LEGAL IMPACTS OF THE EXISTENCE OF REFUGEES AND ASYLUM SEEKERS IN INDONESIA

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ABSTRACT

Indonesia is not a state party to the 1951 Convention relating to the Status of Refugees. There are no rights and obligations attached to Indonesia to deal with the problem of refugees and asylum seekers. Their presence will lead to cultural change in society. The research is done by approach of juridical normative approach. Based on the results of the discussion, and then retrieved the following statement. This paper show that the existence of refugees and asylum seekers in Indonesia brought the bad impact community social conditions for Indonesia, such as a marriage that is not valid, the status of the child is not clear, the son of civil rights lost. In addition, refugees often create chaos in neighborhoods, because of differences of language and culture. (ii) Directorate General of Immigration’s effort to deal with the problem of refugees and asylum seekers existence in Indonesia by issuing Directorate General of Immigration Regulations Number IMI-1489.UM.8.05 of 2010 concerning the Handling of Illegal Immigrants and coordinate with the UNHCR for resettlement of refugees to third countries.

Keywords: refugees, asylum seekers, Indonesia


1. INTRODUCTION

Not all foreigners who enter to Indonesia meet the applicable procedures. Most of them have an economic motive to search for protection and a decent livelihood. Indonesia is one of the countries that would later become a transit country for refugees and asylum seekers, if they can not be accepted by the state its purpose. Indonesia as the destination country for refugees and asylum seekers cannot be unequivocally filter refugees to come and settle in Indonesia for long time. They are here as illegal immigrants because it occupies a region without having the immigration permit and the Attestation Letter from United Nations High Commissioner for
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Refugees (UNHCR). There is no immigration procedures make obscurity status permits the refugees and asylum seekers in Indonesia. This will complicate supervision conducted Directorate General of Immigration (DGI) in overseeing the refugees (Syahirin, 2017).

The problem of refugees in Indonesia is not only the role of International agencies, but rather the DGI. Indonesia as a transit country for refugees must be prepared to receive the immigrants admitted as refugees to shelter or a decent livelihood (Taylor, and Rafferty-Brown, 2010). Article 33 paragraph (1) of 1951 Convention relating to the Status of Refugees explained that a refugee is not permitted under any circumstances to be discharged due to the threat of race, religion, nationality, and to engage in a particular social group or his political opinions (Lisdiyono and Suatmi, 2017). The existence and activities of refugees as individuals or groups have a negative or positive impact, the social conditions of community. The occurrences of an increased number of refugees have affected the culture of the people living around the refugees and asylum seekers shelter. The bad impact that happens is social conflict, the status of children of mixed marriages, as well as the results of the dispute due to the jealousy of a social group to another group. Indonesia is not a state party to the 1951 Convention relating to the Status of Refugees. So, no rights and obligations attached to Indonesia to deal with the problem of refugees and asylum seekers. Their presence will lead to cultural change in society. Thus, there are losses in Indonesia when the problem is not quickly resolved by the government. Based on the above descriptions, then the problems in this paper are (i) how is the social influence of refugees and asylum seekers existence in Indonesia? (ii) What are Directorate General of Immigration’s efforts to deal with the problem of refugees and asylum seekers existence in Indonesia?

2. LITERATURE REVIEW

2.1. Immigration
The term of immigration is derived from Latin ‘migratio’ meaning displacement of people from a country towards other country. Immigration can also be defined as the people travel from one country to another is not just to live, but also for other purposes, such as for sightseeing, study, family visits, which are temporary and others in the development world with advances in the field of transportation. Based on Law of the Republic of Indonesia Number 6 of 2011 concerning Immigration, immigration is the traffic subjects of people that enter or exit the Indonesian Territory and the control in order to safeguard the enforcement if state sovereignty.

2.2. Asylum Seekers
Asylum seekers is someone that leaves the territory of the country to another country with reasons of fear caused by race, religion, nationality, political views, social and military.

2.3. Refugees
A refugee is a person who left their country because of certain humanitarian reasons; get the Attestation Letter from UNHCR to resettlement in third countries.

