DOCTORAL (PhD) DISSERTATION THESES

Social And Legal Challenges in Refugees and Asylum Seekers Handling

(Comparison Between Hungary and Indonesia)

by

Mohammad Thoriq Bahri

Szeged, 2025

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(Manuscript completed: 22 June 2025)

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Szeged, 2025.

Preface

The doctoral thesis results and main findings are primarily derived from the following publications as the single author, as the supervision work during the study period. Additionally, other research papers, and conference proceedings had been completed during my PhD study period and are listed as publications 1-10.

List of Publications in MTA, Scopus and Web of Science Indexed Journals

1) Bahri, M. T. (2024). Evidence of the digital nomad phenomenon: From "reinventing" migration theory to destination countries readiness. ***Helivon,*** 10(17), Article e36655. DOI: https://doi.org/10.1016/j.heliyon.2024.e36655 *(Classified as SCOPUS Quartile 1 (Q1))*

2) Bahri, M. T. (2024). Hungary and refugee: From historical to legal development. ***Danube: Law and Economics Review***, 15(1), 47–72. DOI: https://doi.org/10.2478/danb-2024-0003. *(Classified as SCOPUS Quartile 2 (Q2) and **MTA classification B**)*

3) Bahri, M. T. (2023). Between legal fortress and uncertainty: Comparative analysis of the refugee law frameworks in Hungary and Indonesia. ***Zbornik Radova Pravni Fakultet (Novi Sad),*** 57(3), 913–943. DOI: https://doi.org/10.5937/zrpfns57-44287. ***(MTA classification B)***

4) Bahri, M. T. (2023). Assessing EU readiness to manage Ukrainian refugees: From openness to legal limitation. Danube: Law and Economics Review, 14(2), 131–152. DOI : https://doi.org/10.2478/danb-2023-0009. *(Classified as SCOPUS Quartile 2 (Q2) and **MTA classification B**)*

5) Bahri, M. T. (2023). Navigating Indonesia's golden visa scheme through comparative legal policy analysis. ***International Comparative Jurisprudence: Research Journal***, 9(1), 92–110. DOI: https://doi.org/10.13165/j.icj.2023.06.007. *(Classified as SCOPUS Quartile 4 (Q4) and **MTA classification B**)*

6) Bahri, M. T. (2023). Understanding Iranian refugee discourse in Turkey on Twitter by using social network analysis. ***Croatian and Comparative Public Administration,*** 23(1), 7–33.DOI: https://doi.org/10.31297/hkju.23.1.5. *(Classified as SCOPUS Quartile 3 (Q3) and **MTA classification A**)*

7) Bahri, M. T. (2023). Understanding public responses on vaccine passport as immigration policy using the big data analysis. In 3rd International Conference of Bio-Based Economy for Application and Utility (Article 020027). ***AIP Publishing.*** DOI: https://doi.org/10.1063/5.0120311. (Classified as SCOPUS Quartile 4 (Q4))

8) Bahri, M. T. (2022). Assessing legal challenges on passport issuance process in Indonesia as transnational crime prevention by using CIPP analysis. ***European Journal of Law and Political Science,*** 1(5), 1–12. DOI: https://doi.org/10.24018/ejpolitics.2022.1.5.40.

9) Bahri, M. T. (2022). Understanding the pattern of international migration: Challenges in human rights protection. ***Jurnal Hukum,*** 38(2), 81–98. DOI: http://dx.doi.org/10.26532/jh.v38i2.21337. (Classified as SCOPUS Quartile 1 (Q1))

10) Bahri, M. T. (2022). Immigration biometric data exchange among ASEAN member states: Opportunities and challenges in legislations***. Jurnal Ilmiah Kebijakan Hukum,*** 16(3), 433–456. DOI: https://www.researchgate.net/publication/366564714_Immigration_Biometric_Data_Exchange_Among_Asean_Member_States_Opportunities_and_Challenges_in_Legislations.

