

INTERNATIONAL LAW PROTECTION FOR REFUGEES IN INDONESIA

A BACHELOR DEGREE THESIS



By :

JIWO NARENDRO PURWANTO

Student ID Number : 08410086

Department : International Law

**INTERNATIONAL PROGRAM
FACULTY OF LAW
ISLAMIC UNIVERSITY OF INDONESIA
YOGYAKARTA**

2011

THE INTERNATIONAL LAW PROTECTION FOR REFUGEES IN
INDONESIA

A BACHELOR DEGREE

THESIS

Presented as Partial Fulfillment of the Requirements to Obtain the Bachelor
Degree in the International Law Program, Faculty of Law, Islamic University of

Indonesia

By:

Name : Jiwo Narendro Purwanto

Student Number : 08410086

INTERNATIONAL PROGRAM

FACULTY OF LAW

ISLAMIC UNIVERSITY OF INDONESIA

2012

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

A BACHELOR DEGREE THESIS

**INTERNATIONAL LAW PROTECTION FOR REFUGEES IN
INDONESIA**

This bachelor degree thesis has been examined and approved by the language
advisor to be submitted in the front of the board of examiners in Final
Examination on
February 29th, 2012.

Yogyakarta, February 15th, 2012
Content Advisor,


(Sefriani, SH., M.Hum.)



A BACHELOR DEGREE THESIS

INTERNATIONAL LAW PROTECTION FOR REFUGEES IN INDONESIA

This bachelor degree thesis has been examined and approved by the content
advisor to be submitted in the front of the board of examiners in Final

Examination on
February 29th, 2012.

Yogyakarta, February 15th, 2012
Language Advisor,

A handwritten signature in black ink, appearing to read 'Herman Felani', written over a faint, stylized graphic element.

(Herman Felani, SS. MA.)



A BACHELOR DEGREE THESIS

**INTERNATIONAL LAW PROTECTION FOR REFUGEES IN
INDONESIA**

Defended Before the Board of Examiners

On February 29th, 2012.

And Declared Acceptable

Yogyakarta, February 29th, 2012.

Tim Penguji

Tanda Tangan

1. Ketua : Dra. Sri Wartini, SH., M.Hum. Ph.D.

2. Anggota : Sefriani, SH., M.Hum.

3. Anggota : Drs. Agus Triyanta, MA., MH. Ph.D.

International Program

Faculty Of Law

Islamic University Of Indonesia

Dean,



Dr. H. Rusli Muhammad, SH., M.H.

NIP. 195406121984031001

SURAT PERNYATAAN

ORISINALITAS KARYA TULIS ILMIAH BERUPA TUGAS AKHIR MAHASISWA
FAKULTAS HUKUM UNIVERSITAS ISLAM INDONESIA

Bismillahirrohman nirrohim

Yang bertanda tangan di bawah ini, saya:

Nama : JIWO NARENDRO PURWANTO

No. Mhs : 08.410.086

adalah benar-benar mahasiswa Fakultas Hukum Universitas Islam Indonesia Yogyakarta yang telah melakukan penulisan Karya Tulis Ilmiah (Tugas Akhir) berupa Skripsi/Legal Memorandum/Studi Kasus Hukum dengan judul :

THE INTERNATIONAL LAW PROTECTION FOR REFUGEES IN INDONESIA

Karya ilmiah ini akan saya ajukan kepada Tim Penguji dalam Ujian Pendadaran yang diselenggarakan oleh Fakultas Hukum UII.

Sehubungan dengan hal tersebut, dengan ini Saya menyatakan:

1. Bahwa karya tulis ilmiah ini adalah benar-benar hasil karya saya sendiri yang dalam penyusunannya tunduk dan patuh terhadap kaidah, etika dan norma-norma penulisan sebuah karya tulis ilmiah sesuai dengan ketentuan yang berlaku;
2. Bahwa saya menjamin hasil karya ilmiah ini adalah benar-benar Asli (Orisinil), bebas dari unsur-unsur yang dapat dikategorikan sebagai melakukan perbuatan *'penjiplakan karya ilmiah (plagiat)'*;
3. Bahwa meskipun secara prinsip hak milik atas karya ilmiah ini ada pada saya, namun demi untuk kepentingan-kepentingan yang bersifat akademik dan pengembangannya, saya memberikan kewenangan kepada Perpustakaan Fakultas Hukum UII dan perpustakaan dilingkungan Universitas Islam Indonesia untuk mempergunakan karya ilmiah saya tersebut.

Selanjutnya berkaitan dengan hal di atas (terutama pernyataan pada butir no 1 dan 2), saya sanggup menerima sanksi baik sanksi administratif, akademik bahkan sanksi pidana, jika saya terbukti secara kuat dan meyakinkan telah melakukan perbuatan yang menyimpang dari pernyataan tersebut. Saya juga akan bersikap kooperatif untuk hadir, menjawab, membuktikan, melakukan pembelaan terhadap hak-hak saya serta menanda-tangani Berita Acara terkait yang menjadi hak dan kewajiban saya, di depan 'Majelis' atau 'Tim' Fakultas Hukum Universitas Islam Indonesia yang ditunjuk oleh pimpinan fakultas, apabila tanda-tanda plagiat disinyalir ada/terjadi pada karya ilmiah saya ini oleh pihak Fakultas Hukum UII.

Demikian, Surat Pernyataan ini saya buat dengan sebenar-benarnya, dalam kondisi sehat jasmani dan rohani, dengan sadar serta tidak ada tekanan dalam bentuk apapun dan oleh siapapun.

Dibuat di : Yogyakarta

Pada Tanggal : 28 Maret 2012

at Pernyataan



Jiwo Narendro Purwanto
Nama Terang Ybs.

MOTTO AND DEDICATION

You are the best, but I am still better. (Jiwo Narendro)

We cannot change the nature. No! Change is nature. (Anonymous)

Whenever I give up and think that I can't, I believe that Allah can. So I be stronger. (Jiwo Narendro)

There is no bad plan made by Allah, it is always good and perfect, but sometimes you don't relize it. (Jiwo Narendro)

Gusti Allah boten nate sare (Javanese people)

Innallaha basyirun bima ta'malun

Start with basmallah, end with hamdallah (Jiwo Narendro)

I dedicated this thesis to my family

And all of the student of Faculty of Law, Islamic University of Indonesia.

ACKNOWLEDGEMENTS

A very great thanks to The Almighty Allah SWT, for every single assistance given to my life especially for the completion of this thesis. Without Him I could not do anything. Thanks also to my favourite role model my georgious prophet, Muhammad SAW, for bringing all of the human kind to the better era.

This thesis can be done because the favors, supports and prays from a lot of people. My gratituted will be addressed to persons who are mentioned below:

1. Mr. Rusli Muhammad, as the Dean of Faculty of Law Islamic University of Indonesia.
2. Mrs. Karimatul Ummah, as the Chief of Law Department of Law Faculty Islamic University of Indonesia.
3. Mrs. Sefriani, as a patient lecturer of my favourite subject, international law. Thank you for everything you gave to me. Priceless knowledge, brilliant guidance and good time when I felt so down. You taught me how to face big problem and to take everything under control so I could finish this thesis.
4. Mr. Herman Feilani, thank you for correcting my mistake, I am a lost puppy without you sir.
5. All of super georgeous lecturers of International Program: Mrs. Aroma, Mrs. Mila, Mrs Anisa, Mrs. Surach, Mrs. Ani, Mr. Ridwan, Mr. Zaenal Abidin, Mr. Agus Triyanta, Mr. Khoirudin, Mr. Agus Subroto, Mr.

Shalman, Mr. Nandang Sutrisno, Mr. Jawahir, Mr. Budi Santoso, Mr. Yusdani and Mr. Julius Sembiring. You got me understand about law.

6. Mr. Setyawan, mbak Fitri and mbak Amel. You make me enjoy to stay in IP Room because of your great service and funny jokes.
7. The Purwanto's. Thank you my father, H. Purwanto SH., Mhum as my terrific leader of my happy family. You have been a good role model for the member of family. Thank you my mother, Hj. Yumiatus Bsc, who will never stop loving and understanding me. My smart and beautiful lady, Hj. Enggar Galih Mitayani STP, my only sister, thank's for every single support, I really appreciate it. Standing applaus for The Purwanto's.
8. The big Soeparno Family. Thank's to my grandpa, (late) Soeparno Madya Soekarto and my grandma, Soetiyem Binti Wiryodikoro and to my beloved Aunts, Budhe Minil and Budhe Musrini for every beauty time in Wonogiri. The place I was born.
9. My outstanding President, (Late) Mr. Soeharto. I swear, I prefer to live in your golden era (New Order) rather than live in this misdirection era. Indonesia "was" the tiger of Asia in your time Sir. All hail Mr. Soeharto!!! Rest in Peace.
10. Thanks for the great squad of Kamrat (Kama Ratih). Mr Shahroni and all of my brothers: Ikram, adam (wubs: wish you be slim), hilmi, luthfi, dena, firman, putra, femo, tyo, bram, topan, yoppy, alfi, bryan, and others. Let's break the silent in the night again until the neighbors throw everything to make us shut our mouth hahahaha.

11. Thank's to Bu Budi, Panghegar and sate Cak Umar for preventing me from deadly starvation.
12. All of my brother and sister of IP 2006, 2007, 2008 (still remember RIP guys? Rendesvouz and Internal Party at Kaliurang. Love that moment), 2009 (mmm alright...), 2010 and 2011. Stay focus for you bright future.
13. Thank you PROVOKE (Ani, Topan, Bram, Putra, Dena). I really enjoy playing and contributing in this band. This band is my solution to release everything revolving around my mind. Never forget to all of PROVOKATOR, thank's for the scream and the support for us. You guys are rock!!!
14. High five to all of my partners in crime in Salatiga (Deo, junaidi, yudi, eka and sandi). We have to burn our town together again!

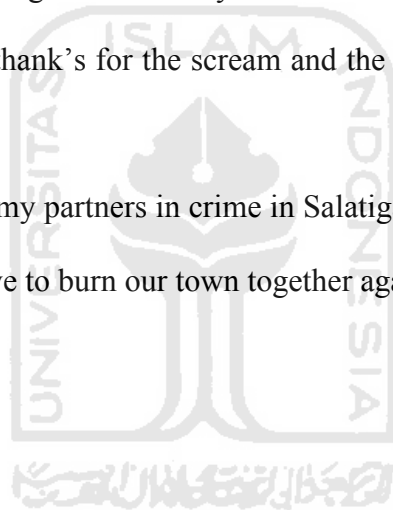


TABLE OF CONTENT

CHAPTER I: INTRODUCTION.....	1
A. Context of Study.....	1
B. Statements of Problem.....	5
C. Research Objective.....	5
D. Definition of Technical Terms.....	5
E. Literature Review.....	7
F. Research Method.....	14
CHAPTER II: THE INTERNATIONAL LAW PROTECTION FOR REFUGEES.....	17
A. Definition of Refugee	17
1. The Definition based on the Scholar.....	17
2. The Definition based on International and Regional Instrument.....	18
B. Rights and Obligations of Refugees.....	29
C. The Protection for Refugees.....	32
D. The Role of UNHCR in International Refugee Problem.....	34
E. Solutions of UNHCR Toward Refugee.....	39
F. Urgency of Refugee Protection.....	43
1. Refugees are Vulnerable to Exploitation and Violence.....	44
2. Refugee is no longer received the protection from their country of origin.....	47

G.	Refugee Protection in Islamic Perspective.....	49
CHAPTER III: INTERNATIONAL LAW PROTECTIONS FOR		
	REFUGEES IN INDONESIA.....	54
A.	The Protection Given by Government of Indonesia toward Refugees.....	54
1.	Protection through National Legislation.....	54
2.	The Practice in the Field in Handling Refugee Cases.....	58
2.1	Refugees in Galang Island.....	58
2.2	Refugees in East Timor.....	67
2.3	The Refugee Case in Port Merak and Tanjung Pinang Detention Center.....	71
B.	Obstacles Faced by UNHCR and Government of Indonesia in Handling Refugee Problems.....	77
C.	The Appropriateness of Protection of Indonesia with International Law.....	79
CHAPTER IV: CONCLUSION AND RECOMMENDATIONS.....		
A.	Conclusion.....	81
B.	Recommendations.....	82
	Bibliography.....	84

ABSTRACT

Throughout the world and over the centuries, societies have welcomed frightened, the victims of persecution and violence. On 28 July 1951, the United Nations Convention relating to the Status of Refugees was enacted. The convention was a landmark of the standards treatment of refugees. The inspiration of the Convention was a strong global commitment to ensuring that the trauma caused by the persecution and destruction of the war era would not be repeated. The cycles of human rights violation is again appeared in many parts of the world are stimulating the worst displacement and traumatic situation. Then for the expansion of the scope in the Convention related to the problem of displacement spread around the world, the 1967 Protocol was enacted. take a look from the tragic tragedy of the Rohingya people. Rohingya moslem looked for help in some countries in Southeast Asia including Thailand and Malaysia by using boats without motor and without food. They were afraid of persecution done by Myanmar regime which forced them to follow Buddhism, they are not allowed to perform the practice of Islamic law and tradition. The military troops always forced them or even gunned them down. What about in Indonesia? Indonesia is geographically included in the strategic area for the sailing way which is connecting Asia, Australia or even America and also two oceans, Hindia and Pacific. It makes Indonesia to become one of the destination of refugees from Indo-China land to transit before they continue to Australia. In Indonesia we may see in the case of refugees from Vietnam. Came because of the fatal persecution and intimidation from their country since the Capital City Saigon conquered by North Vietnam. They left their country to some of ASEAN members (Thailand, Singapore, Malaysia Philipine, Indonesia) and Hongkong in more than 500.000 people by boat. Now the question will be what kind of protection for refugees given by Indonesia? What is the obstacle of Indonesia in facing refugees? Does the protection for refugees in Indonesia appropriate with the International Law? The national legislation in Indonesia should be more strict by ratifyingthe 1951 Convention and 1967 Convention because without ratification Indonesia is not bound into obligation to fulfill the rights of refugees and Indonesia faces the obstacles in determining the status of refugee without ratification, the process only depends on UNHCR means it will take long time while the refugee and asylum seeker wait in the detention center which is the condition is like a prison and not appropriate because they are treated like a prisoner by the officer of Indonesia. No determination system makes the officer consider them as illegal immigrant which leads Indonesia into inappropriateness in protecting refugees.

CHAPTER I

INTRODUCTION

A. Context of Study

Refugee issue is a classical problem which arised in the human civilization as the impact of the presence of the deep fear which threatens their live. World War I and World War II are the example of human civilization impact, which create suffer to the mankind, massive exodus from one country to another country triggers the formation of international regulation.

On 28 July 1951, the United Nations Convention relating to the Status of Refugees was enacted. The convention was a landmark of the standards treatment of refugees. The inspiration of the Convention was a strong global commitment to ensuring that the trauma caused by the persecution and destruction of the war era would not be repeated. The cycles of human rights violation is again appeared in many parts of the world are stimulating the worst displacement and traumatic situation. Then for the expansion of the scope in the Convention related to the problem of displacement spread around the world, the 1967 Protocol was enacted¹.

If we look deeper, the international organization which concerns in the humanitarian aspect, such as League of Nations (1921-1946)² had already given much contributions to the establishment of international instrument to

¹ The State of The World's Refugee in <http://www.unhcr.ch/pubs/sowr2000/intro.pdf>, page 8-10

² *ibid*

protect the refugees³. It was continued by the United Nations. In the era of League of Nations, there was a High Commissioner for Refugees, and then The Nansen International Office for Refugees (1931-1938), The High Commissioner for Refugees Coming From Germany (1933-1938), The Office of The High Commissioner of the League of Nations for Refugees (1939-1946) and Intergovernmental Committee for Refugees (1938-1947).⁴ Besides, there are another commissions under the League of Nations, such as UNRRA (United Nations Relief and Rehabilitation Administration (1943) IRO (The International Refugees Organization). Eventually in 1951, formed a commission that used to be worked for only couple years of working periode, but then became a permanent, UNHCR (United Nations Commissioner for Refugees).⁵

Protecting refugees is primarily the responsibility of States. Throughout its 50 years history, the United Nations Commissioner for Refugees (UNHCR) has worked closely with governments as partners in refugees protection. In every region of the world, government have generously granted asylum to refugees and allowed them to remain until conditions were conducive for the refugees to return to their homes in safety and with dignity.

