



## HUMAN RIGHTS LAW ANALYSIS OF AFGHANISTAN ASYLUM SEEKERS IN INDONESIA

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**Abstract:** The prolonged social conflict in Afghanistan has caused its citizens to flee to various countries around the world. Asylum seekers from this country located in Central and South Asia often face challenges in legal protection, especially in asylum-receiving countries such as Indonesia. Although it does not have an official policy regarding refugees, Indonesia is one of the transit destinations for asylum seekers, including those who are refugees from the conflict in Afghanistan. The study aims to analyze the protection, challenges, and mechanisms of legal protection for asylum seekers from Afghanistan in Indonesia. A qualitative approach is used in the study that relies on literature reviews, such as books, scientific articles, institutional reports, and documents related to the protection of asylum seekers. Indonesia is a member of international legal instruments, such as the 1951 Refugee Convention, but does not yet have a clear national legal framework to protect the rights of asylum seekers. In Indonesia, asylum seekers from Afghanistan face legal uncertainty, limited access to basic services, and the potential risk of deportation to an unsafe country of origin.

**Keywords:** Refugees, Asylum Seekers, Human Rights Law, Afghanistan, Indonesia, Social Conflict.

### INTRODUCTION

Refugees and asylum seekers are vulnerable groups of people who in some cases often experience discriminatory treatment and human rights violations. There are differences

between the two groups underlying the 1951 Geneva Convention and the 1962 Protocol which regulate the International Law of refugees and asylum seekers. Refugees are people

whose status is outside their country of nationality or place of daily residence.

They have fears of being persecuted because the state or reputation of their country still has threats of race, nationality, religion, and membership of certain social groups or certain political opinions. These refugees are outside their country of nationality, and do not want to ask for protection from their country because of fear. Another cause of displacement in their country of origin could also be due to the emergence of internal conflicts in the country that have not ended. (Asiva Noor Rachmayani, 2015)

There are still social inequalities that occur against race, ethnicity, and religion. Meanwhile, asylum seekers are people who apply as refugees and are waiting for their application to be accepted or rejected. These asylum seekers are still in the process of being declared refugees or not based on the provisions of the United Nations High Commissioner For Refugee (UNHCR).

Both issues are often the focus of important attention for countries in the world, including Indonesia. This is because their presence from abroad has the potential to be a threat to a country. Moreover, foreign citizens enter another country illegally, without permission. They do not have visas and travel documents such as passports. Their presence is also without going through the Immigration Checkpoint as a felony or serious crime. (M Almudawar and Ichsanoodin Mufty Muthahari, 2021)

This situation makes refugees unable to receive protection from their home country or their recipient country. Protection from the recipient country is relatively minimal, as is the case in Indonesia. Refugees do not

receive effective protection, due to the lack of legal protection, and the long waiting period for permanent placement in a third country.

In addition, basic needs assistance such as the right to housing and health are limited. Another problem is the limited capabilities and capacities of institutions, such as the Immigration Detention Center (Rudenim). In fact, Rudenim should be supported in the management and handling of foreign refugees as a framework for respecting Human Rights.

This situation must be faced by refugees or asylum seekers from Afghanistan who are the group most affected by the social conflict in their country. Since the outbreak of the conflict in Afghanistan, millions of citizens of that country have been forced to leave their homes and homeland to seek a safer place. (Widodo, 2021)

The factor that drives Afghan refugees is the very long social and political conflict in their country. This condition has resulted in massive displacement, Indonesia itself is actually not a transit country for Afghan refugees. Nor is it a destination country for refugees, but Indonesia is a transit country, before they head to other countries.

These refugees are people who are forced to sever ties with their home country, because they are afraid of experiencing oppression and persecution. This fear is what distinguishes refugees from other immigrants. Humanitarian assistance is needed in facing difficult situations, because refugees do not take advantage of protection from the state. In fact, the state should provide protection to refugees.

For example, the Taliban government cannot provide protection to Afghan refugee citizens. Many Afghans fled their country because they wanted to gain freedom from the Taliban government.

Most of them sought protection in countries that have more established refugee protection systems. Not a few refugees have to go through transit countries, even though the legal conditions are unclear or even without adequate legal protection. One country that is often a transit point for asylum seekers from Afghanistan is Indonesia.

Indonesia faces a dilemma in handling Afghan refugees or asylum seekers, because it has not ratified the 1951 Convention or the 1967 Protocol. Although Indonesia has accepted a large number of asylum seekers, this country does not yet have a clear policy or regulation regarding the legal status of refugees.

With this background, it is important to conduct an in-depth study related to legal protection for asylum seekers from Afghanistan in Indonesia. The purpose of this study is to identify the legal challenges faced by asylum seekers from Afghanistan, as well as to analyze legal protection in Indonesia in guaranteeing their basic rights.

