The Protection of Refugee Rights in Indonesia: Striving for Human Rights Protection in the Pandemic Era

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Abstract

Refugees, an already vulnerable group, has become more vulnerable in the time of the Covid-19 pandemic. Refugees have also become an international problem as well as a serious matter to the destination countries. In Indonesia, as a developing country, view refugees as a burden that must be addressed despite a lack of resources. Not a state party to the 1951 Refugee Convention, Indonesia depends on the UNHCR for refugee determination status. Until refugee status has been determined, refugees remain in the immigration detention and community shelter provided by the government of Indonesia. During their stay, Indonesia is obligated to protect the rights of the refugees, including the right to health. This paper aims to describe the challenges faced by Indonesia providing refugees and migrants' protection during the pandemic and proposes an opportunity to work together to protect the right to health and healthy living for the refugees. There are challenges during Covid-19 pandemics besides all those existing ones, and it needs further consideration. On the other hand, the opportunity to work together with the concept of shared responsibility has proven a promising solution despite all the burdens and obstacles. However, a more organised effort is still needed to protect the human rights of the refugees.

Keywords: *Covid-19 pandemic, human rights, refugee protection, shared responsibility*

I.   INTRODUCTION

Refugees have become an international problem since it involves all countries as the subject of international law. Refugees have also become a serious matter to both the originating and destination countries. In developing countries, refugees pose a burden that needs to be addressed despite a lack of resources. Every country is bound by the "non-refoulement" principle, which means that countries cannot expel or return incoming refugees to the place where they possibly face the risk of torture, danger, or inhumane treatment. However, the principle of non-refoulement is often breached by the developed countries through the mechanism of non-entrée in one way or another. Marjoleine Zieck, in her inaugural course at the University of Amsterdam, has explained the Netherlands' denial of refugee status granted by the

United Nations High Commissioner for Refugees (UNHCR) based on national laws and regulations.[1] This phenomenon has caused collateral damage to other countries, including developing countries.

Facing this condition, developing countries are bound by the principle of non-refoulment. Incoming refugees then temporarily inhabit immigration shelters and tend to proceed to the country of destination. Developing countries usually become transit locations for refugees. However, the "transit time" often becomes longer and longer for many reasons.[2] The longer refugees remain "in transit," the higher the burden to the transit country, disproportionally falling on developing countries.

The many other developing countries in Southeast Asia likewise face a similar problem of incoming refugees. Located near the continent of Australia, Southeast Asia –particularly Indonesia- has become one of the most common transit countries. The archipelagic form provides for many possible landing points. On the other hand, Indonesia has not ratified the 1951 Convention, so it depends on UNHCR for granting refugee status. Indonesia provides shelter for a temporary stay, but the status determination usually takes too much time.

The refugee problem has become more complicated because of the persistent pandemic. It is believed that the Covid-19 outbreak started in Wuhan city, Hubei Province, China, around December 31, 2019. The WHO China country office reported a case of pneumonia with unknown aetiology and then revealed that a new type of coronavirus caused it. The disease, later named the coronavirus, or Covid-19, was announced by the WHO as a Public Health Emergency of International Concern on January 20, 2020, because of the rapidly increasing number of infected people. As of March 25, 2020, a total of 414.179 confirmed cases were reported, with 18.440 deaths, of which cases were reported in 192 countries/territories. Indonesia has reported two confirmed cases on March 2, 2020, then increased to 790 cases from across 24 provinces by March 25, 2020.[3] The number has not stopped increasing, even not slowing in the pace. The disease spread globally, and the pandemic is still here.

The pandemic has forced a new way of life on the entire world. Countries worldwide have attempted to prevent the spread of the disease and tracked, traced, and tested their people to prevent further spread. Restrictions on mobility were also imposed, both domestically and at international borders. Almost all outdoor activities with potentials of crowds have been restricted. Countries also put tight

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[1]   Marjoleine Zieck, *UNHCR's Parallel Universe: Marking the Contours of a Problem* (Amsterdam: Amsterdam University Press, 2010), https://doi.org/doi:10.1515/9789048513321.

[2]   Savitri Taylor and Brynna Rafferty-Brown, "Difficult Journeys: Accessing Refugee Protection in Indonesia," *Monash University Law Review* 36, no. 3 (2011): 138–61, https://search.informit.org/doi/10.3316/INFORMIT.645081707163894.

[3]   Direktorat Jenderal Pencegahan dan Pengendalian Penyakit (P2P) Kementerian Kesehatan Republik Indonesia, *Pedoman Pencegahan Dan Pengendalian Coronavirus Disease (COVID-19)*, 4th ed. (Jakarta: Direktorat Jenderal Pencegahan dan Pengendalian Penyakit (P2P) Kementerian Kesehatan Republik Indonesia, 2020).

restrictions on their borders, preventing people from outside from getting in and vice versa. Those measures have brought significant impacts, especially on migrants and refugees. During this pandemic, the humanitarian doors, which lend a hand to the migrants and refugees, have been temporarily closed and put the lives of the refugees and migrants in uncertainty.[4]

Millions of migrants and refugees have been left stranded because of the lockdown policies of many countries. Some were blamed as sources of Covid-19 infections in hosting countries. There were also instances of refugees fleeing detention centres because of the fear of infection. Suspicion of migrants has spread even faster than infection among refugees or refugees of hosting citizens.[5] The fear and doubt affect their everyday life and interrupts the harmony of their lives with their surroundings.

Recently, the pandemic has entered second or third waves in the number of infected cases in many countries, including Indonesia, which faced fluxuating and increasing active cases over time.[6] Various public health measures have been implemented and escalated continuously. However, conditions are much different for migrants and refugees. Along with being stranded with no land or countries open doors for them for disease spread prevention, refugees and migrants need specific measures to protect their right to health and healthy living. They deserve to be protected from the disease and must prevent further infection from and among themselves. Therefore, protecting the right of health and healthy living for refugees and migrants poses a daunting challenge for the international community. In the name of humanity, Indonesia has found that there is an excellent opportunity to protect migrant rights. This responsibility is not for the UNHCR only, or the host countries, but rather our joint responsibility as a member of the international community. Indonesia has affirmed a commitment to refugee protection by showing interest in implementing the Global Compact on Refugees and the Global Compact on Safe, Orderly, and Regular Migration.[7] Although non-binding, those Compacts provide measures and critical points in protecting the refugees by cooperation and collaboration among parties internationally.

