

## HANDLING POLICIES OF ASYLUM SEEKERS IN INDONESIA

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### ABSTRACT

*Indonesia as a country with strategic geography cannot avoid from the problems of asylum seekers entering Indonesia. According to UNHCR note that number of asylum seekers and refugees in Indonesia by October approximately about 13.405 people. Those all asylum seekers were evacuated spreading in several regions. Generally, asylum seekers recognized as a people who left their origin countries because of terrifying with threats against their safety so they looking for international asylum or protection. The 1951 Convention Relating to the Status of Refugees is the main international instrument on handling asylum seeker but Indonesia has not ratified yet this Convention, and Indonesia does not have an umbrella act that specifically regulates the asylum seekers. The main problem of this research is how was the policy of asylum seekers in Indonesia. Method used for this research is Content Analysis of juridical sociology with Interactive Analysis Models with constructivism and research and development (R&D) paradigms. Indonesia still not have a national systems for determine of asylum seekers status. The protection provided by Indonesian Government just limited to temporary protection as a transit country, by providing facilities and infrastructures such as living place for the asylum seekers to avoid the ungood and improper treatment from the local community which refuse their existence. Based on that conditions, as a mandate in UNHCR Statue of 1950, that non-member State of this convention whether 1951 Convention or Additional Protocol of 1967 should cooperate with UNHCR on handling of asylum seeker and refugees, and Indonesia have been working together with UNHCR to run the process for determine the refugee status. It is listed in Notification Letter of Directorate General of Immigration No. F-IL.01.10-129 of 2002 concerning to Handling of foreigners that recognized as asylum seekers or refugees, that "if among the foreigners mentioned believed that there is an indication as asylum seekers, to contact international organization UNHCR to determine their status." In the Regulation of Directorate General of Immigration No. IMI-1489.UM.08.05 of 2010 concerning to Handling of Illegal Immigrants, also stated that "in terms of illegal immigrations expressed a desire to seek asylum/or for some reasons cannot be charged deportation, and must be coordinated to international organization which handling the refugee problems and/or UNHCR to determine their status".*

Keyword : asylum seekers, refugees, handling

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### A. INTRODUCTION

#### 1. Background

Phenomenon of the asylum seekers is actually no longer a new issue for discussion. The right to seek protection is known as the Right of Asylum, recognized by the United Nations (UN) and it has become customary international law. In the practice of international relations, customary international law has been crystallized as a form of customs which can be viewed from the setting of relations between countries (diplomatic relations between countries) and can be perceived in the case relating to the privileges and diplomatic immunities generally accepted as a habit in practice with a purpose in order to give protection to diplomats over the legal rules (rules for protecting the diplomats) (Widyawati, 2014: 21).

Developments in the world of technology, transportation, and communication in the present day have resulted in a wave of fairly large displacement, both the movement of people, goods, and information. Currently, there are many countries that take advantage of technological developments to make weapons of mass destruction, either by military forces as well as certain radical groups. One of the results is the severe violence that leads people to forcefully leave their country and choose to seek refuge to another country as they feel his life threatened in their own country. The right to seek this protection is known as the Right of Asylum, recognized by the United Nations (UN) and it has become customary international law. Asylum seekers who leave their original homeland or country are caused by various factors, of which these factors are precarious things to endanger their lives when they remain in their home country. They will get and receive no protection from their own country. Even their government is precisely the one who poses a threat to asylum seekers for human rights violations such as torture or oppression against them due to differences of race, religion, race, ethnicity, nationality or membership.

Indonesia also is not spared from this problem, since the late of 1970s, following the conflict in Indochina region, Indonesia has become a transit country for asylum seekers and refugees from the region. In the mid of 2015, Indonesia even dealt with an influx of thousands of irregular migrants who arrived by boat through the Andaman Sea and landed in Aceh and Medan. Currently the number of asylum seekers and refugees residing in Indonesia territory are reaching more than 13,000 people (Source: unhr.org). The asylum seekers are then placed in a temporary shelter or immigration detention center (Rudenim) in various regions in Indonesia. However, asylum seekers are often lumped together with foreigners. As a group of migrants, asylum seekers sometimes become the target of racial hatred, political and economic debate in the country of asylum. Thus, it allows the asylum-seekers to be deported or repatriated to their home country or move to another country. Indonesia as a country that upholds human rights shall be able to separate groups of migrants as well as seek the best way to treat them appropriately in

a fair manner and procedure towards asylum-seekers. None shall be arbitrarily deprived of his right to life, in order to seek protection/asylum from another country, including human rights groups that shall be universally recognized. From description of the background above, the problem is as follows: How is policy on asylum seekers in Indonesia?

