

REFUGEE RESETTLEMENT: A REVIEW OF INDONESIAN LAWS AND PRACTICES

Arie Afriansyah* & Eva Achjani Zulfa*

* Faculty of Law Universitas Indonesia

Article Info

Received : 3/4/2016 | Received in revised form : 5/18/2017 | Accepted : 5/28/2018

Corresponding author's e-mail : arie.afriansyah@ui.ac.id

Abstract

This study analyzes the legal aspects of resettlement in the context of Indonesian law. First, it discusses the laws related to the interaction between refugees and the Indonesian people. Second, this study discusses how Indonesia applies its national law in the treatment of refugees during their period of resettlement. Third, this study offers a proposal on the structuring of national policy in terms of the treatment of asylum seekers that have received refugee status as they await the process of resettlement. In accordance with these three notions, this study employs a judicial-normative approach to analyze the doctrines and requirements of international law as well as the concepts and opinions of scholars combined with rules within national laws about the refugee resettlement procedure for a third-party state. By observing refugee camps in Jakarta, Medan, and Kupang in 2016, this paper concludes that national immigration law in Indonesia is heavily embedded within Law No. 6/2011 on immigration and the Director General's decision No. IMI-1489.UM.08.06 for 2010 with regard to the handling of illegal immigrants. Furthermore, this study argues for the need to implement regulatory measures on the capacity of Indonesian institutions in handling refugees so that more extensive coordination can be achieved.

Keywords: asylum seekers; Indonesia; immigration; refugees; resettlement.

Abstrak

Penelitian ini menganalisa aspek hukum dari resettlement dalam konteks hukum Indonesia. Pertama, tulisan ini membahas mengenai hukum yang berkaitan dengan hubungan antara pengungsi dan orang Indonesia. Kedua, penelitian ini akan membahas bagaimana Indonesia menerapkan hukum nasional Indonesia dalam hal perlakuan pengungsi dalam masa resettlement. Ketiga, penelitian ini memberikan masukan terkait dengan penyusunan kebijakan nasional dalam hal bagaimana perlakuan pencari suaka yang sudah memperoleh status pengungsi sementara mereka menunggu proses resettlement. Sehubungan dengan tiga gagasan utama ini, penelitian ini menggunakan pendekatan yuridis-normatif untuk menganalisis doktrin dan ketentuan hukum internasional, selain itu penelitian juga menggunakan pendapat dari para pakar dan hukum nasional tentang prosedur resettlement kepada negara pihak ketiga bagi pengungsi. Dengan mengamati penampungan pengungsi di Jakarta, Medan, dan Kupang tahun 2016, penelitian ini menyimpulkan bahwa hukum nasional tentang keimigrasian terdapat dalam UU No. 6 tahun 2011 tentang Keimigrasian dan Keputusan Dirjen Imigrasi No. IMI-1489.UM.08.06 tahun 2010 tentang penanganan imigran ilegal. Lebih lanjut, tulisan ini menekankan pentingnya tindakan pengaturan bagi peningkatan kemampuan lembaga di Indonesia dalam menangani pengungsi sehingga koordinasi lebih baik dapat diwujudkan.

Kata kunci: pencari suaka; Indonesia; imigrasi; pengungsi; resettlement.

I. INTRODUCTION

Indonesia serves as a transit state for asylum seekers and refugees.¹ This role can be traced back to the refugee situation in Vietnam from the 1970s to the 1990s.² Recent cases have emphasized Indonesia's role as a transit state for Rohingya asylum seekers and refugees, as well as those from Afghanistan and other countries. In the case of the Vietnamese and Rohingya, Indonesia has shown good faith in handling asylum seekers and refugees.³

Indonesia's positive action is rooted in its international obligations to not reject or return asylum seekers who pass through the country on their way to Australia or New Zealand. Specifically, Indonesia does not conduct the process of refoulement. This obligation has emerged despite the country not being a party to the Convention of Refugees (year) 1951 but rather due to the country's participation in other instruments of international law, namely, the International Covenant on Civil and Political Rights (year) 1966, the Convention on the Rights of the Child 1989 (year), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (year) 1987.

The issue of asylum seekers does not end in granting access. Indonesia has additional responsibilities, such as handling of asylum seekers that have received refugee status until they are accepted into other safe countries.

The process of refugee placement to third-party states needs careful attention. As a member of the international community, Indonesia respects the rights of refugees while also acknowledging the limits in their handling and protection within the country's sovereign borders. Various consequences may emerge from the interaction between Indonesian society and the refugees. Legal and social problems that occur are not due to the status of asylum seekers but are related to the refugee status obtained by some. Thus, this study argues that further research is needed on the implementation of national law with regard to immigration, specifically in the treatment toward refugees that still reside in Indonesia during the process of resettlement to a third-party state.

Based on the preceding background, this paper focuses on three main points. First, this paper will discuss the laws related to the interaction between refugees and Indonesian society. Second, this paper will discuss the regulation of Indonesian national law in the treatment of refugees during their period of resettlement. Third, this paper will offer a proposal on the structuring of national policy with regard to asylum seekers that have obtained refugee status while waiting for the resettlement process. As a research method, the judicial normative approach will be applied by analyzing doctrines and requirements within international law, the concepts and opinions of scholars, as well as the rules within national law with regard to the refugee resettlement process to a third-party state. Furthermore, this study aims to

¹ See Robyn Sampson, Sandra Gifford, Savitri Taylor, "The Myth of Transit: The Making of a Life by Asylum Seekers and Refugees in Indonesia," *Journal of Ethnic & Migration Studies* 42 No. 1 (2016): 1132-1152.

² Tom Brown and Antje Missbach, "The Boats May Have 'Stopped', but More Refugees are Stuck in Limbo in Indonesia," <http://theconversation.com/the-boats-may-have-stopped-but-more-refugees-are-stuck-in-limbo-in-indonesia-56152>, accessed on April 15, 2016.