2.4. The International Organization for Migration (IOM)
IOM developed rapidly by 118 member states where 20 become observers. Indonesia is one of the observers since 1991. This is a very beneficial relationship between IOM with Indonesia in order to improve immigration security.
2.5. The United Nations High Commissioner for Refugees (UNHCR)

UNHCR was established by the General Assembly of United Nations in 1950. Since January 1951, UNHCR is responsible for international protection to refugees and seeking best way for refugee problems. The UNHCR Statue stated that the task of the organization is humanitarian and non-political.

3. RESEARCH METHODS

The formulation of the problem shows that the research is done by approach of juridical normative approach, where the normative jurisdiction is to examine a legal problem and make the settlement through the applicable legislation (Marzuki, 2005). The specification of this study is descriptive analysis to provide an overview of the real facts along with an accurate analysis of laws and regulations that can be used on the material analysis related to visit visa philosophical exemption policy (Ardhiswastra, 2008).

4. RESULT AND DISCUSSION

4.1. The Social Influence of Refugees and Asylum Seekers Existence in Indonesia

Indonesia is part of the country in the world. This is gives rise to consequences that Indonesia should follow the ethics of international laws, if it does not want to be ostracized from the international association. Article 33 paragraph (1) 1951 Convention relating to the Status of Refugees has been giving the definition of refugees and banning forced repatriation (non-refoulement).

"Expel or return (refouler) a refugee in any manner, to the limits of the territory of the state where the soul or freedom are threatened because of race, religion, nationality, membership in a social group or his political opinions."

The exceptions from the non-refoulement principle was elaborated with narrow (Nethery, Rafferty-Brown, and Taylor, 2012). Exceptions should only be applied in certain circumstances such as those in article 33 (2) of the 1951 Convention relating to the Status of Refugees which states that:

"But the benefits of Article 33 (1) should not be given to refugees who have fundamental reasons to be considered as a threat to the security of the State in which he resides, or after it was decided by the Court that he had committed a crime seriously, so harmful to society."

The enforcement non-refoulement principle led to Indonesia should not treat refugees inhuman. Such treatment is not separate from the section restrictions for torture and bad treatment of a variety of appropriate written in Article 3 1984 UN Convention against Torture, Article 7 International Convention 1966 on Civil and Political Rights (ICCPR) and regional human rights law (Syahrin, 2017). Although, Indonesia is not ratified that convention, but Indonesia has a moral responsibility to respect the content of the convention. But, it still gives priority to the Indonesia sovereignty. Each year, the asylum seekers and refugees in Indonesia increase rapidly. Indonesia society is essentially a humanitarian community that tends to be tolerant of each other. There is no distinction to be made in the face of suffering or abuse on a basis of gender, sexual orientation, tribe, caste, religion, or nationality.

Apart from the point of view of international relations, the soul of Indonesia people is reflected in the second statement of Pancasila, namely “equal humanity and civilized”. However, if this problem cannot be solved properly, it can cause a bad influence.

The bad impact, namely:

a. An Invalid Marriage
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An Invalid Marriage is conducted outside the rule of law and marriage law. Based on Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage stated the terms of marriage registration should be done legitimately marriage at marriage registration agencies. A valid marriage according to unenforceable against asylum seekers and refugees, because they did not get the approval of his country's representative in Indonesia.

b. Unauthorized Lineage

The marriage was not legally valid marriage, will produce offspring that are not valid. Children are referred to as children outside of marriage or a child of a mother is not the children of married couples.

c. Loss of Civil Law Rights

It is happen beause an invalid parent marriage that caused their son loss of civil law rights, especially children's inheritance and his father's response to child custody rights.

Example case:

A Sri Lankan citizen named Arunthavanayakam Jayanthan (muslim) coming into Indonesia on May 26, 2006. He was a refugee who had been getting a Attestation Letter from UNHCR on January 29, 2010.

Jeyanthan was married to a girl named Kartini who was born on August 17, 1983 in Timbuseng, South Sulawesi. From that marriage, she has given birth to a child. At this time, Jeyanthan was resettle to Australia and left his wife and children in Indonesia. The village head says that the marriage only authorized by religion, but not according to the law. It is because not issued by the competent institution. Thus, the marriage was not legally in Indonesia. His son's status becomes invalid. The Cubs cannot ask for rights in the civil code to his father because it was born from the marriage invalid. Such cases are a small fraction of the bad impact of the presence of refugees and asylum seekers in Indonesia. Still many are harmed Indonesia society, in particular women and children. Finally, they are harmed and must live alone without the presence of his father. Problem other faced by Indonesia is the extent of attachment to Indonesia in providing assistance in the form of shelter, housing and health facilities, education to the refugees. Indonesia has yet to ratify the 1951 Convention relating to the Status of Refugees and 1967 Protocol till now.

