

INDONESIAN GOVERNMENT CHALLENGES IN RATIFICATION OF THE INTERNATIONAL CONVENTION ON REFUGEES

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Abstract: War and conflict lead to situations that are not conducive, so that people choose to leave their country and move to another country that is considered more secure and worthy to live in. These people are called refugees and the number has reached 60 million in the world. Indonesia is part of the refugee journey. However, Indonesia has not been a party to the 1951 Convention and the 1967 Protocol on Refugees. This underlies the research objectives for analyzing the challenges of the Indonesian government to ratify the International Convention on Refugees. Qualitative research methods are used to develop interpretation and data collection from the literature review. The study finds that the challenges of Indonesian government to ratify the International Convention on Refugees are due to economic challenges in fulfilling the obligations to refugees, security challenges that potentially open transnational crime opportunities, and international practice challenges that demonstrate non-compliance by the Convention's receiving countries in their countries.

Keywords: Indonesian government; refugees; international convention; ratification

Introduction

The wars and conflicts that have occurred in the last decade continue resulting in a lot of harm caused and prolonged. One of the wars broadcasted by the international news that is the war in Syria that started from internal conflict between the government and the opposition. The

losses caused by a prolonged war also have an impact on infrastructure and unstable system of government. The war resulted in civilian casualties and made the situation not conducive, so that people choose to leave their country and move to another country that is considered more secure and worthy to live in.

The phenomenon of leaving a country and choosing other countries to obtain protection and safe and decent shelter has reached its greatest peak since World War II. The United Nations High Commissioner for Refugees (UNHCR) reports that by the end of 2014 there have been 60 million refugees in the world.¹

The decision to become a refugee was chosen in the hope that they would have a safe and comfortable place to live. The refugees choose neighboring countries, because it is considered more closely still having similar cultural characteristics to their country. It will be easier for them to communicate and adapt. Then, Turkey is one of the neighboring countries of Syria and Iraq which is the choice for refugees from Syria and Iraq. The position of the adjacent country and has a cultural similarity to Syria and Iraq is in the presence of 1.800.000 refugees.²

This indirectly also affects the domestic conditions of the country that serve as a refugee. Some countries that accommodate refugees are overwhelmed and no longer able to accommodate the victims of the conflict. However, refugees are still searching for other countries and leaving their country. Until many of them do not consider the issue of cultural similarity and dare to choose countries in Europe as the destination country of refugee.

Refugees take the risk of walking hundreds of kilometers, to climb the fishing boats to arrive in the land of Europe. Europe was chosen as a refugee for the consideration that the continent is a safe place with a stable political system and they can live in peace without worrying about hearing guns around them. But when they arrived on European land, they must realize that not all countries in Europe are open to the presence of refugees. Thus, the reality facing refugees is a limitation of the number allowed to cross the borders of these countries and is heavily dependent on the policies of each refugee-related country.

Germany is one of the European countries that are open and willing to accommodate the refugees. Chancellor Angela Merkel as the leader of Germany is willing to help the refugees by providing a place in his country for the refugees to settle temporarily safely. This has made Germany a favorite destination for refugees, although Angela Merkel's policy has also

not been fully agreed by the people of Germany regarding Merkel's openness to refugees.

CNN News reports that Germany is willing to allocate 3 billion Euros to states in Germany to take care and assist the lives and wellbeing of refugees.³ Furthermore, German local media reports DW citing UNHCR records in 2014 state that there are already 218,000 refugees entering Europe and it has become a distinct historical record for Europe in recent decades.⁴ Beside that, refugees is looking for the alternatives and destinations. Asia is the one of the continents that is broadly comparable to Europe and has many stable countries in politics and economics. UNHCR released data state that as many as 7.7 million refugees have been spread in various countries in Asia and the pacific region.⁵

Indonesia as one of the archipelagos and democratic countries with relatively stable in social, political and economic conditions in Southeast Asia. The country is a potential to take a part as refugee journey. However, Indonesia has not been considered a destination country and is more likely to be a transit country, before proceeding to the destination country, Australia. Until May 2015, Indonesia has been visited by 12,000 refugees who come from various countries and in various ways.⁶ But, the number is still fluctuate. This is due to several factors as reported by CNN from an interview with UNHCR Indonesia Chief Representative in Jakarta that the first factor is due to the end of the war or conflict in the country of origin and the second factor the increase of ships entering Indonesian seas used by refugees to go to destination country.⁷

