates a legal void on this matter. Hence, there emerges an urgency and necessity for the President to issue a Presidential Decree to give legal certainty for all stakeholders involved in handling refugees. The issuance of the decree would not have to wait until the 1951 Convention and the 1967 Protocol are ratified because it may take quite a while, and in this urgent era during the pandemic, a prompt action shall be taken.

The Presidential Regulation 125/2016 brings up a new question on why the President decided to stipulate a Presidential Regulation other than a Presidential Decree as explicitly mandated by the law. It is true that in theory, Presidential Regulation may contain materials as ordered by Law.<sup>10</sup> However, in this context, what is mandated by the law is not the making of a Presidential Regulation, but a Presidential Decree. This becomes an issue because there are fundamental differences between those two instruments. The pronounced features of a regulation are that it is general (impersonal), abstract (non-

<sup>7</sup> Nurul Qamar, *Perbandingan Sistem Hukum dan Peradilan Civil Law System dan Common Law System* (Refleksi 2010).[40].

<sup>8</sup> Undang-Undang Nomor 37 Tahun 1999 tentang Hubungan Luar Negeri.

<sup>9</sup> *Ibid.*

<sup>10</sup> Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.



representational), and applies continuously as long as not stipulated otherwise, while a decree is the total opposite as it is known to be individual (personal), concrete (representational), and applies only once for a time being.<sup>11</sup> Hence, Presidential Regulation and Presidential Decree are two different types of legal instruments. The impact of the absence of a decree is that no concrete program and decision has been made to fully fulfill refugee rights. Thus, it is safe to conclude that the issuance of a Presidential Decree is still needed.

Besides the existing Presidential Regulation, there already is a decree in the ministerial level governing the implementation of social and financial assistance during the COVID-19 pandemic, namely the Ministerial Decree No. 54/HUK/2020 enacted by the Minister of Social affairs of Indonesia. Nonetheless, the existence of this decree is not based upon any higher regulation on refugees.<sup>12</sup> The government also requires the recipient of the assistance to have a legitimate identity card which, of course, is merely owned by citizens.<sup>13</sup> As a result of those arrangements, the *a quo* case shows that refugees ended up being excluded from receiving government assistance because they did not meet the requirement of owning a legitimate identity card, knowing that the decree does not categorize refugees as recipients from the beginning. Thus, even if there already are two implementing regulations, it is still urgent and necessary to stipulate a new one that covers the whole issue in the form of Presidential Decree.

## V. CONCLUSION

<sup>11</sup> Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-undang* (Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI 2006).[2].

<sup>12</sup> Keputusan Menteri Sosial Republik Indonesia Nomor 54/HUK/2020 tentang Pelaksanaan Bantuan Sosial Sembako dan Bantuan Sosial Tunai dalam Penanganan Dampak *Corona Virus Disease* 2019 (COVID-19).

<sup>13</sup> Tri Nuke Pudjiastuti, 'Kerentanan Pengungsi pada Masa Pandemi COVID-19 di Indonesia' (Pusat Penelitian Politik LIPI, 2020) <http://www.politik.lipi.go.id/kolom/kolom-1/politik-internasional/1384-kerentanan-pengungsi-pada-masa-pandemi-covid-19-di-indonesia> accessed 28 January 2021.

The legal void of refugee provisions in Indonesia has impacted on the uncertainty for refugees to get government assistance during the pandemic. Refugees living in Rudenim and shelters have the rights to obtain basic necessities provided by the government in the form of clean water, fulfillment of food, beverages, clothing, health and hygiene services, and also worship facilities based on Presidential Regulation 125/2016, and it is still valid during the pandemic. Meanwhile, for refugees who live outside due to the overcapacity of the shelters, there is still no regulation that guarantees their rights, both in a normal condition and in a pandemic. The government should have taken care of them as well considering that Indonesia is a country that upholds human rights. But, to create a more solid legal certainty throughout the nation, it becomes urgent and necessary to issue a new specific regulation in the form of Presidential Decree that governs refugee provisions in getting assistance, especially during the COVID-19 pandemic. The decree shall specifically regulate the implementation of the assistance to refugees.

## **VI. SUGGESTIONS**

1. The Government of Indonesia must include refugees as the people who are entitled to receive social and financial assistance such as food, beverages, health facilities, and cash transfers, especially for refugees living outside Rudenim and shelters during the COVID-19 pandemic;
2. The Government of Indonesia must issue a Presidential Decree as an implementing regulation mandated by the existing law that governs refugee provisions in getting assistance, then immediately execute it by objectifying a concrete program.

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**LEGAL OPINION**  
***ALSA LOCAL CHAPTER***  
**UNIVERSITAS JENDERAL**  
**SOEDIRMAN**

## ASSESSING THE EXISTENCE OF THE STATE IN PROTECTING REFUGEES AS A POLICY URGENCY IN THE PANDEMIC TIME

### COVID-19

By: Arian Nathan Parheheon  
Universitas Jenderal Soedirman

#### I. Limitations and Assumptions

1. This Legal Opinion is prepared and is intended to participate in ALSA Indonesia Legal Opinion Period III.
2. This Legal Opinion is only based on applicable legal provisions, both in Indonesia and countries that are concerned with the legal issues that the author raises.

#### II. Case Position

1. That on April 12, 2020, several refugees from various countries were found, one of which was from Afghanistan who resided in Cisarua, Bogor, West Java, named Muhammad Akbar Anwari
2. That Akbar has lived as a refugee since 2015 and the fact shows that this is exacerbated by the Covid-19 pandemic.
3. Whereas after being traced, Akbar and several other refugees experienced difficulties and experienced a crisis in fulfilling their daily lives due to several factors, namely being unable to find work because of their citizenship status.
4. Whereas condition *a quo*, the government has provided some assistance to its people, but except for the refugees who cannot show their family cards and identity cards so they cannot access assistance from the Indonesian government.

### III. Legal Issues

1. What is the catalyst for State policy towards the case *quo* according to applicable International Law?
2. How effective is the Presidential Decree. No. 125 of 2016 concerning the handling of refugees from abroad to resolve the case *a quo*?

### IV. Legal Basis

1. The 1945 Constitution of the Republic of Indonesia (“*UUD 1945*”)
2. Law Number 39 of 1999 concerning Human Rights
3. Directorate General of Immigration Regulation No. IMI-1489.UM.08.05 the Year 2010
4. PRESIDENT OF THE REPUBLIC OF INDONESIA. No. 125 of 2016 concerning Handling of Refugees from Abroad
5. Geneva Convention 28 July 1951
6. 1967 Protocol on International Refugees and Asylum Seekers

### V. Analysis

#### 1. The Catalyst for the State's policy towards the case *quo* according to the applicable International Law

The Indonesian State is a constitutional state<sup>[1]</sup>, that's how it is stated in the Indonesian constitution so that the state acts and runs the wheel of government based on governing regulations, especially in the case *a quo*. Indonesian regulations do not specifically regulate refugees, covering their rights and citizenship status. The only legal umbrella that regulates is PERPRES RI No. 125 of 2016 concerning the Handling of Refugees from Abroad. In the case *a quo*, the CALVO doctrine emerged<sup>[2]</sup> which emphasized the principle of non-intervention accompanied by the affirmation that foreigners

were only entitled to be treated like their citizens. The background for the emergence of this doctrine are two reasons:

- 1) That every foreigner residing in a country has the same protection rights as that citizen of that country and foreigners cannot demand greater protection than that received by the citizen of that country
- 2) Everyone foreigners who claim protection rights that are greater than those granted by the country where they live are contrary to the right of equality between countries (*The right of equality of nations*).

