

HUMAN RIGHTS PROBLEM OF STRANDED REFUGEES IN A TRANSIT COUNTRY: CASE STUDY IN MAKASSAR CITY, INDONESIA

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Abstract

Global forced displacement mostly by conflict and persecution continues to escalate dramatically at the end of 2016 and has never been higher since World War II. People fleeing war or another catastrophe who cannot return to their country of origin have been granted asylum in the foreign country. They will be processed to have their claims *for refugee* status thoroughly assessed by *UNHCR in which is named after as a Refugee Status Determination (RSD)*, a legal process by government or UNHCR to determine whether a person seeking international protection is considered a refugee under international, regional or national law. In fact, the vast majority of refugees who intend to migrate to developed states as their final destination, generally settle first in a stable and middle-income country such as Indonesia. As a result, Indonesia is swamped by refugees, and their condition has been exacerbated by Indonesia status which is not the signatory of the 1951 Refugee Convention. This status leads to the limitation for accessing human rights of refugees. Thus fulfilling refugee's rights are prevalent due to the uncertainty for resettlement to the third country. Notwithstanding some institutions such as International Organization for Migration (IOM), Immigration, and Social Service department have conducted programs for a refugee to overcome their lack of activities, the implementation is uneven. The findings of this research demonstrates that (1) when refugees are not permitted to get a job, have limited access to education and affordable health facilities, (2) The program suffers from various difficulties due to the lack of cooperation with related agencies and the lack of human resources, they continue to suffer with their refugee status being negatively affected. This study used a participatory method, observation and literature review. Data is obtained through the interview of refugees and related authorities in different locations. During collecting the data, the author implemented several empowerment programs in refugee community housing as a strategy of the author who encounters difficulties while getting information

Keywords: *Human Rights, Transit Country, Refugee Status Determination, Global forced displacement*

INTRODUCTION

Indonesia has been selected as one of the transit areas by refugees who have fled from conflicts or wars since 1999. Geographically linking Asia to Australia, Indonesia has grown in importance as a location with easy access by land for refugees intending to live in Australia. Hence, Indonesia has experienced a high traffic of refugees even Indonesia is not a signatory 1951 United Nations Convention on the Status of Refugees and 1967 Protocol Related to the Refugee Status. The country, however, has shown its compliance with the principle and spirit of the convention.

Data in UNHCR in 2017 shows that the number of registered refugees in Indonesia to be approximately around 13,800 peoples. At the end of December 2017¹, most refugees came from Afghanistan (55%), Somalia (11%) and Iran (6%), being distributed in a number of Indonesian cities such as Makassar. Boedi Prayitno, the Head of the Immigration Detention Centre in Makassar, observed that Makassar accommodated about 1,800 refugees, with those from Afghanistan representing 1,274, followed by 217 from Myanmar and 170 from Somalia.²

¹ <http://www.unhcr.org/id/>

² Tribun Timur. (2018, February 27). *Wajah Pengungsi Pikat Istri Warga Makassar*. PP.1

The Regional Government of Makassar provides community housing and motels for refugees, as is the case in other urban centres in Jakarta, Medan and Pontianak. In Makassar, the local government is assisted by International Organization for Migration (IOM) and United Nation High Commissioner for Refugee (UNHCR). IOM helps the government in regulating the movement of illegal migrants as well as provide humanitarian assistance to those who are arrested. These services include counselling, medical care, food, shelter, necessary skills training and assistance in applying asylum or voluntary repatriation. IOM's efforts are related to its principal mandate as one of the organisations that focuses on giving humanitarian aid to individual and countries.

Different from IOM, UNHCR focus is to determine immigrants' status. Once an immigrant is registered, he/she is considered an asylum-seekers. Then, the asylum-seeker has to prove that the persecution is taking place in his/her country to be recognized as a refugee. The UNHCR's primary purpose is to safeguard the rights and well-being of people who have been forced to flee. Together with partners and communities, UNHCR works to ensure that everybody has the right to seek asylum and find a safe refuge in another country. The UNHCR has strived to secure lasting solutions.³ IOM and UNHCR have continued to carry out a variety of activities as a response to the limitations faced by refugees while living in the transit country.

