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ADVOCATING THE TEMPORARY RIGHTS TO WORK FOR REFUGEES AND ASYLUM SEEKERS IN TRANSIT IN INDONESIA

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Abstract

Refugees and asylum seekers stuck in protracted transit in Indonesia are prohibited from working and are denied the right to work. This paper investigates the legal foundation for Indonesia's policy of depriving refugees and asylum seekers of their right to work, the coherence of the stated rule with higher regulations, and possible regulations allowing refugees to work. The finding indicates that deprivation of the right to work is a human rights violation, and the legal basis of the policy is inconsistency with laws and regulations on the higher hierarchy, as well as inconsistency with international norms ratified by Indonesia. This study acknowledges the state's commitment to safeguarding citizens' economic well-being against perceived risks, notably refugees taking over local jobs. To balance the state's interest and refugee human rights, this study examines the feasibility of temporary work provisions for refugees and asylum seekers in Indonesia.

Keywords: *refugees, asylum seekers, rights to work, Indonesian law and regulation*

Abstrak

Pengungsi dan pencari suaka yang terjebak dalam transit yang berkepanjangan di Indonesia dilarang bekerja dan ditolak haknya untuk bekerja. Studi ini mengkaji dasar hukum kebijakan pencabutan hak atas pekerjaan bagi pengungsi dan pencari suaka di Indonesia, mengkaji koherensi peraturan tersebut dengan peraturan yang lebih tinggi, dan menjajagi peraturan yang memungkinkan pengungsi mengakses pekerjaan. Temuan menunjukkan bahwa perampasan hak atas pekerjaan merupakan pelanggaran hak asasi manusia dan dasar hukum kebijakan tersebut tidak sesuai dengan peraturan perundang-undangan yang lebih tinggi, serta tidak sesuai dengan norma-norma internasional yang telah diratifikasi oleh Indonesia. Studi ini memahami kepentingan negara untuk melindungi kesejahteraan ekonomi warga negara dari persepsi ancaman yaitu para pengungsi mengambil alih pekerjaan dari warga lokal. Untuk menyeimbangkan kepentingan negara dan hak asasi pengungsi, studi ini menawarkan gagasan tentang kemungkinan ketentuan akses sementara untuk bekerja bagi pengungsi dan pencari suaka yang transit di Indonesia.

Kata kunci: *pengungsi luar negeri, pencari suaka, hak untuk bekerja, hukum Indonesia*

I. INTRODUCTION

Indonesia is a transit country for refugees on their journey to seek resettlement in a developed country. Since the end of the 1970s, Indonesia has been temporarily hosting foreign refugees, sharing the responsibility with the United Nations High Commissioner for Refugees (UNHCR). Nevertheless, Indonesia still has not ratified the 1951 Convention Relating to the Status of Refugees, nor does it have comprehensive and clear regulation of refugee protection. Furthermore, Indonesia has not yet established a national refugee status determination system to acknowledge the existence and regulate the activities of refugees during their transit in Indonesia.

The rising global refugee crisis and the limited opportunities for resettlement in a third country have left the refugees and asylum seekers in Indonesia in an indefinite state of protracted transit. The refugees' agonizing long transit in Indonesia is further exacerbated by the deprivation of fulfilling their basic needs and fundamental rights, including the right to work. The regulation as the basis of the prohibition to work is the attachment of the Regulation of the Director-General of Immigration No. IMI-0352.GR.02.07 of 2016 concerning the Handling of Illegal Immigrants Who Claim to be Asylum Seekers or Refugees. Besides the regulation, Indonesian officials are also reluctant to grant refugees and asylum seekers access to engage in income-generating activities for the reason that refugees will endanger Indonesians' job security as well as national security concerns.¹ Despite the Indonesian government's recognition that refugees are struggling in long-term transit without a source of income or access to livelihood,

Without access to work, refugees and asylum seekers cannot be self-reliant and have to rely on remote support from non-governmental organizations or personal loans, putting economic and social pressures on the community and the individual. At the same time, the Indonesian government does not intend to expand its budget for refugees and asylum seekers because Indonesia has already taken more than it should in protecting refugees.² Also, the prohibition on working has forced those in dire financial need to secretly engage in income-seeking activities, albeit tiny and sporadic, under the risk of being detained by the authorities. As was the case in Makassar in early 2021, RUDENIM (Immigration Detention Center) in Makassar detained two refugees who were found working as construction laborers.³

Economically, the ban on working in Indonesia has squandered productivity potential, given that 73 percent of refugees and asylum seekers in Indonesia are adults.⁴ The suggestion that refugee access to work will be a threat to Indonesian citizens' jobs and economic security is unfounded because, by combining the data of the refugee adult population from the UNHCR in December 2020⁵ against the Indonesian working-age population in August 2020, the refugees' working age group

¹ Interview with Chairul Anwar (Head of the Indonesian Foreign Refugee Task Force) by Nino Viartasiwi, Risyie Dwiyani, and Ayu Prestasia. 25 February 2020.

² Achsanul Habib, "Indonesia and Refugee Crisis: The Three-Ways Approach" (JakPost Up Close #18: Bridging the gap in refugee response in Southeast Asia, Webinar, November 7, 2020), <https://www.youtube.com/watch?v=hdTWAT-MI4k>.

