

THE REFUGEES OF SYRIA: BETWEEN POLITICS AND VIOLATION OF HUMAN RIGHTS*

Gading Gumilang Putra** and Yulida Nuraini Santoso*

Abstract

In the midst of the crisis, Syria brought the military to force, face to face with their people, including refugees. Many proposals have been presented, both regional and internationally-scoped, along with the rise of victims of crisis. Yet, the absence of an adequate response was implemented instead. In addition to this, military supremacy is also among the action taken upon the refugees that fled. This article will analyze the absence from the point of view of political preservation, as their political justification. This stance shows the world that legitimacy of the government is still relevant through the existence of the military forces in dealing with refugees. However, field observa-

Abstrak

Di tengah krisis yang terjadi, Suriah menggunakan militer dalam menghadapi rakyatnya dimana pengungsi adalah salah satunya. Berbagai tawaran solusi regional dan internasional ditawarkan seiring korban yang terus berjatuhan. Namun Suriah tak memberikan respon apapun dan justru menggunakan metode militernya dalam menghadapi para pengungsi yang mencoba pergi dari Suriah. Artikel ini melihat Preservasi Kekuasaan sebagai landasan politik Suriah yang membuatnya tetap mempertahankan pola tersebut. Posisi ini diambil untuk menunjukkan kepada dunia bahwa legitimasi pemerintah terhadap negara masih hadir melalui militer. Namun, melihat

* Preferred Citation Format: Putra, G. G., & Santoso, Y. N. (2012). *The Refugees of Syria: Between Politics and Violation of Human Rights*. J.G.L.R., 1(1), 1-16.

** 2008; International Law; Faculty of Law, Universitas Gadjah Mada; Yogyakarta, Indonesia.

*** 2008; International Relations; Faculty of Social and Political Science, Universitas Gadjah Mada; Yogyakarta, Indonesia.

tions show that violation of human rights is indicated in Syria during the exercise of concept. In this article, violation will be reflected based on the instruments of human rights law ratified by Syria themselves. This article will then conclude with the position of the refugee in between the political stances of Syria and the violation of human rights conducted during the course of the crises.**

Keywords: *refugees, human rights law, Syria.*

A. Introduction

The wave of Arab unrest that began with the Tunisian revolution reached Syria on March 15, 2011, when residents of a small southern city took to the streets to protest the torture of students who had put up anti-government graffiti. The government responded with heavy-handed force, and demonstrations quickly spread across much of the country (France24, 2012). The impact of domestic political unrest is the emergence of refugees that flee the country in mass and seek for shelter to the nearest borders. This becomes a problem when the unrest doesn't come to a halt, as the containing countries of these refu-

kondisi yang ada Suriah telah mengindikasikan hadirnya pelanggaran hak asasi manusia. Hal ini didasarkan pada beberapa instrumen hukum internasional di bidang hak asasi manusia yang telah diratifikasi oleh Suriah. Artikel ini mencoba menguraikan posisi pengungsi Suriah diantara kebijakan politik internasional yang diambil dan pelanggaran hak asasi manusia yang terjadi.

gees must work harder to assure their safety.

Jordan, Turkey and Lebanon are three of several nations that have received thousands of refugees (HRC, 2011). Some wait after passing the borders, others set tents as close as they can get to the borders but as far as possible from military assaults. Reuters report there are 24, 564 refugees in Turkey, 20,000 in Lebanon, another 20,000 in Libya, and around 5000 refugees in Iraq, most of which are not registered by UNHCR (Reuters, 2012). According to UNHCR, the registered population is 50,377 individuals: 23,343 in Turkey, 12,761 in Lebanon, 12,034 in

Jordan, and 2329 in Iraq (UNHCR, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic, 2012). Before the up rise Syria was also a receiving nation to the many refugees that sought shelter from Palestine and Iraq (HRC, 2011).

The Arab League has responded by initiating a joint mission with the United Nations (UN, 2012). The European Union (EU), in consideration to the attacks to their people and no sight of cease fire, imposed a ban on the import of oil (Bakri & Erlanger, 2011). This has lead Syria to a devastating economic state. The United Nations has initiated three actions as follows: GA resolution earlier vetoed by Russia and China (Harris et al., 2012), the Joint Mission to report back the condition in Syria and last but not least the United Nations Supervision Mission in Syria (UNSMIS) operation.

