

# ICOHS 2018

**The 2<sup>nd</sup> International Conference  
on the Humanities, Social Sciences and Sustainability**

**September 1-2, 2018  
Hotel Sunroute Plaza Shinjuku  
Tokyo, Japan**

**ISSN: 2433-3581**



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# DOMESTIC REFUGEES; A Globally Neglected Problem<sup>1</sup>

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The emergence of domestic refugees (internally displaced persons hereafter abbreviated as IDPs) has long existed since the end of the cold war. In the 1980s and 1990s, the number of internally displaced people has increased dramatically in many parts of the world. Among the basic reasons and causes that caused the mass evacuation were civil wars and other social conflicts. It is not known exactly how many people are forced to evacuate, but the figure of 20-25 million is an estimate that illustrates how big the issue is. This figure is a terrific spike over the last fifteen years. The spread is even wider, if it had existed only in some African countries, now are in more than forty countries.<sup>3</sup>

The point to consider in the context of these refugees is the nature of events which perceived as dangers that cause anxiety or fear because those are considered to threaten the security or safety of those who avoid themselves from it. In this case it is distinguished between events, dangers or calamities that are natural events such as volcanoes, earthquakes, floods, or droughts and which are human made disasters such as armed conflict, international or internal, oppression or disorder perpetually perpetrated by a ruler or a particular group of persons in the country concerned, for example because of race, color, ethnic origin, religion, social class or political opinion of persons subject to such persecution or interference.<sup>4</sup> The definition of refugees contained in the Convention on Refugee Status 1951, the Protocol on Refugee Status of 1967 and Cartagena Declaration of 1984 all mean refugees as activities that cross international or interstate boundaries. However, if refugees do not cross national borders, they will not receive international protection. This requires further discussion of the protection of domestic refugees. The term Internally Displaced Persons has not been very common in Indonesia. The public often experiences confusion of refugee terms with refugees, asylum seekers or migrants / migration. In Indonesia, as of May 2001 there were 1,305,690 (one million three hundred five thousand six hundred and ninety) internally displaced persons scattered from Aceh to Papua. The largest number is in Maluku (300,091 inhabitants) and the smallest in South Sumatra (1700 inhabitants). This illustrates that no single province in Indonesia is sterile

<sup>3</sup> Anonim, 2002, *Pengungsi Kita - Our Refugees*, Suplemen Yayasan Aksara pada Majalah Tempo edisi Juni 2002, pp. 89-89.

<sup>4</sup> Emmy Soeprapto, 2000, *Prinsip-prinsip Dasar Hukum Pengungsi Internasional - Basic Principles of International Refugee Law*, a paper in a seminar of International Law of Refugees, Faculty of Law, Surabaya University and UMHCE, Surabaya.

from internally displaced persons. This fact places Indonesia in 6th out of 40 countries that have conflicted Internally Displaced Persons.<sup>5</sup>

Before the 1990s the handling of IDPs was not on the agenda of the United Nations (UN) because IDPs were residents of conflict areas who were forced to move to other areas still within the jurisdiction of the State. Thus, IDPs are under the concept of State sovereignty. Therefore, no UN body has a statutory mandate to address IDPs.

Many international experts argue that IDPs are in a more difficult and dangerous situation than refugees, in the case that they are in a jurisdiction of a State that is unable or less committed to protecting them. Therefore, this paper will explain the protection of Internally Displaced Persons under humanitarian law and human rights.

### 1. Definition of armed conflict according to humanitarian law

Under humanitarian law<sup>6</sup>, armed disputes are divided into two, namely international armed conflict and non international armed conflict. The definition of international armed conflict occurs when it involves two or more countries. As an extension of the definition of international armed conflict is contained in the Additional Protocol I of 1977 which provides that this Protocol applies to the situation of interstate war but also in armed conflict between a nation against Colonial Domination, Alien occupation and Racist Regimes known as CAR conflicts.<sup>7</sup>

The definition of non-international armed conflict is provided for in Article 3 of the concurrent provisions and Additional Protocol II of 1977. In this Additional Protocol II there is no definite definition of non-international armed conflict, but in essence is a dispute between the State on the one hand and entity other than State.

