

## The Application of the Non-Refoulement Principle as a Form of Protection for Refugees in Semarang City



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**ABSTRACT:** This research aims to identify and analyze the handling of refugees from abroad or stateless who enter the jurisdiction of Semarang City. The 1951 Refugee Convention has set minimum standards for the treatment of refugees, including their basic rights. Besides, the 1951 Convention also prohibits expulsion and forced repatriation of people with refugee status, which is referred to as the principle of non-refoulement. This research used the socio-legal research method. The primary data used was based on observation, attendance in the field, and interviews; as well as secondary data through the study of documents, laws, and regulations, and existing concepts. The results of the research showed that even though Indonesia has so far not ratified and become a party to the 1951 Refugee Convention. On the other hand, national legislation and policies that support the implementation of the non-refoulement principle are needed, because the Indonesian State is factually faced with a large number of Foreign refugees entering Indonesia's sovereign territory have shown an increase. Policy implementation and application of the principle of non-refoulement in the context of protecting foreign refugees in Indonesia has become a serious concern of the government of the Republic of Indonesia, including the government of Semarang City.

**KEYWORDS:** Refugees; the Principle of non-Refoulement; Law Protection.

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### 1. INTRODUCTION

Indonesia is the biggest archipelago country in the world. It has a very unique and strategic geographical position. The geographical location of Indonesia is between two oceans, namely the Indian Ocean and the Pacific Ocean, and the two continents of Asia and Australia. Geographically, the location of Indonesia is between two oceans and two continents. Thus, the State of Indonesia is used as a link between the continents of Asia and the continent of Australia. It also underlies Indonesia as the main transit country for refugees to go to Australia as the final country.

In addition, Indonesia as an archipelagic country has many gaps that can be exploited by illegal immigrants who do not necessarily have the same goals as refugees. Yet, it will make Indonesia a place to live to get a better life than in their home country. (Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2017).

The migration of residents, both within the territory of the country and those that have crossed national borders, is an event that has long existed in human history and is happening more and more frequently nowadays (Weiner, in Gung Wu, 1997). The phenomenon of human migration occurs due to several factors that encourage it, such as war (armed conflict) in the area of origin, lack of food supplies and (economic) jobs, social factors such as political pressure, race, religion, and ideology to the problem of uncomfortable climate conditions (IOM, 2015).

The entry of foreigners into the territory of a country regardless of their motives, is not automatically considered to be a refugee status. They come and enter without being equipped with immigration documents, thus they violate immigration laws from the sovereignty of the country they enter. They can only be recognized as refugees or asylum seekers if there has been a stipulation from the United Nations High Commissioner for Refugees (UNHCR). Therefore, the General Assembly of the United Nations in 1950 issued Resolution No. 428 (V), in which the Resolution asked countries in the world to cooperate with UNHCR by becoming convention participants, making special agreements with UNHCR, and assisting several other UNHCR activities – Article 2.

Legal instruments in handling refugee problems internationally, there are conventions as a form of effort to provide protection for refugees, namely: The 1951 Convention Relating to the Status of Refugees and The 1967 Protocol Relating to the Status of Refugees. Therefore, the actions taken by a country by expelling refugees is a real action against violations of international law, which prohibits sending back refugees and asylum seekers to places where they can face danger and

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persecution.

This principle is generally referred to as the non-refoulement which has been regulated in Articles 32 and 33 of the 1951 Convention. The main meaning of the non-refoulement principle is that no country may return or send refugees or asylum seekers to an area where the lives and safety of refugees or seekers' asylum are under threat (Riyanto, 2010).

Although Indonesia has not implemented a policy of ratification of the 1951 Refugee Convention and the 1967 Protocol, there are external and internal requirements to apply the non-refoulement principle. External demands can be seen in the description of international ecology that the principle of non-refoulement cannot be separated from the context of protecting human rights which has developed into a *jus cogens* or peremptory norm which is a basic principle in international law and is recognized by the international community as a norm that cannot be violated. under any circumstances. Although there is no official consensus as to which norms are *jus cogens* and how a norm achieves such status and that there is encouragement to adhere to them, it is universally accepted. Internal demands can be described in the national ecology that there is not enough ability for the government to fulfill the obligation to fulfill refugee rights because the government has not been fully present in the rights of its citizens.

The Government of Indonesia also has legal instruments that are used as a manifestation of the Indonesian government's concern for refugee problems. It is explained in Law Number 5 of 1998 concerning the Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (UU CAT), Law No. . 37 of 1999 concerning Foreign Relations, Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights 1966, Law no. 6 of 2011 concerning Immigration, Government Regulation Number 31 of 2013 concerning Immigration Presidential Regulation No. 125 of 2016 concerning Handling of Refugees from Abroad, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No.M.05.IL.02.07 of 2006 concerning Handling of Illegal Immigrants who declare themselves as Asylum Seekers or Refugees, Regulation of the Director General of Immigration Number IMI-0352.GR. 02.07 concerning Handling of Illegal Immigrants Who Declare Theyself As Asylum Seekers or Refugees, Regulation of the Director General of Immigration Number IMI 1917-OT.02.01 of 2013 concerning Standard Operational Procedures for Immigration Detention Houses.