In April the Syrian government had agreed to a six-point peace plan, which laid out a framework for a cease-fire that does not involve the president leaving power. This plan was initiated by United

Nations-Arab League envoy, Kofi Annan. But, only a week after the plan was put into effect, the Secretary General of the United Nations, said that Syria had failed to implement almost every aspect of the peace plan (S/2012/238, 2012, pp. 1-5). Still, without a better alternative, the United Nations proposed sending 300 cease-fire observers to Syria (NY Times, 2012).

This ignorance of international response kept continuing until this very day. In late May, there was a massacre that left at least 108 villagers dead in central Syria, most of them women or children (NY Times, 2012). This event led more than 4000 Syrian to become a refugee in Iraq (Haddadi, 2012). This ignorance proves that to all international actions, Syria has not presented any form of cease fire against their oppositions, therefore dismissing demands of the international world to stop the violence.

Political Preservation will be considered as a theoretical framework used by Syria to describe their choice of ignorance, in this article. This theory will also be seen as an international political justification for the Syrian government

to maintain their position. The position of Syria, based on this theory, was taken by government to show the international community that their control over the country is still present through military forces, thus justifying their ignorance to the world.

In the other hand, the military force used by the government has indicated violation of human rights, especially for the refugee. The political crisis is deemed present in Syria. This crisis has spread fear to many turning them in to refugee. Apparently, military forces were not only used for those who protest against the government but also those who try to leave the country.

The ignorance of Syria government on international action causing their absence in maintaining a peaceful condition is the main problem which this article will highlight. However, this article will not answer the main problem *per se*. The concern of human rights violation and how far intact it is with political matters is what this article wishes to answer. In consideration to the condition of refugees of Syria, what political interest is causing their absence in maintain-

ing a peaceful condition? Not stopping there, is violation of human rights present? If so, how is it violated? The article will be divided into three fractions to answer the aforementioned questions: (a) Power Preservation: A political justification of Syria repression (b) The legal Framework for Refugee Law and Human Rights Law in Syria and (c) The implementation of the Refugee Law in Syria. And at the end of the paper there will conclusion that describes the refugees of Syria, positioned between politics and violation of human rights.

B. Power Preservation: Political Justification of Syria Repression

Morgenthau & Thompson (2010) reveals that the concept of power preservation is a rational, coming from an incumbent government wishing to prolong its regime. There are two ways of bringing it into form. Other than a diplomatic ceremonial it has been customary for a demonstration of military force. This demonstration of military force wished to convey a message of peace and strength, but to other extremes it is also an effective conveyance of the message of im-

perialism, in this case to the people of Syria (pp. 99-101).

The concept of power preservation stems from the state of international anarchy, a sphere where the world is in no hierarchical positioning, hence no nation or entity is superior enough to rule the other. In regards to this, a nation is prone to the effect of others due to the need to self-suffice their domestic demands. The state of preserving the nation creates the balance of power where one nation struggles to preserve over the other so as not to be defeated. Rooting to its definition, balance of power is the distribution and opposition of forces among nations such that no single nation is strong enough to assert its will or dominate all the others (The American Heritage Dictionary, 2012). Power preservation is needed to preserve the state and carry out international politics accordingly. This pattern is also seen in political corruption. In the eyes of Inge Amundsen (2011) power preservation takes place at the formulation end of politics, where decisions on the distribution of the nation's wealth and the rules of the game are made. The corrupt use of

political power for power preservation may take the form of buying political support through favoritism, clientelism, co-optation, patronage politics and vote buying. Given the fact that power preservation is a need than a choice, military actions are exercised in the state of conflict to maintain national order and preserve the nation as a whole. This is seen in the case of Syria and the postponed act to cease fire against the regime's opponent. To be able to grasp how this is reflected internationally, it is important to highlight other actions of nations (pp. 13-15).

1. Arab League and International Actions

Arab states are divided over how to handle the crisis in Syria. Egypt, Algeria and Tunisia are convinced that the assault against Syria is necessary. Others worry that weakening the government could tip Syria, with its potent mix of religious and ethnic allegiances, into a deeper conflict that would destabilize the entire region. Some may fear the threat from their own populations if the government, in this case President Bashar were toppled (The Telegraph, 2012).

