



Dynamics and Challenges of Legal Regulation concerning Human Smuggling with Refugee Objects in Indonesia

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Abstract This research discusses the dynamics and challenges in legal regulation related to human smuggling, focusing on refugees in Indonesia. Despite Indonesia being a significant transit country for refugees, the existing legal framework, particularly Law No. 6 of 2011 on Immigration, does not specifically regulate the status and protection of refugees. Consequently, refugees are often viewed as illegal immigrants, leading to human rights violations and legal uncertainty. The first subsection analyzes how dynamic legal regulations interact with the challenges faced in the context of human smuggling. It further explores necessary efforts to create legal certainty, including the need for more specific regulations and transparent procedures. This research is expected to contribute to the development of better policies and practices in dealing with human smuggling cases and protecting the rights of refugees in Indonesia.

Keywords: human smuggling, refugees, legal regulation, Indonesia, human rights

Introduction

The existence of refugees is a persistent issue throughout human civilization. This is a consequence of human instinct to seek comfort and avoid fears that threaten safety. Such threats may arise from natural factors or human actions (Hansen, 2019). Natural disasters fall into the former category, while acts of war, civil unrest, and similar actions belong to the latter. Historically, the primary motivation for migration was driven by the human instinct to seek housing or areas that provide safety and comfort. Historical records indicate that the Canaanites (now known as Palestinians) migrated from Asia to Europe, similarly to the Romans during their heyday, among many other nations. This large-scale population displacement was initially viewed as a domestic issue of a state. However, as

migration across borders expanded, the refugee issue became a concern faced by particular countries, eventually recognized as a collective problem of humanity. This issue also poses an unavoidable challenge for the Indonesian government, as a country that often becomes a destination for refugees seeking safety and protection (Adhaniah et al., 2021).

The refugee issue has garnered serious attention globally, given its connection to human rights (HR) and the demographic dynamics of countries worldwide (Baines, 2017). Within increasingly interconnected international relations, migration and population mobility become significant factors influencing a country's demographic structure. Therefore, it is reasonable for countries worldwide to pay close attention to this refugee issue. According to data published by the United Nations High Commissioner for Refugees (UNHCR) at the end of 2020, there were approximately 82.4 million individuals who were forcibly displaced to various countries due to persecution, conflict, violence, human rights violations, and events that disrupt public peace.

The refugee issue is often linked to human smuggling, which is also a global concern recognized as a form of transnational crime that must be fought and prevented collectively (Brolan, 2002). In order to reach their desired destinations, many refugees resort to the services of smugglers. International syndicates usually operate these smuggling services with a primary motive of financially profiting. In this context, there exists a duality where refugees require facilitators to advocate for their rights to live decently in the destination country. At the same time, smugglers tend to prioritize financial gain from the services they provide to refugees. It is not uncommon for migrants utilizing smuggling services in various countries to be refugees themselves.

In the context of Positive Law in Indonesia, there is a focus on researching the enforcement of human trafficking laws based on Law Number 6 of 2011 on Immigration and Law Number 15 of 2009 on the Ratification of the Protocol against the Smuggling of Migrants by Land, Sea, and Air. This research also examines policy formulations for the future to combat human trafficking crimes in Indonesia. The results of the research indicate that the efforts to enforce laws against human trafficking have not yet been optimal, as there is no specific law to deal with human smuggling crimes and only relies on the Immigration Law. Meanwhile, future policy formulations have already been included in the Draft Criminal Code 2019, stated in Book II Chapter XX on Human Smuggling in Article 463. In the proposed legislation, there are still limitations in the capacity of criminal law, necessitating legal resolutions through non-penal means.

Penalties against human traffickers still face challenges because many international regulations focus more on the protection of refugees themselves and rarely specifically regulate the enforcement of laws against human trafficking offenders. However, as a form of transnational crime requiring prevention and suppression, imposing heavy penalties on traffickers is considered the fairest and

most effective enforcement of law. From a legal perspective, the goals of law—legal certainty, justice, and societal benefits—must be felt by all parties, both offenders and victims. The lack of general sentencing guidelines concerning human smuggling perpetrators causes legal rulings from law enforcers to be potentially contested or appealed in higher courts, as they are deemed insufficient in providing adequate justice and legal benefits. This also risks creating disparities in judicial rulings for the offenders of human smuggling.

