

# Defining State Sovereignty on Non-Refoulement Principles: Australian, American and Indonesian Practices

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This paper sought to find out about the meaning of state sovereignty. It did so in terms of practices carried out by Australia, America and Indonesia, when faced with prohibitions on refusing refugee arrivals that are based on the principle of non-refoulement. To investigate this, the writer used a type of normative research with a legal and conceptual approach. The results of the study show first, that state sovereignty supports refugee protection. This is illustrated by the attitudes of countries which accept refugee arrivals, and work together with international and regional organizations to help solve the refugee problem. This can be seen in the practice of Indonesia. State sovereignty is defined as support for the protection of citizens and their territory. In this position the sovereignty of the country prioritizes the interests of its citizens and territorial integrity. Two reasons underlie the meaning of sovereignty in this model; first, the reasons for national security; and second, the reasons for public order. This meaning can be seen in the actions taken by Australia and America.

**Key words:** *State sovereignty, non-refoulement principle, refugee protection.*

## Introduction

One of the most important legal aspects of refugee protection listed in the 1951 Geneva Convention is the principle of non-refoulement. This principle requires countries to accept refugees who come to their territory, by not driving them back to places where they feel threatened. This principle was formed due to refugees having often experienced a refusal to enter other countries' territories in the past. It has been regarded as the backbone of refugee

protection. The institutionalization of the principle of non-refoulement in the 1951 Geneva Convention was expected to provide fresh air for settling the refugee problem. However, that hope never materialized. Rejection by some countries, when refugees want to enter their territory, *in casu* (*in casu extremae necessitatis omnia sunt communia* – in cases of extreme necessity, everything is in common) Australia and America, is still a complicated problem that needs to be resolved. This phenomenon still occurs despite the prohibition on refusing refugee arrivals based on the principle of non-refoulement. The main factor behind the attitude of these countries is state sovereignty, in which the state has full authority to regulate everything within its territorial boundaries with national law.

The state is assumed to be the owner of absolute sovereign rights, consisting of jurisdictional power, authority to manage natural resources / resources, including control over border areas. The style of argumentation is in line with contemporary socio-political conceptions as expressed by David Miller, where sovereignty consists of three elements, namely legal, economic, and border sovereignty. In other words, migration flows are part of the country's sovereignty that needs to be regulated. As a result the refugees are left stranded just like that, without any protection or assistance provided by the destination country. The situation is made worse when the country is not a party to the 1951 Geneva Convention, so it has no legal obligation to be bound and apply the principle of non-refoulement (*pacta tertiis nec nocent nec prosunt* – agreements neither harm nor benefit third parties). Nevertheless, there are also countries that are not participants in the Convention who adhere to the principle of non-refoulement, as has happened in Indonesia.

Australia, America and Indonesia have different views in applying the principle of non-refoulement to the handling of refugees who want to come to their territory (Wardhani, 2011). On the one hand, there are countries that require refugees to be physically present in the country if the principle is to apply. On the other, certain countries insist that this principle applies to refugees as soon as they leave their homeland, regardless of whether they have entered new territory (Newmark, 1993). This application is certainly related to how the country interprets the concept of non-refoulement and the reasons underlying the country's policies or attitudes. In connection with that, the problem investigated by the writer is: How is the definition of state sovereignty by Australia, America, and Indonesia, when faced with the provisions for not refusing the arrival of refugees based on the principle of non-refoulement?

### **Research Methodology**

This research is a normative study which looks at the law from the point of view of its norms only (Sonata, 2014), in this case the instruments of International Law governing the principle of non-refoulement, and state sovereignty. The approach that the writer used is a case, and a

conceptual approach that starts from the views and doctrines developed in the science of law (Marzuki, 2007). In addition, the phenomena that occur in the practice of the international community will also be used by the writer, in answering the problems of this research.

## **Literature Study**

### ***Concept of State Sovereignty***

Sovereignty is a concept that is very attached to the state. Jean Bodin said that sovereignty is the main thing of political unity called the state. Without sovereignty there is no state (Mishra, 2008). Sovereignty is a difficult thing to define. Cynthia Weber as quoted by Atul Mishra acknowledged that when confronted with the question of a specific definition of sovereignty, theorists of international relations easily say that the meaning of sovereignty is still fuzzy (Mishra, 2008). This can be understood as such, because there is no standardized understanding mutually agreed upon among experts, even though many experts have written about sovereignty.