This paper aims to describe the challenges to refugee and migrant protections during the pandemic and espouses an opportunity to work together to protect the right to health and healthy living for the refugees. Limitations on mobility, the threat

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4   Hans Henri P. Kluge et al., "Refugee and Migrant Health in the COVID-19 Response," *The Lancet* 395, no. 10232 (2020): 1237–39, https://doi.org/10.1016/S0140-6736(20)30791-1.

5   AKM K M Ahsan Ullah, Faraha Nawaz, and Diotima Chattoraj, "Locked up under Lockdown: The COVID-19 Pandemic and the Migrant Population," *Social Sciences & Humanities Open* 3, no. 1 (2021): 100126, https://doi.org/10.1016/j.ssaho.2021.100126.

6   Shunqing Xu and Yuanyuan Li, "Beware of the Second Wave of COVID-19," *The Lancet* 395, no. 10233 (2020): 1321–22.

7   Arie Afriansyah, "Indonesia and the Global Compacts on Refugees and Migration," *International Journal of Refugee Law* 30, no. 4 (2019): 684–86, https://doi.org/10.1093/ijrl/eey066.

of the disease spreading, and the lockdown have challenged states' refugee protection throughout the world, including in Indonesia. However, there is an opportunity to join hands and collaborate with others through the concept of shared responsibility, discussed below.

II. REFUGEE RIGHTS

As humans and specifically as refugees, refugees have a set of rights that must be protected wherever they are. As a preliminary matter, it is important to understand the extent of refugee rights.

1) The Protection from Forced Return to the Country of Origin (Non-Refoulement)

When persons flee from their home countries facing fear of persecution that could endanger their lives, security, and integrity, governments of countries where refugees land must provide protection for them from not being returned to their country of origin to avoid further human rights violations. The international community has recognised the principle of non-refoulment as stipulated in Article 33 paragraph 1 The 1951 Refugee Convention; UNHCR Basic Legal Documents on Refugees 1999 page 8-37; Article 3 United Nations Declaration on Territorial Asylum; Article. VIII of the Asian-African Legal Consultative Committee, Bangkok Principles; Article II paragraph 3 OAU Convention 1969; Article 22 paragraph 8 American Convention on Human Rights Convention 1969.

The legal basis for non-refoulement of refugees is Article 9 Universal Declaration of Human Rights (UDHR); Article 5 UNHCR; Articles 2 and 6 of the Convention Against Torture; Article 7 of the International Covenant on Civil and Political Rights.

2) The Right to Seek Asylum

Asylum is the protection provided by the jurisdiction of a country in the territory of its country for a person or group of people who come to look for it after a person or group of people has been exposed to human rights violations in their country. Mary Crock explained the state's obligation to provide asylum as "The State will bear joint responsibility for the fate of the asylum-seeker as a matter of international law."[8] In fact, granting asylum often creates problems between countries due to differences in opinion and understanding of asylum. Although granting asylum is the right of a sovereign states, granting asylum is an essential aspect of protecting human rights. It is necessary because it not only guarantees the right to life but also prevents human rights violations. Therefore, granting asylum must be considered

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[8] Mary Crock, "In the Wake of the Tampa: Conflicting Visions of International Refugee Law in the Management of Refugee Flows," *Pac. Rim L. & Pol'y J.* 12 (2003): 49.

a principle of international law under the UN charter if it does not conflict with international law. Asylum is set forth in Article 14 paragraph (1) of the Universal Declaration of Human Rights (DUHAM), namely, everyone has the right to seek and enjoy in other countries asylum from persecution. The principle that underlies the UNHCR is that "if asylum seekers arrive on a large scale, the state will provide temporary protection." In line with the provisions of Article 14 of the DUHAM, according to Chimni, the granting of asylum cannot be said to be an act of hostility by other countries, especially the country of origin of the asylum seekers.[9]

3) The Right to Equality and Non-Discrimination

Refugees have the right to be treated humanely by an asylum-granting country. As a general rule, the rights and freedoms recognised by international human rights law are endowed on all people, including refugees, who have the right to respect and basic human rights and citizens of the country granting asylum.[10] It is essential to protect the rights and freedom of refugees globally and regionally, (Article 2 paragraph 1 ICCPR; Article 2 paragraph 2 ICESCR; Article 1 paragraph 3, article 13 paragraph 1 (b), 55 (c) and 76 (c) UN Charter; Article 2 Universal Declaration of Human Rights; Article 14 European Convention; Articles. 1 and 24 American Convention; Articles 2, 13, 18 paragraph 3 African Charter) because when in a foreign country, refugees are acutely vulnerable to discrimination. This may occur because most refugees usually do not carry identity or immigration documents, a problem to the authorities of the asylum-granting country. It is not uncommon for refugees to be accepted in the receiving country under suspicion and without legal certainty surrounding their existence in the receiving country.

4) The Right to Life and Security

As explained above, refugees are a vulnerable population, their safety regularly threatened. Some of their basic rights are threatened during evacuation even when they are still in their country of origin. Gil Loescher explained that the condition of refugees can be very bad, often even worse than when they were in their home country, because of the compulsion to evacuate.[11] Refugees are often separated from their family members, under threat, objects of exploitation and haunted by the fear of being forcibly returned to their country of origin. Most of the children living in shelters usually cannot live like children should. Often refugees are also at risk of violence, including murder, rape, genocide, and forced disappearances. Women

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[9] Bhupinder S Chimni, "The Geopolitics of Refugee Studies: A View from the South," *Journal of Refugee Studies* 11, no. 4 (1998): 350–74.

