

Research Article

No Choice but Welcoming Refugees: The Non-Refoulement Principle as Customary International Law in Indonesia

Dodik Setiawan Nur Heriyanto*

Faculty of Law, Universitas Islam Indonesia, Indonesia

Sefriani

Faculty of Law, Universitas Islam Indonesia, Indonesia

Fezer Tamas

Faculty of Law, University of Debrecen, Hungary

ABSTRACT: The non-refoulement principle requires each country to consider refugees and asylum seekers in their country of origin if they are subject to persecution and threaten their lives. As a geographically strategic country, Indonesia has been a significant crossroad for international refugees and asylum seekers often consider Indonesia their temporary destination. Moreover, the complex situation of international refugees has encouraged to reinterpret of the principle of non-refoulement into various national measures and domestic policies, given that Indonesia is deemed a transit country for refugees and has not ratified the 1951 Convention on the Status of Refugees. This paper aims to analyse the concept of refugee protection under international law, particularly the non-refoulement principle and investigate the application of the non-refoulement principle in Indonesia. This study employed normative and empirical legal research with statutory, conceptual, and comparative approaches. This study confirms that the non-refoulement principle is part of *jus cogens* norms in international law but does not fit in its application. Indonesia has inconsistency in upholding the non-refoulement principle into the binding normative rules. Refugees have received far less attention from the Indonesian government due to insufficient infrastructure and financial allocation. Moreover, the existing executive regulations do not provide effective enforcement since these regulations have a lower position in the hierarchy and cannot have deterrent sanctions. Hence, ratification of the 1951 Convention is urgently needed by Indonesia to guarantee the protection of refugees within its jurisdiction. At the regional scope, Indonesia can encourage ASEAN countries to adopt good practices in the European Union to set sharing quotas to ensure that not most refugees escape to Indonesia.

KEYWORDS: Customary International Law; Indonesia; Refugees.

* Corresponding author, email: dodiksetiawan@uii.ac.id

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I. INTRODUCTION

This paper explores the development of refugee protection under international law, particularly the non-refoulement principle, by considering the application of the non-refoulement principle in Indonesia. This study reveals that refugees in Indonesia obtain unequal treatment.¹ While in 2015, there was an increase in the number of refugees by 13,188; among these were 7,911 asylum seekers.² These numbers may be significant in reality,³ due to Indonesia's strategic location between two continents (Asia and Australia) and two oceans (the Indies and the Pacific).⁴ Its strategic location provides convenient opportunities for refugees to stop temporarily to go to other countries such as Australia or Singapore. When these refugees know that the Indonesian people have hospitality while they stop by, they generally stay in Indonesia with no attention from the Indonesian government.⁵ From this situation, the United States Report on Human Rights in 2021 mentioned that most refugees and asylum seekers stay in Indonesia without certain status.⁶

¹ Leslie E Velez & Claire A Smearman, "Protecting the World's Most Vulnerable" (2008) 41 Md Bar J 32–37.

² Tri Wahyun, "UNHCR: Jumlah Pengungsi di Indonesia Meningkatkan", (2015), online: <<https://www.cnnindonesia.com/nasional/20150728204221-20-68699/unhcr-jumlah-pengungsi-di-indonesia-meningkat/>>.

³ This number will increase if we also add data on migrants in Indonesia, both legally and illegally. See also Risky Vista Puspita Sari, Aries Harianto & Ida Bagus Oka Ana, "Kepastian Hukum Pengaturan Penggunaan Tenaga Kerja Asing di Indonesia" (2018) *Lentera Huk* 389–402; Dodik Setiawan Nur Heriyanto, "Klausula Terkait Perlindungan terhadap Buruh Migran dan Urgensinya untuk Diatur Secara Khusus di dalam Perjanjian Perdagangan Bebas antara ASEAN dan Uni Eropa" (2015) 22:3 *J Huk IUS QUIA IUSTUM* 329–345.

⁴ Graeme Hugo, George Tan & Caven Jonathan Napitupulu, "Indonesia as a Transit Country in Irregular Migration to Australia" in Marie McAuliffe & Khalid Koser, eds, *A Long Way to Go Irregular Migr Patterns, Process Drivers Decis* (ANU Press, 2017) 167.

⁵ Ganesh Cintika Putri, "The Dilemma of Hospitality: Revisiting Indonesia's Policy on Handling Refugees Under International Law" (2022) 13:1 *J HAM* 113–130.

⁶ Human Rights Watch, "World Report 2015: Indonesia", (2014), online: <<https://www.hrw.org/id/world-report/2015/country-chapters/268176>>; The United States Embassy and Consulates in Indonesia, "2021 Country Reports on Human Rights Practices: Indonesia", (2021), online: *Off Reports* <<https://id.usembassy.gov/our-relationship/official-reports/2021-country-reports-on-human-rights-practices-indonesia/>>.

Refugees in Indonesia may cause problems, particularly concerning social aspects at the border. They conduct illegal activities such as theft, prostitution⁷ and drug dealing due to the employment prohibition by the Indonesian government.⁸ As commonly happens, there is frequent horizontal conflict between local communities and refugees who commit crimes because they lack social protection support,⁹ as well as the employment prohibition policy.¹⁰ Also, there are refugee children in immigration prisons receiving poor service and violence.¹¹ These problems happened due to the restriction for the refugee to work based on the Indonesian domestic policy and the small budget allocation to provide the minimum standard of facilities for refugees. In addition, the present laws have been promulgated by the executive power, which does not have effective enforcement. It lacks deterrent sanctions and legislative support to finance and supervise existing laws. In the meantime, the uncertain legal framework of protecting refugees in ASEAN also has created unclear treatment among refugees living within the region. Refugees receive bad treatment and even strict restrictions at the border, so they tend to run away and stop at Indonesia's outer border.

Since ASEAN does not yet have a responsive legal and policy framework, refugees lack sufficient protection to culminate in conditions of concern. In practice, Rohingya refugees who arrived in Thailand were arrested by smugglers and asked the refugees to pay a certain sum of money as a ransom

⁷ Batam News, "Imigrasi Batam Amankan 10 Orang Imigran Gelap Jadi Gigolo", (2016), online: <<https://www.batamtimes.co/2016/09/08/imigrasi-batam-amankan-10-orang-imigran-gelap-jadi-gigolo/>>.

⁸ Luthvi Febryka Nola, *Refugee Employment Prohibition in Indonesia* (2021), Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia.

⁹ Raden Ajeng Rizka Fiani Prabaningtyas, "Indonesia and The International Refugee Crisis: The Politics of Refugee Protection" (2019) 9:2 J Indones Soc Sci Humanit.

