

The Rights to Health for All: Is Indonesia Fully Committed to Protected Refugees and Asylum Seekers?

R. Yahdi Ramadani

Department of International Law, Faculty of Law, Universitas Airlangga, Surabaya, Indonesia

Aktieva Tri Tjitrawati

Department of International Law, Faculty of Law, Universitas Airlangga, Surabaya, Indonesia

Mochamad Kevin Romadhona

Global Migration Research Group, Faculty of Social and Political Science, Universitas Airlangga, Surabaya, Indonesia

Enny Narwati

Department of International Law, Faculty of Law, Universitas Airlangga, Surabaya, Indonesia

Sri Endah Kinasih

Global Migration Research Group, Faculty of Social and Political Science, Universitas Airlangga, Surabaya, Indonesia

Abstract

Indonesia has a comparable obligation to safeguard the right to health for refugees and asylum seekers who enter its jurisdiction, notwithstanding its non-ratification of the 1951 Convention and the 1967 Protocol. The primary objective of this study is to examine the implementation of state policies on the safeguarding of the right to health for Refugees and Asylum Seekers in Indonesia. This study employs normative juridical research, which is a kind of research that examines doctrines or principles. Normative juridical research is sometimes referred to as theoretical research. The findings of this study indicate that not standing Indonesia's non-ratification of the 1951 Convention and the 1967 Protocol, the regulation pertaining to the safeguarding of refugees and asylum seekers has been included under Presidential Regulation (PERPRES) No. 125 of 2016. In conclusion, it can be inferred that the information presented supports the notion that the aforementioned points The challenge of providing adequate healthcare for refugees and asylum seekers in Indonesia is impeded by the lack of alignment between legal regulations and government policy.

Keywords: refugees, asylum seekers, right to Health, state obligations, Indonesia.

INTRODUCTION

The state is one of the subjects of international law which has sovereignty to

exercise jurisdiction in its territory absolutely (Adolf, 1996:1-2). States as subjects of international law have territories, sovereign

and independent governments. The state has an obligation to provide protection to every resident in its territory. The state's obligations, among others, are related to human rights which oblige every country to respect, protect and fulfill the human rights of every person in its country's territory (Kusumaatmadja & Agoes, 2021:89). In providing protection to every person in the territory of the country, the state must include this protection in the legal regulations it makes. The state's obligations are divided into two obligations, namely direct obligations (immediate obligations) and Progressive Obligations (progressive obligations) (Philip, 2016:33). Direct obligation (immediate obligations) it is the state's obligation to provide protection to every person residing in the territory of the country as stated in a juridical or legal product. Meanwhile, Progressive obligations (progressive obligations) is an obligation that can be abandoned if there is a lack of supporting resources (Philip, 2016:34). These two state obligations aim to provide protection to everyone in a country's territory as a form of fulfilling human rights.

Every country will not be separated from its obligation to fulfill the rights that every individual has, especially the right to health that every person in the country has (Isriawaty, 2015: 10). The right to health is an obligation that cannot be ignored by the state

considering that the right to health is a basic human right or fundamental human right. The state is obliged to provide the right to health to everyone regardless of age, gender, gender, ethnicity, and so on (Prasetio, 2021:327). The right to health is granted by the state, to both its citizens and foreigners within its territory immigrant workers, asylum seekers, and refugees.

The World Health Organization (WHO) also provides provisions for everyone in a country to maintain health, wash hands, and maintain a distance of at least one meter from other people, use masks, postpone travel to areas where the virus is increasing intending to anticipate the spread of COVID-19. Besides that, the WHO provides suggestions for the implementation of lockdowns either in whole or in part in countries experiencing an increase in cases of the spread of COVID-19 (Hadiwardoyo, 2020:86). However, lockdown is not an effective way to prevent the spread of COVID-19 considering lockdown is very influential on the economic income of the community, unable to meet their needs properly (Disantara, 2020:48). The WHO said that one of the most effective ways to prevent COVID-19 mutations from continuing to develop is vaccination (Makmun, 2020:53). Vaccination is a step to prevent the development of the virus.

Vaccines make a big contribution to avoid high cases of the spread of COVID-19.

There is a problem with the right to health for one group that is vulnerable to disease, namely refugees and asylum seekers. These health problems include vaccines, medicines, and physical and mental health services during COVID-19 or under normal conditions experienced by asylum seekers and refugees (Pratama et al., 2020: 201). Fulfilling the right to health for asylum seekers and refugees is an uneasy task. It is a complicated issue to solve. This is because an unclean environment makes asylum seekers and refugees vulnerable to experiencing health problems. Apart from that, living conditions are inadequate in the economic and work sectors where asylum seekers and refugees live. Refugees are not free to act like citizens of countries party to the 1961 Convention and the 1967 Protocol or citizens of transit countries. So, the right to health for asylum seekers and refugees is not fulfilled optimally (Hariyanto. 2021: 592).