[10] B Chimni, "The Changing World Order, the Structural Role of Humanitarian NGOs, and the Protection of Displaced Persons and Migrants," in *ICVA CONFERENCE*, 2003.

[11] Gil Loescher, "Introduction: Refugee Issues in International Relations," *Refugees and International Relations*, 1989, 1–33.

are the most vulnerable to violence.[12] Given that the right to life and security are universal rights that must be protected in several international provisions including Article 3 of the Universal Declaration of Human Rights; Article 6 paragraph 1 ICCPR; Article 1 American Declaration; Article 4 paragraph 1 of the American Convention; Article 2 paragraph 1 European Convention; Article 4 African Charter; and protection against genocide in Article II Genocide Convention 1948.

Perpetrators of violations of the right to life and security against refugees face strict punishment as stipulated in the 1993 Vienna Declaration, paragraph 28. This declaration mandates that all countries investigate violations of refugee rights by anyone so that every country is encouraged to implement the laws protecting women from rape and sexual violence, including female refugees.

5) The Right to Return to Country of Origin

Refugees must be allowed to return to their home countries if so desired. In addition, refugees also need protection from being forced to return to their country of origin. Human rights legal instruments regulate the right of individuals to return to their country of origin through Article 13 paragraph 2 Universal Declaration of Human Rights; Article 12 paragraph 2 African Charter; Article 12 paragraph 4 ICCPR, Article 22 paragraph 5 of the American Convention; Article. 3 paragraph of the Fourth Protocol to the European Convention prohibits the deprivation of the right to enter the territory of the state of which a person is a national; Article 12 paragraph 2 The African Charter limits restrictions to those provided for by law for the protection of national security, law, and order, public health or morality. The UN Security Council, through UN Security Council Resolution No. 876 of 1993, has affirmed that "refugees and displaced persons have the right to return to their country of origin."[13]

Refugees have the right to return to their country of origin and enjoy their lives. As for the receiving country or in coordination with UNHCR, it is better to return the refugees if it is known that their home country conditions are conducive as stipulated in Article V of the 1969 OAU Convention and the refugees are returned voluntarily.

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[12]   United Nations High Commissioner for Refugees, "United Nation Report about Refugee" (New York, 1998).

[13]   U.N.S.C. Resolution 876 (1993) of October 19, 1993, on the situation in Abkhazia on the right of Palestinians to return, in Kathleen Lawand, "The Right to Return of Palestinians in International Law," *International Journal of Refugee Law* 8, no. 4 (1996): 532–68.

III. INDONESIA: THE CHALLENGES IN PROTECTING THE RIGHTS OF REFUGES DURING THE PANDEMIC

Refugees are a vulnerable population which needs special attention, especially during the pandemic. When in host countries or transit countries, refugees usually have limited sources of stable accommodation and necessities. They also have difficulty finding employment or temporarily employed with minimum wages. Refugees are also vulnerable to being victimize or receive adverse treatment. They can be stressed out in their condition of having fled their home country while still being burdened with uncertainty in the hosting country or transit country. The burden is hard enough, only to add the threat of Covid-19 infection.[14]

Refugee housing is usually crowded and difficult to accommodate strict health protocols. This means that the infection can quickly spread within refugee camps by one infected person, whether they show any signs or symptoms.[15]

Indonesia, while not a party to the 1951 Convention, has established a national regulation concerning the international refugees in Indonesia through Presidential Regulation Number 125 Year 2016 on The Handling of Foreign Refugees. Through this regulation, the government of Indonesia has authorised the UNHCR to determine the status of refugees who arrive in Indonesia. In 2019, there were almost 13.700 people of concern in Indonesia and only 1.300 cases were closed due to resettlement, repatriation with assistance, or spontaneous departure. Many school-aged lost the opportunity to join a school because of the lack of support. The tension between refuges and local communities remained high in several places, potentially causing mental distress.[16] The conditions above illustrate the burden on refugees living in Indonesia, where only around 1% of them have found a solution for their future life and resettlement. On the other hand, the Office of UNHCR in Jakarta claiming to have implemented enhanced refugee status determination (RSD) through efficient data handling and processing. They have also reduced the number of refuges in immigration detention to 88% by advocating for placing refugees in community shelters; albeit in some places, the tension continues to rise between the refugees and the local citizens.[17]

Access to and availability of healthcare services for refugees poses another challenge.[18] For example, in Indonesia, refugees are visited by healthcare personnel at most once a week or often only twice a month. In fact, in the absence of specific complaints or expressed symptoms, there may be no visit at all. The immigration

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[14] Mangrio Elisabeth, Paul-Satyaseela Maneesh, and Strange Michael, "Refugees in Sweden During the Covid-19 Pandemic—The Need for a New Perspective on Health and Integration," *Frontiers in Public Health* 8 (2020): 605.

[15] Mohamed Buheji et al., "Alleviation of Refugees COVID-19 Pandemic Risks-A Framework for Uncertainty Mitigation," *International Business Research* 13, no. 7 (2020): 69–79.

[16] United Nations High Commissioner for Refugees, "UNHCR 2019 Year End Report," 2020.

[17] United Nations High Commissioner for Refugees.

[18] Buheji et al., "Alleviation of Refugees COVID-19 Pandemic Risks-A Framework for Uncertainty Mitigation."

detention centres also with the nearest government hospital to treat the refugees if they need to be admitted to a hospital. Health screening is carried out but not only sporadically.[19] The influx of the Rohingya in Bangladesh refugee camps, saw that refugees were served by several hospitals provided by non-governmental organisations and foreign countries, 340 beds in total. There were also more than twenty primary healthcare centres, albeit with varied functionality. Those healthcare facilities have improved the health status of refugees since 2017. However, the mortality rate and the malnutrition remain high.[20]

The pandemic that started in early 2019 has posed other challenges to refugees staying in Indonesia, in healthcare services and education. In its report, the UNHCR indicated that refugees have limited access to healthcare facilities due the burden of the pandemic itself. However, the Ministry of Health had issued a circular note to guarantee that registered refugees staying in Indonesia have access to healthcare facilities related to Covid-19. School-aged children also faced barriers to accessing education during the pandemic. Due to the lack of electronic devices necessary for distance learning, school-aged children have not received proper education.[21]

