

*Management of Refugees through Intercultural and Interfaith Dialog*

Atik Krustiyati

University of Surabaya, Indonesia

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Abstract

The issues of refugees in Indonesia are considered serious and needed immediate response. These are not only because Indonesia has become the transit destination for refugees, but also the origin country of them. The definition of refugees based on Refugee Convention 1951 and Protocol 1967 is those who left their origin countries due to persecution caused by issues of differential race, religion, nationality or social groups and particular political opinion. As these people are not protected in their home country, they need to seek for international protection. Thus, refugee problems are human rights problem among nations as two countries are involved; the home country and the host country.

Refugees require relief like nationality status, and assistance in the form of food, medicine, clothes and shelter. Throughout this time, management of refugees in Indonesia is categorized as durable solution. These are assimilation/naturalisation, repatriation, resettlement through security model and set aside individual rights model that emphasize human rights.

As such, it is needed new approach model through interfaith and intercultural dialog. The underlying reason for this is the fact that these refugees carry along their culture and faith. This approach needs to be followed by legal and structural approaches. In legal approach for example, Indonesia needs to do ratification and accession of Refugee Convention 1951 and Protocol 1967 in due time. While structural approach means enhancing the role of apparatus in the management of refugees to meet harmonization in international relations.

**Key Words:** Refugee, Interfaith, Intercultural

## INTRODUCTION

This paper is written based on the observation and research results that I have done and will be done in Indonesia, specifically in East Java, which is one of the provinces in Indonesia. The results of studies that have been done are the "The Development of East Timorese Refugees Situation Post Public Polls from Legal, Social and Cultural Aspects in 2012". While the research that I will do in 2013 titled "Management Model of East Javanese Refugees from Legal and Psychological Aspects". Two studies are conducted in multidisciplinary sector as refugees' problems are seen from the social, cultural, and psychological aspects.

Furthermore, this paper is also written based on observations from various media about the refugees management which still become a problem in Indonesia. The problems are caused by several things, namely the fact that until now Indonesia has not ratified the 1951 Refugee Convention and its 1967 Protocol. The lack of international instruments on refugees and the lack of national legal instruments that comprehensively regulate refugee problem have caused difficulties in handling the refugees' problems. Moreover, throughout this time, the management of refugees in Indonesia is based on the security model as refugees are viewed as threats to the states' security. Such management has possibilities to disregard individual rights based on human rights.

In its literal sense, the term refugee is used to define people who are forced to leave his place of residence to get to a safer place. Forced displacement has become the indicator for the absence of human security<sup>1</sup>. These people are forced to leave his place of residence due to natural disasters, and disasters caused by humans (eg security threats, armed conflict, or political reasons)<sup>2</sup>.

Difference reasons that cause people become refugees has caused the difference in treatment or favor. For refugees caused by natural disasters, assistance needed is temporary relief until they are capable to live their own lives. While for refugees caused by human actions, aside from requiring such assistance, they require protection as well. This protection can take place as asylum, non-refoulement, repatriation, or if they agree, placement to other countries which will accept them (resettlement).

This phenomenon of forced displacement has undergone rapid development, not only because of the amount of people displaced has become greater, but also because underlying factors of this phenomenon has become increasingly complex as well. Hundreds, even millions of people forced to leave their communities to save themselves<sup>3</sup>. The number of people who left the country tend to be more than the

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<sup>1</sup>UNHCR, **The State of the world's Refugee 1997-1998 : A Humanitarian Agenda**, New York : Oxford University Press, 1998, pp.11

<sup>2</sup>Jovan Patnagic, **Introduction to International Refugee Law**, delivered at Refugee Law Course, The International Institute of Humanitarian Law, San Remo, Italy, September 1996, pp. 13

<sup>3</sup>Jun Justinar, **About Refugee**, IDP's dan EDP's, Humanitarian Law, Human Rights and Refugee, Faculty of Law University of Trisakti, Jakarta, 2005, pp. 2

number of states that are willing to accommodate the refugees<sup>4</sup>. Currently there is a trend of developing countries (including Indonesia) to become the host as well as receiving countries of refugees, albeit some merely become transit points of refugees before they go to the third country. As a developing country with limited resources, problems due to the arrival of the refugees certainly occur in Indonesia.

