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## Introduction to Refugee Law in Freedom to Learn Era

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### 1. Introduction

The Freedom to Learn initiative, spearheaded by the Minister of Education, Culture, Research, and Technology (Mr. Nadiem Makarim), is a program that promotes independent learning based on students' interests and personalities. The purpose of Freedom to learn for educators is to increase competence, engage actively in professional networks and organizations, and develop independently. Additionally, the Minister has officially launched the Freedom to Learn Curriculum as a follow-up to the 2013 curriculum revisions. The Freedom to Learn Curriculum is a continuation of the development and implementation of the emergency curriculum, which was launched in response to the COVID-19 pandemic (Kementerian Pendidikan, 2021).

From elementary to higher education, schools are given the Freedom to choose their Curriculum per the Freedom to Learn Curriculum. It is hoped that this new Curriculum will be more adaptable because it focuses on essential material and allows for the exploration of contemporary issues (environmental, health, economic, political, legal, and social issues).

This article will address one aspect of the actual issue, namely the legal aspect, more precisely refugee law. This means that in the current era of Freedom to Learn, the introduction of refugee law at the level of higher education (Faculty of Law) is necessary. Given that the issue of refugees became a point of contention during the Russia-Ukraine conflict on February 24, 2022. Another reason that refugee law is necessary is that Indonesia is a rule of law country that upholds human rights. Various regulations governing human rights can be seen, such as Law no. 39 of 1999 on Human Rights, Law no. 12 of 2005 on Ratification of civil and political rights, Law no. 11 of 2005 on Ratification of economic, social, and cultural rights, as well as other regulations (Krustiyati & Astuti, 2021, p. 5).

The term "refugees" refers to the human rights that these people lack, is caused by the situation in their home country prevents them from remaining, forcing them to flee. At the same time, the right to live and feel secure within a country's territory is a jus cogens and peremptory norm that should never be compromised. Refugees are a recurring problem in human civilization as a result of fear for their safety. (Romsan, et al., 2003, p. 3).

In daily parlance, the term "refugee" refers to a person who flees his or her residence in search of a safer haven. In the Oxford dictionary, a refugee is defined as "a person who leaves his home to seek refuge, especially to a foreign country...." (Brown, 1993, p. 693). They were forced to leave their homes due to natural disasters and human-made disasters. For example security disturbances, weapons disputes, or political reasons. The different reasons that cause people to become refugees lead to different treatment or assistance. For refugees caused by natural disasters, the assistance needed is temporary assistance until they can live on their own. Meanwhile, refugees who are caused by human actions, in addition to needing assistance also need protection. Such protection can be in the form of granting asylum, guarantees not to be returned to their country of origin (non-refoulement), sending back to their country of origin (repatriation) or if they agree to it, placement in another country that is willing to receive it (resettlement) (Soeprapto, 2000, p. 10).

When discussing the issue of refugees, it is critical to establish who qualifies as a refugee and what rights and obligations can be imposed on them. To address these concerns, it is necessary to examine the international treaties governing refugee.

### 2. The definition of refugees

The thing that must be considered before analyzing the substance of the 1951 Convention is the consideration that this convention contains time limitation. According to the provisions of Article 1B paragraph (1) of the 1951 Convention, the words "events occurring before January 1 1951, shall be understood to mean either (Assembly, 1951):

- a. events occurring in Europe before January 1 1951; or
- b. Events occurring in Europe or elsewhere before January 1 1951, and each Contracting State shall make a declaration at the time of signature, Ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

After the 1951 Convention was signed, it was discovered that the number of refugees continued to grow, and thus these new arrivals were not subject to the 1951 Convention's refugee provisions. The 1951 Convention regulates only refugees who arrived prior to 1951; therefore, refugees arriving after 1951 are

not covered by the Convention. As a result, the United Nations General Assembly adopted the Protocol on the Status of Refugees in 1967. The 1951 Convention, as amended by the 1967 Protocol, applies to anyone who meets the criteria for refugee status, whether as a result of events occurring before or after 1951. The definition of refugee which governed on Article 1 Para. (2) Protocol 1967 stated that: “.....the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article of the Convention as if the words "as result of events occurring before January 1 1951 and ....." and the words "as result of such events", in article 1 A (2) were omitted.

Article 1 para. (3) of the 1967 Protocol also provides that the Protocol applies without geographical restrictions (Assembly, 1967). So the 1951 convention and the 1967 Protocol are international treaties, as sources of international law for refugee issues. The 1951 Convention is a basic document but its provisions are limited by time (for events prior to 1951). While the 1967 Protocol removed these restrictions.