The uncertainty their status and future has exposed refugees to significant stress and may have harmed their health. Stress itself can lower immunity, rendering refugees more vulnerable to be infection. The lack of testing and health screening has also become a risk factor in managing the disease. Other risk factors that also increase the chance of getting the disease are their comorbidity, such as the history of hypertension, diabetes mellitus, or being obese. It happens all over the world when dealing with refugees. Many refugees were not afraid of dying because of the virus because they thought they would be dead because of hunger.[22]

The pandemic has led to food scarcity due to transportation restrictions that have interfered with food distribution. The lack of food frequently occurs when a region or territory is locked down. As a result, it has become increasingly important to provide food for the locked-down areas facing food insecurity. Even if there was available food, the prices would be high, and sometimes out of reach for refugees. The food provided in the detention centres or shelter has also been limited in composition and quantity. Presidential Regulation Number 125 Year 2016 does not allow the refugees to work in Indonesia and the UNHCR supports them with only a limited regular allowance. During the pandemic, refugees have tightened their

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[19] Apriadi Apriadi and Nur Rachmat Yuliantoro, "Perlindungan Hak Asasi Manusia Pengungsi Lintas Batas Di Rumah Detensi Imigrasi (Rudenim) Indonesia (Studi Kasus: Rudenim Surabaya)," *JURNAL TRANSBORDERS* 2, no. 1 (2018).

[20] Shaun Truelove et al., "The Potential Impact of COVID-19 in Refugee Camps in Bangladesh and beyond: A Modeling Study," *PLoS Medicine* 17, no. 6 (2020): e1003144, https://doi.org/10.1371/journal.pmed.1003144.with 600,000 concentrated in the Kutupalong-Balukhali Expansion Site (mean age, 21 years; standard deviation [SD], 18 years; 52% female

[21] United Nations High Commissioner for Refugees, "UNHCR Indonesia Factsheet - December 2020," 2020.

[22] Ullah, Nawaz, and Chattoraj, "Locked up under Lockdown: The COVID-19 Pandemic and the Migrant Population."

budgets, which prevents them from making ends meet.[23] It has become so difficult for refugees to stay healthy without proper nutrition.

The lengthy and time-consuming administrative services have also added to the stressful conditions for refugees. Residing in a foreign country without understanding the regulations and law, has created a depressing situation, not to mention the language barriers.[24] The pandemic itself has added significant burden simply because there is no clear end in sight. Here, the burdens facing refugees has become more and more unbearable, despite effors of the UNHCR to make the RSD process more efficient and less time-consuming.

The stigmatisation of refugees is another problem that cannot be put aside.[25] Several countries have admitted that the number of Covid-19 cases has increased after welcoming people from abroad. Some strict nationalists also think that migrants may expose their citizens to the outbreak and impose a greater burden to the national healthcare facilities. It is understandable that refugees and migrants may have contracted the disease agents and have not yet been tested. Unfortunately, some of the refugees enter countries illegally with no proper health documents. The healthcare services and personnel have difficulty reaching those refugees because of the lack of information. Another reason is that countries have prioritized the health of their citizen, subordinating the health of refugees and migrants.

IV. THEORETICAL FRAMEWORK ON SHARED RESPONSIBILITY

In the era of globalisation, countries in a region can also forge a stronger relationship and mutually benefits through the Good Neighbourhood principle. Regionalism and multilateralism in the Asia Pacific region today take many forms in addition to the Association of Southeast Asian Nations (ASEAN), the main pillars of regional cooperation. There is a push to expand cooperation among countries in the Asian region, particularly East Asia, to build more comprehensive regional cooperation without having to lay the foundation of the *acquis communautaire* (regulations and laws needed by the community) such as that of the European Union.

The definition of regionalism is the interaction or good relations of people, institutions, media, goods, financial, including political relations and military cooperation in a specific region. In addition, regionalism can be interpreted as relations among countries or interest groups that are well institutionalised in a region to achieve specific goals.

In Southeast Asia, the discussion about regionalism cannot be separated from the organisation among the countries of Southeast Asia or ASEAN. ASEAN

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23 United Nations High Commissioner for Refugees, "UNHCR Indonesia Factsheet - December 2020."
24 Taylor and Rafferty-Brown, "Difficult Journeys: Accessing Refugee Protection in Indonesia," 2011.
25 Ullah, Nawaz, and Chattoraj, "Locked up under Lockdown: The COVID-19 Pandemic and the Migrant Population."

has undeniably made the process of regionalisation of Southeast Asia easier and quicker. Although Southeast Asian regionalism is going well, regionalism cannot be separated from the interference of outside forces on regional political stability.

The problems related to refugees, either directly or indirectly, affects the political stability of the region. Strong regional cooperation based on shared responsibility enables the achievement of dynamic and regional peace. The importance of the role of countries in the region can also be analysed though an International Relations theory, namely the Systemic Theory.

The systemic theory has the characteristic of outside-in, namely that an area is seen as a wider system. There are two translations of Systemic Theory in analysing regionalism in a region, namely The Theories of Realism and Neo-Realism. According to the Realism theory, the state is the only actor in international relations and has the power to influence non-state actors. However, globalisation today with the competing interests of the states, it would be very difficult to create regional relationships as inspired by the Realism Theory. This fact triggers the emergence of the Neo-Realism Theory, which emphasises that non-state actors also play a role in international relationships or regionalism. Kenneth Waltz put forward the Neo-Realism Theory, intended to complement the Theory of Realism by EH Carr and Hans Morgenthau in the International Relations field. According to the theory of Neo-Realism, regionalism is an alliance of cooperation that does not emphasise the aspects of the region alone but the actors' bargaining, the coordination of strategies and the attempts to find an agreement shortly to gain common goals and are often formalised in a treaty in various fields.[26] Examples are such as APEC, OPEC, AFTA, and NAFTA.