Refugees have been the targets of violent attacks and intimidation, largely because they were perceived as “different” from the communities in which they had temporarily settled. Tensions between refugees and local

³ Gilbert Jager, “On the History of the International protection for refugees. Page:727 in: <http://www.ICRC.org/Web/EngsiteengO.nsf/iwpList128/5BA471F787461F15C1256>

⁴ Gilbert Jaeger, “On the History of the International Protection of Refugees”, ICRC September 2002 Vo. 83 No. 843, page 279 in <http://migration.ucc.ie.htm/B6600608ACF>

⁵ *Ibid*

populations have arisen when refugees were seen as competitors for natural and economic resources.⁶

Throughout the world and over the centuries, societies have seen frightened, murder, the victims of violation and persecution. These tragedies are creating huge migrations of the people to save their lives to the other countries. We may take a look from the tragic tragedy of the Rohingya people. Rohingya muslim looked for help in some countries in Southeast Asia including Thailand and Malaysia by using boats without motor and without food. They were afraid of persecution done by Myanmar regime which forced them to follow Buddhism, they are not allowed to perform the practice of Islamic law and tradition. The military troops always forced them or even gunned them down.

What about in Indonesia? Indonesia is geographically included in the strategic area for the sailing way which is connecting Asia, Australia or even America and also two oceans, Hindia and Pacific. It makes Indonesia to become one of the destination of refugees from Indo-China land to transit before they continue to Australia. In Indonesia we may see in the case of refugees from Vietnam. Came because of the fatal persecution and intimidation from their country since the Capital City Saigon conquered by North Vietnam. They left their country to some of ASEAN members

⁶ Verri, Pietro., Dictionary of the International Law of Armed Conflict, International Committee of the Red Cross, Geneva 1992.

(Thailand, Singapore, Malaysia Philippine, Indonesia) and Hongkong in more than 500.000 people by boat.⁷

Another occurrence is the huge migration of refugees from East Timor. When voting showed that 21,5% of voters chose pro-integration and the rest supported the independency for East Timor a big chaos occurred⁸. Persecution done by the pro-integration militia toward the pro-independency. The militia burned their houses, did violence, did robbery and attacked the humanitarian officer.

But there are still a lot of obstacles faced by Government of Indonesia and UNHCR in facing the refugees problem in Indonesia. These are the challenge of Indonesia Government to improve the work of its apparatus and improve the preparation in every single side especially in the field in dealing with refugees⁹.

The problem faced by Indonesia is how far the dependency of Indonesia in giving favor and assistance in form of protection, housing and health facility, education and others to the refugees transit in Indonesia, like in Pulau Galang Case. However so far Indonesia is not becoming the party of 1951 Convention relating to the Status of Refugees and Protocol 1967 relating to the status of Refugees yet. In this problem Indonesia is pushed to still give the protection for the refugees and cannot force them to come back to their home land because Indonesia must respect the principle of non refoulment

⁷ Arie J. Kumaat, *Vietnamese Boat People on Galang Island*. Paper, on 30 July 1989.

⁸ <http://www.org/peace/etimor99/etimor.htm>

⁹ <http://arwanblack74.blogspot.com/2011/03/unhcr-dan-pengungsi-di-indonesia.html>

which was set out in 1951 Convention relating to the Status of Refugees because it is widely accepted that the prohibition of refoulement is part of customary international law, means that even States that are not party to the Refugee Convention must respect the principle of non-refoulement.

B. Statement of Problems

1. What kind of protection for refugees given by Indonesia?
2. What is the obstacle of Indonesia in facing refugees?
3. Does the protection for refugees in Indonesia appropriate with the International Law?

C. Research Objectives

1. The aim of this thesis is for learning deeper about the protection of international law and the government of Indonesia for refugees. It will be explained about problem in handling the refugees problem especially in Indonesia.
2. This thesis will analyse the obstacle faced by Indonesia in handling the case of refugee in its territory.
3. This thesis will also analyse about the implementation of international law in protecting the refugees in Indonesia, whether it is already appropriate or not because refugees problem is always becoming a critical nation for every nations.

D. Definition of Technical Terms

The terms used in this thesis will clearly be explained to make the analysis easier to be understood by the readers.

The International law protection will be focused on the 1951 Convention of The Law of Refugees. A convention which was enacted on 28 July 1951 because of the commitment to ensure that the trauma caused by persecution and destruction of war would not be appeared anymore.¹⁰ It deals with the protection of refugees and the standards treatment given for them.

The definition of refugee refers to 1951 Convention. According to the 1951 Convention relating to the Status of Refugee, a refugee is someone who:

1. Has a well-founded fear of persecution because of his/her: race, religion, nationality, membership in particular social group or political opinion
2. Is outside his/her country of origin; and
3. Is unable or unwilling avail him/herself of the protection of that country, or to return there, for fear of persecution.¹¹

Refugee in Indonesia known as *pengungsi* which is not separating whether that people is getting the persecution like what has been explained on the definition of refugee based on 1951 Convention, but also covering all of the victim of natural disaster too. In Indonesia there is no difference of term whether that refugee is moving across nation or just only inside country. But in dealing with the refugees come from outside nation, Indonesia has different treatment because Indonesia is working together with UNHCR in dealing that case.¹²

¹⁰ Kate Jestrām and Marilyn Achiron, *Refugee Protection: A Guide to International Refugee Law*, p3

¹¹ 1951 Convention

¹² <http://dc233.4shared.com/doc/cPxKebtk/preview.html#1>

A humanitarian and non political organization, *UNHCR (United Nation High Comissioner for Refugees)* is mandated by the United Nations to protect refugees and help them find solutions to their plight.¹³ UNHCR seeks long term solutions to their plight of refugees by helping refugees repatriate to their home country, if conditions are conducive to return, integrate into their countries of asylum, or resettle in second countries of asylum.¹⁴

E. Literature Review

Indonesia as one of the transit place for refugees should be able to provide a good protection for them. the government of Indonesia should provide an appropriate and clear regulation to maintain refugees and keep the condition and relationship between the local citizen and the refugees in conducive circumstance. Eventhough Indonesia is not becoming the party of 1951 Convention relating the status of Refugees ang 1967 Protocol, protecting and not forcing them to come back when the situation in the country of origin is still in the hostility (principle of non refoulement) are must be done because it is already become the customary international law.

Displacement caused by the rejection of the origin coutry toward some group of people forces them to look for protection accross nation. Fear of being threatened and even being killed make them very difficult to come back to their homeland. In the receiving state they also have to face another problem when the local citizen do not want to accept them and considere

¹³ UNS, *Human Rights dan Refuges*, Fact Sheet No. 21, Centre for HumanRights United Nations Office at Geneva, 1993, page 4.

¹⁴ UNHCR, *The State of the World's Refugees: 50 years of Humanitarian Action*, Oxford University Press, 2000, page 67

them as their competitors. It is possible there will be a conflict again between refugees and local citizen. This kind of tragedy is one of the reason why there are a lot refugees choose to live in the middle of ocean with a boat as “boat people” like what have been done by Rohingya (moslem ethnic of Myanmar) and Vietnam boat people. A lot of them live in the middle of the sea and facing another problem for instance: starving and disease caused by less of health facility. Here the role of international world and instruments are needed.

Everyone has the right to seek and to enjoy in other countries asylum from persecution.¹⁵ As acknowledge in the OAU Convention, the Cartagena Declaration and the 1967 UN Declaration¹⁶ on Territorial Asylum, granting asylum is a humanitarian and apolitical act. The word “*asylum*” is not defined in international law; but it has become the term for total of protection provided by a country to refugees on its territory. Asylum means basic protection and no forcible return (refoulement) to the refugees when refugee’s life or freedom would be threatened for a temporary period with the possibility of staying in the host country until a solution outside that country can be found.

Declaration 1967 is also referering to the article 13:2 of Universal Declaration of Human Rights which states : “*Everyone has the right to leave any country, including his own, and to return to his country*”¹⁷

¹⁵ UDHR, Art 14(1)

¹⁶ UN General Assembly adopted a Declaration on Territorial Asylum directed toward States. Grnting assylum is peaceful and humanitarian act that cannot be regarded as unfriendly by any other State, and notes that it is the responsibility of the country of asylum to evaluate a person’s claim for asylum.

¹⁷ article 13:2 of Universal Declaration of Human Rights

The Organization of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa 1969, adopted from the definition of 1951 Convention, refugee is¹⁸

“any person compelled to leave his/her country owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality.”

Cartagena Declaration (1984) includes in the definition adopted from the 1951 Convention refugee:

Persons who flee their countries: *“because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”*¹⁹

Effort for introducing the law related to refugees was began to be done in Indonesia since 1981 and started to be implemented intensively since 1998 which resulted some development. These can be seen from the presence of regulation which implicitly regulates the refugees in Law No. 37 year 1999 regarding International Relation. Besides, the government issued some national regulations related to refugees, for instance *Surat Edaran Perdana Menteri of Republic of Indonesia* No. 11/RI/1956 regarding The Protection for Political Escapement, Presidential Decision No. 38 year 1979 regarding the Coordination of Settlement towards the Refugee Problem from Vietnam in Indonesia, and Presidential Decision No. 3 year 2001 regarding National Coordination Body of Disaster Prevention and Refugee Handling.

¹⁸ The refugees flow in Africa happened after the colonialization era. So that in 1963 OAU considered needing a Regional Convention regulates the refugees which appropriate with the situation in that region, OAU Convention only apply to the refugees in African Region.

¹⁹ Cartagena Declaration 1984

In every region of the world, governments have generously granted asylum to refugees and allowed them to remain until conditions were conducive for the refugee to return to their homes in safety and with dignity.

There is exclusions clauses, means someone cannot be granted the status of refugee. They are:

1. People who get the protection or assistance from Bodies or Institutions of UN outside UNHCR;
2. People who already enjoy the rights and obligations similar with the citizen where they live;
3. People commit warcrime or crime againts humanity;
4. People who do actions which contradict with the goals and principles of UN.²⁰

Based on Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR Statte) 14 December 1950, there 6 duties of UNHCR²¹:

1. To promote the conclusions and ratification of international conventions, supervising their application and proposing adjusments;
2. To promote measures to improve the situation of refugees
3. To assist efforts to promote voluntary repatriation or local settlement:
4. To facilitate the transfer of refugee's assets;

²⁰ Achmad Romsan, Usdawadi, M. Djamil Usamy, Mada Apriandi Zuhir. *Pengantar Hukum Pengungsi Internasional: Hukum Internaional dan Prinsip-Prinsip Perlindungan Internasional*. Percetakan Sanic Offset, Bandung. 2003. Page: 41-42

²¹ Achmad Romsan, Usdawadi, M. Djamil Usamy, Mada Apriandi Zuhir. *Loc.cit*, p:39-40

5. To obtain from governments information concerning refugee numbers and conditions;
6. To facilitate the coordination of their efforts.

A refugee's right to be protected against forcible return, or refoulement, is set out in the 1951 Convention relating to the status of refugees:

“No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” (Article 33(1)).²²

This principle is not only stated in the 1951 Convention but also stated in Convention Against Torture article 3, Geneva Convention IV 1949 in article 45 paragraph 4, in the International Covenant on Civil and Political Rights 1966 article 13, and in another Human Rights instruments.

It is widely accepted that the prohibition of refoulement is part of customary international law. This means that even States that are not party to the Refugee Convention must respect the principle of non-refoulement. When this principle is violated or threatens to be, UNHCR respond by intervening with relevant authorities, and if it deems necessary, will inform the public.

A refugee has the right to safe asylum. However, international protection comprises more than physical safety. Refugees should receive at least the same rights and basic help as any other foreigner who is a legal resident, including certain fundamental entitlements of every individual. Thus refugees

²² 1951 Convention Article 33:1.

have basic civil rights, including the freedom of thought, of movement and freedom from torture and degrading treatment. Every refugee should have access to medical care. Every adult refugee should have the right to work. Right of schooling.

1948 Universal Declaration of Human Rights also explains the rights crucial to refugee protection²³:

1. Right to life, liberty and security of person
2. Right to seek and enjoy asylum
3. Freedom from torture, or cruel, inhuman or degrading treatment or punishment
4. Freedom from slavery
5. Recognition as a person before the law
6. Freedom of thought, conscience and religion
7. Freedom of opinion and expression
8. Right to be educated
9. Right to participate in the cultural life of a community

Refugees also have certain **obligations**, they should conform to the laws and regulations of their country of asylum and with measures taken by the authorities to maintain public order.

The teamwork of government of Indonesia and UNHCR is also a good role to protect the refugees. It was stated when Indonesia faced the serious refugees problem in 1975. Hundred of people left the Indo-China peninsula

²³ Kate Jastram and Marilyn Achiron, *Refugee Protection: A Guide to International Refugee Law*, p.46

(Cambodia, Laos and Vietnam) to look for protection from another countries as the result of the change of regimes in that area, through road trip, river nor sea. Most of them, especially from Vietnam came to Indonesia by using boats. At that time in Indonesia there was no UNHCR office. To guarantee the acceptance to them and the place to live for them in Indonesia, UNHCR acted through Permanent Mission of Indonesia in Geneva and the Branch Office in Bangkok, and sent its staffs for short term mission. A staff was ordered for long term mission, then office in Indonesia was coordinated by the Branch Office of UNHCR in Kuala Lumpur. By the opening of the refugees camp in Galang Island, since 1981, the UNHCR office in Jakarta became the Branch Office.²⁴

The establishment of the Branch Office of UNHCR in Indonesia is becoming one of the real form of Indonesian Government to take part in protecting refugees.²⁵

The involvement of UNHCR in Indonesia like in the refugee ethnic case in Aceh, handling of East Timor refugees, and still a lot of case which got the attention and assistance from UNHCR in that handling. In the implementation UNHCR got the mandate to provide protection toward refugees and facilitate it to settle the refugees problem and this mandate is not only limited to the refugees stated in 1951 Convention but also for the people without citizenship or stateless person, people return from their refugee camp (returnees) and also, in the certain case for the internally displace persons.

²⁴ UNHCR's Protection Mandate in <http://www.unhcr.2001/mandate.pdf>

²⁵ *Ibid*

The Aceh people and the Government of Indonesia ever made the decision to maintain temporary the assylum seeker of Rohingya is deserve to be an example of another country, and it is really based on international law. Because for giving the temporary camp is in line with the principle of non refoulment in 1951 Convention although still a lot of challenges and obstacles faced by Indonesia together with UNHCR in dealing refugees case, especially in the providing of facility, coordination and preparation to treat and maintain the refugee especially related with the coordination between apparatus which is sometimes not connected well with the government and UNHCR in giving the development of information of refugees.²⁶

Respecting the principle of non refoulement as the customary International Law had also been done by Indonesia . Indonesia did not force the refugees to come back to their home land but temporarily handle them and coordinate with UNHCR in its action.

But, ironically a lot of refugees come to Indonesia they face a lot of trouble related to the protection which is not in line with the value human rights. This is all related to the appropriateness of settlement condition. Non refoulement principle is not enough. Indonesia must give a good protection to maintain all of refugees without violate the value of human rights.

F. Research Method

1. Object of Research

a. Protection of Refugees in Indonesia

²⁶ Special Report: Comprehensive Plan of Action: *The Indo-Chinese Exodus and the CPA*, UNHCR in <http://www.unhcr.ch/refworld/legal/handbook/handeng/hbfore-wo.htm>

- b. The problem faced by Indonesia in facing refugees
- c. The appropriateness of protection given by Indonesia to refugees with international law.

