

Legal Review of Working Refugees in Indonesia (Research Study: Afghanistan Refugees in Medan City)

Rizky Maulana, Hasdiana Juwita Bintang, Mhd. Azhali Siregar

Abstract

This study aims to analyze the legal certainty of the practice of refugees working in Indonesia. The focus of this study is the effectiveness of regulations governing refugees, prohibitions for refugees while in Indonesia, especially prohibitions on working for refugees, and supervision carried out by related officers in supervising foreign refugees, especially in the city of Medan. The sample used in this study was Afghan refugee citizens by analyzing the results of the Examination Report (BAP) and conducting interviews with the foreign refugee task force as primary data. This study uses normative-empirical law which is prescriptive. Based on the results of this study, there are still foreign refugees in the city of Medan who work as *hair stylists* even though this violates the rules for foreign refugees. It is hoped that this research can be used as a reference for formulating more effective policy recommendations in overcoming this problem.

Keywords: Legal Review, Overseas Refugees, Working

Rizky Maulana

Law Science Study Program, Panca Budi University of Development, Indonesia
e-mail: rizkymaulana3300@gmail.com

Hasdiana Juwita Bintang, Mhd. Azhali Siregar

Law Science Study Program, Panca Budi University of Development, Indonesia
e-mail: hasdiana.juwita@gmail.com, azhalisiregar@dosen.pancabudi.ac.id

1st International Conference on the Epicentrum of Economic Global Framework (ICEGLOOF)

Theme: Digital Marketing Strategy to Optimize Business Growth in the Modern Era

<https://proceeding.pancabudi.ac.id/index.php/ICEEGLOF>

Introduction

A refugee is someone who is forced to leave their country. The main reason refugees leave their country is because of war and ethnic violence so that refugees have fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group. The existence of refugees is an issue that will always exist in human civilisation (Saragih dkk, 2021). The reason that always underlies why Indonesia always accepts refugees is that Indonesia highly upholds the principles of international law such as the implementation of the *Non-Refoulement* Principle or the prohibition of expulsion (Sivakkar et al., 2024).

Principle of *Non-Refoulement* is a prohibition or not being allowed by a country to return or send refugees to a region where they will face persecution or mistreatment that endangers their lives for reasons related to race, religion, nationality, membership in a particular social group or because of their political beliefs (Riyanto, 2010)

The refugee status itself is discussed in the 1951 Refugee Convention and the 1967 Protocol. In these regulations, the basic rights of refugees are fully regulated, including the right to work, but in our own country, Indonesia has not ratified the Convention and Protocol. The statement above indicates that Indonesia has no obligation to fulfill the rights of refugees, but in the 1945 Constitution, Article 28G paragraph (2) it is stated that "Everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country."

Therefore, Indonesia has created its own regulations governing refugees, namely in Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Abroad, however, the Presidential Regulation does not regulate the basic rights of refugees in detail, but only regulates how to handle refugees.

The United Nations High Commissioner for Refugees (UNHCR) is an international organization engaged in humanitarian affairs and the UN high commissioner for refugees who has an important role in handling refugees in Indonesia. UNHCR works with the Indonesian government, non-governmental organizations, and the international community to provide protection and assistance to refugees. UNHCR has carried out various roles as a humanitarian agency in various countries in humanitarian efforts, especially for refugees who are outside their country of citizenship (Sivakkar et al., 2024).

Currently, the refugee problem is a special concern for Indonesian society. The large number of refugees currently with diverse nationalities, backgrounds and cultures certainly raises many problems, both personal and social. Handling refugees is also inseparable from several problems, such as the discovery of several refugees who do not want to be regulated, always violate the established rules and regulations, and violate existing laws. This is because most refugees have been in Indonesia for years without any clear certainty about when they will be placed in a third country (Sivakkar et al., 2024).