Then, rather than that, the 1951 Convention affirms the rights of refugees as follows:

- a) Right not to be treated with discrimination
- b) Property rights
- c) Right to associate
- d) Right to litigate in court
- e) Right to work
- f) Right to social welfare
- g) Right to education and teaching
- h) Right to freedom of movement
- i) Right to identification and travel documents
- j) Non-refoulement
- k) The rights right to personal status

Indonesia has not ratified the 1951 convention or the 1967 protocol so there is no legal obligation for Indonesia to implement these provisions. However, Indonesia must still respect customary international law and the principles of international law and practice. Indonesia has a high commitment to protecting refugees living in the territory of Indonesia, one of which is the issuance of legal policies, regulations, laws, and other implementing regulations. One of them



is Presidential Regulation Number 125 of 2016 concerning the Implementation of Refugees and asylum seekers in Indonesia as mandated by the Constitution article 28G of the 1945 Constitution which reads as follows:

*"Every person has the right to protection of himself, family, honor, dignity ,and property under his control, and the right to a sense of security and protection from the threat of fear to do or not do something that is a human right"*

Reflecting on the existing constitution, the status *quo* becomes an input to the applicable regulations in Indonesia, as a country that upholds human rights, it should provide specific regulations regarding refugees to create legal certainty and protection for refugees. This *mutatis mutandis* provided an opportunity for the Indonesian government to formulate a clear and comprehensive regulatory framework relating to refugees.

## **2. The effectiveness of the Presidential Decree. No. 125 of 2016 concerning the handling of refugees from abroad in an effort to resolve the case *a quo***

Presidential Regulation Number 125 of 2016 is a legal umbrella that regulates refugees and asylum status as well as filling the legal void, previously the mechanism for handling refugees was carried out based on the Director-General of Immigration No IMI-1489.UM.08.05 of 2010 concerning the handling of illegal immigrants. However, the author thinks this is not sufficient to fulfill the rights of refugees, because this Presidential Regulation only regulates the granting of residence permits in the territory of Indonesia, the placement of refugees in Indonesia, be it living

facilities, security and other asylum seekers. In this case there is also legal disharmony, especially in related regulatory aspects, why is that? PERPRES No. 125 of 2016 only refers to Law Number 37 of 1999 concerning Foreign Relations and does not contain a law on immigration as a consideration for the stipulation of this regulation. There is an extension of the meaning of legal terminology related to the function of *rudenim*, and this is an odd thing considering the principles of the formation of legislation which contain the principles of *Lex superiori derogate legi inferiori*, *lex specialis derogate legi generali*, and *lex posteriori derogate legi priori*.<sup>[3]</sup>

The issuance of the PERPRES has not resolved the problem in the case *quo*, because it does not regulate the rights of refugees so that there is no legal guarantee for refugees in Indonesia. Especially the lack of refugee shelter facilities. Some refugees are entrusted to immigration detention centers. The facility, which is a prison for foreigners who are involved in immigration violations, is used to accommodate refugees. Whereas the standard of operation and services of a detention center is like a prison for perpetrators of immigration crimes, from iron-barred rooms with mediocre toilets. Not to mention the cost of handling the refugees. The country does not have a budget item for dealing with refugees. Then related to the epidemic disease suffered by refugees, this could spread to Indonesian territory, because refugees also have the right to mobility to interact with residents. Then the next problem is the determination of refugee status by UNHCR, which takes a long time and there is no implementing regulation that regulates similar matters.

The issuance of PERPRES still faces obstacles and problems in its application in Indonesia. Regulations require renewal to suit

current conditions and developments, especially in resolving the case *quo*.

## VI. Closing

### 1. Conclusion

- a) Indonesia has not ratified the 1951 refugee convention and the 1967 protocol, but still has the obligation and responsibility for the protection of refugees as a country that upholds the protection of human rights based on customs and doctrines recognized by international countries, Indonesia also respects the contents of the convention which as evidenced by the issuance of PERPRES 125 of 2016 concerning the handling of refugees from abroad.
- b) PERPRES No. 125 of 2016 concerning the handling of refugees from abroad issued by the Indonesian government has so far not been effective in providing protection and providing proper treatment to refugees abroad in Indonesia in the sense of protection within the scope of the rights of refugees because Indonesia itself have not ratified the Geneva Convention 1951 and the 1967 protocol, causing the foreign refugees in Indonesia to also live with limitations to meet their needs.

### 2. Suggestion

- a) The government must have a full commitment to pay attention to the rights of refugees in Indonesia, one of which is ratifying the Geneva convention of 2915 and the 1967 protocol.
- b) The government must take a firm stance on *UNHCR* and the countries parties to the convention to be able to assist determine the fate of the status of refugees in Indonesia and increase supervision from central to regional government levels of the implementation of PERPRES No. 125/2016.

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<sup>[1]</sup> Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia

<sup>[2]</sup> Rahayu, Kholis Roisah, Peni Susetyorini, 2020, *"PROTECTION OF HUMAN RIGHTS OF REFUGEES AND SUAKA SEEKERS IN INDONESIA"*, Legal Matters, Vol. 49 No.2, April 2020, pp. 205-211.

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**LEGAL OPINION**  
***ALSA LOCAL CHAPTER***  
**UNIVERSITAS SYIAH KUALA**

## Handling Refugees in Indonesia During the COVID-19 Pandemic

Asyila Shalsabila Moebin and Putri Srilantria Salsabila

Universitas Syiah Kuala

### I. LEGAL ISSUES

1. Refugees and Migrants in Indonesia during the COVID-19 Pandemic.
2. Indonesia's efforts in providing legal protection for refugees.
3. Rescuing and handling Rohingya Refugees with COVID-19 protocol in Aceh as a form of humanitarian care.

### II. LEGAL BASIS

1. Perpres No. 125/2016 tentang Penanganan Pengungsi dari Luar Negeri.
2. Konvensi Pengungsi 1951 dan Protokol 1967.
3. Pasal 16 Deklarasi Hak Asasi Manusia ASEAN (AHRD) 2012
4. Undang-Undang No. 37 Tahun 1999 tentang Hubungan Luar Negeri.
5. Undang-Undang No. 6 Tahun 2011 tentang Keimigrasian.

### III. LEGAL ANALYSIS

#### 1. Refugees and Migrants in Indonesia During the COVID-19 Pandemics

The Coronavirus (COVID-19), discovered in Wuhan, China, spread to all countries in the world quickly and uncontrollably. On January 30, 2020 WHO announced and included the Covid-19 outbreak in the Public Health Emergency of International Concern (PHEIC)<sup>1</sup> and increased the status as a pandemic on March 11, 2020.<sup>2</sup>

<sup>1</sup> WHO, 'WHO Director-General's statement on IHR Emergency Committee on Novel Coronavirus (2019-nCoV)' (WHO, 2020) [https://www.who.int/director-general/speeches/detail/who-director-general-s-statement-on-ihr-emergency-committee-on-novel-coronavirus-\(2019-ncov\)](https://www.who.int/director-general/speeches/detail/who-director-general-s-statement-on-ihr-emergency-committee-on-novel-coronavirus-(2019-ncov))>accessed 23 January 2021

<sup>2</sup> WHO, 'WHO Director-General's opening remarks at the media briefing on COVID-19-11 March 2020' (WHO, 2020) <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> >accessed 23 January 2021



During the COVID-19 pandemic, refugees were among the most vulnerable groups considering the many factors that influenced it. In terms of numbers, there are only around 14 thousand refugees in Indonesia, compared to a global total of 70.8 million (UNHCR, 25 April 2020). This number consists of 41.3 million internally displaced peoples (IDPs) or internally displaced countries; 25.9 million refugees (between countries); 3.5 million asylum seekers; and this includes 3.9 million stateless refugees.<sup>3</sup> In fact, around 5 thousand other refugees are not in official shelters, do not get any facilities in terms of access to socio-economic assistance and are not accepted by the community so that they independently depend on the compassionate assistance of other communities and survive to protect themselves from the COVID-19 disease.<sup>4</sup>

Although Indonesia did not ratify the 1951 Refugee Convention, the Indonesian government's commitment to refugees can be seen from the perspective of humanitarian disasters and concerns, namely by being swift and systematic, Indonesia provides assistance to forced migrants from Bangladesh and the Rohingya. The Indonesian government also applies its humanitarian policy to refugees, especially those not in holding homes. All refugees should have the same right to health protection besides Indonesia, which needs to expressly demand UNHCR and IOM, which have the United Nations (UN) mandate in the New York Declaration for Refugees and Migrants, which then reached an agreement and set forth in A Global Compact for Safe, Orderly and Regular Migration for carry out its obligations without discrimination related to health protection for refugees in Indonesia.<sup>5</sup>

## **2. Indonesia's Efforts in Providing Legal Protection for Refugees**

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<sup>3</sup> Dr. Tri Nuke Pudjiastuti, 'Kerentanan Pengungsi pada Masa Pandemi COVID-19 di Indonesia, (Pusat Penelitian Politik-Lembaga Ilmu Pengetahuan Indonesia, 2020) <http://www.politik.lipi.go.id/kolom/kolom-1/politik-internasional/1384-kerentanan-pengungsi-pada-masa-> >accessed 21 January 2021.