Furthermore, Article 35 of the 1951 Convention and the 1967 Protocol stipulates that the parties to the agreement are responsible for cooperating with United Nations High Commissioner for Refugees (UNHCR) in carrying out their duties and obligations as regulated in the convention (Assembly, 1951). In other words, UNHCR is the organization responsible for the protection and assistance of refugees. The UNHCR Statute provides a mandate for UNHCR to resolve or protect refugees within the framework of the United Nations. UNHCR's definition of refugees is not limited to geographic location. UNHCR also provides a mandate to negotiate with countries that are not parties to the 1951 Convention and 1967 Protocol (Grahl-Madsen, 1997).

In addition to international refugee issues, there are also regional refugee agreements. These regional agreements, including to:

- 1) Principles concerning Treatment of Refugee, 1966.
- 2) OAU Convention Governing the Specific Aspect of Refugee Problems in Africa, 1969.

To find out whether a refugee is subject to the provisions of the 1951 Convention or is subject to the authority of UNHCR, his status must be determined. This determination process is known as “determination of eligibility” determination of eligibility.

a. Convention Refugee

Countries that are parties to the 1951 Convention or the 1967 Protocol, “eligibility” is determined by the government of the country concerned. Usually, the government of the country forms a commission consisting of agencies related to the problem of dealing with refugees. If the country has a UNHCR representative, then the UNHCR representative in that country can also be asked for his opinion regarding the determination of “eligibility”.

If a person is denied refugee status at the commission level, he or she may appeal to a higher authority or agency appointed by the government of the country concerned. Thus, it appears as though the “eligibility” commission serves as an appeals court. The final decision is made by the agency or agency at the second level. A person who is recognized as a refugee by a state party to the 1951 Convention or the 1967 Protocol is frequently referred to as a convention refugee, as his status is determined in accordance with the 1951 Convention or the 1967 Protocol.

b. Mandate Refugee

On the other hand, in countries that are not parties to the 1951 Convention or the 1967 Protocol, the determination of “eligibility” is carried out by UNHCR representatives. A person residing in these countries is recognized as a person within the scope of UNHCR's authority, which is essentially the agency's mandate.

### **3. Rights and Obligation of Refugees and Contracting State**

With the international recognition of refugees, it is natural that those who have refugee status but do not receive protection from their country of origin should receive international protection upon their arrival in the territory of another country. The 1951 Convention and the 1967 Protocol grant refugees and the country in which they reside certain rights and obligations. In an essence, refugees have the following rights and obligations: (Assembly, 1951)

- 1) The prohibition of expulsion or return. No refugees will be expelled or returned in any manner whatsoever to the frontiers of territories where his life and Freedom are threatened (Art. 33).
- 2) Not impose penalties, on account of their illegal entry or presence as long as they provided they present themselves without delay to the authorities along with its reasons. (Art. 31).
- 3) Not imposing of such refugees movement restrictions:
  - a. The movement of illegal refugees will not be restricted unless the necessary restrictions are taken pending their status in the country in which they are located or they obtain an entry permit from another country (Art. 31(2)).
  - b. Refugees legally residing in their territory are not restricted in their right to choose their place of residence and move freely within their territory.

- 4) The prohibition to discriminate. There will be no discrimination against refugees based on race, religion or nationality of origin and they have the Freedom to practice their religion as practiced in their country (Art. 3 and Art. 4).
- 5) Free access to the courts of law on the territory of all Contracting States. (Art. 16).
- 6) Refugees will receive the same treatment as is accorded to nationals with respect to elementary education and other than elementary education. (Art. 22).
- 7) Personal status. The refugee's personal status will be regulated in accordance with the law in which he is domiciled. If he does not have a domicile, then it is regulated according to the law in which he resides (residence). The most basic rights, namely the rights related to marriage, must be respected and recognized
- 8) Opportunity to have protect something
- 9) Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order (Art. 2).
- 10) A person who has obtained the status of a refugee according to law (lawfully staying) will enjoy social welfare, for example: the right to work, wage-earning employment, housing and security.
- 11) A refugee who does not have a valid travel document will be issued a identity papers (Article 27) and will be allowed to apply for the necessary facilities for application to another country (Art. 31 paragraph (2)).
- 12) Every effort will be made to facilitate assimilation and naturalization (Art. 34).

