

4-1-2013

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Atik Kusriyati

Surabaya University, Indonesia, kusriyati@ubaya.ac.id

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Recommended Citation

Kusriyati, Atik (2013) "ECUADOR'S DECISION TO GRANT ASYLUM TO JULIAN ASSANGE : THE MANIFESTATION OF HUMAN SECURITY?," *Indonesian Journal of International Law*: Vol. 10 : No. 3 , Article 14.

DOI: 10.17304/ijil.vol10.3.366

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ECUADOR'S DECISION TO GRANT ASYLUM TO JULIAN ASSANGE : THE MANIFESTATION OF HUMAN SECURITY?

Atik Krustiyati^{1*}

Ecuador's decision to grant asylum to Julian Assange (Australian citizen) on August 16, 2012 has caused several impacts. Julian Assange, the founder of WikiLeaks, was arrested in Britain in connection with a Swedish investigation into accusations of sexual offenses. But United States Law enforcement official said that the fact that he was in custody did not affect their deliberations about whether he might be charged in this country in connection with publication of leaked government documents. Being disappointed with the decision, the British authorities sent a written notice to the Ecuador's Embassy in London that they would assault the Embassy if Assange was not handed over. The letter has led to tense diplomatic relations between two countries. Facing the difficult situation, UNASUR (The Union of South America Nations) held a Foreign Ministers Meeting (FMM) after the President of Ecuador granted the asylum. The meeting produced an agreed document that support Ecuador's decision and encourage all parties to have continuous negotiation to find mutually acceptable solutions based on good neighbour principles.

Keyword(s): *diplomatic asylum, human security, assange.*

I. INTRODUCTION

The granting of diplomatic asylum to Julian Assange by the Embassy of Ecuador in the UK has led to many problems. As we have known, Julian Assange is an Australian citizen, the founder and editor of WikiLeaks, a website that publishes classified documents from many countries with the goal to create a more open government. Julian Assange then chose to live within the residence permit in Sweden because state law prohibits the whistle blower Australia.

In 2010, when Assange was in Sweden, he was accused for a rape and sexual abuse. He denied the allegations and said that there was a political motive behind the indictment against him. Assange then left Sweden and moved to London. However, when he was in London, Swedish prosecutors issued a warrant for him to be extradited to Sweden. Hence, Assange filed an application to the Embassy of Ecuador in

¹ * Senior Lecturer at Law Faculty, Surabaya University. For further discussion contact writer at krustiyati@ubaya.ac.id / atik.krustiyati@yahoo.com.

London for a diplomatic asylum. This request was based on Assange's concern that the Government of Sweden would give him to the United States due to the leak of the US's diplomatic documents on the WikiLeaks. These namely the publication of the United States' diplomatic documents and the videos of the United States' troops fire at Iraqi civilians and journalists in 2010. The asylum was finally granted on 16 August 2012 due to Ecuador's consideration of Assange's safety.

The government of Ecuador is concerned that the Swedish government will eventually hand him over to the United States because of his activities related to the WikiLeaks. Moreover, the asylum was granted based on Ecuador's consideration that Britain, Sweden and the United States would not guarantee a transparent and fair treatment for Assange if he was extradited. However, this decision has made the United Kingdom issued a written notice to the Ecuadorian Embassy in London, that the UK would revoke the Embassy's diplomatic status and immunity if the Embassy did not hand Assange over.²

Indeed, seeking asylum is the right of every person, as stipulated in Article 3 of the Universal Declaration of Human Rights as follows: "Every person has the right to life, liberty and safety". This means that the recognition of these rights are the same for everyone, and inalienable to all members of the community because it gives honor to human dignity, commonly known as *jus cogens*, which is a principle that cannot be altered or peremptory norms.

