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# A Dialectical Understanding of Refugee Problems in Indonesia: Humanitarian and State Sovereignty Perspective

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## Abstract

The increasing number of refugees each year has caused the government difficulties in handling refugee issues. The absence of law concerning refugees in Indonesia has caused weak coordination between related institutions in field. In this paper will discuss what the urgency, relevance, and obstacles faced by Indonesia in the process of ratification of the 1951 Convention and 1967 Protocol. This research was carried out using a normative juridical approach, by examining a legal problem and resolving it through applicable laws and regulations. The urgency to ratify this Convention can strengthen the human rights institutions in the country, although this is not the only indicator for good human rights implementation. It is because some human rights norms are in fact also regulated in domestic legislation in the current reform era this. Indonesia can not exclude the existence of the International Convention on Human Rights. Even it is necessary to bring the domestic and international factors closer. The relevance to ratify this Convention will enhance the international accountability of a country through a more objective and civilized way. Meanwhile, in terms of legal technical considerations, the ratification will strengthen and enrich the national legal instruments so that it will better ensure the progress and protection of human rights better. Ratification can even be a shortcut to bring closer the existing gap between legal instruments at the international and national levels. Obstacles faced are categorized into two aspects, namely the security and legal aspects. The security aspect caused by refugees is often seen as a threat to the state. While the legal aspects of the law are caused by the absence of comprehensive rules in regulating the refugees and asylum seekers in positive law in Indonesia that can weaken the coordination between agencies in the field. As a law-based country that highly appreciate human rights, ratification of The 1951 Refugee Convention and 1967 Protocol must be a priority. Both instruments are relevant, since the substance is not only heavily loaded with regulation about human rights but also in line with cultural values and norms in Indonesia. As such, the process of ratification needs to consider the country readiness, in terms of technical, political and legal aspects, since those aspects are sometimes challenging. On this matter, ratification is expected to narrow the gap between national and international instruments of law.

**Keywords:** Refugees, The 1951 Convention, Humanitarian, State Sovereignty

## 1. Introduction

Lately in various media both print and electronic news coverage about the exodus of many Rohingya refugees from Myanmar. News coverage on the issue of Rohingya refugees is indeed not acres of news coverage over the same problems experienced by other ethnic minorities, such as the ethnic Karen who also get the same treatment

as bad from the Military Junta of Myanmar. Nevertheless, the violence against ethnic Rohingya is no less bad with the problems experienced by ethnic minorities of Myanmar more (Sari, 2018).

Rohingya is the term for a Muslim minority originating from West Arakhan, Myanmar. The area is very remote and borders Bangladesh. The residents of this region are generally of Arab descent who migrated to the region since the time of the Mughal Empire, the Islamic empire that controlled the Indian subcontinent in 1526-1858. Rohingya people characteristics seen from physical, language, and culture that shows the proximity of the Rohingya people with South Asian community, especially those Chitagonian. In course of time since, Myanmar controlled by the Military Junta, the Rohingya become targets of various forms of violence and other actions that violate their human rights. Many of them are employed in the forced to build roads and military camps, molested women and men victims of rape (Mutaqin, 2018).

The Government of Myanmar must responsible for the Rohingya instead take a stance that is upside down and letting the fate of the Rohingya in conditions of heartbreaking. As a result, until now still going on a wave of evacuation of the breakout and the Rohingya spread to many lands, as well as to Indonesia (Susetyo & Chambers, 2020). Such conditions caused the Rohingya and also people from other ethnic minorities who come from other regions of Myanmar be "*stateless citizen*" (residents who lost their citizenship status).

Organization of Islamic Conference (OIC) urged the international community to immediately deliver political pressures on the Government Myanmar related existence of violence and discrimination against the ethnic Rohingya in Rakhine State, Myanmar. As a minority citizen Rohingya is experiencing the pressure of social, cultural, economic, and abandonment of their fundamental rights.

Though violence was committed against the Muslims, then should be done within the framework of a neutral with a principled issue on humanity. Citing the opinion of Yusuf Kalla in Kompas on August 4, 2012, actions taken by Myanmar are severe human rights violations, and the Government of Myanmar should open up access for humanitarian aid agencies to enter Arakan, another name of Rakhine State, which is on the border of Myanmar and Bangladesh.