<sup>4</sup> Ibid, accessed 23 January 2021

<sup>5</sup> Ibid, accessed 23 January 2021

The 1951 Convention on the Status of Refugees, defines a refugee as a person who, because of a justifiable fear of persecution, for reasons of race, religion, nationality, membership in a particular social group and political party, is outside of his State of nationality and unable or does not want protection from that State, for fear of persecution.<sup>6</sup> Protection and assistance to refugees is no longer the responsibility of their country of origin, but the responsibility of the international community. The existence of refugees is protected by the 1951 Refugee Convention and the 1967 Refugee Protocol. However, until now Indonesia has not ratified the convention. Therefore, Indonesia does not have the authority to determine refugee status, namely Refugee Status Determination (RSD), so that the handling of refugees is fully mandated by the United Nations High Commissioner for Refugees (UNHCR). Meanwhile, the refugees will be placed in a Community House, which is a temporary shelter. After UNHCR determination of status, refugees are moved to a third country or returned to their country of origin.

There are several juridical reasons that Indonesia has not ratified the 1951 Refugee Convention. Specifically Article 17 concerning the right to work and Article 21 concerning the right to obtain a house. These articles are considered heavy by the Indonesian government because Indonesia is a developing country, has an inadequate income per capita, the number of unemployed and poverty is quite high.

There are also non-juridical reasons to consider that the Indonesian government has not ratified the 1951 Convention, including some who argue that the 1951 Convention on Refugees is an old product that emphasizes dealing with legacy problems from World War II and the 1951 Convention is deemed incapable of providing a solution for current cases especially in Indonesia. However, Indonesia has several arrangements in dealing with refugees transiting in Indonesia, so that the stability of the country's security can run well. The national legal

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<sup>6</sup> 1951 Convention Relating to the Status of Refugees.

instrument that deals with the problem of refugees is Article 28 G paragraph 1 of the 1945 Constitution which states that: "Everyone has the right to be free from torture or treatment that degrading human dignity and is entitled to political asylum from other countries." In addition, it is also regulated in the Immigration Law and the ratification of various international human rights covenants. However, this regulation is deemed inadequate in providing legal protection for refugees specifically. The law that deals with the handling of foreign refugees in Indonesian national law is Law no. 37 of 1999 concerning Foreign Relations which mandates to regulate later through a Presidential Regulation. Only in 2016 was it followed up with Presidential Regulation No. 125 of 2016 concerning the handling of refugees from abroad.<sup>7</sup> Normatively, this regulation fills the legal void in regulating refugees and asylum seekers in Indonesia which is affirmed in Article 28G of the Basic Law and Article 25 to Article 27 of Law Number 37 Year 1999 regarding Foreign Relations.<sup>8</sup>

Although not yet legally formal, the current system in Indonesia is categorized as being able to respect the main principles contained in the 1951 Convention such as non-refoulement, not punishing or criminalizing the existence of refugees who enter illegally, and also the principle of non-refoulement. discrimination. According to international regulations, at least Indonesia has respected these three main principles.<sup>9</sup>

### **3. Rescuing and Handling Rohingya Refugees with Covid-19 Protocol in Aceh as a Form of Humanitarian Care**

<sup>7</sup> Lembaga Bantuan Hukum Makassar, <https://lbhmakassar.org/liputan-kegiatan/memahami-perlindungan-hukum-bagi-pengungsi/>

<sup>8</sup> M. Alvi Syahrin and Yusa Shabri, 'The Implementation of Asylum Seekers and Refugees Law Enforcement in Indonesia After Presidential Decree Number 125 of 2016 on the Treatment of Foreign Refugees' (2019) 2(2) Academia .edu <[https://www.academia.edu/download/62323565/JIKK\\_Vol.2\\_No.2\\_Tahun\\_201920200309-121261-1xls2zh.pdf](https://www.academia.edu/download/62323565/JIKK_Vol.2_No.2_Tahun_201920200309-121261-1xls2zh.pdf)> accessed 23 January 2021

<sup>9</sup> Yahya Sul-toni et al, 'The Reason of Indonesia Not Ratified Refugee Convention 1951 and Legal Protection for Refugees in Indonesia' (2014) <<https://media.neliti.com/media/publications/34781-ID-alasan-indonesia-belum-meratifikasi-konvensi-1951-tentang-pengungsi-dan-perlindu.pdf>> accessed 23 January 2021

Rohingya is one of the ethnics in Myanmar who is not recognized and granted citizenship status by the Government of Myanmar because they are considered as illegal immigrants and border crossers from Bangladesh. In May 2012, there was a conflict between Rohingya and Rakhine ethnic, it started when a forensic photo of a Rakhine ethnic woman named Ma Thaida Htwe, murdered by three Rohingya men in May 28, 2012 was circulated.<sup>10</sup> Rakhine ethnic demonstrated “No Rohingya”, killed the Rohingya community, destroyed worship places and homes, which led nearly 60.000 of people homeless and forced to flee to other countries.

As the application of customary laws related to helping and solidarity with fellow humans, the people and Regional Government of North Aceh had the initiative to rescue Rohingya refugees in accordance with Covid-19 Protocol. All of Rohingya refugees have undergone rapid test, and they are declared non-reactive.

Coincide with the holding of the 36<sup>th</sup> ASEAN Summit, this should be a momentum for ASEAN leaders to resolve conflicts and end crimes against humanity that have occurred in Myanmar in line with the recommendations of the UN and United Nations Security Council Resolutions as a follow-up to the UN Independent Fact-Finding Team for Myanmar. ASEAN countries also need to accept Rohingya refugees and does not refuse each other in facing vulnerable groups whose lives are being threatened in the middle of the sea. All ASEAN countries have to prioritize human rights, including the refugees' rights, so that this ASEAN Summit will not only become a meeting and dialogue for cooperation that prioritizes only for economy, but also situations of humanitarian democracy and justice crises that occurred in the Southeast Asia.<sup>11</sup>

<sup>10</sup> Fatma Arya Ardani, 'Kebijakan Indonesia dalam Membantu Penyelesaian Konflik antara Etnis Rohingya dan Etnis Rakhine di Myanmar (Studi Karakter Kepribadian Susilo Bambang Yudhoyono)', (2015) 1(2) <<https://ejournal3.undip.ac.id/index.php/jihi/article/view/8790/8542>> accessed 23 January 2021

<sup>11</sup> Rizka Argadianti Rachmah et al, 'Penanganan Pengungsi Rohingya di Aceh Utara saat Pandemi Covid-19' (KontraS, 2020) <https://kontras.org/2020/06/27/penanganan-pengungsi-rohingya-di-aceh-utara-saat-pandemi-covid-19/> > accessed 21 January 2021

#### IV. CONCLUSSION AND SUGGESTION

During the COVID-19 pandemic, refugees were one of the most vulnerable groups considering the many factors that influenced it. around 5 thousand other refugees are not in official shelters, do not get any facilities in terms of access to socio-economic assistance and not accepted by the community so that they independently depend on the compassionate assistance of other communities and survive to protect themselves from the Covid-19 disease.