F. H Hinsley defines sovereignty as the final and absolute power in the political community. Outside the political community, the final and absolute power does not exist (Morris, 2000). Daniel Philpott briefly said that sovereignty is the highest authority in an area. The sovereignty in question includes three things, namely prescription of legitimacy, rules for acquiring sovereign status, and prerogatives (Mansbach, 2004). Meanwhile, according to Janice E. Thomson, sovereignty as an institution instills in the country what Thomson calls a meta-political authority. This means that with sovereignty, a country is authorized to decide what is political and what is not. With sovereignty, the state has not only the highest authority over political matters; the state has the authority to move activities, problems and practices into economic, social and cultural fields (Thomson, 1995).

In accordance with international conceptions, sovereignty can be viewed in two aspects, internal and external (Held, 2002). Internal sovereignty is related to the state's power to regulate its own country, within the environmental boundaries of its territory. Sovereignty includes the authority and power to establish law, obtain submission, and resolve problems within its jurisdiction. All of this is related to the activities carried out by the executive, legislative, and judicial institutions of a country (Dixon and Robert, 2003). The state must be considered independent in all matters of internal politics, and in principle must be free to determine its own destiny within the framework of the authority granted to it (Held, 2002).

In contrast to internal sovereignty, external sovereignty places more emphasis on the state's ability to enter into relations with other countries. The state has the authority to freely determine its relations with various countries or other groups without the pressure, restraint or

supervision of certain countries (Shaw, 2008). This freedom is also included in determining the direction and political views of the country.

The concept of sovereignty is related to the independence of a country. This also pertains to the assumption that each country has an equal position, when establishing relations with other countries (Jackson, 2003). This understanding has the following implications: (1) States have the same sovereignty; (2) States cannot interfere in other states' problems; (3) States have exclusive jurisdiction over territories; (4) States are assumed to have competence; (5) States may only be liable in the event that the state gives its approval; (6) States almost have full authority to decide to go to war; (7) Positive international law can only bind a state if that state is expressly and voluntarily bound by it.

Based on the foregoing, it can be asked whether the true and exclusive nature of state sovereignty is still maintained in this contemporary era? The answer to that question is still debated among legal experts, especially experts on states and International Law. This is because the sovereignty described by Bodin is seen as *postestas legibus solute* or *legibus solutus*; absolute power, above the law (Delbrueck, 1982). In the realm of International Law there are scholars who assume that state sovereignty is a barrier to the growth of the international community, and to the development of International Law governing the life of the international community (Inayatullah and David, 1995).

### ***Responsibilities of Refugee Protection and International Protection Objectives***

The concept of international protection of international refugees, together with the Law on Human Rights, has helped to spearhead a revolution in the whole International Law regime. One subject of protected international law is individuals who are also recognized as human rights holders (Muktiono, 2015). Despite the fact that individuals are rights holders, their rights are often ignored. Not infrequently the state is an actor who ignores the rights of these individuals (Hutagalung, 2005). Accordingly, the absence of effective national protection - failure or the inability of the home country to fulfil the responsibility to protect human rights - is an issue of international concern and responsibility. To fill this protection vacuum requires the establishment of a special rights regime for refugees.

The responsibility to protect the human rights of refugees is not only on the shoulders of United Nations High Commissioner for Refugees (UNHCR) (Cuny, 1981), but also the state as the main person in charge. The UNHCR is to ensure that the government takes the necessary steps, starting with recognition and ending with the realization of durable solutions. The capacity of the international community to support and assist affected countries, including through the UNHCR, has become an important element in the effectiveness of international protection (Turk, 2002).

The purpose of international protection is to provide help or solutions, where individuals are forced to leave their home countries to seek asylum. This is done because the country ignores human rights, including the rights of individuals to life, freedom and security. Through this protection, every man and woman has the right to freedom as individuals in the society in which they are protected. Denial or a lack of the protection that should be given to individuals, is the essence of being a refugee (Goodwin-gill, 1989). To compensate, the UNHCR was given the main responsibility for providing international protection to refugees (Hocke, 1986).

### ***Standards of Treatment for Refugees***

Refugees were originally a domestic problem in a country, but along with the development of the concept of human rights, the issue of refugees became a global problem (Feller, 2001). In this connection, refugee protection is not only the responsibility of certain countries but every country (Riyanto, 2004).