In handling waves of incoming refugees as an indirect consequence of globalisation, specifically armed conflict in the world, developing countries must optimise internal and external sovereignty to play an active role in international activities. As one of the developing countries in Southeast Asia, it is undeniable that Indonesia has also faced the problem of international refugees, so Indonesia must initiate cooperation in any form starting with the surrounding environment or regional areas such as the Association of Southeast Asian Nations (ASEAN). As stated in the above theories, inter-state cooperation is also a form of upholding external sovereignty and a form of Indonesia's active role in offering solutions to global problems, at least inside the country itself and the surrounding region. The cooperation can be in multilateral agreements or action plans in handling international refugees in the ASEAN region.

Globalisation has elevated relations between countries worldwide, as if these countries are members of a large community with unclear boundaries. Despite

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[26] Adji Samekto, *Pergeseran Pemikiran Hukum Dari Era Yunani Menuju Post-Modernisme* (Jakarta: Konstitusi Press, 2015).

being in a large community with unclear boundaries, one thing that should not be forgotten in the study of globalisation is state sovereignty, because it is a fundamental principle in the study of international law. According to Jean Bodin, state sovereignty is understood as the highest, absolute, and eternal power, infinite, and cannot be divided. In this case, the definition applied to the sovereignty of the state in creating the laws and regulating its citizens. According to the author, Bodin's opinion must be harmonised with the concept of sovereignty in international law in the era of globalisation.

The discussion of sovereignty in International Law in the era of globalisation cannot be separated from the *nation-state* because of the 1648 Westphalia Treaty.[27] Sovereignty here can be categorised into internal and external sovereignty. According to the author, Jean Bodin's Sovereignty Theory is a form of internal sovereignty in the sovereign state, which has exclusive authority over certain areas without interference from foreign parties in accordance with the principle of non-intervention. External sovereignty places the state as an independent state holding the same degree as another, as stated by Grotius.[28]

Grotius's teachings emphasise the concept of two things. First, that all humans have the same inherent traits, and second, because of these common traits, humans tend to form communal life.[29]. Besides tending to live together, humans also want to live peacefully based on Sociality Awareness, which all nations can accept as the law of the nations.[30] In living together with other countries, external sovereignty plays a very important role. The state can use external sovereignty to regulate its foreign policy. Observing the current situation of globalisation, governments find it very difficult to overcome their global dynamics and challenges by maintaining absolute independence, eschewing global interdependence. Thus, to realise a balanced state life, internal and external sovereignty must be addressed dynamically and harmoniously. As a form of harmonisation between internal and external sovereignty, state law must be built from a fusion of interests that utilise external elements practical to it, as stated by Rudolf von Jhering.[31] Thus, by referring to the three theories above, the true relationship among countries becomes a necessity in the current era of globalisation. One form of relationship among countries is regionalism as in the ASEAN community.

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[27] Sefriani, *Peran Hukum Internasional Dalam Hubungan Internasional Kontemporer* (Jakarta: Raja Grafindo Persada, 2015).
[28] Sefriani.
[29] Samekto, *Pergeseran Pemikiran Hukum Dari Era Yunani Menuju Post-Modernisme*.
[30] Bernard L Tanya, Yoan N. Simanjuntak, and Markus Y Hage, *Teori Hukum Strategi Tertib Manusia Lintas Ruang Dan Generasi* (Yogyakarta: Genta Publishing, 2010).
[31] Tanya, Simanjuntak, and Hage.

V. THE OPPORTUNITY TO WORK TOGETHER THROUGH THE CONCEPT OF SHARED RESPONSIBILITY

The UNHCR as an international body whose responsibility is to provide international protection for the refugees.[32] One its duty is to determine the status of the refugees, especially for non-parties to the 1951 Convention. However, from practical experience, refugee status granted by the UNHCR does not guarantee that refugees are accepted by the destination country. When such status is ignored, refugees' protection is threatened, and they are prone to the unintended violations of their rights as refugees. The possibility of violation of refugee rights also happens when the refugees enter developing countries that have not adequately prepared for hosting refugees.

Most developing countries have strived to overcome the burdens of poverty, famine, and inadequate infrastructure. Countries still struggle to make ends meet for themselves and are probably ill-prepared to accept more people. The principle of non-refoulment may impose on countries an existential threat to their welfare. The collateral risk from this burden is the unintended violations of refugee rights because of the unpreparedness of the host country to protect refugees. Thus, shared responsibility comes to the surface when there are violations of human rights and refugee rights in the offending country.[33]

A similar problem is also faced by Indonesia, a developing country in Southeast Asia. As a non-party to the 1951 Convention, Indonesia depends on UNHCR for refugee status determination. Refugees entering Indonesia remain in immigration detention or community shelters in several cities in Indonesia while awaiting determination of their status. Another problem is the limited resources for treatment of refugees during the time awaiting the status determination. With limited resources, the government needs assistance, especially when dealing with numerous refugees. As an illustration, the number of refugees keeps increasing over time. According to data from the United Nations High Commissioner for Refugees (UNHCR) in January 2012, there were 3.275 asylum seekers and 1.052 refugees registered with the UNHCR Jakarta office. At the end of 2014, there were 4.131 refugees registered with UNHCR Jakarta. In 2015, based on the information from UNHCR Representative Office, there were at least 3.8 million international refugees in the Asia Pacific region.[34]

Meanwhile, according to data from the UNHCR Indonesia, the number of asylum seekers and international refugees in Indonesia is 13.679 people. As of the

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[32]   United Nations General Assembly, "Statute of the Office of the United Nations High Commisioner for Refugees" (1950).

[33]   Maarten den Heijer, "The Practice of Shared Responsibility in Relation to Refoulement," 2016.