³ According to the author's first-year research in 2015, Indonesia has carried out its international obligations not to refuse or return all asylum seekers who entered the country on their way to Australia or New Zealand. Indonesia has also been working with the International Organization for Migration and the United Nations High Commission for Refugees to temporarily accommodate asylum seekers in immigration detention throughout Indonesia to facilitate the process of refugee status determination.

establish a direct analysis of accommodation for the refugees that have obtained their status from the United Nations High Commissioner for Refugees (UNHCR) in Indonesia in Jakarta, Medan, and Kupang in 2016.

II. INDONESIA'S INTERNATIONAL OBLIGATIONS IN RELATION TO REFUGEE HANDLING

As a state that has not ratified the Convention on the Status of Refugees 1951 and Protocol of 1967 into its national law,⁴ Indonesia's international obligations regarding the protection of refugees and/or asylum seekers is based on the principle of non-refoulment. Meanwhile, Indonesia maintains its international obligations related to the protection of human rights⁵ as the country is a party to various international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child and Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

An important principle that needs to be analyzed in relation to asylum seekers and refugees is the principle of non-refoulment. Article 33, verse 1 on the Convention on Refugees 1951⁶ states the following:

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

The provisions of Article 33, paragraph 1 should be regarded in conjunction with Article 1A (2) of the 1951 Convention on the Status of Refugees.

Based on the two aforementioned rules, the principle of non-refoulment applies to refugees as defined in Article 1A (2) of the Convention on the Status of Refugees of 1951 and applies to those who are not excluded in the 1951 Convention on the Status of Refugees. The principle of non-refoulment is also relevant to asylum seekers, who are individuals whose refugee status has not been formally defined.⁷ Based on the principle of non-refoulment, actions that should not be made by state authorities at the border include deportation, extradition, and the refusal to enter.⁸

Furthermore, according to the exceptions to the principle of non-refoulment provided for in Article 33, paragraph 2 of the Convention on the Status of Refugees of 1951: *"The benefit of [Article 33(1)] 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 [or she] is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country."*⁹ The applicability

⁴ The debate on whether Indonesia should ratify the Convention of 1951 is not included in the scope of this paper. See further in Dita Liliansa dan Anbar Jayadi, "Should Indonesia Accede to the 1951 Refugee Convention and Its 1967 Protocol?", *Indonesian Law Review* (2015), DOI: <http://dx.doi.org/10.15742/ilrev.v5n3.161>

⁵ Given the history of the Convention of 1951 on the Status of Refugees and the limitations of the convention itself, this study also refers to other human rights instruments. See David Weissbrodt. *The human rights of non-citizens* (Oxford: Oxford University Press, 2008).

⁶ Convention relating to the Status of Refugees, Geneva, 28 July 1951, UNTS Vol. 189.

⁷ Weissbrodt, *The human rights*, p. 3.

⁸ *Ibid.*

⁹ *Ibid.*, p. 4.

of this exception is submitted to the consideration of each country.¹⁰

In essence, the principle of non-refoulment cannot be reduced in any form that emphasizes the responsibility of the state to not allow the refugees and/or asylum seekers in danger as defined in the 1951 Convention on the Status of Refugees.

A. Universal Declaration of Human Rights

Indirectly, the provisions in the Universal Declaration of Human Rights are related to how the state should treat and deal with refugees. Article 5 of the Universal Declaration of Human Rights states that *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*¹¹ If this provision is associated with the principle of non-refoulment, then if a country deports refugees and/or asylum seekers, that country indirectly allows the refugees and/or asylum seekers to be subjected to torture or cruel, inhuman, and other treatment that degrades human dignity. Therefore, the action of returning refugees and/or asylum seekers is an indirect violation of Article 5 of the Universal Declaration of Human Rights.

C. International Covenant on Civil and Political Rights

The provisions of the International Covenant on Civil and Political Rights relating to refugees and/or asylum seekers are Articles 2 (1) and 7.¹²

Article 2 (1) of the International Covenant on Civil and Political Rights states that *"Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."* If related with regard to the handling of refugees in the country's territory, the article puts places a burden on the state parties to ensure that the handling of refugees is done with the best effort regardless of the "status" of them as refugees, their origin of the refugees, and the other factors mentioned in Article 2 (1) of this.

Then, Article 7 states that *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*¹³ This provision, if associated with the principle of non-refoulment and handling of refugees, means that State Parties to the present Covenant must not return refugees and/or asylum seekers to their place of origin where they would be subjected to torture and cruel, inhuman and other degrading treatment.¹⁴

D. Convention on the Rights of the Child

In relation to refugee children, the 1951 Convention on the Status of Refugees

¹⁰ Ibid.

¹¹ From United Nations, General Assembly, Universal Declaration of Human Rights, G.A. res. 217A (III), UN Doc. A/810, 1948.

¹² Santosh Persaud, "Protecting refugees and asylum seekers under the International Covenant on Civil and Political Rights," UNHCR Policy Development and Evaluation Service, Research Paper No. 132, November 2006.

¹³ from International Covenant on Civil and Political Rights, New York, 16 December 1966, UNTS Vol. 999.

¹⁴ Persaud, "Protecting refugees"

specifies the same standards applied to refugee children and adults.¹⁵ Therefore, the Convention on the Rights of the Child is also an important reference with regard to the best interests of children.¹⁶ In the practice of handling refugee children, the main concerns are the (1) availability of a supportive environment for children to learn and retain their native language, (2) availability of an environment for children to perform religious practices or beliefs, and (3) availability of an environment for children's play and recreation.¹⁷ In essence, the environment occupied by refugee children should be conducive to their growth and development both physically and psychologically.

E. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The provisions of Article 3 paragraph (1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is one of the provisions that prohibit refoulment. According to the provisions of this article, "*No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*"¹⁸ In the context of refugees and/or asylum seekers, their protection against torture and other cruel and inhuman acts that degrade human dignity is one of the important principles to uphold.¹⁹

With regard to the international legal instruments discussed above, Indonesia has attempted to fulfill their provisions, including not conducting refoulment, due care for the state of child refugees, and other actions in collaboration with the UNHCR and IOM. A special section of this paper discusses the fulfillment of Indonesia's obligations in the handling of refugees in Medan, Kupang, and Jakarta and the Indonesian government's cooperation with the two aforementioned agencies.