³ "Rudenim Makassar Amankan 2 Pengungsi Yang Kedapatan Bekerja Sebagai Kuli Bangunan," Directorate General of Immigration. Imigrasi.Go.Id, <https://www.imigrasi.go.id/berita/detail/rudenim-makassar-amankan-2-pengungsi-yang-kedapatan-bekerja-sebagai-kuli-bangunan>, accessed May 19, 2021

⁴ UNHCR Indonesia, "Monthly Statistical Report March 2021," accessed June 23, 2021, <https://www.unhcr.org/id/wp-content/uploads/sites/42/2021/04/Monthly-Statistical-Report-March-2021.pdf>.

⁵ UNHCR Indonesia, "Figures at a Glance" (UNHCR Indonesia, November 2021), <https://www.unhcr.org/id/en/figures-at-a-glance>.

population is only 0.005% of the Indonesian working-age population.⁶ Furthermore, there are refugees with unique skills and job experiences that will not compete with local people in the job market.

Indonesia's status as a non-signatory party to the 1951 Refugee Convention and its 1967 Protocol does not absolve it of its obligation to protect refugees' fundamental human rights, including the right to work. Indonesia is responsible for safeguarding human rights and ensuring that all persons, including foreign refugees, can exercise their rights under its jurisdiction.⁷ Following this rationale, Indonesian foreign refugee governance must refer to the Universal Declaration of Human Rights' fundamental rights (UDHR). The restriction of work for refugees may violate human rights principles and other higher-ranking Indonesian regulations. It is critical to identify the regulation's place in the Indonesian legal hierarchy to determine its compatibility with higher law. More importantly, it is also because Indonesia lacks a separate statute to rule out the prohibition itself. Currently, the government's treatment in admitting asylum seekers is largely determined by the Indonesian immigration policy.⁸ In dealing with refugees, the immigration authority employs security measures such as arbitrary detention to punish income-generating activities.

The purpose of this study is to provide answers to two questions. To begin, what laws and regulations serve as the basis for denying refugees and asylum seekers access to work in Indonesia? Second, is the regulation preventing refugees and asylum seekers from engaging in income-generating activity consistent with existing human rights and refugee protection laws and regulations? Additionally, the study gives insight into the viability of enacting legislation granting temporary work permits to refugees and asylum seekers transiting in Indonesia.

II. PROTRACTED TRANSIT AND REFUGEE PROTECTION FRAMEWORK

According to UNHCR Indonesia's estimates as of November 2021, 13,175 refugees are transiting in Indonesia, a negligible proportion of the global refugee population. The number of refugees in Indonesia is also small compared to the neighboring countries of Malaysia and Thailand.⁹ Indonesia's status as a transit country for refugees stems from its location between the continents of Asia and Australia, as well as between the Pacific and Indian oceans, which has led to its recognition as the most popular transit country for migration to Australia. Refugees transiting through Indonesia while waiting for a response to their UNHCR resettlement applications. While the status of being in transit implies temporariness, in reality, the transit period is protracted into many years. Numerous refugees transit in the country for more than

⁶ Kemenaker Indonesia, "Penduduk Usia Kerja Indonesia," accessed August 14, 2021, <https://satu-data.kemnaker.go.id/details/data/Pada%20periode%20Agustus%202020,%20diketahui%20jumlah%20Penduduk%20Usia%20Kerja%20%28PUK%29%20di%20Indonesia%20sebanyak%20203.972.460%20orang.%20Jumlah%20tersebut%20mengalami%20peningkatan%20sebesar%201,38%20persen%20dibanding%20periode%20Agustus%202019>.

⁷ Debby Kristin and Chloryne Trie Isana Dewi, "The Rights of Children Refugee in Transit Country Under the CRC, A Case of Indonesia: an Intended Negligence?," *Padjadjaran Journal of International Law* 5, no. 1 (January 30, 2021): 61–80, <https://doi.org/10.23920/pjil.v5i1.349>.

⁸ Bilal Dewansyah, Wicaksana Dramanda, and Imam Mulyana, "Asylum Seekers In A Non-Immigrant State And The Absence Of Regional Asylum Seekers Mechanism: A Case Study Of Rohingya Asylum Seekers In Aceh-Indonesia And Asean Response," *Indonesia Law Review* 7, no. 3 (December 1, 2017): 341–66, <https://doi.org/10.15742/ilrev.v7n3.373>.

⁹ UNHCR, "UNHCR Global Report 2020," November 25, 2021, <https://www.unhcr.org/flagship-reports/globalreport/>.

four years without a clear vision of the duration of their transit time.

As a non-signatory to the 1951 Refugees Convention, Indonesia still adheres to the principle of non-refoulement of international refugee law. According to the principle of non-refoulement, no refugee should be returned to a country where he or she is likely to face persecution, abuse, or torture.¹⁰ In terms of the international protection system for asylum seekers and refugees, the principle of non-refoulement has become the first and most important norm. As a result, international society has regarded non-refoulement as a *jus cogens* principle.¹¹ This is an overriding principle of international law from which no deviation is permissible.¹² This principle's provision is also advocated in the 1951 convention on article 33. Accordingly, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol are the core of the international protection system. These are supplemented by other international human rights and humanitarian law instruments that adhere to the non-refoulement concept.¹³

UNHCR is the leading institution in handling refugees in Indonesia. Globally, UNHCR seeks to form durable solutions for refugees with its three points: local integration in the country of asylum, voluntary repatriation to the country of origin, or resettlement to a third country. However, UNHCR Indonesia exercises the so-called Comprehensive Solutions beyond the classic UNHCR's durable solutions. Due to the Indonesian government's reservation about refugees' local integration into Indonesian society and the challenges associated with other durable solutions, UNHCR Indonesia seeks opportunities for refugees' self-reliance within the context of a temporary stay.¹⁴

