

THE HANDLING OF ASYLUM SEEKERS AND REFUGEES IN INDONESIA IN STATE SOVEREIGNTY THEORY

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Abstract

One of the problems facing the country today is the existence of asylum seekers and refugees, this has arisen since mankind has known war. Asylum seekers and refugees, which have now become national and even international problems, cannot be separated from the policies taken by a country in protecting its citizens from the various impacts caused by the migration flow. The precautionary principle applied by the Indonesian government in addressing the problem of the increasing number of asylum seekers and refugees today is manifested by political attitudes that are not part of the countries that ratified the 1951 Convention and the 1967 Protocol on the Status of Refugees. Problems then arise when the government has to deal with asylum seekers and refugees. Legal arrangements in handling asylum seekers and refugees in Indonesia in the theory of state sovereignty are currently regulated in the Regulation of the Director General of Immigration Number IMI-1489.UM.08.05 dated 17 September 2010 concerning the Handling of Illegal Immigrants, where the regulation is still at the level of the Director General's regulation. The handling of asylum seekers and refugees in Indonesia should be regulated at the level of the law. In addition, because Indonesia is not a member country that ratified the 1951 Refugee Convention and the 1967 Refugee Protocol, so the Immigration Law only accommodates the understanding that violators of an illegal entry permit, then they are an immigration crime. However, in an effort to maintain state sovereignty, it is necessary to issue a law-level arrangement containing the handling of the problem of refugees and asylum seekers in Indonesia, for example the process of placing refugees in third countries (resettlement) and voluntary return (assisted voluntary) and regulations for refugees. Violating Indonesian criminal law.

Introduction

The term "immigration" comes from the word "immigration" which is given an affix in the form of the prefix "ke" and the suffix "kan". The word "immigration" is a noun (noun) which according to the Big Indonesian Dictionary means the movement of residents of another country to a certain country to settle down. In the General Indonesian Dictionary written by Bdudu - Zain the word "immigration" is defined as the movement of foreigners to a country. Meanwhile, in the Indonesian Language Dictionary for students published by the Language Development and Development Agency of the Ministry of Education and Culture, the word "immigration" is defined as: "the movement of people from one country to another. In English the word immigration is the same as (synonym) of the word "immigration" which means: "the movement of non-native people into a country in order to settle there" or people moving into a country to live. Meanwhile, the term "immigration" according to the Big Indonesian Dictionary (online) is related to immigration; intricacies of immigration.

According to Law Number 6 of 2011 concerning Immigration, immigration is a matter of traffic of people entering or leaving the Indonesian Territory and its supervision in order to maintain the upholding of State sovereignty. Regarding the definition of Immigration Law, so far there is no agreed definition. Based on the definition of the term above, Immigration Law can be defined as a number of provisions or regulations relating to the traffic of people entering or

leaving the Indonesian Territory and its supervision. Immigration law refers to the policies of national governments that control the phenomenon of immigration into their country. Immigration law, is closely related to foreign nationals and the legal status of people. Immigration laws vary from country to country according to the political climate. Immigration law is not only based on national law but also on international law. Meanwhile, the purpose of the Immigration Law is to protect the entire Indonesian nation and the entire homeland of Indonesia in order to maintain the upholding of the sovereignty of the State.

If we talk about the purpose of Immigration Law in order to maintain people's sovereignty, it must be understood first the meaning of the word 'sovereignty'. The word 'sovereignty' comes from English, namely 'sovereignty' which comes from the Latin word 'superanus' meaning 'the top'. The state is said to be sovereign or 'sovereign' because sovereignty is an essential characteristic of the state. When it is said that the country is sovereign, it means that the country has the highest power. However, this supreme power has its limits. This supreme power is limited by the country's territorial boundaries, meaning that a country only has the highest power within its boundaries. So the notion of sovereignty as the highest power contains two important limitations in itself, namely: (1) Power is limited to the boundaries of the territory of the country that has that Power and (2) That power ends when the power of another country begins.

In the context of international relations, the principle of state sovereignty is one of the important principles in international law and even includes one of the *jus cogens*, namely: "A norm that is accepted as a basic norm of international law and recognized by the international community as a whole as a norm that should not be violated."

