

BAB III

PENUTUP

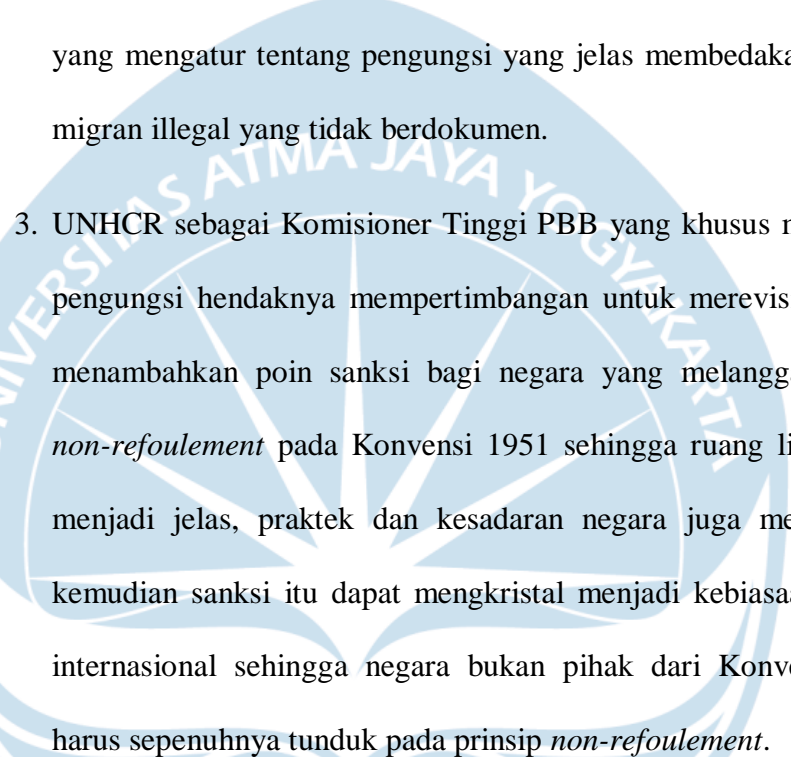
A. Kesimpulan

Berdasarkan analisa data pada bagian pembahasan diatas, dapat disimpulkan bahwa kebijakan Malaysia sebagai negara yang bukan merupakan negara pihak dari Konvensi 1951 dan Protokol 1967 terhadap pemulangan pengungsi Myanmar pada tanggal 23 Februari 2021 untuk kembali ke negara asalnya adalah bertentangan dengan prinsip *non-refoulement* sebagai prinsip utama dalam hukum pengungsi internasional yang telah mengkristal menjadi kebiasaan hukum internasional dan telah mencapai status *jus cogens*. Dengan demikian, Malaysia harus secara kooperatif bekerja sama dengan negara-negara lain maupun organisasi internasional di bawah kewajiban hukum untuk mengakhiri pelanggaran yang dilakukan oleh negara lainnya terhadap prinsip *non-refoulement*.

B. Saran

Berdasarkan kesimpulan di atas, maka penulis ingin memeberikan beberapa saran, yaitu:

1. Malaysia sebagai anggota masyarakat internasional harus sepenuhnya patuh terhadap prinsip *non-refoulement* yang merupakan kebiasaan hukum internasional dan telah mencapai status *jus cogens*.

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2. Malaysia hendaknya mulai menyiapkan peraturan mengenai mekanisme untuk memproses ketika pencari suaka dan pengungsi masuk ke wilayah negaranya; dan menyiapkan kerangka administratif dan/atau peraturan perundang-undangan nasional yang mengatur tentang pengungsi yang jelas membedakannya dari migran ilegal yang tidak berdokumen.
3. UNHCR sebagai Komisioner Tinggi PBB yang khusus menangani pengungsi hendaknya mempertimbangan untuk merevisi dan/atau menambahkan poin sanksi bagi negara yang melanggar prinsip *non-refoulement* pada Konvensi 1951 sehingga ruang lingkupnya menjadi jelas, praktek dan kesadaran negara juga meluas, dan kemudian sanksi itu dapat mengkrystal menjadi kebiasaan hukum internasional sehingga negara bukan pihak dari Konvensi 1951 harus sepenuhnya tunduk pada prinsip *non-refoulement*.