The problem is both the Myanmar and Bangladesh are two countries that are covered. Therefore, the OIC, United Nations, and ASEAN are expected to actively give diplomatic pressure upon Myanmar. This is due to the ethnic Rohingya already thousands of citizens affected by the violence and resulted in many deaths, displaced, and loss of citizenship (Cheung, 2012).

Learn from the Rohingya case, there are many problems that can be taken, bearing in mind the benefits until recently Indonesia has yet to become a party in the 1951 Convention and 1967 Protocol. Whereas day by day the number of refugees coming into Indonesia the more that inevitably will become a burden for Government of Indonesia (Missbach & Stange, 2021).

The question of the refugees is a problem as old as the human civilization. In a general sense a refugee is a person or a group of people who for some reason had to leave their home areas towards other regions either in their own country or other countries. Basically, the refugee problem is a humanitarian problem and dealt with principles of humanitarian anyway. In the case of refugees as the existence of a natural disaster, then handle can be said to be simple, because their main needs were housing until they can be returned to its original area. In this case, relief and assistance that take precedence are food, water, clothing, sanitation, health, and so on. While refugees from human made disaster especially victimized continuous interference against their fundamental freedom or personal, or persecution, because of race, colour, origin, ethnic origin, religion, social group, or political opinion, and are looking for security and safety as well as safety outside their home country, basically also remained an issue and dealt with humaniter humaniter anyway (Hashimoto, 2018). These kind of people don't just need relief, and assistance for their survival, but also other vital needs, i.e. international protection, because they would no longer gain protection from the governments of their countries of origin.

As a country that has not ratified the 1951 Convention and the 1967 Protocol, Indonesia does not have the authority to determine refugee status. All countries, including countries that have not ratified this Convention, uphold the standards of refugee protection that have become part of general international law, because the Convention has become *jus cogens*, and no refugee can be returned to an area where his life or freedom is threatened (Tan, 2016).

Linkages with international law can be relied upon to subsume the international interest criteria Indonesia in the process of ratification it later, which basically meets the national interests of legal and moral criteria. One classification of other national interests are the secondary interest, which includes the protection of citizens who are abroad and support the nation's diplomats immunity (Syahrin, 2019). This will be discussed in writing what became urgency, relevance, and constraints for Indonesia to ratify the 1951 Convention and 1967 Protocol.

## 2. Method

This research was carried out using a normative juridical approach, by examining a legal problem and resolving it through applicable laws and regulations (Marzuki, 2015). The specification of this research is descriptive analysis to provide an overview of the actual facts. The analysis technique uses a statutory regulation approach and literature review related to the research topic.

## 3. Discussion

### 3.1 Does Indonesia Have to Ratify the 1951 Convention?

Before becoming a party to the 1951 and 1967 Conventions or Protocols, it is important to first look at what rights refugees have. This aims to consider whether Indonesia is able to fulfill these rights or not. Some of them are: the right to religion (Article 4), the right to own property (Article 13), the right to associate (Article 15), the right to trade (Article 18), the right to do work. (Article 19), the right to education (Article 22), the right to decent working conditions and social security (Article 24), freedom of movement (Article 26).

Looking closely at some of the above rights, then that should not be accepted are the provisions of Article 4. Other articles not to do a reservation, can be seen in terms of Article 42 on 1951 Convention, namely: the definition of the term displaced (Article 1), non-discrimination (Article 3), freedom of religion (Article 4), access to pengadilan (article 6 Paragraph 1), non-refoulement (Article 33), final clause (Article 36-46).

The 1951 Convention was the starting point of any discussion on the question of refugees. This Convention is one of the two devices to another Refugee Convention, namely the 1967 Protocol. The 1951 Convention designed at the end of World War II, and the definition of a refugee that formulated therein is focused to those who are outside the territory of their home country and become refugees as a result from events taking place in Europe before January 1, 1951. In connection with the increasing refugee problem in the late 1950s and early 1960s, it was felt that there was a need to expand the temporal and geographical coverage of the substance of the 1951 Convention.