One of the problems facing the country today is the existence of asylum seekers and refugees, this has arisen since mankind has known war. Asylum seekers and refugees, which have now become national and even international problems, cannot be separated from the policies taken by a country in protecting its citizens from the various impacts caused by the migration flow. The precautionary principle applied by the Indonesian government in addressing the problem of the increasing number of asylum seekers and refugees today is manifested by political attitudes that are not part of the countries that ratified the 1951 Convention and the 1967 Protocol on the Status of Refugees. Problems then arise when the government has to deal with asylum seekers and refugees.

Determination of status that cannot be carried out directly by the Indonesian government as a legal consequence of not ratifying the 1951 Convention and the 1967 Protocol on the Status of Refugees indirectly makes Indonesia dependent on the United Nations High Commissioner for Refugees (UNHCR), which is an international organization under the United Nations which is given the mandate to lead and coordinate international action to protect refugees and resolve refugee problems around the world, which in fact the process of determining the status of asylum seekers to be categorized as refugees who are then placed in asylum countries takes a long time. During this period while waiting for the status determination process by UNHCR, based on the prevailing laws and regulations in Indonesia, asylum seekers and refugees are treated the same as foreigners with the category of illegal immigrants. Law Number 6 of 2011

concerning Immigration which was born as a substitute for Law Number 9 of 1992 concerning Immigration does not recognize the terms asylum seekers (asylum seekers) and refugees (refugee) but only recognizes legal and illegal foreigners. This is as regulated in the Regulation of the Director General of Immigration Number IMI-1489.UM.08.05 dated 17 September 2010 concerning the Handling of Illegal Immigrants. This status as an illegal immigrant has resulted in the treatment of law enforcers towards asylum seekers and refugees in Indonesia as if ignoring legal protection, especially if it is related to the realization of social justice in society. They are grouped in the same group as foreigners who are categorized as illegal immigrants who violate immigration laws and regulations.

In Indonesia, foreigners who declare themselves as asylum seekers and refugees are placed in temporary shelters known as Immigration Detention Centers (Rudenim). The 1951 Convention on the Status of Refugees (The Convention on The Status of Refugees) and the 1967 Protocol are the international legal framework and guidelines for protecting refugees whose development process began in the early 20th century by the League of Nations (LBB), the predecessor body the founding of the United Nations (UN). The process reached its climax on 28 July 1951 when a special United Nations conference approved the adoption of a convention on the status of refugees. The convention describes who is called a refugee, the types of legal protection, assistance and social rights that refugees will receive from the state party, the obligations of refugees to the receiving country and who are not eligible for refugee status.

In Indonesia, the Directorate General of Immigration which is under the control of the Ministry of Law and Human Rights is an institution that is given the responsibility to deal with problems involving foreigners, both those who enter and leave legally (legal migrants) and those who enter and leave illegally (illegal migrants). Including foreigners who later declare themselves as asylum seekers (asylum seekers) and refugees (refugees), however the current immigration laws do not specifically regulate the issue of asylum seekers (asylum seekers) and refugees (refugees). Law Number 6 of 2011 concerning Immigration which was born as a substitute for Law Number 9 of 1992 concerning Immigration does not also regulate procedures for handling asylum seekers and refugees, only to the problem of people smuggling.

Talking about the handling of asylum seekers and refugees in Indonesia, at the policy level up to now, it is only guided by the Regulation of the Director General of Immigration Number IMI-1489.UM.08.05 dated 17 September 2010 concerning the Handling of Illegal Immigrants. In the regulation it is stated that a person who enters the territory of Indonesia without having a valid immigration document and then declares himself seeking asylum cannot be subject to immigration administrative action in the form of deportation. This is as referred to in Article 2 of the Regulation of the Director General of Immigration Number IMI-1489.UM.08.05 concerning the Handling of Illegal Immigrants which states that: (1) Illegal immigrants when known to be in Indonesia are subject to Immigration Actions. (2) In the event that the illegal immigrant as referred to in paragraph (1) expresses a desire to seek asylum and/or for certain reasons cannot be subject to deportation, it is coordinated with international organizations dealing with refugee issues and/or UNHCR to determine their status.

Based on the description above, the problem is how is the legal arrangement in handling asylum seekers and refugees in Indonesia in the theory of state sovereignty? The aim is to find out and analyze the legal arrangements in handling asylum seekers and refugees in Indonesia in the theory of state sovereignty.

