

LEGAL PROTECTION OF THE INDONESIAN DIASPORA IN COUNTRIES OF ARMED CONFLICT

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Abstract

Armed conflicts can occur due to political disputes within or between countries. The sustainability of the status and security guarantees of the Indonesian Diaspora, affected by armed conflicts, cannot be resolved entirely during and after the war has ended. The complexity of the unpredictable political situation presents an obstacle to its resolution. To address these issues, normative research uses qualitative legal material analysis techniques. The study aims to answer the following questions: (1) What is the legal status of the Indonesian Diaspora in countries where armed conflicts exist, based on International Law? and (2) How can legal protection efforts for the Indonesian Diaspora affected by armed conflict countries be enforced sustainably? The research conclusions are as follows: (1) The legal status of the Indonesian Diaspora in countries with armed conflicts, based on International Law, is the same as that of the civilian population, and therefore, all their rights must be protected as outlined in the Geneva Convention IV concerning the Protection of Civilians in Time of War and Additional Protocols. When the war has ended, the rights of the Diaspora must still be protected based on other related human rights protection regulations.; and (2) Legal efforts that can be made to protect the Indonesian Diaspora in countries with armed conflicts include: (1) the Indonesian government needs to collect accurate data; (2) evacuate quickly and precisely; (3) strengthen diplomatic relations with countries experiencing armed conflicts; and (4) provide guarantees for their well-being when the war is over or after successful evacuation to a safe country, even if the war is ongoing.

Keywords: Legal Protection, Indonesian Diaspora, Armed Conflict

Introduction

Background of the Problem

War or armed conflict continues to persist in numerous countries. Armed conflicts may arise from political disputes within a country or between countries. As recently witnessed, the armed conflict between Ukraine and Russia compelled dozens of Indonesian diaspora members to evacuate to safer nations (Cabinet Secretariat of the Republic of Indonesia, 2022). Yemen serves as another illustration of a country where armed conflict has persisted. Yemen has experienced turbulent development dynamics due to the Arab Spring, which is the effect of the revolutions in Tunisia and Egypt in early 2011. To address these conditions, the Ministry of Foreign

Affairs strives to improve strategic goals through improving services and protection of Indonesian citizens and BHI and empowering the Diaspora in Yemen (Ministry of Foreign Affairs, 2015). The Diaspora is an entity that needs to be protected in times of war abroad.

Based on the Strategic Plan of the Directorate of Protection of Indonesian Citizens and BHI, the Indonesian Diaspora are Indonesian citizens, their descendants, and people with Indonesian blood living abroad (Ministry of Foreign Affairs, 2015). The challenge of providing legal protection for diasporas in countries experiencing armed conflicts is also a concern for the Government of Indonesia. Based on the Performance Report of the Ministry of Foreign Affairs in 2015, the data shows that the Ministry of Foreign Affairs has

achieved the realization of excellent WNI and BHI diaspora services by exceeding 67.69% of the target set and achieving completion of 83.35%. On a separate note, the Ministry of Foreign Affairs has faced challenges in resolving certain cases, particularly evacuating Indonesian citizens in conflict areas due to the complexities involved (Fitriani and Vido Chandra, 2018).

To increase security guarantees for the Indonesian Diaspora in armed conflict countries, particular strategies must continue to be pursued before and after armed conflict occurs. The legal problems that arise from this conflict are not only during the war but also after the war. This is because their employment or education status threatens many Indonesian diasporas. The quality of the diaspora remains uncertain as the armed conflict continues, and its conclusion cannot be accurately predicted. Optimal legal efforts need to be made so that sustainable justice guarantees in fulfilling the rights of the Indonesian Diaspora affected by war can be fulfilled.

Considering these challenges, the author will research legal protection initiatives for the Indonesian Diaspora in countries experiencing armed conflicts, focusing on sustainable justice enforcement. The problem formulations of this research are: (1) What is the legal status of the Indonesian Diaspora in countries where there is an armed conflict based on International Law; and (2) How are the legal protection efforts of the Indonesian Diaspora in armed conflict countries.

Research Methods

This research is normative legal research. The technique of collecting legal materials uses library study techniques. Legal material analysis techniques are carried out qualitatively using interpretation.