Meanwhile, the rights of Contracting States to the 1951 Convention are as follows (Assembly, 1951):

- 1) Contracting States have the right, in times of war or other grave and exceptional circumstances, to take temporarily measures deemed necessary for national security (Art. 9).
- 2) Contracting States are not bound to provide travel documents to refugees if there are urgent reasons for national security and public order (Art. 28).
- 3) Refugee-receiving countries may impose penalties on refugees if they do not immediately report to the authorities and provide a valid reason for their presence or illegal entry (Art. 31 paragraph (1)).
- 4) The Contracting States may impose restrictions against the movement of refugees as deemed necessary until the refugee status is regulated or they then get permission to go to another country (Art. 31 paragraph (2)).
- 5) The Contracting States can expel refugees on the grounds of national security or public order (Art. 32 paragraph (1)).
- 6) The principle of non-refoulement does not apply if there are reasons to consider certain refugees a danger to the security of the country or certain refugees have been sentenced by a court for a serious crime that may pose a danger to the people of that country.

According to the rights and obligations of refugees and the Contracting States in which they are located, it appears as though the Convention attempts to strike a balance between humanitarian considerations for accepting refugees and respect for the host country's sovereignty.

In terms of refugees, the Convention established guidelines for their treatment in the country where they are located, and these guidelines provide assurances to refugees that a minimum standard for refugees exists. From the recipient's perspective, the convention's provisions contain standards that respect the recipient's sovereignty. Similarly, it is possible to engage in dialogue and avoid acrimonious exchanges between the parties.

#### **4. Indonesia's Policy on the Issues of Refugee**

The problem of refugees is closely related to the dimension of human rights, because the main cause of the emergence of refugees is the existence of persecution and serious violations of human rights. In principle, Indonesia does not recognize the policy of granting asylum to refugees or the policy of local resettlement and local integration. This is understandable considering the large population of Indonesia and the tough challenges that Indonesia faces in prioritizing the welfare of its people. Nevertheless, Indonesia has always respected the general principle of international law in the matter of refugees, namely the principle of non-refoulement. This is in accordance with the provisions of TAP.MPR.XVII/MPR/1998 Art. 24 concerning Human Rights (to obtain asylum).

Indonesia has firsthand experience with resolving the refugee crisis on a large scale, having dealt with boat refugees from Indochina. The issue of boat refugees can be resolved once and for all through international cooperation. The problem of large numbers of refugees, such as boat people, must be addressed comprehensively and with the active participation of all relevant parties. Collective action is required at the regional and multilateral levels to resolve this issue, as it is not only a burden on the host countries' economic development, but also has the potential to undermine the host countries' sociopolitical stability.

Indonesia is still grappling with the issue of non-human boat refugees from a variety of countries. There have been signs in recent years that Indonesia has become a "transit" country for asylum seekers from Somalia, Sri Lanka, Iraq, Iran, Palestine, and Algeria. Indonesia's strategic location entices asylum seekers to make a pit stop in the country. They essentially do not intend to apply for asylum with the Indonesian government, as they are aware that Indonesia is unfamiliar with the policy of granting asylum. Additionally, they believed that Indonesia was unattractive as a permanent residence. The majority of them express a desire to be relocated to a third country in Europe, Australia, or New Zealand.