The reality of protracted transit in Indonesia without a clear protection scheme concerning living expenses and being denied entry to the labor market further exposes refugees in Indonesia to vulnerability. Refugees can only rely on minimal cash help from international organizations, loans from relatives living overseas, and assistance from local people to meet their daily expenditures. Obviously, direct cash aid is limited and unsustainable. More significantly, depriving refugees of economic rights is harsh, demeaning, and ultimately detrimental to their mental health. As a result, not only will refugees become a burden on society, but they will also be unable to contribute to the economy. Hence, there is a pressing need to create solutions that would enable refugees to increase their self-reliance, including access to livelihoods, for the benefit of the refugees, community, and country.

¹⁰ Guy S. Goodwin-Gill, "The International Law of Refugee Protection," in *The Oxford Handbook of Refugee and Forced Migration Studies*, ed. Elena Fiddian-Qasmieh et al. (Oxford University Press, 2014), <https://doi.org/10.1093/oxfordhb/9780199652433.013.0021>.

¹¹ Black's Law Dictionary defines "*jus cogens*" as a mandatory or peremptory norm of general international law accepted and recognized by the international community as a norm in which no derogation is permitted. A peremptory norm can be modified only by a later norm that has the same character.

¹² Jean Allain, "The *Jus Cogens* Nature of Non-refoulement," *International Journal of Refugee Law* 13, no. 4 (October 2001): 533–58, <https://doi.org/10.1093/ijrl/13.4.533>.

¹³ Frances Nicholson and Judith Kumin, "A Guide to International Refugee Protection and Building State Asylum Systems" (Koninklijke Brill NV, 2017), https://doi.org/10.1163/2210-7975_HRD-1021-20180068.

¹⁴ UNHCR Indonesia, "Comprehensive Solution," accessed July 13, 2021, <https://www.unhcr.org/id/en/comprehensive-solutions>.

III. THE RIGHTS TO WORK UNDER INTERNATIONAL HUMAN RIGHTS LAW AND INDONESIAN LAW

A. Rights to Work: International Human Rights Law

Under international law, the right to work is fundamental for a person's survival. International human rights legislation stipulates that everyone, including refugees, has the right to work in a dignified manner.¹⁵ This right is a part of economic, social, and cultural rights pertaining to the workplace, social security, family life, cultural involvement, and access to housing, food, water, sanitation, health care, and education.¹⁶ Accepting economic, social, and cultural rights as human rights obligates nations to ensure that these rights are available to everyone and to offer remedies for violations.¹⁷

1. Universal Declaration of Human Rights (UDHR) 1948

In Indonesia's history of human rights, the provisions of Indonesia's Constitution have been in line with the Universal Declaration of Human Rights, which was born three years after Indonesia's independence. In practice, Indonesia also respects and adopts the principles and norms of the United Nations Declaration on the Rights of the Child in its laws, especially those that deal with the right to work, which include the following

"Everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including food, clothing, housing, and medical care and necessary social service, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control."¹⁸

According to the UDHR's requirements, refugees in Indonesia shall have access to this right and be allowed to adapt to the terms of Indonesian national legal instruments. Indonesia has not properly protected the rights of everyone, including refugees, by ignoring this principle. Each state should safeguard and preserve everyone's right to employment, as it is inextricably linked to the enjoyment of the right to a decent standard of life.

2. International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR also regulates the right of everyone to work, which is contained in Article 6:

*"(1). The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
(2). The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies, and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding*

¹⁵ Office of United Nations High Commissioner for Human Rights (OHCHR) and Inter-Parliamentary Union (IPU), *Human Rights: A Handbook for Parliamentarians*, No. 8-2005 (UN Office of the High Commissioner for Human Rights (OHCHR), 2005), <https://www.refworld.org/docid/46cea90d2.html>.

¹⁶ Office of United Nations High Commissioner for Human Rights (OHCHR) and Inter-Parliamentary Union (IPU).

¹⁷ Office of United Nations High Commissioner for Human Rights (OHCHR) and Inter-Parliamentary Union (IPU).

¹⁸ Article 23 (1) UDHR 1948.

fundamental political and economic freedoms to the individual.”¹⁹

ICESCR calls for states to comply with the provision by providing access to work for everyone. Covenant states are also expected to facilitate skills training programs to achieve economic, social, and cultural development. In line with the provision, a refugee is an individual with the right to work who should be fully protected by Indonesia as the party to this covenant.

3. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Indonesia is also a signatory to ICERD, an international human rights instrument aimed at eradicating racial discrimination and fostering inter-racial understanding. This treaty also guarantees the right to work. Indonesia has agreed to become active in promoting and supporting universal respect for and fundamental freedoms for all by ratifying this convention. Indonesia has committed to acting without regard for race, gender, language, color, religion, or national origin, especially in giving equal access to work for all. Indonesia will ensure that all human beings are treated equally before the law and are entitled to equal protection without regard for their race or religion. The convention’s article 5 paragraph (e) point (i) provides that:

“The rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration.”²⁰

As a result of this law, Indonesia shall abolish and prohibit all forms of racial discrimination by individuals, groups, and organizations. Indonesia shall uphold the convention by ensuring the social, economic, cultural, and other rights of refugees and asylum seekers in its territory, including access to employment.

