

CHAPTER ONE

INTRODUCTION

A. Background

Since 1975 Indonesia has received a large number of refugees that make Indonesia as transit country before arriving to their destination country. Indonesia is among the states of asylum seekers and refugee destinations including Malaysia, Thailand, and Australia. Until the end of January 2016, there were 7,616 of asylum seekers officially received at United Nations High Commissioner for Refugee, Jakarta chapter. They were from Afghanistan (50 %), Somalia (10 %) and Myanmar (5 %). While a number of 6,063 refugees enrolled in Jakarta UNHCR came from Afghanistan (49 %), Myanmar (11 %), and Somalia (8 %).¹

The world of International refugee has been coined since the appearance of human conflict and warfare. Generally being asylum seekers or refugee are victims of violence or those who fled of the wars that took place in their homelands. Refugees are classic problem and often springs in the history of civilization. Initially migration in domestic is a domestic problem of a country but along with the number of countries paying attention to this issue then it has become

¹UNHCR, 2016, "UNHCR di Indonesia", taken from <http://www.unhcr.or.id/id/unhcr-ambassador-id> accessed on Friday, October 21st, 2016, 9:53 a.m.

common problem. The report, entitled [*Global Trends*](#), noted that on average there were 24 people forced to flee each minute in 2015, four times more than a decade earlier, when six people fled every 60 seconds.²

Giving protection to asylum seekers and refugees is primarily the responsibility of States. When governments are unwilling or unable to protect their citizens, individuals may suffer serious violations of their rights; they are forced to leave their homes, and often even their families to seek safety in another country. Therefore, protection and assistance to asylum seekers and refugees becomes the responsibility of the international community and no longer the responsibility of the States. International protection should be given to guarantee to all rights for refugees.

An International concern for asylum seekers and refugees began in 1951 at an International Convention on Refugee Status and 1967 additional Protocol. The Convention regarding the Status of Refugees is found in the foundation of International Refugee Law. The Refugee Convention defines the term “refugee” and sets minimum standards for the treatment of persons who are found to qualify for refugee status. The 1951 Convention on the status of refugees regulates in detail their rights.

²UNHCR, 2016, “Global Forced Displacement Hits Record High”, taken from <http://www.unhcr.org/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html> accessed on Friday, October 21st, 2016, 10:09 a.m.

Since Indonesia is not include into the 1951 Convention on the Status of Refugees, asylum seekers and refugees here face difficulties staying in the country. Asylum seekers and refugee are people who need a legal protection, where the protection all forms of subsistence for them. Indonesia is a country that faces the problems of refugees and asylum seekers as it could not give much legal protection.

The lack of National Law concerning asylum seekers and refugees in Indonesia has caused weak coordination between related institutions in its implementation. Problems arise when the Government is not responsive in dealing with refugees or asylum seekers. Since Indonesia has not ratified the 1951 International Convention and the 1967 Protocol on the Status of Refugees, the Government could not immediately provide legal protection for refugee and asylum seekers without the coordination with United Nations High Commissioner for Refugees (UNHCR).³

Asylum seekers or Refugee are not “Illegal Immigrants” because they do not have passport or proper documents. Asylum seekers or Refugee who came in Indonesia, however, are classified into “Illegal immigrants” that make violations of administration based on Law No. 6 of 2011 on Immigrations.⁴ Actually, asylum seekers and refugee can’t be categorized into “illegal immigrants” as they are

³UNHCR, 2016, “Refugee Protection: A Guide to International Refugee Law”, taken from <http://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html> downloaded on Friday, October 21st, 2016, 11:45 a.m.

⁴Law No. 6 of 2011 on Immigration

victim of human rights violations in their country and they were forced to leave their homeland and hope to get a legal protection in other countries. They received no protection but other violations. It means that Indonesia has no mechanism which deals specifically with refugee and asylum seeker.⁵

Being a nonparty to the 1951 Refugee Convention makes Indonesia has no legal obligation to accept asylum seekers and refugees. In reality, however, Indonesia is still receiving asylum seekers and refugees and giving them good treatment. Indonesia has many deficiencies in conducting its responsibility of "International protection" to give the legal protection for asylum seekers and refugee but it is a country which upholds human rights as mentioned in the 1945 Constitutions of Indonesia.