List of Abbreviation

UNHCR	United Nations High Commissioner for Refugees
RSD	Refugee Status Determination
IRL	International Refugee Law
IHRL	International Human Rights Law
ICL	International Criminal Law
CSR51	1951 Convention Relating to the Status of Refugees
CEAS	Common European Asylum System
IOM	International Organization for Migration
ATD	Alternatives to Detention
ASEAN	Association of Southeast Asian Nations
OAU	Organization of African Unity
MTA	Hungarian Academy of Sciences *(Magyar Tudományos Akadémia)*
EU	European Union
NGO	Non-Governmental Organization
IOM Indonesia	International Organization for Migration – Indonesia
UPR	Universal Periodic Review
CIL	Customary International Law
SOP	Standard Operating Procedure

Abstract

This dissertation offers a comparative analysis of the social and legal challenges faced by Hungary and Indonesia in managing asylum seekers and refugees. It highlights a critical legal vacuum in Indonesia's policy framework, underscoring the country's status as a non-signatory to the 1951 Refugee Convention and its 1967 Protocol. This absence of ratification has left Indonesia without a comprehensive domestic legal structure to process, protect, or integrate asylum seekers, who are often treated as undocumented migrants subject to detention and deportation. Presidential Regulation No. 125/2016 provides only limited administrative guidance and fails to guarantee basic rights such as education, employment, or legal status, resulting in systemic human rights vulnerabilities. In stark contrast, Hungary—despite its controversial political stance—operates under a robust legal framework harmonized with EU standards. The Asylum Act of 2007, constitutional amendments, and policies such as the "Stop Soros" law equip Hungarian authorities with significant legal tools to control migration while remaining technically compliant with EU obligations under the Common European Asylum System (CEAS). Hungary's legal coherence has enabled swift Refugee Status Determination (RSD) procedures and effective territorial control, exemplifying how legal rigor can translate into operational efficiency. This study concludes that Indonesia must urgently reform its legal system to create a humane and rights-based asylum policy, drawing key lessons from Hungary's structured but restrictive legal approach. By aligning national policies with international legal standards, Indonesia can better manage its growing asylum population and prevent future humanitarian and administrative crises.

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I. CHAPTER I: INTRODUCTION

1. Background

The mass movement of people through international migration is one of the most pressing issues faced by many countries worldwide.[1]. According to the *International Organization for Migration* (IOM) recent data, more than 218 million people were registered as migrants in the year of 2024, with 8,4 million asylum seekers who were waiting for their final status decision, and 35,4 million were officially registered as refugees during this period. Furthermore, as mentioned in the recent U*nited Nations High Commissioner for Refugees* (UNHCR) annual report, more than 2,6 million claims were submitted worldwide in the year of 2022[2]. Furthermore, the push and pull factors vary significantly across different global regions. In Southeast Asia, labor migration is becoming the predominant form of international migration, as individuals seek better economic opportunities abroad[3]. While in the Middle East and North Africa, forced displacement due to armed conflicts and political instability represents the primary driver of cross-border migration[4]. Within the *European Union* (EU), intra-regional mobility is facilitated by supranational integration policies, which enable EU citizens to frequently relocate among member states, attracted by economic and geographical proximity.[5].

In terms of asylum seekers and refugee movement, the Arab Spring event, which began in late 2010 and gained full momentum in 2011, has been widely recognized as a turning point in contemporary global movement trends[6]. The movement was started by the widespread use of social media platforms to organize protests and disseminate anti-authoritarian sentiments. While some countries experienced relatively peaceful transitions,

[1] IOM, "World Migration Report 2022," *IOM World Migration Report Series* 1, no. 1 (2021): 1–259, https://publications.iom.int/books/world-migration-report-2022. pp.22
[2] IOM, "World Migration Report 2024" (Geneva, 2024), https://publications.iom.int/books/world-migration-report-2024.
[3] ASEAN Secretariat, "Migration Outlook" (Jakarta: ASEAN, 2022), https://publications.iom.int/books/world-migration-report-2024.pp.5
[4] Mohammad Thoriq Bahri, "Understanding The Pattern of International Migration : Challenges in Human Right Protection," *Jurnal Hukum UNISSULA* 38, no. 2 (2021): 24, http://dx.doi.org/10.26532/jh.v38i2.21337. pp. 91-92.
[5] Mariusz Urbański, "Comparing Push and Pull Factors Affecting Migration," *Economies* 10, no. 1 (2022), https://doi.org/10.3390/economies10010021.pp.13-15.
[6] William V Spanos, "Arab Spring (2011)," *Symploke Journal* 20, no. 1–2 (2012): 83–119, https://doi.org/10.5250/symploke.20.1-2.0083.pp.97-115.

others, notably Libya, Syria, and Yemen, experienced violent civil wars, resulting in displacement issues[7].