The problem of refugees in Indonesia is briefly explained in Law no. 37 of 1999 concerning Foreign Relations in Article 27 paragraph 1 which stipulates that: "The President establishes a policy on the issue of refugees from abroad by taking into account the Minister's considerations". The elucidation of the article states: "Basically the problems faced by refugees are humanitarian problems so that the handling is carried out as far as possible to avoid disrupting good relations between Indonesia and the country of origin of the refugees".

## 2. RESEARCH METHOD

This research used a socio-legal research approach. There were two aspects studied. The first was the legal research aspect, namely in the form of law in the sense of the "norm" of statutory regulations. Legal research used a philosophical approach, a conceptual approach, and a regulatory approach (Marzuki, 2014) and the data sources are primary and secondary. Second, socio-research. namely using the law in its social context and meaning that there is an inseparable relationship between law and society, there is a close relationship between law and society as its social basis (Soekanto, 1988). The analysis technique follows an interactive model of data analysis which operates in three activity cycles, namely: data reduction, data presentation, and drawing conclusions or verification (Miles & Huberman, 1992).

## 3. RESULT AND DISCUSSION

### 1.1. Data Collection of Foreign Refugees

The growth of the flow of refugees, asylum seekers, and immigrants in Indonesia continues to grow. Based on statistical data from the UNHCR Indonesia report in Jakarta in 2023, the number of foreign refugees in Indonesia can be seen in the following table:

**Table 1: Number of Foreign Refugees in Indonesia in 2023**

Country of origin	0	5000	10000	15000
Afghanistan				
Somalia				
Myanmar				
Iraq				
Sudan				

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Others	343
TOTAL	

Source: UNHCR statistics report, February 2023.

According to the table above, the number registered with UNHCR is 12,710 consisting of 73% adults and 27% children. Of the total adults, 26% are women and 74% are men. A total of 9,378 refugees have received the first dose of the COVID-19 vaccine, while 8,162 refugees are fully vaccinated (68.2% of the refugee population is eligible for vaccination) and 65 refugees received the first booster. Of the 3,422 children registered with UNHCR, 97 children were not accompanied by their parents or other adult relatives, and 50 children were separated from their parents. A total of 1,299 vulnerable refugees received monthly subsistence allowances in February 2023. Many of them are unaccompanied by children, single women with children, and people with special needs (UNHCR, 2023). In addition to the data obtained from UNHCR regarding the presence of refugees from abroad entering the sovereign territory of the Republic of Indonesia above, specifically for the number of refugees in Semarang City can be seen in the following table:

**Table 2: Number of Foreign Refugees in Semarang City in 2022**

No	Nationality	Man	Woman	Total
1	Somalia	6	6	12
2	Myanmar	3	3	6
3	Iraq	4	2	6
4	Iran	2	1	3
5	Afghanistan	17	15	32

Source : Rumah Detensi Imigrasi (Rudenim) Semarang, Maret 2023

In 2019, the number of foreign refugees in Semarang City was 59 people, but some of them were successfully forwarded by UNHCR to countries that were ready to accept them. Thus, the total number was reduced and only 32 people remained. They are on average a family, but there are also individuals with a total of 6 people. The refugees are victims of war in their country who fled to seek asylum in a third country. Their status is still awaiting a determination from UNHCR for placement in a third country. Their waiting period in Indonesia cannot be predicted because it was fully under the authority of UNHCR and third parties or recipient countries.

In addition, at the Semarang Immigration Detention Center (Detention Center) Office, there were also 10 foreign refugees under the supervision of the Semarang Detention Center Office, namely 1 foreigner coming from Yemen; Algeria 1 person; Taiwan 2 people; Nigeria 5 people; Sri Lanka 1 person. These people have been designated as Detainees (foreign residents of Immigration Detention Centers or Immigration Detention Rooms because they have received detention decisions from Immigration Officials - Article 1 point 35 of Law No. 6 of 2011 concerning Immigration).