In discussing the problem of refugees, the important thing is to determine who can be categorized as refugees, the rights and obligations that can be imposed if they are, and how the behavior of a state in dealing with refugees' problem. It would be reasonable to state here that the refugees' problem has existed since the beginning of human civilization and is essentially the matter of humanity. As such, in the long run, refugees' problem could, and should, be handled through humanitarian actions.

The 1951 Convention is the starting point for any discussion of refugees' problem. This convention is one of the other instruments on refugees, which is the 1967 Protocol. In some ways this Convention is also seen as a paving way, as for the first time in history, a Convention is provided a general definition of refugee. The 1951 Convention on the Status of Refugees was designed by the end of World War II, and the definition of refugee in it is focused on the people outside their home country that became refugees as the result of events occurred in Europe before 1 January 1951. As the issue of refugees had increased by the end of 1950s and early 1960s, it was seen necessary to expand the geographical and time coverage of the 1951 Convention. Therefore, in its development, Additional Protocol to the Convention on the Status of Refugees, the 1967 Protocol was designed.

The 1951 Convention contains three chapters that regulates the protection of refugees, namely Article 31 (Illegal Refugees), Article 32 (Expulsion), and Article 33 (Non-Refoulement). This principle prohibits the return of the refugees to their home country where their survival or freedom is threatened, due to differences in race, religion, nationality, membership in a particular social group. This can serve as the milestone of international protection, which often called as the heart of the international protection of refugees. Thus the importance of the non-refoulement principle should be accepted and respected as a *jus cogens* in international law. In this 1951 Convention, someone is called a refugee if (s)/he has a well founded fear of persecution;

- a. For Reasons of race, religion, nationality, membership of a particular social group, political opinion
- b. Is Unable or, owing to such fear, is unwilling to avail himself of the protection of his country.

As a member of the United Nations, a country is essentially has a responsibility to protect their citizens and foreigners within its territory. However, it is a reality that some countries are unable to carry out such responsibilities due to various reasons. When a government is unable and unwilling to provide protection for its citizens, then these citizens are forced to leave their home country to seek protection in other countries. Thus, the refugees' problem can be a national and international issue. National issue here is state's responsibility, while international issues are those related

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<sup>4</sup>Myron Weiner, *The Global Migration Crisis in Wang Gungwu, ed., Global History and Migration*, Oxford, Westview Press, 1997, pp. 95<sup>298</sup>

to international cooperation among countries in dealing with refugees. This means that every state has the right and responsibility in dealing with refugees which basically is a humanitarian issue by respecting state's sovereignty.

Formulation of law or national legislation on refugees based on international legal standards is the key to strengthen the asylum institution, to make protection more effective, and to provide a foundation for the solution of refugees' problem. Incorporation of international law into national law is very important and needs to be done to regulate things such as procedural matters of refugee status determination.

In international law, it is recognized that a state has the right to refuse or accept foreigners to enter its territory. If a country allows foreigners to enter its territory after fulfilling certain conditions, then the person is a legal foreigner who in that country, and foreigners are given preferential treatment in accordance with applicable law. Conversely, if a person entered the territory of another state without following legal procedure, then the person does not obtain legal protection.

These people usually do not leave the country because of persecution on grounds of race, religion, social group, or political opinion, but rather because of economic factors (to get a better job, or to join their family). Here lies the difference of these people with the refugees. Although both enter into the territory of a state without going through legal procedures but refugees have fundamental reason to be outside of their home country, while economic migrants do not.

In refugee law, the principle of non-refoulement is applicable as regulated in Article 33 of the Vienna Convention 1951. As such, the important thing to do in dealing with refugees is a bilateral policy between the home country and the host country in order to create the condition of good neighborhood. The agreement can regulate how inter-faith dialogue and inter-cultural should be formulated, as someone who flee to another country and culture will bring their beliefs. In addition to become the party to the 1951 Convention and 1967 Protocol immediately, solutive step should be considered due to the national interest of a country.