[34]   Tri Wahyuni, "UNHCR: Jumlah Pengungsi Di Indonesia Meningkat," CNN Indonesia, 2015. Compiled with the personal communication with Mr. Thomas Vargas, UNHCR Indonesia, which took place on 2015.

end of January 2016, 7.616 asylum seekers and 6.063 international refugees were registered with UNHCR Jakarta. Based on data taken from the official UNHCR website up to the end of June 2017, a total of 5.274 asylum seekers and 14.300 refugees were registered with the UNHCR Jakarta. In 2018, the number of asylum seekers and refugees registered at immigration detention centres throughout Indonesia reached 13.840 and in 2019, it reached 13.900 people.[35] If refugee status has not been determined, refugees will remain in immigration detention and community shelters provided by the Indonesian government.

This is a disproportionate burden on a developing country like Indonesia, with limited resources. However, there has help from international organisations. One of the international organisations, the International Organization for Migration (IOM), has assisted in managing the influx of refugees.[36] Unfortunately, the increasing number of refugees seems to have outpace the provided resources. The longer the waiting period for refugee status to be determined, the greater the negative impact of such limited resources on refugees,[37] This in turn may expose refugees to negligence, inappropriate treatment, long-term uncertainty of quality, and many other violations of refugee rights.

Some developing countries have realised that the burden will become more significant as time goes by, while there is no comprehensive, long-term solution. Some countries have gathered and agreed to share the burden through cooperation, collaboration, a regional or multilateral agreement based on this awareness. Sebastien wrote in his paper that there is a great need for regional collaboration.[38] In Southeast Asia, for example, there have been efforts concerning refugees and irregular migration, namely The Manila Process, the Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime; and the "Jakarta Declaration." The Association of Southeast Asian Nation (ASEAN) is also a regional organisation that is significantly concerned with refugees. Unfortunately, those efforts are still limited to information sharing, recent issue discussions, and have not yet evolved into decisive policies or regulations. However, it can be considered as a starting point to build more comprehensive and robust cooperation in overcoming the refugee problem.[39]

Comprehensive cooperation can also be built by learning from more developed countries. As an example of regional cooperation, the European Union has proven its strength despite many problems and obstacles. As concisely describe by Guild

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[35]   United Nations High Commissioner for Refugees, "UNHCR 2019 Year End Report."

[36]   Taylor and Rafferty-Brown, "Difficult Journeys: Accessing Refugee Protection in Indonesia," 2011.

[37]   Afriansyah, "Indonesia and the Global Compacts on Refugees and Migration."

[38]   Moretti Sebastien, "New Issues in Refugee Research," no. 283 (2016).

[39]   *Ibid.*

et al., the European Union has faced a crisis on migrants that needs comprehensive action to overcome.[40] The paper also suggests a new system in managing incoming refugees, not only by a few member states but rather all member states of the European Union. Even in the EU, there is a need to discover new tools since the Dublin Regulation is no longer effective. The EU's example proves that regional cooperation is required to solve the refugee problem.

Regional cooperation can be considered as a shared responsibility in refugee rights protection. In this case, the term "shared responsibility" is slightly different from what den Heijer[41] stated in his paper. Den Heijer stated that shared responsibility means that multiple actors are jointly and severally responsible for their collective acts that resulted in a single harmful outcome. Shared responsibility in this study is more closely related to the distribution of responsibility among the members of the certain group, regional cooperation, or parties of the agreement to fulfil the obligation or responsibility better and more appropriately. Shared responsibility can also be a good model for collaboration among countries and the international body such as the UNHCR to solve the refugee problem. As previously understood, developing countries will have difficulty in fulfilling their obligations individually. Therefore, they need collaboration and cooperation.

As members of the international community, each state has a responsibility to protect refugees. However, there are unique obstacles faced by developing countries in fulfilling this obligation. The failure to provide sufficient protection to the refugees, either by individual countries or by international bodies, may expose refugees to the violation of their rights, negligence, and other dangers. The idea of shared responsibility through collaboration, cooperation, and regional agreement is one promising solution, especially for developing countries.

The idea of shared responsibility in managing the influx of refugees has also been thought of as a promising solution. Shared responsibility is thought to be better than shifted responsibility, which passes the buck on refugee protection to neighbouring countries of the nation of first landing.[42] This practice is often called a Safe Third Country. However, this practice is hard to accommodate by developing countries. The limitations of budgeting and resources in developing countries see incoming refugees as an added burden to the country.

Cooperation among countries, either among countries in a region, or among regions, tends to be one solution in overcoming refugee protection problems. As exemplified by the European Union, the value of solidarity and responsibility-sharing has become their code in facing the international migration problems. The

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40 Elspeth Guild et al., "The 2015 Refugee Crisis in the European Union," no. 332 (2015): 1–6.
41 den Heijer, "The Practice of Shared Responsibility in Relation to Refoulement."
42 Violeta Moreno-lax, "Solidarity's Reach: Meaning, Dimensions and Implications for EU (External) Asylum Policy" 24, no. 5 (2017): 740–62, https://doi.org/10.1177/1023263X17742338.

member countries in the EU region are governed by codes or laws without setting aside their national regulations. They have agreed to embrace the values of solidarity and share responsibility in facing incoming refugees, albeit including debate about how the value should be allocated.[43] The collective value of solidarity in the EU has become the bond that unifies member countries' acts in one way or another. Therefore, each member country's binding value needs to be embraced to be able to act collectively toward refugees.

In the Southeast Asia region, the idea of shared responsibility in refugee protection is not an impossible ideal. Southeast Asian nations share a similar background, history, culture, and the level of development. Southeast Asia even has organized, namely through the Association of Southeast Asia Nations or ASEAN, which unifies its member countries in productive regional cooperation. Effective communication should not be difficult among the member countries through this organisation, and the spirit of collaboration is very much supported and encouraged. In these readily available communities, a shared responsibility can be introduced, developed, and applied.

Shared responsibility in refugee protection is not a novel idea for the Southeast Asian community. It has already been introduced and discussed in several regional meetings such as The Manila Process, the Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, and the "Jakarta Declaration."[44] However, there has not been concrete or significant action to follow up on those meetings. Meanwhile, refugees keep coming, and the existing ones still face uncertainty.

The definition of regionalism is the interaction or good relations in multiple aspects of a region. In addition, regionalism can also be interpreted as relations among states or interest groups that are well institutionalised in a region, intended to achieve specific mutual aims of its members.

