

COMPARISON OF REFUGEE HANDLING POLICIES FROM ABROAD IN MALAYSIA AND INDONESIA

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Abstract

Currently, there are around 12,295 refugees registered at the UNHCR office in Indonesia. However, many of them have an unclear fate, and many of them have even held demonstrations in various places in Indonesia. The empirical legal research with a comparative approach that was conducted resulted in the following conclusions: a) The chaotic handling of foreign refugees in Indonesia is caused by the negative stigma of the community and government towards the existence of foreign refugees, institutional problems, and socio-economic conditions that do not support facilitating employment opportunities for foreign refugees; b) Indonesia and Malaysia are not obliged to accept refugees because they are not signatories to the 1951 Refugee Convention and the 1967 Refugee Protocol. However, the two countries continue to accept them temporarily for humanitarian reasons. The system for handling foreign refugees in Malaysia is more controlled because the legal system adopted also influences Malaysia's firm stance towards foreign refugees. The government must immediately improve the mechanism for handling asylum seekers and foreign refugees in Indonesia so that institutional problems can be overcome and create a more focused handling system that is able to form a firm stance regarding the existence of foreign refugees in Indonesia.

Keywords: Comparison, Policy, Refugees

A. INTRODUCTION

The terms and definitions for refugee first appeared during World War I, which is considered a turning point in the process of nation-building (Ahmad R, 2023). According to the UN's 1951 Convention Relating to the Status of Refugees, a refugee is someone who, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (Nielsen H, 2021).

ARTICLE

In international law, there is a distinction between an asylum seeker and a **refugee** (Yuliantiningsih, 2023). Though many equate the two since both are seeking protection (Fawaid A, 2022), an asylum seeker is a person who seeks refuge or protection, typically from the government of another country, because they feel unsafe and their life is threatened in their home country (Arti B, 2018). Similarly, a refugee is defined as someone who leaves their home country to seek protection in another territory to save their life and body, often due to war or prolonged conflict (Iin & Kadarudin, 2017).

Indonesia is not a party to the 1951 Convention or the 1967 Protocol, so it does not have specific regulations for handling foreign refugees (Primadasa et al., 2021). However, due to humanitarian reasons and pressure from international relations actors, such as International Organizations and International Non-Governmental Organizations (INGOs), Indonesia cannot prevent the entry of asylum seekers (Wahyuni et al., 2023). According to UNHCR, there are currently around 12,295 refugees registered at the UNHCR office in Indonesia (Putri & Achsin, 2023).

Presidential Regulation Number 125 of 2016 concerning the Handling of Foreign Refugees in Indonesia was issued to regulate the presence of foreign refugees (Abimanyu A, 2022). Yet, the chaotic handling of foreign refugees in Indonesia is a widespread issue. For example, hundreds of Afghan refugees protested in front of the UNHCR office in Jakarta on Monday, August 5, 2024. They demanded that the international body resettle them in a third country, as their fate in Indonesia has been uncertain for too long.

This situation seems to be addressed too late. Foreign refugees cannot be returned to their home countries but also have no certainty of being sent to a third country (Faisal et al, 2022). As a result, their lives in Indonesia are becoming increasingly precarious.

The fear of social distortion and increased competition for productive jobs due to the large number of foreign refugees entering Indonesia is often cited as the reason why Indonesia has not yet ratified international refugee conventions (Pamungkas et al., 2021). Society also holds negative stigmas against the presence of foreign refugees, which makes it difficult for Indonesia to facilitate employment opportunities for refugees during their stay (Ramadhan et al., 2025).

The Constructivism Network in international relations is believed to have influenced the Indonesian government's attitude toward foreign refugees (Iji V, 2025). This is especially true given the dominant role of International Organizations like UNHCR and IOM, which assist in handling foreign refugees in Indonesia.

Similarly, Malaysia, Indonesia's neighbor, has also not ratified the international refugee conventions. However, refugee management in Malaysia appears to be more controlled. It is interesting to examine why the handling of foreign refugees in these two countries is different.

The problem of refugee management must be resolved if Indonesia wants to avoid being caught in the dilemma between upholding human rights which is constantly pushed by the global humanitarian network and the threat of social and economic distortion caused by the high number of foreign refugees in the country.