Literature

1. Theory of State Sovereignty

According to Jean Bodin in defining the state as a well-ordered government of several families and common interests by sovereign power. With this understanding of the state, there is a state to create a good life and make its citizens wise and the most important thing is the existence of sovereignty. According to Bodin, what distinguishes the state from other organizations or communities is the existence of sovereignty.

In this theory of sovereignty, power comes from the state. Moh. Kusnardi and Bintan R. Saragih, in the book *Science of the State* noted that the theory of state sovereignty emerged in Germany. To maintain his power, the king embraced the nobility, the army or military and the bureaucracy that existed in Germany at that time. This theory is also said to be a continuation of the sovereignty of the king. The people who have an understanding of the sovereignty of the people are feared by the king, the people will rebel against the king. To anticipate that the people would not rebel against the king, then the king made a new theory of sovereignty. The king's theory states that the people form themselves into a state. So that the people are identical with the state, then, the state must be sovereign. Because state sovereignty is considered too abstract, the sovereignty or power is in the hands of the king.

Apart from Jean Bodin's view, the follower of this theory is Georg Jellinek. In Jellinek's theory, law is the embodiment of the state, because law makes the state, the state voluntarily binds itself with law to exercise its power. This theory of state sovereignty was criticized by Krabbe. According to Krabbe, if the state is sovereign by manifesting itself by law, for Krabbe it is very contrary to reality. From Krabbe's criticism or response to the theory of state sovereignty, Krabbe considers that the sovereign is not the state but the law.

2. Immigration Theory

As explained in Article 1 number 1 of Law Number 6 of 2011 concerning Immigration, it is stated that "Immigration is a matter of traffic of people entering or leaving the territory of Indonesia and its supervision in order to maintain the upholding of state sovereignty". The function of immigration is part of state government affairs in providing immigration services, law enforcement, state security and facilitating development and community welfare.

To carry out the immigration function at every border along the boundaries of the Republic of Indonesia, there are Immigration Checkpoints and Cross-Border Posts. In terms of carrying out the duties and functions of Immigration supervision carried out by an Immigration Officer. Immigration Officers are employees who have gone through special Immigration education

and have Immigration technical expertise and have the authority to carry out their duties and responsibilities under this Law.

The conception of immigration policy in Indonesia is referring to the national goals of the Unitary State of the Republic of Indonesia (NKRI), as referred to in the fourth paragraph of the Preamble to the 1945 Constitution. This becomes the basis and reference for state administrators, especially in terms of formulating policies in the field of immigration. Then Indonesia's politics in the field of immigration now is not open door politics but filter politics which means that the government only allows foreigners to enter who will bring benefits to Indonesia.

Immigration policy towards foreigners through 2 (two) property approaches, namely foreigners who are allowed to enter, reside and carry out activities in Indonesian territory only those that are truly beneficial for the prosperity and welfare of the Indonesian people, in addition through the security approach, namely allowing granting immigration permits only against those who will not endanger state security and public order.

3. Asylum Seeker and Evacuation

An asylum seeker is a person who enters the territory of another country and requests the government of the country concerned to provide a place of protection and the reason why he/she requests a place of refuge is for reasons of humanity, religion, racial discrimination, different political views, and so on. .

In Article 1 of The United Nation Declaration on Territorial Asylum 1967 (UN Territorial Asylum Declaration 1967) states that asylum is granted to people who are entitled to use Article 14 of The Universal Declaration of Human Rights 1948 (UDHR) which states that: "Everyone has the right to seek and to enjoy in other countries asylum from persecution". The statement also includes people who struggle against colonialism or in this case are classified as fighters. This understanding is in line with the definition of refugees, as stated in Article 1 of the Convention Relating to the Status of Refugees 1951 (the 1951 Refugees Convention), which was later refined by Article 2 of the Protocol Relating to the Status of Refugees 1967 (Protocol on the Status of Refugees 1967) which states that; "Any person who, due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group/or political opinion is outside the country of his nationality or citizenship and for that reason is unable and unwilling to take advantage of the protection from that country, or a person who does not have citizenship or is outside the country of his previous permanent residence as a result of the event, is unable, or because of the fear of not being able to return there".