In terms, the 1951 Convention and 1967 Protocols observed about refugees international is a human rights instrument. The existence of an international instrument that is one aspect in advancing the protection of human rights (Missbach, 2019). This condition is caused by, among others, that the State has a large role in voicing the national interest at a time when the process of negotiating and drafting a set of international human rights and at the time of the transformation process of the device into national law binding through ratification or accession.

Ratification could strengthen the institution of human rights in the country, although this is not the only indicator for a good human rights. Most human rights norms are actually also already provided for in domestic legislation on the current reform era. Indonesia cannot rule out the existence of an International Convention for granted about human rights (Jacobsen, 2002). Even felt the need to transporting domestic and international factors. Reconciling the needs of domestic and international factors was strengthened when in 1993 that to set up

National Commission of Human Rights. Moreover, after Indonesia has Law No. 39 of 1999 about Human Rights, Law No. 37 of 1999 about Foreign Relations, Law No. 24 of 2000 about International Treaty, Law No. 26 of 2000 about The Court of Human Rights that the scope of those powers is check and decide the matter of human rights violations. Therefore, the need to approach domestic factor and international community hopes it can not be bargained again. A lot of effort can do to draw closer to both of these factors with the inclusion of several provisions of the organic law of a country or by the way do the various international instruments of ratification.

In response to the recommendation submitted by the Government for its approval of Parliament requested has not as much response to a draft of the manuscript, as usual (1951 Convention and the 1967 Protocol) already agreed jointly by the representatives of the participating countries even have done the authentication credentials. If an international treaty in formal juridical is still a draft law because requires the approval of the Parliament. While some countries have been committing yourself and has even imposed, then the freedom of changing the script of the agreement by Parliament can be said to no longer exist, or in other words Parliament cannot use the amendment right. Under these circumstances the Parliament only in the position of choosing, approving the existing script, or refuse to give consent. This choice is made after hearing the Government's consideration with the rationale which can be accounted for.

The ratification of the 1951 Convention and 1967 Protocol should be done in the form of actual legislation in line with what is required in that Convention (Kadarudin, 2018). The Convention governs the protection of human rights. In connection with this then the fabrication and endorsement of an international treaty must be made with a solid foundation, using the instrument of legislation are obvious, especially one that is regulated in the Law No. 24 of 2000 about International Treaties. This provision is used as a legal basis for the Indonesia to make and ratify an international treaty.

Ratification of an international device of human rights would enhance the international accountability of a country through a more objective and civilized (Heriyanto et al., 2023). Action in the form of reports of state parties in the Monitoring Committee (*treaty monitoring bodies*), is closed and not through ways that are not civilized, i.e. public humiliation, excessive politicization of such the UN Council of Human Rights. Whereas in terms of legal technicality, ratification would strengthen and enrich the national legal system so that it will better ensure the advancement and protection of human rights are better. Ratification could even become a shortcut to further bring closer the gap that exists between legal system at national and international level (Liza Shahnaz et al., 2019).

### *3.2 Indonesia's Considerations in Ratifying the 1951 Convention*

In determining the decision to ratify this international instrument, various considerations must be taken into account, such as political, legal and administrative considerations. From this process a compromise formulation emerged which became corporate values and demonstrated the existence of new laws and minimum and universal standards that could be accepted by a sovereign state (Khairiah et al., 2021). As the desire to reach a unanimous decision in establishing international human rights increases, the universal values of international human rights standards will increase.

If national law provisions already meet international standards, then technically and specifically delegated substantive increasingly prepared a country do the ratification or accession. From the administrative aspects, ratification is the obligation to implement and report on a legal device. Usually this becomes somewhat hindered due to lack of experts who have a level of understanding and mastery against the substance of the international instruments of human rights (Zetter, 1991). Not even rarely even be a contradiction, because there is still a perception that state sovereignty as a pillar of international law can be used as reason to exclude themselves from the peremptory norms.

In this context of Indonesia can make a reservation against the provisions of Article 13, 14, and 17 of the Convention which requires the state to give the same treatment to its own citizens and refugees as well as other

people living in its territory on property rights housing, jobs, and more. Consideration for reserve clauses are for developing countries like Indonesia provides facilities for the citizens of his own country 's it is still difficult for the met, moreover should provides the implementation of the refugees.

