



Navigating Statelessness: Refugee Rights and the Question of Citizenship in Indonesia's Legal Framework

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Abstrak:

Permasalahan pengungsi dan imigran ini memang cukup sensitive. Kebanyakan dari pengungsi biasanya merupakan korban perang dari negara mereka berasal. Sebagai negara yang menjunjung tinggi HAM, Indonesia turut berpartisipasi dalam tatanan global sebagai negara transit bagi para pengungsi dan memberikan fasilitas kepada mereka dengan baik. Penulisan ini bertujuan untuk mengetahui bisa atau tidaknya para pengungsi mendapatkan kewarganegaraan Indonesia. Riset ini menggunakan konsep Konvensi 1951 dengan metode kualitatif. Dalam tulisan penulis berargumen bahwasannya walaupun Indonesia belum meratifikasi perjanjian pengungsi 1951, baik pemerintah Indonesia, maupun pemerintah local, dan masyarakat Indonesia pun ikut memberikan banyak bantuan terhadap para pengungsi yang tersebar di Indonesia. UNHCR sendiri tampaknya memiliki banyak kesulitan perihal relokasi negara tujuan bagi para pengungsi. Tulisan ini penting karena mengingat sudah terlalu banyak pengungsi di negara transit yang belum juga ditempatkan ke negara tujuan sekaligus membahas apakah mereka bisa mendapatkan kewarganegaraan Indonesia sebagai salah satu penyelesaian masalah penumpukan pengungsi. Akan tetapi, perlu ditekankan sekali lagi, dunia tidak bisa memaksa Indonesia untuk meratifikasi dan Indonesia juga tidak perlu terburu-buru meratifikasi konvensi 1951 hanya karena tekanan dunia. Sebab, permasalahan social di dalam negeri sendiripun masih banyak yang perlu diselesaikan.

Kata Kunci: Pengungsi, *Indonesia*, *UNHCR*, Pemerintahan Dunia

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Abstract:

The issue of refugees and immigrants is indeed quite sensitive. Most refugees are usually war victims in their country of origin. As a country that upholds human rights, Indonesia participates in the global order as a transit country for refugees and provides them with good facilities. This writing aims to determine whether refugees can get Indonesian citizenship. This research uses the concept of the 1951 Convention with a qualitative method. In writing, the author argues that even though Indonesia has not ratified the 1951 refugee agreement, the Indonesian government, local governments, and the Indonesian people have also provided much assistance to refugees who are spread across Indonesia. UNHCR itself has many difficulties regarding the relocation of destination countries for refugees. This article is important because considering that there are already too many refugees in transit countries who still need to be placed in destination countries, as well as discussing whether they can get Indonesian citizenship as one of the solutions to the problem of the accumulation of refugees. However, it must be emphasized again that the world must refrain from forcing Indonesia to ratify it. Due to world pressure, Indonesia also does not need to rush to ratify the 1951 convention. This is because many social problems in the country still need to be resolved.

Keyword: Refugee, Indonesia, UNHCR, Global Governance

Pendahuluan

Talking about refugees/immigrants will never end. Because this problem is a phenomenon of human beings, we must work together—it requires many parties involved to solve a problem (Afriandi & Yusnarida Eka Nizmi, 2014). For centuries, the refugee problem has only caused concern and compassion without any attempt to protect the status and rights of refugees legally. Most refugees are victims of violence whose rights as oppressed human beings must be protected. Meanwhile, the refugees' countries of origin are constantly in turmoil, either because of war or because they are stateless. Refugees or population movements on a large scale were initially the only domestic

problem for a country. Then, because population movements also cross one country's boundaries to another, the refugee problem eventually becomes a problem for countries in certain regions and is finally considered a common problem with humanity (Fakhri, 2004).

(Kusumo, 2012) Stated that refugees can be grouped into two types of backgrounds. The first is refugees due to natural disasters, where the state still protects its people. These people are allowed to ask for help from other countries, and the country they come from still provides them with assistance. The second is that refugees here are refugees leaving the country because they are avoiding prosecution (persecution) that is happening in their country. Most of these refugees leave their country for political reasons--they no longer get protection from the government where they came from.