III. INDONESIAN NATIONAL LAW AND THE REFUGEE ISSUE

The Indonesian national laws pertaining to refugee issues include laws related to human rights, foreign affairs, and citizenship and immigration.

A. National law related to human rights

The importance of the protection and fulfillment of human rights in Indonesia can be traced to the country's 1945 Constitution (also referred to as "NRI 1945 Constitution" in this paper), where the section on human rights uses the phrase "any person," which means that NRI 1945 Constitution does not discriminate on who is entitled to protection (*mendapatkan*). Non-discrimination does not mean blind protection, but rather following restrictions set forth in the 1945 Constitution.²⁰

¹⁵ See UNICEF, "Refugee Children: Guidelines on Protection and Care," https://www.unicef.org/violencestudy/pdf/refugee_children_guidelines_on_protection_and_care.pdf.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment from Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, UNTS Vol. 1465.

¹⁹ Kate Jastram and Marilyn Achiron, "Refugee Protection: A Guide to International Refugee Law," UNHCR, <http://www.unhcr.org/3d4aba564.pdf>, p. 16

²⁰ Indonesia. The 1945 Constitution of the State of the Republic Indonesia, Art. 28I,

Related to the presence of refugees in Indonesia, new provisions in the 1945 Constitution, which are intended to protect their existence, include Article 28A, which guarantees that every person has the right to life.²¹ Furthermore, Article 28D states that every person has the right to security, protection, and legal certainty. Article 28G (1) guarantees the protection of privacy and family. Article 28 paragraph (1) states that the rights mentioned, specifically the right to life and to a guaranteed personal dignity and family with recognized standing before the law, cannot be restricted under any circumstances.

Another relevant legislation is Law No. 39 of 1999 on Human Rights. Article 2 of this Law states that the State of Indonesia recognizes and upholds human rights and freedoms. However, in view of this article, we also need to refer to the provisions of Article 67 of the same Law, which states that anyone who is in the territory must comply with the legislation, unwritten laws, and international law on human rights that have been accepted by the Republic of Indonesia.

Aside from the aforementioned regulations, TAP MPR No. XVIII/MPR/1998 on Human Rights is also important. Article 2 of this regulation emphasizes the importance of ratifying the United Nations instruments on Human Rights, as long as such instruments are not contrary to Pancasila and the 1945 Constitution. Furthermore, Article 5 of TAP MPR No. XVIII/MPR declares the Human Rights Charter as a reference in drafting the human rights bill. Thus, Indonesia has always paid attention to international legal instruments on human rights, which do not merely refer to the national desire.

The refugees in Indonesia have rights guaranteed not only by international legal instruments but also by national laws such as the 1945 Constitution and other legislation. Against these rights, refugees residing in the Republic of Indonesia has a fundamental obligation which otherwise implement these basic obligations, it will affect the implementation of the rights concerned.

B. National law related to foreign relations

The national law related to foreign relations and the presence of refugees in Indonesia is Law No. 37 of 1999 on Foreign Relations. The provisions in this Law specifically mention the handling of asylum seekers and refugees in Indonesia. The provision is intended to regulate political asylum.²² The asylum seekers mentioned in this paper are as defined by UNHCR and with reference to Articles 25 and 26 of Law No. 37 of 1999. Article 25 of this Law states that *"The authority to grant asylum to foreigners is vested in the President by taking into consideration the Minister"*. Article 26 of the same Law specifies *"granting asylum to foreigners ... in accordance with national legislation and with due regard to laws, customs, and international practice"*. In relation to refugees, Article 27 of this Law states that *"the President sets the policy problem of refugees from abroad by taking into consideration the Minister's opinion"*. The said Minister is the one responsible for matters of foreign affairs and foreign policy.

²¹ Ibid., Art. 28A.

²² This is proven by the draft Presidential Decree on the Handling of Alien, Asylum Seekers and Refugees, considering its part refers only to Article 27 of Law No. 37 of 1999. Draft Presidential Decree in question can be downloaded at <http://peraturan.go.id/rancangan/download/11e4b28513c7265ea1b4313430323136.html>.

C. National law related to nationality and immigration

In obtaining Indonesian citizenship, refugees must comply with the provisions in Law No. 12 of 2006 on Citizenship.²³ One of the requirements is related to permanent employment; for refugees in Indonesia, having a permanent job is not allowed.²⁴

Furthermore, concerning immigration, the national law that can be referred to is Law No. 6 of 2011 on Immigration. Article 1, paragraph 1 of this Law defines immigration as activities related to the traffic of people entering or leaving Indonesian territory and its oversight to safeguard the enforcement of state sovereignty in Indonesia. Based on this definition, the influx of asylum seekers to Indonesia or discharge of refugees to be placed in a third country, as well as their supervision while awaiting placement in a third country, can be considered as matters of immigration.

Under Law No. 6 of 2011, refugees²⁵ can be classified as “aliens”. According to Article 1, point 9 of this Law, an “alien” is a person who is not a citizen of Indonesia. Thus, when this person enters Indonesian territory, he/she is required to have a valid visa and/or other travel documents.²⁶ If this rule is violated, the person will be placed in a detention center.²⁷ However, Law No. 6 of 2011 does not mention a specific response to refugees. This Law only regulates the handling of victims of human trafficking and human smuggling, which are exempt from immigration administrative action.²⁸

In addition to the above national laws, other special provisions may be referenced when studying the problems of refugees in Indonesia. These provisions include the Director General of Immigration Regulation No. IMI-148.UM.08.5 of 2010 on Handling Illegal Immigrants. Under this rule, the immigration authority stresses that illegal immigrants in Indonesia are subject to administrative action on immigration,²⁹ but asylum seekers and refugees will be dealt with by Indonesian authorities in cooperation with the UNHCR.³⁰

Despite the good faith shown by the Indonesian government, the Director General of Immigration Regulations on Handling Illegal Immigrants are inadequate, especially in handling those who have acquired refugee status from the UNHCR. This treatment includes security and other matters related to the refugees’ daily lives while waiting

²³ Art. 9 of Law No. 12 of 2006 sets the following requirements for citizenship:

- a) aged 18 years or married;
- b) at the time of application, the person has already resided in the Indonesian territory for at least 5 consecutive years or at least 10 non-consecutive years;
- c) physically and mentally healthy;
- d) able to speak Bahasa Indonesia and acknowledge Pancasila and the 1945 Indonesian Constitution;
- e) never been sentenced for a criminal offense punishable by imprisonment of 1 year or more;
- f) must not have dual citizenship upon obtaining Indonesian citizenship;
- g) has employment and/or fixed income; and
- h) has paid the naturalization fee to the State treasury.