The attitude to become parties to the Convention at the same time show a nation spirit in the international effort to fight for human dignity award including the question of refugees. By declaring an endorsement at the Convention, then Indonesia were bound by international obligations arising from this Convention, i.e. accepting the procedure of investigation by the Commission established by Convention. So that the attachment to the Convention was not merely a *reporting obligation*, but as a whole can accept it, including receiving the procedure of investigation by the Commission as provided for in Article 35 of the Convention.

Article 35 of the Convention states that, UNHCR oversee the implementation of the international instrument by states parties, and the state party must provide for the execution of tasks UNHCR these. By accepting the supervision of UNHCR, it is not be construed that a State declared state sovereignty to the international community, because the rights in this Convention belongs to the category the non derogable human rights, because it concerns the right to life, and the right to protection. A state of emergency or in the interest of political stability should not be a reason to reduce the right to life, and the right to personal safety. However, in the circumstances that the State must respect the obligations (*erga omnes*). The obligation of the sovereign State to respect the right to life and personal safety that can be diihat from Article 3 of UN Declaration of Human Rights as follows any individual has the right to life, freedom and personal security.

As a right in non derogable categorizes, *jus cogens* norms interpreted as, norms have been accepted and recognized by the international community, which is not should not be revoked and no be excluded by anyone (Hathaway & Gammeltoft-Hansen, 2015). As a right which has a characteristic, then the right is binding on countries even if there is no obligation that is required in the Convention or declaration specifically consent. So, by having characteristics such that without ratifying any country (especially the members of the UN), it cannot avoid the obligation. Only by becoming a party to the Convention for the state concerned had a binding international obligation legally to protect the rights and interests of refugees residing in the territory of the sovereignty or the jurisdiction of the state. This is a logical consequence that not only contains a requirement for states parties, but also made provision that allows a state party to do (Collins, 2016). In addition, the intrsument also allows states parties to reserve certain articles that was indeed opened in the Convention.

The 1951 Convention contains three chapters governing the protection of refugees, namely, Article 31 (refugees residing unlawfully in the country of exile), Article 32 (expulsion), and Article 33 (non-refoulement). This principle prohibits the return of a refugee to his home country where survival or their freedom is threatened, due to the existence of racial, religious, nations, members in a particular social group is a the basic international protection. So, non-refoulement principle so must be accepted and respected as a *jus cogens* in international law (Goodwin-Gill, 2021).

S. Prakash Sinha gave the sense of a refugee as follows: "the international political reguee may defined as a person who forced leave or stay out his stay of nationality or habitual residence for political reason rising from acquiring events between that states and its citizens which made he stays there impossible or intolerable, and the who whas taken refugee in another state without having acquired a new nationality" (Sinha, 2011). From the opinion, it can be affirmed that in general, a refugee must meet the following criteria: (a) The reason must be based on political factors; (b) The political problems arising between the State and its citizens; (c) There are circumstances that require such person left the country or place of residence, either voluntarily or forced; (d) Return to their country or place of residence is not possible, because it is very dangerous to himself; (e) The person must ask for refugee status in another country; (f) The person does not get a new nationality.

Citizenship is an important factor for the individual, because he can have citizenship identities, as the basis for the protection of his country (Joppke, 2010). The provisions of this Convention will not damage the order of cultural values, customs, and religious norms and followed by the people of Indonesia. For the Government of Indonesia are fit enough to ratify the international instruments. It is soft enough and flexible, because it not only

contains a prohibition or a requirement for States parties, but also contains a provision that allows a state party to do. In addition to these instruments also allow states parties to reserve a particular article that was indeed opened in the Convention.

The protection of refugees is primarily the responsibility of each state. The issue of protection to refugees and asylum seekers is a classic problem that has become an international issue since a long time (Fitzgerald & Arar, 2018). Already many centuries the country receives and provides protection for foreigners who are victims of oppression or violence in the region. This kind of humanitarian tradition in the 21st century was instituted into an International Convention on refugees. According to the 1951 Convention that someone said to be refugees if: A Refugee is a person who: (a) is outside his/her country of nationality; (b) has a well founded fear of persecution; (c) for reasons of race, nationality, religion, membership of a particular social group, political opinion; (d) is unable or, owing such fear, is unwilling to avail himself of the protection of his country.