The 1951 Geneva Convention stipulates the rights, obligations and protection of refugees into three main article asylum principles, which are very closely related to immigration, as follows:

- a. Article 31 which provides that refugees who enter or come directly from an area where their life or freedom is threatened, cannot be punished, provided these refugees report themselves to local agencies and indicate the reasons for their illegal entry or presence in territory of the country.
- b. Article 32 which states that national security and public order can be used as a reason for the state to expel refugees illegally residing in the territory of their country, as long as it has gone through a legal process. Refugees will be allowed to submit evidence to clean themselves and appeal to the competent authorities or persons specifically appointed by the competent authorities.
- c. Article 33, which states that the party to the Convention will not expel or return refugees in any way to the borders where their lives and freedoms are threatened. However, it should be noted that this provision must not be claimed by refugees carelessly. The person concerned may indeed be dangerous to the community or to the security of the country where he resides.

Based on the description above, the 1951 Geneva Convention tries to accommodate the humanitarian aspects of accepting refugees and still prioritizes respect for the sovereignty of the recipient country. In terms of its function, the 1951 Geneva Convention provides guidance on the treatment of refugees where they are located. The intended treatment has been mentioned by Sinha (1971):

- a. National Treatment. Such treatment is for example, giving people the freedom to practice their religion, educate their children, have access to justice and legal assistance, and so on.
- b. The treatment given by the recipient country. This treatment includes the protection of industrial property, inventions, trademarks, trade names, rights to literary works, scientific works, and others.
- c. Most Favoured Treatment. This treatment is related to the right to become involved in non-political organizations, to form organizations such as non-profit or trade organizations.
- d. The same treatment for foreigners in the country. This treatment, for example, refers to ownership of movable and immovable property, the right to benefit, the right to housing and so on.

## Research Results

### *Defining the Principle of Non-Refoulement as Jus Cogens*

In International Law, it has been stated that the principle of non-refoulement is the backbone of international refugee protection. This principle plays the most important role in fulfilling the rights of refugees. It is likened to the entrance ticket of refugees to the territory of a country, and guarantees that they get their rights.

Given the importance of the principle of non-refoulement, it is considered a coercive norm and often referred to as *jus cogens*. *Jus cogens* in International Law is a norm that has been accepted and recognized by the international community (Luhulima, 2018). This norm has binding force and cannot be violated by other legal provisions (Verdoss, 1966). *Jus cogens* can only be changed if there is a norm of new general international law of the same nature. As a result, all international agreements that are in conflict with the *jus cogens* are cancelled (The 1969 Vienna Convention).

It is believed that in International Refugee Law, non-refoulement is a forced norm that must be respected in all circumstances and cannot be changed. Non-refoulement as instituted in the 1951 Geneva Convention seeks to assume the interests of all people, regardless of a country's participation in the 1951 Geneva Convention and / or the 1967 New York Protocol (Justinar, 2011). In this regard, Kadarudin in his thesis said that the principle of non-refoulement has also become a legal obligation by the state to the international community as a whole. Or in other words, the principle of non-refoulement is an *erga omnes* obligation. Violations of these principles are not only of concern to the victim state but also to other countries as part of the international community (Kadarudin, 2012).

Non-refoulement is considered as *jus cogens* because it has fulfilled two criteria required by the 1969 Vienna Convention, specifically Article 53. Article 53 in principle confirms that for an International Law norm to be called a *jus cogens* norm, it must meet two criteria: first, the double consent condition, and second, conditions as norms that cannot be distorted.

According to the terms of double consent, a common standard of international law is said to be *jus cogens* if the norm is accepted and recognized by the international community as a whole. In general, to show a norm recognized or cannot refer to international treaties or International Customary Law that adopts the norm. International agreements that adopt the principle of non-refoulement include Article 3 of the 1933 International Refugee Status Convention; Articles 44 and 45 Geneva Convention IV concerning Protection of Civil Population 1949; Article 33 Geneva Convention 1951; Article 3 paragraph (1) 1967 Territorial Asylum Declaration; and Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or Human Dignity 1984.

Besides being adopted in international treaties, the principle of non-refoulement first became the norm for International Customary Law. Thus, non-refoulement binds all countries in the world, not excepting countries that have not ratified the 1951 Geneva Convention. Buerghenthal and Maier expressed their opinions as follows: “*Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation.*” (Buerghenthal and Harold, 2002)

This principle has emerged and has been practised by countries since World War I. The application of the principle of non-refoulement was further strengthened by the failure of countries during World War II to provide a safe haven for refugees fleeing genocide at the hands of the Nazis. Reflecting on this, countries have begun to encourage and campaign for the protection of refugees who come for protection (Padmanabhan, 2011).