## **THE ROLE OF UNHCR IN THE MANAGEMENT OF REFUGEES**

In the UN charter it is stated that the the role of the UNHCR is related with the context of human rights protection. This links is confirmed, moreover, in the reference to the 1951 Refugee Convention, roomates makes reference to the principle that all human beings shall enjoy fundamental rights and freedom without discrimination. The Preamble also recalls that the United Nations has, on various occasion, manifested its profound concern for refugees and endeavored to assure refugees the widest possible exercise of these fundamental rights and freedoms<sup>5</sup>.

In the previous section it is pointed out that in the long run, refugees' problem should be dealt in humanitarian manner, and the international community's attention should also be focused on the material need of refugees to aid their survival. This perception changed after World War I (1914-1918), the Bolshevik Revolution in Russia (1917),

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<sup>5</sup> Training Module, **An Introduction to The International Protection of Refugee**, UNHCR, pp.39

and the collapse of the Ottoman Empire (1918), which led to millions of people who were forced to leave their native country<sup>6</sup>.

The international community finally realize that the needs of people who are out or forced to leave their origin country are not limited to material assistance for their survival, but also respectful treatment that allows them to live outside their origin country with honor<sup>7</sup>.

One of the tasks of the High Commissioner for refugees who were appointed by League of Nations (LoN) was giving juridical status of refugees albeit the absence of definition on the term refugee itself. One form of international refugee protection provided by LoN was giving travel documents to refugees to enable them travel to other LoN member states.

The establishment of this institution and the appointment of the first High Commissioner with the task to determine the legal status of refugees, all was done by the LBB, as an early recognition of the international community that the refugee issue is not only a humanitarian problem but also a problem with juridical aspect. This has marked the entry point of the concept of international protection of refugees in international law.

After LoN disbanded due to various factors, the United Nations (UN) stood, and under the UN, UNHCR was established to manage the refugees' problem. Nearly 62 years ago, precisely on January 1, 1951, when UNHCR began his task, the number of refugees handled was only about 1 million people, and almost entirely in Europe. Refugees' issues were considered as temporary problems by the international community. Thus, UNHCR was also intended to be a temporary body as well, and the UN General Assembly established the existence of UNHCR for only three years with the expectation that the approximate one million refugees could be resolved.

However, the reality was different as the completion of this approximate one million refugees had not been completed within three years. Moreover, the number of new refugees has continued to increase from year to year. As a result, the presence of the UNHCR was also extended three times each year, and since 1964 was extended for five years until now.

Aside from this, the task of UNHCR has evolved as well as requested by the UN General Assembly to help people who according to the Statute of UNHCR cannot be categorized as refugees, but are in a similar situation with refugees. The large number of refugees is a burden to be borne by the temporary host countries. Due to the fatigue among traditional donor countries to provide assistance, as well as the lack of virtual prospect of the resettlement of refugees in third countries, has caused refugees' problems become more complicated than ever.

Therefore, since the last few years, UNHCR has implemented a new concept in its effort to find a solution to the refugee problem, namely repatriation to their home

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<sup>6</sup>Enny Soeprapto, **Concept International Protection of Refugees and Implementation**, Paper, University of Surabaya, 1998, pp. 6

<sup>7</sup> *Ibid.*,



country as well as the creation of conditions in these countries so that the condition that caused the existence of refugees would not happen again. This effort can be done by involving various stakeholders, such as the countries of origin and the host countries, donor countries, regional bodies, non-governmental organizations both nationally and internationally, the political organization of the United Nations, development agencies, as well as humanitarian agencies, both nationally and internationally.

Such solution was applied in Southeast Asia, including Indonesia, when dealing with the boat people (boat people) from Vietnam. Several approaches were used to overcome the problem of Vietnamese refugees are as follows:<sup>8</sup>

1. Hold negotiations with potential destination countries for these refugees to accelerate the process of refugee placement to third;
2. Build Processing Centre in Galang Island and cooperate with other countries particularly the United Nations (UN High Commissioner for Refugees/UNHCR). The goal is to get the world opinion on solving the refugee problem, which is not a regional problem per se, but also a global problem as it involves humanity and justice. By engaging the world, it means that the solution must be addressed together;
3. The Government of the Republic of Indonesia held the approach to Vietnam, which is the host country of many refugees who came to Indonesia, to do constructive policy for limiting the refugee flow to ASEAN countries. Furthermore, emphasized the consequences of political, social and economic as well as the vulnerabilities that have been posed by the refugees.

