

CHAPTER I INTRODUCTION

I. Background

The refugee problem is still an issue that has not been completely resolved until today. Until now, there are still many cases of displacement that have emerged which indicate that a number of global humanitarian crises in the world have not been resolved. The 1951 Convention on the Status of Refugees describes refugees as "*people outside their national state who are caused by legitimate fears of persecution, caused by faith, ethnicity, nationality, membership of certain social classes and political parties, who do not want protection from that State.*" The displacement is done because of the oppression of refugee human rights in their country of origin, and they are looking for land or other countries as their new residences which of course avoid the suppression of human rights (Husin, 1998) .

The large scale of population displacement was initially only a domestic problem of a country. Then, because population movements also exceed one country border to another, the refugee problem eventually spreads to a problem for countries in certain regions and is finally considered a common problem with mankind (Romsan, 2003). The refugee problem is a global problem. According to the United Nations (UN), currently there are 30 million refugees scattered throughout the world. The burden of refugees should be the joint responsibility of the countries in the world, a based fear is what distinguishes refugees from other types of migrants, no matter how heavy the situation is, and also from others who need humanitarian assistance. Therefore, in order to respond to the desperate situation faced by refugees, special arrangements must be made by the international community in order to be able to rely on the security of the state which is expected to provide them with security (UNHCR, Sejarah UNHCR).

In the midst of the current refugee crisis, many countries are under criticism for not doing much further to help

immigrants, for example by not providing shelter in their territories to help refugees. Many countries refuse to accept refugees for various reasons. The presence of refugees is considered a source of security, social, economic and environmental threats by some citizens in the receiving country. From a security perspective, refugees can generate political radicalism and militancy which can spread to the surrounding community (Jacobson, 2002).

There are millions of refugees and asylum seekers from all over the world are trying to seek protection from other countries, including Indonesia. The Republic of Indonesia is geographically located in a strategic position in the world map and has become a place for refugees / asylum seekers to enter with various motives (Rosmawati, 2015). According to UNHCR, until the end of September 2019, the cumulative number of refugees in Indonesia was 13,676 from 45 countries and more than half of the population came from Afghanistan. The United Nations High Commissioner for Refugees (UNHCR) Indonesia notes that there are around 13,600 asylum seekers and cross-border refugees in Indonesia. Until the end of July 2020, most refugees in Indonesia came from Afghanistan (56%), Somalia (10%) and Iraq (6%).

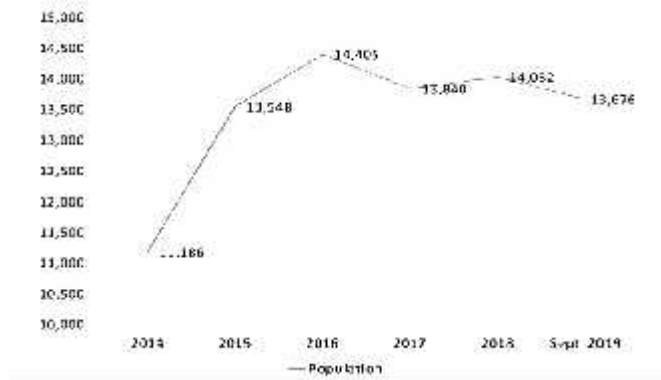


Figure 1.1. Registered Refugees and Asylum Seekers in Indonesia. (Sources : Indonesia Sandya Institute & UNHCR, September 2019)

A refugee in transit is a refugee who is temporarily admitted to the territory of a State on condition that he is resettled elsewhere, according to the UNHCR International Thesaurus of Refugee Terminology. These refugees and asylum seekers seek protection in countries that have ratified the 1951 Refugee Convention and the 1967 Protocol or what are often referred to as third countries, but this is certainly not easy, before refugees and asylum seekers are placed by UNHCR in third countries, it is not uncommon for refugees and asylum seekers to first stop in a transit country, one of which is Indonesia (Nurhalimah, 2017).