The problem of international refugees and asylum seekers has become a common forum for the international community and the global order. This is because this problem has crossed the territorial boundaries of a country and entered the territory of other countries in large numbers. Their presence is not a surprising phenomenon. In addition to issues regarding climate change and terrorism, the issue of refugees and asylum seekers has become a global problem that deserves joint attention (Afriandi & Yusnarida Eka Nizmi, 2014).

As a country that often experiences natural disasters, Indonesia has to evacuate the local population to a safer place and feel sympathy for the refugees because they feel in the same position. The main urge of these refugees/immigrants is felt to be very instinctive because they also need a safer and more comfortable place—their own country may not necessarily be able to provide them with such a right. History records that the Canaan people (now called the Palestinian people) once migrated from Asia to Europe, as did the Romans in their heyday and other nations (International Organization for Migration Mission in Indonesia, 2009).

According to (Suryokumoro, 1951) Indonesia's position, which is located between two oceans and two continents, makes Indonesia a strategic place for movement and also a transit point for foreign refugees from the Asian continent who wish to go to Australia. According to data provided by the United Nations High Commissioner for Refugees (UNHCR), Indonesia has received a significant number of new foreign refugees in recent years. As of March 2012, there were approximately 3,781 registered foreign refugees in Indonesia. Based on the latest data for 2021, Indonesia itself accepts refugees from 20 countries, such as; Afghanistan, Somalia, Myanmar, Sri Lanka, Sudan, Palestine, Iraq, Iran, Pakistan, Ethiopia, Eritrea, Yemen, Vietnam, Egypt, Syria, Bangladesh, Jordan, Kuwait, Congo and stateless (Imigrasi.go.id, 2021). These countries were then accommodated in Indonesia at the direction of UNHCR, which already has at least five offices based in Jakarta; the rest are in Medan, Pekanbaru, Tanjung Pinang, and Makassar (UNHCR, n.d.). However, not many of these refugees protested because of the rights they could not get when they fled to Indonesia, as has been reported by (Noviansah, 2022) There are so many demonstrations of Afghan citizens in front of the UNHCR office to be moved to a third country as soon as possible.

Therefore, this article aims to find out whether refugees in Indonesia can obtain Indonesian citizenship. Considering that so many old refugees cannot be transferred to their destination countries. The author argues that if we look at it from the state regulations regarding Indonesian citizenship, there is a certain period for someone who wants to stay in Indonesia. However, we will also look at it from the side of Indonesia, which still needs to ratify the 1951 convention so that we can analyze it.

The author uses the concept of the 1951 convention agreement and the 1967 protocol to find out this. The 1951 convention is the first point of any

discussion on refugee issues. This convention is one of two other refugee convention instruments, namely the 1967 Protocol.

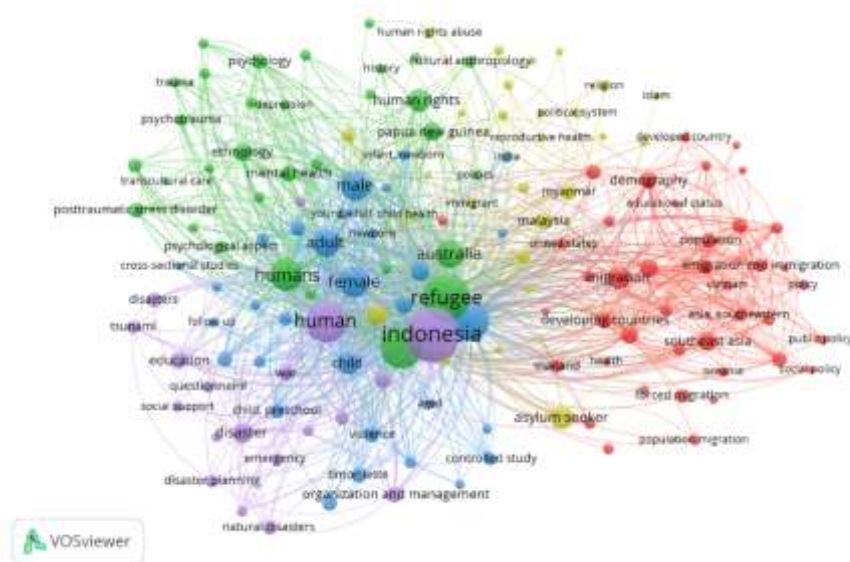
The 1951 Convention concerning the status of refugees was drafted at the end of World War II. The definition of refugees formulated in it focused on people who are outside the territory of their country of origin and became refugees as a result of events that occurred in Europe; the refugee problem itself is increasing. In the late 1950s and early 1960s, it was deemed necessary to expand the time and geographical scope of the 1951 Convention. Therefore, in its development, an additional protocol was designed and agreed upon to the convention on the status of refugees, namely the 1967 Protocol (Afriandi & Yusnarida Eka Nizmi, 2014).

