



State Responsibility on the Securitization and Protection of Refugees Under the Immigration Legal System in Indonesia

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ABSTRACT. As one of the main areas of cooperation for ASEAN, Indonesia bears the responsibility of obligations made in the tourism industry as a member of the Association of Southeast Asian Nations (ASEAN). It follows that Indonesia must without a doubt create safe conditions for the travel and tourist industry on its own. A state's duty is to provide the safety and security of every foreign national on its soil, and foreign nationals must abide by the laws that are in place there. Asylum seekers and refugees are among the non-immigrant foreigners who enter another state as tourists or residents. The purpose of this research is to investigate further how Indonesia's immigration laws support the protection and securitization of refugees who are considered foreign nationals. This article employed the statutory, conceptual, and case approaches within the framework of the juridical normative method. Subsequently, it was discovered that certain immigration policies in Indonesia did not completely address securitization and protection in the country; one such policy required foreign nationals to carry travel documentation like passports or visas. A refugee might, nevertheless, run across circumstances that make them have to go without anything. It is therefore necessary to reevaluate and suggest a new paradigm and breakthrough for Indonesia's official responsibility for the securitization and protection of refugees.

Keywords: State Responsibility, Refugees, Immigration, Securitization, Protection.

1 Introduction

As one of the most popular tourist destinations, the entrance and exit of aliens in Indonesia become unstoppable. Thus, it's a logical consequence for Indonesia to govern the regulations of the migration of aliens in the state borders of Indonesia as a form of national defense. The regulations are also a form of the implementation of state responsibility against aliens according to the doctrine of the protection of alines which is known in the scope of international law.

Indonesia as a state which accepts and receives aliens, has the obligation to ensure the security and protection of each alien in its territory. However, on the other side,

with respect to state sovereignty, each alien also shall be able to adjust and comply with policies and regulations implemented in the state where he/she stands. Therefore, the regulations related to the migration of aliens shall accommodate both the protection of aliens and also become the frontier guard to secure national security from acts of aliens that may threaten the security or peace of a state.

The Directorate General of Immigration, an organization under the Ministry of Law and Human Rights of the Republic of Indonesia, oversees the movement of foreign nationals across the country and is responsible for enforcing a number of existing immigration policies. However, one extremely intriguing aspect of foreigners entering Indonesian territory is that some come specifically to seek asylum and attempt to gain the status of refugee, rather than merely visiting. The term refugee which was defined by Article 1 of the 1951 Geneva Convention means a person that was persecuted and unable or unwilling to receive protection from his/her country of origin and forced to leave his/her country to seek protection from another country. However, the background of these asylum seekers or refugees may vary and it could not be expected for them to arrive in a prepared situation but often under emergency situations that caused them to leave everything behind including identity and travel documents related.

Both the Immigration Act No. 6 of 2011 and Presidential Decree No. 125 of 2016 on the Handling of Refugees from Abroad still require travel documents checking (such as visas or passports) which not every asylum seeker or refugee may have it. This issue later becomes obscure, particularly in handling refugees that do not have or bring any mentioned documents. Therefore, this paper aims to examine and study how does the state's responsibility toward the securitization and protection of refugees which are not in accordance with the immigration regulations applied in Indonesia. This paper applied the juridical normative method [2] with the statute approach which examines the existing regulations both on the international and national level and also the conceptual approach related to the concepts and principles of the handling of refugees.

2 Discussion

2.1 State Responsibility Against Aliens and Refugees

An article published by the International Law Commission (ILC) that addressed states' liability for transnational crimes formerly served as a foundation for state accountability under international law. As per Article 1, a State bears international responsibility for every act it commits that is deemed internationally unlawful. Subsequent Article 2 goes on to clarify that the term "wrongful act" refers to any action or inaction on the part of a state that violates an international responsibility of the state or is attributable to the state under international law. Article 3 determined later that if an act of a state is covered by international law, it can be characterized as internationally wrong.