In resolving refugee issues, the first step taken by UNHCR was to organize a meeting, namely the 1951 Convention. For any dialogue on refugee problems, the 1951 Convention is the starting point. One of two other sets of refugee protocols, including the 1967 Protocol, is this convention. Indonesia is not yet a party to the Convention of 1951 and the Protocol of 1967 (Afriandi & Nizmi, 2014). Indonesia does not have the ability to award RSD or refugee status as a result of this.

Indonesia is a transit country for refugees from different countries, which would automatically have an immense effect on Indonesia as these migrants arrive. Even though Indonesia is not included in the list of destination countries for refugees and has never signed the ratification of the 1951 Refugee Convention, Indonesia must host them without a specific status (Ismail & Burhanuddin, 2016).

As mentioned earlier, Indonesia is not a party to the convention that approves refugee accommodation. However, in the practice, Indonesia still accepts refugees, for example, Indonesia has historically had experience in handling refugees from Vietnam, and receiving refugees from Rohingya. This condition is not supported by the availability of places and the suitability of the population of Indonesia, which now occupies the 4th position in the world after India. In addition, Indonesia is a developing country which has a relatively high level of poverty.

Basically, all countries that have ratified the convention are obliged to accept and provide protection for refugees. If Indonesia is a party to the 1951 Convention, Indonesia has the authority to determine the status of asylum seekers. Apart from having the authority to determine the status of refugees, state parties are also obliged to fulfill the rights stipulated in the 1951 Convention for asylum seekers who have been designated as refugees. The most basic right that must be fulfilled by refugees under the 1951 Convention is not to impose legal sanctions on refugees who enter the territory of a state party or for their existence illegally and without the permission of the competent authorities (Rahmadani, 2017).

Another serious obligation is the obligation for States parties to provide shelter or housing to refugees as stated in Article 21, "Regarding housing, States Parties, insofar as the matter is regulated by law or regulations or is placed under supervision. public agencies, shall provide refugees who live legally in their territories the best possible treatment and, in any case, no less favorable than the treatment given to foreigners in general under the same circumstances" (Nations, 1951). However, if Indonesia is not yet a party to the 1951 Convention, Indonesia does not have the authority to determine the status of asylum seekers because that authority rests with UNHCR, and Indonesia has no obligation to provide housing for refugees.

In an interview with Kumparan team in 2019, international law expert and Professor of International Law at the University of Indonesia (UI) Hikmahanto Juwana explained why Indonesia is not obliged to take care of these asylum seekers. According to him, Indonesia has no obligation because Indonesia is not a participant in the 1951 Geneva Convention on refugees. He explained that UNHCR has a role in screening whether refugees who come to Indonesia can be assigned a refugee status. Then, after that, they can find a country that is willing to accept the refugees. "Indonesia is not a participant in the 1951 refugee convention, and Indonesia is not the country to which refugees or asylum seekers go,

Indonesia is only a temporary place and it is because there is a UNHCR office in Jakarta. Indonesia does not have the obligation to accept refugees because Indonesia is not a participant of refugees, even though now Indonesia cares for them it is not out of obligation, but humanity” (Kumparan, 2019) .

The Coordinating Ministry for Political, Legal and Human Rights, Chairul, in an interview with the Kompas team in September 2019 said that many asylum seekers are still displaced in Indonesia because the country that grants asylum determines the criteria for acceptable refugees. Chairul said that Indonesia does not have the responsibility to grant asylum. However, the government helps asylum seekers who have already come to Indonesia on humanitarian grounds. "Indonesia's position does not ratify the 1951 Refugee Convention. This means that Indonesia has no obligation to accept refugees from abroad. But because they are in Indonesia, the Indonesian Government, as well as the DKI Provincial Government, provide assistance in a humanitarian context," (Sari N. , 2019).