This habit has become part of the practice of countries (state practice) to date. This can be seen in the Preamble Declaration of State Parties to the 1951 Convention and / or its 1967 Protocol Relating to the Status of Refugees, as follows:

[...] 4. *Acknowledging the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of non-refoulement, whose applicability is embedded in customary international law.*

The qualification of the principle of non-refoulement, as a norm that must not be distorted, can be assessed on consideration of the facts listed in the following provisions:

- a. Executive Committee Conclusion No. 25 (XXXIII) dated 20 October 1982 which reaffirms the importance of the basic principles of international protection and in particular the principle of non-refoulement which progressively acquires its character as a coercive legal norm of applicable International Law (General Conclusion on International Protection General Conclusion on International Protection No. 25 (XXXIII), 1982).
- b. Executive Committee Conclusion No. 55 (XL) dated 13 October 1989 which expressed deep concern about the protection of refugees that are seriously threatened in some countries by the expulsion of refugees or other actions that do not recognize the special situation of refugees. Therefore, the Committee calls on all countries to refrain from taking such actions, and specifically from evictions, as this contradicts a fundamental prohibition called non-refoulement (General Conclusion on International Protection General Conclusion on International Protection No. 55 (XL), 1989).
- c. UN General Assembly Resolution 52/132, specifically paragraph thirteen, expressly states that “[...] *principle of non refoulement is not subject to derogation.*” (UN General Assembly Resolution 52/132, 1998)

With the fulfilment of the two requirements above, the principle of non-refoulement can be interpreted, in addition to being both the backbone of international refugee protection, and a *jus cogens* norm.

### ***The Definition of State Sovereignty is Faced with Refugee Protection***

If the two previous requirements have been fulfilled, then automatically the principle of non-refoulement, which is the *jus cogens* norm, cannot be excluded by other general legal norms. Thus the principle of non-refoulement should be obeyed in the practice of the countries of the world, and cannot be ruled out. But in reality, what happens is the opposite of the theory recognized and known in International Law in general, and International Refugee Law in particular, as follows:

#### **a. Practice in Australia**

There are a number of Australian policies and regulations that have attracted the attention of the international community. These policies are also considered detrimental to the position of asylum seekers, especially those categorized as international refugees. The policies are as follows:

##### **1) *Temporary Protection Visa***

Australian immigration is regulated by the Migration Act 1958. It contains everything related to the entry and exit of people as regards Australian territory, and their protection. To be able to enter and get protection from the Australian Government, legal ownership of documents,

in this case the visa, plays a very important role. Without this document, anyone who enters Australia will be considered illegal, and protecting them will become crucial.

Asylum seekers are called illegal because they do not have travel documents such as visas required under the Migration Act 1958 Section 13 and Section 14 (The 1958 Migration Act). The absence of these documents also affects the protection Australia gives them. They will only get a Temporary Protection Visa (TPV). They are unlike asylum seekers who have legal documents, have been released by Immigration upon their arrival in Australia, and will be given permanent protection. Automatically, these latter refugees have rights that are mostly the same as permanent residents.<sup>1</sup>

Australia has always guaranteed refugees protection by giving them Permanent Protection Visas (PPVs). But since the late 1990s, successive Coalition Governments have tried to limit these rights to refugees who come "illegally" by only giving them TPVs. This is a far more limited type of protection, both in duration and the rights it provides.

## **2) *Mandatory Detention***

The next policy owned by Australia is Mandatory Detention. Mandatory detention is defined as a form of detention applied to asylum seekers who lack a visa, ie those who come by boat (The 1958 Migration Act). Asylum seekers must remain in migration custody unless granted a visa (The 1958 Migration Act), or expelled from Australia. There is no time limit to the detention of asylum seekers (McAdam and Chong, 2014). Australia implements this policy because according to it asylum seekers illegally entered its territory and violated the law, namely the 1958 Migration Act.

## **3) *Regional Processing Country***

In 2012 the Migration Legislation Amendment Act 2012 changed the Migration Act 1958. The Australian Government thereby introduced a new concept called the Regional Processing Country (RPC). The 2012 Migration Legislation Act authorizes the Minister of Immigration to appoint a country as an RPC (The 2012 Migration Legislation Amendment). The country transfers and processes refugee claims made by asylum seekers who come by boat to Australia. To realize this policy, Australia made bilateral agreements with Pacific Island countries such as Nauru and Papua New Guinea (McAdam and Chong, 2014).