Based on that definition, refugees can be concluded that in fact the state has a responsibility to protect its citizens and foreigners living in the country. But it often happens that the government could not afford to carry out such responsibilities and unwilling to provide protection to its citizens so often does someone have to leave his native country and seek shelter into the country another (Gil-Bazo, 2015). From the description it appears that the problem of refugees and asylum seekers has always been a national and international issue.

Each country has the right and obligation in dealing with the problems of refugees that basically is a matter of humanity, still consider the honor of sovereignty which is owned by the State. In terms of the 1951 Convention has provided clues about the treatment that must be given to refugees, among other things: (a) national treatment. In this case it relates to provisions on freedom to practice religion, access to courts, legal aid and so on; (b) the treatment given by the State that granted regular residence where he was covering the protection of industrial property, inventions, trademarks, rights to intellectual property, and others; (c) most favored destinations with treatment. The right to join non-political organization, forms of organization, non profit, or trade organization; (d) to get the same treatment with foreigners residing in the country. For example the treatment to have property rights, the right to benefit, the right to housing, and so on (Sinha, 2011).

Refugee protection issues have won the affirmation in international law, refugee law in particular in international refugee law contains a principle of international law which is universal (Jastram & Marilyn, 2001). Therefore, the international law principle contained in this refugee law binding on any country, without considering he replied: the state in question has become a party or yet and of the Convention. With regard to international instruments and regional instruments concerning refugees at least five general principles relating to international refugee law to know, such as the principle of asylum, non- extradition, non-refoulment, the right and the duty of the state towards the refugees, amenities provided by the countries concerned towards refugees.

### *3.3 Several Obstacles in Ratifying the 1951 Convention*

Indonesia has not ratified the 1951 Convention or the 1967 Protocol. This must of course be considered carefully, considering Indonesia's geographical location which connects two continents and two oceans. Even though Indonesia is not the final destination for refugees, Indonesia's large area can be used as a transit point for refugees, such as Galangan Island for temporary settlement for refugees from Indochina (Torry et al., 2022).

The 1951 Convention is a fundamental international agreement aimed at protecting the rights and welfare of refugees throughout the world. Even though many countries have ratified and implemented this convention, Indonesia faces several obstacles in the process of ratifying this important agreement. This essay explores the challenges Indonesia faced in adopting the 1951 Convention and examines the implications of these obstacles. (a) Geographic and demographic challenges. Indonesia, with its vast archipelago consisting of thousands of islands, faces unique geographic challenges that impact its ability to effectively manage and control migration. The size and complexity of these countries makes it difficult to implement uniform refugee policies across the region, potentially creating disparities in the treatment of refugees. In addition, Indonesia's diverse demographics, with diverse ethnicities, languages and cultures, add complexity to the formulation and

implementation of refugee policies; (b) Lack of domestic legal framework. Ratifying the 1951 Convention requires aligning domestic regulations with the international standards established by the treaty. However, Indonesia currently only has Presidential Regulation Number 125 of 2016 which has not yet been implemented optimally. This regulation is still very limited in scope, thereby limiting institutions in carrying out their obligations. These issues will hamper countries' ability to fully comply with the principles of the convention and provide adequate protection for refugees in their territories; (c) Resource constraints. Indonesia, like many other developing countries, faces resource limitations that impact its capacity to adequately address refugee-related challenges. Allocating sufficient resources for the reception, protection and integration of refugees requires a major financial commitment. Indonesia's competing priorities, such as economic development and poverty alleviation, may limit the resources available to implement a comprehensive refugee policy in accordance with the 1951 Convention; (d) Security concerns. Indonesia's historical and contemporary security challenges, including terrorism and political instability, contribute to concerns about the potential security risks associated with hosting refugees (Vogl, 2019). Governments may be concerned that ratifying the 1951 Convention could inadvertently exacerbate security problems, as refugees may be vulnerable to exploitation or inadvertently become targets of criminal elements; (e) Public perception and political will. Public opinion plays an important role in shaping government policy, and in the case of refugees, negative perceptions or misunderstandings about their impact on local communities can influence political decisions. A lack of public awareness and understanding of the reasons refugees seek asylum and the international obligations under the 1951 Convention can hinder the development of strong public support, which is crucial in the ratification process.