Then regarding the definition of refugees according to the Presidential Regulation of the Republic of Indonesia Number 125 of 2016 concerning Handling of Refugees from Overseas in Article 1 is Refugees from Abroad, hereinafter referred to as Refugees are foreigners who are 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 of certain social groups, and different political opinions and do not want protection from their country of

origin and/or have obtained asylum seeker status or refugee status from the United Nations through the High Commissioner for Refugees in Indonesia. While the definition of a refugee from the OAU Refugee Convention emerged from the experience of the war for independence in Africa, and in 1965 the Commission on Refugees in Africa was formed.

This convention represents an important extension of the concept of refugees because it defines refugees as people who have fled the effects of civil war, for example, indiscriminately. This deserves to be considered a refugee under the OAU Refugee Convention even though one of the elements of persecution from the 1951 Convention is absent. According to the OAU Refugee Convention, the definition of a refugee is as follows: "A refugee is a person who is forced to leave his country due to external aggression, occupation, foreign domination or events which seriously disturb public order in any part or all of the State of origin or the State of nationality".

Other definitions of refugees are also found in the Cartagena Declaration, although this part of the definition is clearly influenced by the OAU Refugee Convention and reflects the history of mass displacement due to civil wars in American countries. While the declaration is not legally binding, its principles, including the definition of a refugee, have been incorporated into the national laws and practices of Central and Latin American countries. The Cartagena Declaration defines refugees as follows: "Refugees if they leave their country because their life, safety or freedom have been threatened by public violence, foreign aggression, internal conflicts, gross violations of human rights or other circumstances which may disturb public order in general. Are you serious" In addition to the definition of the 1951 Convention, the OAU Refugee Convention, and the Declaration of Cartagena, the UN's special organ dealing with refugees, UNHCR also provides the following definition of a refugee: place of residence and cannot return there because of a serious and indiscriminate threat to his life, physical integrity or freedom due to public violence, or events that seriously disrupt public order".

Asylum seekers and refugees have little difference. An asylum seeker is someone who comes to a country because he is threatened in his country of origin. Asylum seekers who come to a country and have not obtained the status of "refugee" from the country of destination have not been able to enjoy the rights and other benefits of a refugee, because becoming an asylum seeker is the initial stage in an effort to gain status as a refugee. Although there are differences between asylum seekers and refugees in enjoying rights and various privileges, there are similarities between the two, namely in the background and criteria between asylum seekers and refugees. This is because a refugee starts as an asylum seeker who then changes status after receiving legal recognition. From this equation, four elements of the equation can be drawn as follows: 1. being outside their nationality; 2. there is a reasonable fear; 3. because of persecution (race, religion, nationality, social group, political opinion); and 4. Do not receive national protection.

Research Methods The

Legal arrangement in handling asylum seekers and refugees in Indonesia in the theory of state sovereignty uses empirical normative legal research methods supported by interviews. The

types of data used are primary data types and secondary data types. The data analysis used is qualitative descriptive analytical.

Discussion

Of Legal Arrangements in Handling Asylum Seekers and Refugees in Indonesia in the Theory of State

Sovereignty State sovereignty means the highest power which is the essential nature or characteristic of a country. However, this supreme power has boundaries that are limited by the boundaries of the territory of the State, which means that a country only has the highest power within its territorial boundaries, both land and sea. In addition, a country has sovereignty with several conditions or elements as the reference for the international community, namely the 1933 Montevideo Convention on the rights and obligations of the state (Montevideo Convention on the rights and duties of State). The 1933 Montevideo Convention states that the requirements of a country are the existence of a permanent population (a permanent population), the existence of a certain territory (a defined territory). The existence of a government (a government), and the ability to conduct relations with other countries (a capacity to enter into relations with other states). In the context of international relations, the principle of state sovereignty has power over a territory (territorial) as well as rights that then arise from the use of territorial power. Sovereignty means that the state has the right to full power to exercise its territorial rights within the boundaries of the territory of the country concerned. The principle of sovereignty in the United Nations Charter is one of the most important and respected basic principles, especially in the equal position of rights between countries in the world, and this is one of the principles or doctrines called "jus cogens" or "peremptory norms".

In implementing the free and active policy, the state must pay attention to the principle of state sovereignty. Sovereign countries have exclusive rights in the form of power, namely:

- a. The power to control domestic matters;
- b. The power to receive and expel foreigners;
- c. Privileges to open diplomatic representatives in other countries;
- d. Complete jurisdiction over crimes committed within its territory.