According to (Unhcr, 1967) The 1951 Convention and 1967 Protocol are the only international legal instruments that explicitly cover the most important aspects of refugee life. Under their terms, refugees are entitled, at a minimum, to the same standard of treatment enjoyed by other foreign nationals in a given country and, in most cases, to the same treatment as nationals. The 1951 Convention also recognizes the international scope of the refugee problem and the importance of international solidarity and cooperation in efforts to resolve it.

Kerangka Teori

Figure 1. Research trend regarding refugee in Indonesia
Source: VOS viewers

Out of the 264 existing Scopus research documents, the authors



process them into data. We can see from the picture above that the red one is the most popular cluster. At the same time, Indonesia looks very clear and large, indicating that many researchers out there discuss Indonesia regarding refugee problems. Many of the trends found are also mostly criticisms from other countries regarding Indonesia's should carry out its duties properly as a third (transit) country; this is due to many refugees currently living in Indonesia temporarily. However, research needs to discuss the global order of refugees in Indonesia as a transit country and whether refugees can get Indonesian citizenship. In this article, the author wants to show that Indonesia has carried out its duties as a transit country for refugees quite well.

Metode Penelitian

This study uses a qualitative method. According to (Sugiyono, 2011) Qualitative research methods are based on the philosophy of postpositivism, used to research natural object conditions (as opposed to experiments) where the researcher is the key instrument, data collection techniques are carried out in triangulation (combined), and data analysis is inductive/qualitative. The results of qualitative research emphasize the meaning of generalizations, which the authors then draw from various literacy sources such as journal articles, books, websites, and news. For this study, the data collection technique used by authors uses three data collection techniques, namely journals, news, and also information or archives from official government websites.

Hasil dan Pembahasan

A. Indonesia as a Transit Country for Refugees

When the 1951 convention took place, among the many countries that had ratified the convention, Indonesia was not a country that did not. This does not mean that this is an excuse for Indonesia not to participate in UNHCR activities. Indonesia is a country that also has to deal with the problems of foreigners seeking asylum and refugees entering and living in Indonesian territory. Even though it is not a destination country, due to its geographical location, Indonesia is the final stopover for waves of asylum seekers and refugees going to the destination country, namely Australia. For the first time, in 1979, Indonesia was dealing with a problem involving large numbers of refugees and asylum seekers.

The first refugees at that time were refugees and asylum seekers from Vietnam arriving in Indonesia due to the Indo-China war between the People's Republic of China and Vietnam. Indonesia has at least received around

170,000 refugees and asylum seekers coming to seek protection (UNHCR Indonesia, n.d.-b). Then followed by the Middle East, Central Asia, and South Asia, such as; Afghanistan, Sri Lanka, Iraq, Iran, Myanmar, and Pakistan. Even though later on, the latest data written by (Akbar & Dwijayanti, 2022) data from UNHCR, in 2020, at least 82.4 million people were forced to move countries, and the trend continues to increase yearly. As of September 2021, UNHCR recorded the number of refugees registered in Indonesia reaching 13,273 people. Of these, 73% were adults, and 27% were children, of which 7,458 came from Afghanistan, 1,364 people from Somalia, 707 people from Myanmar, 677 from Iraq, and the rest from other countries.