In March 2015, there were 11,941 Rohingya in Indonesia, most of them in Aceh, because Aceh was the first place for them to transit after sailing in the ocean.⁸ The refugee handling in Indonesia is jointly coordinated between UNHCR and International Organization of Migration (IOM) by providing shelters for Rohingya refugees residing in Aceh, while the Indonesian government also provides clothing, food and medicines for those injured.

Based on the above explanation, it can be understood that the problem of refugees is an international issue that the solution is very complex. Every year there is an increase in the number of refugees, so that the UN has established a special body that is tasked with handling refugees, namely UNHCR. Since its inception, the UN has formulated a Convention on Refugees. The Convention is the 1951 Convention and the 1967 Protocol.⁹

The Conventions and Protocols are drafted by the United Nations to protect refugees and clarify their legal status. The 1951 Convention explains the status of refugees and address the refugee problems in Europe before

1951, but, after 1951 refugees not only in Europe, but extended to other continents. Due to the widespread of refugees, the 1967 Protocol was rearranged containing explanations on the status of refugees as in the 1951 Convention, but within the 1967 Protocol it had differences in the removal of time restrictions and geographical position. The Convention and the Protocol contain the subjects governing refugee issues covering: basic understanding of refugees, refugee law status, refugee rights and duties in refugee destination countries, and implementation of agreements, particularly with regard to administrative and diplomatic relations.

Indonesia also has laws regulating the granting of asylum and refugees namely Law Number 37 of Year 1999 on Foreign Relations. It is mentioned in Article 26 that the granting of asylum to foreigners is carried out in accordance with national legislation and by observing international law and practice. But in the law does not explicitly explain how the refugee handling. In addition, Indonesia has not ratified the 1951 Convention and the 1967 Protocol and became a party state to make Indonesia a neglected state in refugee handling procedures. In fact, Indonesia has a Pancasila ideology with substance in the humanitarian spirit. Several scientific papers have discussed the position of the Indonesian government in the ratification of the International Convention on Refugees i.e. Simbolon and Sultoni.¹⁰ Therefore, this paper aims to analyze the challenges of the Indonesian government to ratify the International Convention on Refugees.

Method

Qualitative research methods used by the authors to develop interpretation and data collection from literature review and develop theories and concepts. This paper produces descriptive explanations and answers the purpose of study. The data sources from written information sourced from books, magazines, newspapers, which can be accessed through offline and online documents. Analytical techniques are used to answer the questions in the formulation of the problems collected from the process of collecting data and see the facts that have occurred, then arranged systematically and connect it with the concept within the framework of theory.

Results and Discussion

The Challenges of Indonesian Government in the Ratification of 1951 Convention of Refugees and 1967 Protocol

Indonesia is one of the countries that until now has not become a party to the 1951 Refugee Convention and the 1967 Protocol. Thus, Indonesia is still limited in dealing with refugee issues in its jurisdiction, different things may happen when Indonesia chooses to ratify the 1951 Refugee Convention and 1967 Protocol.

In analyzing this study, the author uses a conceptual model of rational actors.¹¹ This model is described as an intellectual process. Government behavior is analogous to the behavior of a reasonable and coordinated individual. In this analogy, this individual goes through the intellectual stages, applying reasoning seriously to the choice of alternatives.¹²

Thus, the government in making choices is assumed to firstly examine the national interests, and the goals of a nation, the alternatives to the policy which its government can take, and the profit and loss calculations for each of those alternatives. In choosing options and alternatives, policy makers use the "results optimization" criteria.¹³

If this theory is applied in this case, Indonesia has chosen a choice among other options, which should be optimal and most favorable to the Indonesian side. In this case, alternative options are confronted with the Indonesian government's willingness to ratify the International Convention on Refugees.

Authors identifies some of the Indonesian governments challenges to ratify the International Convention on Refugees, including economic challenges, security challenges and international practice challenges. The explanation of these three challenges as follows.