In the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 dated April 19, 2016 concerning the Handling of Illegal Immigrants Who Declare Themselves as Asylum Seekers or Refugees, it is explained that when refugees will reside in Indonesia, refugees are required to fill out a statement letter containing the refugee's agreement not to violate the rules for refugees, including for refugees who work to earn wages. However, in reality, in the city of Medan, refugees are still found working. One of them is NS, a refugee from Afghanistan who was caught by officers at the Medan Immigration Detention Center working as a *Hair Stylist* at a *barbershop* in the city of Medan. Therefore, the author is interested in conducting this research with the title " Legal Review of Refugees Who Work (Research Study: Afghan Refugees in the City of Medan) "

Based on the background that has been described, the problem formulation is: used are:

- a. What are the regulations in Indonesia for protecting refugees from abroad who are in Indonesia?

Juridical Reviews of Working Refugees

- b. What are the prohibitions for Foreign Refugees while in Indonesia?
- c. What is the role of the task force in following up on Afghan refugees working in Medan City?

Research purposes

The objectives of this research are:

- a. Analyze regulations in Indonesia that govern the protection of refugees from abroad;
- b. Identify the prohibitions that apply to foreign refugees while in Indonesia;
- c. Examining the role of the task force in handling the case of Afghan refugees working in Medan City

Data Sources

The data used in this study are primary data and secondary data.

- a. Primary Data

Primary data is information obtained from primary sources or directly, namely information from sources or respondents. In this study, the primary data is the original data from the results of the BAP of Afghan Citizens who was carried out at the Medan Immigration Detention House.

- b. Secondary Data

Secondary data is information obtained indirectly from sources but from third parties. Secondary data from this study was obtained from libraries in the form of books, and from the internet in the form of scientific writing consisting of these and journals.

Data Analysis Technique

This study uses a prescriptive normative-empirical legal study. The approach used is a legal analysis that includes related regulations such as Presidential Regulations (Perpres), Regulations of the Director General of Immigration, Employment Laws, Minutes of Examination (BAP), and government policies and regulations related to handling foreign refugees. The data used in this study consists of primary data and secondary data. Primary data is obtained through interviews and BAP results and secondary data is obtained through literature studies that include primary and secondary legal materials. After the data is obtained, the data is processed and analyzed qualitatively .

Research Methodology

The definition of a refugee according to Presidential Regulation number 125 of 2016 is a foreigner who is in the territory of the Unitary State of the Republic of Indonesia due to a well-founded fear of persecution on the grounds of race, religion, ethnicity, religion, nationality, membership of a particular social group, and different political opinions and does not want protection from their country of origin and/or has obtained asylum seeker status or refugee status from the United Nations through the High Commissioner for Refugees in Indonesia. Based on the definition of a refugee, it can be concluded that a person with refugee status leaves his/her own country due to a conflict that leads to a conflict on the grounds of race, religion, nationality, membership of a particular social group and political opinion.

The conflict forced the refugees to leave their country and move to a transit country. Indonesia is one of the transit countries that the refugees will go to. Indonesia was chosen as a transit country because of its strategic geographical location, making Indonesia one of the transit countries for economic migration, asylum seekers and refugees who want to go to Australia and New Zealand

(Directorate of Human Rights and Ministry of Foreign Affairs, 2015). God created human beings as the most noble creatures, possessing dignity and noble degrees and having the same basic rights (Bukit et al., 2024). Therefore, Indonesia is a country that highly upholds Human Rights (HAM) as stated in Law Number 39 of 1999 as a manifestation of Indonesia's moral and legal responsibility as a member of the United Nations (UN) in respecting and implementing the Universal Declaration of Human Rights. Indonesia is active in building cooperation and partnerships in the field of human rights both bilaterally and multilaterally. Human rights diplomacy in Indonesia has two-way goals, namely (Directorate of Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs, 2023):

- a. Participate in joint efforts to advance and protect human rights at regional and global levels in the field of human rights.
- b. Strengthening national efforts in the field of human rights through international cooperation

Viewed from the direction of human rights goals in Indonesia, Indonesia highly upholds the rights of humans, including refugees who come to Indonesia. This is reflected in the principles that bind Indonesia where Indonesia is not a country that has ratified *the Convention Relating to the Status of Refugees* (1951 Convention) and *the Protocol Relating to the Status of Refugees* (1967 Protocol) but because Indonesia highly upholds the principle of international law in the form of the principle of *non-refoulement* (prohibition of expulsion) which binds all countries, Indonesia cannot forcibly expel refugees who come to Indonesian territory, especially foreigners who come who are in need of help from inhumane conditions (Sivakkar et al., 2024) . This is supported by the 1945 Constitution, Article 28G paragraph 2 which states that:

"Everyone has the right to be free from torture and degrading treatment. In addition, everyone also has the right to obtain political asylum from another country."