B. Access to Work: National Regulations

The 1945 Constitution mandates that Indonesia should commit to promoting and protecting human rights. As the legal basis of human rights norms in Indonesia, the constitution guarantees everyone’s human rights. As the Constitution does not alienate refugees in its provisions, refugees’ rights in Indonesia are guaranteed by the 1945 Constitution, other national laws and legislation, as well as by international legal instruments.²¹

1. The 1945 Constitution

Indonesia is a state of law that upholds human rights as stipulated in the Constitution. In Chapter X.A. the Constitution stipulates provisions relating to the right to a decent life, namely that everyone has the right to live and has the right to defend their life.²² In addition, everyone has the right to develop themselves through the fulfillment of their basic needs, the right to education, and the right to benefit from science, technology, art, and culture, to improve the quality of their lives and

¹⁹ Article 6 (1) and Article 6 (2), International Covenant on Economic, Social, and Cultural Rights 1966.

²⁰ United Nations, General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination

²¹ Arie Afriansyah and Eva Achjani Zulfa, “Refugee Resettlement: A Review Of Indonesian Laws and Practices,” *Indonesia Law Review* 8, no. 2 (2018): 203–20.

²² Article 28A of the 1945 Constitution of the Republic of Indonesia.

the welfare of humankind.²³ Everyone also has the right to work, a free choice of employment, just and favorable conditions of work, and protection.²⁴

The Indonesian constitution uses the nomenclature “*everyone*” for human rights provisions, not “*citizen*” like in the provision in Chapter X about Citizens and Residents. Consequently, based on the provisions of Article 28A, Article 28C point 1, and Article 28D point 2, asylum seekers and refugees in Indonesia are actually protected from not getting access to work. Clearly, asylum seekers and refugees are also included in the protection arrangement of the Indonesian Constitution.

2. Law No. 39 of 1999 on Human Rights

Article 9 point 1 of the Law No. 39 of 1999 on Human Rights stipulates the right to live. It states that everyone has the right to life, to sustain life, and to improve his or her standard of living. Article 11 of the law states that everyone has the right to grow and develop in a way that he feels fit. These provisions are related to the right to work for everyone, which is also ensured by national human rights law. Furthermore, the provision related to asylum seekers or refugees, also regulated in article 28 point 1, states that everyone has the right to seek and receive political asylum from another country.²⁵

The provisions of Law No. 39/1999 on Human Rights show that Indonesia recognizes the existence of people who seek asylum for protection from other countries. Additionally, it also respects every person’s rights to gain access to the fulfillment of their basic needs and improve their standard of living.

3. Law No. 11 of 2005 on the Ratification of the International Convention on the Economic, Social and Cultural Rights (ICESCR)

Indonesia ratified the International Covenant on Economic, Social, and Cultural Rights into its laws and regulations on October 28, 2005. By ratifying the covenant, all legal norms contained within are applied and binding on the ratified state. Indonesia’s consideration of becoming a party to this international covenant is also explained in the explanation section of Law No. 11 of 2005. Ratification of the convention is proof of Indonesia’s commitment to promoting and protecting human rights, which is in line with the 1945 Constitution. Article 5 of the ICESCR states that:

1. *“Nothing in the present Covenant may be interpreted as implying for any State, group, or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.”*
2. *“No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.”²⁶*

As such, Indonesia must respect the rights of asylum seekers and refugees seeking protection, particularly those relating to employment and the right to a dignified existence while in transit through Indonesia.

²³ *Ibid.* Article 28C point 1.

²⁴ *Ibid.* Article 28D point 2

²⁵ Section Six, the Right to Security, Law Nr. 39 the Year 1999 concerning Human Rights.

²⁶ Article 5, International Covenant on Economic, Social, and Cultural Rights 1966.

IV. CURRENT INDONESIAN POLICY TOWARDS ACCESS RIGHTS TO WORK FOR REFUGEES AND ASYLUM SEEKERS

The regulations governing the treatment of refugees and asylum seekers in Indonesia are set out in Presidential Regulation No.125 of 2016 Concerning the Handling of Foreign Refugees. The legislation establishes a legal framework for refugee protection in Indonesia. The presidential regulation, on the other hand, governs solely technical aspects of refugee relocation, placement, safeguarding, and immigration supervision. Apart from providing temporary shelter and emergency assistance, this rule makes no provision for the protection of asylum seekers' and refugees' fundamental rights. Additionally, there is no law regulating the social, economic, and cultural rights of refugees.

In Indonesia, Presidential Regulation No. 125 of 2016 makes no distinction between asylum seekers and refugees, treating both groups equally. However, the presidential regulation's provisions restrict asylum seekers' and refugees' rights and activities, creating practical confusion about what they are and are not permitted to undertake in terms of livelihood activities. In general, anyone seeking refugee status should register with the UNHCR as an asylum seeker. As an asylum seeker, the individual may be subjected to further Refugee Status Determination (RSD) procedures. Nonetheless, not all UNHCR-registered asylum seekers will obtain an RSD interview. For individuals asked for RSD interviews, the procedure is arduous, and it is understood that the time required to acquire a decision on the claims is uncertain due to the lack of transparency in the process.²⁷ The uncertainty surrounding the waiting period for a refugee claim, the subsequent procedures, and the ambiguous laws defining the activities in which refugees and asylum seekers may engage in Indonesia impose additional difficulties on them.