2. Legal Materials

- a. Primary: 1951 Convention, Law No. 37 year 1999 regarding International Relation, *Surat Edaran Perdana Menteri of Republic of Indonesia* No.11/RI/1956 regarding The Protection for Political Escapement, Presidential Decission No. 38 year 1979 regarding the Coordination of Settlement towards the Refugee Problem from Vietnam in Indonesia, and Presidential Decission No.3 year 2001 regarding National Coordination Body of Dissaster Prevention and Refugee Handling.
- b. Secondary: books and jornal related to the protection of refugees especially in Indonesia

3. Method of Gathering Legal Materials

The way of the writer get the source is by using library studies and documentation. The writer collect the data from book related to the protection of refugee and the role of UNHCR as the UN body to deal with all of the matters concerning the refugee it self.

4. Approach Method

This thesis is using the juridical approah by analyzing the problems from the point of view of legal regulation, legal decrees and rules.

5. Method of Legal Materials Analysis

The writer used the descriptive qualitative method with the data obtained is descriptively presented then try to correlate and elaborate n accordance to the regulation, legal decrees and rules related to the implementation of protection for refugees in Indonesia.



CHAPTER II

INTERNATIONAL LAW PROTECTION FOR REFUGEES

A. Definition of Refugee

According to the Indonesian Dictionary (*Kamus Besar Bahasa Indonesia*) is stated that the word refugee (*pengungsi*) is coming from the word *ungsi* and for verb is *mengungsi* which is runaway from dangerous situation to the safe place that can give the safety. While *pengungsi* is a noun means people who flee. *Pengungsi politik* or political refugee means the citizen of a certain country who moves to another country because of the political reason, usually they have the different thought of political matter with the power holder of their country of origin.²⁷

1. The Definition of Refugee Based on the Scholar

Some scholars give the definition of refugee, for instance:

a. Malcolm Proudfoot

This scholar gives the definition of refugee by seeing the condition of refugees as the impact of World War II. Eventhough he is not clearly giving the definition of refugee, but the conclusion of his statement is²⁸ the forced movements were the result of the persecution, forcible deportation, or flight of Jews and the political opponents of the authoritarians governments; the tranference of ethnic populations back to their homeland or to newly created

²⁷ *Kamus Besar Bahasa Indonesia*, Edisi Kedua, Department of Education and Culture, Balai Pustaka, 1995 page 356

²⁸ Malcolm J. Proudfoot, *European Refugees: 1939-1952 A Study in Forced Migration Movement*, London: Faber & faber Ltd, 1957, page 32 quoted in: http://migration.ucc.ie/immigration/what_is_a_refugee.htm

province acquired by war or treaty; the arbitrary rearrangement of prewar boundaries of sovereign states; the mass flight of civilians under the terror of bombardment from the air and under the threat of pressure of the advance or retreat of armies over immense areas of Europe; the forced removal of populations from coastal or defence areas under military dictation; and the deportations for forced labor to bolster the German war effort.

b. Pietro Verri

This scholar gives the definition concerning refugee by quoting the article 1 of UN Convention on the Status of Refugees 1951, which is applies to any person who has fled the country of his nationality to avoid persecution or the threat of persecution.²⁹

2. The Definition of Refugee in the International and Regional Instrument

The international instruments here are Statute of the Office of the United Nations High Commissioner for Refugees, well-known with UNHCR Statute of 14 December 1950; Convention on the Status of Refugees in 25 July 1951 and used of force in 22 April 1954³⁰, and Protocol Relating to the Status of Refugees in 31 January 1967 and used of force in 4 October 1967.³¹ United

²⁹ Pietro Verri, *Dictionary of International Law of Armed Conflict*, International Committee of the Red Cross, Geneva 1992, page 96.

³⁰ Furthermore Convention on the Status of Refugees 1951 called Convention 1951.

³¹ Furthermore Protocol Relating to the Status of Refugees 1967 called Protocol 1967

Nations Protocol Relating to the Status of Refugees of 31 January 1967 and United Nations Declaration on Territorial Asylum 1967.

While the regional instruments related with the refugee are the 1928 Havana Convention on Asylum, the 1933 Montevideo Convention on Political Asylum, the 1954 Caracas Convention on Territorial Asylum and Diplomatic Asylum and the 1951 Cartagena Declaration on Refugees.

1. Based on the 1951 Convention (the 1951 Convention Relating to the Status of Refugees)

Generally the definition of refugees can be seen in article I A (2).³²

“as a result of events occurring before 1 January 1951 and 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”

Well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion becomes the basic foundation of UNHCR to determine whether someone can be categorized as refugee or not.

Furthermore in 1951 Convention is also regulating the exclusions clauses and the cessation clauses. A condition where someone cannot get the status

³² Article 1 of 1951 Convention

of refugee in exclusion clauses is they who already fulfil the criteria as refugee but they do not need and do not have right to get the protection. They are³³:

1. People who get the protection or assistance from Bodies or Institutions of UN outside UNHCR;
2. People who already enjoy the rights and obligations similar with the citizen where they live;
3. People commit warcrime or crime againsts humanity;
4. People who do actions which contradict with the goals and principles of UN.

The cessation clauses means someone is not considered as a refugee if the political change happened in his/her country of origin and possible for them to establish the new residence in that country.

2. Based on the Protocol Relating the Status of Refugees of 31 January 1967.

In 1967 Protocol, the definition of refugee has already extended, it can be seen in article 1:2 refugees is defined:³⁴

“for the purpose of the present Protocol, the term ‘refugee’ shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words ‘As a result of events occurring before 1 January 1951 and...’ and the words ‘...a result of such events: in article 1 A (2) were committed.’”

³³ Achmad Romsan, Usdawadi, M. Djamil Usamy, Mada Apriandi Zuhir. *Pengantar Hukum Pengungsi Internasional: Hukum Internasional dan Prinsip-Prinsip Perlindungan Internasional*. Percetakan Sanic Offset, Bandung. 2003. Page: 41-42

³⁴ See the article 1:2 of Protocol Relating to the Status of Refugees of 31 January 1967

The presence of the extension of definition of refugee is triggered by the presence of new refugee group occurred within 1950 -1960s, especially in Africa. So that the countries participate this Convention apply the definition based on the '1951 Convention, but without the limitation of time and geographic.³⁵

3. The Draft Convention on Territorial Asylum

The most recent effort of the United Nations in the area of conventional international law affecting refugees was abandoned in 1977, when action on the Draft Convention on Territorial Asylum ("Draft Convention") was indefinitely postponed after representatives failed to reach agreement on the text.³⁶ This abandonment marked the end of nearly thirty years of work by the United Nations on the status of refugees under international law.³⁷

In 1948, the United Nations General Assembly adopted the Universal Declaration on Human Rights,³⁸ a non-binding resolution which included the statement "everyone has the right to seek and to enjoy in other countries asylum from persecution."³⁹ The Commission on Human Rights, which drafted the Declaration, suggested at about that time that "the question of the inclusion of the right of asylum from persecution in the International Bill of Human Rights or in a special convention for that purpose"⁴⁰ should be examined at the earliest opportunity. A lack of agreement among States,

³⁵ Training Module...Op Cit page 19

³⁶ *Refugee protection: A Guide to International Refugee Law*, UNHCR, Inter-Parliamentary Union, 2001

³⁷ *ibid*

³⁸ Alexander Betts *Protection by Persuasion: International Cooperation in the Refugee Regime*, Ithaca: Cornell University Press, 2009

³⁹ Art. 14(1). The original version of the article, before adoption, read: "everyone has a right to seek and to be granted ... asylum."

⁴⁰ The Commission on Human Rights

however, as to a series of central issues, led to the failure to include any clause pertaining to asylum in the International Covenant on Civil and Political Rights.⁴¹ The issues dividing the members were the same central issues discussed during negotiations on the Draft Convention: the personal scope of such a clause, the definition of the person to whom asylum should be granted, and whether a right to asylum should be created.⁴²

After an impasse on these issues which lasted several years, a Draft Declaration on the Right of Asylum was submitted to the Commission on Human Rights in 1957 by the French representative.⁴³ On December 14, 1967, after ten years of discussion by the Commission and the consideration of the draft declaration by two committees of the General Assembly, General Assembly Resolution No. 2312, entitled "Declaration on Territorial Asylum", was unanimously adopted by the General Assembly.⁴⁴

Soon after adoption of the Declaration, efforts began to establish a Convention on Territorial Asylum. In 1971, the European Office of the Carnegie Endowment for International Peace at Geneva, in conjunction with the UNHCR convened a "Colloquium on Territorial Asylum and the Protection of Refugees in International Law." At this meeting and a series of subsequent meetings over the next two years, a group of eminent international lawyers, members of the International Law Commission, and representatives of various United Nations member States and international and regional

⁴¹ *ibid*

⁴² Guy S. Goodwin-Gill and Jane Mc Adam *The refugee in international law*, Oxford: Oxford University Press, 2007, p 69

⁴³ *ibid*

⁴⁴ *ibid*

commissions, prepared a draft which was submitted in 1973 to the General Assembly. In 1974, the General Assembly directed the President of the General Assembly to establish a Group of Experts on the Draft Convention, composed of representatives of not more than twenty-seven States which were to be selected on the basis of geographical distribution after consultation with different regional groups. The Group's mandate was to meet no later than May 1975 for a maximum of ten working days to review the text of the Draft Convention.⁴⁵

The Draft Convention as reported out by the Group of Experts did not significantly change the definition of refugee established by the 1951 Convention. Article 2 of the Draft Convention, concerning the scope of application of the document, read:

1. A person shall be eligible for the benefits of this Convention if he, owing to a well-founded fear of:

(a) Persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, including the struggle against colonialism and apartheid, or

(b) Prosecution or punishment for acts directly related to the persecution as set forth in (a), is unable or unwilling to return to the country of his nationality, or, if he has no nationality, the country of his former habitual residence.⁴⁶

⁴⁵ Matthew J. Gibney, "The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees," Cambridge University Press 2004. Page 55

⁴⁶ Guy S. Goodwin-Gill and Jane Mc Adam. *Loc cit.* Page 83

In this form the draft article represented little change from the 1951 Convention, except for the inclusion of two additional clauses. The first clause added "the struggle against colonialism and apartheid" as a permissible basis for persecution. This clause could have broadened the basis for claiming asylum, although the determination of when persecution has occurred in the struggle against colonialism would have been difficult to define.

The second clause created an additional basis for asylum for "prosecution or punishment for acts related to the persecution as set forth in clause (a)." This clause would seem to broaden the grounds upon which asylum could be granted. Other sections of the draft at this stage also represented a relaxation of the international posture toward granting asylum. Article I stated that each contracting State shall use its "best endeavours in a humanitarian spirit"⁴⁷ to grant asylum to any person eligible for the benefits of the Draft Convention. Article 3 provided in absolute terms that no person who fits within the Draft Convention's scope and is within the territory of a contracting State can be compelled to return to his country of origin if his life or freedom will be threatened therein.⁴⁸ Article 8 stated that "the grant of territorial asylum ... is a peaceful and humanitarian act. It shall not be regarded as an act unfriendly to any other State and shall be respected by all States."⁴⁹

⁴⁷ Matthew J. Gibney. *Op cit.* P 93

⁴⁸ This is an expression of the principle of non-refoulement, also contained in art. 33 of the 1951 Convention:

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particular serious crime, constitutes a danger to the community of that country.

⁴⁹ Mathew J. Gibney. *Op cit.* Page 96

After the work of the Group of Experts was completed, a conference of plenipotentiaries was convened from January 10 to February 4, 1977, at the request of the General Assembly. On January 13, consideration of the Draft Convention began.⁵⁰ With regard to article 2, concerning application of the Draft Convention, there was no discussion of expanding the definition of refugee to include persons other than political refugees. To the contrary, according to one participant's account of the proceedings, discussion revolved around three issues: (a) amendments seeking to amend the introductory phrase of the paragraph so as to emphasize even more strongly the sovereign right of the State to grant or refuse asylum; (b) amendments seeking to add to the grounds of persecution; and (c) amendments relating to paragraph 2 seeking to widen the exclusion clauses.⁵¹

As a result of these discussions, and after a fairly close vote (38 to 34, with 15 abstentions), an amendment was adopted replacing the words "if he, owing to a wellfounded fear of persecution," taken from the 1951 Convention, with "if he, being faced with a definite possibility of persecution"⁵² The requirement of a "definite possibility" of persecution, rather than a "well-founded fear," created a much more restrictive definition than that contained in the 1951 Convention.⁵³

In other action on article 2, a sub-paragraph was added which read: "(3) The provisions of paragraph I of this article shall also not apply to any person

⁵⁰ *Ibid*

⁵¹ *Ibid*

⁵² Arthur C. Helton *The price of indifference - refugees and humanitarian action in the new century*. Oxford: Oxford University Press, 2002. Page 133

⁵³ *ibid*

requesting territorial asylum for purely economic reasons." Also, the grounds of persecution were expanded to include reasons of "kinship, foreign occupation, alien domination, and all forms of racism."⁵⁴ The new version of article 2 was adopted 47 votes to 14 with 21 abstentions.⁵⁵

Under article 3, an additional exception to the principle of non-refoulement at a State's border was created in the case of "a great number of persons whose massive influx may constitute a serious problem to the security of a Contracting State."⁵⁶ Additional articles on the duties of those seeking asylum and the facilitation of family reunification were also adopted.⁵⁷

The Conference did not complete action on the entire Draft Convention before the end of the time allocated to it. In its final message to the General Assembly, the conference recommended that the General Assembly "consider the question of convening at an appropriate time a further session of the Conference."⁵⁸ At that time most Western delegations were not in favor of an early resumption.⁵⁹ Given the length of time spent working on the Draft Convention and its predecessor agreements, the lack of effective action is disappointing.⁶⁰ Such an international effort is not likely to be undertaken again soon. In addition, given the direction the Draft Convention was taking, it can be surmised that no international consensus exists to support a

⁵⁴ *ibid*

⁵⁵ *ibid*

⁵⁶ Mathew J. Gibreg. *Op cit*. Page 126

⁵⁷ *ibid*

⁵⁸ Christina Boswell *The ethics of refugee policy*, Aldershot: Ashgate, 2005. Page 75

⁵⁹ *ibid*

⁶⁰ *ibid*

broadening of the definition of refugee as it currently exists in the 1951 Convention to include economic refugees. As one participant in the proceedings concluded:

In this situation it seems unlikely that a Convention on Territorial Asylum which constitutes progress from the legal and humanitarian angles could be concluded in the near future on a universal level within the framework of the United Nations, and still less likely that it would be widely ratified.⁶¹

a. The Definition of Refugee Based on the Regional Instrument.

There are some regional instruments which specifically regulate refugee matter, such as:

1. Organization of African Unity (OAU) Convention

The ratification of the OAU Convention⁶² done in 1969 by referring to the 1951 Convention relating to the Status of Refugees as the basic and universal instrument relating to the status of refugees. So the definition of refugee based on OAU still hold on the definition given by the 1951 Convention. Furthermore which becomes the addition according to the characteristic in Africa that is people who unintentionally flee from their country because of:⁶³

‘owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality.’

⁶¹ Arthur C. Helton. *Lop cit.* page 146

⁶² The occurrence of the massive movement of the people in Africa caused by the end of the colonization era in that region. So, in the early of 1963, OAU considered the presence of the Regional Convention which regulates about refugees according to the special situation in that region. OAU Convention only applied in Africa territory.

⁶³ See article 1:2 of OAU Convention

Thus, people who leave their country of origin because of the civil war, violence and war have the right to get the status as refugee in States which become the participants of 1951 Convention by not concerning the deep fear of persecution like what has been stated in Article I A 1951 Convention.

2. Based on the Latino America States

The first legal instrument used to give the protection toward refugees is the 1928 Havana Convention on Asylum, the 1933 Montevideo Convention on Political asylum and the 1954 Caracas Convention on Territorial Asylum and Diplomatic Asylum.