²⁴ Refugee Statement from the Director General of Immigration Regulation on Handling Illegal Immigrants states that refugees should not find employment and activities to earn income or wages.

²⁵ Refugees do not include internally displaced persons.

²⁶ Indonesia (3), Undang-Undang tentang Keimigrasian (Law on Immigration), UU No. 6 Tahun 2011, LN No. 52 tahun 2011, TLN No. 5216 (Law No. 6 of 2011, SG No. 52 of 2011), Art. 8 para (2).

²⁷ Ibid., Art. 81

²⁸ The administrative measures on immigration may be the inclusion in the list of prevention or deterrence to deportation from the territory of Indonesia; see *ibid.*, Art. 75

²⁹ Art. 2 para (1) of Director General’s Immigration Regulation No. IMI-148.UM.08.5 of 2010 on the Handling of Illegal Immigrants.

³⁰ Pasal 2 para (2) and Art. 3, *Ibid.*

for third-country placement, during which they may experience conflict resulting from their interaction with local communities around the detention centers or shelters where they live.

Inadequate regulation is important to note given the increasing number of refugees who are arriving or are already in Indonesia. Data from the UNHCR show the following refugee numbers in the past several years: 385 (in 2008); 3,230 (2009); 3,905 (2010); 4,052 (2011); 7,223 (2012); 8,332 (2013); 5,659 (2014); and 4,426 (2015).³¹ As of the end of January 2016, the number of asylum seekers registered with UNHCR Jakarta had reached 7,616.³²

D. National Law Development related Refugees

Apart from the existing national provisions, new regulations, especially on the handling of refugees, are being prepared by the Indonesian government. As of the writing of this article, the Ministry of Foreign Affairs has initiated the draft Presidential Decree on the Handling of Alien Asylum Seekers and Refugees. Another draft presidential decree is intended to implement the provisions of Article 27 of Law No. 37 of 1999 on Foreign Relations regarding the need to establish a Presidential Regulation on the Management of Alien Asylum Seekers and Refugees.³³

In other words, the draft Presidential Regulation aims to serve as an adequate legal umbrella for the protection of refugees and asylum seekers in Indonesia. The draft presidential decree regulates the following:

- 1) handling of alien asylum seekers and refugees coordinated by the Coordinating Minister for Political, Legal, and Security;
- 2) placement of alien asylum seekers and refugees at shelters;
- 3) handling of alien asylum seekers and refugees in coordination with government agencies responsible for Discovery, Placement, Shelter, Care, Security; and Immigration Control.
- 4) placement of foreigners with status of "rejected asylum seekers" and "case-closed person" as well as refugees in the process of voluntary repatriation resettlement in a house/room for immigration detention during deportation proceedings;
- 5) processing, in accordance with the provisions of applicable laws, of each alien asylum seeker and refugee who has violated Indonesian law;
- 6) collaboration of the Ministry of Foreign Affairs with the UNHCR to provide data and information on foreign asylum seekers and refugees, which are reported every month to the Coordinating Minister for Political, Legal and Security Affairs with a copy for the Minister of Interior, Minister of Justice and Human Rights, and the Indonesian National Police; and
- 7) formulating a defined integrated procedure for government agencies on the handling of alien asylum seekers and refugees.

³¹ UNHCR Indonesia, <http://www.unhcr.or.id/id/unhcr-ambassador-id>, accessed on July 13, 2016.

³² Ibid.

³³ Ministry of Law and Human Rights of the Republic of Indonesia, "Database Peraturan, Rancangan-Peraturan President tentang Penanganan Orang Asing Pencari Suaka dan Pengungsi [Database of Regulations, Draft Regulation on the Handling of Alien Asylum Seekers and Refugees]," <http://peraturan.go.id/penanganan-orang-asing-pencari-suaka-dan-pengungsi.html> accessed on July 12, 2016.

Based on the description of the Indonesian national law, the country has laws related to the handling of asylum seekers and refugees as well as rules that adjust to the social situation of refugees. However, in the national law, an abstract matter is how to respond to refugees who are awaiting placement in a third country.

IV. REFUGEES IN WAITING: LEGAL AND SOCIAL IMPACTS

This chapter discusses the legal requirements that are recognized to be related to the interaction between refugees and Indonesian society. We have to note that this study was conducted before the issuance of Presidential Regulation 125, No. 2016 with regard to the Treatment of Refugees from Foreign Countries.

The general requirements with regard to refugees that can be discussed are the Constitution of the Republic of Indonesia 1945, Law No. 39 of 1999 with regard to Human Rights, Law No. 37 Year 1999 with regard to International Relations, and Law No. 6 Year 2011 with regard to Immigration.

These requirements are considered in relation to Article 28A of the Indonesian Constitution, which guarantees every person's right to life. Furthermore, Article 28G, verse (1) of the Indonesian Constitution guarantees the protection of every individual and family. Article 28D of the Constitution states that every person has the right to receive protection and legal certainty. Thus, the refugees in Indonesia have these rights. However, their protections and guarantees have to be considered in relation to security and public order.