Indonesia faces a series of obstacles in ratifying the 1951 Convention, ranging from geographic and demographic challenges to the lack of a comprehensive legal framework and resource constraints. Overcoming these obstacles requires joint efforts from governments, civil society, and international partners to build awareness, address security concerns, and develop policies that are robust and aligned with the principles of the convention. Ratifying the 1951 Convention is not only a legal obligation but also a humanitarian imperative that can contribute to maintaining regional stability and upholding the rights of vulnerable groups in Indonesia.

The handling of refugee problems is currently regulated in Presidential Regulation Number 125 of 2016. However, until now, there have been no derivative regulations from any government agency that explain the legal norms of this presidential regulation, giving rise to new problems in the field. For example, coordination has not been established, local governments have not been willing to allocate budgets, independent refugee shelters are not yet adequate, law enforcement for refugees who violate regulations, and so on. In many cases, local governments feel an additional burden because they receive objections to the entry of foreigners (refugees) into the region. The sharp differences between regional culture and refugees have the potential to cause social conflict (Briskman & Fiske, 2016). Apart from that, the assimilation process between refugees and local residents actually creates new burdens because the children who are there as a result of assimilation are not taken as well as during repatriation or resettlement.

The current difficulties in handling refugees can be described through two handling models as follows: (a) Security model. This model places greater emphasis on sovereign (state) rights because refugees are often considered a threat to the state and must always be controlled. This security model consists of two parts, namely controlling (internal) and protecting (external). The internal approach is a direct control mechanism for society, for example in the form of regulations governing refugees, immigration issues and so on. Meanwhile, the external approach focuses on foreign policy, the role of the UN and others. (b) Individual rights model. This model places more emphasis on individual rights, because refugees are seen as individuals who must be protected according to the 1951 Convention and the 1967 Protocol. Apart from that, they must also receive protection according to human rights doctrine. Refugees must receive justice and protection from persecution or torture in accordance with human dignity.

The most important thing to do in dealing with the refugees was the political bilateral policies between countries of origin of refugees (*country of origin*), with a refugee receiving country (*the host country*). The development of the rule of law for the refugee protection can be implemented in many ways, namely: (a) Access the instruments of law or international human rights of refugees, among others, the Convention of 1951 and 1967 Protocol; (b)



Drawing up legal instruments or regional human rights. It can be seen from what is done in the Organization of the African Union through the 1969 Convention, then European countries through the 1985 Schengen Convention, and 1990 Dublin, as well as the countries of Latin America through 1984 Cartagena Declaration; (c) Draw up national legislation on refugees, this legislation should be done by developing a comprehensive national law and is not contrary to the universal principles of refugee protection.

### *3.4 Is Indonesia Trapped in a Refugee Maze?*

In 2019, asylum seekers and refugees again demonstrated in front of the UNHCR Jakarta Representative Office. This action was repeated, after previously there was no agreement on refugee relocation initiated by the DKI Jakarta Government. They demanded that they be immediately transferred to the destination country, which until now has not been realized by UNHCR. "Imagine, they (UNHCR) have been lying to us for seven years, how can we believe it," stressed the demonstrators.

To date, there are around 13,657 refugees in the waiting period for the resettlement process. A total of 5,242 of them lived independently (not receiving assistance from the International Organization for Migration) and 8,415 were placed in shelters in several areas. The number of arrivals of asylum seekers and refugees to Indonesia is not commensurate with the number of settlements or placements in receiving countries, including those voluntarily repatriated and deported from Indonesian territory. Moreover, in the last two years, there has been a significant decline in refugees resettled in third countries.

There are at least four attractions for refugees from being in Indonesia to their destination in Australia, namely: (a) Indonesia is the closest country to the route for illegal foreign immigrants; (b) Indonesia's maritime sovereignty still has many loopholes and is not fully protected. So, foreign parties can easily enter without immigration checks; (c) The existence of UNHCR is an attraction for foreign refugees who have money; (d) Indonesian citizens and foreigners, even officials who use asylum seekers and refugees as a business venture. Based on data the author got from refugees in the Kalideres area, they have to pay at least around US\$ 5000 - 10,000 per person to get to Australia by first transiting to Indonesia. They handed over the money to a group of agents suspected of being a human smuggling syndicate (Syahrin, 2017).