These conflicts produced unprecedented levels of the mass movement of asylum seekers and refugees. In 2015 alone, approximately 1 million asylum seekers arrived in the EU territory by sea via the central and eastern Mediterranean routes, with 3735 of them drowning, as shown in Figure 1[8]. Turkey, under its Temporary Protection regime, has since hosted the largest number of Syrian refugees globally, currently exceeding 3.6 million as of early 2024[9].

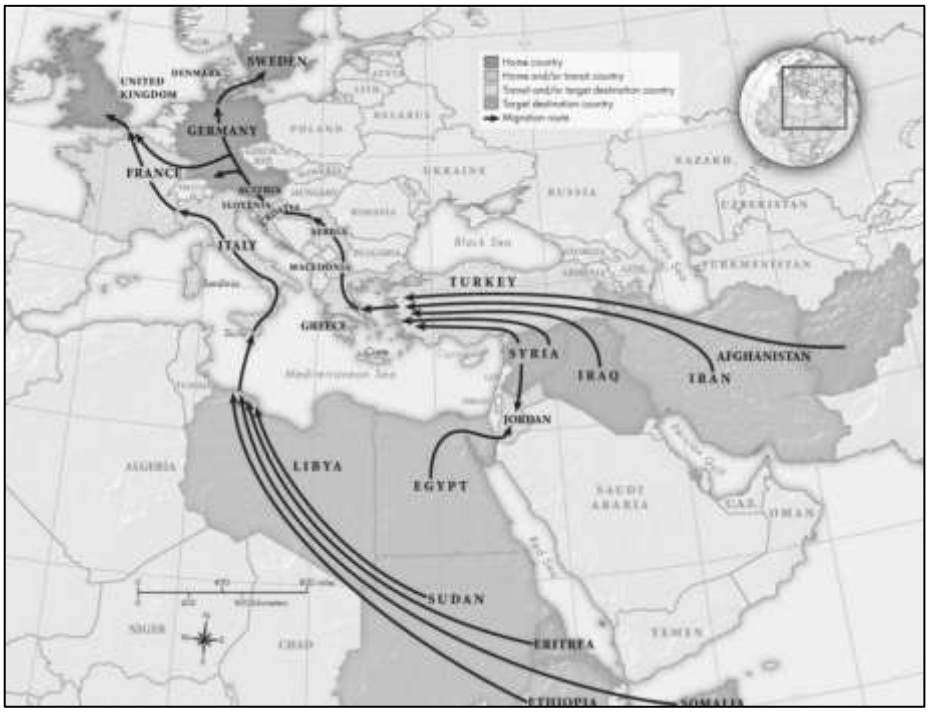

Figure 1. The asylum seekers movement maps, via the Balkan and Mediterranean route during the European refugee crisis of 2015. Source: John McKay et al, 2016 [10]

Later on, the full-scale Russian invasion of Ukraine on February 24, 2022, triggered the largest and fastest refugee crisis in Europe since World War II[11]. According to UNHCR data, as of April 2025, over 6,35 million Ukrainian refugees have been recorded across

[7] Omar Khalfan Bizuru, "A Model of Regime Change the Impact of Arab Spring throughout the Middle East and North Africa," 2021, 171.pp.80-84.
[8] UNHCR, "Over One Million Sea Arrivals Reach Europe in 2015," UNHCR Stories, 2016, https://www.unhcr.org/news/stories/over-one-million-sea-arrivals-reach-europe-2015.
[9] Human Rights Watch, "Turkey: Hundreds of Refugees Deported to Syria," Official Report, 2022, https://www.hrw.org/news/2022/10/24/turkey-hundreds-refugees-deported-syria.
[10] John McKay et al., *A History of Western Society: Combined Volume*, 12th ed. (Boston, 2016).
[11] UNHCR, "Ukraine-Fastest Growing Refugee Crisis in Europe Since WWII," UNHCR Stories, 2022, https://www.unhcr.org/hk/en/news/ukraine-fastest-growing-refugee-acrisis-europe-wwii.