## **4) *Operation Sovereign Borders***

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<sup>1</sup> Part A Form 866 Application for a Protection Visa, Department of Home Affairs, Australian Government.



The Australian Government also established a policy called Operation Sovereign Borders (OSB). OSB is a border security operation led by the military, and supported and assisted by various federal government agencies. This operation was to combat human smuggling and protect Australia's borders. Under this policy, people traveling illegally to Australia by boat will be intercepted and removed from Australian waters, or sent to other countries for processing outside Australia, in this case Papua New Guinea and Nauru.

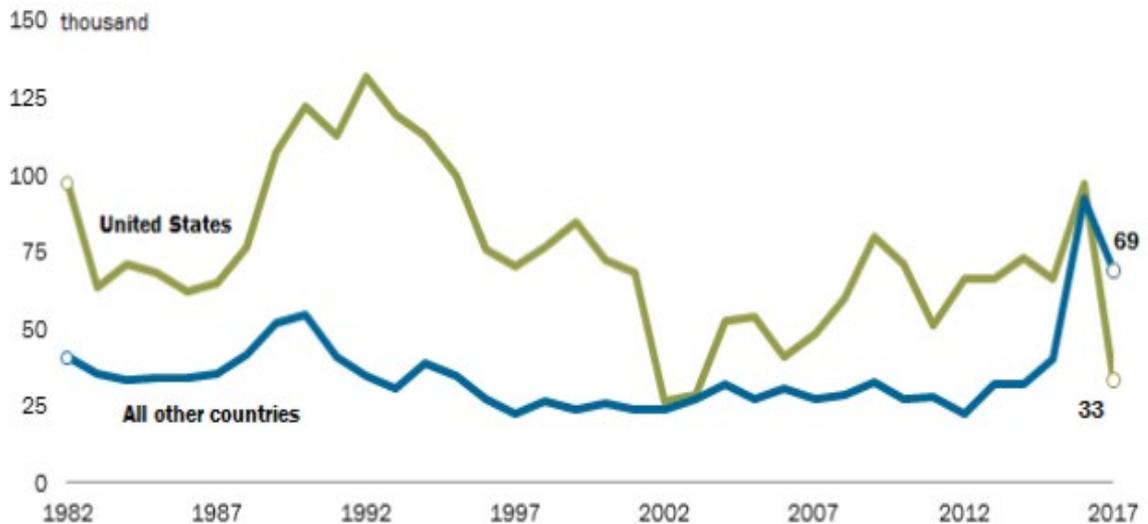
The essential reason why Australia can determine policies and regulations as above for refugees is first, because Australia has sovereignty to regulate the laws and territories of its country; second, Australia has a certain stigma against refugees. The stigma in question is the illegal mention of asylum seekers, including refugees. McAdam and Chong explain that various media and politicians in Australia often say that asylum seekers and refugees are illegal. They are considered a threat to national security; thus, Australia has the right to keep asylum seekers away from its territory (McAdam and Chong, 2014). The means of keeping them away is the establishment of laws and policies for asylum seekers and refugees. Once again, it is because Australia has sovereignty, and wants to protect its national interests.

#### **b. Practice in the United States**

The United States has become a global leader in the resettlement of refugees, and this leadership is urgently needed. The number of refugees around the world fleeing persecution in their home countries, to seek safety abroad, has grown dramatically over the past decade (Krogstad, 2019). But that changed immediately when the Trump administration drastically reduced the maximum number of refugees who could enter American territory (Krogstad, 2019).

The American government has a new security inspection procedure aimed at refugees, before they can be accepted in the country. As a result, this has extended the waiting time, and left many refugees in dangerous situations for a long time. In 2017, for the first time in modern history, America has fewer refugees in the country than any other country in the world (Connor and Jens, 2018).