Indonesia has its own regulations in handling refugees. Through Presidential Regulation number 125 of 2016, it has been explained in detail regarding the regulations for handling refugees in Indonesia such as finding refugees, recording and monitoring refugees in shelters. Refugees while in transit countries will be placed in temporary shelters or known as *Community Houses* (CH).

Refugees who enter Indonesian territory, after the data collection process is carried out, are then placed in temporary shelters/CHs determined by the Regional Government (Sivakkar et al., 2024). After being placed in CH, immigration supervision is carried out by the Immigration Detention Center. This has been stated in Presidential Regulation 125 of 2016:

"Immigration Detention Center officers carry out immigration supervision of refugees" (Article 33 paragraph 1) Immigration supervision of refugees as referred to in paragraph 1 is carried out when they are found, in shelters and outside shelters, when they are sent to the destination country, when they are voluntarily repatriated, and when they are deported' (Article 33 paragraph 2)"

In Presidential Decree Number 125 of 2016, Article 30 paragraph 1 states that:

" Every refugee is obliged to comply with the rules and regulations in the shelter as referred to in Article 25 letter h, the customs applicable to the local community, and the provisions of laws and regulations."

Every refugee must obey all refugee regulations while in the shelter or CH. Some of the regulations that refugees must obey include:

- a. Refugees are prohibited from using harsh words and provocative words and from carrying out activities that could cause disturbances to security, peace and order.
- b. Refugees are prohibited from holding demonstrations, protests, political activities and other mass organizations inside and outside refugee shelters.
- c. Refugees are prohibited from carrying out trading activities both inside and outside the shelter.

Juridical Reviews of Working Refugees

- d. Refugees are prohibited from driving motor vehicles
- e. Refugees are prohibited from working and receiving wages in the form of goods or services.
- f. Etc.

Upon entering Indonesia, the refugees have read the attachment of the General Regulation of Immigration Number IMI-0352.GR.02.07 dated April 19, 2016 concerning the Handling of Illegal Immigrants Who Declare Themselves as Asylum Seekers or Refugees. By signing the Statement Letter contained in the Regulation of the Director General of Immigration, it indicates that they agree to the rules that have been determined and will comply with them while in Indonesia and if the refugees violate the provisions that have been determined, the refugees are willing to be placed in the Immigration Detention Center.

The contents of the refugee statement letter in the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 dated 19 April 2016 include:

- a. Refugees must reside in a place determined by the Directorate General of Immigration, unless written permission has been given to be moved or removed for certain reasons.
- b. Refugees are not permitted to be in airport or seaport areas unless accompanied by an immigration officer.
- c. Refugees are not allowed to receive overnight guests or stay in the accommodation provided for them.
- d. Refugees must obey the regulations in force in Indonesia, including not being allowed to seek work, carry out activities related to earning wages, drive vehicles without a driving license and maintain order in the surrounding environment.
- e. Refugees must report themselves to Indonesian Immigration periodically once a month.

UNHCR recorded that at the end of 2023 there were 12,295 refugees registered with UNHCR Indonesia. There were 1,455 refugees in Medan City spread across 14 temporary shelters or known as *Community Houses* (CH) (Sivakkar et al., 2024). The basic needs of refugees in Indonesia are met by an international organization, namely *the International Organization for Migration (IOM)*. IOM distributes financial assistance to refugees to meet their living needs. Every month, refugees receive assistance of IDR 1,250,000/person for adult refugees and IDR 500,000/person for child refugees. Although IOM has provided financial assistance (pocket money) to refugees every month. However, refugees feel that the pocket money given is too small and cannot meet their needs (Sivakkar et al., 2024).