Within these limits, non international armed conflict can be viewed as a situation where there is a battle between the armed forces and organized armed groups within the territory of a country. Another possibility is an event in which armed factions fight each other without involving a legitimate government.

<sup>5</sup> Hena Susetya, 2004, Kebijakan Penanganan IDPs di Indonesia dan Dunia Internasional - IDPs Handling Policy in Indonesia and International World, Jurnal HI, Vol.2 No.1 Okt., p. 148

<sup>6</sup> *Ibid.*, p.31

<sup>7</sup> Arina Permainasari (et.al), 1999, Pengantar Hukum Humaniter - Introduction to Humanitarian Law, Jakarta ICRC, p. 139



In an armed conflict it will surely inflict both casualties on both combatants and civilians. Combatants are people who actively participate in combat and civilians are people who are not involved in combat<sup>8</sup>.

## 2. The Definition of Refugees

Based on the factors of causes, refugees are divided into two, namely, refugees caused by natural events (natural disaster) and refugees caused by human actions (human made disaster)<sup>9</sup>. According to Sulaiman Hamid, the definition of refugees is a person who is forced to sever relations with his home country because of the fear of being persecuted and unable to return.<sup>10</sup> For refugees (transborder migrant), they have been protected by an international juridical instrument that defines the rights of refugees in general as well as guarantee of minimum standardized treatments of refugees that is contained in the 1951 Convention Relating to the Status of Refugees (CRSR) The 1967 Protocol.

As for the domestic refugees there is no specific regulatory convention regarding its protection. The notion of domestic or internal refugees is:

Persons or groups of persons who have been forced or forced to flee or to leave their homes or places where they formerly lived, mainly as a result of or in order to avoid the effects of armed conflict, vulnerable situations characterized by the number of violent acts in general, human rights violations, natural disasters, or human-caused disasters, and they do not cross the internationally recognized borders of the State.<sup>11</sup>

## 3. Protection of internally displaced persons under the Internal Displacement Principles

To fill the void in the international protection system, the UN has issued guiding principles or referred to as Guiding principles on Internal Displacement. This principle was put forward by Francis M. Deng, United Nations Representative for domestic refugee affairs, at the United Nations conference on Human Rights in 1998. This principle is established under international humanitarian law instruments and human rights law as an international guideline for governments and international agencies working in the areas of aid, protection and service for

<sup>8</sup> Haryomatarah, 2005, *Pengantar Hukum Humaniter - Introduction to Humanitarian Law*, Jakarta : PT Rajagrafindo Persada, p. 73

<sup>9</sup> Irawati Handayani, 2002, *Perlindungan Terhadap Pengungsi Domestik (Internally Displaced Persons) Dalam Situasi Bersenjata Internal Menurut Hukum Internasional - Protection of Internally Displaced Persons in Internal Armed Dispute under International Law*, Bandung : Jurnal HI UNPAD, vol. 1 no. 2, p. 158.

<sup>10</sup> Sulaiman Hamid, 2002, *Lembaga Suaka dalam Hukum Internasional - Asylum Institution in International Law*, Jakarta: PT Rapi Grafindo Persada, p. 47

<sup>11</sup> Office for Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement*, 2001.

internally displaced persons. The entry and proximity of human rights with humanitarian law lies in the meaning of humanitarian, so violation of humanitarian law is the same as gross violation of human rights. Humanity is related to the feelings or mental attitudes of a human or sentiment of active goodness towards mankind.<sup>12</sup>