Article 2 of Law No. 39 Year 1999 states that Indonesia recognizes and looks highly upon human rights and basic freedoms. The regulations within Article 67 also state that every person within the vicinity of the Republic of Indonesia has an obligation to follow the rules stipulated in the country's laws and unwritten laws, as well as international human rights laws that have been accepted by Indonesia.

If it is related toward the presence of refugees in Indonesia, then the asylum seekers and refugees have human rights that are determined and guaranteed not only in the scope of international law but also national law that is rooted toward the Indonesian Constitution as well as other laws that follow. Toward the rights stipulated, the refugees that are within the vicinity of the Republic of Indonesia has the obligation to carry out such rights especially in the form of maintaining order.

In regards to the Law No. 37 Year 1999 in a specific view, it states that in lieu of the handling of asylum seekers and refugees in Indonesia, despite it being stated, the requirements regarding such treatment toward the asylum seekers and refugees are adequately general. In Law No. 37 Year 1999, it really regulated more toward asylum seekers due to political matters. This can be seen to the Articles 25 and Articles 26 of the Law No. 37 Year 1999. Article 25 Law No. 37 Year 1999 states that "The authority give asylum toward foreign aliens is under the hands of the President with the consideration of the Minister". Article 26 Law No. 37 Year 1999 regulates more stating that "The granting of asylum toward foreign aliens are carried out in regards to the rules of national laws as well as considering law, custom and international practice".

Law No. 6 Year 2011 understands immigration within Article 1 point 1 as the foundation of how to look at the movement of people exiting and entering the vicinity of Indonesia as well as the supervisory functions in the prospects of maintaining the sovereignty of Indonesia. Pursuant to this definition, then the entering of asylum seekers in Indonesia or the exiting of refugees to settle in third-party states can be

constructed as a matter of immigration. This can be included in the realm of oversight, both from the aspect of asylum seekers as well as refugees that have been waiting for settlements in third-party states.

Based on Law No. 6 Year 2011, asylum seekers as well as refugees (refugees here do not fit the category of internally displaced persons) can be deduced as a Foreign Alien. In accordance to Article 1 verse 9 Law No. 6 Year 2011. Foreign Aliens are people that are not a citizen of Indonesia. It is because of that they cannot be understood as a citizen of Indonesia, and because of this a foreigner coming into the borders of Indonesia must own and carry a valid visa³⁴ or other travel documents. A violation of this would result to being placed in a detention center.

However, especially to that of the asylum seeker and refugee, Law No.6 Year 2011 does not state the specific handling toward them. Law No. 6 Year 2011 only regulates in regards to the treatment toward victim of human trafficking and people smuggling in which they serve as an exception toward the administrative actions of immigration.

In addition to the general requirements mentioned, the DirectorGeneral of Immigration's Regulation No. IMI-148UM.08.5 Year 2010 explains the treatment of illegal immigrants. Several key points in this law are the following:

- article 2, verse 1 states that illegal immigrants within the vicinity of Indonesia are given administrative actions within the scope of immigration laws;
- article 2, verse 2 states that Indonesia serves as a shelter for asylum seekers and refugees, whose status will be determined by the UNHCR; and
- article 3 highlights that the UNHCR is a working partner of Indonesia's immigration ministry.

The DirectorGeneral of Immigration's rule on the treatment of illegal immigrants does not provide legal certainty with regard to the long-term stay of asylum seekers and refugees in Indonesia. As long as the asylum seekers and refugees are waiting for notification from the UNHCR, they cannot be deported (as stated by the principle of non-refoulement). For refugees whose status is rejected by the UNHCR, the process and funding for returning home will be assisted by the IOM.

Furthermore, the law has not given an optimal overview in terms of the treatment of asylum seekers and refugees that have obtained status from the UNHCR. This treatment considers the scope of security and other daily concerns, including the possibility of conflict with the temporary host community, while the refugees wait for resettlement in third-party states.

Based on the explanation of the national requirements on immigration and refugees, Indonesia's national law guarantees the protection of human rights for refugees. However, the relevant rules are inadequate because of the absence of legislation concerning the treatment of refugees waiting for third country placement and of asylum seekers whose requests have been rejected by the UNHCR.

In the midst of uncertainty about the relevant legal instruments, social interaction between the refugees and their host communities cannot be avoided. The following subchapters clarify the social interaction between refugees and their communities in Jakarta, Medan, and Kupang.³⁵

³⁴ Indonesia (3), Undang-Undang tentang Keimigrasian, UU. No. 6 Tahun 2011, LN No. 52 tahun 2011, TLN. No. 5216, Pasal 8 ayat (2).

³⁵ Elaboration of social interaction is based on field observation conducted in the three cities in 2016.

A. Jakarta

Our research focuses on South Jakarta, which has a population of 15, 418. As an interview was conducted with the Head of the Population Office in South Jakarta (Kasudin Disdukcapil). In relation to the oversight on the presence of aliens in South Jakarta, two issues that need to be considered are (1) oversight of the judicial operation of population in carrying out the Office of Population in the platform of prevention and (2) The Office of Population consolidates the foreigners who are not in South Jakarta and those who do not break the rules nor disturb social stability and security. According to the Head of the Disdukcapil of South Jakarta, as of June 2016, no data on the marriage between a refugee and an Indonesian citizen has been recorded. Furthermore, no coordination has occurred between the Disdukcapil and the UNHCR in creating a flexible supervisory system.

At the level of areas such as that of the Mayor of South Jakarta within the decision of the Mayor in the Mayor's decision which is through Mayor decree No. 82 2016 that regulates the supervision of foreigners. With regard to organization of foreigners and foreign workforce in South Jakarta, oversight for foreigners, as well as the question of marriage, requires close coordination between the Disdukcapil and the Office of Religious Affairs. However, because of the system of writing down formal aspects without material clarification, the data are not organized in a material platform. Thus, the data reliability is not optimal.

B. Medan

Medan is one of the cities with several community housing districts that have refugees and asylum seekers. Thus, the potential for legal problems and social conflict may arise from the interaction between the refugees and asylum seekers due to marriage and other concerns. Thus, a field study in Medan is necessary to understand the potential legal problems. The results from this field study can be used as a reference in formulating regulations or procedures to solve such legal problems.