As a country without ratifying the 1951 convention agreement, Indonesia has no authority to grant RSD or refugee status. Therefore, UNHCR (United Nations High Commission for Refugees) stipulates arrangements for problems regarding refugees under the mandate it received based on the 1950 UNHCR statute. All countries, including those that have not ratified the refugee convention, are required to uphold the standards of refugee protection, which have become part of general international law because the convention has become *jus cogens*, and no refugee can be returned to the territory where his life or freedom is threatened (UNHCR Indonesia, n.d.-a). With Indonesia having not ratified international agreements regarding refugees and asylum seekers, namely the 1951 International Convention and the 1967 Protocol, problems arise when the government is not responsive in dealing with refugees or asylum seekers.

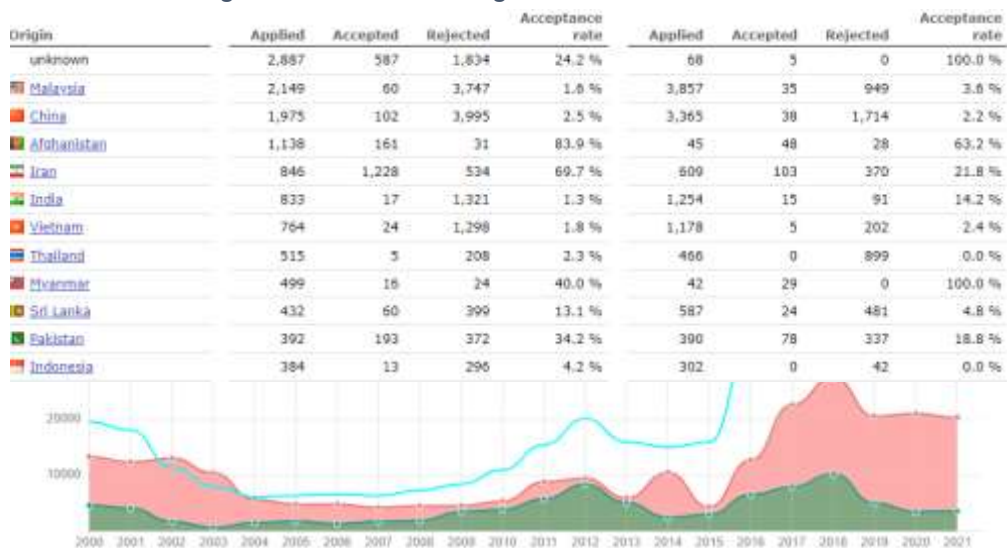
Just like quoted by (Mohammadi & Askary, 2022) Lots of miserable refugees live in Indonesia. In their opinion, many refugees experience mental health; on the other hand, many refugees commit suicide because of their long time in transit countries without meeting their separated families; some

even protest—saying that overcoming this problem must be a priority for the Government of Indonesia, UNHCR and the international community. Argumentation from (Mohammadi & Askary, 2022) it is not completely wrong, and if we look from an international perspective and the perspective of refugees, there may be a point. However, the authors also argue that they are wrong in some respects. It needs to be emphasized again that Indonesia still needs to ratify the 1951 convention on refugees, which was later mentioned in the 1967 protocol, where the state may not reject the refugees who come and return the refugees to their country. On the other hand, Indonesia has reasons for not ratifying it, so they are caught in a dilemma between saving foreign citizens or their citizens. Of course, each country has its reasons.

Once again, Indonesia is flanked by two continents and two oceans. Even though it is not the final destination country for refugees, the vast area of Indonesia can become a haven for refugees. The reasons that Indonesia has regarding its unwillingness to ratify the refugee convention are; (1) Economic Aspect, (2) Security Aspect, and (3) International Context Aspect. However, Indonesia is still responsible for refugees who stop at home. This can be seen from how the Indonesian Ministry of Foreign Affairs, Retno Marsudi, continues to urge the Australian government to increase the quota for accepting refugees from Indonesia because most refugees choose Australia as their final destination.

It should be noted that Australia is a favorite destination for refugees. Therefore, on average, those who want to go to Australia must stop in Indonesia as a transit point. We can see the data below, where Australia is the last destination country for refugees.