Discussion

Legal Status of the Indonesian Diaspora in States of Armed Conflict Under International Law

War incidents, or what is recognized in International Law as armed conflict, frequently lead to unrest and harm in the broader community. According to Pietro Verri, armed conflict is any form of armed dispute between several parties, including two or more states, a state and a non-state entity, a state, and a rebel faction, or between two ethnic groups within a state. (Ho, 2019). When war takes place, the legal provisions that are referred to are International Humanitarian Law.

Some principles of international humanitarian law that must be adhered to include: (1) The Principle of Restriction, namely, the parties to an armed conflict are only limited to choosing the means of war and weapons used in armed conflict as contained in Article 35 Paragraph (1) of the 1977 Additional Protocol on the Protection of International Victims of Armed Conflict; (2). The Principle of Proportionality, namely, the parties to the attack must limit their attacks only to legitimate military targets as stipulated in Article 51 Paragraph (5) Letter (b) of the 1977 Additional Protocol I concerning the Protection of Victims of International Armed Conflict; (3) The Principle of Distinction, namely the distinction of parties involved in armed conflict between the civilian population, combatants as military targets so that any attacks are aimed solely at military objectives and increase the protection of the civilian population as stipulated in Article 48 of the 1977 Additional Protocol I concerning the Protection of Victims of International Armed Conflict. (Bunga & Tukan, 2019).

During a war, the civilian population is a legal subject that may not fight and may not be attacked. This provision also applies to diasporas with the same legal status as civilians during war. The diaspora

concept encompasses first-generation immigrants and their children born abroad, as long as they maintain connections with their parent's country of origin. Cultural, linguistic, historical, religious, or affective ties distinguish diaspora groups from other communities. (Migration Data Portal, n.d.).

According to the Ministry of Foreign Affairs, the Indonesian Diaspora are Indonesian citizens (WNI) and foreign citizens (WNA) who are children of Indonesian citizens, former Indonesian citizens, and children of former Indonesian citizens. (Ministry of Foreign Affairs of the Republic of Indonesia, n.d.). The Indonesian Diaspora can also be described as everyone who is abroad and holds an Indonesian passport, everyone who is of Indonesian blood and not an Indonesian citizen (WNI), Indonesians who are married to foreigners, or who are not Indonesians at all, neither blood nor citizenship ties, but have concerns and connections. (Budiarti Putri, 2020). According to Dino Patti Djalal, there are four groups of Indonesian diasporas. The first group is the diaspora, still Indonesian citizens who hold green passports legally. The second group is foreign nationals who have relinquished their status as Indonesian citizens. The third group is foreign nationals who have held foreign citizenship status since birth but still have kinship ties in Indonesia. The fourth group is foreign nationals who do not have kinship ties in Indonesia but have an extraordinary love for Indonesia. (Dilahwangsa, 2022).

The status of the diaspora is the same as ordinary civilians in a country where armed conflict occurs. For this reason, regulating the protection of the Indonesian Diaspora during the war refers to the Geneva Convention IV and its Additional Protocols. Indonesia became a party to the Geneva Convention in 1949 through the accession of Law Number 59 of 1958 concerning the Participation of the

Unitary State of the Republic of Indonesia in the Four Geneva Conventions dated August 12, 1949. Indonesia still needs to ratify the additional protocols in 1977 and 2005. As a party to the 1949 Geneva Conventions, Indonesia is committed to continuing to promote and socialize the principles of International Humanitarian Law as a code of conduct for parties involved in armed conflict. (Ministry of Foreign Affairs of the Republic of Indonesia, 2019).

In the event of not being a party to the conflict, third-country nationals' home countries are responsible for disseminating the contents of the Geneva Conventions and their additional protocols to their armed forces and civilian populations. They are also obliged to criminalize, investigate, and prosecute, if necessary, grave breaches of the Geneva Conventions, including those committed by their nationals in conflicts outside their territory. These obligations reflect and apply, in addition to the general responsibility to respect and ensure respect for International Humanitarian Law under Common Article 1 and customary law (International Committee of the Red Cross, 1977).

When the war has ended, the rights of the Indonesian Diaspora should still receive guarantees from the state. The Indonesian Diaspora has made a urgent contribution to the country, furthermore legal protection related to human rights regulations for the Diaspora continues to be implemented.