The absence of regulations or specific laws regarding sentencing for smuggling offenders impacts practices on the ground, causing confusion among judges in delivering rulings on human smuggling cases. Most perpetrators are Indonesian citizens (WNI) or local residents who often act merely as field operators, not as primary actors in human smuggling and trafficking crimes. Dissatisfaction and responses to court rulings, along with judicial discretion in adjudicating human smuggling cases, indicate a need to reform laws concerning the sentencing of human smuggling offenders to achieve justice, legal certainty, and benefits for the broader community. As previously explained, the refugee issue is complex and multidimensional, making it inappropriate to equate it with human smuggling or migration issues. Based on the above exposition, this research will discuss the dynamics and challenges of legal regulation against human smuggling involving refugees in Indonesia.

Methods

The normative legal research method is utilized in this legal study, focusing on document studies and legal norms. This method aims to analyze the existing legal rules and how those rules are applied or interpreted in a particular regulation. The primary sources used in normative legal research are legislations and other legal literature. This approach is highly relevant for researching legal issues of a theoretical and conceptual nature, as outlined above in this research discussing the dynamics and challenges of legal regulations regarding human smuggling involving refugees in Indonesia. One approach used in this method is the statute approach and the conceptual approach. The statute approach involves examining and analyzing various regulations governing particular issues, such as Law Number 6 of 2011 on Immigration and related regulations. Through this approach, the researcher can discuss the above exposition in this research regarding the dynamics and challenges of legal regulation concerning human smuggling with a focus on refugees in Indonesia.

Results and Discussion

Dynamics of Legal Regulation Concerning Human Smuggling Involving Refugees in Indonesia

According to Law No. 6 of 2011 on Immigration, refugees and asylum seekers are still categorized as illegal immigrants, namely immigrants who enter Indonesian territory without official documents or outside the procedures established by law. Consequently, refugees and asylum seekers are often subject to detention in Immigration Detention Houses (RUDENIM) located in various locations in Indonesia, with uncertain detention durations. This situation is particularly concerning, considering that they generally do not intend to enter a country without official documents, as it is difficult for refugees to obtain legitimate immigration documents.

Article 120 of the Immigration Law regulates the crime of human smuggling, with a minimum prison sentence of five years and a maximum of 15 years, along with a fine of at least Rp 500 million and a maximum of Rp 1.5 billion. The same criminal threat also applies to attempts to commit the crime of human smuggling. Regulations regarding the procedures for entering and exiting individuals from Indonesia are defined in the Immigration Law. According to the provisions of Article 8 paragraph (1) of the Immigration Law, it states that "Every person entering or leaving the territory of Indonesia must possess valid travel documents." Therefore, foreigners classified as refugees are those without valid travel documents, violating the rules stipulated in the Immigration Law.

Illegal immigrants are defined as "foreigners who enter or are in Indonesia without valid authorization," and therefore must be subject to immigration actions according to the provisions of Article 2 paragraph (1) of the Regulation of the Directorate General of Immigration concerning Handling Illegal Immigrants, which states that "Illegal immigrants known to be in Indonesia are subject to immigration action." Such actions include deportation as referenced in Article 75 paragraph (2) letter f of Law No. 6 of 2011 or temporary placement in Immigration Detention Houses (RUDENIM). As outlined in Article 83 paragraph (1) letter b and letter d of Law No. 6 of 2011, immigration officials are authorized to place foreigners in RUDENIM if they are in Indonesia without valid travel documents or are awaiting deportation execution.

