

## **CHAPTER ONE**

### **INTRODUCTION**

#### **A. BACKGROUND**

Indonesia is located among the recipient countries of asylum seekers and refugees in large numbers such as Malaysia, Thailand and Australia. Subsequently Indonesia is affected by mixed population movements. The arrivals numbers of asylum seekers in Indonesia advanced in 2008 and increased in 2009 with a total of 3,230 people requesting protection through UNHCR. Currently, the majority of the asylum seekers come from Afghanistan, Myanmar and Somalia. (Data arrival of asylum seekers who enrolled in UNHCR from year to year: 385 in 2008; 3,230 in 2009; 3,905 in 2010; 4,052 in 2011, 7,223 in 2012; 8,332 in 2013 and 5,659 in 2014).<sup>1</sup>

Asylum seekers and refugees are eligible for International Protection. First and the most important, it is the responsibility of states to protect their citizens. When the government cannot and unwilling to protect their citizens, then citizens may suffer as a result of serious violations of their personal rights. Because, by definition, the basic rights of the refugees are no longer protected by the government of their home country, the international community takes responsibility to ensure that the basic rights of life are respected. The phrase

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<sup>1</sup> UNHCR, "UNHCR di Indonesia" <http://www.unhcr.or.id/id/unhcr-ambassador-id> accessed on 12 October 2015, 10:03 a.m.

"international protection" covers all activities which can guarantee the rights of refugees.

The 1951 Convention on the status of refugees regulates in detail the rights of refugees. Although most of the rights of refugees can be limited in a particular situation (as the rights of citizens) some important rights set in the convention<sup>2</sup>

Indonesia is not a party to the 1951 Convention on the Status of Refugees (Refugees Convention) or the 1967 Protocol. Asylum seekers and refugees (and stateless people) here face difficulties staying in the country. Asylum seekers and refugees in Indonesia are not permitted to work and receive no social benefits from the Government of Indonesia. The Government of Indonesia allows them to stay here while they have current registration documents from the Office of the United Nations High Commissioner for Refugees (UNHCR).<sup>3</sup>

Problems arise when the Government is not responsive in dealing with refugees or asylum seekers. Because Indonesia has not ratified the 1951 International Convention and the 1967 Protocol on the Status of Refugees, the Government could not immediately determine the status of immigrants such as asylum seekers or refugees.

Status determination conducted by UNHCR (United Nations High Commission for Refugees) takes a long time. Condition has been aggravated by a

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<sup>2</sup> UNHCR , 2007-1008, *Melindungi Pengungsi*, Jakarta: p. 18

<sup>3</sup>Suaka Sekretariat, "Refugees and Asylum Seekers in Indonesia" <http://suaka.or.id/2015/07/06/refugees-and-asylum-seekers-in-indonesia/> accessed on 10 October 7:35 p.m.

lack of national instruments governing the same subject. Indonesia does have Act Number 37 of 1999 on Foreign Relations which mandates on refugees and asylum seekers. That provision should have been followed up with a government issued Presidential Decree (Decree). Unfortunately twelve years have already passed, and the decree has not turned up.<sup>4</sup>

Consequently, when there is a group of foreigners who entered Indonesian territory they are categorized as illegal immigrants who commit administrative violations of immigration as state in the Law Number 6 of 2011 on Immigration. Finally the group of strangers is grouped together and placed in Immigration Detention House (*Rudenim*).<sup>5</sup>

## **B. Research Questions**

Based on the background, it can be formulated that the research questions are:

1. What are the importance of the ratification of 1951 Convention to Indonesia?
2. What are the barriers of the implementation of the 1951 Convention to Indonesia?

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<sup>4</sup> Hukum Online, "Indonesia Perlu Ratifikasi Konvensi Tentang Pengungsi" <http://www.hukumonline.com/berita/baca/lt4f351aacc4a70/indonesia-perlu-ratifikasi-konvensi-tentang-pengungsi>, accessed on 12 October 2015 11:17 p.m.

<sup>5</sup>*Rudenim* is a technical unit which performs the function of immigration as temporary shelters for foreigners who violated the Immigration Act. The stranger who stays in *Rudenim* called *deteni*. *Rudenim* built due to the increased traffic of people, both who came out or go to Indonesia, so the potential to issues of immigration. in order to optimize the prosecution it is necessary to have facilities and supporting infrastructure such as *Rudenim*.

### **C. Objective of Research**

1. To analyze the issue of the refugees that was conducted by Indonesian Government. It learns more about the reasons why Indonesia Government does not ratify the 1951 Convention.
2. To understand or to conduct a library research on the barriers of the implementation of the 1951 Convention on Status of Refugees towards Indonesia Government

### **D. Benefit of Research**

There are some benefits of research, namely:

#### 1. Theoretical Benefits

This research will give benefits to know deeply about the 1951 Convention and the reasons why Indonesia have to ratify it and also how the implementation of the Convention toward Indonesia

#### 2. Practical Benefits

The research will give the benefit on more understanding about the refugee's law which concern about the implementation of 1951 Convention Relating to the Status of Refuges in Indonesia and to know deeper about the view of International law in the case of the refugees and asylum seekers in Indonesia. In addition, the research will provide more understanding on the reasons why does Indonesia need to ratify the 1951 Convention Relating to the Status of refugees.

## **E. Overview of the Chapter**

This research consists of five chapters, namely Chapter I: Introduction. Chapter II: Literature Review. Chapter III: Research Methods. Chapter IV: Result and Discussion, and lastly, Chapter V: Conclusion and Suggestion.

The aims of this research are to learn more about the reasons why does Indonesia needs to ratify the 1951 Convention on the Status of refugees and the issues and challenges in the implementation of the provisions within the Convention besides, this research will elaborate the topic systematically by dividing it into five chapters

The first is Chapter I, consisting of Introduction, will elaborate general matter, such as background, Research question, research objective, research benefits, and overview of the chapter. The background contains the current condition of refugees in Indonesia and how the Indonesia Governments respons towards the refugees condition in Indonesia earlier. And in this chapter the author also would like to define some Internatioanl Perspective on refugges. Problems of the topic are the reasons why does Indonesia need to ratify the 1951 Convention Relating to the Status of Refugees.

The second is Chapter II, Literature Review, in which author will elaborate each variable on this undergraduate thesis; the definition of refugees and asylum seekers based on the International Perspective, the 1951 Convention as the monumental effort for the refugees and the non-

refoulement principle. Moreover, it will elaborate more about the International Refugees Law and Indonesian Refugees Law.

The third is Chapter III, Research Methodology, here author will show the research method used on this undergraduate thesis. The type of research, legal material, method of collecting data and method of data analysis are discussed in this chapter.

The fourth is Chapter IV, Research and Analysis, the chapter elaborates the case with the normative legal research, with case approach. The focus of this research is on the reasons why does Indonesia need to ratify the 1951 Convention on the Status of refugees , the barriers of the ratification and the challenges within the implementation of the Convention in Indonesia. The chapter will describe more about advantages and disadvantages either Indonesia ratify the Convention or not.

The last is Chapter V, Closing. Contain of the conclusions and the suggestion from the author toward all of the result of the research.