A. The Prohibition of Exercising Rights to Work for Asylum Seekers and Refugees in Indonesia

Indonesia's immigration laws tend to classify refugees and asylum seekers as illegal migrants. As a result of this designation, this group is strictly prohibited from participating in work activities on Indonesian territory. Whereas the international legal order establishes that refugees are entitled to particular protection and are different from illegal migrants. The term "migration" is frequently interpreted to refer to a voluntary process, such as someone crossing a border in search of better economic prospects. The preceding description is inapplicable to refugees, who are unable to return home safely and are thus eligible for protection under international law.

The prohibition of working for refugees and asylum seekers in Indonesia is written out in the refugee declaration, which is an annex to the Director-General of Immigration's regulation IMI-0352.GR.02.07 of 2016 on the Treatment of Illegal Immigrants Claiming to be Asylum Seekers or Refugees. It states that refugees must abide by Indonesian law, which includes legislation governing work, business

²⁷ Rohaida Nordin, Norilyani Hj MD Noor, and Rosmainie Rofiee, "InEffective Refugee Status Determination Process: Hindrance to Durable Solution For Refugees Rights and Protection," *Indonesia Law Review* 11, no. 1 (2021): 73–91, <https://doi.org/10.15742/ilrev.v11n1.687>.

activities, motor vehicle use, and cooperative behavior.²⁸ According to this statement, refugees and asylum seekers are prohibited from working or engaging in revenue-generating activities.

A further examination of the Director-General of Immigration's regulation shows that the refugee declaration in point 4 violates the established laws and regulations provisions. This is because point 4 of the declaration establishes broader rules than those found in the Director-General of Immigration Regulations' articles. In this case, the rule prohibiting refugees from seeking work or engaging in wage-earning activities is neither detailed nor explicit in the Immigration Directorate General Regulations.²⁹ Additionally, it is critical to evaluate the enforcement of this refugee declaration in the appendix of the Director-General of Immigration's regulation based on the hierarchy and material content of Indonesian law. The theory of Legal Norms Hierarchy is a ladder structure with tiered regulations in which lower legal standards must comply with higher legal standards and higher legal standards, such as the Constitution, must adhere to lower legal standards.³⁰

The most fundamental (*grundnorm*) structure and hierarchy of Indonesian legislation are as follows: the 1945 Constitution of the Republic of Indonesia; the People's Consultative Assembly Decision; the Law/Government Regulation in Lieu of Law; the Government Regulation; the Presidential Regulation; the Provincial Regulation; and the Regency/Municipal Regulation.³¹ In addition to the categories of legislation mentioned previously, other types of legislation include regulations issued by ministers as long as they are recognized and legally obligatory if ordered by superior law or made by virtue of authority.³²

From the above explanation, it is clear that the regulations of the Director-General of Immigration are part of the legislation. However, it is also obvious that the existence of the stated regulation conflicts with its superior legislation, which is Immigration Law No. 6 of 2011. As specified in the provision, the Director-General of Immigration's regulation is based on Immigration Law No. 6 of 2011. Meanwhile, under Immigration Law No. 6 of 2011, the legal standards governing the restriction of refugees from working are unregulated. Additionally, the Immigration Act contains no provisions regulating asylum seekers and refugees. Thus, the existence of the Director-General of Immigration Regulation IMI-0352.GR.02.07 has created much legal confusion, particularly regarding the regulations governing refugees and asylum seekers who are not permitted to work.

B. Law concerning foreign workers

Although Indonesia does not have particular legislation governing refugees' rights to work, it does have regulations governing foreign employees that might be applied to refugees who work. On a national level, employment and foreign worker rules are

²⁸ Point 4, Refugee Declaration of Compliance, Appendix the regulation of the Director-General of Immigration Number IMI-0352.GR.02.07 the year 2016.

²⁹ Article 4 Point 4 state "*Pencari Suaka dan Pengungsi sebagaimana dimaksud pada ayat (2) wajib mentaati ketentuan peraturan perundang-undangan, adat istiadat masyarakat setempat dan mengisi surat pernyataan.*" ["Asylum Seekers and Refugees as referred to in paragraph (2) must comply with the provisions of laws and regulations, local community customs and fill out a statement letter:"

³⁰ Roy Marthen Moonti, *Ilmu Perundang-Undangan [Legislation]* (Makassar: Keretakupa, 2017).

³¹ Article 7 (1), Law Number 12 of 2011 Jo. Law Number 15 of 2019 regarding Establishment of Laws and Regulations.

³² *Ibid.* Article 8 (1) and (2).

governed by various pieces of legislation, including the following:

1. Law No. 11 of 2020 on Job Creation
2. Law No. 13 of 2003 on Manpower (Indonesian Labor Law)
3. Government Regulation No. 34 of 2021 on Foreign Workers Utilization
4. Presidential Regulation No. 20 of 2018 on Foreign Workers Utilization
5. Ministerial Regulation No. 10 of 2018 on Foreign Workers Utilization Procedure

According to Indonesian labor laws, the workforce is defined as anybody capable of producing goods and/or services to meet their own and the community's requirements. Foreign workers are foreign nationals who have obtained visas to work in the Indonesian territory.³³ Any person who works for pay or other types of remuneration is referred to as a worker or laborer. Along with those definitions, another critical item to remember is the employment relationship, which is the relationship between employers and employees that is based on a work agreement that includes components of work, wages, and orders. Thus, performing work under the regulations satisfies the elements. These factors include the physical presence of employees and employers, job contracts, salaries, and employer commands, as well as compliance with Indonesian labor laws.