According to its ontology, human rights are the rights possessed by human beings acquired and brought together with their birth or presence in social life because it has a privilege that may opens the possibility for them to be treated according to that privilege.<sup>13</sup> In general, the Human Rights Law also provides protection to all persons without any adverse distinction. It can be said that human rights apply in times of peace while humanitarian law applies at the time of armed conflict, but essentially human rights remain in force even at the time of armed conflict.<sup>14</sup> Humanitarian law has a relationship with human rights law. There is a common goal of both protecting human and individual rights in all situations. The Human Rights Law aims to guarantee the civil, political, economic and cultural rights of everyone to be respected at all times to ensure that they are fully developed within their communities and where necessary to protect them against the abuse of responsible authorities. Whereas humanitarian law is intended to guarantee and preserve the basic rights of combatants and civilians in armed conflict.<sup>15</sup> The Guiding Principles on Internal Displacement is not a legally binding document, but these principles have reflected and are consistent with international human rights and humanitarian law. These principles consist of 5 parts and 30 principles. These sections are:

- a. General principles
- b. Principles relating to humanitarian aid
- c. Principles related to repatriation
- d. Principles relating to general humanitarian aid
- e. Principles related to repatriation, resettlement and reintegration

#### 4. Protection of Domestic Refugees

According to Humanitarian Law and Human Rights are believed to have universal value which means no borders and time. This universal value is then translated into various national legal products in various countries to protect and uphold human values. Even this universal value is confirmed in international instruments, which are; International Covenant on Civil and political

<sup>12</sup> Masyur Effendi, 2005, *Perkembangan Dimensi Hak Asasi Manusia - The Development of the Human Rights Dimension*, Jakarta : Ghala Indonesia, p. 190

<sup>13</sup> Theo Huljbers, 1990, *Filosof Hukum - Philosophy of law*, Yogyakarta : Penerbit Kanisius, p. 96

<sup>14</sup> Arina Permainasari dik., 1999, *Pengantar Hukum Humaniter - Introduction to Humanitarian Law*, Jakarta : ICRC, Jakarta, p. 334

<sup>15</sup> CD. Rover, *To Serve and To Protest : Universal Reference of Human Rights Enforcement - Action Universal Penegakan HAM*, PT Raja Grafindo, Jakarta, 1998, p. 136

rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, and so forth.<sup>16</sup>

This issue of international human rights protection is well regulated in international human rights law which specifically regulates the protection of individuals and groups from gross human rights violations committed by government officials.<sup>17</sup> Human rights protection can be done in times of peace and armed conflict. The United Nations efforts to raise the issue of special protection for women and children during armed conflict by issuing the Declaration on the Protection of Women and Children in Emergency and Armed Conflict. This declaration refers to international armed conflict and only regulates criminal offenses against children, but has not yet contained the concept of gender based violence.<sup>18</sup>

As far as refugee protection relates to situations of armed conflict, there are several principles as follows:

- a. Protection against arbitrary refugees is the right of everyone (principle 5 verse 1) in conformity with article 14 paragraph 1 of Protocol II of 1977
- b. Exceptions may be made in situations of armed conflict when it comes to the security of civilians or for imperative military reasons (principle 6, verse 2b) as mentioned in Article 17 paragraph 1 of Protocol II of 1977
- c. The evacuation must end in no more time than expected by circumstances
- d. Displacement should not be done in a way that violates the right to life, honor, freedom and security of the persons concerned. During displacement, the refugees will have some protection. Some protection principles for IDPs during evacuation include:<sup>19</sup>
  - 1) Protection of the right to life (principle 10),
  - 2) Protection of dignity and physical, mental and moral integrity (principle 11)
  - 3) Protection of independence and personal security (principle 12)
  - 4) Protection of recruitment, determination or permission to children to take part in armed conflict (principle 13)
  - 5) Protection of freedom of movement and freedom to choose shelter (principle 14)

<sup>16</sup> Hikmahanto Juwana, *Empowerment of Legal Culture in the Protection of Human Rights in Indonesia; Human Rights in Perspective of International Legal System (Pemberdayaan Budaya Hukum Dalam Perlindungan HAM di Indonesia; HAM Dalam Perspektif Sistem Hukum Internasional)*, in Mulyadi, 2005, *Human Rights, Nature, Concepts and Their Implications in the Perspective of Law and Society (Hak Asasi Manusia: Hakikat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat)*, Bandung: Refika Aditama, p. 70.

