



## **INTERNATIONAL LEGAL PROTECTION STUDY FOR REFUGEES THROUGH THE 1951 REFUGEE CONVENTION AND 1967 PROTOCOL**

**Kadek Diah Karuni**

Faculty of Law and Social Sciences, Ganesha University of Education

e-mail : [diah.karuni@undiksha.ac.id](mailto:diah.karuni@undiksha.ac.id)

---

### **Info Artikel**

Masuk: 1 September 2023

Diterima: 10 Oktober 2023

Terbit: 1 November 2023

### **Keywords:**

Legal Protection,  
Refugees, Convention  
1951

---

### **Abstract**

*The definition of a refugee based on the 1951 Convention includes a person who because of his fear of persecution caused by reasons of ethnicity, race, religion, nationality, membership of certain social groups and also certain political parties outside his country of nationality so that he does not want protection from that country. To provide protection to international refugees, the 1951 Refugee Convention was enacted as a form of legal protection. The refugees then evacuate to seek legal protection in countries that have ratified the Convention. Prior to 1951, issues related to international refugees were still a polemic, especially in terms of legal protection and legal status for these refugees. Therefore, writing this article aims to find out the legal protection for international refugees through the 1951 Convention, find out who is called a refugee, determine the status of international refugees, their position and rights, as well as countries that have ratified and have not ratified the convention. The method used in writing this scientific article is a library research method through several literatures such as websites, journals and also e-books that are in accordance with the topic of this article. This article shows the findings that international refugees currently have legal status, their position and rights are protected in a refugee country when that country has ratified the 1951 Convention and the 1967 protocol. Of the 195 countries that are members of the United Nations, only 144 have ratified the convention, and the rest have not ratified, one of them is Indonesia.*

**Kata kunci:**

*Perlindungan Hukum,  
Pengungsi, Konvensi  
1951*

**Corresponding Author:**  
*Kadek Diah Karuni*

**DOI:**  
XXXXXXX

---

**Abstrak**

Definisi dari pengungsi berdasarkan Konvensi 1951 yaitu meliputi seseorang yang karena ketakutannya akan penganiayaan yang disebabkan karena alasan suku, ras, agama, kebangsaan, keanggotaan kelompok sosial tertentu dan juga partai politik tertentu yang ada diluar negara kebangsaannya sehingga tidak menginginkan perlindungan dari negara tersebut. Untuk memberikan perlindungan kepada pengungsi internasional, maka ditetapkanlah Konvensi Pengungsi 1951 sebagai wujud perlindungan hukum. Para pengungsi kemudian melakukan pengungsian untuk mencari perlindungan secara hukum di negara yang telah meratifikasi Konvensi tersebut. Sebelum tahun 1951, masalah terkait pengungsi internasional masih menjadi polemik, terlebih dalam hal perlindungan hukum dan status hukum bagi pengungsi tersebut. Maka dari itu, penulisan artikel ini bertujuan untuk mengetahui perlindungan hukum bagi para pengungsi Internasional melalui Konvensi 1951, mengetahui siapa saja yang disebut sebagai pengungsi, penentuan status bagi pengungsi internasional, kedudukan dan hak yang dimiliki, serta negara-negara yang telah meratifikasi dan belum meratifikasi konvensi tersebut. Adapun metode yang digunakan dalam penulisan artikel ilmiah ini adalah metode riset kepustakaan melalui beberapa literatur seperti website, jurnal dan juga e-book yang sesuai dengan topik artikel ini. Artikel ini menunjukkan temuan bahwa pengungsi internasional saat ini telah memiliki status hukum, dilindungi kedudukan dan haknya di negara ungsian pada saat negara tersebut telah meratifikasi Konvensi 1951 dan protocol 1967. Dari 195 negara yang menjadi anggota PBB, hanya 144 yang sudah meratifikasi konvensi tersebut, dan sisanya belum meratifikasi, salah satunya adalah negara Indonesia.

*@Copyright 2023.*

---

**INTRODUCTION**

Problems related to refugees have actually existed since humans have been familiar with conflict and war. In general, those who become refugees are victims of acts of violence, or those who deliberately fled from the ferocity of war taking place

in their country. For centuries, the problem of refugees has only aroused feelings of compassion and concern, but without any efforts to protect them legally, both in terms of their legal status and their rights that must be protected. The problem of international refugees and asylum seekers has become a common topic of discussion in the international community, this is because the problem of refugees has exceeded the territorial boundaries of one country and then entered the territorial territory of other countries in large numbers. Problems related to refugees have existed since the 20th century, which first arose during the Russian war (revolution in Russia). In general, refugees flee because there has been oppression of human rights in their country, and they seek refuge in another country as their new residence, of course in the hope of being away from oppression of human rights (Husin, 1998 : 27).