In the context of Southeast Asia, the discussion about regionalism cannot be separated from the Association of Southeast Asian Nations (ASEAN). ASEAN has undeniably made the process of regionalisation of Southeast Asia occur more easily and quickly. Evidence of regionalism cooperation can be seen in the ASEAN Banking Integration Framework (ABIF), which offers economic and financial cooperation.[45]

In managing waves of refugees coming into the country as an indirect consequence of globalisation, which has brought a shift in armed conflict around

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[43]   Valsamis Mitsilegas, "Humanizing Solidarity in European Refugee Law: The Promise of Mutual Recognition" 24, no. 5 (2017): 721–39, https://doi.org/10.1177/1023263X17742817.

[44]   Sebastien, "New Issues in Refugee Research."

[45]   Handriyanto Wijaya, Jamal Wiwoho, and Emmy Latifah, "ASEAN Banking Integration and Its Impacts on the Banking Industry in Indonesia," *Advances in Social Science, Education and Humanities Research* 358 (2019).

the world, developing countries will need to optimise their internal and external sovereignty to play an active part in international activities. Indonesia has long faced the problem of international refugees, so the government of Indonesia should spearhead an initial effort. This initial effort could be grounded in the surrounding environment or regional areas such as the ASEAN. As stated in the above theories, inter-state cooperation is based on a country's need to live in harmony with the neighbouring countries, to build a strong Sociality Awareness, and uphold external sovereignty. Regional cooperation can also become the means of Indonesia's active role in offering solutions to global problems, at least in Southeast Asia.

Several steps can be taken under the conditions mentioned above to bring the shared responsibility ideal into real action. First, the collective values, the spirit of collaboration, and the ideal should be well introduced methodically. The member countries should first realise that they face the same problem, have similar conditions and limitations, and share the same resolve. This collective awareness will bring collective consciousness that all the member countries can share the burden and responsibility. Scientific evidence will strengthen the awareness and encourage collaborative efforts. Second, there should be an initiation of action. Following up on those previous meetings, ASEAN can prioritize an agenda to discuss the problem of refugees among the member countries. The meeting should result in a collective agreement on collaboration in protecting refugees as shared responsibility for concrete action. Based on this collaboration, more technical guidelines can be developed further as the plan solidifies. However, those steps are easier said than done. The first and main problem here is realising the collective awareness of refugee protection, which is already a problem in some member countries. Another issue that cannot be set aside is the impact of shared responsibility on each member country's sovereignty, which needs to be further studied.

Shared responsibility in handling and protecting international refugees is a promising concept for countries with limited resources. However, there is still a need for a united vision and a shared awareness of each member state's obligation to protect refugees and the need for an active contribution of each country in handling the issue. This shared vision and collective understanding are essential to the implementation of joint responsibility. In principle, a country does not have an obligation to handle refugees outside its territory, as Betts stated in his book.[46]

Implementation of shared responsibility must be preceded by determining the definition that will be used as the basis for the materialisation of the concept. The formulation of the definition of shared responsibility (responsibility-sharing) was on the agenda of The New York Declaration for Refugees and Migrants on 19 September 2016. Although it is still being formulated, in general, the concept of shared responsibility

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[46] Alexander Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime* (Ithaca: Cornell University Press, 2009).

includes efforts related to handling international refugees and preventing a refugee crisis. This assistance includes financial assistance, assistance for refugee placement, provisions of supporting logistics, and other interventions. By implementing the concept of shared responsibility, it is hoped that a more equitable contribution from countries around the world can be achieved so that it has the prospect of enhancing international peace and cooperation. Countries that have become "favourable countries" for refugees will bear less of a burden in handling and managing refugees through collaboration with other countries, either in the form of financial assistance, logistics or by becoming new refugee destination countries. Through this concept of shared responsibility, the role of international organisations and the private sector can be increased. International organisations can contribute by bridging communication and initiating harmonious cooperation to handle international refugees. This cooperation can be initiated on a regional scope. Meanwhile, the private sector can make a financial contribution, either in the form of grant assistance or in the form of investment. Once again, the prospect of implementing the concept of shared responsibility must be preceded by a clear and mutually agreed definition, at least by countries that will work together to share responsibilities in handling international refugees.

VI. CONCLUSION

The Covid-19 pandemic has brought a new dimension to almost every aspect of life. The change of daily activities, limited mobility, the country-wide lockdowns, and strict health protocols has put refugees and migrants by their nature, at a higher level of vulnerability. The challenge in refugee protection demands more comprehensive solutions, especially the right to health and healthy living in the pandemic era. The challenges also faced by Indonesia with all the limited resources and support despite unending efforts. The responsibility to carry out the protection does not fall on the UNHCR only, or countries such as Indonesia, but to every international community. There is an opportunity to join hands and collaborate through a concept of shared responsibility in protecting refugee rights.

The idea of shared responsibility through collaboration, cooperation, and regional consensus is a promising solution, especially for developing countries. Scientifically, it is important to bring about the practical evidence that many countries are still facing refugee problems and possibly requiring an alternative solution of cooperation and collaboration to overcome the problem. It might be in the form of bilateral, multilateral, or regional cooperation to distribute the burden, which we mention as "shared responsibility". Therefore, a scientific study is needed to lay a scientific basis to construct an action plan.

On the other side, actions to protect refugee rights has proven more important. The rising number of refugees becomes a challenge to solve the refugee problem immediately. This study constructed the alternative solutions which develop from recent practical evidence and lessons learned in refugee rights protection, to provide better action to overcome the problem.

REFERENCES

Afriansyah, Arie. "Indonesia and the Global Compacts on Refugees and Migration." *International Journal of Refugee Law* 30, no. 4 (2019): 684–86. https://doi.org/10.1093/ijrl/eey066.

Apriadi, Apriadi, and Nur Rachmat Yuliantoro. "Perlindungan Hak Asasi Manusia Pengungsi Lintas Batas Di Rumah Detensi Imigrasi (Rudenim) Indonesia (Studi Kasus: Rudenim Surabaya)." *TRANSBORDERS*: International Relations Journal, no. 1 (2018) : 26-43. http://dx.doi.org/10.23969/transborders.v2i1.1133.