This inability to come to a unanimous stance is of the advantage to Syria's. It provides them more time to lay out better strategies in the area of self-defense and offensive actions if needed. The political support of Russia and China in putting a foot down through the recent veto has given them someone to watch their back as they go through the rough phase (Harris et al., 2012). The combination of both has led to the *status quo* as is witnessed by the world.

As a suspended member of the Arab League they are now neither standing alone nor stronger than ever. Until a final and absolute decision is placed on the table with unanimous decision, Syria is free to act as they wish. Their largest fear at the moment is one of foreign actions. At the time being, the only force able to bring Syria to a halt in fire is further international sanctions, whereas this can only be done if Arab League soon comes to an absolute decision.

2. Nations of receiving refugees

The impact towards receiving nations of refugees from Syria is severe. The fleeing of hundreds and thousands by the day to neigh-

boring nations has caused great instability to bordering cities. Health care is to be provided in great amount, possible social frictions that may take place and places to shelter are also at the utmost priority. At this stage all receiving countries are in attempt to balance their Open Door policies but at the same time, ensuring domestic instability is hampered to all measures. If violence in Syria increases and starts to affect Jordanian citizens, attitudes toward Syrians may quickly sour.

With President Bashar still preserving his seat in office, Turkey's patience is coming to a halt. If Syria fails to respond adequately through the agreement of cease fire proposed by Kofi Anan representing the United Nations, the worst will fall upon these refugees instead and once again they will be forced into a restless danger-zone. The relationship between Syria and Turkey can soon come into a very thin line, and be lost for good.

Jordan is running out of room for more, yet the refugees continue to flood in. The condition of the temporary housings is quickly getting worse. Despite the burden of the growing numbers of Syrian

refugees, which officials place at over 100,000, authorities continue to avoid opening official refugee camps out of fear that the move will impact Amman's policy of neutrality towards the Syrian crisis (Luck, 2012).

Though both Jordan and Turkey are overwhelmed by the amount of people entering the borders illegally every day and they are still providing health care, education and other basic services such as water supplies as much as they can. Until this day, none of the officials are able to answer the impact of the mass fleeing, as this all depends on how much longer they are going to stay.

Sita Bali (2001) states that if a hosting country is reluctant to have refugees stay for too long they will take all possible actions to make sure that their stay is temporary. The fact that Jordan is reluctant of setting up camps that can hold even more refugees for the long run proves this point. Though they are not reluctant to welcome them due to their open border policy, they are certainly not willing to have them stay for good and have them return very soon (p. 33).

Power preservation here is reflected in the fact that the regime is calling refugees to return home despite the nation's poor shelter and the rejected proposal of the UN to cease fire. Amnesty is promised for those who decide to obey and return home, ignoring the international propaganda (Vancouverdasi, 2012).

3. Syria and their Economic Ties

90% of Syrian oil export is sent off to EU countries of Germany, Italy and France. This has resulted in a 20% sum of the Syrian GDP, hence then ban posed in February 2011 has brought a tremendous drop to their cash flow. EU has imposed travel bans and asset freezes on more than 120 individuals and 40 companies. These include President Assad and most of his close family, the Syrian Central Bank and senior officials, including seven ministers. Last year, the EU banned crude oil imports from Syria and in February it expanded sanctions to block trade in gold, precious metals and diamonds with Syrian public bodies and the central bank (BBC, 2012, pp. 3-4).

Though they were certain that others would come looking for

them in Asia, their prediction failed, causing even more loss. This is so as it appears that the European Union is their largest trade partner summing an impressive 22,5% alone, followed by Iraq with half of the amount (13,5%). Certainly this is no good sign for Syria's economic wheels, losing to EU, Asian market and US at the same time within a year, they only have Iraq to turn to. Syria's only chance of survival is through Russian defense equipment. According to the Moscow-based Centre for Analysis of Strategies and Technologies, current contracts for sales of arms and military equipment from Russia to Syria are worth at least \$2.5 billion (BBC, 2012, p. 5).

Given the above, it is important to ask where the United Nation positions itself in this utter social and economic fiasco. Siti Muti'ah Setiawati (2004) gives her reasoning to UN's failure highlights the fault of structure. She mentions that United Nations role to maintain peace is equipped with the right to take action through economic sanctions, military embargo, and force of weapons and placement of Peace keeping Operations, as is stated in

the United Nations Charter Chapter VII. Yet in practically it is not accomplished. This is so as the exercise of veto rights of the Five Permanent (P5) members' hand over tremendous power to rule out or bring effective a resolution, most of the decision's made are poled to their interest (pp. 41-45). This is seen in the use of veto right by China and Russia hampering the pass of the resolution responding to Syria's up rise early in the year of 2012 (Harris et al., 2012). Arm trade of Syria and Russia has proven that the exercised veto right can make a tremendous difference.