Figure 2. Data on Refugees Arrivals in Australia.



Source: worldwidedata.info

The data above shows the upheaval of refugees wanting to enter Australia starting in 2012, then increasing and peaking in 2017. Unfortunately, that year there was an upheaval in Australia regarding the refusal of refugees to enter their country without official documents. The buildup of refugees in Indonesia was also due to this. (BBC News, 2016) says migrants and asylum seekers registered with UNHCR in Indonesia after 1 July 2014 can never be accommodated in Australia. This condition has created a buildup of refugees in Indonesia. UNHCR admits that it is increasingly difficult to place migrants in Indonesia, considering that there was a refugee crisis in Europe at that time. Several countries consider refugees in Indonesia as Australia's responsibility. As a result, more and more people are trapped in waiting in Indonesia.

Figure 3. Refugees data received in Australia.

Source: worldwidedata.info

As previously stated, many refugees wish to go to Australia as their final destination. However, the number that comes in with the number of refugees received by the Australian government is very different. Indonesia, for example, submitted 384 refugees, but only 13 were accepted. Here, the Indonesian Ministry of Foreign Affairs, Retno Marsudi, tried to press the issue of refugees on the Australian government so that the quota would be added (BBC News, 2016) and also to other countries to be more open to refugees.

We must appreciate Indonesia's efforts to find a place to live for refugees. Regardless of the bad news about how the refugees do not have their rights in Indonesia, we cannot argue because Indonesia has never ratified the 1951 refugee convention. Even though it has never ratified it, Indonesia's persistence to participate in overcoming global governance issues also deserves appreciation. Furthermore, the author argues that as a transit country, despite the shortcomings, Indonesia has made every effort for refugees.

B. UNHCR and Indonesian Local Government Assistance.

Several factors prevent refugees and asylum seekers from receiving effective protection in Indonesia. These factors include a lack of legal protection, long waiting periods for permanent resettlement, limited basic livelihood support (housing, health care, education, and work rights), and inhumane conditions in detention centers. UNHCR operates in Indonesia with the approval of the Government of the Republic of Indonesia (Suaka Indonesia, 2015). UNHCR operates in Indonesia with a license from the Indonesian government. However, its capacity could be improved due to the significant increase in the number of asylum seekers requesting assistance in Indonesia. UNHCR has around 60 staff based in Indonesia. For those known to owe

international protection, UNHCR tries to provide one of three possible durable solutions: resettlement to third countries, voluntary repatriation, and local integration. Local integration is unavailable in Indonesia because the Indonesian government does not allow recognized refugees to remain in the country. Both UNHCR Indonesia and IOM Indonesia are severely under-resourced and overworked.

(Suaka Indonesia, n.d.) Asylum seekers and refugees in Indonesia are not allowed to work and do not receive social benefits from the Government of Indonesia. The Indonesian government allows them to stay here as long as they have up-to-date registration documents from the Office of the United Nations High Commissioner for Refugees (UNHCR). However, it needs to be emphasized again that Indonesia is not a party to the 1951 Convention relating to the Status of Refugees (Refugees Convention) or the 1967 Protocol. On the other hand, there are also stateless refugees, so even though Indonesia is not a party to the 1954 Convention concerning the Status of Stateless Persons and The 1961 Convention on the Reduction of Statelessness, UNHCR in Indonesia is working with the Government of Indonesia on this issue.

Talking about cooperation, the local government also took part in it, so it was not only the state but much assistance from the local government, citizens, and students who took part in it. This proves that Indonesia's concern for asylum seekers and refugees is not only from the scale of the Indonesian government but also down to the smallest point: the local community and students. This concern arises from a high sense of humanity. The Indonesian people especially have a sense of humanity in which they imagine if they were in the position of these refugees or asylum seekers.

DKI Jakarta Provincial Government assistance for example, (Sari, 2019) distributing food to refugees from Afghanistan, Somalia, and Sudan, not

only, but the local government has also set up tents for refugees to live in. Not only in terms of food but also the clean water provided by the DKI Jakarta Provincial Government. However, this relief was only temporary, (Tambun, 2019) says the DKI Provincial Government (Pemprov) has stopped logistical assistance such as food and clean water for thousands of asylum seekers living in temporary shelters in the former Kodim building, Kalideres, West Jakarta. As a high commission in managing refugees, UNHCR itself is only able to assist in the first three months (CNN Indonesia, 2022), and refugees depend on the help of the surrounding community.

