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RIGHT TO ASYLUM IN TURKISH AND INDONESIAN LAW

Abstract

More people have been forced to flee their homes and seek asylum in other countries. The right to asylum was first regulated in Article 14 of the Universal Declaration of Human Rights. The 1951 Refugee Convention and the 1967 Refugee Protocol further define refugee rights. These legal instruments contain a variety of provisions emphasizing refugee protection and implying the responsibility of states to ensure refugee protection on their territory. This article examines Turkey's implementation of the right to asylum, as well as Turkey's status as a signatory to the 1951 Refugee Convention and its Protocol. Furthermore, despite not being a party to the 1951 Refugee Convention or the 1967 Refugee Protocol, this article elaborates on Indonesia's commitment to providing refugeesa possibility to find safety. This article will compare what rights refugees have in Indonesia and Turkey under the national legal frameworks of the Law on Foreigners and International Protection Number 6458 and Presidential Decree Number 125 of 2016.

***Key words**: Refugee, Right of Asylum, the 1951 Refugee Convention, Law on Foreigners and International Protection Number 6458, Presidential Regulation Number 125 Year 2016.*

INTRODUCTION

The right to asylum plays an important role in the system of protection for people fleeing persecution. Everyone has the right to seek and enjoy asylum in other countries, according to Article 14 of the Universal Declaration of Human Rights (UDHR). Convention Relating to the Status of Refugees (the 1951 Refugee Convention) and the 1967 Protocol also support it. A person seeking asylum from another country must apply to that country or the UN High Commissioner for Refugees (UNHCR). They can benefit from the country's right to asylum after obtaining refugee status. When it comes to granting asylum, each country has its own set of rules. It depends on the country's circumstances and whether it is a signatory to the 1951 Refugee Convention. Turkey is a signatory to the 1951 Refugee Convention, while Indonesia is not a signatory to either the 1951 Refugee Convention or its 1967 Protocol. There are significant differences in how refugees are treated in the two countries, particularly the regulations in Indonesia and Turkey.

In Turkey, The Parliament passed the Law on Foreigners and International Protection (LFIP) in 2013. The Law establishes the fundamental tenets of Turkey's national asylum system. Turkey also passed the Temporary Protection Regulation in 2014, which outlines the rights and obligations, as well as the procedures for those granted temporary protection in Turkey. The extent of the protection to be provided for foreigners seeking asylum in Turkey, as well as the establishment, duties, mandate, and responsibilities of the Ministry of Interior's Directorate General of Migration Management (6, p-167). Social assistance services and benefits are to be provided to applicants and international protection beneficiaries in need.

In late 2016, the President of the Republic of Indonesia signed Presidential Regulation Number 125 of 2016 on the Treatment of Overseas Refugees in Indonesia, which contains key definitions and outlines processes for detecting, sheltering, and protecting refugees and asylum seekers. Since Indonesia is not yet a State Party to the 1951 Convention on the Status of Refugees and the 1967 Protocol, nor does it have a system for determining refugee status, the government has delegated refugee protection to UNHCR.

Despite the fact that Indonesia has not ratified the 1951 Convention, it is required to uphold refugee protection standards that have become part of general international law. Turkey, on the other hand, as a signatory to the 1951 Refugee Convention and the 1967 Refugee Protocol, is required to follow all of the rules outlined in the convention and protocol. Because of this distinction, the facilities available to refugees in these two countries differ.

The goal of this article is to compare the refugee asylum systems in Indonesia and Turkey. This article will discuss the Turkish refugee crisis, the legal framework of the right to asylum in Turkey, and the benefits available to refugees in Turkey. Later this article will examine the refugee situation in Indonesia as well as Indonesian refugee regulations.

I. RIGHT TO ASYLUM IN INTERNATIONAL LAW

Asylum is the protection provided by one state to a national of another state against that state (10, p-16). The receiving state determines who receives asylum. Asylum is a sovereign prerogative of every country, as is controlling the cross-border movement of people and allowing the entry of foreigners into the territorial sovereignty. A person also has the right to leave his country in search of asylum. Article 14 of the Universal Declaration of Human Rights stipulated for the first time the Asylum Right. “Everyone has the right to seek and to enjoy in other countries asylum from persecution. The right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.” (15). Later, the international community acknowledged the right to asylum as a fundamental human right. This right is fully articulated in the 1951 Refugee Convention and the 1967 Refugee Protocol.