¹⁰ Nola, *supra* note 8; *Director General of Immigration Regulation No. IM.0352.GR.02.07. on the Handling of Illegal Immigrant Claiming to be Asylum Seekers or Refugees on April 19, 2016.*

¹¹ Human Rights Watch, *supra* note 6.

to gain freedom from the threat of detention.¹² UNHCR in 2015 estimated that 25,000 Rohingya and Bangladesh refugees arrived in Indonesia, Malaysia, and Thailand to seek protection.¹³ However, the uniformity and inadequate provisions of refugee protection in ASEAN may result in an adverse regional crisis and hamper the realisation of the ASEAN integration ideals. It is important to note that more protection may be needed to operate an efficient international protection system. In contrast, in the European Union, where harmonised rules aim to establish a unified regime, some member states, such as Hungary and Poland, due to the mass migration crisis that started in 2015 in Europe, introduced policies that practically seized international protection from many asylum seekers.¹⁴

Indonesia has a vital role in participating and encouraging the establishment of a legal framework for protecting refugees in the ASEAN region.¹⁵ Although not all ASEAN member states have ratified the 1951 Refugee Convention and the 1967 Protocol, the obligation to protect refugees remains inherent because the substance of the provisions of the Convention has already become international customary law.¹⁶ Therefore, refugee protection measures and their legal framework in the ASEAN region must be established to maintain regional security and stability.

¹² Human Rights Watch, "Thailand: Allow Newly Arrived Rohingya Access to Asylum", (2022), online: <<https://www.hrw.org/news/2022/06/07/thailand-allow-newly-arrived-rohingya-access-asylum>>.

¹³ Edwards Adrian, "UNHCR - UNHCR Report Shows Sharp Increase in Sea Crossings in the Bay of Bengal", (2015), online: *Brief Notes* <<https://www.unhcr.org/news/briefing/2015/5/554c8adf9/unhcr-report-shows-sharp-increase-sea-crossings-bay-bengal.html>>.

¹⁴ *Monthly Data Collection on the Current Migration Situation in the EU*, by European Union Agency for Fundamental Rights (FRA) (2016); *Council of the European Union "Council Decision (EU)" 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece*, OJ L 239.

¹⁵ Nikolas Feith Tan, "The Status of Asylum Seekers and Refugees in Indonesia" (2016) 28:3 *Int J Refug Law* 365–383.

¹⁶ Sir Elihu Lauterpacht & Daniel Bethlehem, "The Scope and Content of the Principle of Non-Refoulement: Opinion" in Erika Feller, Türk Volker & Frances Nicholson, eds, *Refug Prot Int Law UNHCR's Glob Consult Int Prot* (Cambridge University Press, 2003).

As a country with a strategic location for the path of refugees, international refugee protection practices in Indonesia will be examined in this study to provide a comparative picture of an adequate legal framework model in delivering solutions to the problem of the minimal protection of refugees in Indonesia and generally in the ASEAN region. Normatively, the principle of non-refoulement has been regulated in the 1951 Convention relating to the Status of Refugees and has been recognised as customary international law.¹⁷ Based on a philosophical basis, this principle is a framework of protection to guarantee the fulfilment of human rights to the refugees to be free from persecution based on race, religion, citizenship, and political views in their home country.¹⁸ The right of everyone to obtain protection from other countries has been universally recognised.¹⁹

This paper aims to analyse the concept of refugee protection under international law, particularly the non-refoulement principle. It also seeks to investigate the application of the non-refoulement principle in Indonesia profoundly. Hence, two legal issues were discussed in this study. First, what is the basic concept of refugee protection under international law? Second, how far is the application of the non-refoulement principle in Indonesia?

II. METHODOLOGY

With legal research, this study examined the philosophical, sociological, and juridical aspects of providing refugee protection using a comparative approach in Indonesia and Hungary. In addition, this study used statutory and conceptual approaches to analyse the applicability of the principle of non-refoulement in international law. All legal materials were qualitatively processed to ascertain the extent to which the principle of non-refoulement is applied in the state practices. Hence, the outcome of this study is expected to contribute to the development of the principle of non-refoulement,

¹⁷ Guy S Goodwin-Gill & Jane Mcadam, *The Refugee in International Law* (Clarendon Press, 2000); Slamet Supriadi, "International Refugees Protection in the Context of Human Rights" (2021) 7:4 Law Res Rev Q 417–432 pp. 417-420.

¹⁸ Ishita Chakrabarty, "Refoulement as a Corollary of Hate: Private Actors and International Refugee Law" (2020) 35:3 Virginia J Int Law Online 53–74.

¹⁹ (Universal Declaration of Human Rights, 1948, article 14)

primarily related to implementing the principle in various ways to adjust the empirical conditions without prejudice to the basic rules that have been applied in customary international law.

III. REFUGEE PROTECTION UNDER INTERNATIONAL LAW

A. Fundamental Rights of Refugee

The values and norms of the right of refugees are closely tied to human rights. Codification of universal human rights values into the Universal Declaration of Human Rights inspired the concept of protecting the rights of refugees through multilateral agreements.²⁰ For this reason, the basic values of human rights associated with refugees were well adopted in the 1951 Refugee Convention and the 1967 Protocol.

According to Huijbers, human rights are the rights that are possessed and attached to the human being acquired and brought with him in his birth or presence in society because he has a privilege that allows him to be treated according to his privileges.²¹ Human rights internationally have been recognised and embodied in the form of fundamental rights embedded in dignified human beings, such as civil and political rights, freedom from oppression, freedom from detention without going through a valid and fair trial, the right of protection as an individual with natural rights which cannot be contested, and taken by anyone or from any party Robertson,²² Nickel,²³ and Donnelly.²⁴

The state must guarantee and protect human rights that have become a social construct built on humanity based on a moral conception to foster its

²⁰ *Ibid.*

²¹ Theo Huibers, *Filsafat Hukum* (Yogyakarta: Kanisius, 1995).

²² Geoffrey Robertson, *Kejahatan Terhadap Kemanusiaan Perjuangan untuk Mewujudkan Keadilan Global* (Jakarta: Komisi Nasional Hak Asasi Manusia Republik Indonesia, 2002).

²³ James W Nickel, *Hak Asasi Manusia Refleksi Filosofis atas Deklarasi Universal Hak Asasi Manusia* (Jakarta: Gramedia Pustaka Utama, 1996) at 18-21.

²⁴ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press, 2013)2.

humanitarian vision.²⁵ The protection guarantee is then implemented through the state constitution and the prevailing laws and regulations.²⁶ The regulation of human rights in the national legal system does not guarantee good human rights because human rights violations often occur, and universal human rights values and norms are often ignored. Thus, the World Conference on Human Rights held in Vienna, Austria, in 1993, resumed in 1997 and 2002, resolves five essential points, such as human rights contain universal values; the international community must maintain human rights; considering cultural, social, and cultural pluralism in the implementation of human rights; every state is required to guarantee human rights without taking refuge behind relativism; and developed countries need to help developing countries without violating human rights.²⁷

International refugees are forced to flee their home countries to other countries to protect human rights. Finding a region or country that provides a sense of security to refugees must be protected based on universal human rights norms. If their home country has changed well, refugees may return to their home country or build their communities to enjoy human rights.²⁸ The guarantee of human rights protection for internally displaced persons is set out in Article 14 of the Universal Declaration of Human Rights, which guarantees “the right to seek and enjoy in other countries asylum from persecution.”²⁹ Referring to the guarantees of the Universal Declaration of Human Rights, the preamble to the 1951 Convention also stipulates “the principle that human beings shall enjoy fundamental rights and freedoms without discrimination.”³⁰

Some refugee human rights that must be guaranteed and protected under international refugee law include the right to protection against refoulement,

²⁵ I Made Subawa, “Hak Asasi Manusia Bidang Ekonomi Sosial dan Budaya Menurut Perubahan UUD 1945” (2008) 33:1 Kertha Patrika at 3.