The large number of refugees and people who can not formally categorized as refugees but in a equal condition with refugees also needs protection and assistance, partly because the more severe the refugees' problem and the more difficult search for a permanent settlement. In addition, the emergence of internal conflict in various countries and the larger number of people who claim their human life or freedom is threatened in the country who seek entry into other countries as asylum, even though they are in fact none other than economic migrants or migrants who seek personal enjoyment.

Another obstacle is the difficulty of refugees to obtain asylum in developed countries, while their origin countries could not receive them back, because conditions in these origin countries do not conducive to their safety. Attention to these issues, it seems clear that the issue of asylum is a humanitarian issue and a legal issue. This is explicitly stated by Enny Soeprapto as follows: "Asylum is an institution of both humanitarian and legal nature. It is humanitarian as its objective is to save a person from potential or real persecution. Asylum is also of a legal nature, as once asylum granted, the person's status as asylee would have rights and obligations derived there from as may be accorded or imposed by the country of asylum under its national legislation or under the relevant international instruments (once there is national and or regional instruments) of a legally binding nature"<sup>9</sup>.

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<sup>8</sup> Nyoman Sulaksmi, **Legal Protection for Vietnamese Refugee by Indonesian Government**, University of Surabaya, 1992, pp. 39.

<sup>9</sup> Enny Soeprapto, **International Protection of Refugees and Basic Principles of Refugee Law, An analysis**, University of Trisakti, Jakarta, 1998. pp.40

Some of these people are protected internationally due to the Statute of UNHCR, while some are not because they are not categorized as refugee. Refugees' problem should not be the cause of tension between countries of origin and host countries, as well as disruption of international peace and security. Therefore, international peace and solidarity are needed to facilitate the settlement of the refugee problem faced by international community now and in the future. Jovan Patrnogic states that: "It is generally accepted that refugee problems must be approached in the international community, while bearing in mind the need to respect humanitarian principles roomates are an obligation to all. To implement these principles of the highest importance, what is needed is solidarity"<sup>10</sup>.

The UNHCR is one important international organization which is quite important. Since it began operations on January 1, 1951, UNHCR has played an active role in dealing with refugees from the events that occurred in various countries such as in Afghanistan, Sudan, Sri Lanka, Colombia, and other countries. Its authority was later extended by subsequent resolutions of the General Assembly and the UN Economic and Social Council (ECOSOC). The authority of UNHCR is to provide international protection to refugees and find durable solutions for them based on humanitarian and non-political reasons. Those who had received assistance from other UN organizations when the UNHCR Act was legalized were excluded from the mandate of UNHCR. As such, people who were displaced by the Korean War (UNKRA) were not included in the mandate of UNHCR<sup>11</sup>.

From the description above, it is appear that UNHCR provides protection and assistance to refugees around the world. With headquarter in Geneva, Switzerland, in its first formative years, UNHCR was intended to ensure the protection of basic human rights (IDPs) and asylum seekers. The mandate of the High Commissioner for Refugees is stated in a document known as the Statute of UNHCR. The statute is received by the UNGA in Resolution 428 (V), on December 14, 1950. In this resolution, the role of UNHCR is confirmed, which is to provide international protection under the framework of UN to refugees who are within the scope of this statute. Another important thing is that UNHCR also assists and supports the government of a country to soon become a party to the refugee convention in 1951 following its Protocols.

The statute of UNHCR establishes the authority of the High Commissioner for refugees which includes four categories, namely:

1. People who are considered a refugee under international treaties concluded after World War I and before World War II.
2. People who have been displaced by the Constitution called IRO (International Refugee Organization);
3. The people as a result of events that occurred before January 1, 1951 who suffered persecution for reasons of race, religion, political opinion, national groups are

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<sup>10</sup> Jovan Patrnogic, **Introduction to International Refugee Law**, International Institute of Humanitarian Law, Italy, 1996. pp.71.