Although the local government in Makassar has helped and is being assisted by some international organisations, still, refugee have become a burden for the local authorities and communities. A large number of refugee has the potential to cause unrest, disrupt socio-economic life and potentially affect the political stability of a country. This potential is exacerbated by the uneven distribution of human resource who undertake activities on behalf of refugees, while at the

same time, uncertainties pertaining to travelling to destination or third country continue to exist. As many of these refugees are in the transit state for a short-time, not only do they face restrictions, but also suffer as they cannot gain employment or access to education.

The restrictions in a transit country such as Indonesia can be reasonable. As Indonesia has not ratified the 1951 convention, the United Nation cannot compel Indonesia to do so. Indonesia also cannot provide much to the refugees due to its own demands from a population of more than 270 million people. As a developing state, Indonesia faces many challenges, including high fuel prices, illegal fishing, general poverty and the influx of illegal immigrants who have also contributed to increase crime rates. This basically implies that Indonesia is not ready to host refugees over the longer term.

Along with problems and challenges, Indonesia, particularly in Makassar, the second largest host after Jakarta, appears to include refugees as one of the prominent issues which should be solved immediately. Due to varying reasons, some refugees reside in Makassar for longer periods than they initially were planning to do so. One of the reasons for this is Australia's decision to stop accepting refugees who are transiting in Indonesia. Ultimately, some of the refugees who hoped for a brief stay may be forced to be stranded for a much longer period in a transit state such as Indonesia, which while facing various challenges is also not a party to the refugee convention.

METHOD

This research is a follow-up research from the author who has been researching the state and status of refugees from 2015 to 2017. It relies on the data collected from semi-structured qualitative interviews with government officials as well as non-governmental organisations pertinent to the topic as well as with some refugees. The questions focus on four matters, namely, regulation and policy that manages refugees, programs that are provided for refugees by related institutions, the conditions of long-term

³ <http://www.unhcr.org/who-we-help.html>

refugees and why refugee potentially can cause problems in their host countries. The informants also include staff in IOM, immigration, and refugees.

Some data was acquired when the author implemented empowerment programs for refugees in 2016 at some refugee's housing. It was done due to the difficulties to obtain any piece of information from the refugees. They seem to keep their stories to themselves fearing that they were becoming objects of a research study. Thus, while getting the data, the author conducted English class for the children of refugees, recycled craft classes for the mothers while the males watched the running of the classes and helped to prepare the classes before they started.

This paper used a mixed methodology, using descriptive and qualitative research from the author's observation when conducting empowerment program as well as library research using studies and analysis from journals and newspapers. The author interviewed some refugees, women, men and children in Makassar at the *Perintis Kemerdekaan VII* region. The area was chosen because there were many refugee guesthouses which were close together and where they did not have any major routine activity except exercising. The activities also use community-based communication to develop local communication information systems that are more democratic and horizontally structured (not centralised).

RESULTS AND DISCUSSIONS

Indonesia's status as a transit country stems from its responsibility to implement international customs through the principle of non-refoulment and protection of human rights. The non-refoulment policy is implemented by Indonesia due to its ratification of the *Convention against Torture (CAT)*⁴. Thus, although Indonesia was not the state party to the *Refugee Convention* or

⁴ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

Refugee Protocol, it nonetheless has non-refoulement obligations and therefore, protected refugees on its territory. The principle of non-refoulement is stated in the *Refugee Convention as follows*⁵:

1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision 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 [they are], or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