### 1.2. Policies for Handling Foreign Refugees in Semarang City

The refugees who arrived in Semarang City were placed first in the Immigration Detention Center (Rudenim). Some of the refugees who are declared not to have to serve a period of detention at the Immigration Detention Center will be transferred to Wisma Husada Semarang as a temporary community house until they are determined as refugees or asylum seekers by UNHCR to be distributed to certain countries. This refers to the Director General of Immigration's letter Number IMI-UM.01.01-2817 on 30 July 2018 regarding Return to the Functions of Immigration Detention Centers and the Director's Letter of Supervision and Immigration Enforcement Number IMI.5.GR.02.07-4.944 dated 30 November 2018 regarding Implementation of Return Rudenim function. Thus, the steps taken are as follows:

- a. Emptying the Rudenim (Immigration Detention Center) from asylum seekers and refugees, except for those who are subject to isolation or are in the process of being repatriated or in the process of being placed in a third country;
- b. The transfer of refugees and asylum seekers from the Detention Center to temporary shelters (Wisma Husada) is carried out in stages.

Wisma Husada is a place that was established by a private party to accommodate visiting tourists in Semarang City, but from November to December 15, 2018, it has been selected and rented as a temporary shelter for foreign refugees and asylum seekers. Therefore, the gradual transfer of refugees and asylum seekers from the Detention Center to Wisma Husada Semarang City through the protection program for overseas refugees was officially and effectively carried out by IOM in 2019.

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### 1.3. Fulfillment of Basic Needs for Refugees in Semarang City

Implementation of the fulfillment of basic rights that have been carried out for refugees placed in Wisma Husada Semarang, as follows:

#### 1. The right to a decent place to live

Foreign refugees at Wisma Husada, Semarang City, have received proper housing according to the standards set out in the Shelter Guide for Humanity issued by the Ministry of Social Affairs of the Republic of Indonesia. Wisma Husada has a building area of 285 m<sup>2</sup> and a total land area of 425 m<sup>2</sup> and 23 rooms, each of which has an area of 3x3 m<sup>2</sup>. Each room is occupied by 1 family and several unmarried refugees can apply to live alone of course with IOM approval. Good and clean bathrooms and sanitation systems have also been provided by Wisma Husada.

#### 2. Right to education

The National Regulation regarding refugees, namely Presidential Decree No. 125 of 2016 does not regulate the right to education for refugees, but foreign refugees who are at Wisma Husada Semarang, especially those who are still young, have been provided with educational facilities by IOM in collaboration with the Semarang City Government. Refugee children aged 5 – 16 years are allowed to study free of charge from kindergarten to private high school in Semarang City. The same goes for refugees over the age of 18. As many as 2 refugee children had the opportunity to receive education at kindergarten, 6 refugee children had the opportunity to attend elementary school, 9 refugee children at junior high school, and 8 refugee children at senior high school. This is actually in line with several children's rights contained in the 1989 Convention on the Rights of Children (CRC) which was ratified by the Government of Indonesia.

#### 3. Right to health

Referring to Article 26 paragraph 2 (a) Presidential Decree No. 125 of 2016 concerning the Management of Refugees, fulfilling the right to health for foreign refugees who are at Wisma Husada Semarang is quite good with indicators of the proximity of health facilities to refugee shelters, namely the Lebdosari Health Center which is only about 200 m from Wisma Husada. Any evacuees who had health problems will be referred to the Lebdosari Health Center and the Mardimulyo Clinic which is about 500 m from Wisma Husada. If refugees experience symptoms of illness that require referral to receive more intensive care, they will be rushed to Columbia Asia Hospital, which is approximately 500 m away, where the costs will be borne by IOM.

Coronavirus vaccination is also a concern carried out by the Semarang City Government for foreign refugees. The vaccination program is carried out by the Semarang City Health Office, and overseen by the International Organization for Migration (IOM) and the Regional Office of the Ministry of Law and Human Rights in Central Java. The right to proper access to health is not just the provision of health services free of charge, but also the cleanliness of the residence and a good sanitation system that has been given to refugees from abroad who are placed in Wisma Husada, Semarang.

#### 4. The right to work

Even though Presidential Decree No. 125 of 2016 explicitly does not regulate the right to work, this regulation also does not prohibit refugees from working. One of the refugees at Wisma Husada, namely A (52), originally from Afghanistan, works as a painter every day. He uses this expertise to sell his paintings by using social media as a means to market his work. Likewise, G (36), originally from Afghanistan, had the opportunity to become a sports teacher at a private school in West Semarang City. Based on the results of interviews with 32 foreign refugees at Wisma Husada Semarang City, only 2 refugees had activities to make a living. Others only rely on the monthly money received from IOM of IDR 1,300,000.00 to meet secondary and tertiary needs.

## 4. CONCLUSION

Although the government of the Republic of Indonesia has not ratified the 1951 Refugee Convention and the 1967 Protocol, it has implemented the principle of non-refoulement and the basic principles of international law *jus cogens* (peremptory norm) as norms that provide respect and protection for human rights. The Semarang City Government has provided good handling and service in managing refugees who enter the jurisdiction of Semarang City, namely in the form of fulfilling the right to a proper place to live, the right to education, the right to health, and the right to work.

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