## B. LITERATURE REVIEW

### 1. Terminology of Asylum Seekers

In *Black's Law Dictionary*, definition of *asylum* is mentioned as follows:

*Asylum is a sanctuary, or place of refuge and protection, where criminals and debtors found shelter, and from which they could not be taken without sacrilege. Shelter; refuge; protection from the hand of justice. The word includes not only place, but also shelter, security, protection. While a foreign country has the right to offer an asylum to fugitives from other countries, there is no corresponding right on the part of the alien to claim asylum. This right of asylum has been voluntarily limited by most countries by treaties providing for the extradition.*

In the draft of Presidential Regulation of the Republic of Indonesian on the Handling of Foreigners Asylum Seekers and Refugees, stated that asylum seekers are foreigners who declare themselves as asylum seekers or holding Asylum Seeker cards issued by the UNHCR in Indonesia.

Concept of *Asylum* in the international law includes two elements: (Starke, 1989: 475)

- a. Shelter, which is more than purely temporary evacuation, and
- b. A level of active protection of the ruler of an asylum.

Asylum can be a territorial and extra-territorial asylum or diplomatic asylum. Territorial asylum is an asylum granted by a country in its territory, while the diplomatic asylum is an asylum granted to and in connection with the embassy, consular buildings, the international headquarters, warships, to asylum seekers from their rulers. Given these differences, the general principle is that each state has the full right to grant territorial asylum unless it has recognized some special restrictions in relation to the granting of asylum, while the right to grant diplomatic asylum is an exception and must be determined in each case. Asylum seekers are often same interpreted as refugees, but they have blurred the difference though. It is because of these fundamentals and principles of the treatment refugees will accept, the 1951 Convention relating to the Status of Refugees also included basic principles for asylum seekers. Eny Haryono argued about it as follows (Wagiman, 2012: 95):

People often misinterpreted 1951 Convention as the Convention on Refugees. Whereas in the Convention there was no single word of asylum. Except in its preambel. This occurred because it was admittedly not the Convention on asylum. This was a convention that translated Universal Declaration of Human Rights of 1948 into a juridical instrument that was specifically applied to refugees. Conventions on asylum are ever attempted to create but failed.

The term of refugee according to *the Refugee Convention of 1951* (the 1951 Convention) Part A of Article 2 is:

*Those who have a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*

United Nation High Commissioner for Refugee (UNHCR) as an international organization mandated to address issues of refugee and asylum proposed the following definition:

*An asylum-seeker is an individual who has sought international protection and whose claim for refugee status has not yet been determined. As part of internationally recognized obligations to protect refugees on their territories, countries are responsible for determining whether an asylumseeker is a refugee or not. This responsibility is derived from the 1951 Convention relating to the Status of Refugees and relevant regional instruments, and is often incorporated into national legislation (UNHCR, 2014: 5)*

Refugees, have a meaning that everyone with a cause for earnest concern to deal with charges, for reasons of race, religion, nationality, membership of a particular social group or political opinion. The term of refugee applies to all victims of external aggression, occupation, foreign domination or chaotic events of public order in all or some parts of the country of origin or nationality of a person, leading the concerned is forced to leave the previous residence, to seek an asylum abroad out of his origin or set off to areas of his non-original nationality (Nasution, 2006: 104). The difference between asylum seekers to refugee status is regarding the provision. Refugee status can be obtained based on objective measures, so as it is evident that asylum seekers are entitled to obtain the status from other countries. As the meaning of Article 1 of the 1951 Convention on the Status of Refugees and the 1967 Protocol on *Territorial Asylum*, that prior to obtaining refugee status, a person shall meet the following requirements:

- a. The person is outside the country as the identity of his nationality or outside the country he used to reside if he holds no citizenship status.
- b. Their concerns over an emergence of factors that justify them to endure persecution due to his race, religion, nationality or affiliation to a particular social group, or because of his political views.
- c. Refugee is not able or refuses to stay in the protection of his country of origin or the country he used to reside or if he holds no citizenship status of his country of origin or the country he used to reside.

## 2. The principle of Non-Refoulement (Refoulement Prohibition)

The principle of non-refoulement is a basic principle and concept in the system of international protection for refugees and asylum seekers. The principle in question is principle of law, which is a general and abstract way of thinking. The principle of law is a background of concrete legal regulations contained in or behind a rule of law. The principle is identical to the fundamental. In terms of international law it is known term of *general principle of law* which was translated to be principles of the common law or fundamentals of the common law (Parthiana, 1987: 25-27). The *non-refoulement* principle was contained in

Article 33 of the 1951 Convention on the Status of Refugees: Article 33 Prohibition of Expulsion or Return (non-refoulement):

1. The Contracting States shall not expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his (or her) life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. However, the advantage of this provision shall not be claimed by a refugee where there are viable grounds to consider as a danger to the national security in which he lived or, having been convicted by a penalty for a severe criminal offense, he would be danger for the people of other countries.