The principle obliges Indonesia to accept people who left their countries due to security reasons. The author is able to demonstrate that the refugees that Indonesia has hosted do pose certain threats and can affect the local community negatively. The situation has become worse because Indonesia does not have any policies to handle crimes that are perpetrated by refugees. Indonesia only has a legal basis based on immigration matters under *Law No. 6/2011*, itself a response to Indonesia's accession to the *United Nations legal instrument on Transnational Organized Crimes 2000*. The law provides Indonesian immigration officials with broad authority to prevent the arrival and departure of foreigners, including the authority to investigate human trafficking and people smuggling crimes.⁶ Unfortunately, this law does not mention explicitly matters relating to refugee. As a result, crimes and illegal acts

⁵ *Convention relating to the Status of Refugees* (n 4), art 33.

⁶ Reza, Bhatara Ibnu. (2013). Challenges and Opportunities in Respecting International Refugee Law in Indonesia. In Angus Francais, & Rowena Maguire (Eds.), *Protection of refugees and displaced persons in the Asia Pacific Region* (pp. 117-134). Surrey-England : Ashgate Publishing Limited, pp.129

perpetrated by refugees has increased dramatically in Indonesia.

For instance, in Pekanbaru, is the capital of Riau province, Sumatra, Indonesia, the local government through the National Unity and Political Entity (*Kesbangpol*) formed a special team to monitor refugees concerning the possibility of conflicts in the community. There are indications that the refugees developed religious teachings that were different or even contradictory to the religious and local practices of Pekanbaru residents. Additionally, many of these refugees often hung out at the local traditional market and were drunk after visiting the nightclubs⁷. Adding to the rising social problems, many of them are from the Middle East, including Iraq and hence, tend to be good looking. Some of them have used their physical appearance to tease local women, in the hope of beginning a romantic relations or even free sex.

This problem also occurred in Cisarua, a location and district in the Bogor Regency, located in the province of West Java, where some refugees were diagnosed to be afflicted with gonorrhoea, an indication of HIV infection as a result of free sex that could be fatal to the health of the local people.⁸ The increase in the number of refugees seems to be affecting Indonesia's security, with many of them occupying community lands and interacting with locals, including marrying local women and raising a family. For some, the influx of refugees has been a destabilizing phenomenon through their disrespect for local social and religious practices as well as ignorance of local and national law.⁹ This has the potential to trigger

⁷ Awasi Migran, Kesbangpol Pekanbaru Bentuk Tim. (2015, July 15). Retrieved from <http://m.klikriau.com/read-17310-2015-01-04-awasi-migran-kesbangpol-pekanbaru-bentuk-tim.html#sthash.hRlIaais.dpbs>.

⁸ Permasalahan Pencari Suaka di Indonesia (2015, April). Retrieved from <http://nationalgeographic.co.id/berita/2013/10/permasalahan-pencari-suaka-di-indonesia>.

⁹ Yahya Sultoni. (2017 January 9). Potensi Konflik Antara Imigran Dan Pengungsi Dengan Masyarakat Lokal Cisarua, Jawa Barat. Retrieved from <https://lingstra.org/2017/01/09/potensi-konflik->

to inter-state (conflict between Indonesia and the state of origins of these refugees) and ethnic-religious conflicts due to cultural and religious differences between refugees and local communities.

To home in on this rising challenge, Head of the Immigration Detention Center (Rudenim) in Makassar, Boedi Prayitno, stated that many refugees from conflict countries such as Afghanistan, Myanmar, Somalia, Sudan, Pakistan, Iran, Iraq, Egypt and Sri Lanka even had affairs and extra-marital relations with Makassarese wives, thereby worsening the ire of local Makassarese males towards these refugees. There has also been a spurt in the level of crimes in Makassar. From June 2017 to the end of February 2018, Makassar Immigrant Detention Centre handled 47 cases of crimes involving refugees from various conflicted-countries in the world transiting in Indonesia.¹⁰ The majority of cases involved crimes such as fornication, paedophilia, fights, fraud, and destruction of property. The cases were processed according to immigration laws with the police sanctioning the perpetrators. However, the authority and jurisdiction of immigration is only limited to the law Number 6 of 2011 concerning on immigration, resulting in criminals being isolated in a detention centre.

