

International Law, Humanitarian Issues, and the COVID-19 Outbreak: The Ambivalence of Indonesian Government in Handling Refugees

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Abstract— This research aims to reveal the difficulties faced by the Indonesian government in dealing with refugees during the COVID-19 outbreak and find solutions to these problems. To analyze this phenomenon, this research used a descriptive qualitative approach. Data was collected through interviews, literature study, and supported by observation. The research result shows that the Indonesian government faces ambivalence in dealing with this problem. On the one hand, Indonesia did not participate in ratifying the 1951 International Convention and the 1967 Protocol, so Indonesia was not obliged to handle the presence of refugees. But on the other hand, since early 2020, Indonesia has been appointed as a member of the UN Human Rights Council so indirectly Indonesia must comply with all forms of international declarations on human rights. With this position, the Indonesian government must normatively pay attention to refugees in the form of access to social assistance and health facility services. Considering government limitations due to the COVID-19 outbreak, several solutions that can be taken include clarifying and strengthening the cooperation with UNHCR and IOM, expanding community-based protection cooperation, delegating part of the state's authority to local governments which deemed capable, and regulating the opening of limited work access for refugees.

Keywords— Ambivalence, Asylum Seekers, COVID-19, Indonesian Government, Refugees

I. INTRODUCTION

There is not a single country in the world that is completely prepared to face the hard blow of the COVID-19 outbreak. No matter whether it's a superpower country, a developed country, let alone a third-world country; everyone is rushing to deal with the virus that is spreading rapidly. Even the United States government, which is often the patronage of various countries' policies, has not escaped sharp criticism because it is considered to be delaying the response to handling COVID-19 [1]. Although the current situation is slowly getting better, the virus has not completely disappeared. Even almost two years after COVID-19 emerged, the world still can't really control it. In fact, COVID-19 has mutated into more virulent variants like alpha, beta, delta, gamma, and omicron. Therefore, this phenomenon should really be an important lesson so that it does not happen again in the future of mankind.

When all countries are busy taking care of their respective citizens, it is no wonder that refugees and asylum seekers do not become a group that gets adequate treatment. Their rights are uprooted due to the uncertainty they experience in fleeing from their home countries. They are being outside the country where they normally reside, as a result of an event and cannot or due to fear in such a way and do not intend to return to their country [2]. Therefore, it is true to say that refugees, asylum seekers, and migrants are vulnerable to epidemics [3]. Meanwhile, the WHO said that concrete decongestion camp plans needed to be prioritized, and vulnerable people needed to be moved to safe

accommodation [4]. It should be understood that their fate uncertainty will make the spread of COVID-19 increasingly out of control.

In the territory of Indonesia, the flow of refugees and asylum seekers continues to arrive along with the growing potential for COVID-19 transmission. Actually, Indonesia is just a transit country for them. Indonesia is a developing country that geographically connects the Asian region and Australia; thus the country has long been a major transit point for asylum seekers, especially those who attempt to seek protection in Australia [5][6]. However, since July 2014, Australia has closed its borders tightly in line with the Operation Sovereign Borders policy [7]. As a result, there is an accumulation of refugees and asylum seekers in Indonesia which then triggers various social problems.

In the Asia-Pacific region, providing protection for 8.3 million displaced people has been a significant concern for international humanitarian organizations and affected states [8], while at the global scope the total number of refugees and asylum seekers reached 70.8 million people. When compared with the global number, the number of refugees and asylum seekers in Indonesia which reaches around 14,000 is quite small actually. They are mostly from Afghanistan and Pakistan, but also from Myanmar, Iraq, Iran, Sri Lanka, and other countries [9]. However, this number remains a difficult problem during this pandemic, where Indonesia's economy is experiencing a decline, causing reduced people's income, narrowing of employment opportunities, and other latent problems [10].

The accumulation of refugees and asylum seekers, especially in urban areas, is certainly a thorny problem in itself [11]. The economic downturn which has an impact on the decline in people's income has collided with refugees who are also trying to survive in the midst of an uncertain future. The absence of a definite policy from the government also makes this situation even more dilemmatic. Therefore, it is interesting to study more deeply how the steps of the Indonesian government in handling refugees and asylum seekers during the COVID-19 outbreak, especially at the beginning of the virus spread. In addition, it is also important to formulate possible options that can help overcome the problem of refugees and asylum seekers in Indonesia, both now and in the future. This issue must be the concern of all stakeholders because everything is intertwined between international law, humanity, and other related issues.

