

International Refugee Law Study Perspective State Obligations to Refugees

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Abstract

In principle, international refugee law must be in line with the development of society to understand the many problems that occur in the context of international refugees, that international refugee law is expected to function or be useful in regulating and resolving complex international refugee problems in an international scope in an appropriate and fair manner. Efforts to obtain legal protection, of course, what humans want is order and regularity between the basic values of law, namely legal certainty, legal usefulness and legal justice. Although in practice the three basic values are generally in conflict, efforts must be made for the three basic values to coincide. This also applies to international refugee law in modern times, which basically aims to create legal protection for order and regularity between the basic values of law, namely legal certainty, legal usefulness and justice within the scope of international refugees. Whereas a state's obligations to refugees, based on the provisions of Article 3 of the 1951 Convention on the Status of Refugees, state parties are obliged to apply the provisions of this convention to refugees without discrimination on race, religion or country of origin.

Keywords: International Refugee, State Obligations, Refugees.

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1. Introduction.

The term international law was put forward by a British legal expert and philosopher, Jeremy Bentham in 1870 in his famous work *Introduction to the principle of morals and legislation*. According to Jeremy Bentham, international law has the same meaning as the term law of the nations, *droit des gens*. The term international law when reflected back in Roman times found the term "ius gentium" which in German, Dutch, Scandanivian countries is known as *volkerrecht* or *volkenrect* (Peter Melanczuk, 1997:2). In this case, *ius gentium* is related to the term *volkerrecht* which is analyzed as a law that regulates relations among Romans, as well as regulates relations between Romans and other nations (regulations of relations between one nation and another).

International law is law which has rules in governing relations between countries with one another. Meanwhile, according to Mochtar Kusumaatmadja, international law is the principles and principles of law which as a whole regulate all forms of relations or problems that exist between countries and are not civil in nature (Kusumaatmadja, 2010: 1-2).

That in international law itself there are legal subjects or as owners or holders of rights and obligations in international law. The definition of legal subjects in general according to Mochtar Kusumaatmadja itself is parties whose activities or actions are regulated so that these parties have the authority to carry out their activities based on existing positive law.

International law is the part of law that regulates the activities of international scale entities. National law in Indonesia is a mixture of European legal systems, religious law and customary law. Most of the systems adopted, both civil and criminal, are based on continental European law, especially from the Netherlands because of aspects of Indonesia's past history which was a

colony with the title Dutch East Indies / Nederlandsch-Indie (Hasanuddin Hasim, 2019: 166).

In understanding the enactment of international law, there are two well-known theories, namely monism and dualism. According to the theory of monism, international law and national law are related to each other, national law is subject to and must comply with international law. According to the dualism theory, international law and national law are two separate legal systems, which do not have a relationship of superiority or subordination to each other. The existence of international law becomes the control of the international law community in carrying out national law in order to achieve world order.

The national law of each country has an important meaning in the constellation of world politics and international society, so that it will raise the question of what is the relationship between the various national laws and international law. Discussion of the relationship between international law and national law can be viewed from a theoretical point of view and practical needs (Dina Sunyowati, 2013: 76).

The relationship between international law and national law, in this case one of them relates to the implementation of international law. The relationship that unites various special regulations in the international rules of an international legal system needs to be interpreted so that the meaning of the nature of international law can be understood. It is only on the basis of a clear understanding of the relationships that make up the international legal order that the nature of international law can be understood. Besides that, in principle, international law is a rule and principle that regulates relations or issues that cross national boundaries between countries and countries or individuals and individuals in the context of international relations.

Regarding the international law described above, this research will focus on discussing international law from the perspective of international refugees. In principle, international refugee law must be in line with the development of society to understand the many problems that occur in the context of international refugees, that international refugee law is expected to function or be useful in regulating and resolving complex international refugee problems in an international scope in an appropriate and fair manner. Efforts to obtain legal protection, of course, what humans want is order and regularity between the basic values of law, namely legal certainty, legal usefulness and legal justice.