To date, there have been several criminal acts committed by refugees in Makassar, with physical fights between refugees a common occurrence. For instance, two Iraqi citizens fought with two groups of foreigners from Sudan and Afghanistan at Wisma Bugis, Tamalanrea, Makassar¹¹. A clash also happened in Wisma Maysara, Jl Masale 1, Pettarani III, Tamamung, Panakukang District, where two Iraqis

antara-imigran-dan-pengungsi-dengan-masyarakat-lokal-cisarua-jawa-barat/

¹⁰ Wajah Pengungsi Pikat Istri Warga Makassar. (2018, February 27). *Tribun Timur*, pp 7

¹¹ Hendro Cipto. (2015 September 10). Pengungsi WNA Sudan dan Afghanistan Bentrokan di Makassar <https://regional.kompas.com/read/2015/09/10/10575381/Pengungsi.WNA.Sudan.dan.Afganistan.Bentrokan.di.Makassar>

fought.¹² In fact, two of the five refugees from Afghanistan who was arrested by the police continued fighting in the police station with disputes often arising due to misunderstandings.¹³

There have also been cases of violence against women. For instance, a refugee from Myanmar admitted that she was often got abuse physically by her husband.¹⁴ According to one of the psychologists from *Cahaya Madani Makassar Institute*, Titin Qomariah, who often counselled the refugees, said that the Myanmar women admitted that her husband was innately a rude person but where the living conditions in a refugee camp had made the situation worse. According to Titin, due to the stress experienced by many refugees, caused by continued uncertainties and lack of business opportunities, many had often resorted to committing violence against the wife or the child.

Clearly, the key issue is the lack of laws to refrain, deter and punish the refugees, especially due to Indonesia's status as a non-signatory of the refugee convention and where there is also the need to show compassion to these people. Even when crimes are committed by refugees and this is brought to the attention of the UNHCR and IOM, the response of these international organisations has been lukewarm with the general unwillingness to expel these refugees to a third country. Even when the violators are

apprehended by the police, it is difficult to try and sentence them.¹⁵

In view of the rising number of refugees in Indonesia and the challenge these non-citizens pose to Indonesia, the only way forward is to develop a more effective refugee policy. In the past, Indonesia did not have any specific policy to regulate refugees, although it has been managing them for many years by depending on law No. 37/1999. According to the law, with regard to foreign relations 'the granting of asylum to foreign nationals shall be exercised in accordance with national legislation taking into account international law, custom and practice.'¹⁶ From this regulation, it is clear that while Indonesia defers to International Law, Custom and Practice for granting asylum, it still tries to appropriate the national authorities to make decisions on refugee matters.

However, as can be seen from the law, it only focuses on immigration. It regulates the entry and departure of foreigners but do not accommodate the refugees. On December 31st 2016, President Jokowi signed a presidential decree that outlined the treatment of asylum seekers and refugees from abroad. The order defined "refugees" based on the 1951 Convention of Refugees, which regulates the protocol in handling asylum seekers and refugees who arrive in Indonesia, including search and rescue operations in emergency situations. It assigns the distribution role for each related institutions, mainly under the Ministry of Foreign Affairs and Ministry of Law and Human Rights, in addition to regulating the funds needed for the

¹² Makassar Hentikan Penerimaan Imigran Pencari Suaka. (2016, Oktober 10). Retrieved from <http://regional.kompas.com/read/2016/05/16/10004021/Makassar.Hentikan.Penerimaan.Imigran.Pencari.suaka>

¹³ Imigran adu jotos di Kantor Polisi. (2016, September 2). Retrieved From <http://www.antaraneews.com/berita/155669/imigran-adu-jotos-di-kantor-polisi>

¹⁴ Hardiansya. (2016, Noember 8). Cerita Imigran Myanmar Yang Disiksa Suaminya Berkali-kali di Makassar. Retrieved from <http://bicara.id/cerita-imigran-myanmar-yang-disiksa-suaminya-berkali-kali-di-makassar/>.