B. LITERATURE REVIEW

Defining Refugees and the Issues with Foreign Refugee Management

According to the 1951 UN Refugee Convention, a refugee is an individual who has fled their country due to a well-founded fear of persecution based on their race, religion, nationality, or political views (Aling D, 2024). This article also distinguishes between refugees and asylum seekers, even though the two are often considered the same when seeking protection.

This research highlights the serious issues surrounding refugee management in Indonesia. Although Indonesia is not a signatory to the 1951 Refugee Convention, it accommodates thousands of refugees on humanitarian grounds, regulated by Presidential Regulation No. 125 of 2016. However, the policy's implementation remains chaotic, as evidenced by protests from refugees whose fates are in limbo. This problem is caused by negative public stigmas, institutional issues, and a lack of socio-economic support to facilitate employment opportunities for refugees.

Refugee management policies in Indonesia and Malaysia share similarities. Neither country is a signatory to the 1951 and 1967 Refugee Conventions, so they don't have a legal obligation to host refugees. However, both nations still accept refugees as transit countries.

- Indonesia: Refugee management in Indonesia, although regulated by a Presidential Regulation, still faces issues of sectoral ego among government agencies. Collaboration with international organizations like UNHCR and IOM actually hinders synergy. Additionally, a lack of clear regulations and negative public views toward refugees are major obstacles.
- Malaysia: Refugee management in Malaysia is considered more controlled. While refugees who enter without documents are considered to be breaking the law (based on the Immigrant Act 1959/63), Malaysia maintains a firm and consistent stance. The country's Common Law legal system allows it to impose strict penalties on undocumented immigrants while also providing job opportunities for legally registered refugees.

C. RESEARCH METHODOLOGY

This type of research is empirical legal research, a type of legal research that examines the law by examining its operation in society and the effectiveness of current laws (Effendi & Ibrahim, 2016). The approach used is the Comparative Approach, which is a method used to compare legal institutions within one legal system with legal institutions from other legal systems or countries (Morris L, 2015). The legal sources used are primary, secondary, and tertiary legal sources. Data collection techniques include interviews, observation, and documentation. Several legal analysis techniques are employed, including: Descriptive Techniques, which describe the facts of a legal event or legal condition, and Evaluation Techniques, which evaluate the legal condition (Diantha et al., 2018).

D. RESULT AND DISCUSSIONS

Implementation of Foreign Refugee Management in Malaysia and Indonesia

Foreign Refugee Management Policy in Indonesia

Today, Indonesia's high standing in the international community requires it to address global issues like immigration, a consequence of globalization (Nugroho et al., 2025). However, as a developing nation, Indonesia has limited capacity to respond to these challenges. This necessitates a stable policy that is appreciated internationally while also serving national interests.

According to Iskandar (2012), a policy is a series of plans, programs, activities, and decisions made by actors to solve a problem. In handling foreign detainees or individuals, the Directorate General of Immigration has a "soft policy" that follows global human rights standards. Article 2 of Presidential Regulation No. 125 of 2016 clearly states that refugee management is a collaborative effort between the central government and the United Nations High Commissioner for Refugees (UNHCR) and/or other international migration or humanitarian organizations with agreements with the government. This regulation mandates that three government institutions—the central government (in coordination with local governments for housing), the police (for security), and immigration (for supervision)—along with the International Organization for Migration (IOM) manage refugees. This collaboration requires a difficult synergy (Ninie P, 2016).

Sectoral egos often dominate government policy, especially given that the IOM funds all refugee needs with a significant amount of money (Bintana P, 2025). In practice, local governments and immigration play the largest roles; immigration is administratively responsible, while local governments ensure a decent standard of living for refugees.

According to Yuliana's research (2018), institutional and administrative structures have not changed since Presidential Regulation No. 125 of 2016, despite a transfer of supervisory authority. This is a problem because the Standard Operating Procedures (SOP) used still refer to an outdated 2013 regulation, which is no longer in line with the new presidential regulation.

Several problems have emerged from this regulation's implementation:

1. Public perception: Indonesian society is still reluctant to accept refugees due to concerns about social distortion and increased competition for jobs.
2. Controversy: Many argue that Indonesian laws provide minimal support for refugees. The government is not obligated to manage foreign refugees, so refugee rights can easily be overlooked.
3. Lack of synergy: The collaboration between the government and international organizations hinders synergy among stakeholders.
4. Regulatory ambiguity: The lack of clarity in regulations for handling foreign refugees is a problem. Refugees, initially placed in Immigration Detention Centers, were later moved to the care of local governments in collaboration with the IOM.