²⁶ A Masyhur Effendi & Taufani Sukmana Evandri, *HAM dalam Dimensi/Dinamika Yuridis, Sosial, Politik* (Bogor: Ghalia Indonesia, 2007) at 35.

²⁷ A Masyhur Effendi, *Tempat Hak-Hak Asasi Manusia dalam Hukum Internasional/Nasional* (Bandung: Alumni, 1980) p. 79.

²⁸ UNHCR, *Human Rights and Refugee Protection* (Jakarta: UNHCR, 1998) at 3.

²⁹ *Universal Declaration of Human Rights*, *supra* note 19 Art. 14.

³⁰ *Convention relating to the Status of Refugees*, 1951 Preamble.

the right to seek asylum, the right to equality and non-discrimination, the right to life, liberty, and security, and the right to return. To begin with, in the right to protection against refoulement, the purpose of refugees protected outside their home country is to avoid human rights violations against them. Therefore, in international refugee law, refugees are assured that every country is forbidden to return the refugees to their home countries. This guarantee of human rights is better known as the principle of non-refoulement. The theoretical concepts and problems in practice related to the principle of non-refoulement will be discussed in more detail in Chapter V of this research.

On the other hand, about the right to seek asylum, international refugees are guaranteed the right to seek asylum to protect their safety. They are entitled to apply for asylum to other countries (outside their country of origin) as a haven because of the backdrop of fear of persecution in their home country.³¹ This form of asylum, according to Starke³² is a territorial asylum where the asylum country has full power in applying its country's sovereignty as an implication for the granting of asylum within its jurisdiction. International refugees as asylum seekers seek refuge or a safe place outside the territorial sovereignty of the country of origin of asylum seekers by applying for asylum aimed at other parties or countries. Submission of requests from asylum seekers addressed to such other party or country implies that the home country of asylum seekers is unwilling or incapable of protecting asylum seekers, so asylum seekers do not choose to seek refuge in their home country and prefer to seek protection from other parties or countries. The leading cause of asylum-seekers is that there are things and reasons for an intense fear of persecution, so the asylum-feeding country can consider the reason for fear of granting asylum. Hamid argues that there are reasons to be considered in determining the granting of protection by the state to asylum seekers as outlined in binding international law and customs, namely "the reasons for humanity, religion, racial discrimination, and politics".³³

³¹ JG Starke, *An Introduction to International Law* (London: Butterworth, 1977) at 479.

³² *Ibid* p. 475.

³³ Hamid Sulaiman, *Lembaga Suaka dalam Hukum Internasional* (Raja Grafindo Persada, 2002) at 46.

The rationale for the acceptance or non-acceptance of such asylum applications is the right of a country as a sovereign entity. The granting of asylum is the absolute authority of a state. The state-granting asylum shall have the absolute power to evaluate or judge for itself the grounds upon which the asylum is granted, without having to disclose or disclose the reason to any party, including to origin country of asylum seekers³⁴. This is also in line with the opinion of Crock³⁵ which states that the state will bear the joint responsibility for the fate of the asylum-seekers as a matter of international law (the state will assume the collective responsibility for the fate of asylum-seekers as prescribed in international law). Moussalli also argues that when large asylum-seekers come in, the state will at least provide temporary protection.³⁶

The granting of asylum status to refugees does not necessarily mean that an asylum country interferes with another country's sovereignty (especially the country of origin of asylum seekers/refugees internationally). However, granting asylum can be categorised as an act that prioritises the principle of peace and humanity. This is clearly stated in the Declaration on Territorial Asylum that "...be declared as unfriendly by any other state."³⁷ The decision to grant asylum by a country shall be respected by other countries, including the refugee's home country asylum, as the act of granting asylum is part of the sovereignty of the country and constitutes a manifestation of the upholding of the objectives and principles of peace and humanity as regulated in the UN Charter, international law and custom.

In addition, in the right to equality and non-discrimination, international refugees have the right to equality and are free from discrimination wherever they are. This principle is fundamental for every country to consider the discriminatory treatment of international refugees because of ethnic/religious, gender, and other factors. Discrimination also often occurs

³⁴ Iman Prihandono, "Pemberian Suaka oleh Negara: Kasus Pemberian Suaka oleh Pemerintah Australia kepada 42 WNI asal Papua" (2006) 21:1 J Huk Yuridika.

³⁵ Mary Crock, "In the Wake of the Tampa: Conflicting Visions of International Refugee Law in the Management of Refugee Flows" (2003) 12:1 at 49.

³⁶ Michell Moussalli, *Who is a Refugee?* (Geneva: UNHCR, 1982) at 42.

³⁷ *Declaration on Territorial Asylum*, 1967.

because international refugees are largely denied citizenship documents because they are forced to abandon their possessions, so border officials treat them with excessive suspicion. This equality is a fundamental right that puts all people free and have equal rights in human rights.³⁸ Equity requires equal treatment, in which the same situation must be treated equally, and by debate, different cases are treated differently.

The principle of non-discrimination has the same concept as equal rights. The focus of non-discrimination covers the view that people cannot be treated differently based on additional and unauthorised criteria. Discrimination based on race, colour, skin, ethnicity, gender, age, language, disability, religion, politics or other opinions, societal or geographical origin, possession, birth or other status established by international human rights standards violates human rights. This principle of non-discrimination has been regulated and adopted in many multilateral agreements, especially in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social, Economic and Cultural Rights (ICESCR). Article 2(1) of the ICCPR states that each State Party to the present Covenant undertakes to respect and guarantee the rights recognised in the present Covenant to all persons within its territory and subject to its jurisdiction, without distinction of any kind as to race, colour, sex, language, religion, politics or other opinions, national or social origin, property, birth or another social status.³⁹ While the principle of equality is guaranteed in Article 3 of the ICCPR, which states that the States Parties to the present Covenant undertake to ensure equal rights of men and women to enjoy all the civil and political rights outlined in the present Covenant.⁴⁰ Every country is prohibited from discriminating against international refugees under any circumstances.

In the meantime, in the right to life, liberty, and security, international refugees are people in a state where both the soul and the property threaten. Their dignity and rights are also threatened when they travel from their home country, including in tents/shelters. They often lose their property,

³⁸ De Rover C, *To Serve and To Protect* (Jakarta: Raja Grafindo Persada, 2000) at 340.

³⁹ *International Covenant on Civil and Political Rights*, 1966 Art. 2 par. (1).