Cartagena Declaration is very important⁶⁴ besides the OAU Convention and 1951 Convention because it has given the recommendation that the definition of refugee used in that area must include the people flee from their country because of the reason of threat, security, persecution, foreign aggression, internal conflict, gross violation of human rights or another reason which disturb the public order. Here is the complete recommendation in point 3:⁶⁵

“to reiterate that, in view of the experience gained from the massive flows of refugees in Central American Area, it is necessary to consider enlarging the concept of refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (Article 1, Paragraph 2) and the doctrine employed in the reports of Inter-American Commission on Human Rights. Hence the

⁶⁴ Cartagena Declaration or Cartagena Declaration on Refugees was legalized in a colloquium that is “*Coloquio Sobre la Protección Internacional de los Refugiados en América Central, México y Panamá: problemas Jurídicos y Humanitarios*” in Cartagena, Colombia in 19-22 November 1994. Cartagena Declaration has already been practiced in several countries in Latino America territory and has been legislated in the national legislation in that territory. Some regional organization in that area have ratified that Declaration such as: Executive Committee, Organization of American States (OAS) and United Nation General Assembly.

⁶⁵ See the Point 3 on the conclusion achieved in Cartagena Colloquium in http://www.unhcr.ch/refworld/legal/instrument/asylum/cart_eng.htm

definition and concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”

Here there are some new definition and its scope is broader than other convention because in the definition of refugee it is contained new perception of category for someone who can be a refugee such as he flees his country because the reason generalized violence (threat, security and persecution), foreign aggression, internal conflicts, gross violation of human rights and public order disturbance.

B. Rights and Obligation of Refugee

A refugee has the right to safe asylum. However, international protection comprises more than physical safety. Refugees should receive at least the same rights and basic help as any other foreigner who is a legal resident, including certain fundamental entitlements of every individual. Thus refugees have basic civil rights, including the freedom of thought, of movement and freedom from torture and degrading treatment. Every refugee should have access to medical care. Every adult refugee should have the right to work. Right of schooling.⁶⁶

Based on 1951 Convention and 1967 Protocol. The rights of refugees are:

⁶⁶ Article 17, 18, 19 and 22 of 1951 Convention and 1967 Protocol

- a) *Non discrimination rights*. Refugees do not deserve from any discrimination done by contracting state whether it is based on race, religion, nationality or colour and they have the freedom of religion manifestation and also right of education for their child in where they are placed.⁶⁷
- b) *Right of personnal status*. This right is regulated in the law of their domicile. If they do not have domicile, their personnal status will be regulated in the place of residence. Their right relating to the marriage must also be recognized by the contracting state.⁶⁸
- c) *Right upon moveable and immovable property (ownership)*. A refugee has the same right to posses the ownership upon the moveable and immoveable property and save it like another person and also able to transfer his or her asset to the country where he or she will stay.⁶⁹
- d) *Right to associate*. The contracting state shall recognize the freedom of refugee to associate by establishing the association as long as it is non political association.⁷⁰
- e) *Right to get access to the court*. If there is a case faced by refugee where they want to settle the case before the court, in this case they have the same right with the citizen in that country including in getting the legal aid and submit their suing.⁷¹
- f) *Right to work*. For the refugees whose already permanently settled in certain country and already recognized before the law, they have the right

⁶⁷ Article 3 and 4 of of 1951 Convention and 1967 Protocol

⁶⁸ Article 12 of of 1951 Convention and 1967 Protocol

⁶⁹ Article 13, 14 and 30 of of 1951 Convention and 1967 Protocol

⁷⁰ Article 15 of of 1951 Convention and 1967 Protocol

⁷¹ Article 16 of of 1951 Convention and 1967 Protocol

to get job and establish company. Their job must based on the rule, such as owing certificate relating to their ability in specific job.⁷²

- g) *Right to get education.* Every refugee has the same treatment with the other citizen to get the elementary school education.⁷³
- h) *Freedom of movement.* Every refugee has the freedom to choose in which region or province they will be resided as long as that choice is still inside the territorial of the state where they are placed.⁷⁴
- i) *Right of social welfare.* Every refugee is able to enjoy the right of social welfare, such as right to work, housing, get salary from the job they do.⁷⁵
- j) *Right upon the identity and travel document.* Every refugee has the right upon the identity correspondence and travel document to go out from the territorial of the state where they are placed unless because of the reason of security and public order. Travel document issued based on international agreement will be recognized by the contracting state.⁷⁶
- k) *Non refoulement.* In case of refugee is permanently settled in a certain stae, there will be no refoulement to the area ehere their life is threatened and there will be no punishment for refugee entering illegally, unless the national security considers that they create disturbance in the place they live.⁷⁷

⁷² Article 17, 18 and 19 of of 1951 Convention and 1967 Protocol

⁷³ Article 22 of of 1951 Convention and 1967 Protocol

⁷⁴ Article 26 of of 1951 Convention and 1967 Protocol

⁷⁵ Article 20 and 22 of of 1951 Convention and 1967 Protocol

⁷⁶ Article 27 and 28 of of 1951 Convention and 1967 Protocol

⁷⁷ Article 31, 32 and 34 of of 1951 Convention and 1967 Protocol

Refugees also have certain **obligations**, they should conform to the laws and regulations of their country of asylum and with measures taken by the authorities to maintain public order.⁷⁸

C. The Protection for Refugee.

The protection of refugee which must be provided by the host state is set out by 1951 Convention. The protection is related to the fulfillment of the standard treatment of refugees, these are:

1. *Religion*: The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.⁷⁹
2. *Public Relief*: The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.⁸⁰
3. Other areas in which refugees are to be accorded treatment equal to that of the host country's nationals include public elementary education, rationing and labor legislation and social security.⁸¹
4. *Movable and Immovable Property*: The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable

⁷⁸ Joly, Daniele., *Heaven or Hell: asylum policies and refugee in Europe*, London: Macmillan Press, 1996, page 75

⁷⁹ Article 4 of 1951 Convention

⁸⁰ Article 23 of 1951 Convention

⁸¹ Article 24 of 1951 Convention

property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.⁸²

5. *Rights or access of association:* As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.⁸³
6. *Access to Courts:* (1) A refugee shall have free access to the courts of law on the territory of all Contracting States. (2) A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.⁸⁴ (3) A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has habitual residence the treatment granted to a national of the country of his habitual residence.⁸⁵
7. *Self-Employment:* The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.⁸⁶

⁸² Article 13 of 1951 Convention

⁸³ Article 15 of 1951 Convention

⁸⁴ *Cautio judicatum solvi* means Payment security for legal cost

⁸⁵ Article 16 of 1951 Convention

⁸⁶ Article 18 of 1951 Convention

8. *Housing*: As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.⁸⁷
9. *Movement*: Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.⁸⁸

D. The Role of UNHCR in International Refugee Problem

The increase of the armed conflict intensity in the beginning of the 20th century in some States triggers the massive exodus. Refugee problems from Bosnia and Herzegovina, Chechnya, Iraq, Kosovo and Rwanda are the examples of the impact of the armed conflict happened in that states which stimulates the resolution through international way toward refugees and also for the internally displaced person (IDPs).

The step in handling the refugee has been so long become the concern of United Nations. In 1946 United Nations legalized the establishment of the specialized agency that is International Refugee Organization (IRO) which took over the role of The United Nations Relief and Rehabilitation Agency (UNRRA). Since July 1947 until January 1952, IRO had succed to reside

⁸⁷ Article 21 of 1951 Convention

⁸⁸ Article 26 of 1951 Convention

more than 1 million refugees to the third State, repatriate 73.000 people and make agreement for 410.000 people neglected in their own country.⁸⁹

There is a difference between the IRO and United Nations High Commissioner for Refugees (UNHCR), where IRO just concern to the protection for Refugees and displaced person who became the victim of the World War II, while UNHCR concern about the protection toward refugee as the impact of World War II nor toward the refugees arise after the establishment of that High Commissioner.⁹⁰

The refugee problem beside handled by UNHCR also handled by the International Committee of the Red Cross (ICRC) as one of the humanitarian institution located in Geneva, Switzerland. However, it is different with UNHCR which handles the holistic of refugee problem, ICRC only handles the refugee and displaced person who become the victim of armed conflict or chaos.

1. The Duty and the Authority of UNHCR

This instrument is legalized by UN General Assembly in the Resolution 428 (V) in December 1959. United Nations High Commissioner for Refugees was established in January 1951. Generally the UNHCR Statute consist of three chapter: 1. General Rules, 2. Function of UNHCR and 3. Organization and Finance. In the General Rules stated the function of UNHCR:⁹¹

“...of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope

⁸⁹ UNS, *Human Rights and Refugees*, Fact Sheet No. 21, Centre for Human Rights United Nations Office at Geneva, 1993, page 4.

⁹⁰ The State of the World's Refugee in <http://www.unhcr.ch/pubs/sowr2000/intro.pdf>

⁹¹ See Article 1 of UNHCR Statute

of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.”

It can be seen that there are two general functions of UNHCR: they are to give international protection and find the permanent solution for refugees. It is also stated that the mission of UNHCR is humanitarian and social and not political. In performing its function, UNHCR is referring to the policy given by UN General Assembly or Economic and Social Body (ECOSOC). UNHCR is a temporary institution. In the very first beginning it was established for three years.⁹² Then extended to five years until nowadays.

Furthermore in UNHCR function, like what has been stated in UNHCR Statute, to give international protection toward a person who has a well-founded fear of persecution because of his/her: race, religion, nationality, membership in a particular social group or political opinion, is outside his/her country of origin and is unable or unwilling to avail himself of the protection of that country, or to return there, for fear of persecution.⁹³

The office of United Nations High Commissioner for Refugees was established based on the General Assembly Resolution of United Nations No. 319 A (IV) dated in 3 December of 1949. Then through the General Assembly Resolution of United Nations dated in 14 December 1950 No. 428

⁹² United Nations High Commissioner for Refugees (UNHCR)-History of Organization, in: http://migration.ucc.ie/immigration/what_is_a_refugee.htm

⁹³ See article 1 of 1951 Convention

(V), the High Commissioner for Refugees officially operated in January 1951.⁹⁴

United Nations High Commissioner For Refugees (UNHCR)⁹⁵ is the international institution mandated to give the international protection toward refugee and give the permanent solution for refugee by assisting governments or the other humanitarian organizations to give the repatriation facility for the refugees.⁹⁶

2. These are the main authorities and development of UNHCR⁹⁷:

1. Increase the operation scale of UNHCR.

The main focus is finding the solution for the 400.000 refugees who are not yet receiving the residence as the impact of the World War II. In 1996, UNHCR had assisted 26 million people. The number of fund and staffs increased significantly. The fund needed by UNHCR in 1951 was around 300.000 US\$ and the number of staffs are 33. In 1999, the number of fund needed by UNHCR reach more than 1 million US\$ and employed more than 5.000 staffs. Its scope firstly only focus in Europe but in 1999 UNHCR had the offices in 120 countries in the world.⁹⁸

2. The activity of UNHCR is broader⁹⁹, at the first time UNHCR only gives the residence facility to the refugee, but then the scope becomes broader to the other facilities, including giving health assistance, food, education and other social assistance. The number of the case and problem that must be

⁹⁴ *Ibid*

⁹⁵ UNHCR is under the ECOSOC. See chapter 10 of the United Nations Charter.

⁹⁶ See the Statute of the Office of the United Nations High Commissioner for Refugees 1950.

⁹⁷ The State of the World's Refugee in <http://www.unhcr.ch/pubs/sowr2000/intro.pdf> page 3-4.

⁹⁸ www.unhcr.org

⁹⁹ *ibid*

handled is increased.¹⁰⁰ From dealing the refugees, UNHCR then also deal with the displaced person, returnees, stateless person and asylum seekers.

At the international level, UNHCR promotes international refugee agreements and monitors government compliance with international refugee law. UNHCR staff promote refugee law among all people who are involved in refugee protection, including border guards, journalist, NGO's, lawyers, judges and senior governmental officials.

At the field level, UNHCR staff work to protect refugees through a wide variety of activities, including responding emergencies, relocating refugee camps away from border areas to improve safety, ensuring that refugee women have a say in food distribution and social services, reuniting separated families, providing information to refugees on conditions in their home country so they can make informed decisions about return, documenting refugee's need for settlement to a second country of asylum, visiting detention centres and giving advice to governments on draft refugee laws, policies and practices.¹⁰¹

UNHCR seeks long-term solutions to the plight of refugees by helping refugees repatriate to their home country, if conditions are conducive to return, integrate into their countries of asylum or resettle in second countries of asylum.

¹⁰⁰ www.unhcr.org/globalreport.htm

¹⁰¹ UNHCR, *The State of the World's Refugees: 50 years of Humanitarian Action*, Oxford University Press, 2000. Page 78

E. Solutions of UNHCR for Refugees

UNHCR has been given a mandate to provide international protection to refugees and seek permanent solutions to their problems. The effort to get the permanent solutions becomes the main goal of international protection. There are three solutions given¹⁰²:

1. Voluntarily repatriation

UNHCR promote the repatriation for refugees to their country of origin whenever they want to come back without any force.

2. Local integration

For example the refugees of Burundi in Tanzania, refugees of Rwanda in Uganda and Refugees of Philippine in Malaysia. The purpose of local integration is to give them skill in the first country of asylum, it can be done in several ways for example through school to increase their skill or through trading activity or even planting.

3. Resettlement

For example, people who come from South East Asia States are resettled in other country especially in Australia, Europe and North America. The assistance from UNHCR in the field is by affording resettlement to the third country through the teamwork within government of country of settlement and the International Organization of Migration (IOM) and voluntary bodies who take care of the resettlement in the third country UNHCR is also pushing the

¹⁰² UNS, *Human Rights and Refugees*, Op Cit, page 112

governments of those states to mitigate the acceptance criteria to the refugees and determine the special procedure of immigration to refugees.¹⁰³

The member states recognize that the duty of this body is non-politic activity.¹⁰⁴ Duty in form of the social responsibility and having the humanitarian characteristic which are burdened to UNHCR should be done in legal frame that is agreed by all of states, those are international law for refugees and national legislation drafted by the states to assist the role of UNHCR.

To apply its function in accordance with the UN General Assembly Resolution No. 428 (V), states shall work together with UNHCR by these ways:¹⁰⁵

1. Become the participant of each international convention to protect the refugee and implement that Convention;
2. Establish the special agreement with UNHCR to implement the steps to repair the condition of refugee and decrease the number of refugees who need the protection;
3. Not ignore the refugees who are categorized as poor people;
4. Assist UNHCR to promote the voluntarily repatriation;
5. Promote assimilation, especially by giving naturalization;
6. Provide the travel document and the other document;
7. Allow the refugees to transfer their asset especially for the need of resettlement;

¹⁰³ Goodwin-Gill, Guy, *Op Cit*, page 89

¹⁰⁴ Mochtar Kusumaatmadja, *Pengantar Hukum Internasional, Op Cit*, page 65

¹⁰⁵ United Nations General Assembly Resolution 428 (V), 14 December 1950, Article 2.

8. Give the information to UNHCR related to the number and the condition of refugees, law and regulation related to them.

The obligations UNHCR to give the international protection toward refugee like what have been stated above will be terminated if:¹⁰⁶

1. The refugees voluntarily reuse again the protection given by their country of origin; or
2. The refugees lost their citizenship, and voluntarily they get it back; or
3. They enjoy the protection of their new country; or
4. They have return to their country of origin; or
5. They cannot be considered as refugee because the condition that make them become refugee is over. So the reason of economy to become refugee is not acceptable with the competence of UNHCR; or
6. They have no natuinality but the condition which make them lost their nationality is over.

Beside the international protection, UNHCR is also gave the authorities to:¹⁰⁷

1. Promote the draft and ratification of the international conventions related to the protection and observe those application and suggest those amendment;

¹⁰⁶ *ibid*

¹⁰⁷ *Ibid*, Article 8

2. Promote through the special agreements with the government each rule which is predicted can repair the refugee condition and lessen the refugee who needs the protection;
3. Assist the governments effort and private sector to promote voluntarily repatriation or asimilation in the new community in the new state;
4. Promote the refugee acceptance by not ignoring the people who really in poor condition;
5. Accelerate in getting the permission for refugee to transfer their asset especially for the need of resettlement;
6. Get the information from governments related to the number and the condition of refugee in their territory and the law and regulation which regulate regarding the refugee;
7. Creating a good relationship with governments and private organizations to overcome refugee;
8. Give the coordination facilities toward the coordination effort of private organ related with the improvement of refugee welfare.