The crime of human smuggling is categorized as a type of organized transnational crime. This crime is also regarded as a specialized crime in Indonesia that requires more focused handling. Regulations regarding human smuggling crimes in Indonesia are currently governed by the Immigration Law. These provisions encompass definitions, prevention measures, enforcement steps, and criminal sanctions related to human smuggling. According to Article 1 number 32 of the Immigration Law, human smuggling is defined as:

“Acts aimed at seeking profits, either directly or indirectly, for oneself or others, involving the transportation of an individual or groups of individuals, either in an organized or unorganized manner, or ordering others to transport individuals or groups of individuals, either in an organized or unorganized manner, who do not have the lawful right to enter the territory of Indonesia or exit from the territory of

Indonesia and/or enter into countries which they do not have the lawful right to enter, either using valid documents or false documents, or without using travel documents, either through immigration checks or not.”

In the Indonesian Criminal Code (KUHP), there are articles that can be used to charge human smuggling perpetrators, specifically Article 263 on forgery, applicable to those who create or use false documents. However, in refugee cases, this article is usually not applied, as refugee smuggling often occurs without using any documents but through direct access to Indonesian territory.

Indonesia provides protection for the freedom to seek political asylum as stipulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945). Article 28G paragraph (2) states, "Everyone has the right to be free from torture and inhumane treatment and has the right to seek political asylum from another state." Based on this provision, Indonesia fundamentally accepts political asylum requests from foreign nationals, thus indirectly providing protection to refugees seeking asylum in Indonesia. Furthermore, the Human Rights Law also reinforces this regulation through Article 28 paragraph (1), which states, "Everyone has the right to seek asylum for political protection from other countries." Implicitly, this indicates that Indonesia accepts political asylum requests and, in some cases, provides protection to refugees who request it, even though there is no clear regulation differentiating between the categories of refugees and illegal immigrants.

The dualism in classifying refugee status in Indonesia is closely related to the protection provided to individuals who are victims of human smuggling, both by the Indonesian government and by the UNHCR. Until now, Indonesia lacks a clear regulation regarding refugee status. As a result, many refugees pass through Indonesia as a transit country before heading to Australia as their final destination. In the Indonesian government's view, refugee status is categorized as illegal immigrants due to the lack of clarity in regulating refugee status.

Refugee status according to UNHCR has a stronger legal basis, namely the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, which explains in detail the rights and obligations of refugees and the states acknowledging their existence. The dualism of refugee status in Indonesia is evident in how the government determines the status of victims of human smuggling. The Indonesian government categorizes all victims of human smuggling as illegal immigrants. In this case, protection for victims is limited to detention in Immigration Detention Houses for a temporary period until they are deported to their home countries. This categorization refers to Article 120 of the Immigration Law, which asserts that human smuggling involves the illegal transfer of an individual across national borders, thereby designating victims of human smuggling as illegal immigrants. The UNHCR compiles data on victims of smuggling who claim to be asylum seekers and refugees. Subsequently, the UNHCR classifies them as asylum seekers before granting refugee status. Should the victim successfully obtain refugee status, the UNHCR will provide full

protection until a third country willing to host them is identified. While awaiting their application as asylum seekers, these refugees will still reside in Indonesia under the protection of the UNHCR.

In addressing refugee issues, Indonesia has established cooperation with the UNHCR as Indonesia has not ratified the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol. This collaboration involves transferring the responsibility for handling refugees to the UNHCR, which operates under the mandate set forth in the UNHCR Statute established in 1950, especially for countries that have not signed the convention. Consequently, Indonesia lacks the authority to determine whether a group entering its territory qualifies as refugees. Such authority rests with the UNHCR, given that Indonesia is not a party to the 1951 Convention Relating to the Status of Refugees and its Protocol.

The issues arising from the differences in status determination include individuals who become victims of human smuggling claiming to be refugees to gain protection from the UNHCR. Consequently, Indonesia cannot engage effectively in handling illegal immigrants who claim to be refugees, even if their status has not been legally validated. The status determination process by the UNHCR typically takes a considerable amount of time, requiring asylum seekers to reside in Indonesia for extended periods. Not all applications to the UNHCR are accepted; if an application is rejected and reaches a final decision denying it, the responsibility for that individual returns to Indonesia.