Basically, there have been many published studies related to the problem of refugees and asylum seekers during the COVID-19 pandemic. However, there are quite a few studies that specifically discuss Indonesia. From the review of literature, it is found that related research includes: First, the research entitled 'Refugees and asylum seekers in Indonesia amid the spread of COVID-19: Case study of refugees and asylum seekers in Pekanbaru' [12]. This study suggests that the acceptance of refugees by Indonesia on humanitarian principles has been in line with the identity that has been shown as a defender of human rights. To maintain this good identity, in terms of handling COVID-19 with refugees, Indonesia should adapt policies that are adaptive and sensitive to minority groups in Pekanbaru City.

Second, the research entitled 'The problem of Indonesia's health diplomacy in the age of COVID-19 pandemic' [13]. Using an intermestic approach, this research critically analyzes the implementation of health diplomacy in Joko Widodo's administration. This research suggests that the implementation of Indonesia's foreign policy related to the COVID-19 pandemic is still less significant. Domestic factors, especially the marginalization of diplomacy's position in national crisis management, are obstacles to the performance of the Ministry of Foreign Affairs, in addition to the functional and institutional weaknesses of the Indonesian diplomatic bureaucracy. Directly or indirectly, these conditions will certainly have an impact on the uncertain fate of refugees and asylum seekers.

Third, the research entitled 'The migration policy during COVID-19 outbreak: The case of Indonesia's immigration governance' [14]. This study finds that migration policies and governance in Indonesia during the COVID-19 pandemic indicate a lack of coordination between border agencies, and this can lead to mutual blame. In more detail, this research explains that immigration policies at the Indonesian border are actually very strict but inconsistent, where policy instruments are revised and extended every month. This policy has not been designed for the situation after the COVID-19 crisis in Indonesia was declared completed by the competent authorities.

From a review of several related studies, it can be mapped that research examining the issue of refugees and asylum seekers during COVID-19 in Indonesia mostly uses a humanitarian and the Indonesian government's reactive response perspective. However, there has been no research comparing the humanitarian and international law aspects which poses a big dilemma. This dilemma or ambivalence makes the Indonesian government hesitate to take strategic policies for handling refugees and asylum seekers during the pandemic. Therefore, the novelty offered by this research becomes clear. From the novelty, it is hoped that this research can provide input for improving the handling of refugees and asylum seekers in the future, especially during crisis periods such as COVID-19.

II. METHODS

To obtain holistic research results, this research used a descriptive qualitative type of research. This research focuses on Jakarta, which is the most densely populated area of refugees and asylum seekers in Indonesia. To collect data related to the Indonesian government's policies in dealing with refugees and asylum seekers during the COVID-19 outbreak, the authors conducted interviews and literature studies. Interviews were conducted with three informants with an adequate understanding of the refugee's and asylum seekers' issues. One of the key informants works for an international organization that takes care of immigrants. However, due to sensitive issues, the names of the informant and institutions will be kept confidential. In addition, the authors also made observations to see the lives of refugees and asylum seekers during the COVID-19 outbreak, especially those who chose to live in locations with close access to UNHCR and IOM offices. Given that the consequences of interview studies need to be addressed in terms of the possible harm to the subject as well as the expected benefits of participating in the research [15][16], especially considering that this research was conducted during the COVID-19 outbreak, so the authors should be more careful to protect themselves and resource persons as a way to prevent the virus transmission.

III. RESULTS AND DISCUSSION

The use of the terms refugees and asylum seekers are still often used interchangeably [17][18]. In fact, international law has a different meaning regarding the legal status of the two, even though the term basically has something to do with the refugee problem itself. The 1951 International Convention on the Status of Refugees defines a refugee as a person who due to a well-founded fear of persecution, for reasons of race, religion, nationality, membership in a particular social group and political party, is outside his country of nationality and does not want protection from that country. The convention is used as a reference by the United Nations High Commissioner for Refugees (UNHCR) to define and determine the eligibility of an asylum seeker to be granted official refugee status. However, the problem is that Indonesia has not yet ratified international legal instruments governing refugees, both the 1951 Convention and the 1967 Protocol. Therefore, it becomes a fundamental note in this research how researchers define refugees in the Indonesian case, even though Indonesia has not ratified international law which regulates refugees.

In Indonesia, when the government decides to ratify an international convention or protocol, it will be manifested in the form of a national act (*undang-undang*). In reality, until now there is no national act that regulates refugees. However, the increasingly massive flow of refugees and asylum seekers to Indonesia has forced the government to issue a regulation so that they have a legal basis for making related policies. The government then issued Presidential Regulation Number 125 of 2016 about the handling of refugees from overseas. According to this regulation, refugees are defined as foreigners residing in the territory of the Unitary State of the Republic of Indonesia due to a well-founded fear of persecution on the grounds of race, ethnicity, religion, nationality, membership in certain social groups, and different political opinions and do not want protection from the state of origin and/or have obtained asylum seeker status or refugee status from the United Nations through the High Commissioner for Refugees in Indonesia.