In addition, it also provides policy recommendations that can improve the legal protection system, both through improving national policies and cooperation with international institutions. This study is expected to contribute to the formulation of policies that are fairer and more responsive to the needs of asylum seekers in Indonesia.

## **MAIN PROBLEM**

Several fundamental problems need to be identified and analyzed in legal protection for asylum seekers from Afghanistan affected by social conflict and residing in Indonesia. These problems include legal aspects, policies, and implementation of protection faced by asylum seekers during the process of seeking protection in Indonesia. This study will discuss the main problems related to the absence of a national legal framework for refugees in Indonesia, the challenges of accessing asylum applications, and the role of UNHCR in providing protection for asylum seekers. In addition, it reviews Indonesia's policies in handling asylum seekers. It is hoped that this study can provide a clearer picture of existing protection and provide recommendations for improving the existing system.

## **METHOD OF RESEARCH**

The study uses a qualitative approach by analyzing legal protection for asylum seekers from Afghanistan in Indonesia. The type of research is descriptive analytical with the aim of describing the situation of legal protection for asylum seekers, as well as analyzing legal policies in Indonesia. Meanwhile, the literature study provides a strong theoretical basis for the analysis of the rights of asylum seekers and their protection. The literature review used includes books, scientific articles, UNHCR reports, legal documents related to the protection of asylum seekers.

## **RESEARCH RESULTS AND DISCUSSION**

Indonesia has a strategic geographical position, this country is part of Southeast Asia which is located on the equator. Its location is also between the Asian and Australian continents and between the Pacific and Indian Oceans. Indonesia, which is located between two continents and two oceans, is often called the archipelago, the largest archipelago in the world.(Fitria, 2015)

With this strategic position, Indonesia has become one of the destination countries for refugees and asylum seekers. The existence of refugees and asylum seekers has actually existed since the era of the leadership of President Soeharto in 1979. At that time, Indonesia became the destination for asylum seekers and Vietnamese refugees. Hundreds of thousands of people left the region to seek protection from other countries.

This was after the capital city of Saigon (South Vietnam) fell into the hands of North Vietnam. They left the region by following rivers, by air, and by sea. The existence of refugees continues to increase from year to year, whose existence should not be ignored. In its development, refugees from Afghanistan emerged who are now widely found in Indonesia.

Based on UNHCR data at the end of 2023, there were 12,295 refugees registered with the institution. Of that number, 1,752 refugees came from Rohingya who were disembarked from 11 ships in several locations in Aceh and North Sumatra. Meanwhile, the remaining 10,543 refugees and asylum seekers came from several countries.(unhcr.org, 2024)

Of the 10,543, there were 5,980 refugees and asylum seekers from Afghanistan, 2,063 from Myanmar, 1,170 Somalis, 536 Iraqis, 449 from

Haman, and other countries. The problems of refugees and asylum seekers have become the focus of the media and social media, such as when they lived in a noodle and chicken meatball stall on Jalan Sugriwo, Krapyak Village, West Semarang District.

The location of the stall is close to the Semarang Immigration Detention Center (Rudenim). The rejection was because the Rudenim located in the capital city of Central Java Province was already full and could not accommodate asylum seekers. Previously, a family of asylum seekers asked to be accommodated at the Rudenim, but were not accepted.(jawapos.com, 2017)

Until this problem went viral on social media. The family had previously come to the Rudenim for about a week, they were a husband, wife and three children. The presence of the asylum seekers had also been rejected by residents around the former Kodim Building in Kalideres, West Jakarta. There were 1,150 refugees, they claimed to have been in Indonesia for five years.

The reason for leaving Afghanistan was because they wanted to avoid the never-ending war. The location of the former Kodim Building shelter is close to the UNHCR office. Meanwhile, the rejection came from residents of the Daan Mogot Baru complex, they unfurled banners rejecting the arrival of refugees.

Law Number 6 of 2011 concerning Immigration regulates the flow of people entering or leaving the territory of Indonesia, as well as carrying out supervision in maintaining the sovereignty of the state. Meanwhile, the function of immigration is part of the affairs of state government, in

providing immigration services, law enforcement, state security, and facilitators of community welfare development.(Cristiana, 2021)

Immigration is part of the realization of the implementation of enforcement over the territory of Indonesia, in order to maintain order in the nation and state. Those who enter Indonesia are only foreigners who are beneficial to the prosperity and welfare of the people. In addition, foreigners who do not endanger public security and order. This means that foreigners must comply with the legal regulations in Indonesia, of course according to the intent and purpose of their arrival.