The term and definition of refugee first appeared during the First World War, and at that time it was estimated that there were 1.5 million refugees (Taylor, 1993 : 28) Of the number of refugees, half a million refugees came from Armenia who were displaced after the massacre occurred. magnitude and also after their forced repatriation to Turkey. These displaced refugees sought refuge in countries in the Middle East, the Soviet Union and also other western countries. Refugees who live in refugee countries do not have identity as proof of themselves, so they cannot take legal action, for example they cannot get married, cannot make agreements and are even prohibited from traveling.

This ultimately causes problems and causes refugees to feel inconvenienced because they cannot take legal action. So, to overcome these problems, international agreements were made. International agreements or what are often called treaties are one of the formal legal sources for international law. International agreements made to overcome the refugee problem before 1951 include international agreements in 1928, 1933, 1938, 1939 and 1946. These agreements were then continued by the UN with the holding of a conference on the status of refugees in 1951 which was then supplemented by a protocol. 1967 (Mangku, 2021 : 13) The convention related to refugee status became known as the 1951 Refugee Convention, which is a multilateral agreement which contains the definition, status of refugees, stipulates the rights of individuals to obtain asylum and the responsibilities of countries that provide asylum. The convention also contains the designation of people who do not meet the criteria for refugees, such as war criminals.

The 1951 Refugee Convention is based on the 1948 Universal Declaration of Human Rights which recognizes the rights of people seeking asylum with the aim of avoiding oppression in other countries. A refugee can obtain his human rights in countries that ratify the refugee convention. The 1951 Refugee Convention was approved by the United Nations on 28 July 1951. The first country to ratify the agreement was Denmark, namely on 4 December 1952 and then only implemented

it on 22 April 1954. The 1951 Refugee Convention and the 1967 Protocol are forms of protection law against international refugees. Currently, there are 144 countries in the world that have ratified the convention, which means that 144 countries have participated in providing protection and ensuring legal status for international refugees, because without identity and legal status, refugees will not have rights and cannot carry out legal actions. In this article, we will examine the definition and criteria of refugees, the legal status of refugees, the position and rights of refugees based on the 1951 Convention as well as countries that have and have not ratified the convention.

## **RESEARCH METHODS**

This research is normative juridical legal research. In this research, three types of approaches are used, namely, the Statute Approach, The legal materials used in this research, namely primary and secondary legal materials obtained from library/literature studies, were then studied and analyzed for their relationships and interrelationships in helping and explaining the concepts and theories used in this research.

## **RESULTS AND DISCUSSION**

### **Understanding Refugees**

The definition of refugees contained in international treaties or agreements before 1951 includes people who come from certain areas, and then because of conditions in their area, these people are forced to leave the area. The definition of refugees then developed over time, in 1951 refugees were defined in general and not only in certain areas, but in the 1951 Convention there were still time restrictions, namely only those who fled before January 1 1951. This restriction on refugees had the aim of limiting protection for refugees who have fled, while those who are displaced in the future do not receive protection from the convention. However, along with developments over time, in 1967 restrictions in the form of refugee datelines were abolished. The 1951 Refugee Convention and the 1967 Protocol are almost the same in principle. The three things that are the main contents of the convention are:

1. The first is the basic definition of a refugee, which includes someone who, because of their fear of persecution for reasons of ethnicity, race, religion, nationality, membership of certain social groups and also certain political parties outside their country of nationality, does not want protection from that country.
2. The second is related to the legal status of refugees, the rights and obligations of refugees in the country of refuge
3. And the third is related to the implementation of the agreement. In this case, the emphasis concerns administration and diplomatic relations, namely regarding cooperative relations with UNHCR. In this way, UNHCR will be able

to carry out its own duties as well as carry out supervisory duties, especially towards countries where refugees reside. In principle, UNHCR's task is to provide international protection for international refugees.