Field work in Medan was conducted on August 2–4, 2016. The interviewees were from the North Sumatera office of the Ministry of Law and Human Rights; the Immigration Detention Centers in Medan, the residents around the detention centers; the police force in the Belawan district; the Immigration Office Class I in Polonia, Medan; and the Pelangi Hotel and YPAP 1, which house the refugees and asylum seekers in Medan.

This field study presents the following findings:

- Interaction between the local residents and the refugees is good.
- According to the Belawan Sector Police, no incident has been reported with regard to the refugees and asylum seekers in the area. The role of the Belawan police is to serve as a boundary before the asylum seekers enter the detention centers. The Head of the Police Sector said that usually, the asylum seekers come first to the police and are then placed in the detention centers.
- Interaction between the refugees and the local community is based on marriage. Usually, children from such marriages have a problem in obtaining birth certificates. The marriage is conducted through religious rituals rather than civil procedure. In preparation for a wedding, Hotel Pelangi supervisors and YPAP 1 inform their superiors as well as IOM officials. The IOM workers have visited the

community houses several times to provide oversight and control.

- Interaction between the refugees and the local community are also observed in the relationship among the refugee children who are placed in local schools. Thus far, no problem has been reported in schools with regard to the presence of refugee children.

C. Kupang

In Kupang, the refugees and asylum seekers are fewer than those in the two other cities. In such conditions, the potential for legal problems that emerge from the presence of aliens is insignificant and almost nil. The detention centers in Kupang are considered as models for other immigration detention centers because the management has met optimal standards with deep consideration for human rights. Thus, our field study in Kupang was intended to understand the steps and policies implemented to balance the interests of local residents with the treatment of asylum seekers and refugees. Results of our field study can be used as a lesson-learned approach in the policy formulation to address legal and social problems that may arise from the interaction between the refugees and the local community.

The field study in Kupang was conducted on August 3–5, 2016. The interviewees were from the UNHCR in Kupang, the District Office of the Ministry of Law and Human Rights of East Tenggara Timur, the Office of Population and Civil Registration in Kupang, the Immigration Detention Center and other detention centers in Kupang.

The field study found that refugees awaiting placement in third countries were welcomed by the people of Kupang. The local residents hoped that the refugees can contribute to the economy, especially for merchants who provide daily needs. However, concerns of residents related that the refugees are not well placed in third countries so that the desire to become a citizen there. Specifically, refugees in Kupang are free to move around, but their freedom has limits, for example, when using a mobile phone³⁶ or staying out at certain hours.³⁷

The government's role in the handling of refugees in Kupang includes the removal of refugees under certain conditions such as (1) having a family, (2) being physically ill, (3) being a minor, or (4) having the longest refugee status.³⁸ Refugees are involved in various activities or programs organized by the government, such as free English classes for children and adults. For example, some refugees with teaching ability provide English lessons three times a week. In addition, refugees are often invited to cooking events by associations of mothers in the village of South Sapa. Refugees and asylum seekers are also actively involved in sports competitions, blood donation campaigns, and sharing clothes and money with the local community before Eid-ul-Fitr. These programs have been running smoothly since 2015. The IOM has helped provide assistance in the form of budget detention facilities and organizing sports and cooking activities.

According to the UNHCR, the interaction between the refugees and local

³⁶ Access to mobile phones is one of the vital rights of refugees so that they can communicate and are not isolated from the outside world. See also Walker, R., Koh, L., Wollersheim, D., & Liamputtong, P. (2015). "Social connectedness and mobile phone use among refugee women in Australia". *Health & Social Care in the Community*, 23(3), 325-336. DOI:10.1111/hsc.12155.

³⁷ Based on the results of interviews with Dr. Effendi Saragih, M.M. as Chief of the UNHCR in Kupang.

³⁸ Ibid.

community in Kupang is good and frictionless³⁹. The UNHCR's role is to monitor the movements of refugees from detention centers to community houses. In the absence of a community house, the UNHCR, in collaboration with IOM, seeks to transfer refugees from immigration detention and place them in three hotels that function as "immigration detention rooms" under the supervision of the Kupang Immigration Office. The problem that arises in the transfer of refugees is that the quota, which is not proportional to the number of refugees, is causing some of them to remain in immigration detention because those who have been placed in hotels have not received a resettlement notification.

The field study in Kupang highlights the following findings:

- According to the interviewees, no social and legal problem have occurred in relation to refugees and asylum seekers.
- The detention center has been conducting routine socialization of asylum seekers and refugees in the local community and district government level. The purpose is to prevent conflict between detention is which the officer or otherwise a member of the local community and the detention center, and to improve the relationship and bond of friendship while adhering to rules that are adaptable to the humanitarian conditions of the refugees.
- According to the Office of Population and Civil Registry, no marriage between refugees has been reported in Kupang.

V. STRUCTURING OF NATIONAL POLICY ON REFUGEES

In general, the presence of refugees in Indonesia presents a dilemma, especially for those who are awaiting placement in a third country. On the one hand, Indonesia has international obligations to protect them on the basis of legal instruments such as the International Covenant on Civil and Political Rights. Under Indonesian national law, refugees are entitled to protection of their human rights. On the other hand, the presence of aliens raises concerns about social problems resulting from the interaction of refugees with the local community. Thus, Indonesian national law has limitations in matters of immigration and foreign affairs. Nevertheless, Indonesian law enforcement aims to provide protection not only to citizens but also to refugees. UNHCR Indonesia serves as a bridge so that refugees and Indonesian citizens can coexist.

As Indonesia is not a party to the Convention on the Status of Refugees (1951), issues involving them are classified as immigration matters. Even within the scope of immigration, the legislation does not specifically address the problem of asylum seekers and refugees. This condition has resulted in the reluctance of regional government officials to face the massive influx of foreigners seeking asylum. Only Act No. 6 of 2011 Concerning Immigration and the Director General of Immigration Regulations governs the treatment of foreigners who are classified as illegal migrants. All foreigners who do not have immigration permits are categorized as illegal immigrants.