⁴⁰ *Ibid* Art. 3.

security, family, and even their souls in certain circumstances. International refugees feel that life in refugee camps is much worse and more dangerous than living in their own country. The right to life is a non-derogable right. For this reason, the right to life is also adopted by many multilateral agreements, especially on human rights. Article 3 of the Universal Declaration of Human Rights stipulates that everyone has the right to life, liberty and salvation⁴¹. Article 6 of the ICCPR states that every human has an inherent right to life. This right must be protected by law. No human being is rashly subject to the right to life.⁴² Article 6 of the Convention on the Rights of the Child stipulates that “States Parties to the Convention recognise that each child has the inherent right to his or her life”.⁴³ Every child can declare, “I must live and thrive as a man”.

Despite its non-derogable rights, the right to life can be reduced with certain limitations. Article 4(1) of the ICCPR stipulates that States Parties to the Convention may delay or diminish the enjoyment of the rights enshrined in the Convention.⁴⁴ The circumstances referred to in Article 4(1) shall be “when the State is in an emergency, which circumstances shall be reported by the State intending to postpone it to all States Parties to the Convention through the Secretary-General of the United Nations.” Subsequently in Article 4(2) of the ICCPR then determines that “even in an emergency, even if a country is in an emergency, it is not permissible to postpone or degrade certain rights.”⁴⁵ The meaning of these rights include the right to life, the right to be free from acts of torture, the right not to be cruel and degrading of human dignity, the right not to be enslaved, the right not to be imprisoned simply because of the inability to fulfil the contract, the right not to be penalised under retroactive law, the right to equality before the law, embracing faith and religion.

Therefore, an emergency that could be justified to undermine the right to life is described again in the General Comment. Article 4 of the ICCPR

⁴¹ *Universal Declaration of Human Rights, supra* note 19 Art. 3.

⁴² *International Covenant on Civil and Political Rights, supra* note 39 Art. 6.

⁴³ *Convention on the Rights of the Child, 1989* Art. 6.

⁴⁴ *International Covenant on Civil and Political Rights, supra* note 39 Art. 4 par. (1).

⁴⁵ *Ibid* Art. 4 par.(2).

states that two conditions must be met: "The situation must amount to a public emergency which threatens the nation's life, and the State party must have proclaimed a state of emergency".⁴⁶ It is an emergency that threatens the nation's life, and the participating countries of the ICCPR must officially declare the state of emergency in question). Loescher argues that many refugees live in makeshift shelters or slums near their home country's borders.⁴⁷ They lose the opportunity to work and depend on international charities to survive. Refugees are often separated from their family members, are exposed to the danger of armed attacks, are subjected to many forms of exploitation and degradation, and are haunted by the constant fear of expulsion and forced return to their home country. A large number of children have spent their entire lives in refugee camps. The longer they stay there, the less chance they have to experience some semblance of normal life. Finally, in the right to return, refugees also have the right to be able to return to their home country voluntarily and guarantee security. States are forbidden to force them to return to their home country when conditions are still dangerous for them to return. At least many multilateral treaties on human rights guarantee that individuals outside their country of origin can return to their country. For example, Article 13(2) of the Universal Declaration of Human Rights states that everyone has the right to leave every country, including his country of origin and has the right to go back.⁴⁸ Also, Article 12(2) of the ICCPR states that everyone shall be free to leave any country, including his own⁴⁹ and paragraph (4) states that no one shall be arbitrarily deprived of the right to enter his country.⁵⁰

In the Convention on the Elimination of Racial Discrimination, Article 5(2) (ii) states that everyone is guaranteed the right to be free to leave any country, including its own country and return to one of the countries which it chooses.⁵¹ The African Charter on Human Rights and Peoples Rights is also

⁴⁶ *Ibid* General Comment Article 4.

⁴⁷ Gil Loescher, "Refugee Issues in International Law" in *Refug Int Relations* (Oxford: Oxford University Press, 1989) at 7.

⁴⁸ *Universal Declaration of Human Rights*, *supra* note 19 Art. 13 par. (2).

⁴⁹ *International Covenant on Civil and Political Rights*, *supra* note 39 Art. 12 par.(2).

⁵⁰ *Ibid* Art. 12 par.(4).

⁵¹ *Convention on the Elimination of Racial Discrimination*, 1965 Art.5 par. 2 (ii).

provided for in Article 12(2), which stipulates that every individual shall have the right to leave any country, including his own, and to return to his country.⁵² Although the concept of protection of the right to go and return to the home country or other countries is guaranteed in this African Convention, this right may be restricted as long as it is governed by laws and regulations solely for national security, law, public order, public health, or morality.

This restriction is permissible and in line with Article 12(3) of the ICCPR states that the rights shall not be subject to any conditions except the limitations prescribed by law to protect the national security and public order, public health or morals, or the rights and freedom from others, and under other rights recognised in the ICCPR Covenant. The right to return to the country of origin is also guaranteed in the Convention on the Rights of the Child to protect children born outside their home country.

B. Non-Refoulement principle

The principle of non-refoulement is specifically stipulated in Article 33 (1) of the 1951 Convention. That Article stipulates: “No-Contracting State shall expel or return (refoulement) a refugee in any manner whatsoever to the frontiers of territories”. This means that the participating countries of the 1951 Convention are prohibited from evicting or returning refugees in any way to the borders of areas where life and freedom will threaten by race, religion, nationality, membership of a particular social group or political opinion.

The principle of prohibition to restore, as provided for in Article 33 of the 1951 Refugee Convention, offers broad protection to refugees. It is consistent with the framers' aim of the 1951 Refugee Convention: to provide a wider range of protection than the earlier international agreements on refugees.⁵³ Most international law scholars provide detailed coverage of the

⁵² *African Charter on Human Rights and Peoples Rights*, 1981 Art. 12 par. (2).

⁵³ David Weissbrodt & Isabel Hortreiter, “The Principle of Non-Refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading

refoulement refugee phrase. Refugees also include refusals and deportations that place refugee individuals at life-threatening risk. The phrase “by any means” often means that the principle of non-refoulement is applied without limitation. Then the phrase “where life and freedom will be threatened” means that all forms of the threat of persecution outlined in Article 1 of the 1951 Refugee Convention can be considered. These three phrases indicate the extent of the non-refoulement conception.

The non-refoulement principle in the 1967 Refugee Protocol also refers to the prohibition of expulsion and return of refugees as outlined in Article 33 of the Refugee Convention 1951. The regional agreements relating to refugees also use the same conceptual arrangements relating to the principle of non-refoulement. However, some modifications exist for more applicability in the region, such as rejection at the frontier violating the principle of non-refoulement. It is stipulated in Article 3 of the Organization of the African Unity Convention on Specific Aspects of Refugee Problems in Africa that “no person shall be subject to a frontier, return, or expulsion...”.⁵⁴ The Cartagena Declaration in Part III of paragraph 5 guarantees the importance of the principle of non-refoulement, which includes a prohibition against refugee refusal at the border.⁵⁵

The principle of the prohibition of expulsion and repayment may also apply to asylum seekers, including those who have been granted asylum legally under international law. This principle is also regarded as a fundamental principle concerning refugee protection. For this reason, this principle is also seen as an inherent right of the refugees from the time they first came out of their country and during their stay in the refugee country⁵⁶. The right is a non-derogable right considering that Article 42 of the 1951 Refugee Convention stipulates that the State party to the Convention shall not be

Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human Rights Treaties” (1999) Buffalo Hum Rights Law Rev.