Power preservation in this argument lies in the fact that Syria has the full support of not only one but two Security Council members. This will assure that no international intervention will take place as long as Syria has Russia and China to watch their back. The issue of refugees highlights economic issues of the contemporary world politics because of the close association between economic pressures and the motivation or responses to refugee issues (Bali, 2001, p. 73). The case of Syria reflects that in fact the posed sanctions have slowed them

down, but it has not brought them to a standstill, or to surrender.

The above directs our attention to the extreme gap that is formed between Europe and Syria. The gap is extremely wide allowing Syria to enjoy the justification as they are worse off. Ending economic ties with Europe may have brought them to a significant decrease but they are already on the verge of falling apart, compromising at the very last moment is certainly not on their agenda. The further apart their economic ties are, the less likely they are to back down.

Power preservation is seen here in the fact that despite lack of economic boosts to the economy of Syria undergoing an extreme political crisis, Syria remains firm on its stance of rejecting all international intervention to the nation. Furthermore the influence of the international world is referred to as propaganda.

It is important to note that along with political justification, the human rights issues gravity also takes place. Not only does it rotate alongside, it brings tremendous impact towards the end of the conflict.

C. Legal Framework of Refugees

Syria has never ratified, accessed, or signed international treaties regarding refugee matters. However, the refugee's treaties are basically rooted to the protection of human rights (Hathaway, 1991, pp. 121-122). Regarding the human rights treaty, Syria voted in favor for Universal Declaration of Human Rights and also ratified four of international legal instruments on Human Rights. Those instruments are: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant of Economic, Social and Cultural Human Rights (ICESCHR); the Convention on the Rights of the Child; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Syrian Arab Republic is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance, although it is bound by the provisions of the International Covenant on Civil and Political Rights that also prohibit enforced disappearances (A/HRC/S-17/2/Add.1, 2011, p. 11). These treaties are strongly uphold

the value of human rights and also protect the refugees.

Article 13 The Universal Declaration of Human Rights stated: (1) Everyone has the right to freedom of movement and residence within the borders of each State. (2) Everyone has the right to leave any country, including his own, and to return to his country. In the next article, it states: (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. In the other hand IC-CPR also include refugee's protection on article 12 and 13. These rules are basically the legal framework to protect the basic rights of Syrian refugees.

D. Implementation of the Refugee Law in Syria

As mentioned before, Syria has never ratified, accessed, or signed treaties regarding refugee matters. This is to bring into highlight the convention relating to the Status of Refugees 1951, Convention re-

lating to the Status of Stateless Persons New York 1954, nor Protocol relating to the Status of Refugees New York 1967. However those rules on human rights that Syria had been ratified implicitly states that everyone basically has the right to apply to become refugee and this right is unlimited, but not all of the application will be proceed directly and the status of refugee is not directly given. Furthermore the neighboring countries are the partner of UNHCR and using both the national rules and international refugee instrument to protect the refugee of Syria (United Nations, 2012, pp. 3-15). This neighboring countries are Jordan, Lebanon, Turkey and Iraq. Even though Syria offered amnesty for those refugees who come back, these neighboring countries still continue to protect them and practicing the non-*refoulement* principle.

Outlining the case of a refugee, a Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, identifies a few points: (a) well-founded fear

of being persecuted; (b) for reasons of race, religion, nationality, membership of a particular social group or political opinion; (c) is outside the country of his nationality; (d) and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; and (e) 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 (UNHCR, 1992).

Until now, more than 40.000 have fled from the Syria and becoming refugee. Those refugees consist of the registered refugee of citizens of Syria, internal displaced persons, and third country nationals (TCNs). These TCN are migrant workers in Syria and some refugees from Palestine and Iraq (UNHCR, 2012). At the moment the neighboring countries are having open door policy and those citizens are all defined as refugee (United Nations, 2012).