So, the protection activity which given either in field or in the headquarter of UNHCR, like what has been stated in UNHCR's Protection Mandate are:¹⁰⁸ guarantee the asylum distribution, predict the ned and monitor the treatment for refugee and asylum seeker, together with host state guarantee the phisical security of refugee, identify the vulnerable groups of

¹⁰⁸ See in UNHCR's Protection Mandate in <http://www.unhcr.2001/mandate.pdf> page 51

refugee by ensuring their needs toward certain protection and prioritize the assistance by ensuring their welfare, support some county to establish the system of registration and documentation, promote the decrease of the stateless person, actively revitalize the protection regime by creating the cooperation with NGOs and international organization to ensure the support of this regime, promote the refugee law including the advocacy for the acceptance of Convention and Protocols of refugee and develop the national institution and legislation, protect the displaced person, develop the capacity of UNHCR, promote and implement the long-term solution for the voluntarily repatriation, reintegration and settlement and identify the need to settlement and process the obedience to implement the obligation to resettle in third country.¹⁰⁹

In implementing sum of the activity above, UNHCR needs operational fund. Related to the funding, Article 20 of Statute of the Office of the United Nations High Commissioner for Refugees states that the administration fund of the UNHCR is beared fully by the United Nations and the voluntarily charity from a lot of donature. The biggest states donature of the UNHCR activities are: Australia, Canada, United States, England and Japan.¹¹⁰

F. Urgency of the Refugee Protection

Refugee is a group of people who flee from their homeland because of fear of persecution which threatens their safety and live. The decision to leave is a crucial thing after for so long time live in the chaos situation.

¹⁰⁹ *ibid*

¹¹⁰ UNHCR, special Report, *Comprehensive Plan of Action, The Indo-Chinese Axodus and the CPA*, Public Information Center UNHCR, Switzerland, 1996.

Refugee usually does not bring the travel document so that a lot of them get the repressive treatment in their country of origin, country of transit and the destination country. the disgracing treatment usually in form of violation, rape, discrimination and refoulement. All of them can be categorized as the violation of human rights. So that is why the protection toward the refugee is necessary to do and some of international instruments of human rights contain the protection of the basic fundamental right of refugee.

1. Refugees are Vulnerable to Violence.

Like all other persons, refugees are entitled to an adequate standard of living, adequate food and housing, as well as physical and mental health. However, refugees' primary need is for safety—physical safety—that they are unable to obtain in their country of origin. Thus the primary obligation of states under the refugee conventions is not to return (*refoule*) refugees to countries where they will be in danger of “persecution.”¹¹¹ The grant of refugee status is thus often described as being an international substitute for the protection that should come from a person's state of nationality or habitual residence.

Violence is always coming to them from their country of origin. They cannot live in safety. They are really under the fear of persecution whether it is caused by race, religion, nationality, membership in a particular social group or political opinion.¹¹² It forces them to flee from their country and find the protection of another country. We can take example from the case of

¹¹¹ See UN Refugee Convention, articles 1A and 33; see also African Refugee Convention, article 2.

¹¹² 1951 Convention

Rohingya people in Myanmar. Rohingya muslim looked for help in Indonesia by using boats without motor and without food. They were afraid of persecution done by Myanmar regime which forced them to follow Buddhism, they are not allowed to perform the practice of Islamic law and tradition. The military troops always forced them or even gunned them down.

They have a dark skin that makes them look more like the Bangladesh Muslim. There are two ethnic groups live in Arakan, Buddhist Rakhine and Rohingya muslim.¹¹³ From the population more less 50 million people in Myanmar, 8 million are muslims (2006), and 3,5 million Muslims are rohingyan¹¹⁴. Then because of persecution done by the Military regime of Myanmar, 1,5 million of them had to leave their country to save their own lives to Bangladesh, Pakistan, Arab Saudi, United Arab Emirates, Malaysia and Thailand since the independency of Myanmar 1948.

Rohingya people are depending on their self in agricultural aspect, only few of them become merchant, fisherman and businessman. Then until discrimination attacks them and turns them to become homeless person. Tax of agricultural products create suffer for them and in the end of the day they became a low wage worker for new comers of Arakan, the Buddhist people. They also have to share their product with Buddhist people who has no willingness to share their product back to Rohingya people. Regime has already prohibited and banned them to defend their rights including the rights of education and rights of work. Moreover, regime prohibited them to

¹¹³ Jan Becka, 1995, *Historical Dictionary of Myanmar*, London: Scarecrow Press.

¹¹⁴ Human Right Watch, *History of the Rohingya People*,
<http://www.hrw.org/reports/2000/malaysia/maybr008-01.htm>

become the civil servant and from military aspect, there is no even one of military troops come from Rohingya people.¹¹⁵

When the Military Regime took control over Myanmar, sistematically they try to eliminate the political rights of rohingya people. With the promulgation of Citizenship Act in 1982 they were called as “the stateless person (people without citizenship)”. Rohingya people were also declared as a community that deserve to be decimated from Myanmar territory.¹¹⁶

Military junta regime practices two policies of de-Islamization in Myanmar: first, by physical obliteration through genocide and ethnic cleansing towards Rohingya moslem in Arakan, and second through cultural asimilation. Their main purpose is changing the strategic area of Arakan where dominated by Moslem and turns to be dominated by Buddhist people, moreover now the name Arakan changed by the government become Rakhine, the special characteristic of Buddhist name.¹¹⁷

In Arakan, rohingya people who detained illtreatly, tortured, fast executed and murdered. Their rice fieldand their farm are taken by the new comer, Buddhist. Rohingya Moslemahs are being raped and treat inhumanly, they are forced to marry the Buddhist man, forbided wearinf hisab, forced to use the contracepcy equipments and forbided to marry with the Rohingya man.

¹¹⁵ *ibid*

¹¹⁶ Amnesty International, *Myanmar, The Rohingya Minority: Fundamental Rights Denied*.
<http://web.amnesty.org/library/Index/ENGASA160052004?open&of=ENG-MMR>

¹¹⁷ The Economist, 1-7 Desember 2007, *Myanmar's Rohingyas*, e-book edition,
<http://ifile.it/7izate/the.economist.-.2007-12-01.pdf>

As the result of that anti-Islam policy is a migration of Rohingya moslem to the neighbor country. Most of the country does not want consider them as the assylum seeker, in non-Moslem country such as Thailand they are tortured, threatened and expelled by its army troops. In the moslem country like Bangladesh they get no fully assistance. Moreover same with Thailand, Indonesia called them as economic refugee.¹¹⁸

This example shows us that their condition is really vulnerable of violence, so their protection is urgent and necessary to do as the step of protecting the human rights.

2. Refugee is no longer received the protection from their country of origin.

They have had to flee and because of the reasons for their flight, refugees frequently arrive in the host country traumatized and in need of medical treatment, and without any money or other means of subsistence. They generally do not speak the language of the country of refuge, and all too often in the 1990s they may face hostility from other residents in the country of refuge. They are particularly vulnerable to exploitation and violence during the period of flight and while in the country of refuge.¹¹⁹ They may have lost or become separated from the “breadwinners” of their families, which in itself is a cause for both emotional trauma and very real difficulties for the maintenance of livelihood. It is not to be forgotten that approximately 80 percent of the world’s refugees are women (many of whom are widowed)¹²⁰

¹¹⁸ Kompas, 11 Februari 2009, *Thailand Setuju Usul RI soal Pengungsi Rohingya*, <http://internasional.kompas.com/read/xml/2009/02/11/15510877/Thailand.Setuju.Usul.RI.Soal.Pengungsi.Rohingya>

¹¹⁹ UNHCR, *The State of the World's Refugees* (Oxford: Oxford University Press, 1997), 62-67.

¹²⁰ see Margaret Owen, *A World of Widows* (Zed Books, London, 1996). With regard to the situation of Afghan refugee widows and children, see also the Report of the High Commissioner for Human Rights, *Human*

and children.¹²¹ As the United Nations High Commissioner for Human Rights has pointed out: “Being a refugee means more than being an alien. It means living in exile and depending on others for such basic needs as food, clothing and shelter.”¹²²

Refugees are not a homogeneous group, and they may also have very different practical experiences and problems in their countries of refuge. There are many differences between the experiences of the middle-class Bosnian refugee family in Germany, the second generation Palestinian who has never lived in his/her country of origin, and the Afghani widow in Pakistan. However, whatever their background and wherever they seek refuge, all too often refugees share a common problem: Their ESC(Economic, Social and Cultural Rights) rights are in jeopardy, and they face practical problems in accessing the economic and social entitlements that they do have.¹²³ In Great Britain, for example, a 1995 government study found that, despite being relatively well-educated, most refugees suffered considerable downward social mobility and found it very difficult to obtain employment of the same status as they held in their home country.¹²⁴ In many parts of the world refugees (and asylum seekers) may find themselves living in very large refugee camps or, alternatively, “spontaneously settling” among citizens of a neighboring country with persons of the same ethnicity as themselves. Where

Rights and Mass Exoduses, UN Commission on Human Rights, Fifty-fourth Sess., Part I. B.2, UN Doc. E/CN.4/1998/51 (30 Jan. 1998)/ Mass Exoduses Report.

¹²¹ R. Ellis, *UNHCR Issues: Women, Help for Single Parent Refugee Families*, available on the Internet at <http://www.unhcr.ch/issues/women/rm09507.htm>

¹²² See United Nations High Commissioner for Human Rights, Fact Sheet No. 20, *Human Rights and Refugees 1997*, (hereafter cited as Fact Sheet 20), available on the Internet at <http://www.unhchr.ch/html/menu6/2/fs20.htm>

¹²³ see Mass Exoduses report.

¹²⁴ J. Carey-Wood, K. Duke, and T. Marshall, *The Settlement of Refugees in Britain*, Home Office Research study No. 141, (London: HMSO, 1995). Page 98

refugees (and asylum seekers) are confined to camps, this, in itself, may have implications for their ESC rights. On the one hand, access to wage-earning employment may be limited, particularly where camps are located in remote and/or poor areas of the country of refuge. On the other hand, the concentration of refugees/asylum seekers in one place may facilitate their access to food, education and medical services provided by the host state and/or international organizations and NGOs.

In other parts of the world, for example in many Western countries, refugees and asylum seekers are not confined to refugee camps, but are confronted by a complex legal machinery for claiming refugee status, for obtaining permission to work, and for access to state benefits in host countries.¹²⁵ They also face language and other problems integrating into the country. Refugees' ability to access their ESC rights is frequently limited by their inability to communicate in the language of the host state and their limited understanding of its systems. Persons suffering from health problems or psychological trauma may find it even more difficult to obtain employment or self-employment and to access social services.

G. Refugee Protection in Islamic Perspective

In dealing with refugees, Islam also has its own perspective which respects and concerns the human disaster whether related with family, race, problem among states and nations and religion. It is contained in

¹²⁵ *ibid*

some explanation of Islamic verses in Qur'an. The principle of helping each other is universally applied.

1. Mankind have the same position and they are obliged to know each other, even consist different tribe, nation and religion.¹²⁶
Here, all of human in this world must create the brotherhood to another human eventhough they have the different background.
2. Reciprocity or help one another in righteousness and faith and not help in sin and hostility.¹²⁷ So, helping our brother (refugee) is an obligation.
3. Establish the global piece for society in different nation and religion.¹²⁸ The piece is something must to reach by Islam, so in here Islam asks us to decrease the possibility of hostility occurred in this world which can create the flow of suffered people to seek the save place.

The condition of refugees which is under threat and persecution triggers the Moslem countries to take responsibility. This action is arose because Islamic thought obliges people to help one each other based on righteousness and brotherhood not the hostility.

Since Islamic Relief is guided in its work with refugees by Islamic humanitarian values, it is important to briefly outline the concept of asylum in Islam and the obligations incumbent upon Muslims in receiving refugees.

¹²⁶ QS Al Hujarat:13

¹²⁷ QS Al-Maidah:2

¹²⁸ Q.S Ali Imran:64

Many scholars have pointed to the presence of humanitarian values within Islam (see An-Na'im 1990; Mirbagheri 2006)¹²⁹. With regards to refugees in particular, the issue of forced migration has a particular resonance in Islam, especially in view of the fact that the Prophet Muhammad (peace be upon him) was himself a refugee who fled Mecca with his followers in order to escape persecution in 622. This event, known as the *Hijra*, actually marks the beginning of the Islamic calendar. The refugees who fled Mecca at that time are given an honoured place in the Qur'an and are known as *Muhajirun*. Furthermore, those people who gave them a good reception are also highly respected and are known as the *Ansar* or supporters of the Prophet and his followers (see Abu Sahlieh 1996)¹³⁰. It should also be mentioned that Muslims fleeing religious persecution in Mecca were advised by the Prophet Muhammad (pbuh) to travel to Abyssinia where they sought and received sanctuary from the Christian ruler Negus. The story of the *Hijra* itself and its centrality in terms of the foundations of the faith indicates the importance given to the concept of the protection of refugees and the provision of asylum in Islam.

The Qur'an speaks explicitly about the issue of asylum seekers and refugees:

¹²⁹ An-Na'im, A. (1990) *Towards and Islamic Reformation: Civil Liberties, Human Rights and International Law*. Syracuse: Syracuse University Press. Page 64

¹³⁰ Abu-Salieh, S. A. (Spring 1996) 'The Islamic Conception of Migration'. *International Migration Review*. 30(1): 37-57

And if anyone of the disbelievers seeks your protection, then grant him protection so that he may hear the word of Allah, and then escort him to where he will be secure. (Surah 9:6)

Islamic law or *Shariah* affirms the practice of providing sanctuary to persecuted persons and the sacredness of some places, such as the Kaaba in Mecca. Anyone who sought refuge in a mosque or in the home of a companion of the Prophet Muhammad was safe and secure. However, asylum according to *Shariah* law is not confined only to sacred places – it is also granted in homes and designated communal places under the protection of Islam. Asylum should be provided without discriminating between free persons and those who are enslaved, rich and poor, men and women, or Muslims and non-Muslims.¹³¹

In Islam, asylum is a right of anyone seeking protection. Asylum ‘is an integral part of the Islamic conception of human rights’¹³². The concept of ‘*aman*’, which is intrinsic in *Shariah*, encompasses the rights of refugees and asylum seekers and the duties incumbent upon their hosts¹³³. The medieval theologian Ibn al Arabi suggests that asylum is obligatory from states where there is injustice, intolerance, physical persecution, disease, and financial insecurity¹³⁴. Additionally, Zaat has argued that while the Qur’an implies that worldly consequences will befall those who do not give humanitarian assistance to those in need and those who do provide protection and

¹³¹ Mirbagheri, F. (2006) ‘Islam and Humanitarian Values’. *Refugee Survey Quarterly*. 21(3): 139-149

¹³² Arnaout, G. M. (1987) *Asylum in the Arab-Islamic Tradition*. Office of the United Nations High Commissioner for Refugees, International Institute of Humanitarian Law, Geneva. Page 49

¹³³ *ibid*

¹³⁴ Eickelman, D. F., and Piscatori, J. (eds). (1990). *Muslim Travellers: Pilgrimage, Migration, and the Religious Imagination*. New York: Routledge. 157

assistance will achieve a ‘special legal status’ (reward from Allah) in Islamic law¹³⁵. Therefore, Zaat claims that ‘Muslim states and non-state actors ... have an obligation to guarantee the safety, security and unfettered access of those offering protection and assistance’¹³⁶. It is clear, therefore, that Islamic law encourages a humanitarian approach to refugees, asylum seekers and internally displaced persons.



¹³⁵ Zaat, Kirsten (2007) ‘The Protection of Forced Migrants in Islamic Law’. *UNHCR New Issues in Refugee Research*. Research Paper No. 146.

¹³⁶ *ibid*

CHAPTER III

INTERNATIONAL LAW PROTECTION FOR REFUGEES IN INDONESIA

A. The Protection Given by Government of Indonesia toward Refugees

The efforts of government of Indonesia in protecting refugee can be shown in national legislation and the practice in the field in handling refugees. However the protection of national legislation is remain unclear and not specific because Indonesia is not becoming the member of 1951 Convention and 1967 Protocol.

So that is why in practice there are still a lot of violation done by Government of Indonesia in handling refugee. It is usually related to the treatment, facility and rights protection for refugees.