Economic Challenges

Economics is one of the most important aspects for the sustainability and progress of a country, Indonesia as a developing country is certainly very realistic in taking a broad-based economic decision, beside that Indonesia not as well as developed countries in Europe. Domestic problems in Indonesia such as large population that require government attention and still high in poverty rate. With the responsibility of the government in the fulfillment of refugee rights, if it becomes a state party to the Refugee Convention. It becomes the consideration of the Indonesian government to delay the ratification process of the 1951 Refugee Convention and the 1967 Protocol.

Based on data from Population Census in 2010, it is known that the population of Indonesia has reached 237.641.326 people and continues to grow. Meanwhile, the number of refugees residing in Indonesia based on UNHCR data in October 2015 has reached 14.000 people. With the influx of refugees to Indonesia will certainly increase the number of people living in Indonesia. This becomes an economic burden as well as potentially hampering government efforts to prosper the population.

In addition, the rights of refugees which must be fulfilled as a state party becomes a challenge for Indonesia. Indonesia's population with up to 200 million people and the number of people living below the poverty line still in high number, it certainly makes the Indonesian government reconsider taking up new task by ratifying the 1951 refugee convention and the 1967 protocol.

One of the rights that the state needs to fulfill is the right of education from children's refugees where the Indonesian government must provide educational facilities or a special school for them to get the right of education in Indonesia. This right is explicitly contained in the 1951 Refugee Convention and the 1967 Protocol in Chapter IV on the Welfare of Article 22 which states: States Parties shall provide the refugees with the best possible treatment, and in any case, no less good than the treatment which is given to persons foreigners are generally in the same circumstances, concerning education, in addition to basic education, and in particular, regarding access to studies, recognition of foreign school certificates, diplomas and degrees, exemption of fees and educational levies and scholarship receipts.

This responsibility will certainly add to the burden of the Indonesian economy where there are still many schools in Indonesia that still need government assistance for renovation and even many children in the outer and remote areas in Indonesia who have not been able to access education and have schools to support their education. So, in this case the Indonesian government should be wise in determining priorities for renovating and building schools in Indonesia and paying more attention to decent education for Indonesian children or putting the rights of refugees into education, while they can work on the education as part of a better future.

Indonesia, which is not yet a state party to the 1951 Refugee Convention and the 1967 Protocol still not have obligation to supply logistics or food for refugees in Indonesia. These needs are provided by UNHCR as a responsible body with a direct mandate from the United Nations to address and resolve world refugee issues, including ensuring their lives by provide their food and logistical needs. Another right that needs to

be fulfilled is the right of jobs for refugees. This is in conformity with the contents of the 1951 Refugee Convention and the 1967 Protocol in Chapter III on Works with Income in Article 17 which States Parties shall grant to procedural refugees in the region the best treatment provided to citizens of foreign countries under the same circumstances, regarding the right of works to perform works with income.¹⁴

If we reflect on Indonesia's ability, it will be very difficult for the government to fulfill the right to works. This can be observed from the domestic conditions of Indonesia that is still covered by the unavailability of employment, so that many of its citizens are unemployed and the increasingly limited employment opportunities for the Indonesian citizens. This domestic condition become one of the challenges to the Indonesian government, so it has not ratified the 1951 Refugee Convention and the 1967 Protocol. Indonesia's growing and slow-moving economic growth, when compared to developed and progressive countries in Europe will certainly be a heavy economic burden for the government.¹⁵

The preparation of supporting facilities and infrastructure to process and accommodate refugees also becomes a challenge for the Indonesian government. As mandated by the 1951 Refugee Convention and the 1967 Protocol that States parties are required to provide the Refugee Processing Center as a place to process and record refugees. If Indonesia is not a party, it will be done by UNHCR Indonesia as a representative and mandate holder of the UN, but it is different if the Indonesian government has ratified the 1951 Refugee Convention and the 1967 Protocol and become a state party, it must be done by the Indonesian government itself.