Although Indonesia is not a party to the 1951 Convention and 1967 Protocol, Indonesia has and is a party to various Human Rights instruments that must be respected and fulfilled. As the application of customary laws related to help and solidarity with fellow humans, the people and Regional Government of North Aceh had the initiative to rescue Rohingya refugees in accordance with Covid-19 Protocol.

Government could do various efforts to maintain the Human Rights and the Rights of Refugee, such as fully increasing the implementation of Presidential Regulation No. 125/2016, especially on the technical perspective of budgeting and financing, making additional technical rules related to the safety of residents and refugees during the COVID-19 pandemic, and set the appropriate location for the refugee shelter immediately.

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**LEGAL OPINION**  
***ALSA LOCAL CHAPTER***  
**UNIVERSITAS SAM RATULANGI**



## **ASSURANCE OF THE REFUGEES THROUGH THE PANDEMIC**

Johanes Kilapong dan Vanaquessa Pingkan  
**Universitas Sam Ratulangi**

### **I. HEADING AND PREAMBLE**

Most of the refugees in Indonesia came from Afghanistan, Somalia, Iraq, Myanmar, Sudan, Sri Lanka, Yemen and Palestine. The reason they came to Indonesia because refugees were submitted for resettlement to a third country before they go to their destination country. Now throughout The COVID-19 Pandemic, Refugee comes to a point where it becomes one of most vulnerable group. In terms of quantity, Refugees in Indonesia currently holds at fourteen thousand compared to Global Worldwide that reaches 70.8 M (UNHCR, April 25th 2020). The amount consists by 41.3 M Internally Displaced Peoples (IDPs); 25.9 M Refugees between countries; 3.5 M asylum seekers; and 3.9 M refugees without citizenship. Indonesia's condition itself, only 9 thousand refugees who are in a shelter managed by International Organization for Migration (IOM), while approximately 5 thousand refugees are not in a shelter and receive no amenities. The amount increases since March 15th 2018 where IOM cuts off their aid for refugees and asylum seekers that illegally be in part of IOM's Shelter. In that way, those refugees struggle to live while also keep an eye for infectious virus COVID-19. They have to be independent. Therefore, their assurance throughout this pandemic is barely to be known.

### **II. FACTS**

UNHCR has created the 2021 Planning Figure which includes refugees will have access to primary health care, primary school-aged refugee children who live outside IOM accommodation will be enrolled in primary school, identified children will have their protection needs such as health, education, etc. UNHCR has received assistance from donors so that during the COVID-19 pandemic, aid has distributed

to refugees, including cash assistance for refugees who are not staying or facilitated by UNHCR.

Although Indonesia did not ratify the 1951 Refugee Convention, the Indonesian government's commitment to refugees can be seen from a humanitarian disaster perspective. This is indicated by Presidential Regulation No. 125/2016 which shows the form of Indonesian political negotiations regarding the handling of refugees. Politically, Indonesia is not a member of the refugee convention, but Indonesia's concern for them can be carried out as a country that upholds humanity.

### **III. REGULATION**

1. The 1951 Convention Article 33 (Non-Refoulement), Article 31 (Non-Penalization), and Article 3 (Non-Discrimination).
2. Republic of Indonesia Presidential Regulation Number 125 of 2016
3. Article 28 G Paragraph 1 1945 Constitution

### **IV. ANALYSIS**

The definition of refugee based on the convention 1951 is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being prosecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Rights for refugees based on that constitution include access to the courts, to primary education, to work, and to provision for documentation, including a refugee travel document in passport form.

As for the general obligation of refugee, "Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order" Refugees are being protected by united nations through UNHCR is a global organization dedicated to saving lives, protecting rights and building a better future for refugees, forcibly displaced communities and stateless people. UNHCR was created back in the 1950 after the second world war. UNHCR's main role in

pursuing international protection is to ensure that States are aware of, and act on, their obligations to protect refugees and persons seeking asylum. However, UNHCR is not a supranational organization and cannot be considered as a substitute for government responsibility. UNHCR will intervene with the Indonesian authorities to protect refugee from deportation to their home country. While refugee must abide by Indonesian laws and respect local traditions, customs, and culture. If refugee commit a criminal offence in Indonesia, they're will be prosecuted and punished according to Indonesian law.

Indonesia as a country didn't have any obligation to these refugees. The ministry of law and human rights this past few years had been help the refugees through accommodation, aid, etc. but through this pandemic when the government focus been through on Indonesia's citizen, the assurance for those refugees should come from UNHCR and Australia as the destination country.

If we see through the 2021 Planing Figures by UNHCR, it will bring prosperity and benefits to all refugees if it goes well. The contents of the 2021 Planning Figures include, refugees will have access to primary health care, refugees were submitted for resettlement, some 700 departed for resettlement, etc.

From the UNHCR itself, if refugees have medical problem they can access low-cost medical treatment at government-run healthcare facilities (known as 'Puskesmas'). in the case of covid-19, UNHCR through their Assistant High Commissioner for Protection Gillian Triggs, said that "Access to health services does not depend on citizenship or visa conditions" and encourage countries to not discriminate those refugees despite of the legal status or nationality.

Indonesia has carried out its duties and responsibilities properly even though Indonesia is not a country that ratified the 1951 Refugee Convention or its 1967 Protocol. But indirectly, Indonesia has been waiting for the principle of non-refoulment and non-discrimination. The President has also issued Presidential Regulation No. 125 of 2016 concerning the handling of refugees from abroad, which temporarily protects the refugees until they get a long-term solution. However, in reality, during the COVID-19 pandemic, the refugees did not receive

special attention. Not many media have reported refugees' lives during this pandemic, even though many refugees do not live in detention centres.

## **V. CONCLUSIONS**

Politically, Indonesia is not a member of the refugee convention, but Indonesia's concern for them can be carried out as a country that upholds humanity.

Their assurance remain somehow unknown but can be reliable at the same time depends on how well does UNHCR act throughout the whole thing Meanwhile Indonesia already handled the situation for refugees throughout the pandemic quite well

If every side cooperate and working through this solution we can clearly assure that those refugees still have the right as a human being in this global pandemic situation.

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**LEGAL OPINION**  
***ALSA LOCAL CHAPTER***  
**UNIVERSITAS UDAYANA**

## NOTICED BUT NEGLECTED: REFUGEES AMIDST PANDEMIC IN INDONESIA

Aisha Mahira Hakim Pambudi, Lutfiana Umar, and I Gede Yoga Pradana Putra

Universitas Udayana

### I. Issues

As a Law State,<sup>1</sup> Indonesia is obliged to treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis,<sup>2</sup> including refugees. As stipulated in the Universal Declaration of Human Rights (“UDHR”), everyone has the right to seek and enjoy asylum in other countries from persecution.<sup>3</sup> Through this clear benchmark for the universal human rights standards, the government must perform the protection and fulfillment of refugees’ rights. Despite as a non-signatory<sup>4</sup> of the 1951 Refugee Convention and its Protocol, Indonesia is categorized into a transit country,<sup>5</sup> not to mention that Indonesia has ratified some of the core human rights treaties<sup>6</sup> in which the government needs to comply with its international obligations.<sup>7</sup> Additionally, Indonesia should not be contrary to the principle of indivisibility.<sup>8</sup>

<sup>1</sup> See Article 1(3) of the 1945 Constitution of the Republic of Indonesia

<sup>2</sup> Vienna Declaration and Programme of Action on Reports of the World Conference on Human Rights (25 June 1993) UN Doc A/CONF.157/23. ¶I.5.

<sup>3</sup> See Article 14(1) of UDHR

<sup>4</sup> UNHCR ‘States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol’, (UNHCR, 2012) <<https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>> accessed 15 January 2021.