The division of authority in managing illegal immigrants is set forth in the Director General of Immigration Regulation regarding Illegal Immigrants. This regulation governs how to handle illegal immigrants entering Indonesian territory and refers the cases of those seeking asylum and recognized as refugees to the UNHCR. However, the consequence is that almost all victims of human smuggling classified as illegal immigrants claim to be asylum seekers and refugees to gain protection from the UNHCR. Indonesia's perspective on refugees who are victims of human smuggling remains limited to an immigration perspective, which only considers immigration aspects. However, these refugees also involve elements of human rights violations that need protection, especially since they have a special status as refugees. Regulations in international conventions are founded on violations of human rights experienced by refugees, highlighting their need for special protection, which is one of the fundamental bases of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

Legal regulations concerning human smuggling involving refugees in Indonesia indicate several significant weaknesses. First, the existence of Law No. 6 of 2011 on Immigration, which categorizes refugees and asylum seekers as illegal immigrants, creates barriers to the protection of their rights. In this context, the Indonesian government still lacks specific regulations that clearly acknowledge refugee status, resulting in refugee handling processes often conflicting with human rights principles. Refugees arriving in Indonesia are frequently treated as illegal

immigrants and placed in Immigration Detention Houses (RUDENIM), lacking adequate legal protection. This situation poses a risk of human rights violations, such as unnecessary detention without a defined time frame and neglecting their right to seek asylum and international protection.

Indonesia's cooperation with the UNHCR in handling refugees has limitations that affect the effectiveness of protection for victims of human smuggling. Although Indonesia is committed to providing protection, not ratifying the 1951 Convention and its 1967 Protocol causes Indonesia to lose authority to determine refugee status and entirely depend on the UNHCR. This dependency can lead to situations where individuals claiming refugee status do not receive timely attention or handling, while they become trapped in legal uncertainty. The lengthy processing of refugee status by the UNHCR can leave refugees waiting in uncertain circumstances, making them susceptible to exploitation by human smuggling networks. Thus, despite cooperation with the UNHCR, legal ambiguity and complex bureaucracy continue to hinder effective protection for refugees and asylum seekers in Indonesia.

Challenges and Efforts to Create Legal Certainty in Regulating Contractual Clauses in Insurance Agreements.

The legal ambiguity surrounding refugee status in Indonesia presents a significant challenge impacting the protection and handling of cases related to refugees. Despite many refugees entering Indonesia with the aim of seeking safety, existing immigration policies, particularly those stipulated in Law No. 6 of 2011 on Immigration, categorize them as illegal immigrants. This provision not only results in the stigmatization of refugees but also adversely affects the protection of their fundamental rights. When refugees are considered illegal immigrants, they frequently face detention in Immigration Detention Houses, where they may encounter inhumane conditions and violations of human rights.

Additionally, classifying refugees as illegal immigrants creates confusion in law enforcement. As a transit country for many refugees trying to reach other countries such as Australia, Indonesia lacks clear procedures for handling refugees. This vulnerability exposes refugees to discriminatory treatment, where they might be arrested and deported without proper access to apply for asylum or protection. This ambiguity creates a situation in which refugees cannot enjoy the rights they should receive based on human rights principles.

The situation is further aggravated by the lack of understanding among law enforcement and immigration officials regarding refugee status and protection. Many of these officials lack sufficient training or knowledge about refugee rights and the international procedures related to refugees, leading to mishandling and violations of their rights. Consequently, refugees often find themselves trapped in a complex and opaque bureaucracy where they cannot advocate for their rights.

This ambiguity signals the necessity for Indonesia to clarify and amend existing regulations to ensure that refugees receive protections aligned with international law and human rights principles.

Another major barrier in addressing the issue of human smuggling in Indonesia is the absence of specific regulations protecting refugees. While Indonesia receives many refugees, the lack of a clear, separate legal framework to protect their rights results in ineffective law enforcement. Law No. 6 of 2011 on Immigration, although it contains provisions regarding immigration, does not explicitly regulate the status and protection of refugees. As an outcome, many refugees find themselves caught in unfavorable legal situations, often treated as illegal immigrants without consideration for their vulnerable conditions and backgrounds.