If we compare the definition of refugees according to the 1951 Convention and Presidential Regulation Number 125 of 2016, we will get two big points that connect the two. First, they both use the diction that 'a refugee is a person who due to a well-founded fear of persecution, for reasons of race, religion, nationality, membership in certain social groups and political parties, is outside his country of nationality and does not want the protection of that country'. Second, Presidential Regulation Number 125 of 2016 uses the diction 'has obtained asylum seeker status or refugee

status from the United Nations through the High Commissioner for Refugees in Indonesia', in this case, the authorized institution referred to in the sentence is UNHCR. Meanwhile, UNHCR has confirmed that they define and grant refugee's status based on the 1951 Convention. Thus, it can be said that the definition gap about refugees between international law and Indonesian national regulation has reached a compromise point.

However, this does not mean that regulations in Indonesia run without problems. In the hierarchy of laws in Indonesia, one regulation must not conflict with the regulation above it. In this case, a presidential regulation is prohibited from contradicting the national act because in the hierarchy the position of the national act is higher. Whereas Act Number 6 of 2011 about immigration (immigration act) does not recognize the terms of asylum seekers or refugees, so foreigners who enter Indonesian territory are categorized as illegal immigrants. The implication is that all foreigners who come to Indonesia, whether asylum seekers, refugees, or criminals who enter without having official documents are automatically qualified as illegal immigrants, and those caught are detained in immigration detention houses.

Another weakness of Presidential Regulation Number 125 of 2016 is regarding the process of returning refugees which is not in accordance with the provisions of international law. Based on the presidential regulation, the process of returning refugees is carried out voluntarily or by deportation. This is contrary to Indonesia's obligation to uphold refugee protection standards and the principle of non-refoulement [19]. The principle of non-refoulement clearly guarantees that no one should be returned to their country of origin where they will face violence, torture or cruel, inhuman or degrading punishment, and other irreparable harm. Therefore, in the future, there is a need for harmonization between the presidential regulation and the immigration act, especially in critical times such as the COVID-19 outbreak.

As a country that has not ratified the 1951 Convention and the 1967 Protocol regarding the status of refugees, Indonesia is not obliged to handle refugees comprehensively. It should be understood that when referring to historical facts, basically the 1951 Convention is an old product aimed at reducing the residue from World War II [20]. The destruction of the various countries involved forced their people to migrate in search of a better life. Indonesia, which was new independent in 1945, certainly did not want to be trapped in these regulations. Apart from still having to build their own newly independent country, the obligations contained in the convention are quite burdensome, such as providing housing, jobs, and so on. In other words, the burden of the convention far outweighs the benefits to Indonesia.

With this position, Indonesia also has no obligation to determine the status of an undocumented immigrant who enters Indonesia. The determination of this status was delegated to the UNHCR. Referring to the Indonesian immigration act which states that anyone who enters without having official documents is automatically qualified as an illegal immigrant as stated by Arifin and Wiraputra, the treatment given is the same so that refugees and asylum seekers must go through the arrest process to be detained in immigration detention centers. It was during this detention process that the Indonesian government handed over the determination of their status to UNHCR.

Besides UNHCR, the international organization related to refugees is the Indonesia International Organization for Migration (IOM). UNHCR is in charge of overseeing the process of determining refugee status, resettlement to third countries, and repatriation. Meanwhile, IOM is tasked with providing day-to-day assistance including food, accommodation, and health. Asylum seekers and refugees while in transit countries such as Indonesia are the responsibility of IOM until they are placed in a third country or voluntarily return to their country of origin. Unfortunately, however, both UNHCR Indonesia and IOM Indonesia are under-resourced and have a high workload. As a result, all these processes take quite a long time and years. In this situation, their existence raises various polemics such as economic, social, cultural, and security issues, especially their clashes with the urban communities where they live temporarily.

This condition is detrimental to Indonesia's position as a transit country which only plays a role in providing a temporary stopover [21]. As mentioned earlier in this study, the problem got bigger when the Australian government

closed the borders for the entry of refugees and asylum seekers into their country and stopped all related funding. In implementing this policy, Australian border authorities often send refugees and asylum seekers back to Indonesian territory. In this case, Australia clearly violates the 1951 Convention where the ratifying country is prohibited from denying the arrival or sending of refugees to their country. Australia violates the principle of non-refoulement where refugees and asylum seekers have not been properly processed but are immediately expelled from the territory and are not given the opportunity to state their reasons for coming to Australia.