Other obligations for the Indonesian Government, in addition to provide Refugee Processing Centers, the government should also make a special shelter to accommodate refugees as the obligations of States parties to the 1951 Refugee Convention and 1967 Protocol. Indonesia as a non-State party puts the Refugees at the Immigration Detention Center (RUDENIM) which is intended for foreigners who violate the immigration and very different status with refugees and asylum seekers. It is also necessary to provide health facilities for refugees.

The provision of Refugee Processing Center, Shelter, and health facilities for refugees is large, due to the number of refugees. This will certainly become a burden and an economic challenge for the Indonesian government, because it must seek funding from the State Budget (APBN), if Indonesia becomes a state party in the Refugee Convention.

Based on the above explanation it can be understood that the economic challenges facing the Indonesian government to become a state party to the Refugees Convention that is paying attention to the responsibility of the government to its citizens with many populations and some of them still below the poverty line. Furthermore, the fulfillment of refugee rights includes education, employment and supporting facilities and infrastructure take it into consideration.

Security Challenges

This security challenge is one of important consideration for the Indonesian government to ratify the 1951 Refugee Convention and the 1967 Protocol. As a state, ensuring its own internal security is a responsibility that the state must fulfill to its citizens, the security of a country must create a comfortable and stable conditions. Moreover, by creating a stable condition, it can create its own magnet for the country to get the infestation.

On the other hand, if a country cannot guarantee its state security, then the result obtained by the country is chaos and unstable for living, such as in Syria and Iraq. This conditions in both countries is the impact of incompetence from the Syrian and Iraqi governments to create a safe and comfortable condition for their citizens, from the incompetency it create more complex problems, such as migrant crisis that until now has become a global problem.

Syrian and Iraqi citizen who get their country's condition unsafe, certainly prefer to leave their country, seek shelter and safe place in another country for them to settle, and that is done by almost all citizens of Syria and Iraq, and resulted in millions of Syrians and Iraqis displaced in Lebanon, countries in Europe and Asia.

Indonesia as a country that is affected by the conditions in Syria and Iraq also should be ready to accept people from Syria and Iraq to evacuate in Indonesia, if needed. Not only from Syria and Iraq, the Rohingya ethnic that came from Myanmar which was discriminated by the Myanmar government as one of the ethnic groups in Myanmar also took the decision to leave Myanmar and went to seek other countries to live safely and Indonesia become an option for them to evacuate and considered as a safe place to live. With the presence of people who fled to Indonesia from various countries and various backgrounds and different cultures make Indonesia get its own security threats from the presence of these refugees.

The social impacts in the community with many of the refugees in Indonesia becomes of the worries, the presence of foreigners in local communities with different backgrounds will certainly open up great

opportunities for social friction between refugees and local communities. Firstly, October 2015 in Yogyakarta, 30 refugees from Afghanistan and Myanmar are celebrating Asyura Day where the celebration for Shiite people, and it becomes security threats for the society who are Sunni majority in Indonesia.¹⁶ Moreover, the refugees in Indonesia have been receiving assistance and support for their welfare during their refugee in Indonesia from UNHCR and IOM, from IOM providing monthly living expenses of Rp.1.250.000 for the first 2 family members and Rp.500.000 for the addition of each of the following family members. It possibly creates the social jealousy of the local people who live around the shelter of the refugees. It also potentially creates new social problems between refugees and Indonesian local communities.¹⁷

Beside the social problems, the presence of refugees in Indonesia also potentially open the threats from transnational crime, such as human trafficking and smuggling while the condition of the refugees is a very vulnerable and has a great risk to the crimes of smuggling and trafficking in persons. Refugees today are the objects in the perpetrators of human trafficking, because Indonesia is not the main destination country of refugees, but only a transit country to go to destination countries, such as Australia. There are also refugees who are willing to pay some money to smugglers to take them to the destination country.¹⁸

International Practice Challenges

International practice has been also one of the challenges for Indonesian government has not ratified the 1951 refugee convention and the 1967 protocol and became a party to the convention. Reflect with the conditions in Europe currently that Europe is the greatest hope of refugees fleeing from their country and willingly risking the lives of crossing the oceans to arrive in the European lands.