Asylum is an institution as old as human civilization, and the concept of asylum is already known in the relations between nations since centuries ago, but until now there is no legal instrument that applies internationally and specifically regulates the issue of asylum.³ In a theoretical level, some rules on asylum are juridical and some are not. One example of juridical instruments is the Convention on the Status of Refugees, or commonly known as the Geneva Convention of 1951. This Convention does not specifically regulate asylum, but it contains

² Extracted from various sources namely www.bbc.co.uk/news/uk-19314618# accessed 11 September 2012. www.cnn.com/2012/08/16/world/europe/assange-extradition-timeline/index.html accessed 20 October 2012. www.bbc.co.uk/news/world-europe-11949341, accessed 7 November 2012.

³ There are several juridical instruments regulate asylum, however it only applies in some regions (regionally, not globally).

fundamental principles about asylum issues. Meanwhile, instruments that are not juridical but contain provisions on asylum are the Universal Declaration of Human Rights 1948, and the Declaration on Territorial Asylum of 1967.

Article 1, paragraph 3 Declaration of Territorial Asylum of 1967, states that: "it shall rest with the state granting asylum to evaluate the grounds for the grant of asylum". From this statement it appears that giving the reasons for the granting of asylum is entirely based on a country's consideration. This is understandable, considering that international law is a fundamental principle to the equal sovereignty among nations, and the rights to grant or to refuse asylum to a person or group of people in a country's jurisdiction is a logical consequence of the principle of state sovereignty.⁴

Asylum, in Indonesian Great Dictionary (*Kamus Besar Bahasa Indonesia/KBBI*) is defined as a place of refuge (refuge), ride to live (in).⁵ In Black's Law Dictionary, asylum is defined as: "A sanctuary, or place of refugee and protection, where criminals and debtors found shelter, and from which they could not be taken without sacrilege. Shelter, refugee, protection from the hand of justice. The world includes not only place, but also shelter, security, protection. While a foreign country has the right to offer an asylum to fugitives from other countries, there is no corresponding right on the part of the alien to claim asylum. This right of asylum has been voluntarily limited by most countries by treaties providing for the extradition of Fugitive criminals (international extradition)."⁶

Regulation of asylum in the Declaration of 1967, as already mentioned above, indicates that the asylum issue has become a problem on the relations between nations. The declaration itself has been accepted in the UN General Assembly session on December 14, 1967. The assembly has also recommended countries to consider the following:⁷

a. If someone asked for asylum, his request should not be rejected or

⁴ Atik Krustiyati, *Penanganan Pengungsi Di Indonesia*, Brillan Internasional, 2010, p. 5.

⁵ *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, 1990, pp. 860

⁶ Henry Campbell, Black., *Black's Law Dictionary*, Sixth Edition, St. Paul, Minn, West Publishing Co, 1990, pp., 124

⁷ Sumaryo Suryokusumo, *Hukum Organisasi Internasional*, Alumni, 1995, p. 155.

if he entered the country, he should not need to be expelled, but if a group of people asked for asylum in large numbers, it could be rejected on the basis of national security;

- b. If a country found it is difficult to provide asylum, the country should take appropriate steps for the sake of national unity through the role of specific countries or the United Nations;
- c. If a country granted asylum to fugitives, then other countries should respect that decision

In Indonesia, the institution of asylum is recognized for the first time in 1956, the Prime Minister issued Circular Letter No. 11/PM/1956, on Treatment of Escape Politics on the 2nd September 1956. In 1998, the recognition of the asylum institution was strengthened by the People's Consultative Assembly Decree No. XVII/MPR/1998 dated 13 November 1998 on Human Rights, which recognizes an individual's right to seek asylum and obtained political asylum in other countries. It is also listed in article 24 of the Charter of Human Rights, which is also attached to the Stipulation. A year later, the principles outlined in the asylum institution MPR was confirmed as legal provisions in Act 39 of 1999 on Human Rights.

Furthermore, in section 28G of Law 1945, the second amendment states that every person has the right to freedom from torture or degrading treatment of human dignity, to allow someone to get political asylum in other countries. The provisions in the Act of 1945 is in line with the provisions of the Universal Declaration of 1948, which basically states that the sought of asylum in both global and regional levels is a form of respect for one's rights.