Betts, Alexander. *Protection by Persuasion: International Cooperation in the Refugee Regime.* Ithaca: Cornell University Press, 2009.

Buheji, Mohamed, Bartola Mavrić, Godfred Beka, and Tulika Chetia Yein. "Alleviation of Refugees COVID-19 Pandemic Risks-A Framework for Uncertainty Mitigation." *International Business Research* 13, no. 7 (2020): 69–79.

Chimni, B. "The Changing World Order, the Structural Role of Humanitarian NGOs, and the Protection of Displaced Persons and Migrants." In *ICVA CONFERENCE*, 2003.

Chimni, Bhupinder S. "The Geopolitics of Refugee Studies: A View from the South." *Journal of Refugee Studies* 11, no. 4 (1998): 350–74.

Crock, Mary. "In the Wake of the Tampa: Conflicting Visions of International Refugee Law in the Management of Refugee Flows." *Pac. Rim L. & Pol'y J.* 12 (2003): 49.

Elisabeth, Mangrio, Paul-Satyaseela Maneesh, and Strange Michael. "Refugees in Sweden During the Covid-19 Pandemic—The Need for a New Perspective on Health and Integration." *Frontiers in Public Health* 8 (2020): 605.

General Assembly, United Nations. Statute of the Office of the United Nations High Commisioner for Refugees (1950).

Guild, Elspeth, Cathryn Costello, Madeline Garlick, and Violeta Moreno-lax. "The 2015 Refugee Crisis in the European Union," no. 332 (2015): 1–6.

Heijer, Maarten den. "The Practice of Shared Responsibility in Relation to Refoulement," 2016.

Kementerian Kesehatan Republik Indonesia, Direktorat Jenderal Pencegahan dan Pengendalian Penyakit (P2P). *Pedoman Pencegahan Dan Pengendalian Coronavirus Disease (COVID-19).* 4th ed. Jakarta: Direktorat Jenderal Pencegahan dan Pengendalian Penyakit (P2P) Kementerian Kesehatan Republik Indonesia, 2020.

Kluge, Hans Henri P., Zsuzsanna Jakab, Jozef Bartovic, Veronika d'Anna, and Santino Severoni. "Refugee and Migrant Health in the COVID-19 Response." *The Lancet* 395, no. 10232 (2020): 1237–39. https://doi.org/10.1016/S0140-6736(20)30791-1.

Lawand, Kathleen. "The Right to Return of Palestinians in International Law." *International Journal of Refugee Law* 8, no. 4 (1996): 532–68.

Loescher, Gil. "Introduction: Refugee Issues in International Relations." *Refugees and International Relations*, 1989, 1–33.

Mitsilegas, Valsamis. "Humanizing Solidarity in European Refugee Law: The Promise of Mutual Recognition" 24, no. 5 (2017): 721–39. https://doi.org/10.1177/1023263X17742817.

Moreno-lax, Violeta. "Solidarity's Reach: Meaning, Dimensions and Implications for EU (External) Asylum Policy" 24, no. 5 (2017): 740–62. https://doi.org/10.1177/1023263X17742338.

Samekto, Adji. *Pergeseran Pemikiran Hukum Dari Era Yunani Menuju Post-Modernisme*. Jakarta: Konstitusi Press, 2015.

Sebastien, Moretti. "New Issues in Refugee Research," no. 283 (2016).

Sefriani. *Peran Hukum Internasional Dalam Hubungan Internasional Kontemporer*. Jakarta: Raja Grafindo Persada, 2015.

Tanya, Bernard L, Yoan N. Simanjuntak, and Markus Y Hage. *Teori Hukum Strategi Tertib Manusia Lintas Ruang Dan Generasi*. Yogyakarta: Genta Publishing, 2010.

Taylor, Savitri, and Brynna Rafferty-Brown. "Difficult Journeys: Accessing Refugee Protection in Indonesia." *Monash University Law Review* 36, no. 3 (2011): 138–61.

———. "Difficult Journeys: Accessing Refugee Protection in Indonesia." *Monash University Law Review* 36, no. 3 (2011): 138–61. https://search.informit.org/doi/10.3316/INFORMIT.645081707163894.

Truelove, Shaun, Orit Abrahim, Chiara Altare, Stephen A. Lauer, Krya H. Grantz, Andrew S. Azman, and Paul Spiegel. "The Potential Impact of COVID-19 in Refugee Camps in Bangladesh and beyond: A Modeling Study." *PLoS Medicine* 17, no. 6 (2020): e1003144. https://doi.org/10.1371/journal.pmed.1003144.

Ullah, AKM K M Ahsan, Faraha Nawaz, and Diotima Chattoraj. "Locked up under Lockdown: The COVID-19 Pandemic and the Migrant Population." *Social Sciences & Humanities Open* 3, no. 1 (2021): 100126. https://doi.org/10.1016/j.ssaho.2021.100126.

United Nations High Commissioner for Refugees. "UNHCR 2019 Year End Report," 2020.

———. "UNHCR Indonesia Factsheet - December 2020," 2020.

———. "United Nation Report about Refugee." New York, 1998.

Wahyuni, Tri. "UNHCR: Jumlah Pengungsi Di Indonesia Meningkat." CNN Indonesia, 2015.

Wijaya, Handriyanto, Jamal Wiwoho, and Emmy Latifah. "ASEAN Banking Integration and Its Impacts on the Banking Industry in Indonesia." *Advances in Social Science, Education and Humanities Research* 358 (2019).

Xu, Shunqing, and Yuanyuan Li. "Beware of the Second Wave of COVID-19." *The Lancet* 395, no. 10233 (2020): 1321–22.

Zieck, Marjoleine. *UNHCR's Parallel Universe: Marking the Contours of a Problem.* Amsterdam: Amsterdam University Press, 2010. https://doi.org/doi:10.1515/9789048513321.