Humanity is the only reason of Indonesia to accept asylum seekers and refugees. Indonesia gives its moral responsibility to the asylum seeker and refugee; humanity response of Indonesia makes Indonesian feel respect and sympathetic to asylum seekers and refugees.

Based on the background above, the author considers the treatment and problem on the issues of asylum seekers and refugees in Indonesia as an interesting issue to be studied. The author would like to find how urgent is the ratification of 1951 Refugee convention for Indonesia in regard to legal protection of asylum

⁵Dita Liliansa and Anbar Jayadi, 2015, "Should Indonesia Accede to the 1951 Refugee Convention and Its 1967 Protocol?", Vol.5 No. 3, 2015, *Indonesia Law Review*, ISSN: 2088-8430, Indonesia, Faculty of Law Universitas Indonesia, p. 330.

seekers and refugees.

B. Research Question

What are the urgencies of Republic Indonesia to ratify 1951 Refugee Convention as a Legal Basis on the protection of Asylum Seekers and Refugees in Indonesia?

C. Research Objective

Among the objectives of the research are:

To analyze the issue of the refugees that was conducted by Indonesian Government. To know whether it is more advantages or disadvantages for Indonesia to Ratify 1951 Refugee Convention. To learn more about the reasons why Indonesia Government does not ratify the 1951 Refugee Convention.

D. The Advantages of Research

There are some advantages of research, namely:

1. Theoretical Aspect

The research gives benefits to know deeply about the 1951 Refugee Convention and the reasons why Indonesia have to ratify it and also how the implementation of the Convention toward Indonesia.

2. Practical Aspect

The research provides better understanding about the refugee's law which concern on the implementation of 1951 Convention Relating to the legal protection of Refuges and Asylum seekers in Indonesia. In addition, the

research offers more understanding on the reasons why Indonesia need to ratify the 1951 Convention.

E. Overview of the Chapter

The research consists of five chapters, namely Chapter I: Introduction. Chapter II: Literature Review. Chapter III: Research Methods. Chapter IV: Result and Discussion, and lastly, Chapter V: Conclusion and Recommendation.

The aims of the research are to learn more about the reasons why does Indonesia needs to ratify the 1951 Convention on the legal protection of refugees and asylum seekers and the issues and challenges in the implementation of the provisions within the Convention besides, the research will elaborate the topic systematically by dividing it into five chapters

The first one is Chapter I, consisting of Introduction, it elaborates general matter, such as Background, Research Question, Research Objective, Research Benefits, and Overview of The Chapter. The background contains current condition of refugees in Indonesia and how the Indonesia Governments respons towards the refuges and asylum seekers in Indonesia. The problems of the topic are the reasons why Indonesia needs to ratify the 1951 Convention Relating to the Status of Refugees.

The second Chapter II is Literature Review. The chapter discusses related library reviews regarding Asylum Seekers, Refuge and the 1951 Refugee Convention. Moreover, it will elaborate more about the International Refugees Law and National Law relating to Refugee.

Chapter III, elaborates research method which used in the research. The discussion is started from type of research, legal materials, method of collecting data, and method of data analysis. Type of the research is normative legal research. The research applies statute and case approaches. The data were gathered from some literatures consisted of primary legal material, secondary legal material, and tertiary legal material. Furthermore, the data were taken from library research and analyzed systematically by using qualitative and descriptive method.

The fourth is Chapter IV, Research and Analysis. The chapter elaborates and discusses the findings. The focus of the research is on the reasons why Indonesia needs to ratify the 1951 Convention as the legal basic to protect refugee and asylum seekers in Indonesia, the barriers of the ratification, and the challenges within the implementation of the Convention in Indonesia. The chapter also explains more about advantages and disadvantages of ratifying the Convention for Indonesia.

The last Chapter V is Closing. The chapter provides conclusions and recommendation from the author regarding the topic.