From the statement mentioned above, it is clear that asylum is a person's rights. However, asylum can not be claimed as something that must be given, because the granting or denial of asylum is a country's right, based on its sovereignty. In international law, sovereignty is the foundation in organizing everything existing or occurring in the territory. As a consequence of the sovereign-owned, a state is authorized to establish legal provisions and to enforce provisions of national law towards set of events, wealth and deeds.⁸

⁸ Tien Saefulah, "Hubungan Antara Yurisdiksi Universal Dengan Kewajiban Negara Berdasarkan Prinsip *Aut Dedere Aut Judicare* Dalam Tindak Pidana Penerbangan dan Implementasinya di Indonesia", *Jurnal Hukum Internasional*, vol. I, no.1, 2002, p. 42.

The authority to do things mentioned above is known as jurisdiction under international law or in other words a reflection of basic principle of state sovereignty.⁹ There are many principles of jurisdiction, for example territorial, extra-territorial, personal, universal and protection, and each has different characteristics and purposes.

Granting asylum would involve the issue of territorial jurisdiction / extra territorial jurisdiction and protection (protective principles). The asylum granted to Assange in Ecuador Embassy in London is a territorial asylum, as it was given in Ecuador jurisdictions, and diplomatic asylum, as it was provided in the embassy. The asylum is granted based on the principle of protection of Assange as a human (human security).

In addition, it must be remembered that the granting of asylum is a peaceful and humanitarian act, and therefore should not be seen as a hostile act against another country. As an organization that is humanitarian, asylum is not based on reciprocity. Someone who applies for asylum should not be refused at the border (non-rejection at the frontiers), prohibited of expulsion (non expulsion), prohibited to send back to the country of origin where (s)/he facing life-threatening of danger and freedom (non-refoulement) and extradited (non extradition).

A country who finds it is difficult to give asylum permanently, or to provide asylum for a long period of time, can provide temporary asylum, until (s)/he received asylum in other countries. Furthermore, it should also be remembered that asylum cannot be granted in the case of non-political criminal offenses such as common (ordinary crimes), crimes against peace, war crime, crimes against humanity and acts contrary to the purposes and principles of the United Nations.

Asylum seekers have to obey the laws and regulations in the country of asylum. They also may not engage in activities against the country of origin or that could lead to disruption of relations between the country of asylum and country of origin.

Compliance with the principles of the Universal Declaration remains as a key criteria of recognition of a country or new regime. In addition, real respect for human rights has become a prerequisite to participate in international organizations both regionally and globally.

⁹ Sefriani, *Hukum Internasional Suatu Pengantar*, RajaGrafindo Persada, 2010, p. 233.

A country should bear its own losses that may arise due to human negligence. This is very important because state has obligation to ensure the respect for fundamental rights and freedom of its citizens with reference to the declaration as a minimum standard.

II. TERRITORIAL ASYLUM

In accordance with its terms, the territorial asylum is about the place where a country can give asylum under its jurisdiction. In general, granted territorial asylum can be given in the land, but can also be given in waters. Example of the latter can be seen from the cases of boat people from Vietnam, who lived temporary on ships or boats until they arrived at some land. This asylum can also given to asylum seekers on their voyage to seek asylum in another country.

III. DIPLOMATIC ASYLUM

This kind of asylum is usually given to those who seek asylum in the embassy of a country, whose territory is outside the territory of a state, but is seen as part of the territory of a country. Places according to international law and practice is said to be inviolable, and has immunity. These places namely:¹⁰

- a. Building and grounds (premises) of diplomatic or consular missions;
- b. The house and grounds department heads of diplomatic and consular missions;
- c. Building and grounds (premises) provided by the state asylum, which is not the building yard and diplomatic missions or consular offices and not the homes of the heads of diplomatic and consular missions, in terms of the number of asylum pencai exceeds the capacity of the building and its grounds;
- d. Military bases or camps;
- e. Government's ships or aircrafts that are used for commercial purposes.