Indonesia remains a country of interest to refugees. Indonesia is a transit point for refugees who come from abroad before they are transferred to a host country, namely Australia. There are pros and cons regarding this, many people argue that Indonesia should not have to accept refugees who arrive as a refugee in transit due to some reasons. The main cause is due to the problem of ratification, Indonesia does not have the obligation to accept and accommodate refugees from the other countries because Indonesia has not ratified the 1951 convention and 1967 protocol on the status of refugees, this cause is also supported by two other causes which make this issue even more controversial, first is about the capacity of Indonesia itself and the second is because Australia as a host country is already overwhelmed with refugees, and it will indirectly affect the lives of transit refugees who are still being processed in Indonesia. Whereas on the other hand Australia has the obligation to accommodate refugees because it has

signed the Refugee Convention. Refusing refugees is considered a violation of international law that has been ratified, although accepting refugees has become a sharp spotlight in Australia's country.

Indonesia with its high human values and hospitality still accepts refugees until now, even though it has not ratified the 1951 Convention and 1967 Protocol. Presidential regulation number 125 of 2016 has become the legal basis for the process of helping refugees. The Indonesian government is still trying to help refugees from Rohingya Myanmar, Bangladesh, and refugees from other countries who have entered Indonesia and need help.

Based on the background above, this paper will discuss further about the supporting factors that lead Indonesian government to accept the refugees.

II. Research Question

What supporting factors that lead Indonesian government to accept refugees despite of not ratifying the 1951 Convention and 1967 Protocol regarding the status of refugees?

III. Objective of the Research

- To determine the factors that support Indonesia government to accept the refugees although Indonesia has not ratified the 1951 Convention and 1967 Protocol on the status of refugee.
- To find out how's the regulations of Indonesia in handling the problem of refugee and the regulations of the International Law regarding refugees and the countries who have not ratified the 1951 Convention and 1967 Protocol.

IV. Theoretical Framework

A. National Interest Concept

According to Morgenthau, the national interest of every country is to pursue power, that is anything that can establish and maintain control over another country, he argued that the national interest is a means of pursuing power, because through that power a state can control another country. The national interest is closely related to the actualization of the power possessed by a country to achieve its goals. In its implementation, the realization of a national interest must also be accompanied by appropriate techniques and diplomacy. In conducting international interactions, every country involved in this event cannot be denied that it has its own interests (Matthew, 2020).

The national interest comes from the needs of the people of that country, as well as the aspirations of the country to become an ideal country. Because national interests are the essence of the goals and ideals of the state. So that the state is the main mover in the success or failure of achieving the national interest (Ronapea, 2016). Security, economy, health, national psychology, are things that are the basic needs of the nation that must be achieved, maintained and fulfilled by the government through various methods therein (Syahrial, 2018). The interest is also based on a "power" to be created so that the State can have a direct impact on the State's consideration in order to gain world recognition. In the national interest, the role of the "State" as an actor who makes decisions and plays an important role in international relations and influences the people of the country (Asri, 2019).

For developing countries, displaced people are both a result of violence and a source of ongoing conflict and instability. Forced displacement can disrupt peace - processes, weaken economic development efforts and

escalate inter-communal tensions. Refugee flows may also be a source of regional conflict, creating turmoil in neighboring countries, prompting foreign interference, and often providing base camps for armed refugee groups to participate in insurgency, armed resistance, and terrorist activities. In recent years, both new and long-established refugee populations have been seen by local host governments as a threat to the state's internal order, as well as a threat to regional or even global stability. States view groups of refugees as posing both direct and indirect threats to stability (Loescher, 2002).

In the other side, a policy taken by a country cannot be separated from the national interest of that country. One of the methods used to achieve the national interest of a country is through diplomacy, including by participating in resolving a country's conflict by accepting refugees from a country that is in trouble. Still in line with its function, diplomacy can also be used to improve the image of a country to the public or other countries (public diplomacy). Through public diplomacy, a state can image itself as a good / friendly country so that other countries do not need to consider it an enemy. It can also be used to image as a country with a developed economy and is open to investment. This can invite other countries to invest and of course turn on the wheels of the domestic economy. There are many more benefits that can be obtained through good imagery. Therefore, maintaining the country's image at the international level is also important because it is in line with maintaining or achieving national interests (Satria, 2020).