Over the decades, millions of people have been given life-saving protection, have been able to rebuild their lives, and have frequently returned home once the threat has passed. Many have also been resettled in generous third countries. There is a distinction between asylum seeker and refugee. Asylum seeker is a person who has not yet applied for refugee status or whose application has not yet been accepted. In Article 1, Section A (2) of the 1951 Refugee Convention, a refugee is defined as: “Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” (14).

Refugee refers to foreigners who have legally obtained refugee status, whereas asylum seeker refers to foreigners whose refugee status has been examined and who, as a result, receives protection (13, p-39). The benefits include access to employment, education, and social security. As can be seen, a person cannot acquire refugee status automatically upon seeking asylum. In other words, asylum seekers cannot benefit from the laws of the country in which they seek refuge in the same way as refugees. A refugee is a person who meets the requirements of the refugee concept as defined by an international treaty or the national law of a particular state (5, p-175).

In the 1951 Refugee Convention, procedures for determining refugee status are left to the discretion of the national laws of the states involved. Everyone has the right to seek asylum in other countries. However, the convention and protocol do not confer a right to asylum. Thus, the individual has the right to seek asylum, but not the right to receive it. Asylum seekers must submit an asylum application, after which the competent authority will evaluate them (7, p-66). The obligations of a state towards asylum seekers vary depending on whether or not it is a party to international agreements. Thus, if a state is a signatory to a refugee agreement, it must admit asylum seekers and grant them refugee status. If a state is not a signatory to any refugee agreement, it has no international obligations (4, p-117).

II. RIGHT TO ASYLUM IN TURKEY

A. Refugee Influx to Turkey. Iraq, Afghanistan, and Syria are the countries from which Turkey receives the most refugees. Over the past three decades, a growing number of Iraqi refugees have settled throughout the globe. The Iran-Iraq War precipitated numerous ethnic and political conflicts, including Kurdish uprisings and the Gulf War (11, p-102). The largest Afghan refugee movement began after the

Soviet occupation of Afghanistan in 1979, which resulted in the forcible displacement of millions of Afghans.

Unlike Afghan and Iraqi refugees who have sought international protection, Turkey has provided Syrian refugees with temporary protection. 2011 marked the beginning of the Syrian crisis, when protests in Syria escalated into a nationwide conflict. Turkey, which has an open-borders policy, has established refugee camps near the Turkish-Syrian border in response to the influx of refugees (6, p-317). In 2012, however, the failure of ceasefire efforts and the escalation of fighting led to an influx of refugees. Turkey began to close and secure its borders. As a result, by increasing border security to reduce its own border violations, it reduced the likelihood of an illegal refugee influx by a substantial amount. Those who do not meet this requirement run the risk of being denied entry into the country and subsequently forced to return to Syria.

The Republic of Turkey's Council of Ministers issued a regulation on Temporary Protection in 2014. According to Provisional Article 1 of the Temporary Protection Regulation, the regulation applies to Syrian nationals, stateless individuals, and Syrian refugees. Following the arrival of a new wave of refugees in Europe in 2015, the European Union (EU) worked with Turkey to control and reduce the flow of refugees to Europe. In 2015, the EU and Turkey agreed on a Joint Action Plan to limit irregular migration (8, p-61).

Since the influx of Syrian refugees in 2011, approximately 90% of refugees in Turkey have been Syrian, with the remainder being non-Syrian. In 2020, Turkey will continue to host the most refugees in the world. There are approximately 4.1 million refugees, including 3.7 million Syrians and approximately 400,000 asylum seekers and refugees from other countries (16). The regional insecurity in Afghanistan, Iraq, and Syria has resulted in a steady influx of refugees into Turkey. The main reason they came to Turkey is because of armed conflicts and political tensions in their home country.

B. Legal Framework of the Right to Asylum in Turkey. Turkey is mainly regarded as an immigrations and asylum-seeking destination. Because of the influx of refugees from various countries, Turkey's migration patterns have shifted. Turkey has become a transit country in the last decades as a result of intense migratory movements. Turkey's refugee regulations have been in place since 1934. Two key legal documents have established the fundamental contours of Turkey's asylum regime. The first is the 1934 Law on Settlement, also known as Law Number 2510, which governs entry, settlement, and refugee status applications. This law demonstrates the critical role that migration and asylum played in the process of Turkish nation-building following the disintegration of the Ottoman Empire.

Turkey is one of the few countries that has signed both the 1951 Refugee Convention and its 1967 Protocol on Refugees. Turkey also maintains geographical boundaries, in this case only protecting people from European countries. Turkey, like all other signatories, accepted the 1951 Convention with geographical and time constraints. While almost all other signatories removed their reservations on the definition of refugees with the 1967 Protocol, Turkey did not remove its geographical reservation. According to Article 90 of the 1982 Constitution, human rights in Turkey are protected by a number of international law treaties that predominate over domestic legislation. Furthermore, Turkey has signed a number of treaties, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), collectively known as the International Bill of Human Rights.