The principle of non-refoulement is a key principle in the asylum. This principle is a reflection of commitment of the international community to ensure the fulfillment of human rights, including the right to life, right to free from torture or malicious, inhuman treatments and degrading human dignity, and the right of individuals to freedom and secured. Such rights and other rights can not be gained if a refugee is returned to a state of torture or precarious situation (UNHCR, 2013). In the *Expert Roundtable* organized by UNHCR in cooperation with the *Lauterpacht Research Centre for International Law, University of Cambridge*, England on July 9 to 10, 2001, had agreed to several conclusions relevant to the principle of non-refoulement (Riyanto, 2010) The conclusion was:

- a. The principle of *non-refoulement* is a principle admitted as customary international law.
- b. International refugee law is a dynamic instrument of law supported by the Geneva Conventions of 1951 and New York Protocol of 1967, and also development of the field of other relevant international law, such as international human rights and humanitarian law.
- c. Without discriminating its formal recognition, Article 33 of the 1951 Convention shall be applied to refugees and asylum seekers. In the case of asylum seekers, this provision (*non-refoulement*) is applied until the status is determined based on fair procedures.
- d. The principle of *non-refoulement* embodied in Article 33 of the 1951 Convention included any state action that may result in the return of asylum-seekers or refugees to the frontiers of territories where his life and freedom would be threatened, or in areas where they will deal with the risk of persecution, including interception, rejection at the border, or indirect refoulement.
- e. The principle of non-refoulement is applied in situations of mass influx. It takes creative measures to address the special problems arising in situations of mass influx.
- f. The State's right to take some measures that can lead to *refoulement* act determined by the principle of law concerning the state responsibility. International responsibility to act in accordance with international obligations is a consideration to prioritize.
- g. The principle of human rights protection can be overridden by considerations of public interest and national security as stipulated in Article 33 paragraph (2) of the Geneva Conventions 1951. However, such exceptions shall be interpreted and performed strictly. Exceptions are made by considering opportunity for rescue and a measure of last resort by the state. In cases relating to acts of torture, *refoulement* act shall not be taken without exception.

## C. DISCUSSION

### Policy on Handling Asylum Seekers in Indonesia

Indonesia has a strategic location as a transit country for asylum seekers who will leave for the third country such as Australia or New Zealand. In fact, there are indications that it will lead into a promising destination country. Based on data from UNHCR, asylum seekers to Indonesia mostly come from the countries in conflict such as Afghanistan, Bangladesh, Myanmar, Iraq, Iran, Syria, and Somalia. As it happened in May 2015 when the rescue team located the asylum seekers stranded in Aceh (Kompas, 11/5/2015). They came from Myanmar known as the Rohingya ethnicity. They sailed on a boat to seek refuge or asylum in other countries. Rohingya is one of the Muslims ethnic in Myanmar and the minorities excluded in the list of 137 ethnic groups recognized by the Government of Myanmar. They claimed to have the inhumane treatment in their own country. They endured torment from Myanmar's military junta even some have turned into victims of human trafficking (Yuliantiningsih, 2013: 3). Therefore, because of the fear of persecution they fled the country and sought asylum to another country until landing in Indonesia.

The driven factors of the influx of asylum seekers is due to conflict in their home countries because of differences in ethnicity, politics, and religion, causing a sense of insecurity in the country of origin as well as an influence of fellow citizens who are already located in the destination country. While the attracting factor of Indonesia itself to asylum seekers, among others:

- a. The geographical location of Indonesia which is close to the countries of destination and transit.
- b. There is syndicate (smuggler) and local police officers who helped smuggling.
- c. Indonesia community is famously hospitable and have their religious similarity.
- d. Generally weaker economic conditions in coastal areas.
- e. The number of passable entrances for immigrants to enter the territory of Indonesia.

If you see a map of the driveway of the asylum seekers, asylum seekers evidently entering Indonesia will land on the island of Sumatra and then proceed to Christmas Island, located between Indonesia and Australia, or through local Kupang and landed back in Australia.