The local government and the surrounding community work hand in hand to help refugees from outside. In Aceh, for example, an area thick with Islam, the government accepts Rohingya refugees stranded in the ocean there. Students also assist in the form of money and clothes that are still suitable for use (Pakeh, 2020).

Muhammadiyah, an Islamic community organization through MDMC, assists Rohingya refugees living in Aceh. (Syifa, 2020) This assistance was in the form of underwear, sanitary pads, and bags made directly by the women of Aisiyah. There is much other assistance, and the author thinks that even though the Indonesian government has stepped in to help the refugees, their hard work is not very visible. Refugees keep complaining that they want to be moved immediately; however, Indonesia has tried and made every effort to help them. Also, the Indonesian people provide much assistance to the refugees. Previously, Presidential Regulation No. 125 concerning Handling Refugees from Abroad, especially Chapter III/articles 24 and 26, stated that the regional government would determine the accommodation of refugees. (Republik Indonesia, 2016).

(CNN Indonesia, 2022) Plt. The Director General (Dirjen) of Immigration, Widodo Ekatjahjana, deplores the irresponsible attitude of UNHCR and IOM in handling foreign refugees, which has caused social problems in the Republic of Indonesia (RI). On the other hand, UNHCR and IOM admit that they have difficulty lobbying countries that have ratified the convention agreement. UNHCR only accepts a mechanism for refugees who still have important documents, such as their valid identity cards, while for those who have lost important identity documents, the mechanism is different; IOM runs it. From the analysis above, we can see that Indonesia itself still had to abandon refugees who came from abroad. So, why didn't Indonesia ratify the 1951 convention?

Apart from the three cases previously mentioned, the words of the Director General (Dirjen) of Immigration have a point, which can cause social problems in the Republic of Indonesia. Apart from that, the Indonesian people reject the existence of foreign refugees, or in some cases people call it xenophobia—a phenomenon of dislike or prejudice towards people from other countries. On the other hand, Indonesia itself does not have the slightest lack of human resources, unlike other countries which still lack human resources because most people there don't want to get married or have children, so it is not surprising that a country with a level of human resources like Germany needs more human resources. to be hired. If it's like that, what will happen to the refugees who are still stranded in Indonesia? Therefore, there is a need for an evaluation from both UNHCR, IOM and also countries that have ratified the 1951 convention.

C. Refugees and Indonesian Citizenship Status

It once crossed my mind that when Indonesia did not ratify the 1951 convention, why did Indonesia continue to accept refugees? Of course, this

answer, aside from its high sense of humanity, the author found no other answer. So, what if they get Indonesian citizenship? At least in this way, Indonesia's participation in the global order can be seen even more clearly. However, is it possible?

Refugees coming to Indonesia can be divided into two categories: those who still have an identity card from their country of origin and those who have no citizenship. Doesn't that mean that Indonesia can make those who do not have an identity become Indonesian citizens? If the case were like Timor-Leste, who fled their country to settle in West Nusa Tenggara or East Nusa Tenggara, it would be different because they still have close family living in Indonesia. It is a different case with refugees from Afghanistan, Somalia, Rohingya, or from conflicting countries whose residents must immediately be moved to other countries. Let us see if these refugees can get Indonesian citizenship based on the provisions of Article 9 of the Citizenship Law.