<sup>17</sup> Boer Mauna, 2005, *International Law Understanding Rules and Functions in the Era of Global Dynamics (Hukum Internasional Pengertian Peraturan dan Fungsi Dalam Era Dinamika Global)*, Bandung: Alumnus, hlm. 534

<sup>18</sup> Wiwiek Setyawan, *Wanita dan Konflik Bersenjata – Women and Armed Conflict*, in Achis Suddarti Luhuma, 2000, *Pemahaman Bentuk-Bentuk Tindakan Kekerasan Terhadap Perempuan dan Alternatif Pemecahannya – Understanding Forms of Violence Against Women and Alternative Solutions*, Bandung: Alumnus, p.164

<sup>19</sup> Enny Soerprapto, *Review and Legal Protection Toward Internally Displaced Persons in Aceh Conflict*, delivered in a Nationwide Seminar "Military Emergency in Aceh Viewed from Various Aspects of International Law", held by Pusat Studi Hukum Humaniter dan HAM, Faculty of Law, Universitas Trisakti, Jakarta 1 Juli 2003.



- 6) Protection of the right to seek safety in other parts of the country and to protect against forced returns to settlements or to any place which endangers life, safety and or health (principle 15);
- 7) Protection of the right to know the fate and whereabouts of the missing family (principle 16)

Theoretically, when a person becomes a domestic refugee he/she still receives a guarantee of his/her basic rights as people who are in another territory within the same country. In practice, however, displacement has resulted in the diminishing or inadmissibility of basic rights as a human being. Theoretically, when a person becomes a domestic refugee he/she still receives a guarantee of his/her basic rights as people who are in another territory within the same country. In practice, however, displacement has resulted in the diminishing or inadmissibility of basic rights as a human being. This condition is very vulnerable to the violation or non-protection of their basic rights. Some of the safeguards that should be given to domestic refugees are:

#### a. Non-discrimination

The concept of equality before the law, equality of protection in the law, and the principle of non-discrimination is at the core of international human rights law and has been incorporated in the UN Charter. Prohibition of discrimination is very important in the circumstances of armed conflict both internally and internationally. It is important for domestic refugees to receive guarantees under an instrument of humanitarian law, that any person who is not actively involved in the war includes members of the armed forces who are no longer active in warfare should be treated humanely without any distinction.

In Guiding Principles on Internal Displacement, Principle 1 states that domestic refugees are protected and recognized to have full equality, freedom rights guaranteed by international and national law, just like other persons in their country and they should not be discriminated against in obtaining their rights and freedom on the grounds that they are domestic refugees. This principle expressly states that domestic refugees should be treated fairly and without distinction of any kind and should be guaranteed all their rights given the conditions of those who are particularly vulnerable to human rights violations.

#### b. Violence (violence)

The personal safety of domestic refugees in displacement is usually very vulnerable, especially if they move from their place of origin to refugee camps and after they have lived in evacuation camps. In some countries of the world these domestic refugees have been victims of mass murder and even executions outside of court decisions. Domestic refugees usually get a direct effect from armed conflict, but they also get assurances from violations under human rights law and humanitarian law. The collateral is non derogable rights, such as the right to live primarily



for refugees in their armed conflict should be protected as part of the civilian population, guarantees of prohibition against murder, torture, cruel and degrading treatment human and guarantees for prohibition of forced to move places.

Violence usually occurs in women, both children and adults. They can be victims of rape or other forms of sexual assault. It is expressly stated by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that violence against women is a violation of various rights guarantees under international law and international conventions on human rights.

### c. Basic needs

The necessities of life needed for everyone, especially for domestic refugees, are divided into two parts: the need for adequate food, water, clothing and shelter and the need for adequate health and sanitation coverage.