1. Protection through National legislation.

Firstly it is stated in the 1945 Constitution article 28 G (2) which is showing the contribution of Government of Indonesia in respecting and protecting the human rights including the rights of refugee to be free from any persecution, disgracing treatment and specifically recognizing the right to get political asylum from another country (here the government of Indonesia.¹³⁷

¹³⁷ 1945 Constitution article 28 G (2): “everyone has the right to be free from any persecution and disgracing treatment toward human dignity and has the right to get the political asylum from another country.”

Law no. 37/1999 was enacted in 14 September 1999, including 3 articles related with the granting of asylum and refugee (article 25, 26 and 27). Article 25:1 becomes the principle of the refugee law. This article determines, “the Authority in granting the asylum to the foreign people is held by President by concerning the Minister consideration.”¹³⁸ In article 25:2 is continued by stating “implementation of authority in paragraph (1) is regulated in Presidential Decision.”¹³⁹ Then the mechanism is concerning the customary international and international practice.¹⁴⁰ A commitment to make a teamwork with UNHCR is reflected in the explanation of article 27(1), which states “Indonesia gives its teamwork to the authorized body in the effort to settle that refugee problem.”¹⁴¹

The regulation related to human right in Indonesia is also supporting the protection for refugees. It is Law No 39/1999 related to Human Rights in article 28:1 “Everyone has right to seek asylum to get the political protection from other country.”¹⁴² and the right as regulated in verse 1 is not applied to them who do the non-political crime or any action against the goal and principles of United Nations.¹⁴³

Indonesia is not yet becoming the Contracting State of the United Nations Conventions relating to the Status of Refugees 1951 and 1967 Protocol. The Government of Indonesia ask UNHCR to process the determination of refugee status for the asylum seekers. It makes the

¹³⁸ Article 25:1 of Law No 37/1999 related with International Relation

¹³⁹ Article 25:2 of Law No 37/1999 related with International Relation

¹⁴⁰ Article 26 of Law No 37/1999 related with International Relation

¹⁴¹ Article 27(1) of Law No 37/1999 related with International Relation

¹⁴² Article 28:1 of Law No.39/1999

¹⁴³ Article 28:2 of Law No. 39/1999

determination process will take so long time. For migrants who do not get the refugee status, they are possible to be considered as the illegal migrants and will be deported.¹⁴⁴

Besides, in the waiting period of refugee status determination by UNHCR, the asylum seekers and refugees are detained in the detention center (rudenim). The condition of rudenim is like a prison (live in a cell) while they are not the criminal perpetrator moreover they are the victim of human rights violation in their country of origin. Their placement in detention center only creates another problem. A lot of them get the psychological pressure (especially for the child) and some of them want to escape from that place. In November 13 2011, 13 refugees and asylum seeker escaped from Tanjung Pinang Detention Center. One of them failed to trespass the wire and died and the other one who also failed got a bad injury.¹⁴⁵

Government of Indonesia has no strict regulation without ratification, why? Because of without ratification Indonesia is not bound into any obligation to protect and fulfill all of the rights of the refugees, such as: rights to gainful employment and welfare, on the issue of identity papers and travel documents, on the applicability of fiscal charges, and on their right to transfer their assets to another country where they have been admitted for the purposes of resettlement.

¹⁴⁴ Frances Nicholson & Patrick Twomey (ed/) *Refugee rights and realities - evolving international concepts and regimes*, Cambridge: Cambridge University Press, 1999. Page 94

¹⁴⁵ Harian Kompas, december 7 2011.

The Convention prohibits the expulsion or forcible return of persons having refugee status. Its article 33 stipulates that "no Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"¹⁴⁶. Other provisions deal with such rights as access to courts, education, social security, housing and freedom of movement. Indonesia does not fulfill those rights because of the lack of determination system to grant the status refugees which makes the alien comes to Indonesia considered as illegal immigrant which must be detained than deported.

With this condition, a lot of violation appears toward refugee in Indonesia. That is why ratification of 1951 Convention and 1967 Protocol are necessary to protect refugees in line with the protection of human rights and International Law.¹⁴⁷

It is necessary for Indonesia to participate in Those Convention, because:¹⁴⁸

1. It shows the commitment of the state to treat the refugee in accordance with the law and humanity recognized by international world;
2. It is enlarging the possibility of refugees to get the safety;

¹⁴⁶ Article 33 of 1951 Convention

¹⁴⁷ *Membaca Fenomena Pengungsi dan Pencari Suaka*. www.politikana.com

¹⁴⁸ <http://arwanblack74.blogspot.com/2011/03/unhcr-dan-pengungsi-di-indonesia.html>

3. It assist to prevent from the hostility of states concerning the refugee problem. If the state has become the participant of the convention, its action must be considered as the peace action toward the country of origin of the refugee;
4. It shows the willingness of state to share the burden to protect te refugee;
5. To help UNHCR to mobilize the international support to protect refugee.

2. The Practice in the Field in Handling Refugee Cases

The protection given by Indonesia to the refugees can be seen in some cases. Here the writer will focus on the refugees case of Indo-China in Galang Island, refugees case in East Timor and refugees case in Detention Center in Tanjung Pinang.

2.1 Refugees in Galang Island

The flow of Vietnamese refugees was started since the fallen of the major city Saigon (south Vietnam) to the North Vietnam power, on 10 May 1975, where a year after that established the RSV (Republic of Socialist of Vietnam) on 2 July 1976. Vietnamese refugees left their country because they got the cruel treatment and intimidatif treatment from their country of origin. They left Vietnam by boat, so that we call them *the boat people*.

This Vietnamese refugees flow happened in several periodes and in their journey a lot of them cast away in some states like Thailand, Singapore,

Malaysia, Philipine, Indonesia and Hongkong. The prediction shows that more than 500.000 people spread around ASEAN states and Hongkong.

The Vietnamese refugees is placed in an Island called Galang Island, a little island located in the regency of Riau Islands, in the south east of Batam Island. This island is deliberately to be used by Indonesia Government in 1979 to maintain the refugees of Indo-China.¹⁴⁹

The building of the refugees centre in Galang Island was began since 1979. In August 1979, the first flow came with 46 people and lived in that place. By the building of the additional facilities such as vihara, Catholic Church and Protestant church in September 1979, Galang Island had 140 barrack to maintain 5.320 vietnamese refugees. In the end of 1979, as the place to maintain and process the boat people, the number of them who lived in Galang Island reach 121.000 people. At that time the whole of vietnamese refugees had the status of refugees and they were entrusted from neighbour states and would be processed before be sent to the third states.¹⁵⁰

1. Entrusted from Thailand : 30.000 people
2. Entrusted from Singapore : 6.000 people
3. Entrusted from Malaysia : 2.700 people
4. Entered to Indonesian Sea : 83.000 people

They were periodiccally being processed to be placed into the third states or returned to their country of origin. Day after day in March 1989 the

¹⁴⁹ Galang Island, Vietnamese refugess Camp. <http://www.Vietnamese-refugees.com>

¹⁵⁰ Arie J. Kumaat, *Vietnamese Boat People on Galang Island. Paper*, 30 July 1989, pg 5

number of boat people in Galang Island remained only 19.646 where almost 11.000 of them had already being screened and ready to be sent to third state.

In 1996 the vietnamese boat people in Indonesia listed only 4.254 people.¹⁵¹ But, there were also some people from them especially came from the extrem group such as: ex military corps and police , they refused to be repatriated. If this thing is not anticipated, this will be the burden of Indonesia Government.

To resolve the problem of boat people in Galang Island, the government of Indonesia had conducted some policies, for instance: Humanitarian Operation of Galang Island in 1996. The aim of this operation was to accelerate the repatriation the boat people from Galang Island and Tanjung Pinang to Vietnam and Cambodia. In applicating this action, the government of Indonesia was working together with United Nations High Commissioner for Refugees (UNHCR).¹⁵²

Charter of the United Nations is evidence that the armed forces with relevant agencies, boat people return to their home country in accordance with international regulations. Humanitarian Operations Task Force Commander Major General Galang '96 TNI Arie J. Kumaat with the familiar greeting the refugees Vietnam is located on the ship that brought them home to Vietnam.¹⁵³

The whole boat people in Galang island, Riau, has run out repatriated to their home country. Now the island is empty, there is no boat people on the

¹⁵¹ *ibid*

¹⁵² *Human Rights and Refugees*, Human Rights Fact sheet No. 20, Printed at United Nations, Geneva, 1994.

¹⁵³ Arie J. Kumaat. *Lop cit*. P 2

island. The inhabitants on the Galang Island only the workers, who work on road projects Barelang (Connecting the islands of Batam, Apex and Galang).¹⁵⁴

Boat people, amounting to about 4,000 people coming from Vietnam and Cambodia, have returned to their home country, which implemented Humanitarian Operations Command Task Force 96 led Galang Commander Maj. Gen. Arie Kumaat cooperate with UNHCR (the body of UN refugee affairs).¹⁵⁵

Emptying of boat people from Galang Island is a major success for the Armed Forces in 1996. The return of boat people are running smoothly without the victim or an embarrassing clash of nations and states.

Though the return of refugees is hard work, it is proven in some countries, such as Hong Kong, Malaysia and the Philippines, when the return of refugees from those countries, they finally forced to carry 'forced return' and some even had cause physical clashes.

For example, a shelter for the boat people in Hong Kong. In March 1996, in High Island camp, the repatriation of 20.000 illegal migrants Vietnam to his country the incident occurred. The officer used the tear gas in the camp, because the Vietnamese boat people refused to be returned to their country of origin. Efforts to return boat people from Hong Kong also got resistance. The refugees set fire to their camps.

¹⁵⁴ *ibid*

¹⁵⁵ Galang Island, Vietnamese refugess Camp. <http://www.Vietnamese-refugees.com>

Likewise in the Philippines, Vietnamese citizens are in the island of Palawan, a distance of about 560 miles southwest of Manila refused to be returned. Thanks to pressure from the Catholic Church of the Philippines, finally the President Fidel Ramos was willing to not use violence in repatriation of Vietnamese boat people in the Philippine. Vietnamese refugees currently live in Malaysia around 3128 people, residing in refugee camps Kuala Lumpur and Sungai Besi camp Kerayongh 100 kilometers northeast of Kuala Lumpur, sent in forcibly.¹⁵⁶

Chief of the Armed Forces Information Center Brigadier General Amir Syarifuddin said, because repatriation of boat people from Indonesia are considered by the UN is the best in the whole world, then the Chief Representative of UNHCR Robert Cooper gave the award plaque to the Armed Forces through Armed Forces Chief Gen. Feisal Tanjung.¹⁵⁷

Charter of the United Nations is evidence that the armed forces with agencies related, the boat people return to their home country in accordance with international regulations.¹⁵⁸ With a friendly approach and more consultation with the UNHCR, said Armed Forces Chief of Information Center Brigadier General Amir Syarifuddin told reporters on board the KRI military Teluk Cirebon during the last return of boat people from Galang Island. ABRI soldiers led by Maj. Gen. Arie J. Kumaat served that, in carrying out duties very good, there is no coercion or violence. Therefore,

¹⁵⁶ *ibid*

¹⁵⁷ Arie. J Kumaat. Opcit. P 6

¹⁵⁸ *ibid*

handling of return on Galang Island is the best in the world, Robert Cooper said repeatedly.¹⁵⁹

Emptying the boat people from Galang was caused by several things. The main problem regarding the United Nations High Commissioner for Refugees (UNHCR) plans to suspend aid that had been provided to refugee camps in Asia to accommodate the boat people, without refugee status. UNHCR stopped funding and protection for those who do not obtain refugee status (nonpengungsi) from 1 July 1996, according to UNHCR representative stated the Head of Asia and Pacific region, Alexander Casella.¹⁶⁰

The process of returning the boat people from Galang Island implemented with the two programs. First, the UNHCR program which renamed voluntary Vorlep (Voluntary Repatriation Programme) conducted in cooperation Command Task Force (Kogas) Operations Humanitarian Galang 96 with UNHCR.¹⁶¹

Humanitarian Efforts are made Kogas Galang 96 to encourage boat people in Galang Island will return to his country made through information campaigns, screening of films about the progress development in Vietnam today.

Every night the boat people are given entertainment through TV Videos associated with the atmosphere of life in Vietnam. In addition to the they were divided Vietnam newspapers and magazines, which raises spirit to the boat people back to their ancestral lands. For boat people returned through

¹⁵⁹ *ibid*

¹⁶⁰ Arie J Kumaat. Op Cit. P 8

¹⁶¹ The State of The World's Refugee in <http://www.unhcr.ch/pubs/sowr2000/intro.pdf>.

Vorlep program, over repatriated to the plane of his own consciousness, is that through aboard marine or military vessels.¹⁶²

In the return of refugees operated four ships LST (Landing Ship Tank). Each Teluk Hading KRI, KRI Teluk Cirebon, KRI Teluk Sangkurilang and the KRI Teluk Sampit. And during this military ship return the boat people, always escorted by KRI Fatahilah.¹⁶³

Initially, the Vietnamese boat people refused to return with using warships. They were firmly against the ship's presence the war. Humanitarian Kogas Galang 96 Commander Maj. Gen. Arie Kumaat, convinced that to bring people in Vietnam would not be a warship, but the freighter of the military corps.¹⁶⁴

After the ship LST purchased from East Germany was considered by the messenger Vietnamese party, finally they allowed the ship LST bring boat people, with the requirement that the weapon was on the vessel must be opened first. After that, the ship that brought refugees were allowed into the territory of Vietnam.¹⁶⁵

Arie Kumaat with diplomacy succeeded in convincing the Vietnamese. Vietnam Party realize the unity of ASEAN, it was ultimately generous. Vietnamese delegation who came to Indonesia, led by Deputy Head of the Department of Public Defense Vietnam, Trinh Hy Loung, agreed allowed military transport ship carrying the boat people of the Island Galang to

¹⁶² Stephen John Stedman & Fred Tanner (ed.) *Refugee manipulation - war, politics, and the abuse of human suffering*, Washington, D.C.: Brookings Institution Press, 2003 page 64

¹⁶³ *ibid*

¹⁶⁴ *ibid*

¹⁶⁵ *ibid*

Vietnam, provided non visible weapons on board. Finally all weapons at the ship carrying the human boat wrapped with tarps.¹⁶⁶

Mobile Brigade officers and Marines who watched the boat people equipped with tear gas guns that are rubber bullets only to stifle it. However, during the ongoing operation repatriation of refugees none of the bullets and tear gas is used. For all the boat people have been given illumination regarding the intent and purpose of repatriation, so that their future is better, especially the fate of their children.

The process of returning the boat people from Galang Pualu beginning with the Commander of KRI Tanjung Hading Major Ship Sea Surya Wiranto managed smoothly until the port of Vung Tau, Vietnam boat carrying 244 people.¹⁶⁷

Thing that cannot be ignored is the role of the Indonesian Embassy in Vietnam, including the Consulate General in Ho Chi Minh City. The Embassy and Consulate General have the role in returning refugees successfully. Consulate General in Ho Chi Minh City, Zainuddin Lubis and Defence Attaché, Col. Inf Lumban Sianipar complete hands-on process administration with the Immigration of Vietnam, so that the boat people could immediately derived from the military transport ship.¹⁶⁸

¹⁶⁶ Arthur C. Helton *The price of indifference - refugees and humanitarian action in the new century*. Oxford: Oxford University Press, 2002. Page 88

¹⁶⁷ *ibid*

¹⁶⁸ *ibid*

There are some ways to persuade the refugee to have willingness to come back to their country of origin, some efforts have already done to build their love to their homeland:¹⁶⁹

1. Build the love of their home land by locating some billboards and banners in Vietnamese language in refugees camps;
2. Providing magazines or brochures in Vietnamese language directly from Vietnam;
3. Asking the refugees to watch movie and the interview of ex-refugees from Galang Island who now succeed and work in Vietnam. In that movie and interview, there is a persuasive statement to persuade them to come back to Vietnam;

In fact, those efforts create a very good result, a lot of boat people want to be repatriated, there are still 4.000 Vietnamese boat people stay in Galang Island. UNHCR has given the repatriation deadline of them on the 30 July 1996. UNHCR assists the treatment to the boat people and covers the output related to the repatriation of them including the flight cost.¹⁷⁰ The last group of Vietnamese boat people left the Galang Island in 2 September 1996.¹⁷¹

The repatriation of Vietnamese boat people to their country of origin under the sponsor of UNHCR reaches 109.000 people.¹⁷² Based on the special reports of Comprehensive Plan of Action (CPA), generally since 1975 for about 122.000 Vietnamese came to Indonesia, added by 50.000 refugees

¹⁶⁹ Zolberg, Astride. R., Suhrke, Astri & Aguayo, Sergio, *Escape From Violence Conflict and the Refugee Crisis in the Developing World*, Oxford University Press, 1989.