Those refugees who are willing to cross the ocean to reach mainland Europe have great hopes and dreams of decent, safe and prosperous life, compare with their life in their home country with war and conflict conditions. They decided to Europe with the consideration most countries in Europe have special attention to refugees, one of them with its commitment as a state-party in the 1951 Refugee Convention and the 1967 Protocol.

Although most countries in Europe are the countries that ratify the 1951 Refugee Convention and the 1967 Protocol and become a state party, but not all countries in Europe are willing to accept the presence of refugees who come to their country. Many European member countries are blocking

out the refugees who want to enter their country, they even made high fences on the border to block the flow of refugees by land.

Germany is one of the very open EU member countries with the arrival of refugees, even the policy of this country's leader Chancellor Angela Merkel is opposed by opposition parties in his country and other EU member states who are concerned about the refugee raid to Europe. In addition to Germany, Greece is also EU member countries that became the entrance of refugees to Europe mainland, because refugees who come from the Mediterranean Sea will land in Greece and traveled over land hundreds of kilometers to Germany.

The conditions in Europe, mainly in Germany which have been visited by refugees from Syria, Iraq and conflicting countries have drawn the attention of the EU Council to step in and overcome this problem, especially the large influx of refugee flows to Europe. The EU has institutional action in the form of providing 80 million euros of funding assistance to Greece to address refugee issues.¹⁹

The EU seeks to stem the flow of refugees who come to Europe by holding refugees in Greece to avoid them enter the core region of Europe and other European countries. A similar strategy was undertaken by the EU to Turkey, as Turkey is also one of the refugee entrances to Europe region. The EU also provides Turkey with funding worth 3 billion Euros and reconsiders Turkey's desire to become a member of the European Union.²⁰

The large number of refugees in Europe raises concerns and security threats in Europe, the stigma emerged because of a bomb attack in Paris involving Middle Eastern immigrants as the perpetrators and causing casualties.

The practice of the international community, including the European Union and Germany in the handling of refugees, has also been taken into consideration by the Indonesian government to ratify the 1951 Refugee Convention and the 1967 Protocol. Indonesia can make European practice in the handling of refugees as a party to the Convention. It also poses a challenge for Indonesia to apply best practices from Germany's ways of providing services to refugees.

Conclusion

Based on the above explanation, the authors conclude that the Indonesian government is still facing various challenges to ratify the International Convention on Refugees. The authors found three challenges identified from this study include: economic challenges, security challenges and international practice challenges.

Economic challenges can be understood that the Indonesian government has a responsibility to pay attention to its sizeable citizens and still below the poverty line. Furthermore, the fulfillment of refugee rights includes education, employment and supporting facilities and infrastructure.

Furthermore, the security challenge is the potential for transnational crime, human trafficking and social friction between refugees and residents. Then, the challenge of international practice, Indonesia needs to learn from European countries that handle refugees like Germany. Therefore, Indonesia needs to take a stand and reconsider the ratification of the refugee convention.

Endnotes

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¹ BBC, "Dunia: Pengungsi dunia."

² UNHCR, "Convention and Protocol Relating to the Status of Refugee."

³ CNN. "Internasional: Mengapa Imigran ke Eropa bukan ke Timur tengah?"

⁴ *Ibid.*

⁵ UNHCR, *op.cit.*

⁶ UNHCR, "Where we work, 2015 UNHCR regional operations profile - Asia and the Pacific."

⁷ UNHCR, "Convention and Protocol Relating to the Status of Refugee."

⁸ Tribun News, "Nasional."

⁹ UNHCR, *op. cit.*

¹⁰ Yahya Sultoni et. al., "Alasan Indonesia Belum Meratifikasi Konvensi 1951."

¹¹ William D. Coplin, *Pengantar Politik Internasional: Suatu Telaah Teoretis.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Yahya Sultoni et. al., *op. cit.*, 8

¹⁵ *Ibid.*

¹⁶ Viva news, "Peringati Asyura, Puluhan Imigran Dibubarkan Ormas Islam."

¹⁷ Wapres RI. “Perlukah Pulau Khusus dalam Menangani Pengungsi?”

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¹⁹ The Guardian. “Greece to receive €80m from EU to help house refugees.”

²⁰ New York Times. “Turkey Places Conditions on E.U. for Migrant Help.”

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