Things that cause refugees are divided into two types, namely:

1. The first type, namely refugees caused by natural disasters. Refugees due to natural disasters are in principle still protected by their countries to go out to save their lives, and these refugees can still ask for help from their countries of origin.
2. The second type, namely refugees caused by disasters created or caused by humans. In principle, refugees due to human-made disasters are: refugees leaving their country of origin because they are avoiding prosecution (persecution) from their country. Usually, refugees resulting from man-made disasters occur for political reasons, so they are forced to leave their country and they no longer receive protection from their country of origin.

Of the two types of refugees mentioned above, those regulated in international law as Refugee Law are refugees of the second type, while refugees of the first type are not regulated in International Law.

### **Determining Status For International Refugees**

Determining status for refugees is about a person's eligibility. To determine the legal status of refugees, several criteria can be used which consist of elements or factors, including subjective factors and objective factors. Subjective factors are factors that exist within the refugee himself, and it is these factors that will determine whether the person actually has a feeling of fear or worry about persecution or prosecution. If there is a reason for fear, then the person can be said to be Eligible. Meanwhile, the objective factor is the condition of origin of the refugee, whether in that country there really is persecution of certain people or not. For example, because of differences in race, religion, political views, etc. If the situation in the refugee's country of origin is like that, then this situation can make someone eligible.

A person will not be declared an eligible person if that person is as follows:

- 1) People who have fled abroad with the intention and aim of changing their economy for the better. Such people cannot be said to be refugees. Emigrants, namely people moving from one country to another.
- 2) Moving to another country just to gain personal enjoyment and gain.
- 3) Cannot agree with government policies or because the government's politics are not recognized.

The mistakes that occur in determining someone as Eligible are as follows:

- a. When people seeking refugee status are not honest or forthright.
- b. If the officers are not careful, it will result in fatal mistakes. In connection with this, there is a principle called Benefit Of The Doubt, meaning the benefit

of the doubt. To determine and determine whether a person can be said to be a refugee or not, there is a possibility that the officer will be faced with a doubt, this may be based on the person's subjective elements, or perhaps the doubt is based on an objective element, whether the officer does not know the person's country of origin. This is a situation that is being faced. So based on this principle, officers are obliged to make decisions that are most beneficial for the person, in other words the person is accepted and given refugee status.

### **Position And Rights Of International Refugees**

As refugees whose rights and obligations have been protected through the 1951 convention and 1967 protocol, the following are the rights and obligations that international refugees have (Sukanda Husin. 1998: 32-34): The rights and obligations of refugees are as follows (Sukanda Husin 1998: 32-34):<sup>6</sup>

- 1) Countries participating in the convention or which have ratified the convention are not permitted to treat refugees in a discriminatory manner whether with regard to race, religion, country of origin or the color of the refugee's skin. Refugees have the freedom to practice their respective beliefs and religion, and also the freedom to determine the education of their children in the host country (Articles 3 and 4). This freedom is one of the rights of refugees, namely the right to non-discrimination.
- 2) With regard to the personal status of refugees, this is regulated in accordance with the applicable law in accordance with the area where they are domiciled. Rights relating to marriage are also required to be recognized by countries participating in the Convention and Protocol (article 12). This freedom is the right to personal status.
- 3) Refugees have the same rights in terms of property rights, whether for mobile or immovable voting rights. Refugees also have the right to transfer or relocate their assets to the country where they reside (Articles 13, 14 and 30).
- 4) Countries participating in the Convention or which have ratified the convention, have the obligation and obligation to recognize the freedom of refugees to associate by establishing associations, including trade associations, as long as the association is not for profit and is not political in nature (Article 15). This freedom is the right of refugees to associate.
- 5) Refugees have the right to resolve their cases through a judicial body. If necessary, they must also be provided with legal assistance (Article 16). This is the right that refugees have to sue in court.
- 6) Refugees who have received legal status recognition have the right to obtain work in that country (articles 17, 18 and 19).

- 7) Refugees have the right to primary school education, exemption from education fees or even a scholarship (Article 22). This is the right of refugees to education and teaching.
- 8) Every refugee is given the freedom to choose or determine which area they will settle in, as long as it is still within the country's territory (Article 26). This is the refugee's right to freedom of movement.
- 9) Every refugee has the right to obtain social welfare rights, such as the right to work, housing, and to receive wages for the work they have done (Articles 20 and 22). This is the right of refugees to social welfare.
- 10) Every refugee has the right to obtain identity papers and travel documents outside the country's territory (in accordance with Articles 27 and 28).
- 11) Refugees have the right not to be expelled to areas where their lives will be threatened again, unless the refugees cause chaos in the place where they have fled (articles 31, 32 and 33).