The law of aliens in the scope of international law has shifted from traditional notion of state responsibility into the human rights law, it constitutes a normative ground which grant aliens the protection of basic rights which is guaranteed by the international law [4]. The Universal Declaration of Human Rights (UDHR) 1948 has

comprehensively defined all of the obligations of states to conduct in order to fulfill the protection of human rights. It has been adopted by most states in the entire world and even has become a *jus cogens*. Furthermore, it has become a minimum international standard, which insist that a state cannot escape from the responsibility to treat aliens with minimum common standard [5]. As human rights law is something that is a branch of international law, then obligations contained becomes a state responsibility to conduct, including the protection of aliens. Aliens or foreigners, with any purpose, as long as he/she does not try to threaten a state's security or peace.

Speaking of refugees, the most crucial point to remember is that, in addition to being essentially a part of aliens or foreigners, refugee law is also a part of human rights law. mentioning that someone who has experienced persecution or has had their human rights infringed is considered a refugee. States were therefore ethically obligated to uphold the commitments pertaining to human rights as part of human rights law. However, the 1951 Geneva Convention on Relating to the Status of the Refugee, which contained responsibilities to its parties regarding the handling of refugees, is where the refugee legislation may be found.

A lot of eastern states, including Indonesia, have not ratified yet becoming the party of the convention, which freed Indonesia from any obligations related to the acceptance or even protection of refugees. However, as the issue of refugees is a part of human rights law, which has been a *jus cogens*, under the moral obligations, Indonesia shall be able to apply the minimum international standard of human rights protection to the aliens which also may be asylum seekers of refugees. Therefore, Indonesia still holds state responsibility for protecting and securitizing refugees.

As a consequence of moral obligations, some cardinal principles of the 1951 Geneva Convention also shall be implemented by Indonesia. These cardinal principles has also been a part of international standards on the handling and treatment against refugees. The principles includes the non-penalization, detention, and protection found on the Article 31 of the 1951 Geneva Convention. This principle governs that states may not give penalty to refugee under the reason that the refugee entered the state territory illegally as long as the refugee immediately reports on local authorities and able to show eligible reasons.

The second principle is the non-expulsion principle that could be found on Article 32 of the 1951 Geneva Convention. The principle governs that no states may expel refugee that entered the state illegally, unless the expulsion was meant for national security reasons and was a result of the existing formal procedures. This could means, that deportation against refugee must not be conducted if it does not fulfill the requirement as regulated under Article 32. The last principle is non-refoulement principle that could be found on Article 33 of the 1951 Geneva Convention. This principle stated that no state may refoul refugee in any ways back to their home country or another territory where his/her life could be threatened.

2.2 Existing Immigration Regulations and the Handling of Refugees in Indonesia

Immigration policies are those set forth by governments pertaining to immigrant nationals. The government lays out specific standards in this policy for what is required in order for foreigners to be granted visas, entry permits, stay permits, permanent residence, or limitations on their ability to enter or remain on Indonesian territory. This decision is based on how much the foreigner's presence advances the state's interests and does not pose a threat to them. The Immigration Law and the regulations that implement it set down the processes for individuals to enter and exit Indonesian territory, address the presence of foreign nationals, and provide provisions for both administrative and criminal sanctions in case of legal norm infractions. Foreigners who enter or stay illegally are a violation of the law which can be subject to criminal penalties and heavy fines. The currently adopted selective immigration policy means that only foreigners who are useful, able to contribute to national economic, social, intellectual development and provide added value to Indonesia can be granted entry permits.

Immigration positive law does not contain provisions that apply specifically (*lex specialis*) to asylum seekers and refugees. For example, there is no definition of refugees themselves or provisions regarding their residence permits, shelters, handling mechanisms and monitoring processes. Thus, actually foreigners who enter Indonesia without fulfilling the requirements will be considered as foreigners who enter Indonesian territory illegally and are subject to entry denial. Immigration officers can carry out deportation to expel these foreigners from Indonesian territory. This can be applied normatively to asylum seekers and refugees.