<sup>11</sup> UNKRA is dismissed now and the authority of UNHCR has been extended through various efforts of the General Assembly resolution in 2003.

- forced out of their home territory. They did not want to take advantage of the protection of their home country;
4. The people who are outside their country of citizenship, or if they are not stateless because they have anxiety caused by reasons of race, religion, national groups, political opinion.

## **INDONESIA'S EXPERIENCE IN HANDLING REFUGEES**

Indonesia's valuable experience is when dealing with the refugees from Indochina in Galang Island. The people of Indochina/Vietnam was displaced due to the civil war in the country, especially at a time of Fitcong and when Fitcong was no longer in power. Vietnamese refugee flow began in the fall of the capital of Saigon (South Vietnam), to the hands of the North Vietnamese on May 10, 1975. One year later formed the Socialist Republic of Vietnam (RSV), which officially stood since July 2, 1976. The Vietnamese refugees fled their country because of the inhumane treatment and intimidation from their home country. They left Vietnam by boat, so they called boat people (boat people). This influx occurred in several waves, and along the way many of them are stranded in some countries such as Thailand, Singapore, Malaysia, Philippines and Hong Kong.

Another experience is when East Timor gained independence from Indonesia after the referendum on August 30, 1999. Those who chose the pro-integration East Timorese were forced to leave and flee to the East. East Timorese refugee situation (after their independence under the name of East Timor) is a unique thing, because East Timor was originally a 27th province of the Republic of Indonesia (Republic of Indonesia). 27 provinces to come from the Portuguese colony evacuated by the Homeland, as freedom fighters continue to fight for the Earth Timor gained independence. They were forced to leave East Timor is more accurately categorized as an externally displaced persons (EDP'S) as opposed to internally displaced persons (IDP'S).

Aside from refugees from outside Indonesia (Vietnamese refugees), Externally Displaced Persons, there are many cases involving the internally displaced (IDP'S) such as the case of Aceh, Sambas, Maluku and problems that come from other parts of Indonesia. This problem is compounded by the influx of people from Afghanistan, Middle East and illegal immigrants of other countries.

Based on the discussion above, this paper proposes the handling model approach to refugees through interfaith and intercultural dialogue, because when someone refuge, (s)/he would bring along their refuge and cultural beliefs. Interfaith dialogue and intercultural issues are two areas of great importance to Indonesian. As a culturally diverse country with big diaspora, Indonesia cannot but be keenly interested in advancing international cooperation in these domains, especially Indonesia's strategic geographic location as being in the position of a cross between the two continents, Asia and Australia and two, namely Indonesia and the Pacific Ocean.

In line with the idea to include human rights into national legislation since 1998, especially since the promulgation of Decree No.: XVII/MPR/1998, the 1945 Amendment Act 39 of 1999 on Human Rights and the Law 37 1999 on Foreign Relations, the Director General of Immigration has issued circulars IL.01 No.F-0.10-



1297 dated 30 September 2002 regarding the handling of foreigners who declare themselves as asylum seekers or refugees. The circular specifies that:

1. In general, the rejection to a stranger who comes into Indonesian territory, which does not meet applicable requirements;
2. If there are foreigners who expressed a desire to seek asylum upon arrival in Indonesia, so that is not subject to immigration measures such as the deportation of the country that threaten the lives and liberty;
3. When among strangers is believed there is an indication as asylum seekers or refugees, in order to get in touch with international organizations or the United Nations refugee problem High Commissioner for Refugees (UNHCR) for the determination of its status.

The circular seeks to provide a handle to the immigration officer at TPI in order to give special treatment to foreigners who pose as asylum seekers or refugees. In this case the immigration officers are given the opportunity to contact UNHCR protecting officer, and at that time will also be conducted early research. If there were indications of asylum seekers or refugees, then the matter would be handled directly by the UNHCR.

The problem is that these people often do not come through TPI, and thus they arrive in Indonesian territory without being noticed immigration officers, because they come with a non-regular means of transport, such as a wooden boat. In such cases, the foreigners who pose as asylum seekers or refugees will be accommodated in immigration detention local building or available elsewhere. The next step immigration officer shall immediately notify the International Organization for Migration (IOM), which will conduct the next shelter. IOM will then coordinate with UNHCR protection officer for further handling. The treatment is done in accordance with the duties and functions of the international organizations working in Indonesia with the permission of the Government of Indonesia. During the refugee status determination process, the entire cost of living and accommodation of asylum seekers and refugees are a burden UNHCR and IOM.