On several occasions, UNHCR often intervenes in government policies in the law enforcement process against asylum seekers and refugees. They don't even hesitate to use humanitarian arguments to override positive law. For example, UNHCR asked the Directorate General of Immigration not to deport refugees who have violated the law, even those who have been sentenced to prison. UNHCR is of the opinion that their right to asylum remains intact and should not be reduced in the slightest.

UNHCR's policy as an institution that determines refugee status needs to be questioned. The extent of UNHCR's independence and transparency in providing refugee cards for asylum seekers. Not a few asylum seekers who have fulfilled the requirements as refugees, even at the final stage of the interview, have their applications rejected. Meanwhile, there are some asylum seekers who (perhaps) do not meet the requirements, and are instead given refugee cards. Not to mention the issue of how long the process of issuing a refugee card takes. There are some who have a fast process, around three months, but quite a few have to wait more than two years and have not received a refugee card.

After getting a refugee card, it doesn't mean the problem is over. The certainty of the placement time to a third country is also an issue. Some have waited more than seven years and have not been moved. On the other hand, there are some who have just received a refugee card, after less than a year they are immediately transferred to a third country.

So what about asylum seekers who are denied refugee status by UNHCR? These people cannot be deported (forcibly) by the Directorate General of Immigration. UNHCR, through IOM, requested that they only be returned to their country of origin voluntarily (assisted voluntary return). What if they don't want to be sent

home? How long do they have to stay in Indonesia? Who is responsible for their lives in Indonesia. Should the state budget be used to deal with this problem?

UNHCR representative in Indonesia, Thomas Vargas, stated that his party has limited funds to handle asylum seekers and refugees in Indonesia. He explained that the funds that UNHCR currently has are only able to help around 300 to 400 of the total refugees and asylum seekers spread across Indonesia. Therefore, he plans to collaborate with several parties to give refugees the opportunity to live independently in Indonesia. In fact, UNHCR and IOM also continue to urge the Indonesian Government to provide access to education and employment for refugees.

Empirical facts like this should be of concern to the government. Don't let the existence of UNHCR and IOM actually benefit certain parties and harm Indonesia as a transit country. There are many other negative impacts which will certainly threaten Indonesia's existence as a sovereign country. The question then is, is Indonesia 'trapped' by UNHCR? Or are you trapped in a maze of refugees?

### *3.5 Temporary Emergency Solution for Refugees*

In dealing with refugees and asylum seekers in Indonesia, UNHCR is an important actor in handling this problem. UNHCR has tried to carry out its mandate with various measures to provide international protection to refugees or asylum seekers, namely: (a) Providing guarantees for those identified as refugees who are protected from refoulment or forced return to their country of origin where their lives and freedom are threatened and persecuted, as well as finding long-term solutions for the future of refugees by seeking placement in a third country, or assisting in the process voluntary return to the country of origin (Fiddian-Qasmiyeh et al., 2014); (b) In the process of waiting for the final decision on the realization of a long-term solution, UNHCR guarantees refugees and asylum seekers by facilitating all their basic needs, as well as educational services, language courses, counseling services, health services, and others (Rizka & Prabaningtyas, 2019); (c) In addition to carrying out its duties in Indonesia, UNHCR continues to strive for refugee rights by providing input which includes a step-by-step process, providing support to the government in developing effective mechanisms to address refugee and migration protection problems in Indonesia. Steps towards accession to the 1951 Convention and the 1967 Protocol have not yet been implemented, because to date Indonesia has not ratified the two legal instruments regarding the determination of refugee status; (d) UNHCR collaborates with the Indonesian government in handling refugees, by socializing the government's handling guidelines when finding refugees and asylum seekers at the border, before finally being handed over to UNHCR in the form of training for immigration officers and the National Police; (e) Apart from the efforts made by UNHCR in handling refugees and asylum seekers in Indonesia, there are also factors that hamper the handling mechanism. Indonesia is not a country that has ratified the 1951 Convention and the 1967 Protocol, and national legal regulations have not been able to accommodate immigration interests in resolving the refugee problem. For example, there are no special immigration administration procedures, no provisions regarding temporary residence permits, handling mechanisms and evaluation processes. Therefore, there are differences in the handling and treatment of refugees and asylum seekers between UNHCR officers and Indonesian government officials.