Immigration law enforcement is carried out in two ways, namely administrative actions and enforcement in accordance with the Immigration Law. In its development, Government Regulation Number 31 of 2013 concerning the Implementation Regulation of Law Number 6 of 2011 emerged. Indonesia's position in this immigration issue is a transit country, based on the intervention of international institutions that want to realize human rights.

It is written in the opening of the 1951 Convention and Protocol concerning the status of refugees, that the Charter of the United Nations and the Universal Declaration of Human Rights have been approved by the General Assembly on December 10, 1948.

In the meeting, it was emphasized that the principle of humans must enjoy fundamental rights and freedoms without discrimination, so that all countries that recognize the social and humanitarian nature of the refugee problem do everything in their power to prevent tensions between countries. That was the beginning of

the existence of foreign refugees and Afghan asylum seekers transiting in Indonesia.

This country recognizes the principle of non-refoulement as regulated in Article 2 paragraph 2 of the Regulation of the Directorate General of Immigration Number IMI1489.UM.08.05 concerning Handling of Legal Immigrants. Where, asylum is granted by the President based on a Presidential Decree with the note that asylum seekers have a certificate (Attestation Letter) as asylum seekers. The status of a person or group of people as refugees from UNHCR.(Firdausiah and Listiyapuji, 2023)

Existing policies focus more on regulating immigration traffic and providing humanitarian assistance through international institutions such as UNHCR. Therefore, the government does not have the authority to determine them as refugees, but the authority of UNHCR.

The Indonesian government in handling refugees or asylum seekers is explained as follows:

1. Not willing to provide permanent asylum to asylum seekers who enter or are in Indonesian territory
2. Not willing to accept refugees to settle permanently in Indonesia
3. Only willing to accept asylum seekers and refugees to live temporarily in Indonesia, until they leave for a third country or until they are repatriated
4. All costs required by asylum seekers or refugees during their stay in Indonesia and for their departure to a third country or until they are repatriated are borne by the international community.(Enny Soeprapto, 2004)

Refugees in Indonesia will have their status identified by UNHCR, so that they are placed in a detention room. Meanwhile, those who are not included in the category of refugees or asylum seekers will be deported. UNHCR has the authority to determine the status of a person or group requesting protection from a country that is not a member of the 1957 Convention and the 1967 Protocol.

Refugee status is determined by UNHCR which also provides protection to them. Meanwhile, the concept of protection emphasizes more on efforts to develop international legal instruments, of course for the benefit of refugees. In addition, it provides certainty for them to receive treatment in accordance with the provisions of international legal instruments.

Especially related to the right to work, social security, and the right to obtain or utilize travel facilities. International steps through coordination are taken by UNHCR, its function is to create a liaison with the government, special agencies of the United Nations, NGOs, and intergovernmental organizations.(Rosmawati, 2015)

The existence of UNHCR seeks a permanent solution to the refugee problem. The reason for Human Rights is the most appropriate reason for the recipient country to provide protection for refugees or asylum seekers. Although the country is outside the ratification of the Convention on Refugees.

Moreover, Human Rights are placed in the second paragraph of the United Nations Charter, namely the basic rights in the dignity and values of the human individual, equality between men and women, and large

and small nations. The issue of refugees or asylum seekers is never free from the circle of Human Rights, because everyone has chosen that path.

This is because refugees are those who do not receive proper protection in Human Rights issues in their country. If a country is facing asylum seekers or refugees who come from a region where their country of origin is. They are enemies or are in dispute with the destination country of the asylum applicant, it does not mean that the country is silent with the existence of the applicant.(Cees de Rover, 2000)

The context of the relationship can be said to be universally cross-border, because the most essential is the humanitarian relationship above all else.

## CONCLUSION

Legal protection for asylum seekers from Afghanistan in Indonesia still faces various complex challenges. Both in terms of regulation, implementation, and humanitarian aspects. Indonesia is one of the main transit countries for asylum seekers from Afghanistan, although there is no national legal framework that specifically regulates refugee protection.

This condition causes uncertainty in their legal status while in Indonesian territory. As a country that has not ratified the 1951 Refugee Convention and the 1967 Protocol, Indonesia does not yet have a binding international legal obligation to provide full protection to refugees and asylum seekers.

This means that asylum seekers from Afghanistan who fled social conflict and violence in their country

often do not receive guarantees of basic rights. Such as access to health services, education, employment, and decent housing. Protection for asylum seekers still depends on the international institution UNHCR.

Although it has an important role, this institution has limitations in reaching all the needs of asylum seekers as a whole. Moreover, Indonesia's immigration policy tends to be administrative and not inclusive of the status of asylum seekers. This condition exacerbates the vulnerability of this group to exploitation, discrimination, and the threat of deportation.