The absence of specific regulations further complicates adequate protection for refugees who become victims of human smuggling. Refugees who have been successfully smuggled often lack adequate access to protection or assistance, as their legal status is not formally recognized. In many instances, they have to deal with smugglers and other organized crime networks without any clear legal support to safeguard them. This situation raises not only the risk of exploitation but also prolongs legal uncertainty for these refugees.

Legal ambiguity in regulations also risks generating disparities in the handling of human smuggling cases. Various institutions and law enforcement officials may have different understandings and interpretations regarding how to manage cases involving refugees. This inconsistency could lead to unequal treatment, where some refugees may receive better or worse treatment depending on local policies or the individuals handling their cases. In other words, without clear and integrated regulations, there is a significant risk that the protection afforded to refugees will be uneven and exacerbate their already difficult situation.

The complex bureaucracy in Indonesia's immigration system presents a significant obstacle in managing refugees. When refugees enter Indonesia and apply for asylum, they often face a series of complicated and protracted procedures. This process may involve completing documents, interviews, and evaluations by various institutions, including immigration authorities and the UNHCR. The lack of clarity and the prolonged duration of these procedures can slow down handling processes and create considerable uncertainty for refugees, many of whom have previously experienced trauma.

The legal uncertainty stemming from this slow bureaucratic process has the potential to worsen an already vulnerable scenario for refugees. Many arrived in Indonesia hoping to receive protection from danger in their home countries. However, when they become entangled in a slow and inefficient system, they may experience despair and loss of hope. This situation is often exploited by human smuggling networks, who frequently seek opportunities to exploit those in a helpless state. Refugees awaiting asylum decisions may feel tempted to seek riskier

shortcuts, such as utilizing smuggling services, which can worsen their circumstances and make them more susceptible to human rights violations. This convoluted bureaucracy affects not only the refugees themselves but also the capacity of government institutions to deal with immigration and refugee protection issues. Their inability to respond quickly can result in a backlog of unresolved applications, adding to the workload of already burdened institutions. This creates a situation where refugees feel neglected, diminishing the overall effectiveness of the refugee handling system. Furthermore, this also jeopardizes Indonesia's commitments to its international obligations for human rights protection, as slow and inefficient handling may contradict the fundamental principles that should be upheld.

Indonesia's reliance on the UNHCR to manage refugees poses significant challenges in the refugee protection system of the country. Since it has not ratified the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, Indonesia has shifted the responsibility for protecting refugees to the UNHCR. While the UNHCR has a clear mandate to protect and assist refugees, this reliance creates a void of authority for the Indonesian government, which should play an active role in determining and safeguarding refugee status.

Indonesia's inability to independently determine refugee status hampers effective protection efforts. With a system dependent on the UNHCR, decisions regarding refugee status recognition rest entirely with that international agency, while the Indonesian government has no direct control over the process. This situation can lead to confusion and uncertainty for refugees, who may have to wait a long time to receive decisions about their status. During this period, they often live in vulnerable conditions with no certainty regarding their futures.

This dependency also impacts policies and procedures implemented in Indonesia. As a transit country, Indonesia must often adapt to the policies and practices set by the UNHCR, which may not always align with local needs or conditions. In some cases, this can cause a disconnect between the international procedures applied and the realities on the ground, creating additional challenges in ensuring adequate protection for refugees.

Relying on the UNHCR can reduce Indonesia's incentive to develop more comprehensive regulations and policies concerning refugees. When the responsibility for protection is entirely transferred to the UNHCR, the Indonesian government may become less proactive in creating a strong, responsive legal framework concerning the needs of refugees. In the long term, this may limit Indonesia's ability to participate actively in issues of migration and human rights protection.

The drafting of specific regulations concerning refugee protection and the handling of human smuggling is an important step that the Indonesian government can take to strengthen the legal system and provide better protections for refugees. These regulations should clearly acknowledge refugee status formally, referring to

definitions stipulated in international instruments such as the 1951 Convention and its 1967 Protocol. This way, refugees will not be viewed as illegal immigrants but rather as individuals entitled to protection according to human rights principles.