Field studies in Medan, Kupang, and Jakarta have shown good interaction between the refugees and the local communities. Officers in the field always took a humane

³⁹ The UNHCR source for this field study is Hendrik Ch. Terik as Protection Associate of UNHCR Indonesia.

approach and paid attention to the refugees. The field studies lead to the following conclusions:

- 1) Refugees and asylum seekers have the status of illegal immigrants; thus, their treatment is the same under Indonesian national laws.
- 2) The principles and practice of human rights in handling asylum seekers and refugees in the field is highly dependent on the discretion of the daily executive officer, so different standards of treatment are observed.
- 3) Cooperation among local agencies has been established.
- 4) Handling of marital status and the status of refugee children is conducted merely on the level of public record obligations and has not reached the granting of legality based on applicable laws in Indonesia.
- 5) The interaction of refugees and asylum seekers with the public is peaceful.
- 6) In certain conditions, refugees and asylum seekers are given freedom of movement depending on the discretion of field officers.

As explained previously, based on the explanation of national requirements on immigration and refugees, Indonesia guarantees the protection of human rights, including those of refugees. However, national laws and regulations are inadequate to optimally communicate such commitments for refugees. Thus, this study recommends the formulation of new legal requirements and regulations on the handling of refugees awaiting resettlement to a third-party state and asylum seekers whose request for status has been rejected by the UNHCR.

VI. CONCLUSION

Considering the explanation on the national requirements for immigration and refugees, we can understand that Indonesia's national laws guarantee the protection of human rights, including the rights of refugees. However, Indonesia's commitment is not adequately reflected because the country has no specific legislation on handling refugees who are waiting for placement to a third-party state and asylum seekers whose requests for status have been rejected by the UNHCR. Thus, necessary legal arrangements should be formulated.

ACKNOWLEDGMENT

We are grateful to assistant researchers Anbar Jayadi, Dita Liliansa, Meike Rachmana, and Alfiana Qisthi, who helped in collecting data during our fieldwork.

Bibliography

Legal Documents

- United Nations, General Assembly. *Universal Declaration of Human Rights*. G.A. res. 217A (III), UN Doc. A/810, 1948.
- Convention relating to the Status of Refugees*. Geneva, 28 July 1951, UNTS Vol. 189.
- Convention on the Rights of the Child*. New York, 20 November 1989. UNTS Vol. 1577.
- International Covenant on Civil and Political Rights*. New York, 16 December 1966, UNTS Vol. 999.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. New York, 10 December 1984. UNTS Vol. 1465.
- Indonesia. The 1945 Constitution of the State of the Republic Indonesia.
- . *Undang-undang tentang Kewarganegaraan (Law on the Citizenship)*. UU No. 12 tahun 2006, LN No. 63 tahun 2006 (Law No. 12 of 2006, SG No. 63 of 2006).
- . *Undang-Undang tentang Keimigrasian (Law on Immigration)*. UU. No. 6 Tahun 2011. LN No. 52 tahun 2011. TLN. No. 5216 (Law No. 6 of 2011, SG No. 53 of 2011).
- . *Peraturan Pemerintah tentang Peraturan Pelaksanaan Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian (Government Regulation on the Implementation of Law No. 6 of 2011 on Immigration)*. PP No. 31 Tahun 2013 (GR No. 31 of 2013).
- . *Peraturan Direktorat Jenderal Imigrasi tentang Penanganan Imigran Illegal (Directorate-General of Immigration Regulation on the Handling of Illegal Immigrant)* Peraturan No. Imi-1489.Um.08.05 Tahun 2010 (Regulation No. IMI-1489.UM.08.05 of 2010).

Books

- Anderson, B., M. J. Gibney & E. Paoletti. *The social, political and historical contours of deportation*. New York: Springer, 2013.
- Amidjodjo, Sri Badini. *Perlindungan Hukum terhadap Pengungsi berdasarkan Konvensi Jenewa 1951 [The Legal Protection towards the Refugee based on the Geneva Convention 1951]*. Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman dan Hak Asasi Manusia RI, 2006.
- Gauci, J. P., M. Giuffré & E. Tsourdi. *Exploring the boundaries of refugee law: current protection challenges*. Leiden: Brill, 2015.
- Juss, S. S. *The Ashgate Research Companion to Migration Law, Theory and Policy*. Farnham: Ashgate Publishing, 2012.
- Kirkwood, S., S. Goodman, C. McVittie, & A. McKinlay. *The language of asylum: Refugees and discourse*. Basingstoke, Hampshire: Palgrave Macmillan, 2016.
- Lawrance, B. N., & G. Ruffer. *Adjudicating Refugee and Asylum Status: The Role of Witness, Expertise, and Testimony*. New York: Cambridge University Press, 2014.
- Moreno-Lax, V., & E. Papastavridis. *Boat Refugees' and Migrants at Sea : Integrating Maritime Security with Human Rights*. Leiden: BRILL, 2016.
- Negi, N. & R. Furman. *Transnational Social Work Practice*. New York: Columbia

University Press, 2010.

UN High Commissioner for Refugees. *Protecting refugees and asylum seekers under the International Covenant on Civil and Political Rights*. New York: UNHCR, 2006.

Pietsch, J. & M. A. Clark. *Migration and integration in Europe, Southeast Asia, and Australia: A comparative perspective* Amsterdam: Amsterdam University Press, 2015.

Rivera-Sánchez, L., & F. Lozano Ascencio. *The practice of research on migration and mobilities*. Cham: Springer, 2014.

Schouler-Ocak, M. *Trauma and migration: Cultural factors in the diagnosis and treatment of traumatised immigrants*. Cham: Springer. 2015.

Simeon, J. C. *The UNHCR and the Supervision of International Refugee Law*. Cambridge: Cambridge University Press, 2013.

Simich, L. & L. Andermann. *Refugee and Resilience: Promoting Resilience and Mental Health among Resettled Refugees and Forced Migrants*. Dordrecht: Springer, 2014.