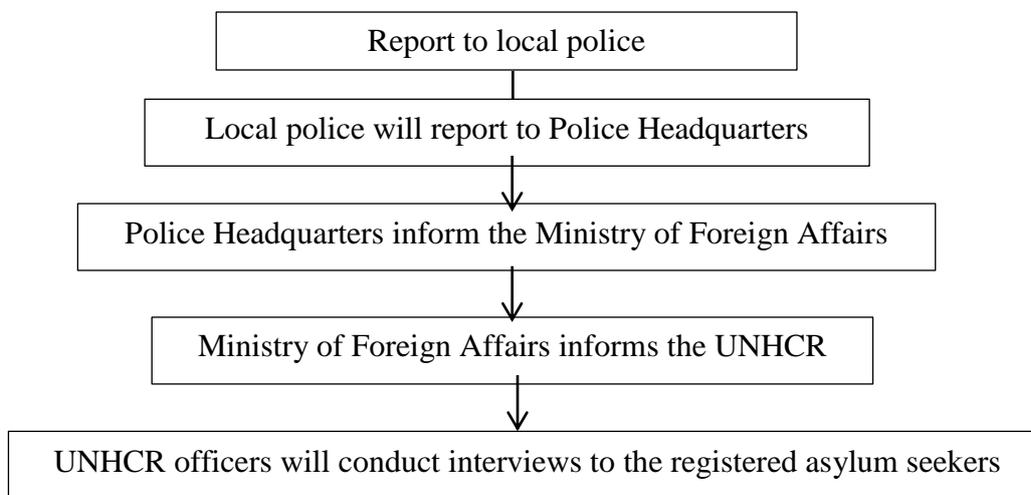
Although having not yet become a party to the 1951 Convention and the 1967 Additional Protocols to the Status of Refugees, Indonesia still carry out its responsibility to protect foreigners in the territory. According to Nur Ibrahim, the grounds the Government of Indonesia is willing to accept and provide temporary protection to asylum seekers is based on humanity and follow customary international law (Interview on February 5, 2016 at the Office of the Directorate of Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs). In Article 38 paragraph (1) Sub. B Statute of the International Court of Justice also stated that “International custom as evidence of a general practice accepted as Law”. In addition, Indonesia has also ratified several instruments of international human rights such as the *Universal Declaration of Human Rights* or the *International Covenant on Civil and Political Rights* which there are provisions related to the protection of fundamental human rights of asylum seekers.

In dealing with asylum seekers, there are three solutions to take by the Indonesian government, (Result of Interview on February 5, 2016 at the Office of the Directorate, Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs). The solution is as follows:

- a. Local integration  
Accepting asylum seekers who have received refugee status to remain in Indonesia, which means they will be naturalized and gain status as a citizen.
- b. Placement in the third country (resettlement)  
Resettlement is the placement of asylum seekers who have received refugee status from countries where they had sought temporary refuge in the third country that agrees to decide and resettle them. They will usually be resettled in participating countries of Refugee Convention of 1951 or the countries who are willing to accept them.
- c. Returns to his home country (Voluntary Repatriation)  
It is a voluntary Repatriation of asylum seekers to their country of origin. It would be challenging to do if asylum seekers refuse to return voluntarily, save those who are actually illegal immigrants or rejected person, which is asylum seekers whose refugee status had been rejected (case closed) and processed according to the immigration provisions.

Of the three solutions above, the second option is the most sought choice by the Indonesian government to protect the incoming asylum seekers (Dit. Human Rights and Humanitarian Ministry of Foreign Affairs). While the first option is a policy that has not been applied in Indonesia. The naturalized asylum seekers will obtain their rights as citizen rights acquired, such as health services, education, housing, and employment. Having considered capabilities and conditions of the country in giving such rights to the naturalized asylum seekers can lead to social jealousy for the Indonesian people and may result in conflict, besides that Indonesia is a non-party to the 1951 Convention and the 1967 Protocol on the Status of Refugees, that it has no obligation to provide these rights. Therefore, it is carried out the removal or placement to the third country (resettlement) to asylum seekers, state parties to the 1951 Convention and the Additional Protocol of 1967 on the Status of Refugees, which will accept and resettle them, that their rights to obtain international protection are met as set forth in the provisions of the international law. Indonesia's commitment in the safeguard measures to asylum seekers in accordance with the provisions of international law that had been carried out and have received appreciation from various parties such as by providing humanitarian aid to accept asylum seekers and provide refuge for them or temporary shelters and rescue operation was also carried out to identify the landing point as frequent location of the entrance of asylum seekers or, if then discovered asylum seekers who need help. Such efforts can be implemented with cooperation and coordination among relevant ministries or agencies.

If there are asylum seekers who enter the territory of Indonesia, the mechanism which is generally carried out as follows =



The first thing to carry out after the discovery of asylum-seekers by local police is reporting to the Police Headquarters, asylum seekers will be submitted in advance to the local immigration authorities for data collection and then report to the Ministry of

Foreign Affairs. Then the Ministry of Foreign Affairs will inform the representatives of UNHCR and in coordination with the countries of origin of asylum seekers to ascertain whether asylum seekers are actually citizens and the grounds of asylum seekers seeking asylum in Indonesia. Afterwards, the asylum seekers will be reported to the UNHCR representative to go through the process of Refugees Status Determination.