Thus it can be interpreted that within a sovereignty there is an inherent and inseparable area of authority/jurisdiction and sovereignty itself. The principle of state sovereignty stipulates that a state has power over a territory/territory as well as the rights that then arise and the use of territorial power. Sovereignty means that the state has the right to full power to exercise its territorial rights within the boundaries of the territory of the country concerned. The principle of state sovereignty emphasizes that it is forbidden to interfere with the existence of other countries. Regarding the current legal arrangements in handling asylum seekers and refugees, Indonesia already has regulations to handle refugees who come to Indonesia, namely Presidential Regulation of the Republic of Indonesia Number 125 of 2016. However, before this regulation appeared, Indonesia had long and often handled refugees. This means that the

existence of refugees in Indonesia is not new, but has occurred in the period 1975 to 1980 with refugees from Vietnam who were placed on Galang Island, Riau Province.

Based on the perspective of International Law, Indonesia has the right as an independent country, namely to apply its sovereignty and determine whether or not to accept refugees who enter Indonesian territory. This is because Indonesia is not a country that has ratified the 1951 Refugee Convention and the 1967 Refugee Protocol. This sovereignty is an action that can be considered as a preventive measure and as a form of state defense from foreign disturbances, in order to protect and maintain the country's economic and political stability, especially for Indonesia as a country develop. Prior to the issuance of the 2016 Presidential Regulation, Indonesia at that time did not have a legal basis regarding legal arrangements for handling asylum seekers and refugees

No.	The Constitution and Legislations	The formulation contained
1.	The 1945 Constitution Article 28 G (2)	"Everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country."
2.	Law no. 5 of 1998 concerning Ratification of the convention against torture and other cruel, inhuman or degrading treatment (CAT Law) (Ratification) Article 3	"No country may refuse, return or extradite a person to a country where there is a belief/reason that is strong that he would be dangerous to be subjected to torture."
3.	Law no. 39 of 1999 concerning Human Rights is contained in article 28 (1) which reads	"Everyone has the right to seek asylum to obtain political protection from other countries."
4.	Regulation of the Director General of Immigration Number IMI-1489.UM.08.05 of 2010 concerning the Handling of Illegal Immigrants	"While in its development the arrival and existence of foreigners as illegal immigrants who later declared themselves as asylum seekers and refugees, the contents of the Director General's regulations concern the handling of asylum seekers and refugees. refugees"
5.	MPR Decree No. XVII/MPR/1998	"Recognizing the existence of the Universal Declaration of Human Rights (UDHR) which in article 24 stipulates that "everyone has the right to seek asylum to obtain political protection from other countries".

From the table above, although there are no specific laws and regulations governing refugees, Indonesia still provides space for asylum seekers who come from abroad, as is also stated in Law no. 37 of 1999 concerning Foreign Relations, particularly in Article 27 paragraph 1 which states that "Refugees from Overseas" are different from internally displaced persons (IDP).

So from asylum seekers or refugees in Indonesia, it is part of a world phenomenon, regarding people mobility which is happening everywhere around the world. Asylum seekers and refugees certainly have different backgrounds but in general it can be said that they are looking

for a better life than the previous life. In contrast to workers who migrate from one country to another, asylum seekers or refugees are people in their country or place of origin who do not have the opportunity to have a good life due to conflicts between race and religion, political differences, or due to natural disasters, poverty, and poor governance.

Bad, and for various reasons. Indonesia is part of the world that was targeted which was originally a transit area but because they could not continue their journey to their destination country they were stuck in Indonesia, which in the end they decided Indonesia as a destination country. Of course this is also related to the domestic security system, economic life, social life, sociological race or religion which may be able to accommodate asylum seekers or refugees in certain areas in Indonesia.

Then now the question arises why in Law no. 6 of 2011 concerning Immigration does not specifically regulate asylum seekers and refugees? According to Prof. Iman Santoso, as a professor of Immigration Law, opinion that this law was formed on the basis of the provisions that have governed since the Dutch colonial era, which in its development only recognize fines, or penalties, for foreigners who enter Indonesia illegally or not in accordance with applicable laws and regulations. As long as the Immigration Law is still valid, namely those who migrate foreigners who enter Indonesia, illegally or illegally migrate, are immigration criminals.

Number 9 of 1955 concerning Foreign Residents, as well as Law Number 9 of 1992 concerning Immigration and the last Law no. 6 of 2011 concerning Immigration does not regulate the existence of refugees or asylum seekers so that it does not accommodate these two things because it is in his understanding that violators of illegal entry permits, then they are immigration crimes.