¹⁷⁰ <http://www.culturalbridge.com>

¹⁷¹ Galang Island, Vietnamese Refugee Camp

¹⁷² United Nations, *Briefing Papers for Students "We the People" The role of the United Nations in twenty-first century.*, New York, 2001, page 231.

came through the regional processing center. More than 11.000 were placed and 8.000 people and 8000 repatriated to Vietnam.¹⁷³

2.2 Refugees in East Timor

The flow of refugees from non East Timor family was started before the presence of voting in the end of 1998 as the anticipation of the violence that could be happened. Then increase after the result of voting in 30 August 1999 declared in 4 September 1999 by the chief of United Nations Assistance Mission to East Timor (UNA-MET), Ian Martin. The result showed that 21,5% of voter chose the pro-integration and 78,5% chose the independence of East Timor.¹⁷⁴

After this declaration, the pro-integration militia did violence, robbery and burn the civilian houses and attack the staff and their place to work UNAMET and attack the humanitarian officers of whole of East Timor. In this tragedy, many of civilian were killed and 500.000 people evacuated from their houses, and for about half of East Timor people were forced to leave from that area.¹⁷⁵ Another data stated that more than 200.000 people left East Timor by forced nor intentionally become the reuees on West Timor and in other part of Indonesia.¹⁷⁶

Refugees situation in East Trimor is a very unique thing. Because, the refugees however do not lost their national protection from Indonesia nor East Timor because eah of them respect the refugees as their citizen that is

¹⁷³ UNHCR., *Special Report Comprehensive Plan of Action, The Indo-Chinese exoduse and the CPA*, page 15.

¹⁷⁴ <http://www.org/peace/etimor99/etimor.htm>

¹⁷⁵ *ibid*

¹⁷⁶ East Timor Refugees., in <http://www.converge.org.nz/pma/etunh-htm>

why both of them still give the protection toward the refugees. Since October 1999, repatriation process of refugees in West Timor and the other part of Indonesia which is under the sponsor of UNHCR and International Organisation of Migration (IOM). In 14 October 1999 the Government of Indonesia and UNHCR signed the Memorandum of Understanding (MoU) regarding the repatriation process.¹⁷⁷ Meanwhile, according to UNHCR NGO Unit in the 5 October 1999 there were 136.000 East Timor neglected in more than 2 dozens of camps and in the city of Atambua. Besides, 40.000 East Timor people neglected stayed in major city (Dili).¹⁷⁸

United Nations High Commissioner for Refugees (UNHCR) together with the government of Indonesia, provided the assistance and protection directly to the East Timor Refugees in the very first beginning. But, after the murders toward three staffs of UNHCR in Atambua in 6 September 2000, UNHCR and the other humanitarian institutions withdraw themselves from East Timor. The assistance still gave to the refugees through the government of Indonesia until the last year government determined the discontinuence of the assistance while wait for the refugees whether they would decide to come back to East Timor or stay in Indonesia.¹⁷⁹

UNHCR began the voluntary repatriation program, and the result was more than 190.000 refugees repatriated to East Timor and predicted still for about 60.000 until 100.000 people stayed in West Timor.¹⁸⁰

¹⁷⁷ *Ibid*

¹⁷⁸ East Timor-emergency update., 5 October 1999., in <http://www.converge.org.nz/pma/etunh-htm>

¹⁷⁹ UNHCR Protection of Refugees in Indonesia., page 3.

¹⁸⁰ *ibid*

Then 12 June 2001, Media Centere had listed the ex East Timor people from several region in Nusa Tenggara Timur (NTT), to determine their choices to remain in Indonesia or come back to East Timor. There was a registration datafor 113.794 people who had right to choose. The result were 115.540 people (98,02%) chose to stay in Indonesia, 1.250 (1,1%) chose to come back to East Timor, 713 (0,63%) abstain and 296 (0,26%) of registration letter were broken.¹⁸¹ UNHCR assisted the repatriation of the East Timor refugees for 127.500 people per 1999.¹⁸²

The logistic aid and medicine from the government of Republic of Indonesia to East Timor would stop in 31 August 2002, government would give the separation pay to the refugees. While UNHCR had already determined that 31 December 2002 as the deadline, the refugees still had choice whether they want to come back to East Timor or become the citizen of Indonesia.¹⁸³

Indonesia is one of the country which is not ratifying yet the 1951 Convention nor 1967 Protocol and has no mechanism to determine the status of refugee. So, UNHCR processes it by its own self every application of refugee status in Indonesia. Every asylum seeker will be interviewed accompanied by translator, giving the decision to accept the application of refugee candidate or not and gives the chance to each applicant to appeal if the application is refused.

¹⁸¹ *KompasI.*, "Indonesia Lebih Menjajikan Bagi Pengungsi Tim-Tim", Thursday, 14 Juni 2001.

¹⁸² United Nations., *Basic Facts about United Nations*, New-York, 2000., page 254.

¹⁸³ *Harian Ekonomi Neraca*, 27 July 2002., page 12.

For those who become refugees, UNHCR will look for the solution for them, which is the resettlement to another country. UNHCR works together with its partner, Church World Service (CWS) in giving the favor including in medical assistance for refugee and International Organization for Migration for taking care the travel document to third country, voluntarily repatriation and assisting the people to concern of UNHCR.

UNHCR and its partner is also trying to obtain the psycho-social need of refugee through counseling and home visiting. The service given by UNHCR and its partner to asylum seeker and refugee is for free.

The government of Indonesia supports this asylum process by allowing the asylum seeker to enter the territory of Indonesia, reference them to UNHCR and allowing them to stay temporary in Indonesia while waiting for the solution.

UNHCR is supporting the development of the national draft to assist the government of Indonesia in handling the flows of asylum seeker.¹⁸⁴ UNHCR actively supports the implementation of refugee law by the policy maker or legal drafter and also hold the seminar concerning the refugee law for the immigration officer, lawyer, Non Government Organization and students. 1951 Convention 1967 Protocol can be found in draft of Human Rights Bill 2004-2009. UNHCR is very supporting the effort of government's plan to ratify the 1951 Convention and 1967 Protocol.

¹⁸⁴ Harris, D.J., *Cases and Materials on International Law.*, Swett&Maxwell, London, 1998, page 58.

2.3 The Refugee Case in Port Merak and Tanjung Pinang Detention Center

We cannot ignore that a lot of bad tragedy also felt by the refugees in Indonesia. The United Nations defines a refugee as someone who is outside their country because of the existence of a fundamental fear of persecution, while asylum seekers are those who have not been classified as refugees. There are five basic to ask for protection: persecution based on race, religion, nationality, member of a particular social group or political opinion. People who fled from the political turmoil, famine or natural disasters cannot ask for refugee status.¹⁸⁵

In Indonesia, according to data released by the International Organization for Migration (IOM) there are approximately 2,000 refugees or asylum seekers. While the United Nations High Commissioner for Refugees (UNHCR) until October 26, 2009 stated that there are around 2107 refugees registered by UNHCR.¹⁸⁶ The refugees and asylum seekers are located in various detention centers, prisons or refugee camps. Most of them come from Afghanistan, Iraq, Sri Lanka and Burma. The conditions of refugess at detention center of Indonesia are very bad because they lived under the standard of health, insecure, isolated and not very suitable for children.¹⁸⁷

The refugees and asylum seekers do not have access to education, decent food, healthcare and clean water. They suffer from malnutrition, depression,

¹⁸⁵ Frances Nicholson & Patrick Twomey (ed/) *Refugee rights and realities - evolving international concepts and regimes*, Cambridge: Cambridge University Press, 1999. Page 77

¹⁸⁶ Stephen John Stedman & Fred Tanner (ed.) *Refugee manipulation - war, politics, and the abuse of human suffering*, Washington, D.C.: Brookings Institution Press, 2003. Page 98

¹⁸⁷ *ibid*

anxiety, skin diseases, vomiting and diarrhea.¹⁸⁸ They were also subjected to violence from Indonesian authorities. Beatings are common after any refugees or asylum seekers who escaped from prison. Persecution is interpreted as collective punishment of asylum seekers or refugees who are still in detention.¹⁸⁹

The Indonesian government has not signed the UN Convention On the Status of Refugees 1951 and Protocol on the Status of Refugees 1967. Although then Government of Indonesia itself has incorporated the conventions and protocols in the list of twelve international legal instruments that will be ratified in the period 2004 to 2009. This condition makes the handling of asylum seekers or refugees in Indonesia do not have a clear legal basis. Meanwhile, the perspective is well developed in the Department of Foreign Affairs, Office of Immigration Indonesia and also the mass media actually see the refugees or asylum seekers as illegal immigrants coming into Indonesia without the document.¹⁹⁰

The case with enough attention is the struggle for Tamil refugees who wanted to go to Australia. Australia became the main destination of the refugees because Australia has signed the UN Convention on refugees and seen as a country capable of providing welfare, peace and democracy for the refugees. In the middle of international waters they were intercepted by the Indonesian Navy and forced to rely on the Port of Merak. This happens after

¹⁸⁸ *ibid*

¹⁸⁹ Frances Nicholson & Patrick Twomey. *Op Cit*. page 112

¹⁹⁰ *ibid*

Australian PM, Kevin Rudd, directly call the President of Indonesia, Susilo Bambang Yudhoyono, asking Indonesia to hold the ship.¹⁹¹

They last about seven months in the port of Merak until finally forced to move to the House of Detention Tanjung Pinang. Since they are in Merak Port, coalition for refugees that is initiated by PRP (Working Peoples Association), the Confederation KASBI (Congress of Indonesia Unions Alliance), LBH (Legal Aid) and the Jakarta Legal Aid Foundation (Indonesia Legal Aid Foundation) build solidarity for the refugees. It is aided by popular movements from Australia, New Zealand, Malaysia, Filipinos, Canada, UK and many other nations.¹⁹²

During their stay in the Port of Merak, the refugees were experiencing intimidation and other forms of oppression. The action was carried out by IOM Indonesia and the Government of Indonesia (both the Navy, Department of Foreign Affairs and Immigration). Meanwhile, UNHCR Indonesia until now acting very slow and often broken promises to the refugees. One fatal incident was the death of one refugee named George Jacob Samuel Christin (29 years) on December 23, 2009.¹⁹³

On 22 December, Jacob started to vomit blood, but the IOM refused to give him medical attention. New on the date of December 23, 2009 around 10:00 when he began losing his eyesight, an ambulance was called by navy personnel. However, the ambulance arrived 4 hours later. After medical examination, Jacob released from the hospital at 17.30 even though he can

¹⁹¹ *ibid*

¹⁹² James C. Hathaway. *Lop Cit.* page 142

¹⁹³ *ibid*

not stand or walk. This is because the IOM is not willing to pay her medical expenses to stay in the hospital. IOM states do not have the funds to do so. Jacob was arrested several hours later and again vomited blood and some body parts that are not identified apart. IOM continues to refuse to take Jacob to the hospital where Jacob finally entered the stage of epilepsy and died. Only at the time the ambulance arrived, but it's too late for Jacob.¹⁹⁴

Apart from Merak Port, the refugees moved to the Detention Centre in Tanjung Pinang. Although they are not criminals, but they are basically confined in the prison which is funded by money from the people of Australia. More than 45 people were imprisoned in a cell measuring 6m x 18.25 m, including three toilets in it.¹⁹⁵ Women and children were separated from their husbands and fathers. This caused grief for many families because they cannot communicate with each other. Even women and children detained in a cell for 24 hours a day as all adult males. There are no playgrounds or adequate facilities for mothers and children. Such conditions would provide psychological impacts and long-term mental health. There have been people who suffer from depression and anxiety. They also doubted the quality of water, which is reported to yellowish, and uncomfortable water for toilets, bathing, and washing.¹⁹⁶

Thus, the practice in the field shows the failure of protection given by Indonesia toward refugee. From the case above still a lot of violation done by Indonesia done to refugee especially in Tanjung Pinang Detention Center

¹⁹⁴ *ibid*

¹⁹⁵ Sarah Kenyon Lischer, *Dangerous Sanctuaries*, Ithaca: Cornell University Press, 2008. Page 64

¹⁹⁶ *ibid*

Case. Persecution is still received and the condition of the detention is likely a prison where the refugees live in a cell including the child, it is not rehabilitating their trauma but only adding the psychological problem. The protection only limited in national legislation which is unclear without the ratification to the 1951 Convention and 1967 Protocol. Why it is unclear? Because Indonesia does not ratify the 1951 Convention, so there is no obligation to provide and guarantee the rights of refugees, that is why violence and persecution still appears. The conditions of refugees at detention center of Indonesia are very bad because they lived under the standard of health, insecure, isolated and not very suitable for children.¹⁹⁷

The refugees and asylum seekers do not have access to education, decent food, healthcare and clean water. They suffer from malnutrition, depression, anxiety, skin diseases, vomiting and diarrhea.¹⁹⁸ They were also subjected to violence from Indonesian authorities. The Government of Indonesia ask UNHCR to process the determination of refugee status for the asylum seekers. It makes the determination process will take so long time. For migrants who do not get the refugee status, they are possible to be considered as the illegal migrants and will be deported.¹⁹⁹

Ratification of the 1951 Refugee Convention and 1967 Protocol by the government of Indonesia is very important for the assurance of respect, fulfillment, and protection of human rights of refugees and asylum seekers. In

¹⁹⁷ *ibid*

¹⁹⁸ *ibid*

¹⁹⁹ Frances Nicholson & Patrick Twomey (ed/) *Refugee rights and realities - evolving international concepts and regimes*, Cambridge: Cambridge University Press, 1999. Page 94

addition, efforts to ratify international human rights instruments can be a solution to the impasse which is faced by the government in dealing with refugees and asylum seekers whose numbers continue to grow.

Step ratified the 1951 Refugee Convention and 1967 Protocol providing greater opportunity for the Government of Indonesia to be directly involved and contribute in accordance with national interests in the handling of refugees and asylum seekers. Refused to ratify the 1951 Refugee Convention and 1967 Protocol will hurt because the Indonesian Government alone cannot determine the status of refugees and asylum seekers. The decision on refugee status is being highly dependent on the decision of the UNHCR.

Determination of status by the government can ensure that asylum seekers are not used as cover for the flight of people who engage in criminal acts and crimes under international law.²⁰⁰ In addition, ratification also takes the opportunity for the Government of Indonesia to obtain assistance and international cooperation related to the strengthening of national capacities in the handling of refugees and asylum seekers. International cooperation will encourage the settlement of refugees and asylum seekers with a more comprehensive way. Thus, the burden of handling refugees and asylum seekers are not borne solely by our government, but also support the international community that moves on the issue of refugees and asylum seekers.

²⁰⁰ Stephen John Stedman & Fred Tanner (ed.) *Refugee manipulation - war, politics, and the abuse of human suffering*, Washington, D.C.: Brookings Institution Press, 2003. Page 135.

However with only a limited national legislation, Indonesia Government can stil violate it. Persecution still received by the refugees in detention center until nowadays.²⁰¹ They are still considered as illegal immigrant because of the emptiness of regulation to require someone to become refugee in Indonesia.