Indonesia does not have a national system of refugee status determination. The protection provided by the Indonesian Government was limited to temporary protection as a transit country, by providing facilities or infrastructure as a place for living for asylum seekers that they will endure no severe treatment from local people who reject their arrival. Therefore, as the mandate specified in the Statute of UNHCR in 1950, that the country as non-party to the 1951 Convention and the Additional Protocol in 1967 should cooperate with the UNHCR in dealing with asylum seekers and refugees, then Indonesia has been working closely with UNHCR to carry out the process of determining refugee status.

It was stated in the Circular Letter of the Director General of Immigration No. F-IL.01.10-129 of 2002 concerning the Treatment to Foreigners who stated themselves as asylum seekers or refugees that "While among strangers is believed that there is an indication as asylum seekers, they shall contact the UNHCR international organization for the status determination ". In the Regulation of Director General of Immigration No. IMI-1489.UM.08.05 of 2010 on Handling Illegal Immigrants, also stated that "In the case of illegal immigrants expressed need to seek asylum and/or for some grounds cannot be subject to deportation, it shall coordinate with international organizations that deal with concerns of refugees and/or UNHCR for the status determination." UNHCR or the United Nations High Commissioner on Refugees is an organization or institution under the support of UN especially concerns of the refugee problems. UNHCR has procedures for granting assistance related to the fulfillment of Human Rights (HAM) such as organizing the physical security for refugees. As in the previous explanation that prior to becoming refugees, their status are asylum seekers, so as to obtain refugee status, asylum seekers must follow the procedures specified by the UNHCR. The existence of UNHCR in Indonesia was passed through an agreement between the Indonesian government and the UNHCR on June 15, 1979. UNHCR had built an office in Jakarta and placed representatives in Medan, Tanjung Pinang, Surabaya, Makassar, Kupang, and Pontianak (Dit. Human Rights and Humanitarian Affairs, 2015: 62). UNHCR has a role as a means or neutral actor for Indonesia to resolve the problem of asylum seekers directly or indirectly through several steps, stages, or process in monitoring program for addressing concerns of asylum seekers. UNHCR protection mandate begins when the asylum seekers were not returned to the country of origin by Indonesia. In other words, UNHCR will ensure the principle of *non-refoulement* to be adhered by Indonesia, apart from Indonesia is a party or non-party to the 1951 Convention.

Refugees status determination procedures by the UNHCR in Indonesia are as follows:

- a. Asylum seekers who would apply for refugee status in UNHCR must fill out a form of Refugees Status Determination (RSD) provided by the UNHCR officer and answer the questions in the form with the most accurate information. This will affect the decision issued by the UNHCR. If the asylum seekers cannot read or write they will be accompanied by UNHCR officer to fill out the form. Once registered, asylum seekers would have to wait for the interview. The waiting period depends on numbers of registered asylum seekers.
- b. The interviews are conducted at the UNHCR office and carried out separately. If necessary, UNHCR will provide an interpreter in the interview process if asylum seekers does not speak English. The interviewed asylum seekers also may submit a request to the female or male officer to interview. Interview related to grounds the asylum seekers left their home country. Asylum seekers have to answer these questions with the most accurate information.
- c. Subsequent to the completed interview process, UNHCR will examine the statement of applicants and take into consideration information from the country of origin of asylum seekers in the decision making. Decisions regarding refugee status will be communicated to the applicant immediately.
- d. Apabila permohonan status pengungsi diterima, maka pencari suaka akan mendapatkan kartu identitas sebagai pengungsi dan menunggu solusi jangka panjang dari UNHCR.
- e. When a request for refugee status is accepted, the asylum seekers will receive a refugee identity card and wait for the long-term solution from the UNHCR.
- f. e. If the request for refugee status is rejected, UNHCR officials will explain the grounds for disapproval. Asylum seekers whose application is rejected may appeal within 30 days after notification of the first decision and will undergo a second interview process with a different officer. The second decision received by the asylum seeker is final one and the case of asylum seekers will be closed (Case Closed). The result of the UNHCR decisions on the refugees status determination would then be submitted to the Immigration Office.

As stated in the 1951 Convention relating to the Status of Refugees, criteria for determining refugee status by the UNHCR are as follows:

1. Having an underlying fear when they remain in their home country.
2. They will endure persecution in their home country.
3. Grounds on difference of race, religion, nationality, membership of a particular social group, or political opinion.
4. Being outside the country of his nationality origin.
5. Unable or unwilling to obtain protection of the country of origin.

Those criteria become one of the basic consideration of whether an asylum seeker is entitled to receive international protection and refugee status and then placed into the third country.