In international arrangements there is a provision which provides a guarantee that a person is entitled to obtain those needs, which are contained in Article 11 (1) of the International Covenant on Economic, Social Rights (ICESR) stating: States recognize the right of everyone to a standard of living for him and his family including clothing, food and shelter. This provision has also been previously stipulated in Universal Declaration of Human Rights (UDHR) 1948, Article 25 which states that everyone is entitled to an adequate standard of living for the health and welfare of himself and his family.

In purely material terms the normal of living standard can be interpreted as a way of maintaining a level of life above the poverty line. The realization of human rights clearly demands the abolition of poverty around the world as depicted in the four freedom address in 1941 which later became one of the inspirations of the UDHR of 1948 as well as other human rights provisions.

In situations of internal armed conflict there is a standard setting that requires the fulfilment of one's basic needs, especially domestic refugees. Article 3 of the 1949 Geneva Convention provides for the humane treatment of every person, especially domestic refugees or other civilians who are not actively involved in the war. Article 3 of the Geneva Convention is considered to have a unique position for two reasons. Firstly because its position is regarded as a mini convention, the latter is the only article in the Geneva Conventions aimed at non-international armed conflicts.<sup>20</sup>

While in Protocol II there are more detailed provisions that can be applied to domestic refugees and other residents due to armed conflict. Article 14 prohibits starvation of civilians as a means

<sup>20</sup> Ane Siswanto, 2005, *Yurisdiksi Material Mahkamah Pidana Internasional - Material Jurisdiction of the International Criminal Court*, Jakarta : Ghalia Indonesia, p. 85

of war. For these purposes it is prohibited to attack, destroy the move or render useless objects that are indispensable to the survival of civilians such as foodstuffs, agricultural areas for the production of foodstuffs, the installation of drinking water and irrigation buildings. Specifically with respect to domestic refugees, Article 18 of the Guiding Principle on Internal Displacement regulates the right to an adequate standard of living and under no circumstances shall domestic refugees be entitled to: basic food and clean water, proper shelter or basic housing, feasible and important health and sanitation services.

d. Protection against freedom of movement (freedom of movement)

The protection of freedom of movement and abiding within the borders of each State is contained in UDHR of 1949 Section 13 and Covenant on Civil and Political Rights 1966 (ICCPR) Article 12 paragraph (1). It is stated that any person legally in the territory of a State shall have the right to freely move within the territory and be free to choose his residence.

Getting a safe place for refugees is one of the rights that can not be separated from the right to freedom of movement. There are indeed restrictions on this right that most international and regional human rights instruments allow, by reason of situations of internal tensions and unrest, and the conditions of disasters. This will certainly limit the guarantees given by human rights law against the rights in question.

e. Personal Right

Legal protection for refugee property is inadequate. Although in UDHR Article 17 there is a guarantee of every person to own his property and possessions not to be looted arbitrarily, but further elaboration is not contained in the ICCPR or ICESR. In Guiding Principles on Internal Displacement Principle 23 (2) there is a guarantee that the property and property of refugees should be protected from action,

looting, attacks or other intentional acts of violence, used to shield military operations or targets, be subjected to revenge, destroyed or seized in a way to punish the public.

f. Education

In reality domestic refugees, especially refugee children do not get the right to education. This can be attributed to the absence of educational facilities at shelters or even the elderly are unable to afford to support the school and supporting equipment for school. Human Rights and Humanitarian Law recognizes that children have the right to receive basic education even under conditions of internal tensions and unrest or internal armed conflict conditions. The right to education is guaranteed in Article 13 of the ICESR and Article 28 and Article 29 of the Convention on the Rights of the Child. Basically the right to education is

acceptable to domestic refugees under any circumstances, as set forth in Article 23 of the Guiding Principle.

g. Documentation and Personal Identity

The displaced people that caused by armed disputes are often in a state of fear, in a hurry and the only thing that comes to mind is to save themselves and the family. This is why the refugees usually lose their letters and personal documentation. Usually at the shelter is done registration for recording data and facilitate family reunification (family reunification). However, many domestic refugees did refuse to register for reasons of recording and granting refugee status are feared to be discriminatory. So the result of refugees who do not register themselves do not get legal protection as the one having the identity card.

h. Reunification

International law recognizes that the family is a basic part of a society that needs special protection. Examples of the arrangements are contained in Article 16 paragraph (3) UDHR 1948 and Article 23 paragraph (1) of the ICCPR stating that the family is a natural and fundamental unity of society and entitled to protection from society and the state.