To meet the need for identity papers, the UNHCR issued a statement or Attestation Letter stating that the holder of the letter is in the process of seeking asylum or refugees, and the UNHCR will handle them. Attestation Letter is not an immigration document that gives permission to stay. Within this waiting period, the Refugee Status Determination (RSD) will be given.

Even if the international legal instruments as mentioned above (1951 Geneva Convention and 1967 Protocol), show the will to provide protection to asylum seekers and refugees (the principle of non-refoulement), they cannot be operated at lower levels, as the apparatus do not own a practical grip aside from the Director General of Immigration circular. Thus the immigration officers have no legal basis to provide status or immigration permit authorizing notch asylum seekers or refugees in Indonesia. Similar difficulties are also faced by other relevant government agencies, such as police and local government.

Noting from the description, it is appear that the policy of asylum-seekers and refugees in Indonesia is still ambivalent. On one hand there is the will to provide international standard treatment to asylum seekers or refugees are particularly

vulnerable to human rights violations, but at the same time there is no adequate national legal instrument for field operations. In addition, the mobility and obligation of asylum seekers or refugees cannot be controlled because their status is not clear.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **Conclusion**

1. Refugee flows occur due to natural disaster and human made disaster, each of which requires different handling. Furthermore, refugees issue is both national and international issue. Therefore, it requires international cooperation both bilaterally, regionally, and globally. One form of international cooperation is the establishment of international agreement to create harmonious international relations, specifically between the home country and the host country.
2. Refugees' problems are related to both humanitarian and law issues. As such, the management of such problem should respect the refugees' rights (using individual rights model) which not merely see refugees as something that endanger state security (security model). Moreover, handling the legal aspects means to encourage states immediately to become the party (consent to be bound) of the 1951 Convention and 1967 Protocol, which is a universal legal instrument.
3. The 1951 Convention contains three chapters that govern the protection of refugees, namely article 31, 32 and 33. This principle of non-refoulement prohibits state to return refugees to their home country where their survival or freedom is threatened, and this has become the milestone of international protection for refugees. Thus the importance non-refoulement principle should be accepted and respected as a *jus cogens* in international law.
4. Protecting refugees is primarily the responsibility of States, specifically those that signed the 1951 Convention. As such, these states are required to apply these terms without discrimination. When refuge situations occur, states must work together to resolve the cause of the refuge flow and to share responsibilities in protecting refugees.
5. UNHCR's role as set out in the Statute of UNHCR in 1950 should always be enhanced, especially in providing international protection for refugees, finding durable solutions to the problem of refugees, as well as to promote international refugee law. This role can be performed well if UNHCR continued to work together with local country.
6. Until now Indonesia is not a party of the 1951 Convention and 1967 Protocol. It is difficult for officers in the field when it comes to addressing the refugee. One of the guidelines that are used is the Circular No. Directorate General of Immigration. F-IL.01.10-1297 (30 September 2002) which basically states that the Indonesian Immigration tolerate the presence of refugees and asylum seekers (not in deportation). Next homework with the UNHCR is to issue Attestation letter/certificate to prevent refugees from getting problems with the authorities.
7. These measures would show the good will of Indonesian government in dealing with refugee problem, as a logical consequence of a country that upholds human

rights as stipulated in Law No. 39/1999 on Human Rights. It also refers to Law No. 37/1999 on Foreign Relations.

## **RECOMMENDATIONS**

1. Necessary preparations concerning technical aspects, administration and law need to be done in order to enhance the ratification/accession process of the 1951 Convention and 1967 Protocol. Harmonization with the relevant national regulations is also required. Assumption that by ratifying the Convention could be the pull factor for the refugees flow into a country is not justifiable.
2. Interfaith and intercultural dialogue efforts need to be increased between the home country and the host country. Such dialogue is important as those who fled to other countries certainly bring along their beliefs, customs, and culture.

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