In terms of regulating refugees in Turkey, Turkey has its own policy. This is a manifestation of Turkey's commitment to human rights in national law. The 1994 Regulation and the 2006 Implementation Order for the Convention formed the foundation of immigration and refugee legislation. Turkey passed the Law on Foreigners and International Protection (LFIP) in 2013. This law enacts landmark reforms that will provide Turkey with an equitable management system. It completely restructured the country's legal framework for migration issues. This law establishes procedures for foreigners, refugees, and those in need of international protection. In accordance with Turkey's geographical limitation policy on the 1951 Refugee Convention, the LFIP provides three types of international protection status. People from European countries of origin, people from non-European countries of origin, and people who, if returned, would face the death penalty or torture in their country of origin.

The Republic of Turkey's Council of Ministers issued a regulation on temporary protection under Article 91 of the Law on Foreigners and International Protection in 2014. Syrian Arab Republic citizens, stateless people, and refugees who have arrived or crossed our borders from Syria Arab Republic will be granted temporary protection (17). While the LFIP mentions social services such as housing, health, and education that can be provided to Syrian refugees, temporary protection status creates additional sources of domestic precarity for Syrians in Turkey (12, p-316). With the mass movement of Syrians from Turkey to Europe since the summer of 2015, Turkey collaborated with the European Union (EU) through the Joint Action Plan to halt the flow of refugees and irregular migrants. Turkey has followed through on its commitment to strengthen measures to combat migrant smuggling and has been working closely with the EU on resettlement and return.

III. THE RIGHT TO ASYLUM IN INDONESIA

A.Refugee Influx to Indonesia. Nearly one-sixth of all refugees are from Asia and the Pacific. This places Asia and the Pacific in third place in terms of total displacement cases. Afghanistan accounts for one in every six refugees under UNHCR's mandate. In 2021, there will be approximately 13,912 registered refugees in Indonesia. The conflict in Afghanistan and Myanmar has forced a large number of its citizens to flee the country. In Myanmar, nearly one million Rohingya live and work on the west coast of the city of Rakhine. Despite the fact that they have lived in Myanmar for centuries, the Myanmar military junta government considers the Rohingya to be ethnic Bengalis and does not recognize them as ethnic Myanmar. The Rohingya people lost their citizenship when the Burma Citizenship Law was passed in 1982.

Due to the absence of the Rohingya in Myanmar, the Myanmar military junta has taken various actions to expel the Rohingya from their ancestral lands, causing the majority of Rohingya people to flee to other countries. In the meantime, those who remain in Myanmar continue to face human rights violations. The violations committed against the Rohingya ethnicity included not being granted a business license; the imposition of high taxes on the Rohingya ethnicity; if they are unable to pay the tax, most of the Rohingya's agricultural land, ponds, and property will be confiscated. The Arakan Rohingya Salvation Army (ARSA) claimed responsibility for attacks on military posts in Rakhine in 2017.

The Myanmar government declares ARSA a terrorist organization, prompting the Myanmar military to launch a brutal campaign that destroyed hundreds of Rohingya homes and forced over 600,000 Rohingya to flee the country (1). Bangladesh has been the first destination for Rohingya refugees since 1978. However, there are numerous financial issues. Humanitarian aid for Rohingya people has been halted since 2012, and Rohingya refugees are facing a health crisis. Those who take the sea route to escape are known as boat people because they travel by boat. Thailand, Malaysia, Indonesia, and Australia are among the transit countries and destinations.

The Rohingya are spread across several Indonesian provinces, including Aceh, Medan, Tanjung Pinang, and Batam. The Indonesian military chief expressed concern that relaxing migration restrictions would increase the number of migrants arriving. Despite not being a party to the 1951 Refugee Convention, Indonesia accepted the existence of the Rohingya nation under pressure from international law. The Indonesian government delegated authority to UNHCR Indonesia to carry out the mandate of protecting refugees and dealing with refugee issues in Indonesia.

B. The Legal Framework of the Right of Asylum in Indonesia . International law has established fundamental obligations for states in implementing international protection. International responsibility will be imposed for actions that violate international law. This responsibility arises when there is a serious violation of human rights protection issues, including refugee rights. Despite the fact that Indonesia is not a party to the 1951 Refugee Convention or the 1967 Protocols, the country has a long history of dealing with the refugee crisis, which has lasted from 1979 to the present. There is no comprehensive national legal instrument to protect refugees' right to seek and enjoy asylum. Indonesia, on the other hand, sees the refugee crisis as a universal human rights issue. In terms of the application of standard human rights treatment, Indonesia has human rights instruments.