Immigration control is supervision carried out on foreigners which includes observing and examining all activities of foreigners starting from entering Indonesia, while in Indonesia until then leaving Indonesia. However, it is different from monitoring refugees. Notwithstanding the fact that refugees are foreign nationals who have fled Indonesia, Article 4 of Presidential Regulation Number 125 of 2016 governs the supervision of refugees. (1) The Minister is in charge of organizing the processing of refugees. (2) The coordination mentioned in paragraph (1) takes place within the framework of formulating policies, such as those pertaining to immigration control, invention, shelter, and security. (3) The minister in charge of government affairs in the area of foreign relations and foreign policy submits his ideas to the Minister for consideration when crafting the policies mentioned in paragraph (2).

According to this article, the Minister of Law and Human Rights coordinates the management of refugees in terms of immigration control. Additionally, Chapter V regulates immigration control and refugee monitoring, which is governed by Presidential Regulation Number 125 of 2016. According to these articles, officers of the Immigration Detention Center (Rudenim) have the authority to control immigration for refugees. This control can be exercised in the following ways: a. when found; b. in shelters, both inside and outside of Rudenim; c. sent to the destination country; d. voluntary return; and e. deportation.

The current existing and applied immigration regulations particularly on the handling of refugees in Indonesia could be found under Presidential Decree No. 125 of

2016 (hereinafter: PD 125/2016) and Immigration Act No. 6 of 2011 (hereinafter: Immigration Act). Both the regulations obliged some requirements for the entrance of any aliens to the Republic of Indonesia. Article 8 of the Immigration Act governed that “each person entering or exiting from the territory of Indonesia shall bring legal and valid travel documents”. The provision later is more concreted for refugees under the PD 125/2016, where any alleged refugees are found by the local authorities, they should be immediately brought to the nearest Immigration Detention Center, and under Article 13 para. 2 it’s stated that the officer of the Immigration Detention Home shall conduct data collection through the examination of travel documents, immigration status, and identity.

The regulations that are mentioned above are just a glimpse of many that show how the government of Indonesia seems to not understand the concept of securitization and protection of refugees comprehensively even for the implementation of the moral obligation that binds it. It could be understood that the existing regulations lean toward the formal administrative aspect rather than the material substance which shall be prioritized in the handling of the issue of human rights. It’s no surprise then if the bureaucracy and the implementation of refugees’ protection become something that is very complex in Indonesia and created a sort of neglect as a result.

As a consequence of not being a party to the 1951 Convention, Indonesia does not have any right to determine whether someone is a refugee or not. Any aliens. The authority belongs to the UNHCR and IOM in order to determine the status of refugees. A cooperation between Indonesia and the UNHCR and IOM has already established to resolve the problem of refugees in Indonesia. [7] The representative of the government of Indonesia in the handling of refugees are the General Directorate of Immigration which has the supervision of refugee immigration as one of the function of the institution mandated by the PD 125/2016.

Although in the practice, the aliens that alleged as refugees which did not bring any valid travel documents will be imposed with an administrative immigration acts such as placement in a particular place for people that do not have any travel documents by the immigration officers. However, with an obscure regulations that applied in Indonesia which only focus on technical – administrative regulation, specific mechanism to handle the refugees is absent. The regulation also becomes the ground for the violation of moral obligations that Indonesia held. The case of the deportation of a Somalian refugee which was a 9 months pregnant woman that happened in the early 2022 [8]. The Somalian woman even already owned an UNHCR identity card but was rejected to enter the territory of Indonesia by the airport immigration officer because she did not bring complete travel documents. The reality that such deportation still happened and has legal grounds surely draws our attention on how serious is Indonesia particularly the General Directorate of Immigration in handling refugees.