Apart from having rights, refugees also have obligations in their country of refuge. Apart from the rights of refugees which have been explained previously, the 1951 Convention has outlined the obligations of refugees as stated in Article 2. This article in conclusion states that every refugee is obliged to comply with all applicable laws and regulations for the creation of public order in the host country.

### **Countries That Have And Have Not Ratified The 1951 Refugee Convention**

Protection of refugees is basically the responsibility of every country. However, countries that have ratified the 1951 Convention have a greater responsibility to provide protection for refugees. Of the 195 countries that are members of the UN, only approximately 144 countries have ratified the convention, and the rest have not ratified it, one of which is Indonesia.

Problems related to refugees are likened to a double-edged sword. On the one hand, a sense of humanity regarding the suffering and persecution experienced by refugees is the reason or what encourages receiving countries to open their doors to the arrival of refugees. However, on the other hand, the receiving country is still focused on domestic welfare problems, so that accepting refugees will cause dilemmas and problems, especially if the country has ratified the convention, so the country is bound and obliged to fulfill the rights of refugees.

One of the UN member countries that has not ratified the 1951 Convention is Indonesia. The Indonesian state has not ratified the convention because the articles in the 1951 Convention are quite burdensome if Indonesia ratifies it. Several articles that could be taken into consideration if Indonesia has not ratified the 1951 Refugee Convention are as follows:

1. Article 17 of the 1951 Convention, which is one of the articles contained in the convention which in conclusion requires refugee receiving countries to

provide employment opportunities for refugees in their territory. If we look at the current situation and conditions in Indonesia, then if Indonesia ratifies the convention, it could burden the national government. This is because in Indonesia itself, according to the Central Statistics Agency (BPS), there has been an increase in the number of unemployed people in Indonesia from 10,000 people to 7.04 million people as of August 2017. If the current situation in Indonesia is added to approximately thousands of refugees, then the burden on the government to provide employment opportunities for Indonesian citizens and refugees will increase. In fact, many Indonesian citizens work abroad because in Indonesia they find it difficult to find work and the wages they get abroad are much higher than in Indonesia. This has proven that the Indonesian government is not yet optimally able to provide jobs for its citizens, let alone provide jobs for refugees, this will only increase the government's burden.

2. 2) Article 21 of the 1951 Convention which in conclusion requires refugee receiving countries to provide shelter or homes for refugees. The obligations in this article are considered quite burdensome, this is because the current situation in the country has not even been realized evenly. Based on data from the Director General of Housing Financing at the Ministry of Public Affairs and Public Housing, it was stated that as of November 2016 there were still around 13.5 million families in Indonesia who did not have a house/place to live. So, if Indonesia ratifies the 1951 Convention, then this will increase the burden on the government, while domestic conditions will not be able to improve evenly.

The articles contained in the 1951 Refugee Convention are a consideration for Indonesia, so that until now Indonesia has not ratified the convention, where the articles contained therein are quite burdensome.

## **CLOSING**

### **Conclusion**

Based on the results and discussions that have been discussed, the following conclusions can be drawn:

1. The definition of a refugee based on the 1951 Convention includes someone who, because of their fear of persecution due to reasons of ethnicity, race, religion, nationality, membership of a certain social group and also a certain political party outside their country of nationality, does not want protection from that country. The refugees then flee to seek legal protection in countries that have ratified the Convention. The role of international treaties or



agreements as a source of formal law is now becoming more important to fulfill the necessary international legal needs. 7 For example, to provide protection to international refugees, the 1951 Refugee Convention was established as a form of legal protection. Things that cause refugees are divided into two types: The first type, namely refugees caused by natural disasters and the second type, namely refugees caused by disasters that are created or caused by humans. Of the two types of refugees mentioned above, those regulated in international law as Refugee Law are refugees of the second type, while refugees of the first type are not regulated in International Law. To determine the legal status of refugees, several criteria can be used consisting of subjective factors and objective factors. Subjective factors are factors that exist within the refugee himself, while objective factors are the condition of origin of the refugee, whether in that country there really is persecution of certain people or not.