It should be understood that vaccines, medicines, physical and mental health services, and clean residential places are part of the right to health that asylum seekers and refugees should get as regulated in the Convention Relating to the Status of the Refugees 1951 and the Protocol New York 1967, the Declaration of Human Rights, and the International Covenant on Civil and

Political Rights (Pratama et al., 2020:206). One of the cases of health problems experienced by refugees and asylum seekers in Indonesia is that they do not receive optimal health services either in health emergencies or in normal conditions.

Indonesia is a country that has not ratified the Convention Relating to the Status of the Refugees 1951 and the Protocol New York 1967 continues to have an obligation to protect refugees and asylum seekers based on the principles of international refugee law, namely principle of nonrefoulment and non-discrimination (Sakharina, 2016:29). Currently there is only one national legal regulation made by Indonesia regarding refugees and asylum seekers, namely Presidential Decree Number 125 of 2016 concerning Management of of Foreign Refugees. However, this regulation only regulates technical steps regarding the efforts that must be made by the Indonesian National Army, the Republic of Indonesia State Police, the Ministry of Transportation, the Maritime Security and Safety Agency, and government ministries/agencies to protect Indonesian territorial waters when receiving refugees and asylum seekers (Sakharina, 2016:30).

Presidential Decree Number 125 of 2016 concerning Management of Foreign Refugees does not specifically explain what rights refugees and asylum seekers have

(Kondoy, 2020:2). The Presidential Decree Number 125 of 2016 only explains the scope of seeking help and evacuation as a form of emergency for foreigners and does not regulate clearly what rights asylum seekers and refugees have, including the right to health. The right to health for refugees and asylum seekers should include regulations that specifically regulate the health rights obtained by refugees and asylum seekers in Indonesia. Until now there are no complete regulations regarding technical steps for providing COVID-19 vaccines, medicines, a clean environment, and physical and mental health services to refugees and asylum seekers in Indonesia (Kondoy, 2020:3).

The issue of health problems, particularly the denied entitlement to healthcare for asylum seekers and refugees in Indonesia, is a significant concern that warrants Indonesia's attention. The inadequate distribution of vaccines, medications, and access to clean environments, as well as physical and mental health services, can pose a problem, acts of discrimination that are forbidden under international law. Based on the discussion above, this research will examine based on international and national legal aspects Indonesia's contribution to protecting the right to health for refugees and asylum seekers in the country.

THEORETICAL FRAMEWORK

The Right to Health

States as subjects of international law are obliged to fulfill all the basic rights of every human being to create prosperity, justice, and security in their territory. The state may not carry out discriminatory actions against a person or group of people by not providing the basic needs that human beings need and without distinction from one another. The state must fulfill basic human rights norms including the right to health by providing accessible and quality health services (Bakry, 2017:296). The Universal Declaration of Human Rights became the basic instrument of international law for the right to health. Article 25 Universal Declaration of Human Rights explains specifically that every individual or every person has a good standard of living for health and welfare, especially in relation to the right to health (Sukharina & Karuin, 2016:). The International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights also become an international legal instrument that regulates the right to health in addition to the Universal Declaration of Human Rights. Apart from that, this convention is an international legal instrument that regulates universal human rights regardless of a person's citizenship status. It needs to be understood specifically that the International

Covenant on Economic, Social, and Cultural Rights includes the obligations of countries that have ratified this convention to carry out commitments to safeguard the rights of every individual, especially the right to health.

In Article 12 paragraph 2 (c) of the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights explain that every country that has ratified this convention is obliged to take steps to provide and fulfill the right to health, especially when endemic conditions and pandemics occur. One step that is of concern and steps that must be taken by the country at this time is to distribute vaccines well without exception (Hidayat, 2017: 127).

Regarding the right to health, of course, it can be further understood in connection with General Comment 14. The Committee on Economic, Social, and Cultural Rights on the Right to the Highest Standard of Health explains further the right to health that must be given to everyone. The Committee explained that the right to health can be understood as fulfilling health service facilities and establishing high and affordable health standards for everyone. In connection with the right to health, as explained in the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights, the committee provides several points of view that must be

understood by the state to fulfill the right to health, namely availability, accessibility, acceptability, and quality.

Asylum Seekers and Refugees

The International refugee law defines several terms, including the definitions of asylum seekers and refugees. There are different terms regarding asylum seekers and refugees considering that their status is quite different. An asylum seeker is someone who is seeking international protection from various problems that occur in the territory of their home country (Notoprayitno, 2013: 103). Meanwhile, a refugee is someone who leaves their country of origin due to fear felt by someone based on issues of race, religion, nationality, membership of a certain social group, or political opinion and asks for protection from another country for these reasons (Glynn, 2012:134). It is necessary to explicitly understand that in general, before their status as a refugee is determined, the refugee is referred to as an asylum seeker or a person seeking protection from certain actions.