In the internal armed conflict situation, Article 4 paragraph (3) of Additional Protocol II provides that children should receive care and assistance attention they need and in Article 4 paragraph (3) b declare that all appropriate measures should be taken to facilitate reunification families that are temporarily separated. Guiding Principle Principle 17 also states that separated family members due to displacement should be reunited immediately and this effort should be facilitated by the authorities.

In regard of refugees it is recognized the need for special protection and treatment in accordance with Article 44 of the Geneva Convention of 1949 and Article 73 of Additional Protocol I of 1977. In armed conflict refugees are persons protected in parts I and II of Convention IV in all circumstances and without distinction which is harmful.

Law Enforcement (socialization, sanction)

Although international and domestic refugees are distinguished, both are victims of a dispute. As mentioned before, no one wants to be a refugee. Refugees are people who are forced to leave home and their homeland because of social conflict, especially armed conflict. Therefore, the main problem of refugees is how to survive in a new place temporarily, whether for a while or longer.

In terms of legal handling it is clear that internally displaced people are also protected as well as internationally. The question then is how are the safeguards implemented, who is carrying out, what should be done in the effort to implement the protection rights of the refugees? Rules or



laws will work if they are beneficial to those who live it, *pacta sunt servanda*. When the rules are considered harmful then the tone of the offense will do violation. One of the keys to law enforcement is the awareness of the limit of benefits and harm than the law. Awareness about rewards and punishments of the rules.

In the case of domestic refugee handling, the main implementer and institution in charge of refugee protection is the local government. But if the government is actually involved as a part of the conflicting parties then it is necessary to mention third parties, namely local NGOs or international organizations that act as neutral parties. It is by this neutral party that the terms of rewards and punishments must be reinforced in operational form, that is through socialization to all parties, especially to the refugees, in order to comply with all refugee protection rules. Protection of the basic rights of refugees is the main responsibility for this institution.

On the other hand, the implementation of refugee protection also depends on the perception and behavior of the refugees themselves. If refugees do not comply with existing regulations it is very likely they will lose the right to protection. For example, the duty of refugees to report personal data for the purposes of data collection in general and to ID is very important for the party in charge of protection in order to know how many refugees with all its categorization. If some refugees refuse to worry that their personal data will be used by the enemy, for example, moreover if some refugees turn out to be combatants, then this persons will lose their protection rights, because they are not officially registered as refugees.

More important than just rewards and punishments, as well as refugees' distrust of protective institutions, the safety of refugees is highly dependent on the resolution of the conflicts. The primary key to refugee safety is the awareness of conflicting major parties to immediately end the conflict. As long as the conflict continues, the safety of refugees will always be threatened. Safety will be assured when there are feelings and behaviors of mutual trust, mutual respect, mutual protection by all parties. Conflict is the source of threat, the source of insecure.

#### Summary

Basically, human rights protection has been contained in international human rights law instruments, among others, in the Universal Declaration of Human rights 1948 until its elaboration in International Covenant Civil and Political Rights and International Covenant Economic and Social Rights. Particularly under conditions of armed conflict, the Geneva Conventions 1949 and the 1977 Additional Protocols apply. For domestic IDPs, there is no regulation at an international convention, but there is Guiding Principle on Internal Displacement which contains arrangements for domestic refugees either caused by natural or disasters humanity. These principles are based on international humanitarian principles and



human rights principles, which serve as an international standard that can assist the governments of the world's nations as well as international humanitarian agencies and development agencies in their efforts to provide assistance and protection to refugees. Indeed these principles have no binding force, but these principles have provided guidance in the handling of domestic refugees. The humanitarian principles seem to neglect the problem of domestic refugees even though the problem is as severe as transborder/international refugees.

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