Indonesia's position as a sovereign country and a transit country does not have a good and appropriate supervisory function regarding refugee issues within the country, so it is undeniable that in the coming year Indonesia will be flooded with refugees from abroad which will have an impact on the economy, security, social and employment opportunities for the Indonesian population (Bambang, 2013).

The existence of law in society is a means to limit the arbitrary behaviour of community members and provide support for interaction between individuals (Ali, 2024). The rules for working for refugees are also not yet regulated in Indonesian laws and regulations. Law Number 13 of 2003, Article 42, which discusses employment, regulates the use of foreign workers, but this is only limited to the use of foreign workers in Indonesia, not for refugees. The prohibition on working for refugees is regulated in the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 dated April 19, 2016 concerning Handling of Illegal Immigrants.

The Director General of Immigration Regulation Number IMI-0352.GR.02.07 explicitly prohibits

refugees from working in Indonesia. However, practice in the field shows a discrepancy between the rules and reality. Like the research study raised in this study on Afghan Citizens with the initials NS. The refugee admitted that he worked as a *Hair Stylist* in one of the barbershops in Medan City. Based on the results of the Examination Report (BAP) conducted by Medan Immigration Detention Center officers, the refugee was fully aware that he was prohibited from working, but when there was an offer to work and assistance from IOM, it was still considered insufficient to meet the needs of life, which was the main factor for refugees to work secretly.

The absence of laws governing refugees working provides an opportunity for employers to exploit the skills and energy of refugees. As in the case of Afghan refugee citizens, the *barbershop owner* knew that the Afghan citizen had refugee status in Indonesia, but *the barbershop owner* said it was okay if he only worked temporarily. When asked about the responsibility of *the barbershop owner* if the Afghan citizen was caught by Immigration, *the barbershop owner* said that he could not help or be responsible if the Afghan citizen was caught working by Immigration. This is certainly detrimental to the refugees and related law enforcement officers because they cannot process the *barbershop owner* who has employed the refugee due to the lack of legal certainty for the employer. Employers should not only be concerned with their income but should also pay attention to the welfare of their employees.

The mechanism for implementing the handling of foreign refugees is executed by the Foreign Refugee Handling Task Force. ¹The Foreign Refugee Handling Task Force was formed based on the Circular of the Minister of Home Affairs of the Republic of Indonesia Number 300/238/SJ Concerning the Establishment of the Foreign Refugee Handling Task Force in the Regency/City. The Medan City Government itself has formed a Task Force for Handling Refugees from Abroad (Satgas PPLN) in accordance with the Decree of the Mayor of Medan Number 465.2/30. K concerning the Medan City Refugee Task Force in 2022 with a personnel composition that can be seen in the table below:

Table 1. Medan City Refugee Task Force Personnel Composition 2022

Advisor I	:	Mayor of Medan
Advisor II	:	Deputy Mayor of Medan
Director	:	Regional Secretary of Medan City
Chairman	:	Head of the National Unity and Politics Agency for Medan City
Secretary	:	Secretary of the National Unity and Politics Agency of Medan City
Deputy Chair/Coordinator of Supervision, Monitoring and Law Enforcement	:	Head of Medan Immigration Detention Center
Member	:	<ol style="list-style-type: none"> 1. Medan Government Assistant 2. Head of the Overseas Organization Monitoring Unit, North Sumatra Police Intelligence Directorate 3. Head of Security and Order Section at Medan Immigration Detention Center