¹⁰ Enny Soeprapto, *Suaka Dan Hukum Internasional*, Surabaya, 2001, p. 21.

IV. HUMAN SECURITY

The idea or concept of human security focuses on the matters of what is security and how much efforts needed to achieve it. At least there are three controversies about it. First is the idea of human security of Western countries in order to spread their values, especially the value of human rights in the new package. Second, the concept of human security is not a new thing, because human security, which broadly encompasses non-military issues have been developed in the concept of comprehensive security. Third, efforts to achieve human security differ based on perspective, experience, and priorities of each country.¹¹

Human security is a concept related to human security. In the past, threats to human security are always interpreted as a threat from outside the state, therefore, focused on safeguarding state security state both sides of the border of the state, society, institutions and value systems.¹² Now this concept is increasingly widespread, as not only seen from the state level, but focus on the security of individuals.

As such, Mahbub ul-Haq said that security includes the security of people, not just territory; security of individuals, not just nations, security through development, and security of all people everywhere in their homes, jobs, streets, communities, and environment.¹³

The idea of human security appears more clearly in the UNDP report regarding human security in several components, and among others assured basic income, physical and economic access to food, relative freedom from disease and infection, access to sanitary water supply, clean water and non-degraded land system, security from physical violence and threat, protection of basic human rights and freedom. On the matter of Assange's asylum, human security can be observed on the security from physical violence and threat and protection of basic human rights and freedom.¹⁴

¹¹ Edy Prasetyono, *Human Security*, FGD Propatria, Hotel Santika, Jakarta, 11 September 2003, hlm., 1

¹² Syahrial Loetan, "Millenium Development Goal (MDG) dan Program Pembangunan Nasional di Indonesia", *Indonesian Journal of International Law*, vol. 1, no. 1, October 2003, p. 61.

¹³ Mahbub ul-Hag in Madjid Tehranian (ed), *Worlds Apart Human Security and Global Governance*, I.B. Tauris Publishers, London, 1999, pp., 79

¹⁴ This Report about Human Development Report of the United Nations Develop-

In today's era, the issue of human security has shifted to the emphasis on improving the quality of people and the environment. Human Development Report of 1994 has identified two major components of human security, which are freedom from fear and freedom from want.¹⁵ This declaration is known as the Millennium Development Goals (MDGs), which in general can be a framework for measuring development progress among nations.

Furthermore, the Millennium Summit in 2000 participated by 147 Heads of State, agreed to adopt the Millennium Declaration which include freedom, security, development, including poverty and hunger, the environment and human rights in the context of human security.

Human security is strongly correlated with human development. In the context of human development, Mahbub ul Haq has described it as: "The basic purpose of development is to enlarge people's choices. In principle, these choices can be secure infinite and can change over time. People often value achievements that do not show up at all, or not immediately, in income or growth figures: greater access to knowledge, better nutrition, and health services, more secure livelihoods, security against crime and physical violence, satisfying participation in community activities. The development objective is to create an enabling environment for people to enjoy long, healthy and creative lives."¹⁶

Actions committed by Assange have caused him to be in danger associated with the deprivation of life and liberty. Thus, he had a security against crime and physical violence, and therefore entitled to protection as a part of human rights, which is one aspect of human security. It is true that the right to protection (asylum) cannot be claimed as something that must be obtained, as it relates to the sovereignty of state.

From the explanation above, it can be concluded that human security relates to human development. By obtaining asylum from Ecuador, Assange has acquired human security, and in this condition, he also experienced human development. In line with this statement, Djauhari Oratmangun said that: "it is well understood that perspectives on human

ments Program 1994.