¹⁵ Hendra Cipto. (2018, February 26). Kepala Rudenim: Banyak Pengungsi Selingkuhi Istri Warga Makassar. Retrieved from <https://regional.kompas.com/read/2018/02/26/12145861/kepala-rudenim-banyak-pengungsi-selingkuhi-istri-warga-makassar>.

¹⁶ Reza, Bhatara Ibnu. (2013). Challenges and Opportunities in Respecting International Refugee Law in Indonesia. In Angus Francais, & Rowena Maguire (Eds.), *Protection of refugees and displaced persons in the Asia Pacific Region* (pp. 117-134). Surrey-England : Ashgate Publishing Limited.

assistance to the state budget and other legitimate sources.¹⁷

Even though the flow and influx of refugees have been controlled, the problems still exist, with spurts of increases from time to time, as was the case with the Rohingya inflow in 2017 and 2018. A number of issues are worth noting. First, Indonesia has had to manage the challenging situation with the sudden influx of refugee due to its status as a non-signatory of the refugee convention. Second, Indonesia has limited policies concerning refugees. Third, the majority of refugees have Australia as their final destination for seeking asylum even though Australian Immigration Minister Scott Morrison announced that asylum seekers who registered with the UNHCR in Indonesia on and after July 1, 2014, would no longer be eligible for resettlement in Australia.¹⁸ This policy has trapped and created a serious dilemma for Indonesia in the manner Australia is handling refugees. Ultimately, refugees in Indonesia who are here for transit purpose end up staying for a protracted period, in turn, leading to all kinds of security and social issues.

In Makassar, facts have shown that most refugees poor outlook and even behaviour is partly related to various international organisation's lack of capacity. From interviews conducted by the author, the refugees complained about IOM's role as an institution that did not help to realise what it had promised to refugees. For instance, the absence of training/empowerment program that should be done in all the refugee housing regularly, is a case in point. As a result, refugees frustrations have increased due to the lack of activity. With this confirmed to be true, adhoc programmes have been launched

¹⁷ Shaffira D.Gayatri & Mohammad Baqir Bayani. (2017, July 26). *Between Trump and Jokowi's Refugee Policy: What it Means for Indonesia*. Retrieved from <http://jakartaglobe.id/news/indonesia-will-help-refugees-wont-host-forever-says-immigration-office>.

¹⁸ Max Walden. (2016 June). Retrieved from <http://www.asyluminsight.com/max-walden/#.WsWm4dtubIU>

by third parties but these tend to be ineffective. For instance, routine training/empowerment was only undertaken in one guesthouse by one vendor who previously submitted a proposal to IOM¹⁹. This situation led to social jealousy, particularly in the research location which is entirely untouched by training/empowerment programs from IOM. At the same time, IOM has been helpful in facilitating the access of others organisations to undertake activities related to refugees. With the limited human resources at IOM and the growing number of refugees in Makassar City, IOM needs to provide more space for those who wish to contribute to IOM programs that are devoted to the refugees during their stay in Makassar.

Why is training and empowerment program important for refugees? This is one way to overcome the limitations of refugee rights in transit countries, in which they are not allowed to work or to find a job. Ideally, the empowerment and training program can be used by the refugee to explore their potentials or capabilities and gain knowledge which will useful for finding a job in their third country. Regular training/empowerment can also reduce the potential for illegal acts by refugees. It was also observed that refugees had difficulties accessing health facilities.