Tabel 1. Eligibility of Refugees to become Indonesian Citizens

| No | Condition | Refugees | |
|----|--|----------|----|
| | | Yes | No |
| 1. | 18 Years Old or Married | √ | |
| 2. | At the time of submitting the application, you have resided in the territory of the Republic of Indonesia for at least 5 (five) consecutive years or at least 10 non-consecutive years | √ | |
| 3. | Physically and mentally healthy | √ | |
| 4. | Can speak Indonesian and acknowledge the | √* | |

| | | | |
|----|---|----|---|
| | state foundation of Pancasila and the 1945 Constitution of the Republic of Indonesia | | |
| 5. | Never been sentenced for committing a crime punishable by imprisonment for 1 (one) year or more | √* | |
| 6. | If by obtaining Citizenship of the Republic of Indonesia, it does not become a dual citizen. | √ | |
| 7. | Have a job and/or steady income | | × |
| 8. | Paying citizenship money to the State Treasury | | × |

Source: Managed by the author

Based on the data above, almost all requirements can be implemented for state governments to help refugees have citizenship. However, several points need to be noted, and the inability of refugees to obtain citizenship.

In the data table above, several tick marks are marked with an asterisk. As we know, requirement number 4 is a very crucial requirement. Some refugees may already be able to speak Indonesian. However, they will obey and recognize the Constitution and Pancasila - we cannot deny that every country has its own rules. However, if this is implemented for refugees who are used to laws and regulations in their respective countries, it could become a problem in the future. For requirement number 5, we cannot guarantee whether they have committed a crime. They are indeed civilians who are in a conflict country, but someone's behavior with various dynamics of human thought, we do not know what will happen. Previously it was also reported that

many Rohingya refugees in Aceh stole (Mubarak, 2022), and also there is a case when the refugees (Arief, 2017) raped local residents, causing new worries and problems.

Furthermore, one requirement for the seventh and eighth points is no less crucial. Because, without income, how can a family live on? Again, Indonesia did not ratify the 1951 convention, making it difficult for refugees to get jobs and adequate schooling for their children living in Indonesia—their status here is only temporary. However, many of the refugees have taken up residence. Indonesia, for five years, cannot be transferred to the next country where they live. Thus, we can conclude that we can also participate in the world's global order by helping refugees obtain Indonesian citizenship, especially those who do not have a country. However, it must be emphasized again that the world cannot force Indonesia to ratify it. Due to world pressure, Indonesia also does not need to rush to ratify the 1951 convention. This is because many social problems in the country still need to be resolved.

Kesimpulan

In the end, Indonesia, as a country that has not ratified the 1951 convention, continues to do its best for refugees. Supposedly, countries that have ratified the 1951 convention feel ashamed because they made it difficult for refugees who wanted to be immediately transferred to their destination countries. One example is Australia, which, from the data above, shows that the number of acceptance of refugees from Indonesia is very small. In contrast, the number of refugees here is very large. In the end, the refugees who had lived in Indonesia for a long time continued to protest in front of the UNHCR building. Then, Indonesia became a scapegoat because it was deemed incompetent in managing refugees. In fact, regarding refugees, UNHCR and the Indonesian branch of IOM have taken care of all of this.

Various types of assistance are also available, from the state government and local government to the most basic, namely the community and student groups who are kind enough to open donations and provide assistance with clothing and food needs. Mrs. Retno, as the Minister of Foreign Affairs of the Republic of Indonesia herself, has done much lobbying to countries that do accept refugees or have signed the 1951 convention, but this has yet to yield maximum results. Moreover, Australia rejected refugees from Indonesia because the refugees who came did not have official documents or state identities (stateless). Those who have lived for more than five years can indeed apply for citizenship in Indonesia, but we also have to look at the existing requirements; The refugees' eligibility is also one of the mature considerations.

Indonesia can also participate in the world's global order by helping refugees obtain Indonesian citizenship, especially those who do not have a country. However, it must be emphasized again that the world must refrain from forcing Indonesia to ratify it. Due to world pressure, Indonesia also can take time to ratify the 1951 convention. This is because many social problems in the country still need to be resolved. There needs to be a more in-depth study for UNHCR and IOM in Indonesia to maximize their lobbying to other countries. There should also be efforts from the central UNHCR to impose sanctions on countries that have violated the 1951 Convention agreement, such as not accepting refugees, even though it is very clear they have ratified the convention. 1951. On the other hand, I criticize UNHCR, IOM, and countries ratifying the 1951 convention. They should be able to re-evaluate the issue of refugees so that there will be no accumulation in transit countries, causing an unnecessary commotion.

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