One of the international organizations that specifically grants refugee status is the United Nations High Commissioner for Refugees (UNHCR). The UNHCR is an organization formed by the United Nations (UN) specifically to handle cases related to refugees as stated in the ratification of The Convention Relating to the Status of the

Refugees 1951 and Protocol 1967. The UNHCR seeks to provide protection to asylum seekers and refugees in several ways, one of which is by helping asylum seekers according to the characteristics of asylum seekers to obtain refugee status. It should be understood that asylum seekers can be said to be refugees if they have gone through the procedures of Refugee Status Determination (RSD) as a form of determining refugee status for asylum seekers. The status and process of determining refugee status for asylum seekers can be carried out by countries that are bound to them The Convention Relating to the Status of the Refugees 1951 and the Protocol 1967 or through a process carried out by the UNHCR to determine it (Sultoni et al., 2013:9).

State Responsibility

State responsibility under international law is closely related to state jurisdiction. State jurisdiction can mean that a state has the right to exercise its power and authority in its territory. State jurisdiction is closely related to state responsibility considering that state responsibility is an obligation that arises as a result of actions and actions carried out by a state. Shaw (2021: 773) stated that "State responsibility is a fundamental principle of international law, arising out of the nature of the international legal system and the doctrines of state sovereignty and equality of

states. It provides that whenever one state commits an internationally” the state's responsibility is fundamental principles in international law, so that if a country violates a rule of international law, then the state's responsibility arises as a result of the actions taken by that country”.

The state's responsibility towards refugees and asylum seekers will arise if human rights, or basic rights, or fundamental rights which is recognized under international law as violated by a country. There are principles of international law relating to state responsibility towards foreigners, namely International Minimum Standards and National Treatment Standard (J.G. Starke, 1999:225). The International Minimum Standard principle requires a state to to treat foreigners following international legal standards in a country's territory. (J.G. Starke, 1999:225).

RESEARCH METHOD

This study employs legal research methodology. This study employs a normative juridical research methodology, which is characterized by the examination and analysis of legal doctrines or principles. Normative juridical research is sometimes referred to as theoretical research (Marzuki, 2013: 60). To address the issue of the right to health for refugees and asylum seekers in Indonesia, this study employs several

methodologies, namely the statutory approach and conceptual methods (Marzuki, 2013:69). The legislative approach is carried out by examining a law or international convention, as well as the historical development of regulations regarding the right to health and state responsibility towards refugees and asylum seekers and the conceptual approach comes from the views and doctrines that have developed in legal science.

DISCUSSION

The Role of Indonesia in Protected Refugees and Asylum Seekers

The state is a subject of international law which has the right and obligation to take action to protect everyone in its territory (Mangku, 2020:22). One group of people who must be given protection by the state are refugees and asylum seekers. Refugees and asylum seekers are groups of people who need to receive protection from the country they are visiting, either temporarily or permanently. Refugees and seekers arrive in a condition where they need help and protection from outside their country of origin (Singh & Khyati Kumari, 2020:5). Indonesia is a transit country for refugees and asylum seekers from various countries. Indonesia is not a destination country for asylum seekers, but Indonesia's position is a strategic stopping place for refugees and asylum seekers. This is because Indonesia's territory

is an archipelago and is surrounded by sea, making it easier for refugees and asylum seekers. Indonesia is not a party to the 1951 Convention and the 1967 Protocol so Indonesia's rights and responsibilities are limited in dealing with refugees and asylum seekers. Even though Indonesia is not a party to the 1951 Convention and the 1967 Protocol, this does not mean that Indonesia does not have an obligation to protect refugees, Indonesia still has the responsibility to respect the principles of refugee law which have become customary international law (Liza Shahnaz et al., 2019: 65).

Indonesia Legal Framework in Protecting Refugees and Asylum Seekers

Refugees and asylum seekers are foreigners who need protection from a receiving or transit country. Refugees and asylum seekers can be categorized as legal subjects who have rights and obligations if they have resided temporarily and their existence must be recognized by the state. The state must ensure whether refugees and asylum seekers are legal or illegal foreign nationals because this can influence state policy in protecting refugees and asylum seekers (Sukharina & Karuin, 2016: 4). Indonesia as a transit country has an obligation to protect every refugee and asylum seeker in its territory by making regulations or legal rules. The Indonesian legal rules become the basis

for treating refugees and asylum seekers by every government agency charged with paying attention to refugees and asylum seekers (Sakharina, 2020a: 64). The establishment of legal regulations regarding refugees and asylum seekers in Indonesia were created because Indonesia was not yet a party to the 1951 Convention and the 1967 Protocol concerning refugees and asylum seekers. Indonesia, by not being a member of the 1951 Convention and the 1967 Protocol, should cooperate with international organizations in granting refugee and asylum seeker status. Apart from that, Indonesia must ensure what rights and obligations need to be given to refugees and asylum seekers in the form of legal regulations.