The Prime Minister's Circular Number: 11 / RI / 1956 concerning the Protection of Political Escape recognizes asylum seekers for the first time in Indonesia. According to Article 1 of this circular letter, *"Political fugitives, those who enter and who are in the territory of Indonesia will be given protection based on human rights and freedoms, in accordance with customary international law."* According to this circular, political fugitives who come to seek asylum in Indonesia or are already in Indonesia and have committed a crime for political reasons or purposes, including attempting to commit and assisting in the commission of political crimes, will be protected. Furthermore, the People's Consultative Assembly Decree Number XVII / MPR / 1998 concerning Human Rights strengthens the recognition of asylum institutions.

The provisions regarding asylum institutions are included in Article 28G paragraph (2) of the 1945 Constitution, which states that *"Everyone has the right to be free from torture or treatment that degrading human dignity and has the right to obtain political asylum from other countries."* The initial handling of problems relating to asylum seekers and refugees in Indonesia is governed by Immigration Law No. 6 of 2011. Because asylum seekers and refugees are both foreigners entering Indonesian territory, the provisions are the same as for other foreigners who enter Indonesia legally, such as tourists and foreign students, or illegally, such as people smugglers. According to Law Number 6 Year 2011, Article 83 paragraph (1), immigration officials are authorized to place foreigners in an immigration detention center or immigration detention room if the foreigner is in Indonesian territory without a valid travel document.

The authority to grant asylum rests with the President through a Presidential Regulatio . In Article 26 of Law Number 37 Year 1999 concerning Foreign Relations it is stated that: *"The granting of asylum to foreigners is carried out in accordance with national laws and regulations and with due observance of international law, customs and practice."* The government does not have the authority to determine a person or group of people as refugees or not. The authority rests with UNHCR. Those whose status has not been identified by UNHCR will be placed in a detention room, while those who are declared not as asylum seekers or refugees by UNHCR will immediately be deported.

It is stated in elucidation of Article 27 of Law Number 37 Year 1999 concerning Foreign Relations that the problems faced by refugees are primarily humanitarian problems. Indonesia should work with the relevant bodies to resolve the refugee crisis. After obtaining refugee status in Indonesia, refugees can seek asylum under the supervision of the UNHCR and the Indonesian government.

In 2016, the Indonesian government issued Presidential Regulation Number 125 of the Republic of Indonesia concerning the Handling of Refugees from Abroad. The Presidential Regulation also provides clear boundaries and definitions of refugee. Refugees are defined as foreigners who are in the territory of the Unitary State of the Republic of Indonesia due to reasonable fear of leaving their country and having obtained refugee status from the United Nations through UNHCR in Indonesia (18). Thus, refugees will not be confused with other illegal immigrants.

The presidential regulation consists of 44 articles and 7 chapters. This regulation contains procedures for coordinating the handling of refugees, such as finding refugees and monitoring refugee immigration. The protection of refugees outlined in Presidential Regulation No. 125 of 2016 Concerning the Handling of Refugees from Abroad is concerned with shelter and the rights that refugees receive while in the shelter. The detention center works with the district and city governments in the areas where refugee camps have been established to provide shelter for refugees. If there is still no permanent shelter, the refugees must be provided with temporary housing. These shelters can be facilitated by International Organization for Migration through the Ministry of Law and Human Rights.

IV. THE ASSISTANCES FOR REFUGEES IN TURKEY AND INDONESIA.

As previously stated, Turkey now has the world's largest number of refugees. This is due to Turkey's geographical location. As a result, Turkey has become a popular destination for refugees and asylum seekers. The largest refugee arrival to Turkey was in 2011 when the Syrian conflict broke out as the number of people forcibly displaced across the world. Aside from Syrians, the refugees in Turkey are from Afghanistan and Iraq. On the other hand, the majority of refugees in Indonesia are from Afghanistan and Myanmar.

Due to its non-participation in the 1951 Refugee Convention and the 1967 Refugee Protocol, Indonesia is a transit country rather than a destination country for refugees. Australia is one of the destination countries for refugees in Indonesia, and the two countries are currently cooperating on a wide range of asylum policies in dealing with the refugee crisis. The cooperation includes funding and human resources, the development of Indonesia's immigration detention regime, as well as training and intelligence to assist Indonesia in anti-people-smuggling operations (2).