Law No. 6 of 2011 concerning Immigration is the last law in force until now in 2006 it does not refer to several provisions governing refugees or foreign asylum seekers who enter Indonesia, so it does not contain the human rights principles regulated in conferences such as the TOC (transnational organized crime), this convention on human rights is not regulated in the ratification of the Law no. 6 of 2011 concerning Immigration. Therefore, until now the Immigration Law has dealt with asylum seekers or refugees in Indonesia.

Then the next question is whether it is in accordance with the theory of state sovereignty, in the theory of state sovereignty, it recognizes the exclusive rights of a sovereign state. According to Prof. Iman Santoso, said that in point 2 of exclusive rights it says that a sovereign state has the right or has the right to accept the arrival of foreigners into its territory or to reject or expel foreigners who are in its sovereign territory. In this context, the current handling of asylum seekers or refugees in Indonesia can be said to have not been firmly in accordance with the provisions, especially if it is related to state sovereignty. For example, Australia as the 1951 Refugee Convention and the Rome Statute which should be bound by the provisions governing refugees and asylum seekers, should be able to accommodate refugees who enter Australia. According to Prof. Iman Santoso said that he once asked the Australian Immigration Office in 2003-2004 why Australia treats asylum seekers so hard, even refugees are put in cells and some are expelled and deported, even though Australia is a member of the refugee convention, it is

true that Australia is part of from the refugee convention, but under the pretext of sovereignty theory using the exclusive right that Australia has the right to refuse the arrival of foreigners. Australia treats refugees as foreigners who are rejected by their country. So do not use what was agreed in the 1951 Refugee Convention and the Rome Statute which is the opinion of one country.

Likewise, Indonesia can use this exclusive right as a basis for rejecting refugees who enter Indonesia, but on the one hand, Indonesia is also bound by the components regulated in human rights. Even in the TOC convention those who are involved in trafficking in persons can also be in a position as refugees so they should not be penalized. So the Indonesian government can look at immigration cases in a more assertive way that is not bound by other provisions related to the refugee problem, but is made by big countries to pressure Indonesia to accommodate refugees in Indonesia. In this case, new arrangements are needed regarding the provisions governing asylum seekers and refugees.

Then the question of what obstacles or obstacles faced by asylum seekers or Indonesian refugees, Prof. Iman Santoso, SH., MH., MA., said that a lot can be divided into technical issues, technical legalities, there are no provisions that can regulate asylum seekers and refugees in Indonesia properly. Law No. 6 of 2011 concerning Immigration stipulates that people who enter illegally or do not meet the requirements to Indonesia are immigration criminals, but on the other hand Article 27 of Presidential Regulation Number 125 of 2016 concerning Handling of Refugees From Abroad regarding refugees accommodating refugees or asylum seekers.

From the laws and regulations in Law Number 12 of 2011 concerning the Establishment of Legislations, it is regulated that presidential regulations are lower in degree than laws. In Law Number 37 of 1999 concerning Foreign Relations regarding foreign relations, it is said that refugees for asylum seekers will be further regulated under it, but what is issued is a presidential regulation.

In Law No. 6 of 2011 concerning Immigration it does not stipulate that asylum seekers and refugees can be accommodated in Indonesia, so it appears in Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Abroad. Compared to the provisions of Law no. 6 of 2011 concerning Immigration.

It is appropriate or should be revised regarding Law no. 6 of 2011 concerning Immigration. Refugees or asylum seekers who will enter Indonesia are the domain of the function of immigration, so that the function of immigration is at the forefront in dealing with asylum seekers or refugees because the domain is a function of immigration duties, so it is necessary to regulate this in the Immigration Act that currently in Law no. 6 of 2011 concerning Immigration has not yet been regulated, so it is necessary to make a revision and incorporate the principles of regulating asylum seekers and refugees based on the theory of state sovereignty and for operationalization referring to international agreements that have been ratified by the Indonesian government and the most important thing is the legal politics of the

government itself regarding immigration, how is the political attitude of the Indonesian government towards refugees or asylum seekers.