The presence of refugees and asylum seekers in Indonesia has increased over time. This increase influences the policies made by Indonesia in handling refugees in its territory. In protecting refugees and asylum seekers, Indonesia has made several legal regulations that are the basis for providing protection (Siahaya et al., 2022: 1089). The regulations that have been made by Indonesia to handle refugees and asylum seekers include:

1. Law of the Republic of Indonesia Number 37 of 1999 concerning Foreign Relations;

2. Law of the Republic of Indonesia Number 6 of 2011 concerning Immigration;
3. Presidential Regulation of the Republic of Indonesia Number 125 of 2016 concerning Handling of Refugees from Abroad;
4. Regulation of the Director General of Immigration Number IMI-1489.UM.0805 of 2010 concerning Illegal Immigrants;
5. Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 of 2016 concerning Handling of Illegal Immigrants Seeking Asylum or Refugees.

The legal framework governing refugees and asylum seekers undergoes dynamic modifications in response to evolving political, economic, and security circumstances within a given nation. The legal framework for the recognition of refugees and asylum seekers in Indonesia is established in the Law of the Republic of Indonesia Number 37 of 1999 on Foreign Relations. This legislation specifically addresses the granting of asylum and the handling of refugee issues, as outlined in Chapter VI, including Articles 25 to 27. The topic under consideration is the acknowledgment of refugees and those seeking asylum, with emphasis on the recognition bestowed by the President, but

also considering the security, political, economic, and other contextual factors of the state, as advised by the Ministry of Foreign Affairs. The recognition referred to in this statement is derived from Article 25 (1) of the Law of the Republic of Indonesia Number 37 of 1999 on Foreign Relations. According to this article, the power to give refuge to foreign individuals is vested in the President, who must weigh the Minister's perspectives before making a decision." (DPRI, 1999).

The Law of the Republic of Indonesia Number 37 of 1999 concerning Foreign Relations, apart from regulating the recognition of the existence of refugees and asylum seekers in Indonesia, also pays attention to the principles of refugee law as stated in international conventions, international customary law, and international practice in granting recognition to refugees and asylum seekers. This is based on Article 26 of the Law of the Republic of Indonesia Number 37 of 1999 concerning Foreign Relations which states that "The granting of asylum to foreigners is carried out by national laws and regulations and taking into account international laws, customs and practices" (DPRI, 1999).

In practice, since the aforesaid law's publication, Indonesia has been assisted by the UNHCR and the IOM to protect refugees and asylum seekers. In conducting their duties in providing protection and fulfillment of

rights to refugees and asylum seekers, the UNHCR and the IOM are assisted by the Directorate of Immigration, the Ministry of Law and Human Rights, the Ministry of Foreign Affairs, the Police of the Republic of Indonesia, and other relevant institutions. However, the recognition of the existence of refugees and asylum seekers experienced problems in the country in 2010.

In 2010, refugees and asylum seekers were considered illegal immigrants with the issuance of Regulation of the Director General of Immigration Number IMI-1489.UM.0805 of 2010 concerning Illegal Immigrants by the Director General of Immigration. This condition caused concern for refugees and asylum seekers from 2010 to 2016. In particular, Article 3 of the Regulation of the Director General of Immigration Number IMI-1489.UM.0805 of 2010 states that "Illegal immigrants cannot have their residence permit status questioned while in Indonesia. Requirement: You must possess either an Attestation Letter or a certificate as an asylum seeker from the UNHCR, or refugee status from the UNHCR. (Directorate General of Immigration, 2010). In the Regulation of the Director General of Immigration Number IMI-1489.UM.0805 of 2010 it is clearly stated that refugees and asylum seekers are Illegal Immigrants because they come to Indonesia without bringing complete documents, causing the Indonesian Government to

specifically classify them as refugees and seekers. Asylum is the same as illegal immigrants who can be deported because they violate the provisions of the law governing the presence of foreigners in Indonesia (Sakharina, 2020b: 4).

Apart from that, the Regulation of the Director General of Immigration Number IMI-1489.UM.0805 of 2010 regulates that every illegal immigrant organizing refugees and asylum seekers if they are refused by the UNHCR can be subject to immigration action. Immigration actions are regulated based on Law of the Republic of Indonesia Number 6 of 2011 concerning Immigration. Article 1 number 31 explains that "Immigration Administrative Actions are administrative sanctions imposed by Immigration Officials on Foreigners outside the judicial process." (Directorate General of Immigration, 2010). The Law Number 6 of 2011 also explains what Immigration Administrative Actions as listed in Article 75 paragraph 2, namely:

1. inclusion in the Prevention or Deterrence list;
2. restrictions, changes or cancellation of Stay Permits;
3. prohibition on being in one or several certain places in Indonesian Territory;
4. the requirement to reside in a certain place in the Indonesian Territory;
5. imposition of burden charges;

6. Deportation from Indonesian Territory.

The actions undertaken by Indonesia over the period of 2010-2016 were found to be in violation of international law, particularly with regards to discriminatory practices against refugees and asylum seekers inside the country. In addition to its violation of international refugee law, the act of deportation runs afoul of norms enshrined in customary international law, including the principle of non-refoulement and the principle of non-expulsion. In addition to this, the authorized repatriation process should be conducted by the UNHCR via voluntary repatriation, rather than being facilitated by entities within the purview of the Indonesian Government, namely the Ministry of Law and Human Rights, through the Director General of Immigration.