In terms of dealing with refugees in Turkey, the European Union also aimed to assist Turkey. This is in accordance with the Joint Action Plan for 2015. The Action Plan attempted to give order to migratory flows and to reduce the influx of irregular migrants. The EU and Turkey reaffirmed their shared commitment to ending irregular migration from Turkey to the EU, disrupting smugglers' business models and providing migrants with an alternative to putting their lives in danger. In 2019, as a result, it has reduced the number of migrants entering European countries.

As relations between the EU and Turkey in dealing with the European refugee crisis develop, members of the Association of Southeast Asian Nations (ASEAN) developed regional cooperation to improve the protection of regional refugees in Southeast Asia. ASEAN held a Special Meeting on Irregular Migration in Bangkok, Thailand, in 2015, in response to the Rohingya crisis. As a result of this meeting, ASEAN members agreed to form an ASEAN refugee handling task force. With the establishment of this task force, ASEAN will have more opportunities to address the issue of Rohingya refugees and other refugees in the ASEAN region.

Foreigner citizens granted international protection status as refugees in Turkey have access to the education system, health services, adequate housing, and labor market, according to the Foreigners and International Protection and Temporary Protection Law. In contrast, the Presidential Regulation Number 125 Year 2016 in Indonesia does not regulate access to the education system, health services, or labor market. Regulations governing this subject are found in laws intended for foreigners, not refugees. In terms of housing, refugees in Indonesia live in shelters. Basic necessities for refugees, such as clean water, food and drink, health services, and worship facilities, have been provided in these shelters. Refugees who want to live outside the shelters can do so in any province they want, but they must register in the city where they live in order to use public services. Those who choose to live outside of shelters must therefore cover their own housing costs.

In terms of access to health services, Turkey's 2014 Temporary Protection Regulation guarantees refugees under temporary protection the right to health services. Turkey's General Health Insurance covers all registered temporary protection beneficiaries, whether they live in or outside of the camps. In Indonesia, both refugees and asylum seekers have the right to health care under President of the Republic of Indonesia Regulation Number 125 Year 2016. They might get it in shelters and detention facilities.

Regarding access to education in Indonesia, it is governed by Law No. 20 of 2003 pertaining to the national education system. The human rights law guarantees that everyone, not just Indonesians, but everyone who lives on Indonesian territory, has the right to an education. In Turkey, The LFIP mandates that applicants and recipients of international protection and their families have access to primary and secondary education.

CONCLUSION

Today's world is rife with conflicts that generate a large number of refugees and displaced people, which has become a global issue requiring various actors of the international community to propose solutions to address the international refugee crisis. The 1951 Refugees Convention and the 1967 Refugees Protocol are the international legal instruments that currently regulate the status of refugees. Article 14 of the Universal Declaration of Human Rights affirms the right to seek and enjoy asylum. The legal framework established by the 1951 Convention and its 1967 Protocol derives directly from this right.

Asylum has become a catch-all term for the protection a country offers refugees on its territory. It is a process that begins with the admission of an individual to safety and ends when the refugee becomes a citizen of his new country, is able to return voluntarily to his country of origin, or finds a permanent

solution in another country. Asylum has a civilian, peaceful, and humanitarian nature that is the responsibility of the receiving state. Refugees must also abide by the laws and regulations of the nation that has granted them asylum.

As a party to the convention and protocol, Turkey is obligated to ensure the protection of asylum seekers on its territory in collaboration with other international and non-governmental organizations engaged in humanitarian assistance and development aid. In addition to having responsibilities regarding the status and treatment of refugees, Turkey has also agreed to implement these instruments effectively and in good faith.

The Turkish asylum system is outlined in the Law on Foreigners and International Protection and Temporary Protection. Asylum-seekers seeking protection who do not register with the authorities are ineligible for all services and assistance in Turkey, including access to health care, education, social services, and employment opportunities. Consequently, registering with the Turkish authorities is the most crucial means of securing their rights in Turkey. On the other hand, the Indonesian government issued Presidential Regulation Number 125 Year 2016 as the country's first regulation pertaining to the refugee issue.

Indonesia does not have a national system for determining refugee status. Consequently, the UNHCR processes refugee claims in Indonesia on behalf of the government. The UNHCR conducts a comprehensive Refugee Status Determination process. However, once registered by UNHCR, refugees in Indonesia have access to public services and available assistance. Whether or not a state has ratified the 1951 Refugee Convention and its Protocol, protection for asylum seekers and refugees is the responsibility of every state. State parties have more rights and obligations than non-state parties. The Convention was not intended to address the underlying causes, but rather to mitigate their effects by providing victims with international legal protection and assistances, and eventually by assisting them in starting new lives.

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