<sup>5</sup> Angus Francis and Rowena Maguire, *Protection of Refugees and Displaced Persons in the Asia Pacific Region* (Routledge 2016).[61]; Adrianus Ramon, Dyan Sitangang, and Tristam Moeliono, *Penanganan Pengungsi* (Penerbit Maharsa 2020).[13].

<sup>6</sup> University of Minnesota, ‘Ratification of International Human Rights Treaties - Indonesia’, (Human Rights Library, 2018) <<http://hrlibrary.umn.edu/research/ratification-indonesia.html>> accessed 15 January 2021.

<sup>7</sup> Suaka Indonesia, ‘Protection for refugees in Indonesia: A state responsibility’, (Suaka, 2019) <<https://suaka.or.id/2019/11/14/protection-for-refugees-in-indonesia-a-state-responsibility/>> accessed 15 January 2021.

<sup>8</sup> OHCHR, ‘The Human Right to Adequate Housing (Fact Sheet No. 21)’, (UN, 2009) <<https://www.un.org/ruleoflaw/files/FactSheet21en.pdf>> accessed 19 January 2021.

The right to health is indispensable<sup>9</sup> and the government needs to respect the right to health by, *inter alia*, refraining from denying or limiting equal access [to healthcare] for all persons, including refugees.<sup>10</sup> In Article 25 of UDHR,<sup>11</sup> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family including medical healthcare. With respect to the right to health, equality of access to healthcare and health services has to be emphasized.<sup>12</sup>

Indonesia nevertheless has failed to guarantee such rights entitled to the refugees, especially during the outbreak of Covid-19. In mid-May 2020, International Organization of Migration (“IOM”) confirmed that a refugee living in the Makassar based-shelter had tested positive with Covid-19 and four refugees were advised to self-quarantine.<sup>13</sup> Moreover, the inadequate healthcare facilities and overcrowded of approximately 1,774 refugees in the shelter have caused fear amongst them.<sup>14</sup> In addition, it has been confirmed that 150 refugees are living in the same cramped building without considering physical distancing since there is no space left. The shelter is not only lacking in spaces but also in Covid-19 testing services and protective equipment (i.e. hand sanitizer and masks), also they were frequently rejected by Indonesian hospitals for health treatment, urging them to escape.<sup>15</sup> Departing from the health conditions that were already severe before the

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<sup>9</sup> CESCR ‘General Comment 14’ in ‘Note by the Committee on Economic, Social, and Cultural Rights, Under Article 12 of the International Covenant of Economic, Social, and Cultural Rights’ (2000) UN Doc E/C.12/2000/4.¶1.

<sup>10</sup> James C. Hatheway, *The Rights of Refugees Under International Law* (Cambridge University Press 2005).[512].

<sup>11</sup> Universal Declaration of Human Rights (“UDHR”)

<sup>12</sup> CESCR (n 9) ¶19.

<sup>13</sup> JN Joniad, ‘Across Indonesia, latest Covid-19 surge adds to woes of refugees in Limbo’, (Southeast Asia Globe, 2020) <<https://southeastasiaglobe.com/refugees-covid-19-indonesia>> accessed 15 January 2021

<sup>14</sup> Emily Canlas, ‘Indonesia: Lack of Access to Healthcare for Refugees and Barriers to Providing Legal Aid’, (Asia Pacific Refugee Rights Network, 2020) <<https://aprrn.org/indonesia-lack-of-access-to-healthcare-for-refugees-and-barriers-to-providing-legal-aid/>> accessed 15 January 2021.

<sup>15</sup> Erfan Dana, ‘A Call for Help: Refugees Risk Catching Covid-19 in Overcrowded Shelters’, (Jakarta Globe, 2020) <<https://jakartaglobe.id/opinion/a-call-for-help-refugees-risk-catching-covid19-in-overcrowded-shelters>> accessed 15 January 2021.



pandemic with poor nutrition and limited access to healthcare, arise a question of how they will cope when they fall ill.

## **II. Applicable Laws**

1. Universal Declaration of Human Rights
2. Constitution of the World Health Organization
3. ASEAN Declaration of Human Rights
4. The 1945 Constitution of the Republic of Indonesia
5. Law of the Republic of Indonesia No. 11 of 2005 concerning the Ratification of International Covenant on Economic, Social and Cultural Rights
6. Law of the Republic of Indonesia No. 39 of 1999 concerning Human Rights
7. Law of the Republic of Indonesia No. 36 of 2009 concerning Health
8. Presidential Decree No. 125 of 2016 concerning the Treatment of Refugees and Asylum Seekers

## **III. Analysis**

### **I. The Indonesian Government Does Not act in accordance with Article 71 of Law No. 39 of 1999 on Human Rights**

Human rights function as high-priority norms or *prima facie* rights that imply duties for both individuals and governments.<sup>16</sup> Pursuant to Article 71 of the Law No. 39 of 1999,<sup>17</sup> it is obligatory that the government must respect, protect, uphold, promote human rights as set forth in this law and in other regulations, both national and international, related to such rights.

Government must act in accordance with the theory of state obligations, in order to respect, protect, and fulfil the Human Rights of the refugees. To respect the human rights of refugees, a State must act in accordance with the principle of

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<sup>16</sup> James W. Nickel, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights* (University of California Press 1987).[3].

<sup>17</sup> Law of the Republic of Indonesia No. 39 of 1999 concerning Human Rights

non-refoulement, to not interfere<sup>18</sup> when the refugees are trying to seek safety in other countries. Moreover, to protect the human rights of the refugees, the obligation entails both a preventative and remedial dimension. A State is thus obliged to enact legislation protecting human rights; to take action to protect individuals when it is aware (or could have been aware) of threats to their human rights; and also to ensure access to impartial legal remedies when human rights violations are alleged.<sup>19</sup> To fulfil the human rights of refugees, the State is required to take positive action to ensure that human rights can be realized. This notion means that the State should create “the legal, institutional and procedural conditions that rights holders need in order to realize and enjoy their rights in full.”<sup>20</sup>

In contrary, the government did not act in accordance with their obligations during Covid-19 pandemic, as: *first*, the Indonesian government has failed to comply with its obligations to provide an adequate standard of housing to refugees, and; *second*, the Indonesian government has failed to provide medical facilities guaranteed to the refugees.

### **1. The Indonesian Government Has Failed to Comply With its Obligation to Provide an Adequate Standard of Housing to Refugees.**

Under the 1945 Constitution of the Republic of Indonesia,<sup>21</sup> Law No. 39 of 1999,<sup>22</sup> and Law No. 11 of 2005,<sup>23</sup> every human being is entitled to the rights of housing with a good and healthy living environment, undistinguished to the refugees. The standard of such right must be subject to the "Health Principles of Housing",<sup>24</sup> which satisfy the measures of

<sup>18</sup> Office of the High Commissioner for Human Rights, *Human Rights: Handbook for Parliamentarians* (Inter-Parliamentary Union 2016).[32].

<sup>19</sup> Office of the High Commissioner for Human Rights (n 18) 32

<sup>20</sup> Walter Kalin and Jorg Kunzli, *The Law of International Human Rights Protection* (Oxford University Press) 2009.[112].

<sup>21</sup> See Article 28H(1) of the 1945 Constitution of the Republic of Indonesia

<sup>22</sup> See Article 40 of Law of the Republic of Indonesia No. 39 of 1999 concerning Human Rights

<sup>23</sup> See Article 11 of Law of the Republic of Indonesia No. 11 of 2005 concerning the Ratification International Covenant on Economic, Social and Cultural Rights.