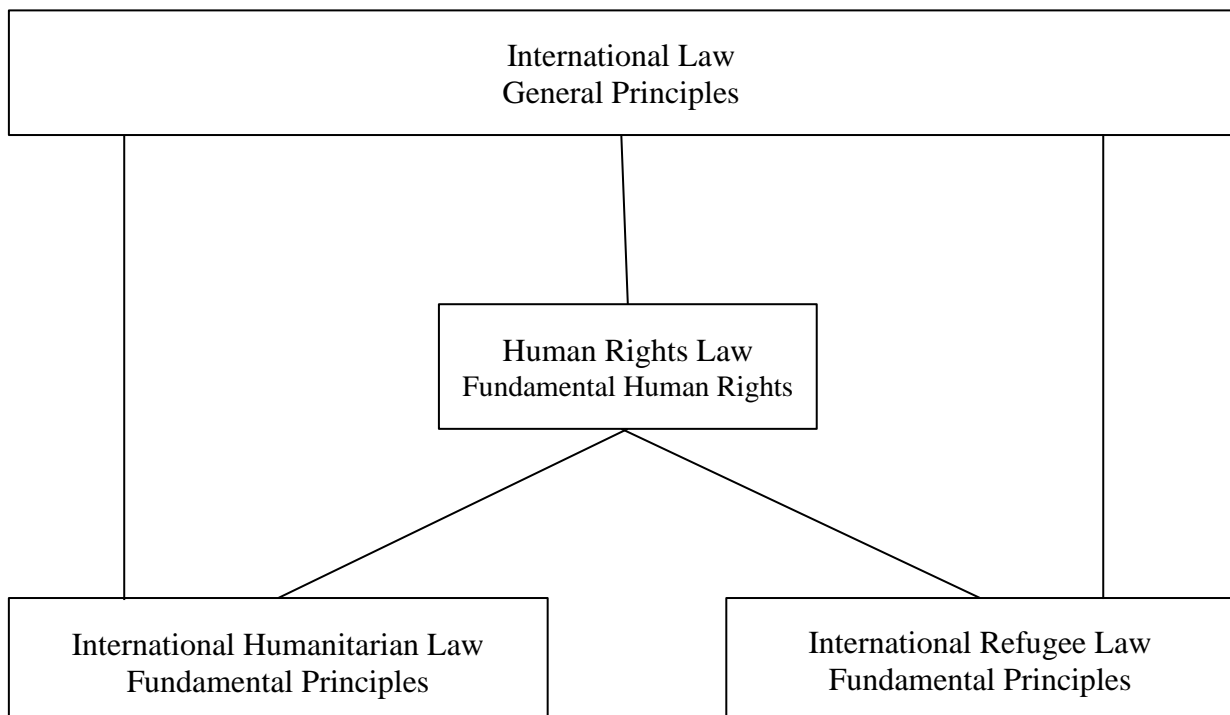
A frequent source of contention in this area is the conflict between Indonesian immigration regulations and the country's commitment to human rights. Generally, the majority of these asylum seekers lack valid travel documents, as they fled their home countries under unusual circumstances. Thus, they entered Indonesia illegally and violated Indonesian immigration laws. Indonesia, as a sovereign country, has complete jurisdiction and authority to take action against individuals who violate immigration regulations, including deportation. The difficulties begin when asylum seekers approach UNHCR representatives in Indonesia to request asylum or refugee status. Given that Indonesia is not a party to the 1951 Convention, UNHCR has the authority to determine whether they qualify as refugees or not based on the mandate it carries. (UNHCR, 1950).

It is difficult to characterize UNHCR's screening of non-boat people in Indonesia as an intervention against Indonesian sovereignty because UNHCR is essentially carrying out its general mandate of providing protection for asylum seekers and refugees. If the UNHCR classifies them as refugees, it follows that Indonesia should refrain from deporting the refugees, both morally and legally, under the provisions of Law No. 5 of 1998 on Ratification of the Convention Against Torture and Other Cruel Treatment or Punishment.

A person who has been declared a refugee is entitled to the protections guaranteed by international law and cannot be simply expelled. Indonesia has always recognized this, despite the fact that it is not a signatory to the 1951 Convention. It is possible that some of those who arrived in Indonesia were refugees fleeing a second country. Indonesia has no choice but to provide them with temporary shelter, given that this status will remain in place until they obtain permanent residence.

Given that Indonesia does not have an asylum policy, UNHCR is obligated to assist in relocating them to third countries. Placement in a third country is not guaranteed and takes time, owing to the strong tendency of countries asked to accept them to decline for a variety of reasons. As a result, numerous instances occur in which these refugees remain in Indonesia for years. Naturally, this places a burden on Indonesia, as it cannot shirk its responsibility to "control" and "care for" these refugees. Nonetheless, Indonesia must continue to pursue this policy in order to preserve Indonesia's image in the international community while demonstrating its commitment to the value of humanity.

## 5. International Law Relating to Refugees



## **International Law**

### *General Principles*

- Sovereign equality of states
- Respect for fundamental human rights
- States shall refrain in their relations from the threat or the use of force against the territorial integrity or political independence of any state
- No intervention in matter within the domestic jurisdiction of any state
- Self-determination of peoples
- States shall settle their international disputes by peaceful means in such a manner that international peace, security and justice are not endangered
- States should cooperate with one another in solving international problems of an economic, social, cultural and humanitarian character
- States shall fulfill in good faith, obligations assumed by them

## **Human Rights Law**

### *Fundamental Human Rights Related to Refugees*

- Right to life
- Right to enjoy human rights without distinction of any kind of such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status
- Right to equality before the law and to be entitled without any discrimination to equal protection of the law
- Right not to be subjected to arbitrary arrest, detention or exile
- Right not to be subjected to torture or to cruel, inhumane or degrading treatment or punishment
- Right to Freedom of movement and residence within the borders of each state
- Right to leave any country including one's own and to return to one's own country
- Right to seek and to enjoy in other countries asylum from persecution
- Right to a nationality
- Right to Freedom of thought, conscience and religion
- Right to Freedom of opinion and expression