Therefore, the law that is formed must be based on the political will of the government in its view of the government towards refugees seeking asylum. Will Indonesia adopt or accommodate as part of human rights treaties, other international treaties, which may have put pressure on the Indonesian government, so that it cannot take firm action to say that refugees or asylum seekers in Indonesia are illegal acts in immigration or both of which are that the Indonesian government in its legal politics will accommodate refugees or asylum seekers who have entered Indonesia. Of course, the legal position of refugees and asylum seekers in Indonesia must be regulated because they cannot continuously live without a clear status.

Were they whitened, were they given special permits to live in Indonesia, were given permission to work, or were they only placed in certain places by the government? However, because of this, all of them are not valid citizens of Indonesia, so it is necessary to have immigration law politics in Indonesia which includes refugees or asylum seekers.

Then in this study, the researcher also conducted interviews with the Immigration party, namely Pria Wibawa, as the Director of Immigration Supervision and Enforcement of the Directorate General of Immigration. Regarding the current government policy towards Asylum Seekers and Refugees, Pria Wibawa said that the Indonesian government did not ratify the 1951 convention and protocol regarding refugee status. However, the Indonesian government ratified the human rights convention.

Where, in it there is an obligation of the state to provide protection for asylum seekers and refugees by applying the principle of non-refoulment. Currently, the government's policy reference for asylum seekers and refugees is contained in Presidential Regulation no. 125 of 2016 concerning Handling of Refugees from Overseas. The regulation regulates starting from handling when found, supervision to placement in Temporary Shelters provided by the Regional Government.

Then whether the current government policy towards Asylum Seekers and Refugees has weaknesses, according to Pria Wibawa, the current government policy towards Asylum Seekers and Refugees has a weakness, namely the lack of adequate national regulations in handling refugee problems in Indonesia, for example the slow process of placing refugees in third countries (resettlement) and voluntary return (assisted voluntary) and regulations for refugees who violate criminal law in Indonesia.

Weaknesses in government policies in handling refugees are contained in Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Overseas where administrative supervision of refugees in the regulation is carried out by the Immigration Detention Center, but in its implementation there is no section or section that carries out tasks. This is because it is not contained in the Rudenim Organization and Work Procedure. It is necessary to make other regulations such as the revision of the Orta Rudenim which adds the function of monitoring refugees in their area.

Furthermore, according to Pria Wibawa, SH., the question regarding the handling SOPs, according to the mandate in Presidential Regulation Number 125 of 2016 concerning Handling Refugees from Overseas, the findings of refugees include government agencies of the Indonesian National Army, the Indonesian National Police and related Ministries/Agencies. The actions taken are in the form of transferring refugees to rescue ships, bringing them to the port or mainland, identifying refugees who need emergency medical assistance, handing refugees over to the nearest Immigration Detention Centre and conducting data

- a. Collection Even though Indonesia did not ratify the 1951 convention, the granting of refugee status carried out by UNHCR must pay attention to aspects of immigration and the laws and regulations that apply in Indonesia as well. For example, the holder of a residence permit after overstay, then reports to UNHCR and is granted status as asylum seeker or refugee;
- b. Placement, difficulties in monitoring refugees who live independently and are not accommodated by IOM as an international organization that handles refugees because UNHCR does not have accurate data on the whereabouts of refugees.
- c. Social aspects, many social conflicts where refugees interact directly with the community, causing gaps and commotion between local communities and refugees in Temporary Shelters;
- d. In the security aspect, refugees held demonstrations to demand placement in third countries but the demonstrations were to local and central governments, while the authority for placement to third countries was the authority of UNHCR and the Indonesian government could not help;
- e. There are asylum seekers and refugees whose status has been rejected by UNHCR, but has not been submitted in writing to the Immigration Office and their status is Final Rejected. And they hope their case is reopened so they can be placed in a third country and don't want to go back to their country;
- f. The slow process of resettlement and AVR has the potential to become a disturbance and threat to the security, order and sovereignty of Indonesia because there is no certainty of time and place for refugees, so that they cannot plan their lives in the future.