**Graph 1.** Number of Refugees placed in the United States compared to Refugees in other Countries as a whole <sup>2</sup>



### 1) *Executive Order 13769*

Donald Trump as the President of the United States on January 27, 2017 surprisingly issued an executive order entitled "Protecting the Nation from Foreign Terrorist Entry Into the United States". The order contained a new American immigration policy under the Trump administration (Executive, 2017), which prohibits the entry of citizens from seven Muslim-majority countries, such as Syria, Iran, Iraq, Yemen, Sudan, Somalia and Libya.<sup>3</sup>

Trump's policy is aimed at refugees, legal residents, and individuals who have dual citizenship in addition to America and Canada, including green card holders from the seven countries. Anyone who meets the criteria stated in the executive order will be arrested when they arrive at an American airport. Travellers who already have official visas and tickets to America are also prevented from flying. Even those already in a transit country to America were not permitted to continue their journey (Pujayanti, 2017).

The purpose of the issuance of this executive order is to safeguard America's national security against the entry of terrorists from a number of countries suspected of being the place where a group of them develops. The main way to prevent their entry is to tighten visa issuance. This process plays an important part in detecting individuals with terrorist ties and stopping them from entering America.<sup>4</sup>

<sup>2</sup> Pew Research Center which analyzes UNHCR data.

<sup>3</sup> See Section 5 Executive Order 13769.

<sup>4</sup> See Section 1 Executive Order 13769.

After Trump issued an executive order, various protests arose from inside and outside the country (Thontowi, 2017). The protest was accompanied by legal remedies submitted by the American Islamic Relations Council to the United States District Court, Eastern District of Virginia, which demanded Trump's policies be cancelled (Pujayanti, 2017). In the end a Federal Court judge rejected the executive order issued by Trump. Not accepting the decision, Trump filed an appeal, but unfortunately that appeal was rejected by a federal Court of Appeals. That means a court ultimately overturned the enforcement of executive orders from President Trump (Pujayanti, 2017).

## 2) *Executive Order 13780*

Although two rulings have declared Trump's policy invalid, he still insisted on rejecting the arrival of immigrants from countries mentioned earlier. This was done by Trump to realize his promises during the presidential campaign. Trump promised his supporters a ban on the arrival of immigrants from the Middle East who wanted to enter America, bearing in mind the threat to American domestic security.

*Our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life. If I win the election for President, we are going to Make America Great Again* (Trump, 2015).

On March 6, 2017, Trump re-issued his latest immigration policy, namely Executive Order 13780. This policy is an improvement from a similar policy that had reaped rejection. Trump strictly froze temporary visa spending aimed at several Muslim-majority countries. The difference is that the countries targeted by this policy were narrowed to six; namely Syria, Libya, Yemen, Sudan, Iran and Somalia. Individuals from Iraq were no longer on Trump's blacklist because they were considered capable of providing a list of identity and security information about their citizens (Syahrin, 2019).

Trump's policy is valid for 90 days from March 6, 2017. The aim is to give time for the six countries to improve their databases and inspection systems, to convince the United States Government that their citizens who want to enter the US will not threaten its security, regional peace, and citizens therein. The government will then give them visas. However, there is no guarantee after 90 days of validity; the policy will be revoked, because all of it will depend on the good intentions of the six countries to comply with the requirements of the American government (Syahrin, 2019). Refugees who want to come to the United States are also still prohibited from entering the United States for 120 days (Bruno, 2018). At the same time, Trump also cut the number of refugee admissions originally set by President Obama, from 110,000 to 50,000 people (Amuedo-Dorantes et al., 2018).

### 3) *Practice in Indonesia*

Indonesia has its own characteristics in terms of refugee acceptance. Indonesia is not a participant in the 1951 Geneva Convention but it is opening its gates to refugees who come to its territory, even though Indonesia is only a transit country (Rachman, 2018). Indonesia began to interact with refugees in the 1970s. At that time, Indonesia handled 170,000 refugees by establishing a shelter camp on Galang Island, in the Riau Islands (Yulia, 2016). Since then, the number of refugees in the following years has increased to date. For example in 2014, Indonesia accepted 4,131 refugees (Indonesia Fact Sheet September, 2014). In 2015, that number increased to 4,318 (Indonesia Fact Sheet February, 2015), and 7,827 in 2016 (Indonesia Fact Sheet December, 2016). In 2017 the number of refugees received was 9,795 (Persons of Concern Population Statistic, Indonesia, 2017). That number continued to grow until the last data sampled in 2018, when the refugees received by Indonesia amounted to 10,771 (Persons of Concern Population Statistic, Indonesia, 2018).