⁵⁴ *Organisation of the African Unity Convention on Specific Aspects of Refugee Problems in Africa*, 1969 Art. 3.

⁵⁵ *Cartagena Declaration on Refugees*, 1984 Part. III, par.5.

⁵⁶ Jean-François Durieux & Jane McAdam, “Non-Refoulement through Time: The Case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies | Kaldor Centre” (2004) 16 Int J Refug Law 4–24.

allowed to place a reservation on the principle of non-refoulement outlined in Article 33 of the Convention.

Article 33(2) of the 1951 Refugee Convention provides an exception to the application of the principle of non-refoulement, which provides that: the "benefit of the present provision may not, however, be claimed by a refugee as a danger to the security of the country in which he is, or who has been convicted by a final judgment of a grave crime, constitutes a danger to the community of that country."⁵⁷ Article 33(2) contains two reasons for the permission of a State Party to the Convention to violate the obligation to implement the principle of non-refoulement: public order and national security.⁵⁸ The reason for this public order can be used if a refugee has been punished by the final judgment of a grave and dangerous crime for the people of that country (having been convicted by a final judgment of a grave crime of that country). Therefore, to refuse a refugee, the States Parties to the Convention shall be obligated to base a court decision which is *inkrakht* (final) to a serious crime committed by a refugee.

The national security, which may be exempted from applying the principle of non-refoulement, shall have the condition that there shall be reasonable grounds to regard it as a danger to the security of the country in which it is situated. The phrase "proper reason" is not reiterated in the 1951 Refugee Convention. In practice, it is often interpreted extensively by many of the parties to the Convention. According to Weiner, large-scale refugee flows can burden a country's economy and change ethnic balance into a source of conflict, leading to local and national political turmoil.⁵⁹ However, at least this reasonable ground requirement provides a control for the participating States of the Convention in order not to be arbitrary in refusing the entry of refugees.

Article 1(f) of the 1951 Refugee Convention provides that refugee status shall not be granted to an individual for serious reasons, including whether

⁵⁷ *Convention relating to the Status of Refugees*, *supra* note 30 Art. 33 par. (2).

⁵⁸ Jan González Vega, "Syrian Refugee Crisis and National Security" (2020) 60 *Rev Derecho Puertorriq* 275–295.

⁵⁹ Myron Weiner, "Global Movement, Global Walls: Responses to Migration 1885–1925" in Gung Wu, ed, *Glob Hist Migr* (Oxford: Westview Press, 1997).

he/she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; he/she has committed a serious non-political crime outside the country of refuge before his admission to that country as a refugee; he/she has been guilty of acts contrary to the purposes and principles of the United Nations.⁶⁰

This provision may directly limit the state parties to the Convention to broadly interpret the reasons for “national security” as provided in Article 33(2) of the 1951 Refugee Convention.⁶¹ Hence, an individual committing one or all of the offences referred to in the 1951 Convention can be said to have threatened the security of a refugee country. As provided for in Articles 31 and 32 of the Vienna Convention on the Law of Treaties,⁶² the exemption provided in Article 33(2) of the 1951 Refugee Convention shall be narrowly interpreted. The interpretation must be per the objectives and functions of Article 1(f) of the 1951 Refugee Convention and the basic principle of non-refoulement.⁶³

IV. INDONESIAN APPROACH TO NON-REFOULEMENT PRINCIPLE

The non-refoulement principle, considered the highest norm in international law, also bounds to Indonesia as a non-participant of the 1951 Refugee Convention. Thus, Indonesia has to show its commitment to uphold the principle within the domestic jurisdiction.⁶⁴ As a form of supervision of refugees in Indonesia, the government has determined to keep the lives of refugees by placing them in the Immigration Detention Centre (*rudenim*) or community house.⁶⁵ Based on the Presidential Regulation No.

⁶⁰ *Convention relating to the Status of Refugees*, *supra* note 30 Art. 1 (f).

⁶¹ *Ibid.*

⁶² *Vienna Convention on the Law of Treaties*, 1969 Art. 31 and 32.

⁶³ Lauterpacht & Bethlehem, *supra* note 16.

⁶⁴ Ni'matul Huda, Dodik Setiawan Nur Heriyanto & Allan Fatchan Gani Wardhana, “The Urgency of the Constitutional Preview of Law on the Ratification of International Treaty by the Constitutional Court in Indonesia” (2021) 7:9 Heliyon.

⁶⁵ Pemerintah Provinsi Riau, “Kepala Kanwil Kemenkumham Riau Tinjau Langsung Pengungsi Rohingya dari Aceh”, online: <<https://www.riau.go.id/home/content/>

125 of 2016, if a foreigner enters the border area and is suspected of being a refugee, the Immigration Officer, in collaboration with the Police Officer, can immediately place them at the nearest Immigration Detention Centre.⁶⁶ The immigration officer has always used this legal standing to direct refugees to the Immigration Detention Centre as a transit place for the refugees. While living in this Centre, the Officers will investigate and surveillance for further actions, including possibly deporting them back to their home country or a third state.

Currently, detention centres in Indonesia are over capacity, considering that too many refugees and asylum seekers enter Indonesian territory yearly.⁶⁷ To answer the problem regarding the limitations of detention centre facilities, the Regency/City Government must have community housing to accommodate the refugees. However, it depends on the intention and financial ability of the Regency Government to facilitate them. In addition, where the Regency Governments already accommodate the shelter, this is usually only given to people who have obtained the status of refugees stipulated by UNHCR due to limited space and resources. Refugees whose application for refugee status is rejected by UNHCR⁶⁸ will remain at the Immigration Detention Centre until voluntary repatriation, resettlement to a third country, or deportation is carried out.

Returning to their country of origin, which may still be unsafe for refugees, would be against the non-refoulement principle. They may be hazardous to come back due to the human rights violation situation in their home country that particularly will discriminate and be dangerous for them. Hence the refugees generally stay in the Immigration Detention Centre, on average, for

2023/04/11/15807-kepala-kanwil-kemenkumham-riau-tinjau-langsung-pengungsi-rohingya-dari>; “Rudenim Makassar dorong UNHCR-IOM cari solusi pengungsi imigran”, (2023), online: <<https://www.antaraneews.com/berita/3384444/rudenim-makassar-dorong-unhcr-iom-cari-solusi-pengungsi-imigran>>.