2. Analysis and Discussion.

Socio-political conflicts and wars between countries and/or civil wars in a country have resulted in refugees being victims of these conflicts. The issue of refugees as victims in these conflicts in the international context is an important issue that is discussed in detail by countries in various international forums and is an issue that is always included in the discussion in certain international forums. Refugees as victims of conflicts are forced to leave their country to seek the safety and security of the souls of refugees (I Gde Putra Ariana, 2022: 58).

Whereas there are refugees as victims in socio-political conflicts as well as wars between countries and or civil wars in a country, then on the basis of this the United Nations (UN) forms a special agency in this case the special agency handles international refugee problems . The special agency that plays an active role in dealing with international refugee problems formed by the United Nations is called the United Nations High Commissioner for Refugees (UNHCR).

Legal protection has the meaning as protection by using legal means or protection provided by law, aimed at protecting certain interests, namely by

turning the interests that need to be protected into a legal right (Harjono, 2008: 1). Explanation of the meaning of legal protection when analyzed is related to the establishment of a special agency that plays an active role in dealing with international refugee problems formed by the United Nations, namely the United Nations High Commissioner for Refugees (UNHCR), then it can be understood that there is an objective legal protection from international agencies to provide protection for refugees as victims in socio-political conflicts as well as wars between countries and or civil wars within a country.

Whereas a country's obligations towards refugees, based on the following provisions:

Article 3 of the Convention on the Status of Refugees 1951, states parties are obliged to apply the provisions of this convention to refugees without discrimination of race, religion or country of origin.

Article 4 of the Convention on the Status of Refugees 1951 stipulates that the State party is obliged to provide the same or at least the same treatment to refugees as it is given to its nationals regarding the freedom to practice religion and freedom regarding the education of their children who are in its territory.

Article 5 of the Convention on the Status of Refugees 1951 states that nothing in this convention shall be deemed to diminish any rights and benefits which are separate from this convention granted by a state party to refugees.

Article 6 of the 1951 Convention on the Status of Refugees also stipulates an explanation of the term "under the same circumstances" which means that each condition (including requirements regarding the period of time and conditions for residence or residence) must be met by certain individuals to enjoy the rights concerned. , if he is not a refugee, he must fulfill it except for requirements which due to their nature cannot be fulfilled by a refugee.

Article 7 of the Convention determines that exceptions to the principle of reciprocity state parties will provide the same treatment to refugees as the treatment given to foreigners in general (paragraph 1). After a three-year period of residence, refugees shall enjoy exemption from legislative reciprocity in States Parties (paragraph 2).

The state is obliged to provide refugees with the rights and benefits they already have, if there is no reciprocity, on the date this convention comes into force for that country (paragraph 3). The State party shall give due consideration to the possibility of granting refugees, in the absence of reciprocity, rights and benefits which exceed those which they have under paragraphs (2) and (3), and to extend the exemption from reciprocity to refugees who do not meet the requirements in paragraphs 2 and 3. (paragraph 4).

The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in Articles 13, 18, 19, 21 and 22 of this Convention as well as to rights and benefits not provided for by this Convention.

3. Conclusion.

Whereas there are refugees as victims in socio-political conflicts as well as wars between countries and or civil wars in a country, then on the basis of this the United Nations (UN) forms a special agency in this case the special agency handles international refugee problems . The special agency that plays an active role in dealing with international refugee problems formed by the United Nations is called the United Nations High Commissioner for Refugees (UNHCR).

The purpose of legal protection from international bodies is to provide protection for refugees as victims in socio-political conflicts as well as wars between countries and or civil wars within a country. Whereas a state's obligations to refugees, based on the provisions of Article 3 of the 1951

Convention on the Status of Refugees, state parties are obliged to apply the provisions of this convention to refugees without discrimination on race, religion or country of origin. Article 4 of the 1951 Convention on the Status of Refugees stipulates that States parties are obliged to provide equal or at least the same treatment to refugees as is given to their citizens regarding freedom of religion and freedom regarding the education of their children within their territory. Article 5 of the 1951 Convention relating to the Status of Refugees provides that nothing in this convention shall be deemed to prejudice any rights and benefits apart from this convention granted by a state party to refugees.

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