Efforts to overcome these obstacles and obstacles in handling Asylum Seekers and Refugees in Indonesia are:

- a. Efforts to overcome this, UNHCR must be consistent in providing refugee status, it should not only provide status but UNHCR can accommodate their residence as well so that there are no independent refugees, so that all refugees should be in Temporary Shelters. If refugees are allowed to live independently, it will make it difficult for the Indonesian government to collect data and have accurate data because each region has different data regarding the number of refugees in their area;
- b. It is necessary to improve regulations related to the handling of refugees, basically the Indonesian government upholds human rights but the security and sovereignty of the state are also very important;

- c. The social and security aspects of the presence of refugees should be UNHCR's attention as well. Where the refugees are independent and living in temporary shelters in some areas, this will certainly have an impact on the surrounding community. So that it is necessary for the role of UNHCR to immediately determine the placement to a third country for the refugees so that they do not conduct demonstrations against local governments, while this is the responsibility of UNHCR;
- d. The Government of Indonesia through the Ministry of Foreign Affairs can pressure UNHCR to immediately pressure member countries that ratify the 1951 Convention to open doors and accept refugees in Indonesia in accordance with their commitments to ratify the convention;
- e. For asylum seekers and refugees who have Final Rejected, it is hoped that UNHCR can submit them to Immigration to be placed in the Immigration Detention Center while waiting for the deportation/return process to their country of origin.

Closing

Legal arrangements in handling asylum seekers and refugees in Indonesia in the theory of state sovereignty are currently regulated in the Regulation of the Director General of Immigration Number IMI-1489.UM.08.05 dated 17 September 2010 concerning the Handling of Illegal Immigrants, where the regulation is still at the level of the Director General's regulation. The handling of asylum seekers and refugees in Indonesia should be regulated at the level of the law. In addition, because Indonesia is not a member country that ratified the 1951 Refugee Convention and the 1967 Refugee Protocol, so the Immigration Law only accommodates the understanding that violators of an illegal entry permit, then they are an immigration crime. However, in an effort to maintain state sovereignty, it is necessary to issue a law-level arrangement containing the handling of the problem of refugees and asylum seekers in Indonesia, for example the process of placing refugees in third countries (resettlement) and voluntary return (assisted voluntary) and regulations for refugees violating Indonesian criminal law.

REFERENCES

- Fithriatus Shalihah dan Muhammad Nur, *Penanganan Pengungsi di Indonesia*, Yogyakarta: UAD PRESS, 2021.
- Fitria, "Penanganan Pencari Suaka dan Pengungsi di Indonesia: Dilema Peraturan Setengah Hati", dalam Heru Susetyo, *Rohingnya Suara Etnis yang Tidak Boleh Bersuara*, Jakarta: PAHAM dan PIARA, 2013.
- Henry J. Schmandt, *Filsafat Politik: Kajian Historis dari Zaman Yunanu Kuno sampai Zaman Modern*, Cet. II Terj. A. Baidlowi dan Imam Baehaqi, Yogyakarta: Pustaka Pelajar, 2005.
- Iman Santoso, *Perspektif Imigrasi dalam Migrasi Manusia*, Bandung: Pustaka Reka Cipta, 2012.
- Indonesia, *Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian*.
- Piagam PBB.
- M. Galang Asmara dan AD. Basniwati, *Hukum Keimigrasian*, Mataram: Pustaka Bangsa, 2020.
- M. Iman Santoso, *Perspektif Imigrasi Dalam Migrasi Manusia*, Bandung: Pustaka Reka Cipta, 2014.

Moh. Kusnardi dan Bintang R. Saragih, Ilmu Negara, Cet. III, Jakarta: Gaya Media Pratama, 1995.

Rosmawati, “Perlindungan Terhadap Pengungsi/Pencari Suaka di Indonesia (Sebagai Negara Transit) Menurut Konvensi 1951 dan Protokol 1967”, Jurnal Ilmu Hukum Universitas Syiah Kuala, Volume 17, Nomor 3 (2015).

Soehino, Ilmu Negara, Cet. III, Yogyakarta: Liberty, 2000.

Wahyudin Ukum, Deportasi sebagai Instrumen Penegakan Hukum dan Kedaulatan Negara di Bidang Keimigrasian, Jakarta: Adi Kencana Aji, 2004.

Wawancara dengan Pria Wibawa, SH., Direktur Pengawasan dan Penindakan Keimigrasian Direktorat Jenderal Imigrasi, tanggal 11 Mei 2022.

Wawancara dengan Prof. Iman Santoso, SH., MH., MA., selaku guru besar Hukum Keimigrasian (Mantan Dirjen 2001-2005), tanggal 23 April 2022.

Yudha Bhakti Ardhiwisasta, Imunitas Kedaulatan Negara di Forum Pengadilan Asing, Bandung: Alumni, 1999.