Through the steps that have been initiated, the discussion of Indonesia's strategic interests in this issue becomes a special concern that needs to be further explored.

B. Human Security Concept

The definition of human security is derived from conventional security studies, which concentrate on state security. In this concept, individuals are the priority, and the ultimate aim is to protect people from traditional and non-traditional threats. The failure of realism to explain the emphasis of reference objects other than the state made Ken Booth and Robert Cox, the critical theorists, broaden the concept of security to include individuals and other state actors. The theory of human security is a type of critical theory that was born because individual security is as vital as state security, and a theory of realism that focuses solely on the state as the sole object of study can not explain (Akhmady, 2020). Centre to this concept is the belief that human security deprivations can undercut peace and stability within and among states. (Afolabi, 2015).

The Commission on Human Security (CHS) in one of its work defines human security as:

The capacity to preserve the fundamental heart of all human lives in such a way that human liberties and human satisfaction are enhanced. Human security means upholding essential freedoms that are the essence of life. It means protecting people from serious and persistent threats and situations. It means using processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together- give people the building blocks of survival, livelihood and dignity (Adedoyin, 2013: 125)

It is important to stress that human protection includes all aspects of human needs. This is why it serves as the basis of all forms and categories of security. The 1994

HDR was more specific, listing seven essential dimensions of human security:

- Economic
- Health
- Community
- Environmental
- Food
- Personal
- Political



Figure 1.2 (Source : Fajarningrum Akhmady, Human Security Concept, IISAUC)

Food security is simply access to basic nutrition and food supply. The initial focus, reflecting the global concerns of 1974, was on the volume and stability of food supplies. Food security was defined in the 1974 World Food Summit as:

“availability at all times of adequate world food supplies of basic foodstuffs to sustain a steady expansion of food consumption and to offset fluctuations in production and prices” (Nations, Report of the World Food Conference, Rome 5-16 November 1974, 1975).

Health protection is more complicated and encompasses a wide range of topics, including access to clean water, living in a safe climate, access to health care, access to safe and accessible family planning and basic pregnancy and childbirth support, prevention of HIV / AIDS and other diseases, and basic awareness to live a healthier life.

Environmental security is straight forward and cover such issues as prevention of water pollution, prevention of air pollution, prevention from -deforestation, irrigated land conservation, prevention of natural hazards such as droughts, floods, cyclones, earthquakes etc.

Community security, on the other hand , requires the preservation of traditional values, as well as of traditions , languages and popular values. It also requires the elimination of racial discrimination, the avoidance and protection of indigenous communities from ethnic conflicts.

Political security The defense of human rights and the well-being of all persons is a matter of political security. It also requires immunity from state violence against citizens, such as freedom of the press, freedom of expression, and freedom to vote. Political stability also requires the removal of political arrest, torture, systemic ill treatment, and disappearance.

Personal Security – including physical assault, fighting, bigotry, exploitation of children, domestic violence. The purpose of personal safety is to protect people from physical violence by the state and other entities. The biggest fear for many is falling prey to violence. (Gierszewski, Personal security within The Human Security Paradigm, 2018).

Economic Security is linked to the income received from work by individuals. A significant factor generating political tension and public security problems is economic security issues resulting from loss of employment.

This list is neither comprehensive nor definitive, and the UN Charter refers more flexibly to ‘fundamental freedoms’. National and regional HDRs aiming to address varying categories of threats and values can use the human security approach in analyzing the topic. Central to the approach is the idea that people have ‘the right to live in freedom and dignity, free from poverty and despair with an equal opportunity to enjoy all their rights and fully develop their human potential. (Gomez & Gasper, 2013).

Here the researcher only focuses on one essential of the seven essential human security, namely *Personal Security* which focuses on human rights and protection from conflict. This essential requires immunity from state violence against citizens, freedom for citizens, also discussing protection for the people from threats. The purpose of personal safety is to protect the public from physical violence by the state and other entities.