During the waiting period, which is a period after the asylum seeker is set qualified as refugees to resettle into the third country, they will be placed in a temporary shelter, immigration detention center (Rudenim) or the Community House in some regions or

provinces in Indonesia, as mentioned in the Circular Letter of the Director General of Immigration No. IMI.5-GR.02.07.0518 of 2015 to place any legal immigrants who already hold a refugee certificate from the UNHCR Indonesia at the Community House.

Immigration Detention Center (Rudenim) is a technical implementation unit which performs the function of immigration as temporary shelters for foreigners who are subject to immigration administrative measures. Rudenim was built due to the increased traffic flow of foreigners into the territory of Indonesia. Currently, Rudenim also functions as a place of living for asylum seekers who are in the process of refugee status determination and resettlement process.

The placement of asylum seekers in Rudenim considered as a form of protection provided by the Government of Indonesia to asylum seekers by providing temporary shelter during the process of refugee status determination and resettlement. In Article 3, paragraph (2) of the Regulation of General of Immigration No. IMI-1489.UM.08.05 of 2010 on the Handling of Illegal Immigrants also noted that "illegal immigrants as referred to in paragraph (1), which are asylum seekers and refugees, can be located in a specific place with facilities of international organizations UNHCR and its existence shall be reported to the Director General of Immigration." Placement in Rudenim is also considered to avoid problems that may arise from the local community who reject their existence.

The reaction in some areas related to the placement, among others (Source: Kemenkumham Data RI of 2015):

1. The Regional Government's position that denies the existence of immigrants and ask for clearing off their region from asylum seekers and refugees.
2. The protest of students and local activists regarding rejection of the presence of immigrants and human smuggling.
3. Negative response of the local communities around the shelter by grounds that their activities disrupt the public order, diversity of religious ideology, and violation of local customs.

Prior to the terms of Rudenim, in 1992, under Law No. 9 of 1992 on Immigration, Immigration Quarantine (Kanim) is a temporary shelter for foreigners who apply for immigration measures. Subsequently in March 2004, based on the Ministerial Regulation of Justice and Human Rights No. M.01.PR.07.04 of 2004 on Organization and Work Procedures of immigration detention center, since then the term of Kanim was changed to Rudenim. In Indonesia there are 13 (thirteen) Rudenim managed by the Directorate General of Immigration, like in the area of Tanjung Pinang, Balikpapan, Denpasar, Jakarta, Kupang, Makassar, Manado, Medan, Pekanbaru, Pontianak, Semarang, Surabaya, and Jayapura.

In certain circumstances where the entire Rudenim have already been overcapacity, the recorded asylum seekers can be directly sent to Temporary Shelter while waiting for placement process in Rudenim. Main priority of the placement on Temporary Shelter is for those with special needs, including those who are unhealthy and require medical treatment, women in labor, and children.

Location of immigration detention centers are situated throughout Indonesia. If you notice, it can be said that some Rudenim have already been overcapacity or excess of capacity (Source: Kemenkumham RI). For instance, Rudenim Semarang with a capacity of 60 people yet inhabited by 82 people and Rudenim Surabaya with a capacity of 80 people yet inhabited by 125 people. With the overcapacity Rudenim, it definitely can cause discomfort for asylum seekers and could lead to conflict between asylum seekers, especially asylum seekers who come from different countries. Therefore, the Government of Indonesia continues to cooperate with international organizations such as the UNHCR and other countries to accelerate the process of removing or resettlement.

For the period of living in temporary shelters or Rudenim and Community House in Indonesia, asylum seekers will receive a grant of ± Rp 1.000.000, - (one million rupiah) per individual to meet their needs, the funds come from IOM and UNHCR in cooperation with country of resettlement destination. In this case the Indonesian government does not participate in providing these funds, as Indonesia is non-party to the 1951 Convention and the Additional Protocol in 1967 that it has no obligation for the fund. Indonesia only provides a temporary residence while they are in Indonesia and help ensure that they suffer no discrimination, in coordination with the countries of origin and destination countries to help speed up the resettlement process.

During their stay in Indonesia, asylum seekers have to respect and comply with regulations or local customs. While asylum seekers acquire international protection, however, they have no freedom from liability. If they commit a criminal offense or violate local rules or customs, then they will be punished in accordance with national law or customary law in Indonesia. Having accepted refugee status request of the asylum seekers, the UNHCR will be responsible for finding a permanent solution (durable solution) with seeking placement in the third country (resettlement) which is a party to the 1951 Convention (Dit. Human Rights & Humanitarian Affairs). Placement or resettlement to the third country are intended for asylum seekers who have received refugee status to leave the country of asylum where they have settled temporarily and legally move to another country. In Indonesia, UNHCR has helped the resettlement process on a case-by-case basis, in seeking the final country of destination where they can live and obtain asylum permanently. Space or place for resettlement is very limited and the amount that can be accepted each year is determined by the respective host countries. However, asylum seekers who have received refugee status are not directly sent to the third country. They will go through the interview process in advance by the representative of host country and UNHCR. The recipient country will usually ask for health and character checks, including criminal record that may be present during the resettlement process. If those steps are completed, UNHCR will inform about the results of placement reception or resettlement to third countries. Having received placement in third countries, the *International Organization for Migration* (IOM) will inform about details of the departure of asylum seekers who have received refugee status and accepted in third countries.