The political landscape and the treatment of refugees in Indonesia have undergone significant transformations since 2016, resulting in the establishment of legislative frameworks that align with the provisions outlined in the Law of the Republic of Indonesia Number 37 of 1999, which pertains to matters relating foreign relations. The aforementioned event pertained to the annulment of Regulation of the Director General of Immigration Number IMI-1489.UM.0805 of 2010, which addressed the issue of illegal immigrants, by the Director

General of Immigration. It was subsequently substituted with the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 of 2016, which specifically addressed the management of illegal immigrants seeking asylum or refugee status.

The regulatory framework established by the Director General of Immigration, as stipulated in Regulation Number IMI-0352.GR.02.07 of 2016, acknowledges the presence of individuals classified as refugees and asylum seekers who are in need of assistance and protection. Furthermore, these laws elucidate the responsibilities and powers of international organizations in relation to the provision of aid, bestowing legal status, and upholding fundamental rights in line with international human rights law. This rule categorizes refugees and asylum seekers as individuals from other countries. However, it ensures that their presence in Indonesia is accompanied by the provision of fundamental rights, in partnership with the IOM and the UNHCR (Mufty & Muthahari, 2021:291).

The Director General of Immigration Regulation Number IMI-0352.GR.02.07 of 2016 addresses the procedures for managing individuals who are seeking asylum or refuge in Indonesia without proper authorization. This regulation also outlines

the Indonesian Government's provision of residence permits to refugees and asylum seekers who have been granted or are in the process of being granted status by the United Nations High Commissioner for Refugees (UNHCR). Article 3 of this regulation stipulates that foreign individuals who have obtained refugee status from the UNHCR in Indonesia are entitled to have their residence permits protected, provided that they comply with the laws and regulations of the country.” (Syahrin & Ginting, 2019:109).

The regulation IMI-0352.GR.02.07 of 2016, issued by the Director General of Immigration, addresses the procedures for managing individuals who enter a country illegally and then seek asylum or refugee status. This regulation stipulates that refugees and asylum seekers may be held in detention rooms, detention centers, or other designated facilities. Another location of interest is Community House, which serves as a suitable accommodation option for asylum seekers who have been granted refugee status by the UNHCR. Nevertheless, it is a common occurrence for refugees and asylum seekers to be confined inside detention facilities despite having obtained refugee status. According to Article 1, Section 33 of Law of the Republic of Indonesia Number 6 of 2011 on Immigration, the Immigration Detention Center serves as a technical unit responsible for executing Immigration Functions. According to the said

law, the primary purpose of the Detention Center is to provide temporary accommodation for Foreigners who are undergoing Immigration Administrative Actions." In this regard, referring to these regulations, refugees and asylum seekers may have conflicting perspectives in understanding the function of detention centers.

The issuance of the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 of 2016 on April 19, 2016, addressing the management of illegal immigrants seeking asylum or refugees, was followed by the issuance of the Presidential Regulation of the Republic of Indonesia Number 125 of 2016 on December 31, 2016, which specifically focuses on the handling of refugees from foreign countries. The aforementioned legal principle serves as the foundation for those tasked with the duty of safeguarding and managing the affairs of international refugees, with the aim of assisting the IOM and the UNHCR (Priambodo, 2021: 122).

The Presidential Regulation No. 125 of 2016, titled "Management of Foreign Refugees " elucidates the acknowledgment of refugees and asylum seekers inside the country. Nevertheless, several deficiencies persist within the ambit of this regulatory framework. It is essential that each authorized agency publish supportive rules

to ensure the protection and realization of rights for refugees in their pursuit of asylum. These regulations should be issued by each respective agency. In addition to the aforementioned point, it is noteworthy that this law primarily encompasses preliminary measures pertaining to the treatment of refugees at large, lacking specificity in terms of categorizing the entitlements and obligations of refugees and asylum seekers within the Indonesian context.

The Regulation of the Right to Health for Refugees and Asylum Seekers in Indonesia

Refugees and asylum seekers are a segment of individuals who have established residence in Indonesia, and their presence is acknowledged within the country's jurisdiction, notwithstanding Indonesia's non-party status to the 1951 Convention and the 1967 Protocol. Indonesia, in its capacity as a transit nation for refugees, has the responsibility of affording protection to those seeking refuge and asylum, with particular emphasis on safeguarding their well-being in matters of health. The provision of healthcare services is crucial for refugees since many undergo arduous travels by sea while seeking asylum in Indonesia. Access to healthcare is essential for restoring their physical well-being to its original state (Jatmika, 2022: 100). The presence of refugees and asylum seekers in Indonesia

often exposes them to adverse physical and mental health circumstances, hence raising significant concerns that require careful attention inside the country. Despite Indonesia not being a signatory to the 1951 Convention and the 1967 Protocol, it must ensure the provision of the right to health for refugees and asylum seekers due to their acceptance inside its borders. The Indonesian government has enacted many legislations about the treatment and status of refugees and asylum seekers inside the country's borders (Primadasa Primadasa et al., 2021:44).