Therefore, human security is connected to major threats to humans and the guarantee of human rights, but irrespective of the precise frontiers, powers and populations of the state, these are the elements that constitute the state. In this way, human security ceases to be a field open to sovereign governments alone, or an internal state matter, and becomes an international issue. The overwhelming array of areas of personal security that can be achieved can be described as freedom pillars of human security, situated in social spheres (Gierszewski, 2018):

- A life of dignity and liberty,
- Aid in need,
- Humanitarian Assistance.

V. Research Arguments

The research arguments are based on the National Interest and the Human Security concept (Personal Security element) that are used by the researcher, and the objective of this research that is in order to explain what factors that support Indonesia to accept the refugees. There are two arguments as the hypothesis of the research, i.e :

1. Indonesia wants to accept the refugees in order to protect and pay respect to the rights or human security of these refugees based on the humanitarian reasons.
2. Indonesia wants to improve its image in front of the international community to gain the world recognition as a friendly country.

VI. Research Methods

A. Type of Methodology

In this paper, researcher used a type of qualitative research, which is a study that intends to understand phenomena about what is experienced by research subjects such as perceptions, motivations, lived experiences, emotions or behaviors, and the meanings individuals attach to them. Holistically and by means of descriptions in the form of words and -languages, on a special natural context and by utilizing various natural methods. This research can be done in two approaches, the first is qualitative approach, and the second one is quantitative approach. However, the qualitative research is essential to the study of " The Reasons of Indonesian Government to Accept Refugees" because the data and

the information must be collected properly, and the quantitative approach is not suitable for this research considering that some of the data in this study are in the form of official data.

B. Type of Data

Secondary Data

The data needed by the researcher in this research are not directly obtained by the researcher from her research subjects/respondents. The data are obtained from secondary data in the form of literature, reading material, documentation data, archives, or other relevant documents whose discussion is relevant to the topic of " The Reasons of Indonesian Government to Accept Refugees ", and the data are obtained before the research or during the research. For references and additions in this study, researcher collected written data from books, reports, and journals. The data are collected based on information obtained from the written documents. Important data will be attached and the conventions and protocols regarding refugee status in Indonesia is included. This research is important considering that Indonesia is one of the countries that has become a destination for refugees and the number of refugees in Indonesia is increasing every year.

C. Data Collecting Method

In qualitative research, data collection is done in natural settings (natural conditions), primary data sources, and data collection techniques more on participant observation, in-depth interviews and documentation (Sugiyono, 2008).

In order to get the completeness of this data, the researcher conducted a library research study. Secondary-data are the data obtained through other sources, not directly obtained by researcher from her research

subjects/respondents. This secondary data is in the form of literature, reading material, documentation data, archives or other relevant documents which are supportive of the research and this data is obtained before the research or during the research takes place. For references and additions in this study, researchers also collected written data from books and journals. Data is collected based on information obtained from written documents. Important data will be attached and the data from United Nations and Indonesia's Presidential Decree will be included.

D. Type of Analysis

The research is explanatory research which is to explain the relationship between two or more symptoms or variables so that they can be used to describe certain phenomena, and this research focuses on the basic question "what".

VII. Scope of the Research

The scope of this research focuses on the reasons that support Indonesia's decision to accept refugees from other countries, the regulations made by the International Institutions regarding the refugees, and the regulations of Indonesia in handling the refugee issue.

VIII. Writing System

To understand this study more clearly, the materials found in this Thesis Report are grouped into several sub-chapters with the structured delivery as follows :

CHAPTER 1 INTRODUCTION

This chapter contains background/context, problem formulation, research purpose, theoretical basis, research arguments or hypotheses, and research methodology

CHAPTER II FINDINGS (DISCUSSION)

Contains analysis of the results of research, the results of data collected through library studies. Explaining how the actual factors that support Indonesia to accept the refugees, and the regulations made by Indonesian government and other institutions that cooperate with Indonesia.

CHAPTER III CLOSING

This chapter contains conclusion and recommendation from the results of the study.