Departure to the country of destination depends on the results of medical examination and security background checks by the recipient country. Recipient countries need to prepare for the arrival of refugees, such as preparing accommodation, language courses and cultural orientation. In general, departures will take 6 (six) months after decision of the receipt. If exceeding the time limit, the Government of Indonesia will coordinate with UNHCR and countries of destination that the resettlement process could be accelerated, this is done in view of the limitations of the state to provide shelter. One thing to note by the asylum seekers and refugees is that they could not determine in which country they will be placed, UNHCR would try to take into account the factor of family relationships during negotiations with the recipient countries.

Resettlement performed as protection to asylum seekers who have received refugee status because Indonesia is non-party to the 1951 Convention and the 1967 Additional Protocol on the Status of Refugees as well as considering Indonesia's ability to provide temporary shelter for asylum seekers are deemed inadequate. Therefore, they are removed to third countries as state parties to the 1951 Convention and the 1967 Additional Protocol, as they should not be taken into deportation or refoulement in accordance with provisions of international law.

Resettlement Data to Third Countries for the Period of 2012 to 2015

Country	2015	2014	2013	2012	Total From 2000
Australia	333	532	815	189	2.734
Canada	5	7	0	1	265
Denmark	0	1	0	0	32
Finland	0	0	0	0	13
France	0	0	0	0	4
New Zealand	0	115	78	53	275
Norway	0	0	0	0	120
Sweden	0	0	7	9	237
England	0	0	0	0	17
USA	74	95	0	5	189
Romania	0	0	0	0	44
Philippines	0	0	0	0	13
Germany	16	98	0	0	130
Sub Total Per Year	428	848	900	257	4.294

Source: Kemkumham. RI

From the table above, it is evident that Australia is likely the country to receive most asylum seekers or refugees. This is because Australia is a state party to the 1951 Convention which provides liability for Australia to fulfill the rights of asylum-seekers or refugees and get settled in the country in accordance with the 1951 Convention and the 1967 Additional Protocol on the Status of Refugees. In addition, Australia is one country with an advanced economy in the Asia-Pacific region that have an impact on the welfare of its citizens.

Besides working with UNHCR, Indonesia also cooperates with other international organizations, which is the International Organization for Migration (IOM). IOM is an intergovernmental organization which was formed in 1951 at the initiative of Belgium and America. IOM was formed as a manifestation of the results of the International Conference on Migration that was held in Brusels (Wagiman, 2012: 191). IOM was tasked to deal with migration issues, encourage social and economic development through migration by upholding the human dignity and the well-being of immigrants. In the draft of Presidential Decree on the Handling of Foreigners, Asylum Seekers and Refugees had mentioned that IOM is an intergovernmental international organization as partner of the government of the Republic of Indonesia for handling, among others, issues of asylum seekers and refugees based on the Memorandum of Understanding with the Government of Indonesia.

Cooperation between the Government of Indonesia with IOM began when IOM provided assistance to the settlement of the Vietnamese boat people who landed in Tanjung Pinang, Riau in 1979. Since then IOM expanded its activities both geographically and within the target population. In 1991, Indonesia was accepted as an IOM observer. In 1999, the Government of Indonesia signed a memorandum of understanding with the IOM, and in 2000 IOM signed a *Cooperation Agreement* with the Government of Indonesia for handling of irregular migrants, *Internal Displaced Person* (IDPs), and immigration and borderline issues in general. *Cooperation Agreement* is a legal basis for IOM to operate in Indonesia.

IOM now has had 20 regional offices spreading across several cities in Indonesia including Jakarta, Banda Aceh, and Jayapura. In Indonesia, IOM assisted the handling of asylum seekers to complete the task of UNHCR, especially in terms of fulfilling the

needs of asylum seekers and bearing cost for asylum seekers for living in Indonesia. In addition to national efforts to cooperate with UNHCR and IOM to deal with asylum seekers, Indonesia also conducts international cooperation both in regional and multilateral level. The importance of international cooperation is to discover the root of the problem (root cause) and create comprehensive and long-term solutions, given the complexity of the problems of asylum seekers.