As a country that upholds respect and enforcement of human rights, there should be a legal arrangement for refugees and asylum seekers in this country, both legal and institutional mechanisms (Long, 2013). So the 1951 Convention and the 1967 Protocol became an urgent matter for ratification, considering the increasing rate of international refugees entering Indonesia. This can also reduce the government's dependence on UNHCR in handling refugee problems in Indonesia. In this way, the process of handling refugees can be more efficient, considering the limitations that UNHCR has in terms of human resources and costs. For example, if ratification has been carried out, the Indonesian government can make a regulation that places the process of determining refugee status at Immigration Offices and implements obligations that refugees must comply with while in Indonesia. So that efficiency can be achieved which is certainly beneficial for refugees to obtain their rights in accordance with the 1951 Convention, including the right not to be punished for entering a country's territory, the right not to be returned to their country of origin, the right to litigate before a court, the right to receive

education, the right to marry, the right to obtain identity, the right to obtain identity and the obligation of refugees is to obey the law where they are and must maintain public order.

If Indonesia does not ratify the Convention and Protocol for reasons of national interest, at least Indonesia has a more comprehensive legal framework for regulating refugees and asylum seekers in its immigration laws and regulations. The Presidential Regulation has not been able to provide legal certainty for refugees while in Indonesia, so it needs to be adjusted by adopting humanitarian principles based on international standards. However, what needs to be noted is that the implementation of this rule must not put aside national interests and burden state finances. Thus, it is hoped that even though it has not ratified the 1951 Convention and the 1967 Protocol, Indonesia will still respect the basic rights of refugees by making national laws that are human rights oriented. For example, granting temporary immigration status which will make it easier to control and supervise foreigners. Currently, state officials only have quantitative data, while UNHCR only has qualitative data. Likewise, there is a need for increased cooperation between UNHCR and the Indonesian government, as well as resettlement countries in handling refugees and asylum seekers, because the refugee problem does not stand alone and cannot possibly be resolved by just one actor (Hashimoto, 2018).

There is a need to repair or renew and increase temporary accommodation facilities for refugees which are already inadequate, because they are not criminals, but rather victims of human rights violations that occurred in their countries of origin (Heriyanto et al., 2023). Increased security ensures safety and protection for refugees and asylum seekers, by initiating a legal framework or international agreement between source countries, transit countries, destination or resettlement countries and with international organizations and NGOs, to prevent and anticipate practices that are detrimental to refugees and asylum seekers from actors who deliberately seek profits by mobilizing migrant movements, such as human smuggling and human trafficking (Afriansyah, 2019).

#### **4. Conclusion**

There needs to be a strong desire from Indonesia to immediately become a party to the 1951 Convention and the 1967 Protocol, for this reason there needs to be good preparation from a technical, political and juridical aspect in ratifying these two international legal instruments. This is based on the substance of international human rights instruments. Indonesia is a country that upholds human rights as mandated in various regulations, such as the 1945 Constitution, TAP XVIII/1998, Law No. 39 of 1999, Law No. 37 of 1999. Handling refugee problems must uphold human rights. Not only normative, but also implementation in the field.

The relevance of ratifying this Convention will increase a country's international accountability in a more objective and civilized manner. Meanwhile, in terms of technical legal considerations, this ratification will strengthen and enrich national legal instruments so as to better guarantee the progress and protection of human rights. Ratification can even be a shortcut to emphasize existing views between legal instruments at the international and national levels. The obstacles are directed into two aspects, namely security and legal aspects. The security aspects posed by refugees are often considered a threat to the country. Meanwhile, from a legal perspective, this is due to the lack of comprehensive derivative regulations from Presidential Regulation Number 125 of 2016, which can lead to coordination between agencies in the field.

As a legal country that highly respects human rights, ratification of the 1951 Refugee Convention and the 1967 Protocol must be a priority. The second instrument is relevant because its substance is not only full of regulations regarding human rights but is also in line with cultural values and norms in Indonesia. Therefore, the ratification process needs to consider the country's readiness, both from a technical, political and legal perspective, because these aspects sometimes pose challenges. In this case, ratification is expected to provide an overview of national and international legal instruments. This is important to create good bilateral relations between countries of origin, transit countries and refugee destination countries.

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