The Government of Indonesia also established several laws and regulations governing refugees. They include Presidential Decree No. 38 of 1979 concerning Coordination of the Resolution of the Vietnamese Refugee Issues in Indonesia; Regulation of the Directorate General of Immigration Number IMI-1489.UM.08.05 of 2010 concerning Handling of Illegal Immigrants; Law Number 37 of 1999 concerning Foreign Relations; Law Number 6 of 2011; and Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad.

In addition to making legal provisions about refugees, the government also cooperates with several international organizations in handling refugees in Indonesia. The cooperation between Indonesia and UNHCR is an example. This collaboration has proceeded since 1979, through the Agreement between the Government of the Republic of Indonesia and the United Nations High Commissioner for Refugees regarding the Establishment of the Office of the UNHCR Representative for Indonesia signed on June 15, 1979 (Wagiman, 2012).

The attitude held by Indonesia in accepting and handling refugees shows that Indonesia holds the values of Pancasila, specifically the second principle. This precept implies that humans as civilized and civilized creatures must be fair in character; in relation to themselves, others, society, the nation and the state (Abdulloh and Listyaningsih, 2018). The values contained in these precepts highlight equality, balance of rights and obligations, and mutual respect for fellow human beings (Hadi, 2016). With these values in mind, Indonesian people are wholly (Wibisono, 1992) required to uphold human rights, respect for equal rights and degrees regardless of ethnicity, race, ancestry, social status or religion (Darmodiharjo and Shidarta, 1995).

### **c. Further Explanation**

In principle Australia and America act on their own volition. State sovereignty is more highlighted in the practices described above. When referring to Jean Bodin's view, sovereignty is defined as the highest, absolute, and eternal power (Andrew, 2011). This is certainly contrary to the current belief of experts that state sovereignty is a residue or residual power held within the limits established through International Law (Setiani, 2017). Nevertheless, it cannot be denied on certain matters, that International Law and all instruments incorporated in it do not seem to be able to do much to suppress the exercise of this sovereignty.

Australian and American practice is a clear example that International Law cannot return a violated state - in this case there is a violation of the principle of non-refoulement - to its original state. What is done by America and Australia shows that the authority of the state is higher than the authority that comes from outside. These countries have the power to regulate people, objects, and events as long as they are in the jurisdiction defined by their country's territory. National security and public order are factors behind states settling their sovereignty by refusing refugee arrivals.

The principle of non-refoulement has so far been introduced as a norm which is mandatory; it is to be obeyed. However, when referring to the 1951 Geneva Convention and state practices, the principle is not strictly enforced, so as to prohibit the eviction or return of refugees from the territory of the country from which refugees came. The principle of non-refoulement becomes lenient when faced with state sovereignty, for reasons of national security, as well as public order. This can happen in this manner, because essentially the interpretation of "threats to national security and public order" is the authority of the local state authority as the holder of sovereignty (Kadarudin, 2012). The writer can imagine that different countries will use different standards to determine which threat is crucial to national security and public order. Chaos may be due to the diversity of these benchmarks.

National security and public order will be the main weapons of countries to reject refugees. Indeed, there must first be a legal process carried out to declare that the refugee threatens national security or public order. Then the refugee is transferred to another country. But what the country enacts a legal process that involves the worst conditions? What can international law do with these conditions? Will the country be penalized? So far not a single country has been sanctioned for violating the principle of non-refoulement. The absence of sanctions weakens the mandatory nature of the principle of non-refoulement.

Theodore Okonkwo said that international agreements are difficult to do especially when there are no sanctions or binding targets. International treaties have loopholes that member countries can target to disobey, when these provisions do not benefit them (Okonkwo, 2017).



The absence of sanctions indicates that legal provisions are weak in law enforcement, as stated by Oppenheim on International Law (Gaffar, 2013).

## **Conclusion**

Based on the explanation mentioned above, it can be concluded as follows. State sovereignty, when faced with refugee protection according to the principle of non-refoulement, can be interpreted in two ways. First, state sovereignty can support refugee protection. This is illustrated by the attitudes of countries that accept refugee arrivals, and work together with international and regional organizations to help solve the refugee problem. This can be seen in the practice of Indonesia. Second, state sovereignty can be defined primarily as supporting the protection of citizens and their territories. Taken thus, the sovereignty of the country prioritizes the interests of its citizens and territorial integrity. Usually there are two reasons underlying the meaning of the sovereignty in this model; first, the reasons for national security, and second; the reasons for public order. This meaning can be seen in the actions taken by Australia and America.

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