Taking the reference to the Indonesian foreign worker's law, refugees in Indonesia do not have the legality to work because of the absence of legislation that regulates refugees' ability to engage in income-generating activities. Additionally, under the immigration law's definition of foreigners, refugees are considered foreigners because they are not Indonesian nationals. However, some of them then breach immigration restrictions, such as by working without a valid work visa, making them liable to administrative detention or removal from the country. Simultaneously, Presidential Regulation No. 125/2016 seeks to safeguard refugees and asylum seekers by utilizing the phrases "refugee" and "asylum seeker" specifically; this instantly disqualifies them from coming within the category of foreigner as defined by the immigration legislation. The shortcoming of Presidential Regulation 125/2016 is that it does not address the needs of refugees in accessing work nor does it regulate how refugees are allowed to work. While the freedom to work is a fundamental human right, refugees' employment rights should not be governed by the same restrictions as foreigners (non-Indonesian citizens) due to their refugee status. There should be a distinct policy governing the provisions pertaining to refugees' access to their rights to work, as well as a clear regulation connecting all pertinent laws pertaining to working for foreigners, including refugees. The specific regulation governing refugees exercising their right to work is critical to avoiding the arbitrariness of immigration authorities supervising refugees in Indonesia and to protecting refugees from exploitation.

V. STATES' RESPONSIBILITY: ADVOCACY AND PRACTICE IN FAVOR OF PROVIDING ACCESS TO RIGHTS TO WORK FOR REFUGEES

Working is a fundamental human right, as stated explicitly in article 23 of the Universal Declaration of Human Rights. Additionally, the human rights principle does not discriminate on the basis of a person's citizenship status. As a result, states hosting refugees are obligated to uphold the principles by allowing refugees and

³³ Article 1 Point 13, Law Number 13 of 2003 on Manpower or Indonesian Labor Law.

asylum seekers access to wage-earning jobs. Indonesia, as a refugee transit country, recognized its international community responsibilities by making a pledge at the First Global Refugee Forum 2019. On how to provide access to work, Indonesia can take a lesson learned from another developing country, Colombia.

A. Indonesia's pledge in the First Global Refugee Forum 2019

Indonesia's latest commitment to refugee protection is a pledge submitted and read at the first Global Refugee Forum in Geneva, Switzerland, 17-18 December 2019. The United Nations bodies convened the forum to solicit the international community's commitment to cooperation in addressing the worldwide refugee crisis.³⁴ At the forum, the Indonesian delegation, led by Hon. Ms. Meutya Hafid, the chair of the Foreign Affairs and Defense Committee of the Indonesian House of Representatives, pledged that the Indonesian government, supported by the parliament, will "*design a refugee empowerment program,... support the implementation of the GCR [Global Compact on Refugees]... develop relevant policies and budget...*"³⁵

A country's pledge at an international forum carries significant consequences since it demonstrates the country's determination to play a substantial role in resolving a global problem. Additionally, as the leading country in Southeast Asia, the world community will closely follow Indonesia's promise execution. Therefore, Indonesia is bound by the responsibility to deliver Indonesian promises to improve the lives of refugees on Indonesian soil.

B. Lesson Learned from Colombia

Colombia is the world's second-largest refugee-hosting country, after Turkey. Colombia is hosting 1,72 million Venezuelan refugees as of December 31, 2020.³⁶ 70% of them live in 25 municipalities (out of over 1,100 municipalities), resulting in an uneven population of residents and non-residents. Even though Colombia is a developing country with a fragile economy, it has taken a courageous step to assist Venezuelan refugees. Colombia has been gradually integrating Venezuelan migrants into the economy since 2019 by rolling out stay permits and subsequently issuing special permits for foreigners to work regardless of their immigration status.³⁷ The Colombian government issued a Temporary Protection Status for Venezuelan Migrants Initiative (TPS) that gives Venezuelans a ten-year legal immigration status with access to education, health, housing, and, most importantly, employment opportunities on

³⁴ UNHCR, "Global Refugee Forum 12 August 2019," Global Compact on Refugees Digital Platform, accessed August 16, 2021, <https://globalcompactrefugees.org/article/global-refugee-forum>.

³⁵ Statement by Hon. Ms. Meutya Hafid, Chair of the Foreign Affairs and Defence Committee of the Indonesian House of Representatives for the first Global Refugee Forum 17-18 December 2019, Genève, Switzerland. For the complete statement of the pledge, see: "Statement by Hon. Ms. Meutya Hafid Chair of the Foreign Affairs and Defence Committee of the Indonesian House of Representatives for the First Global Refugee Forum 17-18 December 2019, Genève, Switzerland," Permanent Mission of the Republic of Indonesia to the United Nations, World Trade Organization, and Other International Organization, December 18, 2019, <https://mission-indonesia.org/2019/12/18/statement-by-hon-ms-meutya-hafid-chair-of-the-foreign-affairs-and-defence-committee-of-the-indonesian-house-of-representatives-for-the-first-global-refugee-forum-17-18-december-2019-geneve-switze/>.

³⁶ UNHCR, "Factsheet Colombia: January-December 2020," March 4, 2021, https://reliefweb.int/sites/reliefweb.int/files/resources/Colombia_FactSheet_UNHCR_04032021_ENG.pdf.