Weissbrodt, D. S. *The human rights of non-citizens*. Oxford: Oxford University Press, 2008.

Articles

Due, C., D. W. Riggs & M. Augoustinos. "Research with Children of Migrant and Refugee Backgrounds: A Review of Child-Centered Research Methods." *Child Indicators Research* 7, no. 1 (2014): 209-227.

Elias, S. B. "The Perils and Possibilities of Refugee Federalism." *American University Law Review* 66, no. 2 (2017): 353-414.

Ferreira-Snyman, A. "Sovereignty and the changing nature of public international law: towards a world law?" *Comparative and International Law Journal Of Southern Africa* 40, no. 3 (2007): 395-424.

Lee, Antony. Kebijakan Imigrasi: Pengawasan Orang Asing di Indonesia, Kompas: 12 April 2016.

Liliansa, Dita and Anbar Jayadi. "Should Indonesia Accede to the 1951 Refugee Convention and Its 1967 Protocol?" *Indonesia Law Review* 5, no. 3(2015): 324-346. Ludwig, B. "'Wiping the Refugee Dust from My Feet': Advantages and Burdens of Refugee Status and Refugee Label." *International Migration* 54, no. 1 (2016): 5-18.

Matompo, Oskar. "Pembatasan Terhadap Hak Asasi Manusia dalam Perspektif Keadaan Darurat [The limitation of Human Rights in the perspective of emergency situation]." *Jurnal Media Hukum* 21, no. 1 (2014).

McDonnell, B. (2009). "Our "Nation of Immigrants": Conflict and Citizenship in a Refugee Relocation Program." *North American Dialogue* 12, no. 2 (2009).

Modri, J. M. "Law's Poverty." *Potchefstroom Electronic Law Journal* 18, no. 2 (2015): 123-273.

Sampson, R., Sandra Gifford, Savitri Taylor. "The Myth of Transit: The Making of a Life by Asylum Seekers and Refugees in Indonesia." *Journal of Ethnic & Migration Studies* 42, no. 1 (2016): 1132-1152.

Susaningsih, Catur. "Analisis Implementasi Kebijakan Penanganan Imigran Ilegal

- untuk Menangani Pencari Suaka dan Pengungsi di Indonesia". (Tesis Universitas Indonesia, Jakarta, 2011).
- Susaningsih, Catur. "Analisis Implementasi Kebijakan Penanganan Imigran Ilegal untuk Menangani Pencari Suaka dan Pengungsi di Indonesia [Analysis of the implementation of illegal immigrant handling policy for handling asylum seekers and refugees in Indonesia]" *Universitas Indonesia, Postgraduate Thesis*.
- Walker, R., L. Koh, D. Wollersheim & P. Liangputtong "Social connectedness and mobile phone use among refugee women in Australia." *Health & Social Care In The Community* 23, no. 3 (2015): 325-336.
- Zwi, K. & G. Chaney. "Refugee Children: Rights and Wrongs." *Journal of Paediatrics and Child Health* 49, no. 2 (2013): 87-93.

Websites

- Australia IMMI. "About Immigration Detention". <http://www.immi.gov.au/managing-australias-borders/detention/about/>.
- "Background to Immigration Detention". <http://www.immi.gov.au/managing-australias-borders/detention/about/background.htm>.
- "Key Immigration Detention Values". <http://www.immi.gov.au/managing-australias-borders/detention/about/key-values.htm>.
- Bakesbangpol DKI Jakarta. "Pengukuhan Anggota Tim Pengawasan Orang Asing (Tim PORA) dan Peresmian Sekretariat Tim PORA Kantor Imigrasi Kelas I Khusus Jakarta Selatan". <http://www.bakesbangpoljakarta.com/index.php?halaman=berita&halaman2=isi&id=377>
- BBC. "Terkatung-katung, Pengungsi Rohingya Nikahi WNI". http://www.bbc.com/indonesia/dunia/2015/04/150419_rohingya_pengungsi_kisah.
- Brown, T. and Antje Missbach, "The Boats May Have 'Stopped', but More Refugees are Stuck in Limbo in Indonesia", <http://theconversation.com/the-boats-may-have-stopped-but-more-refugees-are-stuck-in-limbo-in-indonesia-56152>, accessed on 15 April 2016
- Berita Jakarta. "Tim PORA Jaksel Awasi 11,000 WNA". <http://www.beritajakarta.com/read/31243/tim-pora-jaksel-awasi-11000-wna#.V4XXGdJ97IU>.
- Direktorat Jenderal Imigrasi. Rapat TIM Pengawasan Orang Asing. <http://www.kemenkumham.go.id/v2/berita/670-awasi-orang-asing-kemenkumham-bentuk-tim-pora#sthash.XNAQDu9g.dpuf>.
- Harian Andalas. "Mardiaz Minta Tim Pora Gelar Razia Gabungan". <http://harianandalas.com/kanal-medan-kita/mardiaz-minta-tim-pora-gelar-razia-gabungan>
- Harian 88. "Kantor Imigrasi Jadi Ketua Tim Pora". <http://www.harian88.com/kantor-imigrasi-jadi-ketua-tim-pora/>
- Indonesia Civil Society for Refugee Rights Protection, Suaka: Masalah perlindungan. <https://suaka.or.id/public-awareness/id-masalah-perlindungan/>.
- Jastram, Kate dan Marilyn Achiron. "Refugee Protection: A Guide to International Refugee Law". <http://www.unhcr.org/3d4aba564.pdf>.
- Kanim Kelas I Polonia. "Rapat Tim Pengawasan Orang Asing Kota Medan 2015 Kantor Imigrasi Kelas I Polonia". <http://polonia.imigrasi.go.id/berita/rapat-tim-pengawasan-orang-asing-kota-medan-2015-k>

Kementerian Dalam Negeri. "Mendagri: PembatalanPerdaTakBisaBegituSaja". <http://www.kemendagri.go.id/news/2016/06/22/mendagri-pembatalan-perda-tak-bisa-begitu-saja>.