Based on the research results, concrete steps are needed to improve legal protection for asylum seekers from Afghanistan in Indonesia. Meanwhile, an important recommendation that needs to be made is that the Indonesian Government needs to consider ratifying the 1951 Refugee Convention. This is an initial step in building a stronger and more targeted protection system. In addition, it is also necessary to establish national regulations related to refugees and asylum seekers in order to provide legal certainty and guarantee basic rights while they are in Indonesia. The government also needs to increase cooperation between the government and international institutions to strengthen capacity in handling asylum seeker issues in a more humane and just manner.

## REFERENCES

- [1] Cees de Rover (2000) *To Serve and To Protect (Acuan Universal Penegakan HAM)*. Jakarta: PT Raja Grafindo Persada.
- [2] Enny Soeprapto (2004) *Perlindungan Hak dan Kebebasan Atasi Pengungsi dan Internally Displaced Persons*. Jakarta: Komnas HAM.
- [3] Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian
- [4] Peraturan Pemerintah Nomor 31 Tahun 2013 tentang Peraturan Pelaksanaan UU Nomor 6 Tahun 2011
- [5] Peraturan Ditjen Imigrasi Nomor IM1489.UM.08.05 tentang Penanganan Imigran Legal.
- [6] Asiva Noor Rachmayani (2015) 'Peran United Nations High Commissioner For Refugee (UNHCR) Dalam Perlindungan Warga Negara Asing (Pengungsi) Di Indonesia (Kajian Warga Negara Asing Di Rumah Detensi Imigrasi Kota Pekanbaru)', *JOM FH UNRI*, II, p. 6.
- [7] Cristiana, E. (2021) 'Perlindungan Terhadap Pengungsi dan Pencari Suaka di Indonesia Pada Masa Pandemi Covid-19', *Satya Dharma : Jurnal Ilmu Hukum*, 4(1), pp. 30–48. Available at: <https://ejournal.iahntp.ac.id/index.php/satya-dhamat%0Ahttps://www.ejournal.iahntp.ac.id/index.php/satya-dharma/article/view/760>.
- [8] Firdausiah, N. and Listiyapuji, F.K. (2023) 'Perbandingan Perlindungan Pencari Suaka Dan Pengungsi Di Indonesia Dan Negara Lain Berdasarkan Hak Asasi Manusia', *Constitution Journal*, 2(2), pp. 57–74. Available at: <https://doi.org/10.35719/constitution.v2i2.76>.
- [9] Fitria, F. (2015) 'Perlindungan Pengungsi di Negara Ketiga:

- Praktik Indonesia', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 2(1), pp. 105–125. Available at: <https://doi.org/10.22304/pjih.v2n1.a7>.
- [10] M Almudawar and Ichsanoodin Mufty Muthahari (2021) 'Penanganan dan Perlindungan Hak Asasi Manusia terhadap Pengungsi (Refugees) dan Pencari Suaka (Asylum Seekers) di Indonesia Sesuai Pengkajian Perpres 125 Tahun 2016 dan Implementasi Peran Rumah Detensi Imigrasi dalam Penanganan Pengungsi di Luar Negeri pa', *Perspektif Hukum*, pp. 108–122. Available at: <https://doi.org/10.30649/ph.v21i2.71>.
- [11] Rosmawati (2015) 'Perlindungan terhadap Pengungsi/Pencari Suaka di Indonesia (sebagai Negara Transit) Menurut Konvensi 1951 dan Protokol 1967 Protection of Refugees/Asylum Seekers in Indonesia (As a Transit State) in the 1951 Convention of and the 1967 Protocol', *Kanun Jurnal Ilmu Hukum*, Vol. XVII(67), pp. 457–476. Available at: <https://jurnal.usk.ac.id/kanun>.
- [12] Widodo, J.H. (2021) *Problematisa Pengungsi Afghanistan di Indonesia*, LBH Pengayoman, Universitas Katolik Parahyangan. Available at: <https://lbhpengayoman.unpar.ac.id/problematisa-pengungsi-afghanistan-di-indonesia/>.
- [13] jawapos.com (2017) *Penampungan Imigrasi Penuh, Pencari Suaka Tidur di Warung Bakso*, *Jawapos.com*. Available at: <https://www.jawapos.com/berita-sekitar-anda/01113815/penampungan-imigrasi-penuh-pencari-suaka-tidur-di-warung-bakso>.
- [14] unhcr.org (2024) *Data Pengungsi UNHCR*. Available at: <https://www.unhcr.org/id/who-we-are/sekilas-data#:~:text=Pada%20akhir%20tahun%202023%20terdapat,terdaftar%20dengan%20UNHCR%20di%20Indonesia.&text=Pada%20akhir%20tahun%202023%20terdapat%2012.295%20pengungsi%20yang%20terdaftar%20di%20Yaman%20dan%20lainnya>.