³⁷ Helen Dempster et al., "Refugees' Right to Work: Progress and Remaining Challenges," Think Thank, *Center for Global Development* (blog), accessed April 18, 2022, <https://www.cgdev.org/blog/refugees-right-work-progress-and-remaining-challenges>.

equal terms with Colombians. The act has put Colombia on the map as a pioneer country that adopted a comprehensive public policy framework for the protection of refugees. International organizations such as the World Bank support the effort by providing funding, partnership, and analysis for the success of the programs.³⁸ Other organizations are the United Nations and the Islamic Development Bank as part of the Global Concessional Financing Facility grant to support the facilitation of access to jobs and basic social services for refugees.³⁹

Three reasons become the driving forces behind the efforts.⁴⁰ First is solidarity, as Colombia and Venezuela have shared a long history of cultural ties as neighboring countries. Second, is the vulnerability of Venezuelan migrants. Finally, the practicality of transforming challenges into opportunities by focusing on manpower and the shift to promoting Colombia's economic, social, and cultural development.⁴¹ While the long-term impact of Colombia's open-door policy is unknown, analysts suggest that the strategy has benefited the country in the short run. Colombia has seen positive growth in its economy, as well as a steady recovery after the COVID-19 Pandemic.⁴²

VI. DISCUSSION

Humanitarian approaches to refugee management in Indonesia, as evidenced by Presidential Regulation 125/2016, and security approaches to refugee management, as evidenced by the Director-General of Migration regulation, have potentially reduced refugee protection. Refugees are vulnerable; therefore, denying them access to livelihoods will increase their vulnerability. However, as a sovereign country, Indonesia is entirely entitled to safeguard its citizens' economic and social security through the application of appropriate rules and regulations. Indonesia's apprehension about the arrival of refugees is justified as a transit country that is not a signatory party to the refugee convention. Generally, countries that host refugees address refugee issues out of fear of the demographic impact of the influx and the possibility of societal turmoil induced by competition for scarce economic resources.⁴³ The argument is borne up by the Indonesian government's strategy of providing refugees access to the Indonesian economy. Nonetheless, as a member of the international community, Indonesia is obligated to adhere to global standards such as international human rights principles while dealing with refugees residing on its territory.

³⁸ The World Bank, "Supporting Colombian Host Communities and Venezuelan Migrants During the COVID-19 Pandemic," The World Bank, October 31, 2021, <https://www.worldbank.org/en/results/2021/10/31/supporting-colombian-host-communities-and-venezuelan-migrants-during-the-covid-19-pandemic#:~:text=As%20of%20March%202021%2C%20an,70%20%25%20of%20all%20Venezuelan%20migrants.>

³⁹ Reuters, "Colombia Gets \$31.5 Million Grant to Aid Venezuelan Migrants," April 13, 2019, <https://www.reuters.com/article/us-imf-worldbank-colombia-idUSKCN1R02LC>.

⁴⁰ Juan Fransisco Espinosa, "Learning from Colombia's Migration Policy - Implication to Asia," <https://www.spf.org/en/asia-islam/news/20210625.html>.

⁴¹ Stephanie López Villamil and Helen Dempster, "Why Colombia Granted Full Rights to Its 1.7 Million Venezuelans, and What Comes Next," *Center for Global Development* (blog), January 26, 2021, <https://www.cgdev.org/blog/why-colombia-granted-full-rights-its-17-million-venezuelans-and-what-comes-next>.

⁴² OECD (Organisation for Economic Co-operation and Development), "OECD Economic Surveys of Colombia - Executive Summary," February 2022, <https://www.oecd.org/economy/colombia-economic-snapshot/>.

⁴³ Katy Long, "When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection," *Migration Studies* 1, no. 1 (March 1, 2013): 4–26, <https://doi.org/10.1093/migration/mns001>.

The Indonesian government has been implementing a remarkable effort in handling the refugee problem with the stipulation of Presidential Regulation No. 125 of 2016. However, this regulation fails to accommodate the basic rights of refugees transiting through Indonesia, namely, the right to livelihood. Moreover, the regulation lacks legal effect as it has not comprehensively provided justice, certainty, and benefit to refugees.

Furthermore, the prohibition of working toward refugees based on the Regulation of the Director-General of Immigration No. IMI-0352.GR.02.07 of 2016 needs to be abolished. The enactment of the provisions has created disharmony in the hierarchy of the establishment of laws and regulations. In the theory and content of legislation, all the laws must follow each special material and be in harmony with other regulations. The Immigration Directorate General Regulations Number IMI-0352.GR.02.07 have been granted legal status pursuant to Article 8 of Law 12 of 2011.⁴⁴ This provision ensures that the Director-General of Immigration's regulation is applied lawfully per higher regulations, such as Law Number 6 of 2011 on Immigration, even though the Directorate General of Immigration lacks the authority to enact laws.⁴⁵ This argument implies that this legislation contradicts higher-level regulations, such as Immigration Law No. 6 of 2011, which does not control the prohibition of working for refugees. Meanwhile, the Immigration Law does not recognize refugee status. On the other hand, the Refugee Declaration's prohibition on refugees working is also not legally sound, as the appendix should not contain the regulations governing it.