The proposed regulations should provide a robust legal foundation for dealing with cases related to refugees. This includes provisions regarding asylum application procedures, rights that refugees possess during this process, and protections against deportation or unlawful legal processing. By establishing clear procedures for both refugees and the institutions involved in handling them, these regulations will create transparency and fairness in the refugee protection process. These regulations should also incorporate effective enforcement and oversight mechanisms to ensure that refugees' rights are upheld and safeguarded. For example, provisions may include training for immigration officials and other related parties regarding refugee rights and the handling of human smuggling cases involving them. By fostering a better understanding of refugees' status and their rights, officials can make wiser and more humane decisions in complex situations.

The drafting of specific regulations can also promote collaboration between the government, non-governmental organizations, and international organizations such as the UNHCR. This collaboration is vital to ensuring that the implementation of regulations is carried out effectively and in accordance with international best practices. By involving various stakeholders, Indonesia can build a comprehensive and responsive refugee protection system that accommodates existing dynamics.

Enhancing international cooperation, especially with organizations like the UNHCR, is essential in confronting challenges related to refugees and human smuggling. This cooperation can provide technical support and resources needed for Indonesia to address this complex issue. In this context, the UNHCR has extensive experience and expertise in handling refugee cases, enabling it to assist Indonesia in formulating more effective policies and regulations. Through such cooperation, Indonesia can gain access to training and capacity-building for immigration officials, government agencies, and non-governmental organizations involved in refugee handling. This training could encompass themes like refugee rights, asylum application procedures, and methods to prevent exploitation and abuse against refugees. Thus, personnel can be better prepared and more responsive to difficult and complex situations.

International cooperation may also include the exchange of information and best practices in managing refugee cases. By sharing data and information among countries facing similar issues, Indonesia can learn from the experiences of others that have effectively addressed such challenges. Information sharing also allows Indonesia to understand trends and emerging patterns related to human smuggling, thereby improving monitoring systems and the enforcement of related laws. This cooperation may enhance Indonesia's position in international forums. By actively participating in discussions and global initiatives regarding refugee protection, Indonesia can promote policies aligned with the principles of human rights and gain

support from the international community. Furthermore, this will raise global awareness about the challenges Indonesia faces in managing refugees and encourage other countries to provide assistance and support

Conclusion

Legal regulations concerning human smuggling involving refugees in Indonesia reveal several significant weaknesses that hinder the protection of their fundamental rights. The legal ambiguity around refugee status categorized as illegal immigrants under Law No. 6 of 2011 leads to discriminatory treatment and inhumane detention in Immigration Detention Houses, potentially violating the principles of human rights. Furthermore, Indonesia's reliance on the UNHCR to determine refugee status results in slow case handling, adding legal uncertainties for refugees. The absence of specific regulations acknowledging and protecting refugee status further exacerbates the situation, making refugees vulnerable to exploitation by human smuggling networks. While Indonesia demonstrates commitment to providing protection, without clear and effective regulations and a more robust collaboration with international organizations, these efforts will continue to be hindered and will not provide adequate protection for refugees and asylum seekers in Indonesia.

The legal ambiguity surrounding refugee status in Indonesia, arising from their classification as illegal immigrants under the framework of the Immigration Law, presents various significant challenges to the protection and handling of refugee-related cases, including detention, discrimination, and human rights violations. This situation is compounded by the lack of understanding among law enforcement officials regarding refugee rights and Indonesia's dependence on the UNHCR, which shifts the responsibility for protection. Without specific and comprehensive regulations, bureaucratic processes become cumbersome and prolong the asylum application handling, creating legal uncertainty for refugees. Therefore, Indonesia must develop formal regulations that recognize refugee status, provide clear and fair procedures for asylum applications, and enhance international cooperation to build a responsive and effective refugee protection system. By taking these steps, Indonesia can not only fulfill its international obligations toward human rights protection but also contribute to addressing human smuggling issues and enhancing justice for refugees seeking protection.

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