The Presidential Regulation of the Republic of Indonesia Number 125 of 2016 on the "Management of Foreign Refugees" is a legislative regulation that functions as a guiding framework for the provision of protection to refugees and asylum seekers in Indonesia. The Presidential Decree about refugees is a specific regulatory measure designed to address the treatment of refugees and those seeking asylum. It serves as a complementary measure to the Law Number 37 of 1999, which focuses on matters related to foreign relations. The Presidential Decree Number 125 of 2016 governs the provision of healthcare services to refugees and international asylum seekers in Indonesia. One of the provisions is included in Article 26, paragraph 2, which stipulates that "Refugee shelters, as mentioned in paragraph (1), shall adhere to

the following criteria: a. Proximity to healthcare and religious establishments" (Chandra, 2022:8). This article states that refugee accommodation must be close to health services, which means that refugees and asylum seekers receive health services.

According to Article 26, paragraph 5 of the Presidential Regulation No. 125 of 2016, which pertains to the management of foreign refugees, the provision of necessities is outlined. These necessities, as stated in paragraph 4, encompass the following: a) the provision of clean water; b) meeting the requirements for food, beverages, and clothing; c) access to health and hygiene services; and d) the availability of worship facilities" (Chandra, 2022:9). This article posits that the provision of health care is an essential responsibility of the state. Regional and city governments play a crucial role in the provision of health services for refugees, as outlined in Article 26, paragraph 6 of Presidential Regulation Number 125 of 2016 actually, does not specifically discuss what rights refugees and asylum seekers have in Indonesia (Handayani et al., 2020: 9). Apart from that, the Presidential Decree is still a basic regulation which still requires other regulations which must be made by each state institution which is specifically given the mandate to handle refugees. Currently, there are no official regulations made by institutions to provide rights to refugees, especially for district and city governments.

The regional government is still waiting for the minister's decision, which is one of the guidelines, for making regulations to provide rights to refugees and asylum seekers (Arianta et al., 2020: 167).

The matter concerning the entitlement to healthcare for refugees and asylum seekers presents a complex challenge in terms of resolution. The responsibility for overseeing their presence in Indonesia remains unclear, except for the UNHCR and the IOM, which serve as international entities tasked with offering aid and legal status to refugees and asylum seekers in Indonesia (Fatmawat & Izha., 2023:2803). The Presidential Regulation 125/2016 specifies that healthcare services are allocated based on essential requirements, including medical attention for refugees afflicted with infectious diseases or other ailments.

To date, there exists a lack of explicit rules of the entitlements of refugees and asylum seekers concerning their right to health. Indonesia ought to establish specific regulations on the management of refugees and asylum seekers, encompassing provisions that prioritize the well-being of these individuals. Despite Indonesia's non-party status to the 1951 Convention and the 1967 Protocol, it is imperative to establish unambiguous guidelines to eliminate any potential ambiguity surrounding the entitlements and protections afforded to

refugees and asylum seekers (Primadasa Primadasa et al., 2021:45). One country that can be an example for Indonesia in handling refugees and asylum seekers is Kuwait. Kuwait is not a party to the 1951 Convention and the 1967 Protocol, but Kuwait provides refugees and asylum seekers with the rights listed in almadat 4 Qanun Raqm 1 Lisanat 1999 and the five al-tamin al-sihiya which explains in particular the rights refugees and asylum seekers receive in full so that refugees and seekers get maximum health services.

Indonesia as a legal state should specifically include the rights to health obtained by refugees and asylum seekers so as not to create health problems that cause state responsibility, especially during health emergencies (Disantara, 2020:48). Apart from that, the Law Number 36 of 2009 concerning Health should also apply to refugees and asylum seekers in Indonesia. This is because the law stipulates that every person from society, which means refugees and asylum seekers have the same rights as citizens of the country generally.

The Role of Central and Regional Governments to Protect Right to Health for Refugees and Asylum Seekers

The Presidential Regulation No. 125 of 2016 emphasizes the significance of offering healthcare services to refugees and asylum

seekers within Indonesia. However, it is worth noting that the current provisions pertaining to health services, as outlined in this Presidential Decree, do not comprehensively specify the entitlements to healthcare that are afforded to refugees and asylum seekers. One of the rules pertaining to the right to health is derived from the Law Number 36 of 2009, which addresses health-related matters. This law serves as a fundamental framework for state institutions in ensuring the provision of healthcare services and the fulfillment of the right to health for individuals residing within the Indonesian territory (Turangan, 2020:99).