⁶⁶ *Presidential Regulation No. 125 of 2016 on the Settlement of Refugees from Abroad.*

⁶⁷ M Alfi Syahrin, “Tafsir Yuridis Peraturan Direktur Jenderal Imigrasi Nomor IMI-0352.GR.02.07 Tahun 2016 tentang Penanganan Imigrasi Ilegal yang menyatakan diri Sebagai Pencari Suaka atau Pengungsi dalam Kebijakan Selektif Keimigrasian: Pendekatan Teori Hierarki Norma Huku” (2019) 2:1 J Ilm Kaji Keimigrasian.

⁶⁸ UNHCR, “Refugee Status Determination”, online: <<https://help.unhcr.org/indonesia/registration/rsd/>>.

quite a long time. The lack of financial support from donors has caused international organisations such as the International Organization for Migration (IOM) and UNHCR to tighten and be very selective in granting refugee status. In addition, refugees' resettlement chances are getting smaller because some countries initially committed to accepting refugees have closed themselves and even reduced their acceptance quotas.

The government assists in the voluntary repatriation of refugees who have yet to receive certainty to settle in a third country. In this regard, the government cooperates with embassies and international organisations such as IOM and UNHCR. To be sure, the most dominant obstacle the government faces is related to financial capacity, especially during the Covid-19 pandemic, where most of the budget is allocated for epidemic control.⁶⁹ The situation of the refugees who are in the shelter and the Immigration Detention Centre is receiving squeeze and suffering. Thus, it is crucial to reduce the number of refugees through voluntary repatriation, resettlement to a third country, or deportation.

In addition, the deportation model adopted by Indonesia depends on the situation of the country of origin.⁷⁰ If the country of origin is safe, the refugees who do not want to return will be deported. The deportation process is carried out with financial assistance from the government and generally from refugees who have saved money while living in Indonesia. In some cases, refugees who live in Indonesia through community housing immediately adapt and socialise with the local community. Some refugees are married to Indonesian citizens. Some refugees get Residence Identity Cards through corrupt practices by paying a certain amount of money.⁷¹

⁶⁹ Muhyiddin, "Covid-19, New-Normal dan Perencanaan Pembangunan Indonesia" (2020) 4:2 *Indones J Dev Plan*.

⁷⁰ Ali Muzafar, "Asylum Seekers and Refugees in Indonesia: Problems and Potentials" (2016) 8:2 *Cosmop Civ Soc J*.

⁷¹ Merdeka, "Darurat, imigran di Riau mulai palsukan KTP hingga jadi gigolo" (2015), online: <<https://www.merdeka.com/berita-trending/20150422/peristiwa/17-darurat-imigran-di-riau-mulai-palsukan-ktp-hingga-jadi-gigolo.html>>.

V. LESSONS FROM THE EUROPEAN UNION

The European Union already has a guiding legal framework for protecting refugees.⁷² The Treaty on the Functioning of the European Union (hereinafter: TFEU) is the primary law that, under Title V on the Area of Freedom, Security and Justice, stipulates the absence of internal border controls for persons in the EU shall frame a common policy on asylum, immigration and external border control (Article 67 of the TFEU). Based on the authorisation of the TFEU, several secondary legislations were adopted by the Council and the European Parliament. The Qualification Directive (Directive 2011/95/EC) establishes common ground to grant international protection. The Asylum Procedures Directive (Directive 2013/32/EU) establishes common standards of safeguards and guarantees to access a fair and efficient asylum procedure across the Union. The Reception Conditions Directive (Directive 2013/33/EU) ensures common living conditions for asylum applicants. The Dublin Regulation (Regulation (EU) No 604/2013) designates the Member State responsible for examining the asylum application.

The European Union is also a member of the European Convention on Human Rights (ECHR). The ECHR is also seen as one of the basic foundations in guaranteeing refugee rights, specifically Articles 3, 5(1) and (4) and Article 8. The rules of the ECHR on the prohibition of torture (Article 3), the right to liberty and security (Article 5) and the right to respect for private and family life are all understood as cornerstone principles in the design and implementation of EU law on asylum. In addition, member states in the European Union have also provided guarantees of human rights for refugees and are regulated by several national constitutions and fundamental laws (e.g., Hungary and Germany).⁷³ For example, under the Constitution of the Federal Republic of Germany, "Persons persecuted on political grounds shall have the right of asylum".⁷⁴

⁷² McDonough P & Tsourdi E, "Greek Crisis: Asylum and EU solidarity" (2021) 4 *Refug Surv Q* at 68.

⁷³ Bast J, "Deepening supranational integration: Interstate solidarity in EU migration Law" *Eur Public Law* at 289.

⁷⁴ *The Constitution of the Federal Republic of Germany*, 1949 Art. 16 A.

In September 2015, the Council of the European Union, one of the EU's organs, issued two important decisions: the first decision that relocates about 160,000 refugees residing in Italy and Greece to all other EU countries;⁷⁵ and the second decision on the distribution of refugees to all EU Member States based on the total population of each EU member state, the country's total GDP, the average of asylum applications filed spontaneously between 2010-2014 and the unemployment rate of EU member states.⁷⁶

Although both decisions are binding and the EU members must obey them, some EU member states, such as Hungary, the Czech Republic, and Slovakia, refuse to implement such decisions. However, Estonia, Latvia, Lithuania, Luxembourg, Malta and Finland have complied with this decision, and they relocated refugees residing in Greece and Italy.⁷⁷ The compliance of EU member states in implementing the decision is at least motivated by the political support factor of its government, the process of acceptance of refugees that is easy and good, and a good perception related to the relocation of refugees. In this regard, Germany received the most asylum seekers in 2015, with 890,000 applications.⁷⁸ The Swedish state also receives many asylum seekers in the European Union, signalling the commitment to implementing the Council of European Union's decision to relocate refugees residing in Italy and Greece.⁷⁹ As a result, Sweden's asylum applications increased by 60% from November 2014 to November 2015.⁸⁰ Therefore, implementing the relocation decisions in the EU was

⁷⁵ Council of the European Union "Council Decision (EU) 2015/1523" 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece', OJ L 239.

⁷⁶ Martin Wagner & Albert Kraler, *An Effective Asylum Responsibility Sharing Mechanism* (2014) ICMPD Asylum Programme for Member States Thematic Paper at 1,3,10-11.

⁷⁷ European Council on Refugees and Exiles (ECRE), "Relocation of asylum seekers in Europe: A view from receiving countries" (2018), online <https://asylumineurope.org/wp-content/uploads/2020/11/aida_brief_relocation.pdf>.

⁷⁸ Reuters, "Germany revises down 2015 refugee intake arrivals slow" (2016), online <<https://www.reuters.com/article/us-europe-migrants-germany-idUSKCN1201KY>>

⁷⁹ Monar J, "Justice and Home Affairs" (2016) J Common Mark Stud at 146.

⁸⁰ Reuters, "Sweden sees record number of asylum seekers in 2015" (2015), online <<https://www.reuters.com/article/europe-migrants-sweden-idINKCN0RW1HP20151002>>.

efficient and resulted in a fair share of the mass influx of applications among most Member States. Despite the reluctance of some Member States to implement the relocation decisions (e.g., Hungary, Slovakia, and Czech Republic), the asylum systems of the two most affected Member States that are common entry points for refugees (Italy and Greece) could avoid being overloaded. This sharing allocation policy on the number of refugees in a regional scope can be an effective model to overcome the overload of refugees. This model shows each country's willingness to protect refugees as part of human rights compliance, including considering their capabilities.