2. Refugees have rights and obligations in the country they host/take refuge in. The rights that refugees have in the country of residence are: the right to be treated without discrimination, the right to personal status, the right to opportunity for property rights, etc. in accordance with the Universal Declaration of Human Rights. Refugees also have obligations in their country of refuge, namely that they are obliged to comply with every law and regulation to create public order in the country they live in. Of the 195 countries that are members of the UN, only approximately 144 countries have ratified the convention, and the rest have not ratified it, one of which is Indonesia.

### **Recommendation**

The recommendations expected from this research are:

Since 1951, refugees have been protected by international law through the 1951 Refugee Convention and the 1967 Protocol. Of the 195 countries that are members of the UN, approximately 144 countries have ratified the convention. Countries that have ratified the convention should be able to fulfill the rights of refugees, and refugees should also comply with all existing regulations in the host country. For countries that have not ratified the convention, they should think about it with various considerations and capabilities, so that they don't just ratify it but are unable to implement it. If the convention is too burdensome and it is felt that it is unable to implement it, then the country should not ratify a convention that will be burdensome and not in accordance with national interests.

### **REFERENCES**

- Afriandi, F., 2020. KEPENTINGAN INDONESIA BELUM MERATIFIKASI KONVENSI 1951. [Online] Available at: <https://media.neliti.com/media/publications/31378-ID->

- kepentingan- indonesia-belum-meratifikasi-konvensi-1951-dan-protokol-1967-mengena.pdf [Accessed 20 Mei 2022].
- Cipta Primadasa Primadasa1, M. P. K. R. E., 2021. Problematika Penanganan Pengungsi di Indonesia Dari. [Online] Available at: <https://ejournal.fh.unmul.ac.id/index.php/risalah/article/download/380/214/> [Accessed 20 Mei 2022].
- Mangku, D. G. S., 2021. PENGANTAR HUKUM INTERNASIONAL PUBLIK. 1st ed. Jawa Tengah: Penerbit Lakeisha.
- Peter J. Taylor, Political Geography World Economy, Nation State and Locality, Es Sex :Longman, ed. 1993. dalam Achmad Romsan, Pengantar Hukum Pengungsi Internasional : Hukum Internasional dan Prinsip-prinsip Perlindungan Internasional, (Jakarta : UNHCR, 2003), hal.28
- Rahmadani, F., 2021. KONVENSI PENGUNGGI 1951 DAN DILEMA INDONESIA. [Online] Available at: <http://www.msplawfirm.co.id/konvensi-pengungsi-1951-dan-dilema-indonesia/> [Accessed 20 Mei 2022].
- Registrar, A., 2020. Perlindungan Pengungsi (Refugee) Menurut Hukum Internasional. [Online] Available at: <https://referensi.elsam.or.id/wpcontent/uploads/2014/10/Perlindungan-Pengungsi-Refugee-Menurut-Hukum-Internasional.pdf> [Accessed 20 Mei 2022].
- ResellerCamp, 2021. BAB IV HAMBATAN-HAMBATAN UNHCR DALAM MENERAPKAN SOLUSI INTEGRASI LOKAL DI INDONESIA. [Online] Available at: <http://repository.umy.ac.id/bitstream/handle/123456789/28061/BAB%20IV.pdf?sequence=8&isAllowed=y> [Accessed 20 Mei 2022].
- Sukanda Husin. UNHCR dan Perlindungan Hak Azasi Manusia. (Padang : Fakultas Hukum Universitas Andalas. 1998) dikutip dari Jurnal Hukum No 7 Th. V/ 1998. Padang : FH Univ. Andalas, hlm 27
- UNHCR : 2011, [www.unhcr.org](http://www.unhcr.org), diakses pada tanggal 20 Mei 2022 Wikipedia, 2021. Konvensi Terkait Status Pengungsi. [Online] Available at: [https://id.wikipedia.org/wiki/Konvensi\\_Terkait\\_Status\\_Pengungsi](https://id.wikipedia.org/wiki/Konvensi_Terkait_Status_Pengungsi) [Accessed 20 Mei 2022].
- Yahya Sultoni, S. W. H. S., 2020. THE REASON OF INDONESIA NOT RATIFIED REFUGEE CONVENTION 1951 AND. [Online] Available at: <https://media.neliti.com/media/publications/34781-ID-alasan-indonesia-belum-meratifikasi-konvensi-1951-tentang-pengungsi-dan-perlindu.pdf> [Accessed 20 Mei 2022].