Prohibiting refugees from working is a breach of human rights provisions, most notably the right to a livelihood recognized by international human rights law. The prohibition of work also violates the 1945 Constitution's principles, which guarantee everyone the right to an adequate life and the right to survive. Additionally, as previously stated, legal products that restrict employment and foreign workers cannot be applied to refugees. On the other hand, the Indonesian government's inability to provide access to temporary employment rights demonstrates that Indonesia is falling short of fulfilling the UDHR, ICESCR, and ICERD standards, most notably the fulfillment of refugees' social, economic, and cultural rights.

Finally, the Indonesian government demonstrated its political commitment to strengthen refugee protection on its own by pledging to the international community. The reasons outlined above demonstrate that Indonesia's policies and regulations do not preclude refugees from engaging in income-generating activities. The Director-General of Immigration's Regulation No. I MI-0352.GR.02.07 of 2016 is the only regulation that opposes refugees' right to work. It's also worth noting that the immigration requirements are out of step with the higher-level regulations in the Indonesian legal and regulatory system.

⁴⁴ Article 8 of Law 12 of 2011: (1) Other kinds of rules than as intended in article 7 paragraph (1) covers the regulations stipulated by the People's Consultative Agency, House of Representatives, Regional Representatives Council, the Supreme Court, the Constitutional Court, the State Audit Board, the Judicial Commission, Bank of Indonesia, the Minister, agency, institution, or same level commission established by Law or Government on the instruction of Law, Provincial Regional House of Representatives, Governor, Regency/Municipality Regional House of Representatives, Regent/Municipal Government, the Village Head or the equivalent. (2) Rules as intended in paragraph (1) are recognized and have the force of binding all ordered by higher Rules or established based on authority.

⁴⁵ Prof. Dr. Aidul Fitriaciada Azhari, M.H on RDI UREF's focus group discussion about The Hierarchy of Indonesian Legislation: Concerning the Fulfillment of Refugees' Protection and Rights, August 9, 2021.

VII. RECOMMENDATION OF POSSIBLE VENUES

Based on the explanation of national instruments (the Indonesian Constitution, Indonesia's pledge on refugee protection, international human rights principles, and provisions towards asylum seekers and refugees, as well as laws governing foreign workers), the Indonesian government needs to review and evaluate its management system for dealing with asylum seekers and refugees, particularly in addressing temporary work rights. Furthermore, there is a need for the Indonesian government to enable the livelihoods of refugees and asylum seekers to enhance their access to decent work. In addition to that, under Indonesian national law, refugees are entitled to protect their human rights.⁴⁶ Thus, the Indonesian government should develop and maintain a strategic capacity to ensure relevant and effective policy.

A. Legal Review

The Indonesian government should review the Director-General of Immigration's Regulations Number IMI-0352.GR.02.07 by removing the prohibition on work for refugees. This regulation has created legal uncertainty as it is incoherent with the other regulations. By keeping on implementing this regulation, refugees are at risk of being detained by the immigration officer. Therefore, Indonesia needs to form a special policy regarding access to livelihood and economic inclusion for refugees and asylum seekers. The provisions would be a legal certainty to help refugees and asylum seekers stuck in unknown years of protracted transit in Indonesia.

However, as the concerns of the Indonesian people's job security and social tension potency are also valid and rightful, the legal form of access to work for refugees and asylum seekers should also consider its impact on Indonesian society. The transitory context, stressing the temporary nature of refugees living in Indonesia, could be the basis for the new provision for refugees' access to work. A work permit with a time limit based on the person's status as a refugee or asylum seeker will be a middle ground between the state's concerns about citizens' job security and the need to provide refugees with basic rights to livelihood. Making an income limit subject to taxation can also be a win-win situation.

B. Structuring a new policy regarding access to employment

Indonesia can take constructive steps to protect refugees by granting them temporary work permits. On a practical level, the Indonesian government can restrict the types of occupations available to refugees, such as apprenticeships and work partner schemes, as well as non-formal sector jobs that do not jeopardize the Indonesian citizen's job market. More importantly, those programs will strengthen refugees' protections against exploitation, discrimination, low wages, and workplace abuse.

In addition, Indonesia can conduct labor market structural analyses, conduct advanced research, and commence stakeholder engagement and coordination. Colombia has shown a best practice in granting refugees the right to work. Indonesia, as a developing country, might learn from Colombia's experience in establishing a pilot project for employment activities for refugees and asylum seekers.

⁴⁶ Afriansyah and Zulfa, "Refugee Resettlement: A Review Of Indonesian Laws and Practices."

VIII. CONCLUSION

The examination of relevant national legal instruments, the human rights legal framework applicable to refugees, and the government's concerns about job security and the economy for citizens demonstrate that Indonesia is within its legal rights to guarantee the protection of refugees and asylum seekers' rights through the right to work. The first step is to repeal the Director-General of Immigration Regulation IMI-0352.GR.02.07, which is inconsistent with other regulations. Following that, Indonesia must update or create a new policy that legally accommodates the need to safeguard refugees by giving access to livelihoods while striking a balance between human rights values and the national interest of its residents' economic security. Hopefully, under fair and just legislation, refugees and asylum seekers will be able to contribute economically and socially to the host society, as well as to Indonesia as the transit host country, in the long run. The Indonesian government's refugee protection strategy must include collaboration with non-state institutions and individuals, as well as the development of an evidence-based policy for refugee governance. By providing refugees and asylum seekers access to livelihood, or the temporary right to work, Indonesia will be able to provide meaningful protection for refugees and adhere to human rights norms.

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