Refugees and asylum seekers are individuals who have been identified as vulnerable populations by the WHO. Consequently, nations must exert utmost diligence in refraining from engaging in discriminatory practices against refugees and asylum seekers. To optimize the provision of health care for refugees and asylum seekers, the government needs to assume the necessary effort and duty to guarantee the equitable accessibility and quality of such services for all individuals, including those seeking refuge or asylum. The Law Number 36 of 2009 about Health has established provisions for the obligations and accountabilities of both the central government and regional governments in the provision of healthcare services (Kondoy, 2020: 107). The responsibilities and

obligations of the central government are explicitly outlined by Article 14 of the Law Number 36 of 2009 about Health. This article stipulates that the government bears the responsibility for the strategic planning, coordination, facilitation, and oversight of health initiatives that are both fair and accessible to the populace. This article delineates the responsibility of the central government to undertake health initiatives aimed at enhancing public health. This entails the establishment of programs and activities for illness prevention, treatment, and control, which are to be implemented by the central government for the benefit of the population.

The effective execution of the central government's obligations necessitates adherence to the principles of international health law, as outlined in general comment number 14 of the Committee on Economic, Social, and Cultural Rights about the Right to the Highest Standard of Health. This includes the principles of availability, accessibility, acceptability, and quality which serve as guidelines for the provision of health initiatives aimed at enhancing public health outcomes. In addition, as stipulated in Article 16 of the Law Number 36 of 2009 on Health, it is said that the government has the responsibility of allocating resources in the health domain in a manner that is just and impartial, ensuring that all communities have

equal access to the best attainable standard of health”.

The primary obligation of the central government is to ensure the provision of health services and implement health measures for both the general population and those seeking shelter or asylum. Upon the acceptance of refugees and asylum seekers, it is imperative to acknowledge that they are granted certain rights, notably the basic right to health. Nevertheless, the central government's approach to addressing health issues exhibits disparities in treatment, as it fails to provide essential healthcare services, including vaccinations, during health emergencies. Additionally, challenges arise in accessing necessary medications, while inadequate environmental conditions and a dearth of mental health support further compound the situation. Consequently, these factors contribute to a perception that the central government lacks a proactive stance in effectively addressing the needs of refugees (Yani & Zulkarnain, 2021: 5).

One concerning issue for refugees and asylum seekers pertains to their exclusion from the national vaccination program implemented by the central government during the Covid-19 pandemic. This exclusion poses a potential risk for refugees and asylum seekers, as it increases their vulnerability to contracting the COVID-19

virus. Pratama et al., (2020:206) conducted a study that is relevant to the topic at hand. The actions undertaken by the central government are in contravention of the stipulations outlined in Article 32, paragraph 1 of the Law Number 36 of 2009 pertaining to Health. This particular provision mandates that during emergency situations, health service establishments, whether operated by the government or privately, are obligated to furnish health services with the primary objective of preserving the patient's life and averting any potential disabilities." (Indonesia, 2009). To date, the central government has yet to establish legislation pertaining to the allocation of vaccinations for refugees. Consequently, refugees and asylum seekers only rely on vaccine support provided by the WHO and other relevant international organizations. It is imperative for the central government to establish clear and comprehensive laws pertaining to the entitlements granted to refugees and asylum seekers.

The act of discrimination in administering vaccines to refugees and seekers during a health emergency is also contrary to Article 54 paragraph 1 Law o Number 36 of 2009 concerning Health states that "The provision of health services is carried out in a responsible, safe, quality, equitable and non-discriminatory manner" (Indonesia, 2009). The central government's

action not to provide vaccinations for refugees and asylum seekers in conditions of COVID-19 in dangerous conditions which are classified as infectious diseases is not in accordance with Article 153 of Law Number 36 of 2009 concerning Health which states that "The government guarantees the availability of safe, quality, effective, affordable and equitable immunization materials for the community for efforts to control infectious diseases through immunization." (Indonesia, 2009).

In addition to the challenge of delivering immunizations, those classified as refugees and asylum seekers also need access to mental health support (Bulandaryanti, 2023:9). At present, the absence of a mental health program specifically designed for refugees and asylum seekers is evident within the central government's initiatives. Nevertheless, it is worth noting that Article 145 of the Law Number 36 of 2009 pertaining to Health emphasizes the responsibility of the government, regional authorities, and the community to ensure comprehensive mental health endeavors encompassing preventive, promotive, curative, and rehabilitative measures. This includes the imperative of guaranteeing mental health support within the workplace, as stipulated in Article 144, paragraph (3)" (Indonesia, 2009). According to Article 144, it is stipulated that individuals are entitled to mental health insurance

coverage in response to the adverse effects of fear, pressure, and disruptions that contribute to the development of mental health issues.

Mental health facilities are very important for refugees and asylum seekers. It is of utmost significance for refugees and asylum seekers to acquire appropriate documentation. This is due to the fact that individuals who seek refuge or asylum in Indonesia often experience profound emotions of dread and worry, which may significantly disrupt their mental well-being and overall resilience. In addition to this, those seeking shelter and asylum in Indonesia often arrive in a state of emotional distress, necessitating mental health support and intervention (Watiet al., 2021:9). The provision of mental health services to refugees and asylum seekers is important for the central government, as it aligns with the fundamental right to health that should be extended to individuals in these vulnerable populations. It is noteworthy that Indonesia, although not having joined the 1951 Convention and the 1967 Protocol, should nonetheless prioritize the fulfillment of mental health needs for refugees and asylum seekers.