15 *Ibid.*

16 Human Development Report 2002, United Nations Development Programme, What is Development?, New York, United Nations. Available at <http://hdr.undp.org/hd/default.cfm>

security as well as human development are widely ranges and there are various means and ways to be employed both at national and international levels. Human development and human rights are mutually reinforcing, helping to secure the well being and dignity of all people, building self-respect and the respect of others".¹⁷ There is a strong link between human security and good governance. Bo Asplund and Romeo A. Reyes stated that: "good governance could also contribute directly to human security through democratic political processes that peacefully reconcile diverse and often conflicting demands and needs of society".¹⁸

In short, human security requires a change of thinking about the security of the state leads to the notion of human security, including human security, including the security of individuals and communities. The response of the international community of late demonstrated their concern for the crisis situation that could lead to disruption of the survival and welfare of the community. The difference in understanding the meaning of human security is caused by differences in each country's experience, and however, as already mentioned above, it is not impossible to be reconciled through comprehensive security and cooperative security approach.¹⁹

V. GOOD NEIGHBORHOOD PRINCIPLES

In order to promote cooperation and friendly relations among nations, the UN General Assembly passed Resolution No. 2625 of 1970 (XXV) of the "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations," and these principles should be adhered to by every country in conducting international relations, so that peace and security could be maintained.

17 Djauhari Oratmangun, "Human Development and Human Security : A Journey Towards a Human Global", *Indonesian Journal of International Law*, vol.1, no. 1, October 2003, p. 47.

18 Bo Asplund and Rome A. Reyers, "Human Security, Human Development and The Millenium Development Goals", *Indonesian Journal of international Law*, vol. 1, no. 1, October 2003, p. 38.

19 J Kristiadi, *Human Security*, FGD Propatria, Hotel Santika, Jakarta, 11 September 2003, pp. 4

The principle of relations between nations is highly correlated with human security and asylum issues that are discussed in this paper. Therefore, the granting of asylum and the implementation of human security is not a unilateral action, but action involving other countries. Besides, observance of the principles that have been outlined can garner cooperation and friendly relations among nations. Violation of these principles can lead to international disputes, which in turn can disrupt international peace and security.²⁰

International disputes can include disputes between countries, with individual countries, countries with foreign corporations, as well as disputes between states with a unitary state and non-state. International law regulates the international dispute with the aim that the dispute be resolved as early as possible, honest and fair. Setting dispute resolution in international law embodied in the Hague Convention I in 1899 and 1907 on the peaceful settlement of disputes, as well as the UN Charter.

The Charter of the United Nations (Article 52) also sets on the authority of regional organizations or regional organizations to resolve disputes that occur in the region. The Assange case also involves UN-ASUR (the Union of South America Nations), to find a way out in order to create harmonious relations and mutually beneficial cooperation.

Referring to the Declaration of the General Assembly no. 2625 (XXV), there are seven key principles that have been institutionalized, which are:

1. The principle of prohibition of the use of threats and violation in conducting international relations, the principle of prohibition of the threat or use of force;
2. The principle of peaceful settlement of disputes for the sake of justice, peace, and international security, that states shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.
3. The principle of sovereign equality among states;
4. The principle of not interfering the internal affairs of other states;
5. The principle of co-operation between countries in accordance with

²⁰ I.B..R Supancana, *Prinsip-Prinsip Hukum Internasional Dalam Meningkatkan Kerjasama Dan Hubungan Bersahabat Antar Negara*, Lecture Notes, Faculty of Law, UKI, Jakarta, 14 April 1986, pp., 1.

- the Charter of the United Nations, the Principle of the duty of states to cooperate with one another in accordance with the Charter;
6. The principle of equal rights and self-determination, the principle of equal rights and self-determination of peoples;
 7. The principle of the obligations contained in the Charter of the United Nations on the basis of good faith, the principle of fulfillment of good faith in obligation, which is assumed in accordance with the Charter.

The efforts to formulate these seven principles as mentioned above, are intended to achieve goals, namely:²¹

1. Recognition of universal legal obligations in conducting international relations, in order to respect each country;
2. Promote the creation of legal norms that give independence as subjects of international law;
3. Recognition of the United Nations Charter as the principal source of international law, and improvement in the organization of the United Nations as the world ‘
4. Recognition to consider the basics done by the UN General Assembly, other international organizations, and international conferences in the framework of the development of international law;
5. There is clear alignment of the existing principles, so as to guarantee the coexistence based on peace, security and friendly relations;
6. Strengthening the position of the state as an important subject of international law.