Legal Protection Efforts of the Indonesian Diaspora in State Armed Conflict

The Diaspora is an entity that is highly susceptible to becoming victims during times of war, particularly due to their presence far from their country of origin, which makes monitoring them challenging. To achieve sustainable justice as the 16th goal of the Sustainable

Development Goals (SDGs) related to peace, justice, and resilient institutions, the Indonesian government needs to take several strategic steps to provide fair and sustainable legal protection to the Indonesian Diaspora affected by war.

The first strategy is for the Indonesian government to conduct accurate data collection. The problem is that no data shows the number of Indonesian diasporas globally. (Migration Data Portal, n.d.) This is because emigrants do not automatically become diaspora members, and the descendants of second and third-generation migrants can also be considered or considered part of the diaspora group. There is currently no attempt to measure the global diaspora population. For this reason, the government needs to accelerate the creation of a database for the Indonesian Diaspora in various countries so that the government knows the diaspora in absolute numbers, location, and expertise. (National Research and Innovation Agency, 2021).

The second strategy that the Indonesian government can use to protect the Indonesian Diaspora's rights during armed conflict abroad is to evacuate quickly and appropriately. Geneva Convention IV on the Protection of Civilian Persons in Time of War (Article 35) provides that civilians who leave the territory at the beginning of or during a conflict have the right to do so unless their departure is contrary to the country's national interest. Regularly established procedures should decide the person's request to leave, and the decision should be taken as quickly as possible (International Committee of the Red Cross, 1977). More aggressive evacuation efforts before the war should be optimized to avoid casualties.

The third strategy the Indonesian government can take is to strengthen diplomatic relations with armed conflict countries. In line with the 1961 Vienna

Convention on Diplomatic Relations and Indonesia's diplomatic priorities, legal protection for Indonesian citizens in armed conflict countries requires negotiation. Article 3 Section 1 Letters B and C of the 1961 Vienna Convention states that a state should be able to provide good treatment to foreign nationals living in their country by the provisions of international law. If a state provides less favorable treatment to foreign nationals, it violates international law. The principle of protection in International Law is related to the direction of Mandatory Access Consular Notification. This principle is a principle where the receiving country must inform the sending country when a problem occurs in the receiving country. This principle is clearly stated in Article 36 Paragraph (1) Letter B of the 1963 Vienna Convention to provide information to the diplomatic and consular representatives of the sending country in the event of a problem with the citizens of the sending country who live or are in the receiving country so that later diplomatic and consular representatives can be given legal protection (Gede Yudiarta Wiguna et al. 2022). If Indonesian representatives abroad do not have an Immigration Attaché or Consul, the authority can be delegated to designated foreign service officials. This is a form of government concern through the Ministry of Law and Human Rights to protect Indonesian citizens wherever they are, regardless of the number (Biro Humas, 2022).

The fourth strategy is to guarantee proper survival when the war is over or after being successfully evacuated to a safe country but the war is still ongoing. This strategy must be pursued optimally, considering every nation must protect its citizens, including the diaspora. This is based on the principle of maximum protection, which determines that the government must provide complete protection to every citizen under any

circumstances, both at home and abroad. The obligation to protect citizens in peacetime is enshrined in the International Covenant on Civil and Political Rights, for which the government needs to provide employment and education for the Indonesian Diaspora, who cannot continue these activities due to the impact of war.

The protection of the human rights of the Indonesian Diaspora needs to be guaranteed so as not to increase unemployment crime and decrease the level of education. The government needs to build strong cooperation between agencies in developing programs to sustain the welfare of the Diaspora affected by the war.

Kesimpulan

The Indonesian Diaspora's legal status in a country with an armed conflict under International Law is the same as the civilian population. The Diaspora must be protected in all its rights in the Geneva Convention IV concerning the Protection of Civilians in Time of War and its Additional Protocols. When the war has ended, the rights of the Diaspora must still be protected based on other related human rights protection regulations.

Legal efforts that can be made to protect the Indonesian Diaspora in countries of armed conflict in upholding sustainable justice are: (1) the Indonesian government needs to collect accurate data; (2) evacuate quickly and precisely; (3) strengthen diplomatic relations with armed conflict countries; and (4) provide guarantees for proper survival when the war is over or after being successfully evacuated in a safe country but the war is still ongoing. The government needs to build strong cooperation between agencies in developing programs to sustain the welfare of Diasporas affected by war.

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