2.3 Ensuring the Securitization and Protection of Refugees through an Enhanced Immigration System

The Securitization and Protection of Refugees may not legally binds Indonesia as an obligation, but it will remain to binds Indonesia morally. Conventions relating to the

refugees i.a: 1951 Refugee Convention; 1967 Protocol on the Status of Refugees; Stateless Persons Convention 1954; and Convention on the Specific Aspects of Refugee Problems in Africa 1969 [9] all contain regulations related to human rights particularly on the protection of refugees. Therefore, even though Indonesia has never been a party of any mentioned convention above, Indonesia is desired to always apply the minimum standards of human rights protection toward aliens including refugees nor asylum seekers.

As a state is always responsible for the protection of aliens also refugees, it's essential to ensure that existing regulations and policies accommodate such things. Particularly for the General Directorate of Immigration as the frontier representative of Indonesia in handling aliens and refugees, with existing and applied immigration system and policies shall ensure that it follow and in accordance with the principles of the protection of refugees, including the principle of non-expulsion and non-refoulement.

However, it's shown that the current immigration system has not been able to comprehensively accommodate the protection of refugee, whilst it only exist for regulating the technical-formal-administrative aspect on the handling of refugee and specific mechanism on the handling of refugee that focuses on the fulfillment of human rights substantially does not exist. The confusion in handling refugees is no longer a surprise regarding the weak regulation that Indonesia has and has proven that it led to another violation of human rights.

The securitization and protection of refugees nor asylum seekers as a part of aliens in Indonesia as a country could be ensured by an effort to enhance the immigration system in Indonesia. As the authority that will directly deals with refugees, the government through General Directorate of Immigration shall be able to focus on the fulfillment of human rights by providing minimum standards of human rights. Irrelevant things such as incomplete travel documents or other administrative matters shall be re-evaluated to be a part of the first steps of refugee handling in Indonesia. At least, it shall not be the reason for officers to conduct deportation that clearly violates the principle of non-refoulement.

The enhancement also could be done by creating a new breakthrough on the handling of refugees in Indonesia. With huge numbers of refugees that keep increasing each years, the officers of Immigration Detention Center may be overwhelmed to supervise each of the asylum seekers. A new comprehensive legal framework under the work of General Directorate of Immigration surely is needed to provide strong policies and mechanism regarding the handling of refugees. It will bring benefits for both the authority and the refugees nor the asylum seekers as well, whilst rights and obligations are fully accomodated by the new legal instruments.

The issue of refugee seems like will not reach its end in any time soon, it will keep on going and continue to be a global issue. Therefore, Indonesia as one of the transit countries shall consider what aspects needs to be enhanced to support the implementation of the moral obligation of the protection of refugee. Or if it's possible, the ratification of the 1951 Convention could also be considered, in order to prove Indonesia's contribution and seriousness in facing human rights issues in this world.

3 Conclusion

Indonesia may have its popularity as tourism destination, yet it also have its popularity as a transit country amongst the refugees and asylum seekers. It's why the number of refugees and asylum seekers, that are also aliens in this country, is huge. However, it has been Indonesia's moral obligation to be able to accept them and provide them with the minimum standards of human rights fulfillment as a part of the United Nations that honors the protection of human rights. It's a logic consequence that existing regulations and policies shall ensure the fulfillment. Speaking of the entrance of aliens including the refugees and asylum seekers, then it is under the hands of the General Directorate of Immigration as the authorized institution. However, some obstacles found in the handling of refugees, even on the frontier part of this country. Many refugees may be trapped under the situation that will force them to leave with none or incomplete travel documents or such administrative things. Unfortunately, the current immigration system in Indonesia only focuses on the formal and administrative aspect rather than the substantial aspect, until unwanted things such as deportation towards a refugee still happened. Surely an enhancement on the system could be the soluble solution on the complexity of handling of the refugees. A new legal instrument that harmonized with the principles under the 1951 Convention and focuses on the substantial aspect is desired to leverate the role and contribution of Indonesia in the securitization and protection of refugees.

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