DAFTAR PUSTAKA

Buku

- Anthony Aust, 2005, *Handbook of International Law*, Cambridge University Press, New York.
- Cathryn Costello and Michelle Foster, 2015, Non-refoulement ad Custom and *Jus Cogens?* Putting the Prohibition to the Test : *Netherlands Yearbook of International Law 46*, Springer, United States.
- H. Ishaq, 2017, *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi*, Penerbit Alfabeta, Bandung.
- James C. Hathaway, 2005, *The Rights of Refugees under International Law*, Cambridge University Press, United Kingdom.
- John O' Brien, 2001, *International Law*, Cavendish Publishing Limited, London.
- Muhaimin, 2020, *Metode Penelitian Hukum*, Mataram University Press, Mataram.
- Peter Mahmud Marzuki, 2005, *Penelitian Hukum: Edisi Revisi*, Kencana Prenada Media Group, Jakarta.
- Rafiqul Islam and Jahid Bhuiyan, 2013, *An Introduction to International Refugee Law*, Martinus Nijhoff Publisher, Leiden.
- Sakharina dan Kadarudin, 2016, *Hukum Pengungsi Internasional*, Pustaka Pena Press, Makassar.
- UNHCR, 1979, *Handbook on Procedures and Criteria for Determining Refugee Status*.
- UNHCR, 2001, *Summary Conclusion: The Principle of Non-Refoulement, Expert Roundtable organized by UNHCR and Lauterpacht Research Centre of International Law-University of Cambridge*.
- UNHCR, 2007, *The 1951 Refugees Convention: Questions and Answers*, UNHCR Media Relations and Public Information Service, Geneva.
- Wagiman, 2012, *Hukum Pengungsi Internasional*, Sinar Grafika, Jakarta.

Skripsi Pemandang

Cesar Antonio Munthe, 2011, *Penerapan Asas Non Refoulement dalam Konvensi 1951 berkaitan dengan Pengungsi Timor Leste di Indonesia (Pasca Referendum Tahun 1999)*, Universitas Atma Jaya Yogyakarta

Hendrikus Vidi Suhartanto Djou, 2015, *Peran UNHCR dalam Penerapan Prinsip Non Refoulement terhadap Pengungsi yang mencari Suaka di Wilayah Uni Eropa terkait Yurisdiksi Frontex*, Universitas Atma Jaya Yogyakarta

Rian Fernando Walelang, 2015, *Penolakan Negara-Negara Uni Eropa terhadap masuknya Pengungsi Suriah dikaitkan dengan Asas Non-Refoulement*, Universitas Atma Jaya Yogyakarta

Peraturan Hukum

Constitution of the Republic of the Union of Myanmar 2008

Convention Relating to the Status of Refugees 1951 (Konvensi 1951)

International Court of Justice, 1986, *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua Vs. USA), Judgement of June 27

International Court of Justice, 2012, *Jurisdictional Immunities of the State Cases* (German vs. Italy; Greece intervening), Judgement on 03 February

International Court of Justice, 1969, *North Sea Continental Shelf Cases* (Germany Vs. Denmark), Judgment of 20 February.

Malaysia Immigration Act 1959/63

Permanent Court of International Justice, 1927, *Case Concerning the S.S. Lotus* (France Vs. Turkey) Judgement of September 7.

Protocol Relating to the Status of Refugees 1967 (Protokol 1967)

U.S. Supreme Court, 1987, *I.N.S. v. Cardoza-Fonseca*, 67 U.S. 407.

Vienna Convention on the Law of Treaties 1969

Jurnal

Abdullahi Ayoade Ahmad,dkk., 2016, “The Refugee Crisis in Southeast Asia: The Malaysian Experience”, *International Journal of Novel Research in Humanity and Social Sciences*, Vol. 3, Issue 6, pp: (80-90), Month: November – December 2016, Nouvelty Journals.

Jean Allain, 2001, The jus cogens Nature of Non-Refoulement: *International Journal of Refugee Law*.

Sevrine Knuchel, 2011, State Immunity and the Promise of Jus Cogens, *Northwestern Journal of International Human Rights Volume 9 Issue 2*.

Sri Setianingsih Suwardi, 2006, Perjanjian Internasional yang dibuat oleh Organisasi Internasional, *Indonesia Journal of International Law Volume 3 Nomor 4 Juli 2006*.