For security reasons, the EU already has a good inter-state security system that derives from the fact that the EU is a borderless space for people. The Entry/Exit System (EES) is an automated IT system for registering travellers from third countries each time they cross the EU external border. The EES is a central system accessible to all border and law enforcement authorities in the Member States. Therefore, it can efficiently prevent irregular migration. Where an asylum seeker has been denied an appeal and has committed a crime, the data is directly inputted into the Europol security system, which is accessible to the security apparatus between EU Member States.⁸¹ Europol is the special body of the European Union established in 1999 to enhance the effectiveness and cooperation between the competent authorities of EU Member States and collect intelligence data to prevent and combat international organised crime. Europol should inform all forms of information and events related to security threats in the Schengen Area. This obligation is a form of respect for the principle of duty of sincere cooperation, which has become the basis for establishing Europol.

The uniqueness that may appear appropriate for Indonesia and ASEAN to emulate deals with the determination of the quota-sharing system conducted by the European Union. This quota-sharing system is a regional commitment to jointly overcome problems in determining the number of refugees allocated to each member country by adjusting their domestic resources. This system produces a sense of justice for EU member states. It

⁸¹ Zaun N, "The Power of Strong Regulating States" (2017) Basingstoke: Palgrave Macmillan at 38.

effectively avoids the concentration of refugees in certain countries, considering that most refugees always have a target to live in Western European countries.

As part of ASEAN, Indonesia needs to initiate a regional scheme that is particularistic and effective in protecting refugees. The scheme can refer to the best practices the European Union has implemented, but adapting it to the regional situation is still necessary.⁸² ASEAN countries with a pillar of cooperation can be a marker in formulating regional policies for refugees. This cooperation can be done by providing space for people in areas often refugee destinations to be actively involved in education, accelerating social integration, carrying out communal monitoring, and opportunities for refugees to develop their territory.

VI. CONCLUSION

The principle of non-refoulement has been accepted as the highest norm in international law (*jus cogens*). Article 33 of the 1951 Refugee Convention has an open regulatory character that allows the state or international organisation to develop policies addressing refugee issues but must be in line with the rules of human rights automatically attached to refugees. As a result, this principle remains binding mainly to non-participating countries of the 1951 Refugee Convention. Indonesia passed Presidential Regulation No. 125 of 2016 on the Handling of Refugees from Abroad to bring solid, integrated, and well-coordinated cooperation at the central and local government levels in handling refugees. However, the country is still obliged to ratify the 1951 Refugee Convention to gain benefits in determining the status of refugees and asylum seekers. The Indonesian government carefully approaches refugees under the backdrop of international law and customs, including the principle of non-refoulement. In a practical aspect, it faces some issues in determining the situation of the country of origin before they are repatriated and the financial allocations owned by the government and/or the refugees. Hence, an integrated and comprehensive statutory law must be

⁸² Kneebone S, *ASEAN and the conceptualisation of refugee protection in Southeast Asian states* (New York, 2014) at 260.

legislated to overcome refugee issues in Indonesia. This law is deemed higher than the Presidential Regulation, which provides more power to coordinate all relevant authorities and access to more significant state financial allocation for infrastructures and refugee living support.

In the regional context, Indonesia should encourage ASEAN to strengthen its role in overcoming the issue of refugees in its territory. In addition to promoting its member states to ratify the 1951 Convention, ASEAN can also take the practice done by the European Union to ensure that existing refugees can be jointly provided with protection. The tradition of overcoming problems in cooperation needs to be realised in all policies taken by ASEAN to address the issue of refugees.

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CONFLICT OF INTEREST

The authors declare no competing interests.

ETHICS APPROVAL

The corresponding author states that no human participants or animals are involved in this research.

INFORMED CONSENT

On behalf of all authors, the corresponding author states that no human participants are involved in this research. Therefore, informed consent is not required by them.

REFERENCES

- Adrian, Edwards, "UNHCR - UNHCR Report Shows Sharp Increase in Sea Crossings in the Bay of Bengal", (2015), online: *Brief Notes* <<https://www.unhcr.org/news/briefing/2015/5/554c8adf9/unhcr-report-shows-sharp-increase-sea-crossings-bay-bengal.html>>.
- Antara News, "Rudenim Makassar dorong UNHCR-IOM cari solusi pengungsi imigran", (2023), online: <<https://www.antaranews.com/berita/3384444/rudenim-makassar-dorong-unhcr-iom-cari-solusi-pengungsi-imigran>>.
- Batam News, "Imigrasi Batam Amankan 10 Orang Imigran Gelap Jadi Gigolo", (2016), online: <<https://www.batamtimes.co/2016/09/08/imigrasi-batam-amankan-10-orang-imigran-gelap-jadi-gigolo/>>.
- Chakrabarty, Ishita, "Refolement as a Corollary of Hate: Private Actors and International Refugee Law" (2020) 35:3 Virginia J Int Law Online 53–74.
- Crock, Mary, "In the Wake of the Tampa: Conflicting Visions of International Refugee Law in the Management of Refugee Flows" (2003) 12:1.
- C, De Rover, *To Serve and To Protect* (Jakarta: Raja Grafindo Persada, 2000).
- Donnelly, Jack, *Universal Human Rights in Theory and Practice* (Cornell University Press, 2013).
- Durieux, Jean-François & Jane McAdam, "Non-Refoulement through Time: The Case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies | Kaldor Centre" (2004) 16 Int J Refug Law 4–24.
- Effendi, A Masyhur & Taufani Sukmana Evandri, *HAM dalam Dimensi/Dinamika Yuridis, Sosial, Politik* (Bogor: Ghalia Indonesia, 2007).
- Effendi, A Masyhur, *Tempat Hak-Hak Azasi Manusia dalam Hukum Internasional/Nasional* (Bandung: Alumni, 1980).
- European Union Agency for Fundamental Rights (FRA), *Monthly Data Collection on the Current Migration Situation in the EU*, by European Union Agency for Fundamental Rights (FRA) (2016).
- Goodwin-Gill, Guy S & Jane Mcadam, *The Refugee in International Law* (Clarendon Press, 2000).