At the regional level, Indonesia was the founder and the Joint Chairman of *Bali Process*. *Bali Process* is cooperation in the Asia Pacific region to deal with issues of migration, including asylum seekers. *Bali Process* was formed in 2002 and at the moment consists of 45 countries, in cooperation with UNHCR, IOM, and the *United Nations Office of Drugs and Crime (UNODC)*. At the beginning of its formation, the *Bali Process* focused on development efforts of border management of member countries and strengthened the state control capacity such as law enforcement in cases of document forgery, implementation of legislation and knowledge sharing. However, the *Bali Process* now has an agenda including the issue of human smuggling and trafficking in *irregular movement* (Dit. Human Rights and Humanitarian Affairs, 2015: 33).

Main objectives of the *Bali Process* (*Bali Process*, 2002) in addition to those matters is prevention through preventive and repressive measures by:

- a. Exchange of information and intelligence data.
- b. Law enforcement cooperation in the Asia Pacific region.
- c. Cooperation on borderline and visa systems to detect illegal movements.
- d. Increase public awareness of these activities and help giving an alert.
- e. Improve effectiveness of repatriation strategy (Repatriation).
- f. Cooperation on verification of identity and nationality of the victims.
- g. National law enforcement.
- h. Preparation of measures to protect and assist the victims.
- i. Focusing on the root causes that lead to illegal migration and increased efforts to establish the mechanism of legal migration between countries.
- j. Best practices related to asylum management

Indonesia became an initiator of implementation of the *Special Conference on Irregular Movement of Persons* in Jakarta on August 20, 2013 that produced the *Jakarta Declaration on Addressing Irregular Movement of Persons* or commonly called as the *Jakarta Declaration*, which focused on efforts to identify actual, concrete, and operational steps to cope with the problems of irregular migration, including asylum seekers and refugees, through the pillars of prevention, early detection, protection and law enforcement. *Jakarta Declaration* complemented cooperation mechanisms of *Bali Process*. Indonesia also has sought to enhance cooperation with the involvement of country of origin or country of destination for asylum seekers in addressing issues of asylum seekers, the meeting of Minister of Foreign Affairs, Retno L.P Marsudi with Myanmar Foreign Minister, H.E. Mr. U Wuna Maung Lwin in Myanmar's Foreign Office in Nay Pyi Taw on May 21, 2015 (Source: Directorate of Human Rights and Humanitarian RI), which agreed the preparation of the Government of Myanmar that strengthened measures to reduce the exodus of asylum seekers entering Indonesia. In this context, the Indonesian government made a constructive approach with Myanmar so as not to interfere with democratization and reform process in the country. Indonesia considers the importance of cooperation with the affected countries with the international community. The cooperation was realized by holding a meeting between the Minister of Foreign Affairs of the Republic of Indonesia, Minister of Foreign Affairs of Malaysia, and the Minister of Foreign Affairs of Thailand on May 20, 2015 in Kuala Lumpur. In the meeting it was agreed that the three countries will be involved to help ease the burden on affected countries based on principle of *burden sharing and shared responsibility* (shared burden and responsibility).

At the multilateral level, Indonesia has involved in various multilateral forums that discussed the handling of asylum seekers, such as the *Global Forum on Migration and Development (GFMD)*, and special meetings under the UNHCR *Executive Committee Meeting* including the *annual Dialogue on Protection Challenge*. This was taken by the Government of Indonesia to improve the dimension of human rights and Humanity in anticipation of the trend of increased flow of asylum seekers. Various cooperation by the Government of Indonesia aims to facilitate in providing protection for asylum seekers even though Indonesia is non-party to the 1951 Convention. In order to strengthen the policy and legal framework for protection of asylum seekers in Indonesia, the Directorate of Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs of the Republic of Indonesia has prepared draft of Presidential Decree on the Handling of Foreigner Asylum Seekers and Refugees. Drafting of the Presidential Decree was started in 2013 and a follow-up of Article 27 of the Law No. 37 of 1999 on Foreign Relations.

The draft of presidential decree was designed for handling foreigners including asylum seekers to take into account and respect human rights of asylum seekers and maintain national security and order. It was also referred to government's efforts in dealing with asylum seekers in an integrated, coordinated and more effective measure. Therefore, there will be no throwing responsibility on ministries or agencies. Drafting of the Presidential Regulation had fixed attention to the rules or general principles of international law.

Main content of the Draft of Presidential Decree on Handling Aliens, Asylum Seekers and Refugees:

- a. The normative framework as a reference together with all the relevant Ministry of government institutions
- b. Operational Framework which outlines division of tasks and functions clearly for the respective ministries of related government agencies.
- c. Coordination framework that provides clarity on the coordination flow of handling each stage by the respective ministries and institutions.

- d. Strengthen mechanisms for monitoring and control.
- e. Improve the shelters system.
- f. Proceed cooperation with UNHCR and IOM and other partner organizations.
- g. Provide disincentives for asylum seekers and refugees who disregard the law, rules and local customs.

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