Dokumen PBB

UNHCR, 2004, “Advisory Opinion by UNHCR on the Interpretation of the Refugee Definition”, <http://www.unhcr.org/refworld/docid/4551c0374.html> diakses pada 28 September 2021

UNHCR, 1996, *Conclusion Adopted by The Executive Committee on the International Protection of Refugees: No.79 (XLVII)*.

UNHCR, 1977, *Conclusion Adopted by The Executive Committee on the International Protection of Refugees: No.6 (XXVIII)*.

UNHCR, 1982, *Conclusion Adopted by The Executive Committee on the International Protection of Refugees: No.25 (XXXIII)*.

UNHCR, 1979, Handbook on Procedures and Criteria for Determining Refugee Status, UN doc. HCR/IP/4/Eng/REV.1.

UNHCR, April 2001, Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees.

UNHCR, 1988, Reports of United Nations High Committee of Refugees, UNGAOR Forty Third Session, Supplement No. 12 U.N. DOC A/43/12.

UNHCR, *Submission by the United Nations High Commissioner for Refugees: For the Office of the High Commissioner for Human Rights' Compilation Report-Universal Periodic Review 3rd Cycle, 31st Session: MALAYSIA.*

Website

Aljazeera, “75 Children killed, 1000 detained since Myanmar coup: UN Experts” <<https://www.aljazeera.com/news/2021/7/17/75-children-killed-1000-detained-since-myanmar-coup-un-experts>> diakses pada 08 Agustus 2021

Amnesty International, “*Malaysia : Deportation to Myanmar put lives in Danger*”,<<https://www.amnesty.org/en/latest/news/2021/02/myanmar-deportation-malaysia-danger/>> diakses pada 25 Oktober 2021

BBC, “Malaysia pulangkan lebih dari 1000 migran ke Myanmar, kelompok HAM sebut ‘tidak menusiawi dan menyedihkan’” <<https://www.bbc.com/indonesia/dunia-56171859#:~:text=Malaysia%20memulangkan%20lebih%20dari%201.100,kudeta%20pada%201%20Februari%20lalu>> diakses pada 11 Agustus 2021

BBC, “Myanmar Rohingya : What you need to know about the crisis” <<https://www.bbc.com/news/world-asia-41566561>> diakses pada 11 Agustus 2021

BBC, “Was Burma’s 1988 uprising worth it?” <<http://news.bbc.co.uk/2/hi/asia-pacific/7543347.stm>> diakses pada 07 Agustus 2021

CFR, “Myanmar’s Troubled History : Coups, Military Rule, and Ethnic Conflict” <<https://www.cfr.org/backgrounders/myanmar-history-coup-military-rule-ethnic-conflict-rohingya>> diakses pada 07 Agustus 2021

CNN, “Junta Militer dan Budaya Kudeta di Myanmar” <<https://www.cnnindonesia.com/internasional/20210202175514-106-601458/junta-militer-dan-budaya-kudeta-di-myanmar>> diakses pada 07 Juli 2021

CSIS, “Challenges to the Rohingya Population in Malaysia” <<https://www.csis.org/blogs/new-perspectives-asia/challenges-rohingya-population-malaysia#:~:text=According%20to%20the%20United%20Nations>,