<sup>24</sup> WHO Geneva, *Health Principles of Housing* (World Health Organization 1989).[01].

adequate shelter, adequate space and adequate basic infrastructure.<sup>25</sup> Moreover, overcrowded camps without sanitation may cause an illness,<sup>26</sup> particularly during Covid-19 the virus is capable of human-to-human transmission<sup>27</sup> and was advised by the WHO to practice physical distancing to combat the exposure of Covid-19.<sup>28</sup> The aforementioned has been proven to be one of the ways to limit the spread of the virus.<sup>29</sup>

Presently, at the Makassar-base-shelter, they still have not received their right to an adequate standard of housing. Despite the outbreak of Covid-19, there are 1,774 refugees in the same shelter, particularly 150 refugees in the same cramped building without enough space to practice physical distancing. Moreover, there was one confirmed case and four were advised to self-quarantine. Undoubtedly, the conditions in Makassar-base-shelter can be considered still far from a good and healthy living environment which is not conformable with the measures of adequate shelter. Thus, the Indonesian government has failed to comply with its obligation to provide an adequate standard of housing to refugees.

## 2. The Indonesian Government Has Failed to Provide Medical Facilities Guaranteed to the Refugees

<sup>25</sup> See also Article 28 of ASEAN Declaration of Human Rights; CESCR 'General Comment 4' in 'Note by the Committee on Economic, Social and Cultural Rights, The Right to Adequate Housing (Art. 11 (1) of the Covenant)' (1991) UN Doc E/1992/23.¶7; James C. Simeon, *The UNHCR and the Supervision of International Refugee Law* (Cambridge University Press 2013).[185].

<sup>26</sup> Hatheway (n 10) 822.

<sup>27</sup> World Health Organization, 'WHO Director General's opening remarks at the media briefing on Covid-19', (WHO INT, 2020) <<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---29-april-2020>> accessed 20 January 2021.

<sup>28</sup> World Health Organization, 'Transmissions of SARS-CoV-2: Implications for Infection prevention precautions', (WHO INT, 2020) <<https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>> accessed 16 January 2021.

<sup>29</sup> World Health Organization, 'Covid-19: Physical Distancing', (WHO INT, 2021) <<https://www.who.int/westernpacific/emergencies/covid-19/information/physical-distancing>> accessed 16 January 2021.

As governed in ASEAN Declaration of Human Rights<sup>30</sup> and Law No. 11 of 2005,<sup>31</sup> every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity,<sup>32</sup> the government or the private hospital,<sup>33</sup> shall facilitate medical services for saving a person's life.<sup>34</sup> The government also has an obligation towards those who cannot provide themselves with necessary-care facilities such as health care and health facilities,<sup>35</sup> unexceptionally to refugees.<sup>36</sup> As previously mentioned,<sup>37</sup> that the virus was capable of human-to-human transmission. However, the refugees were not provided basic protective equipment during the pandemic namely Covid-19 testing, masks, and hand sanitizers,<sup>38</sup> and they were frequently getting rejected by Indonesian hospitals. Thus, the Indonesian government has failed to provide medical facilities guaranteed to the refugees.

#### IV. Conclusion

Having elaborated the aforementioned analysis, two points can be concluded in this writing:

1. The Indonesian government has failed to comply with Article 71 of Law No. 39 of 1999 by not protecting, upholding and promoting human rights of the refugees.
2. The Indonesian government has infringed its obligations under Article 28H(1) of the 1945 Constitution of the Republic of

<sup>30</sup> See Article 29 of ASEAN Declaration of Human Rights

<sup>31</sup> See Article 12 of Law of the Republic of Indonesia No. 11 of 2005 concerning the Ratification International Covenant on Economic, Social and Cultural Rights

<sup>32</sup> See Preamble of Constitution of the World Health Organization

<sup>33</sup> See Article 26(2) of Presidential Decree No. 125 of 2016 concerning the Treatment of Refugees and Asylum Seekers

<sup>34</sup> See Article 32 of Law of the Republic of Indonesia No. 36 of 2009 concerning Health

<sup>35</sup> CESCR (n 12).

<sup>36</sup> CESCR 'General Comment 19' in 'Note by the Committee on Economic, Social and Cultural Rights, The right to social security (Art. 9 of the Covenant)' (2008) UN Doc E/C.12/GC/19.¶38.

<sup>37</sup> World Health Organization (n 23).

<sup>38</sup> World Health Organization, 'Corona Viruses (COVID-19): Masks', (WHO INT, 2020) <<https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-masks>> accessed 17 January 2021.

Indonesia, Article 40 of Law of the Republic of Indonesia No. 39 of 1999 concerning Human Rights and Article 12 of Law of the Republic of Indonesia No. 11 of 2005 concerning the Ratification of International Covenant on Economic, Social and Cultural Rights by not providing an adequate standard of housing and medical facilities, especially during the pandemic.

## V. Advice

Indonesia as a Law State and a transit country upholds an important role in ensuring that refugees are afforded with their basic rights,<sup>39</sup> including the right of an adequate standard of housing and the rights to access health facilities, before departing to their destination country. Moreover, it is the government's obligation to improve the quality of life by providing a safe and sanitary living environment, particularly for the vulnerable groups [hereinafter "the refugees"].<sup>40</sup> During the Covid-19 pandemic, IOM and UNHCR have cooperated with various local health departments to enhance the management and referral mechanism for Covid-19 within the refugee communities, delivered cash-based interventions, and led the coordination on the humanitarian response to 99 Rohingya refugees in Aceh.<sup>41</sup>

Nevertheless, there are refugees who still have not received the aforementioned support. The Indonesian government must hold UNHCR and IOM accountable since they were mandated by the United Nations to provide the refugees in Indonesia.<sup>42</sup> On the other hand, Indonesia should not be dependent on the aforementioned organizations and must contribute to help these refugees. For

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<sup>39</sup> Shafira D. Gayatri and Mohammad Baqir, 'Between Trump and Jokowi's Refugee Policy: What it Means for Indonesia', (Jakarta Globe, 2017) <<https://jakartaglobe.id/opinion/trump-jokowis-refugee-policy-means-indonesia/>> accessed 19 January 2020.

<sup>40</sup> UNFPA 'Report of the International Conference on Population and Development' in 'Note by the World Health Organization' (1994) UN Doc E.95.XIII.18.¶8.10.

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<sup>42</sup> Dr. Tri Nuke Pudjiastuti, 'Kerentanan Pengungsi Pada Masa Pandemi COVID-19 di Indonesia' (Pusat Penelitian Politik, 2020) <<http://www.politik.lipi.go.id/kolom/kolom-1/politik-internasional/1384-kerentanan-pengungsi-pada-masa-pandemi-covid-19-di-indonesia>> accessed 16 January 2021.

instance, make regulations regarding health protection for refugees' facilities especially during the pandemic.

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# LEGAL OPINION *ALSA LOCAL CHAPTER* UNIVERSITAS ANDALAS

**The Role of Indonesian Government as a Party to the 1948 Universal  
Declaration of Human Rights in Managing Rohingya Refugees through  
the COVID-19 Pandemic**

Anisah Putri Ananda, Atikahasri UNQ, and Mawaddah Putri M.Parinduri

**Universitas Andalas**

**I. BACKGROUND**

Amidst the large scale of impact caused by the Coronavirus Pandemic in the recent year, there is a group of persons that are labelled as the top of the most vulnerable and prone to the worst disadvantages. The maintenance of refugees has been a developing topic in Indonesian national issues. Whilst Indonesia itself is not a party to the 1951 Refugee Convention and its following protocols, the country has been open and acceptant in managing refugees from all parts of the world.