For Australia, this policy could be triggered by the situation of those who also face a dilemma. In line with the argument put forward by Benhabib, countries like Australia face doubts in addressing sovereignty, territoriality, and human rights. On the one hand, they are aware of their position as ratifiers of the 1951 Convention. So within a few decades, Australia has become a heaven for refugees and asylum seekers. But on the other hand, now they are starting to feel the negative impact of their policies so far. Australia is starting to worry that the steady stream of illegal immigrants will create various problems in the country. However, Australia's actions to close the border certainly cannot be justified. They must be consistent with their policy of ratifying the 1951 Convention. Moreover, they are the commonwealth member of the British, a country that was directly involved in World War II.

Back to the juridical position of Indonesia. Since the beginning of this study, it has been emphasized that Indonesia is not a ratifying country to the 1951 Convention. However, it should be noted that since the beginning of 2020 Indonesia has been appointed as a member of the UN Human Rights Council. Post-authoritarian Indonesia has emerged as a country that advocates human rights values in the Asia-Pacific region [22]. Therefore, Indonesia must also comply with all forms of international declarations on human rights such as the Universal Declaration of Human Rights (UDHR). With this position, the Indonesian government in handling COVID-19 should also pay attention to refugees in accessing social assistance and medical facility services. The Indonesian government ultimately provided health services to refugees and asylum seekers, including COVID-19 vaccination services [23].

Indonesia continues to be committed to assisting the handling of refugees in accordance with the UDHR. The issuance of Presidential Regulation Number 125 of 2016 which regulates the handling of refugees is a tangible manifestation of the efforts of the Indonesian government. So far, Indonesia has continued to show itself as a nation that upholds humanity. For example, if we have a little flashback, during the Andaman Sea crisis, Indonesia systematically assisted Bangladeshi and Rohingya migrants, which later received appreciation at the international level. In addition, Indonesia also supports the WHO agreement on Promoting the Health of Refugees and Migrants in 2019, one of which encourages international organizations and non-governmental organizations to oversee the health of refugees [24]. In this way, the Indonesian government compromises the ambivalence between international law and humanity in dealing with illegal immigrants, refugees, and asylum seekers, both in normal situations and during the COVID-19 outbreak.

So, considering the Indonesian government's limitations due to the COVID-19 outbreak, various actions and breakthroughs are needed as solutions, including: First, clarify the capacity of UNHCR and IOM in carrying out their obligations related to protecting the health of refugees. If the capacities of UNHCR and IOM can be mapped out well, the Indonesian government can help by filling the gaps with more precision. Second, expanding community-based protection cooperation. The government needs to educate the public awareness around the refugees and asylum seekers. Moreover, the Indonesian people are known to have high solidarity with each other, so this effort has great potential for success. Third, Reviewing local or regional-scale policy and action options. Each region and its local government has a different level of threat to COVID-19 and the potential presence of refugees. Therefore, the government needs to work with regions that have been able to control COVID-19 well and have a high level of readiness. Fourth, strictly regulate the opening of work access for refugees. If refugees have access to work, then they will have income so they can protect themselves independently from potential exposure to COVID-19.

IV. CONCLUSION

Currently, the COVID-19 situation in Indonesia has begun to improve. However, the experience of dealing with the epidemic should be a valuable lesson. No one can guarantee that a major tragedy like the COVID-19 outbreak will not happen in the future. So, from the detailed explanation above, it can be concluded that Indonesia faces an ambivalence in dealing with refugees and asylum seekers during the COVID-19 outbreak. On the one hand, Indonesia has not ratified the 1951 Convention and the 1967 Protocol, so Indonesia does not have the obligation to deal with refugees comprehensively. Indonesia does not want to be trapped in burdensome obligations as a consequence of the ratification of these international rules. Moreover, the 1951 Convention is an old product that emerged as a result of the residue of World War II. Thus, Indonesia also has no obligation to determine the status of an undocumented immigrant and delegate it to the United Nations through UNHCR. But on the other hand, Indonesia is a member of the UN Human Rights Council which must comply with all forms of international declarations on human rights such as the UDHR.

As a middle way, although Indonesia has not ratified the 1951 Convention, Indonesia is committed to assisting the handling of refugees in accordance with the UDHR through the implementation of Presidential Regulation Number 125 of 2016 which regulates the handling of refugees partially. In the period of the COVID-19 outbreak, Indonesia proves this commitment by providing vaccinations to refugees. However, given the government's limitations, possible options that can help overcome the problem of refugees and asylum seekers in Indonesia as a transit country in the future are clarifying and strengthening the cooperation with UNHCR and IOM, expanding community-based protection cooperation, delegating part of the state's authority to local governments which are deemed capable, and regulating the opening of limited work access for refugees. As a closing statement, the authors realize that this research has limitations related to time and data sources. Therefore, further research is expected to be able to reveal this ambivalence problem in more depth from the perspective of refugees and asylum seekers which has not been widely disclosed in this research.

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