Some refugees, who were sick, had not received medical treatment over a long period. Based on interviews, communication problems were also responsible for accounting for why patients were often not brought hospitals. There was no precise procedure on how to access the medication and not enough representatives to take care of ill refugees. In the author's research, it was discovered that there was only one housing facility that routinely got a doctor's visit and if other refugees from another shelter tried to seek medical assistance, this was often denied on administrative reasons.

Despite refugees' right to access adequate healthcare facilities which often tends to be highly restricted in transit

¹⁹ IOM Staff Makassar. (2016, September) Telephone Interview

countries, more can be done to assist the refugees. On paper, it looks good. But the reality is otherwise. The IOM needs to add staff in every housing (each housing is represented by one supervisor also acts as a security officer) who handles the health problems. IOM requires co-operation with the nearest clinic or hospital. Regarding communication problems, IOM needs to efficiently and equitably organise Indonesian language classes to make them easier to communicate with the locals. Facts have shown that adult refugees are experiencing difficulties in communication due to lesser interaction with the community even though the refugee children more easily understand the local language because the local people often interact with them.

The difficulty of accessing special education for school-age refugee children is also a problem for refugees. Vast majority complained about the plight of enrolling their children in formal school. Most of the refugees are settled in Makassar for 2-4 years, and during that time, their children do not get any education and lessons. The absence of precise information and rules has resulted some children are lucky to get an education in formal school while others are wondering why there was a differentiation in which their children are not allowed to go to school. Additionally, they encountered difficulties in having baby food, finding affordable sports facilities and expressing their hobbies or specific abilities that can be put to good use, partly to engage these temporary visitors and deter them from undertaking illegal acts.

CONCLUSION

The author concludes that refugees in Makassar are experiencing difficulties in accessing their basic rights, namely the right to work, education and affordable medical treatment. This constraint is in part due to the status of Indonesia as a non-signatory 1951 Refugee Convention and as such, does not formally recognise refugees. Despite this, one of the urban cities in Indonesia, Makassar has accommodated thousand of refugees who are stranded and faced uncertainties with little or

no engagements of these due to various restrictions.

Refugee's problem in Makassar should be considered as one of important issues in Indonesia. First, Makassar is the second largest host after Jakarta, but in fact, Jakarta have received more attention from the media and scholars than Makassar as it capital city of Indonesia. Meanwhile Makassar is usually deemed as peripheries within the Indonesian archipelago. Second, as a result from uncertainty and lack of activities, it is leading to all kinds of security and social issues. There are some criminal acts committed by refugees but they did not receive a proper sentence. Despite related institutions such as IOM and UNHCR have already conducted some programs for refugee, but the distribution is uneven. The program suffers from various difficulties due to the lack of cooperation with related agencies and the lack of human resources. This condition also contributes to exacerbate the refugee conditions and the potential of negative impact to the local community.

In fact, if the refugees are informed that their arrival in Makassar is merely of a transit nature and where they have serious rights as refugees, the refugees may be, in future, be deterred from choosing Indonesia as a transit point. Also, precise information about rights to education, health and employment will also be helpful in dampening the refugees' expectations as well as reducing potential conflicts with local communities. Relevant institutions such as IOM also need to run the programs more effectively, which can help to address many of the refugees' issues while in transit. It is also necessary to build community awareness about the conditions of refugees who have a different cultures and experiences, differently immensely from the local Makassarian community. From a humanitarian perspective, refugees are the sovereign civilians as others, who have the same rights. IOM also needs to involve actively with other third parties to promote or even hold *culture sharing sessions* to facilitate the refugees adapt to the environment in which they live. IOM should be more open to

others who have a desire to solve the problems of the refugees.

Since refugees are a sensitive issue, it is necessary to have regular monitoring of institutions such as Immigration and IOM throughout refugee's activities. The authorities should implement strict regulations, particularly for a refugee who has committed a crime. Also, the security officer is required to stay alongwith them in every community housing. The last is the authorities should take into account the rights of refugees when they stranded in a transit country.

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