## **International Refugee Law**

### *Fundamental Principles*

- Respect of fundamental human rights
- Seeking and enjoyment in other countries asylum from persecution
- Non-refoulement
- International protection of and assistance to refugees based on humanity, impartiality and neutrality
- Family unity - reunion of family
- Freedom of movement - right to leave and to return to one's own country
- Voluntary repatriation
- Search for durable solutions

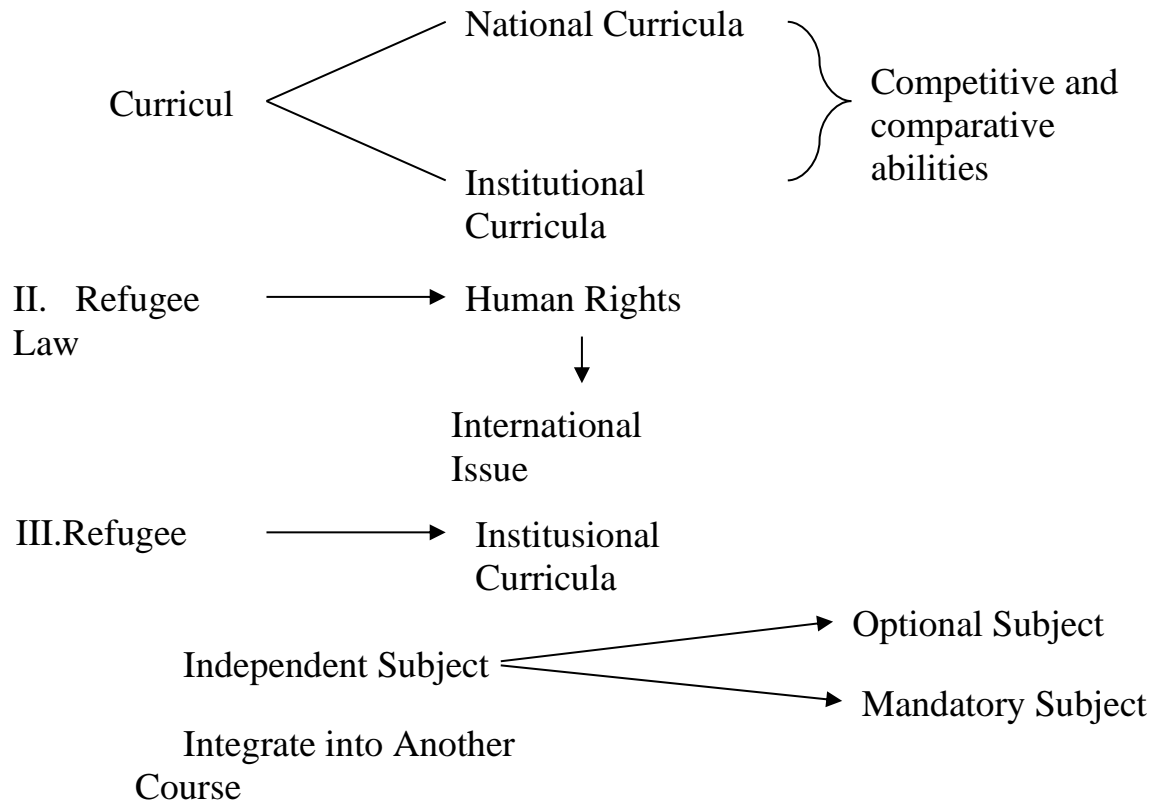
## **International Humanitarian Law**

### *Fundamental Human Rights Related to Refugees*

- The right of the parties of the conflict to choose methods and means of combat which are not limited
- The civilian population shall not be the object of attacks
- person whose liberty is restricted for reasons related to the armed conflict shall be treated humanely, and in case of penal procedures shall enjoy the basic judicial guarantees
- Protection of and assistance to the victims should be based on humanity, impartiality and neutrality

**6. Conclusion**

Taking into account the description above, especially in point 4, the introduction of refugee law in the era of Freedom to Learn needs to be socialized so that students on the one hand can understand the problems that occur around them comprehensively and educators on the other hand can develop themselves by thinking critically and rationally. The introduction of refugee law as a subject linked to the Curriculum can be seen in the following chart:



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