B. Obstacles faced by UNHCR and Government of Indonesia in Handling Refugee Problems.

There are some obstacles faced by the Government of Indonesia in its effort to repatriate the boat people to their country of origin. Those obstacles were coming from the refugee itself, their country of origin and UNHCR. The boat people thought that their country of origin would not accept them again because they already considered as the betrayer for instance they who came from the ex military corps and police. The limited financial resources of UNHCR as the fee to return the boat people was also becoming the problem beside the complicated administraton settlement.²⁰²

The reaction of the boat people to refuse tobe repatriated usually caused by fear of being captured again and treated negatively in their country of origin. Some of them worry about their future because in they do not have anything again in their country of origin so that is why they want to find job in abroad especially in the third state. Other interesting thing is some of them

²⁰¹ The State of the World's Refugee in <http://www.unhcr.ch/pubs/sowr2000/intro.pdf>

²⁰² Special Report: Comprehensive Plan of Action: *The Indo-Chinese Exodus and the CPA*, UNHCR

enjoying the assistance of UNHCR because they already live in refugees camps for long time, and some of them are succeed in third world state.²⁰³

The other obstacles faced by UNHCR and government of Indonesia in handling the refugee problem in Indonesia are:²⁰⁴

The stance of Government of Indonesia to still not ratify the 1951 Convention and 1967 Convention makes the determination of Refugee status is only beared by UNHCR, so it will take so long time and also by not ratifying this, Indonesia does not have the clear instrument to specificcally protect the refugee it self because of without ratification Indonesia is not bound into any obligation to protect and fulfill all of the rights of the refugees. With this condition, a lot of violation appears toward refugee in Indonesia. That is why ratification of 1951 Convention and 1967 Protocol are necessary to protect refugees in line with the protection of human rights and International Law.²⁰⁵ The Government of Indonesia also cannot obtain assistance and international cooperation related to the strengthening of national capacities in the handling of refugees and asylum seekers. International cooperation will encourage the settlement of refugees and asylum seekers with a more comprehensive way. Thus, the burden of handling refugees and asylum seekers are not borne solely by our government, but also support the international community that moves on the issue of refugees and asylum seekers. Without any clear regulation, it creates also the confuse of apparatuces in handling refugees, some of them treat them

²⁰³ *Ibid*

²⁰⁴ <http://arwanblack74.blogspot.com/2011/03/unhcr-dan-pengungsi-di-indonesia.html>

²⁰⁵ *Membaca Fenomena Pengungsi dan Pencari Suaka*. www.politikana.com

as criminal by entering Indonesia Territory illegally without any identity, so that is why a lot of violation and persecution happened. This creates another problem, because of the refugee cannot stand to live in Indonesia and immediately want to be placed in third country.²⁰⁶

C. The Appropriateness of Protection of Indonesia with International Law.

From all of the explanation related to the role of Indonesia in handling refugees cases, since refugees in Galang Island until the case in Detention Center, the protection of Indonesia is still far away from the appropriateness with the International Law.

Good treatment which is free from any persecution and good place to maintain them is remain abandone. Persecution is still received and the condition of the detention is likely a prison where the refugees live in a cell including the child, it is not rehabilitating their trauma but only adding the psychological problem. The protection only limited in national legislation. so there is no obligation to provide and guarantee the rights of refugees, that is why violence and persecution still appears. The conditions of refugess at detention center of Indonesia are very bad because they lived under the standard of health, insecure, isolated and not very suitable for children.²⁰⁷

More than 45 people were imprisoned in a cell measuring 6m x 18.25 m, including three toilets in it.²⁰⁸ Women and children were separated from their husbands and fathers. This caused grief for many families because they cannot communicate with each other. Even women and children detained in a

²⁰⁶ Special Report. *Op Cit.*

²⁰⁷ *ibid*

²⁰⁸ Sarah Kenyon Lischer, *Dangerous Sanctuaries*, Ithaca: Cornell University Press, 2008. Page 64

cell for 24 hours a day as all adult males. There are no playgrounds or adequate facilities for mothers and children. Such conditions would provide psychological impacts and long-term mental health. There have been people who suffer from depression and anxiety. They also doubted the quality of water, which is reported to yellowish, and uncomfortable water for toilets, bathing, and washing.²⁰⁹

The refugees and asylum seekers do not have access to education, decent food, healthcare and clean water. They suffer from malnutrition, depression, anxiety, skin diseases, vomiting and diarrhea.²¹⁰ They were also subjected to violence from Indonesian authorities. The policy of Government of Indonesia by not ratifying them is also not respecting the contribution and willingness to protect the refugee based on International Law.

UNHCR in Indonesia mostly work alone without the assistance of government of Indonesia, it creates the difficulty of UNHCR to determine and grant the status of refugees and it takes so long time to grant it.

CHAPTER IV

²⁰⁹ *ibid*

²¹⁰ *ibid*

CONCLUSION AND RECOMMENDATION

A. Conclusion

1. Protection for refugees given by Indonesia.

The protection of Government of Indonesia is only limited in enacting national legislation. Those are:

1. The 1945 Constitution article 28 G (2)
2. The Law no. 37/1999 was enacted in 14 September 1999
3. Law No 39/1999 related to Human Rights in article 28:1 and article 28:2

But the protection of the rights of refugees and asylum seekers still remain unclear without ratification of 1951 Convention and 1967 Protocol. Indonesia is not bound into obligation to fulfill the rights of refugee, such as: article 33 stipulates that "no Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". Other provisions deal with such rights as access to courts, education, social security, housing and freedom of movement. Indonesia does not fulfill those rights because of the lack of determination system to grant the status refugees which makes the alien comes to Indonesia considered as illegal immigrant which must be detained than deported.

2. Obstacle of Indonesia in facing refugees case.

The Government of Indonesia is also facing the obstacles. Indonesia has no determination system to grant the status of refugees, it makes Indonesia cannot together with UNHCR to grant the status of refugees. It is beared only by UNHCR and it takes so long time. It makes Indonesia consider the alien coes to Indonesia without identity be considered as illegal immigrant who must be detained and be returned.

3. Appropriateness of protection given by Indonesia with International Law.

In the practice the violation toward refugee is often happening to the refugees in detention center, because they are considered as criminal by entering the territory of Indonesia without identity. So that is why a lot of refugee cannot stand to live in Indonesia and it creates another obstacle because of they want to be moved immediately to third world country.

We can conclude that the protection of Indonesia is not yet appropriate with International Law especially by not ratifying 1951 Convention and 1967 Protocol and disgracing treatment toward refugees in Indonesia.

B. RECOMMENDATION

From those facts shown in this thesis related to the action of Government of Indonesia in respecting law of refugees, there would be more respectful if Government ratifies the 1951 Convention relating the Status of Refugees and 1967 Protocol. So Indonesia will have the mechanism to determine the status of refugees and make a teamwork with UNHCR in doing that. Indonesia also

can protect the refugee rights to show the effort to International world in the effort of upholding the human rights enforcement.



BIBLIOGRAPHY

BOOKS

Verri, Pietro., Dictionary of the International Law of Armed Conflict, International Committee of the Red Cross, Geneva 1992.

Kate Jestrarn and Marilyn Achiron, *Refugee Protection: A Guide to International Refugee Law*.

UNS, *Human Rights dan Refuges*, Fact Sheet No. 21, Centre for HumanRights United Nations Office at Geneva, 1993.

UNHCR, *The State of the World's Refugees: 50 years of Humanitarian Action*, Oxford University Press, 2000.

Achmad Romsan, Usmawadi, M. Djamil Usamy, Mada Apriandi Zuhir. *Pengantar Hukum Pengungsi Internasional: Hukum Internaional dan Prinsip-Prinsip Perlindungan Internasional*. Percetakan Sanic Offset, Bandung. 2003.

Joly, Daniele., *Heaven or Hell: asylum policies and refugee in Europe*, London: Macmillan Press, 1996.

J.G Starke, *Introduction to International Law*, ninth edition, London, Butterwrths, 1984, page 17)

Boer Mauna., *HUKUM INTERNATIONAL Pengertian, Peranan dan Fungsi Dalam Era Dinamika Global.*, Alumni, Bandung, 2000.

Goodwin-Gill, Guy, *The Refugee in International Law*, 2nd edition, Oxford University Press, 1996.

Proudfoot, Malcolm J., *European Refugees: A Study in Forced Migration Movement*, London: Faber&faber Ltd, 1957.

Mochtar Kusumaatmadja, *Pengantar Hukum Internasional: Buku I-Bagian Umum*, First edition March 1976, Penerbit Bina Cipta Bandung.

UNS, *Human Rights and Refugees*, Fact Sheet No. 21, Centre for Human Rights United Nations Office at Geneva, 1993.

UNHCR, *The State of the World's Refugees: 50 years of Humanitarian Action*, Oxford University Press, 2000.

UNHCR, special Report, *Comprehensive Plan of Action, The Indo-Chinese Exodus and the CPA*, Public Information Center UNHCR, Switzerland, 1996.

United Nations, *Human Rights, International Instrument: Chart of Ratification as at 31 December 1996*, United Nations, New York and Geneva, 1997.

An-Na'im, A. (1990) *Towards and Islamic Reformation: Civil Liberties, Human Rights and International Law*. Syracuse: Syracuse University Press.

Abu-Salieh, S. A. (Spring 1996) 'The Islamic Conception of Migration'. *International Migration Review*.

Mirbagheri, F. (2006) 'Islam and Humanitarian Values'. *Refugee Survey Quarterly*. 21(3).

Arnaout, G. M. (1987) *Asylum in the Arab-Islamic Tradition*. Office of the United Nations High Commissioner for Refugees, International Institute of Humanitarian Law, Geneva.

Eickelman, D. F., and Piscatori, J. (eds). (1990). *Muslim Travellers: Pilgrimage, Migration, and the Religious Imagination*. New York: Routledge.

Human Rights and Refugees, Human Rights Fact sheet No. 20, Printed at United Nations, Geneva, 1994

Stephen John Stedman & Fred Tanner (ed.) *Refugee manipulation - war, politics, and the abuse of human suffering*, Washington, D.C.: Brookings Institution Press, 2003

Arthur C. Helton *The price of indifference - refugees and humanitarian action in the new century*. Oxford: Oxford University Press, 2002.

Frances Nicholson & Patrick Twomey (ed/) *Refugee rights and realities - evolving international concepts and regimes*, Cambridge: Cambridge University Press, 1999.

Zolberg, Astride. R., Suhrke, Astri & Aguayo, Segio, *Escape From Violence Conflict and the Refugee Crisis in the Developing World*, Oxford University Press, 1989.

United Nations., *Basic Facts about United Nations*, New-York, 2000.

Harris, D.J., *Cases and Materials on International Law.*, Swett&Maxwell, London.

United Nations, *Briefing Papers for Students "We the Pople" The role of the United Nations in twenty-first century.*, New York, 2001, page 231.

Sarah Kenyon Lischer, *Dangerous Sanctuaries*, Ithaca: Cornell University Press, 2008

Jan Becka, 1995, *Historical Dictionary of Myanmar*, London: Scarecrow Press.

ARTICLES AND JOURNALS

Arie J. Kumaat, *Vietnamase Boat People on Galang Island*. Paper, on 30 July 1989.

Training Module RLD 1 June 1992 UNHCR, *An Introduction to the International Protection of refugees*.

Kompas., "Indonesia Lebih Menjajikan Bagi Pengungsi Tim-Tim", Thursday, 14 Juni 2001.

Harian Ekonomi Neraca, 27 July 2002.

Zaat, Kirsten (2007) 'The Protection of Forced Migrants in Islamic Law'. *UNHCR New Issues in Refugee Research*. Research Paper No. 146.

The Economist, 1-7 Desember 2007, *Myanmar's Rohingyas*, e-book edition, <http://ifile.it/7izate/the.economist.-.2007-12-01.pdf>

LEGISLATIONS

1951 Convention

Universal Declaration of Human Rights

Cartagena Declaration 1984

UNHCR Statute

Protocol Relating to the Status of Refugees of 31 January 1967

OAUConvention

Convention Governing the Specific Aspects of Refugees Problems in Africa year 1969.

European Agreement on the Abolition of Visas for Refugees (ETS no 031) entered into force April 9 1960

Charter of the United Nations and Statute of the International Court of Justice, United Nations, New York, 1994.

The Geneva Conventions of August 12, 1949, International Committee of the Red Cross, ICRC Publication

1954 Convention

Protocol Additional 1977

United Nations Declaration on Territorial Asylum

Council of Europe. *The European Convention on Human Rights.*, 1996
European Agreement on the Abolition of Visas for Refugees (1959) entered into force April 9, 1960.

European Agreement on Transfer of Responsibility for Refugees (1980)

Basic Consideration of the Agreement of the European Agreement on Transfer of Responsibility for Refugees (1980)

Resolution No 14/1967

Recommendation No. R (1981) 16 on the harmonization of national procedures relating to asylum.

Recommendation No.R (1984) 1 on the protection of Persons satisfying the Criteria in the Geneva Convention who are not Formally Recognized as Refugees.

Dublin Convention 1990

United Nations General Assembly Resolution 428 (V), 14 December 1950.
United Nations Charter 1945.

Resolution of United Nations General Assembly No 2200 A (XXI) and used of force in 3 January 1976.

ICCPR

ICESCR

1945 Constitution

Law No. 1/1979 article 5:1 regarding Extradition

Law No 37/1999 related with International Relation

Law No.39/1999

INTERNET

The State of The World's Refugee in
<http://www.unhcr.ch/pubs/sowr2000/intro.pdf>.

Gilbert Jager., "On the History of the International protection for refugees.
Page:727 in:
<http://www.ICRC.org/Web/EngsiteengO.nsf/iwpList128/5BA471F787461F15C1256>

Gilbert Jaeger., "On the History of the International Protection of Refugees",
ICRC September 2002 Vo. 83 No. 843, page 279 in
<http://migration.ucc.ie.htm/B6600608ACF>

<http://www.org/peace/etimor99/etimor.htm>

<http://arwanblack74.blogspot.com/2011/03/unhcr-dan-pengungsi-di-indonesia.html>

<http://dc233.4shared.com/doc/cPxKebtk/preview.html#1>

UNHCR's Protection Mandate in <http://www.unhcr.2001/mandate.pdf>

Special Report: Comprehensive Plan of Action: *The Indo-Chinese Exodus and the CPA*, UNHCR in <http://www.unhcr.ch/refworld/legal/handbook/handeng/hbforewo.htm>

Malcolm J. Proudfoot, *European Refugees: 1939-1952 A Study in Forced Migration Movement*, London: Faber & faber Ltd, 1957, quoted in:
http://migration.ucc.ie/immigration/what_is_a_refugee.htm

United Nations High Commissioner for Refugees (UNHCR)-History of Organization, in: http://migration.ucc.ie/immigration/what_is_a_refugee.htm

http://www.unhcr.ch/refworld/legal/instrument/asylum/cart_eng.htm

<http://www.law-enforcement-forum.dk>

Handbook& UNHCR in: http://www.unhcr.ch/refworld/legal/handbook_of_UNHCR/handeng/hbfore-wo.htm.

<http://www.fh.fulda.de/iceus/ipw/2-asylum.htm>.

The State of the World's Refugee in
<http://www.unhcr.ch/pubs/sowr2000/intro.pdf>

www.unhcr.org

www.unhcrglobalreport.htm

UNHCRT's Protection Mandate in <http://www.unhcr.2001/mandate.pdf>

Galang Island, Vietnamese refugess Camp. http://www.Vietnamese_refugees.com

<http://www.culturalbridge.com>

<http://www.org/peace/etimor99/etimor.htm>

East Timor Refugees., in <http://www.converge.org.nz/pma/etunh-htm>

Human Right Watch, *History of the Rohingya People*,
<http://www.hrw.org/reports/2000/malaysia/maybr008-01.htm>

Amnesty International, *Myanmar, The Rohingya Minority: Fundamental Rights Denied*.

<http://web.amnesty.org/library/Index/ENGASA160052004?open&of=ENG-MMR>

Kompas, 11 Februari 2009, *Thailand Setuju Usul RI soal Pengungsi Rohingya*,
<http://internasional.kompas.com/read/xml/2009/02/11/15510877/Thailand.Setuju.Usul.RI.Soal.Pengungsi.Rohingya>

DICTIONARY

Kamus Besar Bahasa Indonesia, Edisi Kedua, Department of Education and Culture, Balai Pustaka, 1995.

HOLLY QUR'AN