UNHCR it has the mandate of providing international protection to asylum seekers and refugees, as well as to find sustainable solutions for refugees. This effort was accomplished by ensuring the fulfillment of the rights of asylum seekers and refugees, through the provision of humanitarian assistance in certain conditions, and by ensuring that the asylum seekers and refugees are protected from efforts refunds are not volunteering to a country (Pickering, S: 2001). In Indonesia, UNHCR is working closely with the Indonesia government and IOM in carrying out its mandate. It raises the internal conflicts of the Indonesia itself because Indonesia is a member of the United Nations and the other hand Indonesia should pay attention to the interests of the nation and the people.

4.2. Directorate General of Immigration’s Effort to Deal with The Problems of Refugees and Asylum Seekers Existence in Indonesia

Issues pertaining to refugees are included in the immigration issue. However, the immigration legislation does not regulate specifically on the issue of asylum seekers and refugees. As a result, the government's apparatus inconsistency occurred in areas when it must face the refugees and asylum seekers (Santoso, 2014). Look at this problems, this is a great time to harmonize immigration with the national law politics which is closely related to human rights, including local regulations so that the working relationship between government agencies can run well.
Immigration law does not contain provisions specifically applicable (lex specialists) for asylum seekers and refugees. The absence of immigration procedures governs how the efforts for handling them. Director General of Immigration has issued Director General Immigration Letter Number F-IL. 01.10-1297 of 2002 which has been replaced by regulation Directorate General of Immigration Regulations Number IMI-1489.UM.8.05 of 2010 concerning the Handling of Illegal Immigrants.

Article 2
1. Illegal immigrants now known to be in Indonesia, subject of immigration.
2. In the case of illegal immigrants as referred to in paragraph (1) states the desire to seek asylum and/or because certain reasons cannot be imposed deportation, coordinated with international organizations dealing with problems refugees or UNHCR for the determination of its status.

Article 3
1. Illegal immigrants can have not the status of residence permit during stay in Indonesia in terms of:
   a. Have obtained the Attestation Letter or Certificate as asylum seekers.
   b. Status as a person who is under the protection of the UNHCR.
   c. Status as refugees from UNHCR.
2. Against illegal immigrants referred to in subsection (1) may be placed in a place of particular with UNHCR and its existence is reported by UNHCR to the Director General of Immigration:
   a. Can be placed with respect to certain international problems of refugees or UNHCR pending the determination of his status.
   b. Mandatory reported by UNHCR to the Director of Immigration Investigation.
3. The placement of the illegal immigrants referred to in subsection (2):
   a. Obliged to obey the provisions of the regulations and fill in the affidavit of its format as contained in the regulations annex.
   b. Supervision of placement is become the head of immigration office responsibility.

Article 4
1. Illegal immigrants who rejected the seekers application and has closed his case by UNHCR for compulsory reported by UNHCR to the Director General of immigration.
2. Against illegal immigrants as referred to in paragraph (1) imposed by Immigration Act.

Article 5
1. In the case of illegal immigrants obtain the Attestation Letter or Affidavits as asylum seekers or as someone who is under the protection of UNHCR or obtain refugee status from the UNHCR who are not domiciled in Indonesia, subject of immigration.
2. In terms of the illegal immigrants referred to in subsection (1) for some reason cannot be subject of Immigration Act, to be coordinated with international organizations dealing with problems of shelter and/or the UNHCR.

The regulation became the legal basis for the immigration officials at the immigration checkpoint, to give it special treatment against foreigners who define themselves as asylum seekers or refugees (Syahrin: 2016). His action is providing the opportunity to contact UNHCR’s protection officer. Those who are indicated as asylum seekers or refugees will be
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handled directly by UNHCR. The process of handling asylum seekers and refugees started since the entry of the alien into the territory of Indonesia declaring themselves as asylum seekers or refugees. The process of inclusion can be through legitimate ways that have a valid travel document and through the immigration checkpoint or in a way that is not valid. This is done by way of entering the Indonesia territory but do not have official documents. There are even entering the Indonesia territory using the boat (Nethery and Gordyn, 2014; Santiago, 2017; Kurniawan, 2017).