The cause of refugee in many cases is the presence of violation of human rights. In this case, the violation on Syrian refugees' rights is well found. Since the uprising, in

March 2011, General Assembly Resolution (2011) noted that Syrian authorities have been doing systemic human right violation such as arbitrary executions, excessive use of force and the persecution and killing of protesters and human rights defenders, arbitrary detention, enforced disappearances, torture and ill-treatment of detainees, including children (pp. 25-27). A year after, General Assembly placed another variant of the violation on its condemned resolution. Those new violations are killing of journalists, interference with access to medical treatment, torture, and sexual violence. Worse, this resolution indicates that crimes against humanity might occur in Syria (A/RES/66/253, 2012, p. 2).

On March, Syrian forces bury mines near the border of Turkey in an attempt to block the mass of refugees fleeing the country. Heavy bombardments of strategic villages or towns on the border with Turkey are also brought into force. There was a week when four people were shot and one sixteen year old boy was drowned when they tried to cross the river and go outside the border (Reuters, 2012).

As additional record, Syria also signed the Rome Statute of the International Criminal Court in 2000, but has yet not ratified it. The Rome Statute establishes four categories of international crimes: war crimes; crimes against humanity; genocide; and the crime of aggression. In the present context, crimes against humanity are particularly relevant to the events in the country since March 2011, in particular the provisions referring to murder, torture, enforced disappearances, persecution, imprisonment or other severe deprivation of physical liberty, and other inhumane acts. Despite non-ratification, the Syrian Arab Republic is still obliged to refrain from acts that would “defeat the objects and purpose of treaty” according to Article 18 the Vienna Convention on the Law of Treaties to which the State acceded in 1970.

These series of violation clearly showed that the government of Syria failed to implement the legal framework of human rights. And this failure goes directly to the life of the refugee. It is worsened by the implementation of Emergency Law as their domestic law. The State of Emergency Law pro-

vided for the detention of suspects for crimes that are not defined by this or other laws, including “*crimes committed against State security and public order*” and “*crimes committed against public authorities*”. The Law permitted Government agencies to “*monitor all types of letters, phone calls, newspapers...and all forms of expression*”, to “*impose restrictions on the freedom of persons...(to hold meetings)*”, to “*evacuate or isolate certain areas*” and to “*seize any property or real estate*”. It also allowed the security forces to hold suspects in preventive detention without judicial oversight for indefinite periods (HRC, 2011, pp. 2-6). On the April 2011, the Syrian authorities lifted the State of Emergency Law and abolished the Supreme State Security Court, even though the law itself remains in force (Aljazeera, 2011).

E. Conclusion

The absence of sanctions from the Arab League, political support from two countries owning veto rights in the Security Council and the economic sanction from EU are the convenient conditions for Syria to exercise their concept of power preservation. The balance

of power, an ideal situation where power preservation is relevant, is reflected in the event as not only does Syria have an international community that condemns its position but also parties that supports their national cause. This situation has led Syria to take actions that reflects the concept of power preservation. And these actions are: (1) presenting their military forces to response the crisis, (2) calling refugee home and giving out amnesty, even though decent and safe places to stay lack tremendously, and (3) ignoring international sanctions and solutions to maintain peace in Syria.

In this situation, refugee has been put as the object of the country's political policy in order to show its legitimation of power in Syria. Unfortunately, they're not only the object of politics in writing *per se*, but also objects of military targets on the field. Refugees, were found, threatened and violated in a lot of aspect of their basic rights. They were not only attacked by gun fires, but also hidden mines as they tried to leave the country and seek for refuge. This concept of power preservation, with its military pre-

sence, has systematically violated the human rights of refugees in Syria. Ironically they are violations measured by Syria incapability's to implement international human rights instrument they ratified.

The article showed that there is a direct connection between power preservation as political stances by the Syria and the violation of human rights. The presence of military as consequences of power preserving has led Syria to violate their citizen. Refugees, in this case, were pushed to a corner leaving no options. It is an imminent warning for all nations to uphold human rights above state sovereignty. Refugees are almost always victims of any political friction and a toppling over a regime. These refugees and the way they are treated are indicators of human rights violation as their emergence anywhere is due to instability, lack of security and most of all shelter. Now, neighboring countries are their only options. Humanitarian Relief through United Nations has set plans for Syrian Refugees neighboring countries. But, it doesn't guarantee the solving of refugees' problem as their number is still increasing until this very day.

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