The International Cooperation in the Context of Providing the Right to Health for Refugees and Asylum Seekers in Indonesia

Currently, countries in the world are facing various problems. The problems faced by countries in the world vary, for example technology, economics, culture, security, defense and health. One way to deal with the problems experienced by countries is of course that cooperation between subjects of international law is needed to deal with these problems. One of the problems that requires international cooperation is health problems, Health is the most important part that can affect the lives of individuals and society (Nugraha et al., 2021:74). In holding international cooperation, of course it is not limited state actors that can hold international cooperation, but other subjects of international law can hold international cooperation, namely international organizations.

International cooperation conducted by subjects of international law can be in the form of bilateral cooperation or multilateral cooperation (Fatmawat and Izha, 2023: 2804). International cooperation is initiated by countries or international organizations and is motivated by various factors. The underlying reason for the establishment of international cooperation is that countries require assistance in meeting the needs of

their communities due to limitations in certain products or technologies. Additionally, countries may be unable to address internal problems on their own, necessitating the involvement of other countries or international organizations. The primary objectives of cooperation are to foster peace between nations, enhance the well-being and prosperity of their populations, and expedite development within their respective countries.

In principle, international cooperation has different positions in a country. International cooperation has various principles, namely: voluntary, agreements to be observed, good faith, agreements neither harm nor benefit third parties, and Non-retroactive (Kusumaatmadja, 1997:45). These principles exist in the form of international agreements that bind a country to obey and subject to international agreements. If the country does not submit and comply with these agreements, it can result in state responsibility. One of the important collaborations currently is the international collaboration created by the WHO in the form of a program, although it is in nature voluntary, such international cooperation can greatly influence attitudes and conditions in the program (Purschet et al., 2020: 112838).

Indonesia is a country that has joined the UN and follows several WHO

recommendations to participate in its programs, especially during the COVID-19 pandemic, this is because Indonesia needs international cooperation to meet all the needs of its people, especially in dealing with health problems. Indonesia has participated in several WHO programs, for example, Covax which aims to provide quality assurance and contribute to COVID-19, however, there are several programs that Indonesia should follow to overcome the health problems faced by the community. One of the health problems for refugees and asylum seekers in Indonesia is getting health services in the form of vaccinations and mental health services.

CONCLUSION

Refugees and asylum seekers in Indonesia experience several health problems. The health problems experienced by refugees and asylum seekers in Indonesia include restrictions on receiving vaccines for refugees and asylum seekers in Indonesia, especially the COVID-19 vaccine, and difficulty in accessing health services, especially free and professional health services. For refugees and asylum seekers, mental health problems experienced by refugees and asylum seekers in Indonesia are generally affected by disease Beck Depression Inventory-II and inadequate housing for refugees and asylum seekers in Indonesia.

The problem of fulfilling health care for refugees and asylum seekers in Indonesia is hampered by the inconsistency of every legal regulation with the policies issued by the government. This has resulted in a lack of efforts by regional and central governments in assisting the UNHCR and the IOM to provide health services for refugees and asylum seekers in Indonesia. Moreover, this obstacle is also caused by the Indonesian government that has not yet ratified the international agreement governing refugees and asylum seekers. Even though Indonesia has not yet ratified the 1951 Convention and the Protocol 1967, however, Indonesia has put concerns about refugees and asylum seekers healthcare and health access.

In Indonesia, the IOM supports access to the national health system and services for Indonesia's vulnerable refugee and asylum seeker populations. In its programs, the IOM maintains a national medical referral service network consisting of local Indonesian health clinics, health centers, and hospitals to provide medical services to them. In addition to physical health care, the IOM has also had a team of practitioners to support their mental health and psychosocial well-being. To increase refugee communities' awareness of public health in the context of migration, the IOM also provides training and awareness raising to detect and address mental health and psychosocial problems faced by refugee populations to health workers, community

leaders, and local faith-based institutions, women's leaders, and school teachers help with the recovery process.

RECOMMENDATION

Addressing refugees and asylum seekers issues, Indonesian government has to follow the Universal Declaration of Human Rights, and the International Covenant on Economic, Social, and Cultural Rights. The Indonesian government has also been able to provide health insurance (BPJS) for refugees and asylum seekers in Indonesia. Data collection on refugees and asylum seekers must also be carried out because, with this data, the government can make appropriate policies in dealing with the problem of refugees and asylum seekers in Indonesia. The Indonesian government must re-enter the issue of managing refugees in RANHAM and revise the Presidential Decree 125/2016. Discussion on issues refugees through RANHAM can be the first step in providing more comprehensive refugee legal instruments in response needs of this group in Indonesia.

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