- Heriyanto, Dodik Setiawan Nur, “Klausula Terkait Perlindungan terhadap Buruh Migran dan Urgensinya untuk Diatur Secara Khusus di dalam Perjanjian Perdagangan Bebas antara ASEAN dan Uni Eropa” (2015) 22:3 J Huk IUS QUIA IUSTUM 329–345.
- Huda, Ni'matul, Dodik Setiawan Nur Heriyanto & Allan Fatchan Gani Wardhana, “The Urgency of the Constitutional Preview of Law on the Ratification of International Treaty by the Constitutional Court in Indonesia” (2021) 7:9 Heliyon.
- Hugo, Graeme, George Tan & Caven Jonathan Napitupulu, “Indonesia as a Transit Country in Irregular Migration to Australia” in Marie McAuliffe & Khalid Koser, eds, *A Long W to Go Irregul Migr Patterns, Process Drivers Decis* (ANU Press, 2017) 167.
- Huibers, Theo, *Filsafat Hukum* (Yogyakarta: Kanisius, 1995).
- Human Rights Watch, “Thailand: Allow Newly Arrived Rohingya Access to Asylum”, (2022), online: <<https://www.hrw.org/news/2022/06/07/thailand-allow-newly-arrived-rohingya-access-asylum>>.
- Human Rights Watch, “World Report 2015: Indonesia”, (2014), online: <<https://www.hrw.org/id/world-report/2015/country-chapters/268176>>.
- J, Bast, “Deepening supranational integration: Interstate solidarity in EU migration Law” *Eur Public Law*.
- J, Monar, “Justice and Home Affairs” (2016) *J Common Mark Stud*.
- Lauterpacht, Sir Elihu & Daniel Bethlehem, “The Scope and Content of the Principle of Non-Refoulement: Opinion” in Erika Feller, Türk Volker & Frances Nicholson, eds, *Refug Prot Int Law UNHCR's Glob Consult Int Prot* (Cambridge University Press, 2003).
- Loescher, Gil, “Refugee Issues in International Law” in *Refug Int Relations* (Oxford: Oxford University Press, 1989).
- Luthvi Febryka Nola, *Refugee Employment Prohibition in Indonesia* (2021), Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia.
- Merdeka “Darurat, imigran di Riau mulai palsukan KTP hingga jadi gigolo” (2015), online: <<https://www.merdeka.com/berita-trending/20150422/peristiwa/17-darurat-imigran-di-riau-mulai-palsukan-ktp-hingga-jadi-gigolo.html>>.

- Moussalli, Michell, *Who is a Refugee?* (Geneva: UNHCR, 1982).
- Muhyiddin, “Covid-19, New-Normal dan Perencanaan Pembangunan Indonesia” (2020) 4:2 *Indones J Dev Plan*.
- Muzafar, Ali, “Asylum Seekers and Refugees in Indonesia: Problems and Potentials” (2016) 8:2 *Cosmop Civ Soc J*.
- Nickel, James W, *Hak Asasi Manusia Refleksi Filosofis atas Deklarasi Universal Hak Asasi Manusia* (Jakarta: Gramedia Pustaka Utama, 1996).
- N, Zaun, “The Power of Strong Regulating States” (2017) Basingstoke: Palgrave Macmillan.
- Pemerintah Provinsi Riau, “Kepala Kanwil Kemenkumham Riau Tinjau Langsung Pengungsi Rohingya dari Aceh”, online: <<https://www.riau.go.id/home/content/2023/04/11/15807-kepala-kanwil-kemenkumham-riau-tinjau-langsung-pengungsi-rohingya-dari>>.
- Prabaningtyas, Raden Ajeng Rizka Fiani, “Indonesia and The International Refugee Crisis: The Politics of Refugee Protection” (2019) 9:2 *J Indones Soc Sci Humanit*.
- Prihandono, Iman, “Pemberian Suaka oleh Negara: Kasus Pemberian Suaka oleh Pemerintah Australia kepada 42 WNI asal Papua” (2006) 21:1 *J Huk Yuridika*.
- Putri, Ganesh Cintika, “The Dilemma of Hospitality: Revisiting Indonesia’s Policy on Handling Refugees Under International Law” (2022) 13:1 *J HAM* 113–130.
- P, McDonough & Tsourdi E, “Greek Crisis: Asylum and EU solidarity” (2021) 4 *Refug Surv Q*.
- Robertson, Geoffrey, *Kejahatan Terhadap Kemanusiaan Perjuangan untuk Mewujudkan Keadilan Global* (Jakarta: Komisi Nasional Hak Asasi Manusia Republik Indonesia, 2002).
- Sari, Risky Vista Puspita, Aries Harianto & Ida Bagus Oka Ana, “Kepastian Hukum Pengaturan Penggunaan Tenaga Kerja Asing di Indonesia” (2018) *Lentera Huk* 389–402.
- Starke, JG, *An Introduction to International Law* (London: Butterworth, 1977).
- Subawa, I Made, “Hak Asasi Manusia Bidang Ekonomi Sosial dan Budaya Menurut Perubahan UUD 1945” (2008) 33:1 *Kertha Patrika*.

- Sulaiman, Hamid, *Lembaga Suaka dalam Hukum Internasional* (Raja Grafindo Persada, 2002).
- Supriadi, Slamet, “International Refugees Protection in the Context of Human Rights” (2021) 7:4 Law Res Rev Q 417–432.
- Syahrin, M Alfi, “Tafsir Yuridis Peraturan Direktur Jenderal Imigrasi Nomor IMI-0352.GR.02.07 Tahun 2016 tentang Penanganan Imigrasi Ilegal yang menyatakan diri Sebagai Pencari Suaka atau Pengungsi dalam Kebijakan Selektif Keimigrasian: Pendekatan Teori Hierarki Norma Huku” (2019) 2:1 J Ilm Kaji Keimigrasian.
- S, Kneebone, *ASEAN and the conceptualisation of refugee protection in Southeast Asian states* (New York, 2014).
- Tan, Nikolas Feith, “The Status of Asylum Seekers and Refugees in Indonesia” (2016) 28:3 Int J Refug Law 365–383.
- The United States Embassy and Consulates in Indonesia, “2021 Country Reports on Human Rights Practices: Indonesia” (2021), online: <<https://id.usembassy.gov/our-relationship/official-reports/2021-country-reports-on-human-rights-practices-indonesia/>>.
- UNHCR, *Human Rights and Refugee Protection* (Jakarta: UNHCR, 1998).
- UNHCR, “Refugee Status Determination”, online: <<https://help.unhcr.org/indonesia/registration/rsd/>>.
- Vega, Jan González, “Syrian Refugee Crisis and National Security” (2020) 60 Rev Derecho Puertorriq 275–295.
- Velez, Leslie E & Claire A Smearman, “Protecting the World’s Most Vulnerable” (2008) 41 Md Bar J 32–37.
- Weiner, Myron, “Global Movement, Global Walls: Responses to Migration 1885-1925” in Gung Wu, ed, *Glob Hist Migr* (Oxford: Westview Press, 1997).
- Weissbrodt, David & Isabel Hortreiter, “The Principle of Non-Refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human Rights Treaties” (1999) Buffalo Hum Rights Law Rev.
- Wagner, Martin, & Albert Kraler, *An Effective Asylum Responsibility Sharing Mechanism* (2014) ICMPD Asylum Programme for Member States

Thematic Paper at 1,3,10-11.

Wahyun, Tri, “UNHCR: Jumlah Pengungsi di Indonesia Meningkat”, (2015), online: <<https://www.cnnindonesia.com/nasional/20150728204221-20-68699/unhcr-jumlah-pengungsi-di-indonesia-meningkat/>>.