The UN Refugee Agency (UNHCR) defines refugees as people who have fled war, violence, conflict or persecution and have crossed an international border to find safety in another country.<sup>1</sup> Whilst the Universal Declaration of Human Rights 1948 explicitly stipulates that obtaining citizenship status is a right for any Individual, the issue of refugees and displacement of people worldwide is recurring, and one of the most complicated issue facing the world community, with Indonesia included. The increase in the number of refugees occurring in Indonesia is caused by the inseparable violence against ethnic Rohingya in Myanmar. People of Rohingya ethnic who are not recognized as Myanmar citizens makethem have to leave their homeland. In 2015, UNHCR reported that there had been an increase of refugees in the Southeast Asian regions,

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<sup>1</sup> UNHCR “What is a refugee”. [www.unhcr.org/what-is-a-refugee.html](http://www.unhcr.org/what-is-a-refugee.html) (accessed on January 17<sup>th</sup>, 2021)

some entering the Indonesia territory.<sup>2</sup>

The violence that engulfs the Rohingya ethnic in Myanmar, such as homicide and arson, has forced most Rohingya to evacuate; they have tried to survive by moving to new areas that they assume are safe and the people in new areas can give some protection. Indonesia is one of the destination countries for immigrants to get protection from unsafe conditions in their country.

Although the Indonesian government, on a local or national level, has allocation funds for major cases, if that allocation is only spent on Rohingya refugees, it would take a lot of risks. Especially regarding the fact that Indonesia is not a state that ratified UNHCR 1951 Convention about refugees, with the result that Indonesia government do not have any obligations for relocating refugees.<sup>3</sup> However in the name of humanity, The Laksamana and Fishermans had done, and also international insistence from United Nations, the Indonesian government has finally given a permit to open access Indonesia territory for Rohingya.

In providing protection against these Rohingya immigrants, the Indonesian government demanded that they refer to human rights standards, as well as provisions in the International Refugee Law to avoid any discriminatory actions against them in the receiving country. So, In this paper, authors will discuss the role and policies of the Indonesian government towards Rohingya refugees, so that it can be improved and applied in this pandemic and in the future.

## II. REGULATION

1. The Universal Declaration of Human Rights 1948
2. The 1951 Refugee Convention United Nations High Commissioner for Refugees (UNHCR)

<sup>2</sup> Prabowo Anggorono. Analisis Kebijakan Indonesia Dalam Menangani Pengungsi Rohingya Pada Masa Pemerintahan Joko Widodo. 2018. Universitas Islam Indonesia

<sup>3</sup> Article: *Indonesia Government Policy on Rohingya Refugee*. [\(PDF\) INDONESIAN GOVERNMENT POLICY ON ROHINGYA REFUGEES \(researchgate.net\)](#) (accessed on January 18<sup>th</sup>, 2021)

3. Indonesian Law Number 39 of 1999 about Human Rights
4. Indonesian Presidential Decree No. 125 the year 2016

### III. ANALYSIS

#### 1. The Fundamental Cause and Legal Stance of the Rohingya People to Flee Their Current Country

The Rohingya are a stateless ethnic group allocated in the south-west of Myanmar. They have had a wide history of facing severe discrimination in their homeland and crimes against humanity. Rape, terrorism, and ethnic cleansing just few as an example. Whilst the demands of reparation and responsibility from the International community only began in the recent years, the need for a larger prosecution and urge of action regarding Myanmar's crimes against humanity has recently fluctuated due to an escalation of armed conflict in the Rakhine State in April 2017, causing the Rohingya to flee nearby Bangladesh. After the beginning of the exodus, larger amounts of migration of Rohingya people to other countries in Asia.

According to the UNHCR, there has been an estimate of 742,000 seeking refuge in the first three months of the crisis in Cox's Bazar, Bangladesh, whilst 12,000 arrived during the first half of 2018<sup>4</sup>. Article 14 of The 1948 Universal Declaration of Human Rights, recognizes the right of persons to seek asylum from persecution in other countries, whilst the United Nations Convention relating to the Status of Refugees, adopted in 1951 is the centerpiece of international refugee protection.<sup>5</sup>

People become refugees or displaced people for a number of

<sup>4</sup> United Nations High Commissioner for Refugees. "Rohingya Emergency." *UNHCR*, [www.unhcr.org/rohingya-emergency.html](http://www.unhcr.org/rohingya-emergency.html) (accessed 24 Jan. 2021)

<sup>5</sup> Organizacja Narodów Zjednoczonych. Office of the United Nations High Commissioner for Refugees and United Nations. General Assembly. *Convention and Protocol Relating to the Status of Refugees*. Amsterdam-Netherlands, Netherlands, Academic Service, 2

reasons:

- They're forced to flee persecution for their political or religious beliefs, ethnicity, nationality or membership of a particular social group
- They're compelled to leave as a result of war
- They're displaced because of "natural" disasters, occurring increasingly as a consequence of climate change.<sup>6</sup>

## **2. Indonesian Government Policies, and the method of Indonesian government in systematically maintaining the Rohingya Refugees, whilst being in line with the current health protocol.**

By the end of 2015, the migration Wave of Rohingya refugees was unstoppable in Aceh. Previously, in 2009 and 2012, due to the outbreak of conflict in Rakhine, Myanmar, Rohingya refugees had come to Indonesia. The first response of Indonesian Government toward Rohingya refugees was the same as the Thailand and Malaysia Government, that was 'Refused'. The Indonesian Army Force Commander gave orders to help the Rohingya refugees by sending food and water to the ship that has been floating for a long time in the waters of Malacca Straits. When the Rohingya refugees come and were rescued by Aceh people, the Indonesia Government should take an attitude of accepting or rejecting therefugees. When such attitudes are implemented in an action, then there should be a basic regulation to decide the action.

There are several things related to indonesia's national policy towards rohingya refugees:

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<sup>6</sup> Oxfam Australia. *Refugees*. <https://www.oxfam.org.au/what-we-do/emergencies/refugees/> (accessed on 25th, 2021)

**a. A national policy's humanity solidarity**

Indonesia's foreign policy orientation in national level regarding the existence of the Rohingya refugees in Indonesia is humanity. Humanity is something that has to do with good intentions. The presence of Rohingya refugees in Aceh waters in a sad condition after a long adrift in the ocean was a fact. On the basis of humanity, closing the Indonesia area for Rohingya refugees was a difficult thing. Consideration of maintaining national security from the infiltration of illegal migrants was also difficult to be said to Aceh Fishermans who decided to bring Rohingya refugees to Aceh beach.

However, humanitarian orientation versus national security become a discourse in Indonesian government policy of Indonesia for receiving Rohingya refugees. Seeing the enthusiasm of Aceh people for Rohingya refugees, Aceh local government in Aceh finally have decided to accept Rohingya refugees with the help of a potluck. Similarly, the Central Government in Jakarta, finally provides relief by sending some Ministers to coordinate to help to handle the Rohingya refugees. The Indonesia Government, officially, issued a policy of opening up the region for Rohingya refugees to Indonesia.<sup>7</sup>

Volunteers from some NGOs coordinating with each other to help the Rohingya refugees live in Aceh. *Aksi Cepat Tanggap* (ACT), for example, initiated development of Integrated Shelter Community as refugee shelters with the principle of humanizing refugees. Under the initiation of the ACT, NGOs with funding joint ventures had built Integrated Community shelters, i.e. dwellings made with a rather large space to live in some groups. There was a shelter for men and also for

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<sup>7</sup> Article: *Indonesia Government Policy on Rohingya Refugee*. [\(PDF\) INDONESIAN GOVERNMENT POLICY ON ROHINGYA REFUGEES \(researchgate.net\)](#) (accessed on January 25<sup>th</sup>, 2021)

women differently. These shelters were reserved for those whose families are an incomplete member. For complete families, there was a special shelter. A shelter can consist of multiple families. The most numerous are the shelters for women that are inhabited both by adult women, adolescents, or young children.<sup>8</sup>

**b. Diplomacy effort and handling rohingya refugee at regional level**

Based on Indonesian Law Number 39 of 1999 about Human Rights *"A set of rights attached to each human being as a gift from the almighty god who is subject to honor, esteem, and protection by the state, law, government, and every man for the honor and protection of his dignity and dignity."*, Indonesia does some diplomacy and also makes a regional policy:

- I. Make a meeting bilaterally with Thailand and Malaysia governments. The meeting discussed solutions to the wave of refugee influx and national security issues from these countries. On the basis of humanity, the Indonesia Government, basically, has no obligation to receive refugees because Indonesia did not ratify the UNHCR Convention 1951, but Indonesia remained to assist Rohingya refugees. It's just, the problems of Rohingya refugees must be solved from its roots, that is Myanmar.
- II. Have a Bilateral Diplomacy with Myanmar. Indonesia bilateral relation with Myanmar in addressing the Rohingya issues is focusing on persuading Myanmar and do not want to pressure Myanmar government on this issue. Response to the Rohingya refugee crisis in 2015, Indonesia's Foreign Minister, Retno, visited Myanmar as one of the issues being discussed is the Rohingya refugees issue. The bilateral meeting is to discuss the

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<sup>8</sup> *Ibid*



elevation of both countries' relationship and to support Myanmar efforts in accelerating its reformation and democratization process. The meeting resulted in several important notes on the discussion between these two foreign minister, as follows:

- 1) Myanmar government agrees to strengthen the measure in preventing irregular movement of migrants from its country
- 2) Myanmar government is prepared to cooperate with regional nations in the eradication of human trafficking.
- 3) Myanmar government is to instruct its embassies to conduct consular visits to temporary settlements of migrants in Aceh.
- 4) Myanmar government also welcomes Indonesia's offer to build Rakhine in an inclusive and non-discriminatory manner.

**c. Indonesian's Presidential Decree about refugees**

According to Indonesian Presidential Decree No. 125 the year 2016, refugees are foreigners who reside in the territory of a unitary State of Republic Indonesia due to fear of persecution will be absent by reason of race, tribe, religion, nationality, membership of a group certain social and political opinions that are different and do not want protection of their home country and/or have obtained the status of an asylum seeker or refugee status from the United Nations through High Commissariat Refugees in Indonesian. This presidential decree also regulates how the central and local governments can help refugees in their area and coordinate with UNHCR to find problems and find solutions for refugees.<sup>9</sup>

**3. The protection and fulfillment of Rights of Refugees in Indonesia through the pandemic and for the future, based on**

<sup>9</sup> UNHCR: Indonesia patut dicontoh soal penanganan pengungsi internasional. [www.liputan6.com/global/read/4015215/unhcr-indonesia-patut-dicontoh-soal-penanganan-pengungsi-internasional](http://www.liputan6.com/global/read/4015215/unhcr-indonesia-patut-dicontoh-soal-penanganan-pengungsi-internasional) (accessed on January 27th, 2021)

## Indonesia towards Rohingya Refugees.

Indonesia with the International Organization for Migration (IOM) joining efforts to meet the request of the Government of Indonesia for ventilators and other essential medical supplies. The ventilators will be part of at least 30 procured jointly with the UNDP and WHO and will be handed over to the National Task Force in Jakarta. To assist the effort to mitigate against transmission within the refugee community, IOM has surveyed potential quarantine and isolation spaces for the refugee population both within existing accommodations and elsewhere, if needed. Additional spaces for quarantine and isolation may be required to reduce transmission within community accommodations where refugee families share common spaces for cooking, and recreation, and where physical distancing, especially for those experiencing symptoms, can be challenging.

The stations are equipped with information on proper hand-washing practices. Even with this particular focus on responding to COVID-19, IOM Indonesia continues to provide regular clinical counseling for migrants in need of psychological services, especially those suffering from psychological disorders and those feeling overwhelmed or distressed due to measures introduced to tackle the pandemic. Similarly, IOM is working in conjunction with local authorities to provide education support through online learning platforms to migrant children and adults under its care. Through this approach, it is expected that children will manage to complete their school assignments and the adults can continue with their language classes during the outbreak.<sup>10</sup>

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<sup>10</sup> IOM Rumps Up Response to Covid 19 Pandemic for Refugees in Indonesia. [www.iom.int/news/iom-ramps-response-covid-19-pandemic-refugees-indonesia](http://www.iom.int/news/iom-ramps-response-covid-19-pandemic-refugees-indonesia) (accessed on January 28th, 2021)

Also, based on Indonesia protect rights of rohingya refugees, in this pandemic situation and for in the future, Indonesia maintains the policies that have been made, such as conducting diplomacy related to refugees, making legal rules to fight for the rights of refugees, providing humanitarian assistance in the form of clothing, food. Especially during the current pandemic, Indonesia must also pay attention to health and apply health protocols to refugees.

#### **4. Solution of the issue regarding health protocols and safety of Rohingya refugees from the public.**

In this situation, regarding health protocols, Indonesia and other countries can provide regular clinical counselling for migrants in need of psychological services, especially those suffering from psychological disorders and those feeling overwhelmed or distressed due to measures introduced to tackle the pandemic. Also can to provide education support through online learning platforms to migrant children and adults under its care. Through this approach, it is expected that children will manage to complete their school assignments and the adults can continue with their language classes during the outbreak, because education is also a critical part of prevention, and the efforts of humanitarian workers ensure that risks and preventative measures are understood. Even if Indonesia does not yet have a comprehensive legal framework for handling Rohingya refugees but based on Indonesian Presidential Decree No. 125 the year 2016 mentioned that The handling of refugees is carried out based on the cooperation between the central government and the United Nations through the High Commissioner for Refugee Affairs in Indonesia and / or international organizations. Hence, Indonesia and IOM (International Organization for Migration) are needed to work together for handling rohingya refugees during COVID – 19.

#### **IV. SUMMARY AND ADVICE**

The UN Refugee Agency (UNHCR) defines refugees as people who have fled war, violence, conflict or persecution and have crossed an international border to find safety in another country. By the end of 2015, the migration Wave of Rohingya refugees was unstoppable in Aceh. Previously, in 2009 and 2012, due to the outbreak of conflict in Rakhine, Myanmar, Rohingya refugees had come to Indonesia. There are several things related to Indonesia's national policy towards rohingya refugees: First, a national policy's humanity solidarity. Indonesia's foreign policy orientation in national level regarding the existence of the Rohingya refugees in Indonesia is humanity. Humanity is something that has to do with good intentions. Volunteers from some NGOs coordinating with each other to help the Rohingya refugees live in Aceh. *Aksi Cepat Tanggap* (ACT), for example, initiated development of Integrated Shelter Community as refugee shelters with the principle of humanizing refugees. Under the initiation of the ACT, NGOs with funding joint ventures had

built Integrated Community shelters, i.e. dwellings made with a rather large space to live in some groups.

Second, diplomacy effort and handling rohingya refugees at regional level. Indonesia made a meeting bilaterally with Thailand and Malaysia governments to discuss solutions to the wave of refugee influx and national security issues from these countries. Have a Bilateral Diplomacy with Myanmar. Indonesia bilateral relation with Myanmar in addressing the Rohingya issues is focusing on persuading Myanmar and do not want to pressure Myanmar government on this issue. Third, Indonesia made a Presidential decree (Presidential Decree No. 125 the year 2016) about refugees, also based on Indonesian Law Number 39 of 1999 about Human Rights.

To protect Rohingya refugees, Indonesia with the International Organization for Migration (IOM) continues to provide regular clinical counselling for migrants in need of psychological services, especially those suffering from psychological disorders and those feeling overwhelmed or distressed due to measures introduced to tackle the pandemic. Similarly, IOM is working in conjunction with local authorities to provide education support through online learning platforms to migrant children and adults under its care. Through this approach, it is expected that children will manage to complete their school assignments and the adults can continue with their language classes during the outbreak. Also, Indonesia can to provide education support through online learning platforms to migrant children and adults under its care. In Addressing the issue of COVID - 19, IOM and Indonesia are needed to give better sanitation for Rohingya Refugees to achieve Sustainable Development Goals Number 3 by raising awareness on COVID - 19 Health Protocols.

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## **Regulations**

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The 1951 Refugee Convention United Nations High Commissioner for Refugees  
(UNHCR)

Indonesian Law Number 39 of 1999 about Human Rights

Indonesian Presidential Decree No. 125 the year 2016

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