Juridical Reviews of Working Refugees

		<ol style="list-style-type: none"> 4. Non-commissioned Officer of Engineering Team 2 Intelligence Detachment of Kodam 1/BB 5. Head of Conflict Management and National Alertness Division at the Medan City National Unity and Politics Agency 6. Legal Product Analyst at the Legal Section of the Medan City Regional Secretariat
Deputy Chair/Coordinator for Security, Order and Data Collection	:	<ol style="list-style-type: none"> 1. Head of the Medan City Police Intelligence Security Unit' 2. Head of the Medan City Civil Service Police Unit
Member	:	<ol style="list-style-type: none"> 1. Member of the Belawan Resort Police Intelligence Security Chief Unit 2. Head of Public Order and Public Security Division at the Medan City Civil Service Police Unit 3. Young Civil Service Police Analyst at the Medan City Civil Service Police Unit 4. Young Policy Analyst Sub Coordinator for Early Warning and Intelligence Cooperation Scope at the National Unity and Politics Agency of Medan City 5. Data Manager at the National Unity and Politics Agency of Medan City
Deputy Chair/Coordinator of Socialization, Education and Fulfillment of Basic Needs	:	Head of the Medan City Social Service
Member	:	<ol style="list-style-type: none"> 1. Head of Medan City Education Department 2. Head of Population and Civil Registry Service of Medan City 3. Head of Medan City Health Service 4. IOM Representative Office of Medan City 5. UNHCR Representative Office in Medan City 6. Young Policy Analyst Sub Coordinator of Conflict Handling Scope at the National Unity and Politics Agency of Medan City 7. Personnel Manager at the National Unity and Politics Agency of Medan City

The PPLN Task Force routinely holds monthly meetings which are also attended by IOM and UNHCR to discuss refugee problems in Medan City, including discussing the problems of refugees who work.

Sarsaralos Sivakkar as the Head of the Medan Immigration Detention Center who is also the Deputy Chairperson of the Medan City PPLN Task Force explained in an interview that refugees

are prohibited from working. This prohibition is based on the consideration that refugees have received life support from IOM and is stated in the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 which expressly prohibits refugees from working in Indonesia. Although there is a clear prohibition, its enforcement in the field faces obstacles, one of which is that refugees who violate the rules should be placed in a special place as mandated in Presidential Regulation 125 of 2016. However, until now there has been no special place available so that officers have made efforts by issuing warning letters to refugees who violate the rules in shelters such as Afghan refugees who are caught working.

The Medan City PPLN Task Force through the Medan Immigration Detention Center (Rudenim) Medan routinely holds *Focus Group Discussions* (FGD) every year. Rudenim Medan invites parties involved from both vertical and horizontal agencies, stakeholders, IOM, UNHCR, the community, and the media. This FGD aims to conduct socialization regarding regulations governing refugees and the problems faced regarding refugees as well as recommendations related to problems related to refugees (Sivakkar et al., 2024).

Conclusions

Indonesia highly respects the rights of all human beings, including refugees who come to Indonesia. Indonesia is not a country that ratified the 1951 Convention and the 1967 Protocol, but because of the principle of *non-refoulement* (prohibition of expulsion) which binds all countries, Indonesia cannot forcibly expel refugees who come to Indonesian territory, especially foreigners who come who are in need of help from inhumane conditions. This is supported by the 1945 Constitution, Article 28G paragraph 2.

Based on Presidential Regulation number 125 of 2016 article 30 paragraph 1 it is concluded that every refugee is required to comply with all refugee regulations while in the shelter including the prohibition of refugees from working. Refugees also sign a Statement Letter contained in the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 dated April 19, 2016. This indicates that they agree to the rules that have been determined and will comply with them while in Indonesia and if the refugee violates the provisions that have been determined then the refugee is willing to be placed in the Immigration Detention Center. The prohibition on refugees from working has not been regulated in the Laws and Regulations, but the prohibition on refugees from working is only regulated in the Regulation of the General of Immigration Number IMI-0352.GR.02.07 dated April 19, 2016 which is stated in the fourth point. In reality there are still refugees in Indonesia, especially in the city of Medan who work secretly such as the Afghan refugee with the initials NS. NS is fully aware that this is a behavior that violates the law for refugees. Refugees who violate the rules should be placed in a special place, but such a special place does not yet exist, so the PPLN Task Force issues warnings to refugees who violate them.

The Medan City PPLN Task Force through the Medan Rudenim routinely holds *Focus Group Discussions* (FGD) every year by inviting parties involved from both vertical and horizontal agencies, stakeholders, IOM, UNHCR, the community, and the media to conduct socialization regarding regulations governing refugees and the problems faced regarding refugees as well as recommendations related to problems related to refugees.