There are no clear service standards for foreign refugees. Across Indonesia, around 14,000 refugees from conflict-ridden countries like Afghanistan, Somalia, Sudan, Bangladesh, Myanmar, and Iran are living in limbo. Indonesia is not obligated to accept refugees since it is not a signatory to the 1951 Convention or the 1967 Protocol, but it hosts them temporarily for humanitarian reasons. Refugees in Indonesia can only wait for the

UNHCR to fulfill its promise to resettle them in a third country, such as Australia, the United States, Canada, and New Zealand.

Foreign Refugee Management Policy in Malaysia

Malaysia is also not a signatory to the 1951 Convention or the 1967 Protocol and has no specific provisions for refugees. However, all foreigners entering Malaysia are subject to the Immigrant Act 1959/63. Under this law, refugees entering Malaysia without official documents are treated as illegal immigrants. They can be denied entry, detained, or deported for reasons of public safety, economic conditions, or other factors.

According to Malaysian law, refugees and asylum seekers who enter without permission are considered criminals. Malaysia is very strict, even with victims of human trafficking and undocumented foreigners (Monique & Puspamawarni, 2020). In fact, more than 45,000 undocumented migrants entering Malaysia have been detained since May 2020.

Like Indonesia, Malaysia has a long history of accepting refugees. In 2015, Malaysia gained international attention when it announced it would accept 3,000 Syrian refugees, allowing them to work and attend school. Two years later, in March 2017, Malaysia launched a program allowing 300 Rohingya refugees to work legally in the country. They were placed in manufacturing and agriculture companies, which gave them not only an income but also skills to use before they were resettled in a third country. The UNHCR is now "wooing" the Indonesian government to help refugees find income so they don't have to live as nomads while waiting for resettlement. They want the government to allow refugees to be involved in local entrepreneurship projects. The Indonesian government is currently in negotiations with the UNHCR to find a suitable solution.

Malaysia is stricter with foreigners who enter and stay without permission. However, for those refugees or asylum seekers who are granted permission, Malaysia provides them with opportunities to work and support themselves.

Comparative Analysis of Foreign Refugee Management in Malaysia and Indonesia

Although neither Indonesia nor Malaysia are signatories to the 1951 Refugee Convention and 1967 Protocol, both cannot reject the entry of asylum seekers and serve as transit countries. Malaysia's Common Law legal system, inherited from its British tradition, gives more room for fulfilling human rights for foreigners who enter and reside in the country legally. Conversely, this stance allows Malaysia to be strict with undocumented foreigners, including asylum seekers and even human trafficking victims.

In Indonesia, foreign refugee management is a "wild ball" that is difficult to control. The lack of a firm stance and the government's limited role in granting refugee status are reasons why Indonesia cannot take a strong position against illegal immigrants who claim to be asylum seekers. Indonesia's legal system, with its long history of Dutch colonialism, has influenced the country's chaotic management of foreign refugees. The immigration institution is under the Ministry of Law and Human Rights. However, according to Presidential Regulation No. 125 of 2016, foreign refugee management is handled by the Ministry of Foreign Affairs in collaboration with the UNHCR and IOM.

Malaysia's firm stance on refugee management allows it to take action, such as repatriation and criminal immigration sanctions, against undocumented refugees. This strict

approach is balanced by Malaysia's policy of providing job opportunities for legal refugees. Malaysia also has an agreement with the UNHCR on the types of jobs refugees can do. Thus, the UNHCR shares responsibility for any potential social or economic impacts.

E. CONCLUSION

Based on the discussion, it can be concluded that the management of foreign refugees in Indonesia still faces many problems. This is due to several key factors: negative stigmas from both the public and the government, institutional issues, and socio-economic conditions that do not support employment opportunities for refugees. Although neither Indonesia nor Malaysia is legally bound to accept refugees because they are not signatories to the 1951 Refugee Convention, both countries still host them on humanitarian grounds. However, the management system in Malaysia is considered more controlled due to the influence of its legal system, which allows the government to be firmer with foreign refugees. Therefore, the Indonesian government needs to urgently improve its refugee management mechanisms. All relevant stakeholders should be involved in drafting new regulations. The goal is to address institutional problems, create a more focused management system, and formulate a firm stance on the presence of foreign refugees in Indonesia.

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