- [over%20100%2C000%20Rohingya%20in%20Malaysia](#) > diakses pada 11 Agustus 2021
- Forbes, “History May Not Repeat Itself In Myanmar Military Coup” <<https://www.forbes.com/sites/sebastienroblin/2021/02/01/is-history-repeating-itself-in-myanmar-military-coup/?sh=2e66193c7f6c>> diakses pada 07 Juli 2021
- Global Asia, “Plight of the Damned : Burma’s Rohingya”, <[Plight of the Damned: Burma's Rohingya > Articles | \(globalasia.org\)](#)> diakses pada 29 September 2021
- Human Right Watch (“HRW”), “Myanmar : Events of 2020” <<https://www.hrw.org/world-report/2021/country-chapters/myanmar-burma>> diakses pada 07 Agustus 2021
- HRW, “All You Can Do is Pray : Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State”, <[Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State | HRW](#)> diakses pada 29 September 2021
- HRW, “Myanmar: Coup Leads to Crimes against Humanity” <<https://www.hrw.org/news/2021/07/31/myanmar-coup-leads-crimes-against-humanity>> diakses pada 08 Agustus 2021
- Physicians for Human Rights, 2011, "Life Under the Junta : Evidence of Crimes Against Humanity in Burma's Chin State", <https://s3.amazonaws.com/PHR_Reports/life-under-the-junta-burma-chin-state.pdf> diakses pada 29 September 2021
- Reuters, “Death toll since Myanmar Coup tops 1,000, says Activist Group” <<https://www.reuters.com/world/asia-pacific/death-toll-since-myanmar-coup-tops-1000-says-activist-group-2021-08-18/>> diakses pada 01 Oktober 2021
- Reuters, “EU, A.S. concerned over Malaysia’s deportation over Myanmar Nationals”, <<https://www.reuters.com/article/us-myanmar-politics-malaysia-idUSKBN2AP0FK>> diakses pada 25 Oktober 2021
- Reuters, “Malaysia can’t take anymore Rohingya Refugees, PM says” <<https://www.reuters.com/article/us-myanmar-rohingya-malaysia-idUSKBN23X19Y>> diakses pada 01 Oktober 2021
- Reuters, “Malaysia denying U.N. Access to detained Asylum Seekers, agency says”, < <https://www.reuters.com/article/malaysia-migrants-idUSKBN27R13P>> diakses pada 15 Oktober 2021

The Diplomat, “The Shifting Politics of Rohingya Refugees in Malaysia”
<<https://thediplomat.com/2020/07/the-shifting-politics-of-rohingya-refugees-in-malaysia/>> diakses pada 11 Agustus 2021

The New York Times, “Myanmar’s Coup and Violence, Explained”
<<https://www.nytimes.com/article/myanmar-news-protests-coup.html> > diakses pada 11 Agustus 2021

UNHCR, “Challenges and Way Forward in Handling Rohingya Refugees in Malaysia”,
<<https://www.unhcr.org/news/latest/2017/3/59128a817/challenges-and-way-forward-in-handling-rohingya-refugees-in-malaysia.html>> diakses pada 29 September 2021

UNHCR, “Figure at a Glance in Malaysia”
<<https://www.unhcr.org/figures-at-a-glance-in-malaysia.html>> diakses pada 11 Agustus 2021

UNHCR, "UNHCR Global Report 2010-Malaysia",
<<https://www.unhcr.org/publications/fundraising/4dfdbf5516/unhcr-global-report-2010-malaysia.html>> diakses pada 27 September 2021

University of Malaya Law Review, “*The Lives of 1,086 Myanmar Nationals : Why the Rush?*”, <<https://www.umlawreview.com/lex-in-breve/the-lives-of-1086-myanmar-nationals-why-the-rush>> diakses pada 24 Oktober 2021

United Nations, "Protection of Migrant's Rights and State Sovereignty",
<<https://www.un.org/en/chronicle/article/protection-migrants-rights-and-state-sovereignty>> diakses pada 09 November 2021

VOA Indonesia, “Malaysia akan Deportasi 1.200 Migran Myanmar”
<<https://www.voaindonesia.com/a/malaysia-akan-deportasi-1-200-migran-myanmar/5780136.html>> diakses pada 11 Agustus 2021

<https://www.etymonline.com/word/refugee> diakses pada 02 September 2021

Kamus

Amy H. Blackwell, 2008, *The Essential Law Dictionary*, Sphinx® Publishing: United States of America

Bryan A. Garner, 1999, *Black’s Law Dictionary* (7th edn), West Group: United States of America

Parry & Grant, 2009, *Encyclopaedic Dictionary of International Law* (3rd edn), Oxford University Press: New York, United States of America.

Artikel Ilmiah

Loura Hardjaloka, 2015, '*Studi Perbandingan Ketentuan Perlindungan Pencari Suaka dan Pengungsi di Indonesia dan Negara Lainnya*'.

Marco Bünte, 2015, *Institutionalising Military Rule in Burma/Myanmar: External and Internal Factors*.

Syafiq Sulaiman, 2017, *Malaysia's Legal Responsibility under International Law to allow Asylum-Seekers to enter its Territory: An Analysis based on Non-Refoulement Principle*, Kuala Lumpur International Business, Economic, and Law Conference 14.