Asylum seekers are usually caught by Indonesia Police and Navy or found by the public, and then handed over to the immigration. However, as not all regions of Indonesia have immigration checkpoint, so the residents who know the arrival of foreigners should be report to the police and directly continue to the IOM or immigration. Furthermore the IOM will send his team to do the interview and examination, and then put them somewhere. For those that are handled directly by immigration, then coordinate with the police and local governments to put them in the Immigration Detention House. If there is an indication that they are asylum seekers or refugees, the stranger was turned over to the IOM and UNHCR to process status.

When the foreigners were illegal immigrants are coming into Indonesia based on economic motives to seek a better life without threats and fear, the immigration will give administrative actions based on Law of the Republic of Indonesia Number 6 of 2011 concerning Immigration. Foreigners who entered legally into the territory of Indonesia through immigration checkpoints, then indicates that the question is an asylum seeker, can directly apply for the status of the asylum seekers to UNHCR Representative Office in Jakarta.

The process of filing a petition for asylum seeker status requires a relatively long and without a clear time limit, raising uncertainty how long they should be in an immigration detention house. The process could reach 1.5 to 5 years. In addition to application letter, the applicant is also required to fill out forms regarding data and identity itself, the country of origin, and the country that became the goal and purpose of the other alternative would have been if the concerned is not acceptable in the country of destination. For those who have applied for protection from UNHCR to be recognized as asylum seekers and refugees would obtain affidavits from UNHCR (Attestation Letter). Further UNHCR will conduct an examination of the petition filed to determine whether foreigners can be granted refugee status. Research was done by conducting interviews and doing research on the State of their home country. During the wait for a decision, those foreigners would remain in the territory of Indonesia. In this case the IOM provides shelter, food and drink as well as the cost of healthcare and other necessities of life (Every and Augoustinos, 2007).

For a foreigner who have received decisions from UNHCR and has been recognized as a refugee status will obtain affidavits as refugees are valid for 6 months and can be extended up to tackle the solution of UNHCR. The solution given by UNHCR to the alien who has been recognized as a refugee is (UNHCR, the State of the World’s Refugees: 1997-1998):

a. Voluntary repatriation;

b. Local integration:

c. Resettlement to third country.

After obtaining refugee status, the refugee cannot be directly assigned to a third country. UNHCR will submit the case to the Convention and the Protocol states parties. States parties have the right to determine whether the refugees were accepted or rejected on its territory. If the destination country refuses, then the petition will be filed in the second alternative country. If there is no country willing to accept refugee, UNHCR would seek other solutions.
Foreigners who are denied refugee status are given the opportunity to appeal within 30 days after receiving the decision (Legomsky, 2003). When in a review of the second coming of foreigners refugee status is rejected remains, then the case will be closed and back and the UNHCR will not seek the help of others. Then, Indonesia may deport and repatriate him back to the country of origin on a basis of entering the territory of Indonesia illegally and do not have a valid document. Practically, there is no fixed period in determining the status or time restrictions for foreigners to live in Indonesia. When should be repatriated or deported in Indonesia immigration law, the difficulty is getting the travel document, the deportation cost, and their country are still in conflict. States parties that are willing to accept refugee to his country would issue a special refugee travel letter which is valid for one trip. The process conducted by UNHCR with the cost fully borne by the UNHCR.

5. CONCLUSIONS

Based on the above description, then his conclusion as follows:

The existence of refugees and asylum seekers in Indonesia brought the bad impact community social conditions for Indonesia, such as a marriage that is not valid, the status of the child is not clear, the son of civil rights lost. In addition, refugees often create chaos in neighborhoods, because of differences of language and culture. Directorate General of Immigration’s effort to deal with the problem of refugees and asylum seekers existence in Indonesia by issuing Directorate General of Immigration Regulations Number IMI-1489.UM.8.05 of 2010 concerning the Handling of Illegal Immigrants and coordinate with the UNHCR for resettlement of refugees to third countries.

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