Suggestions

Indonesia is a country of law and highly upholds human rights. Indonesia should have made laws and regulations that clearly regulate refugees, especially regulations regarding the prohibition of work for refugees and strict sanctions for employers who employ refugees so that the relevant parties can enforce the law according to the provisions and there are no more legal polemics

Juridical Reviews of Working Refugees

regarding the rules for refugees who work. The existence of strict policies through laws and regulations that discuss in detail regarding refugees, especially regarding the prohibition of work, can be used as a reference for authorized officers to be able to take action both for the refugees themselves and strict sanctions for Indonesian citizens who employ refugees.

Through this research, it is hoped that it can be used as a reference for officers to be able to take firm action against foreign refugees who violate the rules or regulations and provide a special place for refugees who violate them so that supervision can be carried out optimally by the PPLN Task Force.

References

Book

Sivakkar, Sarsaralos et al. (2024). *Rohingya History Book: Tracing the Journey of Rohingya Refugees in Indonesia*. PT RajaGrafindo Persada.

Sivakkar, Sarsaralos et al. (2024). *Book of Transformation of Medan Immigration Detention Center*. PT Tri Selaras Cendekia.

Legislation

1945 Constitution

Law Number 13 of 2003 Article 42 concerning Foreign Workers

Law Number 37 of 1999 concerning Foreign Relations

Law Number 39 of 1999 concerning Human Rights

Presidential Regulation Number 125 of 2016 concerning Handling of Refugees from Abroad

Regulation of the Director General of Immigration Number IMI-0352. GR.02.07 concerning Handling of Illegal Immigrants Who Declare Themselves as Asylum Seekers or Refugees.

Journal

Aspan Henry & Gloria G.P.G, 2023, *Penyuluhan Hukum Terkait Pemberian Upah dan Insentif Dilingkungan Pusat Pasar Kota Medan*, hlm 7

Bambang, 2013, Deputy V/Bidkooor Kamnas Kemenko Polhukam, *Indonesia's Policy on Illegal Immigrants Related to State Sovereignty and Responsibility*.

Bukit Alexander, T. Riza Zarzani & Yasmirah Mandasari Saragih, 2024, *Pelaksanaan Hak Asasi Manusia Bidang Kesehatan Kepada Warga Binaan Pemasyarakatan*. Jurnal, hlm 1

Directorate of Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs, 2015, *Handling of Asylum Seekers and Refugees in the Context of Law and Policy*, p. 33.

Directorate of Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs, 2023, *Performance Report 2023*, p. 10.

Gea Ali Yusran, 2024, *Urgensi Landasan Filosofis, Sosiologis, dan Yuridis dalam Pembentukan Undang-Undang di Indonesia*. Jurnal, hlm 1

Marbun Rika Jamin & Rahmayanti, 2024, *Penerapan Hukum Ketenagakerjaan Terhadap Pekerja/Buruh Yang Mengalami Pemutusan Hubungan Kerja Pasca Berlakunya UndangUndang Nomor 11 tahun 2020 Tentang Cipta Kerja*. Jurnal

Putre, KE (2019). *The Policy of Prohibition of Work for Refugees in Indonesia in the Perspective of Human Rights (ham)*. Thesis. Veteran National Development University, Jakarta.

Riyanto, 2010, *The Principle of Non-Refoulment and Its Relevance in the International Legal System*, Jurnal Mimbar Hukum, vol.22, No.3, Faculty of Law, Universitas Gajah Mada, p.1.

Saragih Y. M., Sani, A.Z., & Abu R., 2021, *Penegakan Hukum Terhadap Pelaku Penyelundupan Manusia ke Indonesia*. Jurnal, hlm 3

Sompie, AK (2017). *Legal Study of Employment Provision for Refugees According to International Law*. Journal.

Wahyu Chandra et al., 2023, *Implementation of Regulations for Handling Refugees from Abroad in Medan City*, vol.2, No.6, Faculty of Law, University of North Sumatra, p.492

Website

<https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>. Accessed August 09, 2024. 10:00

WIB

<https://www.unhcr.org/id/sekilas-data>. Accessed August 09, 2024. At 11:00 WIB