In general there are two methods of dispute resolution, which are through peaceful and violent ways.²² UN's role in resolving the dispute amicably determined by the basic objectives of the United Nations, as well as the obligations of its members. One of the basic objectives is the establishment of the United Nations inter-state disputes peacefully, while one of the obligations of UN member states is that they should try to resolve their disputes peacefully and should prevent the war itself to threaten or use violence.

²¹ *Ibid.*, p.2.

²² Peaceful dispute resolution has been regulated in Article 33 of UN Charter, namely through negotiation, mediation, conciliation, inquiry, etc. While conflictive resolutions are war, blockade, retorting, and reprisal.

The Principle of Good Neighborliness (Good Neighbourliness)

This principle is based on the good neighbor policy, which is based on the principle of peaceful coexistence, and the principle of good neighborliness. Elaboration of these two principle crystallized in the following principles:

1. Mutual respect for sovereignty and territorial integrity of each;
2. Mutual aggression (mutual non agresional);
3. Mutual non-interference in each country;
4. Equality and mutual benefit;
5. Peaceful coexistence.

As already described above, the principle of coexistence is essential in order to grant asylum and extradition, because it involves relations with other countries. In relation to the granting of asylum by Ecuador, it can be drawn as conclusion that such actions do not conflict with territorial asylum in 1967 because of the embassy of a country is a part of the territory of a State (*eksteritorialitet*). In addition, according to Article 1, paragraph 1 and paragraph 2 and paragraph 3 of the Declaration, territorial asylum is a manifestation of sovereignty possessed by a State.

Furthermore, from the Convention of Diplomatic Asylum of 1954 in particular article I, III, V, and VI, it can be seen that the actions of Ecuador can be justified, because the granting of asylum is done in the Embassy of Ecuador who was in London.

However, the actions of Ecuador have impacts on other countries such as the United States, Britain and Sweden who asked for Assange's extradition to their countries as respect to acts committed by Assange, the principles of good neighborliness as mentioned above should also be considered. It means to look for balance between the rights of asylum seekers and the sovereignty of asylum state. This balance is necessary to implement good neighbor policy, which is based on the principle of peaceful coexistence, so that good neighborliness can be achieved.

VI.CLOSING

1. The idea or concept of human security focuses on security matters

and how much efforts needed to achieve it. Human security is strongly correlated with human development. The difference in understanding the meaning of human security is caused by differences in each country's experience, and however, as already mentioned above, it is not impossible to be reconciled through comprehensive security and cooperative security approach.

2. Actions committed by Assange has caused him to be in danger associated with the deprivation of life and liberty. Thus, he had a security against crime and physical violence, and therefore entitled to protection as a part of human rights, which is one aspect of human security. It is true that the right to protection (asylum) cannot be claimed as something that must be obtained, as it relates to the sovereignty of state. By obtaining asylum from Ecuador, Assange has acquired human security, and within this condition, it can be said that he also has experienced the human development.
3. In relation to the granting of asylum by Ecuador, it can be drawn as conclusion that such actions do not conflict with territorial asylum in 1967 because of the embassy of a country is a part of the territory of a State (*eksteritorialitet*). In addition, according to Article 1, paragraph 1 and paragraph 2 and paragraph 3 of the Declaration, territorial asylum is a manifestation of sovereignty possessed by a State. Furthermore, from the Convention of Diplomatic Asylum of 1954 in particular article I, III, V, and VI, it can be seen that the actions of Ecuador can be justified, because the granting of asylum is done in the Embassy of Ecuador who was in London.
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5. In this case, UNASUR (the Union of South America Nations), as a regional organization should try to find a solution in order to create harmonious relations and mutually beneficial cooperation. The role

of regional organizations is explicitly stated in Article 52 of the charter which authorizes regional organizations to resolve conflicts in the region.

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