Europe, who entered the EU through Poland, Hungary, and Croatia [12] . Of these, approximately 4,4 million are protected under the EU *Temporary Protection Directive* (TPD), which provides immediate access to the legal residence, labour markets, education, and healthcare[13]. The TPD initiative, which was activated for the first time in March 2022, reflects an unprecedented level of coordination in EU asylum policy. Recent EU proposals seek to extend the TPD through March 2027, alongside new pathways for permanent residency via work or study[14]. Despite initial strong public support, public approval has declined to 71 percent by early 2025, amid rising concerns over integration and welfare capacity[15].

Hungary confronted an exceptionally complex situation as a frontline EU member state, processing over 177,135 asylum applications during the 2015 crisis[16], and followed by receiving 5.9 million Ukrainian asylum seekers since 2022, with 61,000 of them hosted by Hungary as refugees, counted on November 2024[17]. In response, Hungary implemented comprehensive securitization measures including a 175-kilometer border fence, transit zone procedures until 2020, and systematic pushbacks to Serbia, invoking national sovereignty to resist EU burden-sharing quotas, while maintaining formal legal compliance with the EU. Ultimately, Hungary successfully maintained its sovereignty while serving as the EU's eastern bulwark, fundamentally reshaping European asylum governance toward securitized, externalized protection models that prioritize border control over humanitarian access, thereby protecting broader EU territorial integrity[18].

The continuous effects of these crises in the EU were also happening in Southeast Asia, especially around the 2015 refugee crisis period. While the EU remained the primary destination for many fleeing conflict zones, a significant number of asylum seekers, such as Syrians, Iraqis, Afghans, and stateless Rohingya, began arriving in Southeast Asia, as shown

[12] UNICEF, "Refugee Response in UNICEF Appeal 2025" (Geneva, 2025), https://www.unicef.org/media/170816/file/UNICEF Ukraine Refugee Response in Neighboring Countries Humanitarian Situation Report No. 30 1 January - 31 March 2025 (005).pdf.pdf.pp.1
[13] EMN and OECD, "Labour Market Integration of Beneficiaries of Temporary Protection from Ukraine" (Geneva, 2024), https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/migration/OECD-EMN Inform_ Labour-market-integration-of-beneficiaries-of-temporary-protection-from-Ukraine.pdf.pp.4.
[14] Katrien Luyten, "Temporary Protection Directive," no. February 2022 (2022).pp.1.
[15] Jennifer Rankin, "EU Proposes Extending Right for 4m Ukrainians to Stay in Bloc until 2027," The Guardian Online News, 2025, https://www.theguardian.com/world/2025/jun/04/eu-plans-would-extend-right-for-4m-ukrainians-to-stay-in-bloc-until-2027.
[16] EMN, "The Changing Influx of Asylum Seekers in 2014-2014 : Member State Responses," vol. 11, 2017.
[17] UNICEF, "UNICEF Emergency Response in Hungary," UNICEF Annual Report, 2024, https://www.unicef.org/eca/unicef-emergency-response-office-hungary.
[18] Helena Segarra, "Dismantling the Reception of Asylum Seekers: Hungary's Illiberal Asylum Policies and EU Responses," *East European Politics* 0, no. 0 (2023): 1–21, https://doi.org/10.1080/21599165.2023.2180732.

in Figure 2[19]. Indonesia experienced a notable surge in arrivals, beginning with over 1,000 refugees landing in Aceh province in May 2015[20]. Furthermore, in the year 2025, based on the recent UNHCR report, Indonesia hosted more than 14.536 refugees, and 4.477 asylum seekers from 52 countries, with a predicted growth of around 1000 asylum seekers entering Indonesia yearly[21]. Because of the absence of a national asylum law and Indonesia's political position as a non-signatory to the 1951 Refugee Convention, the international protection schemes is not yet available.

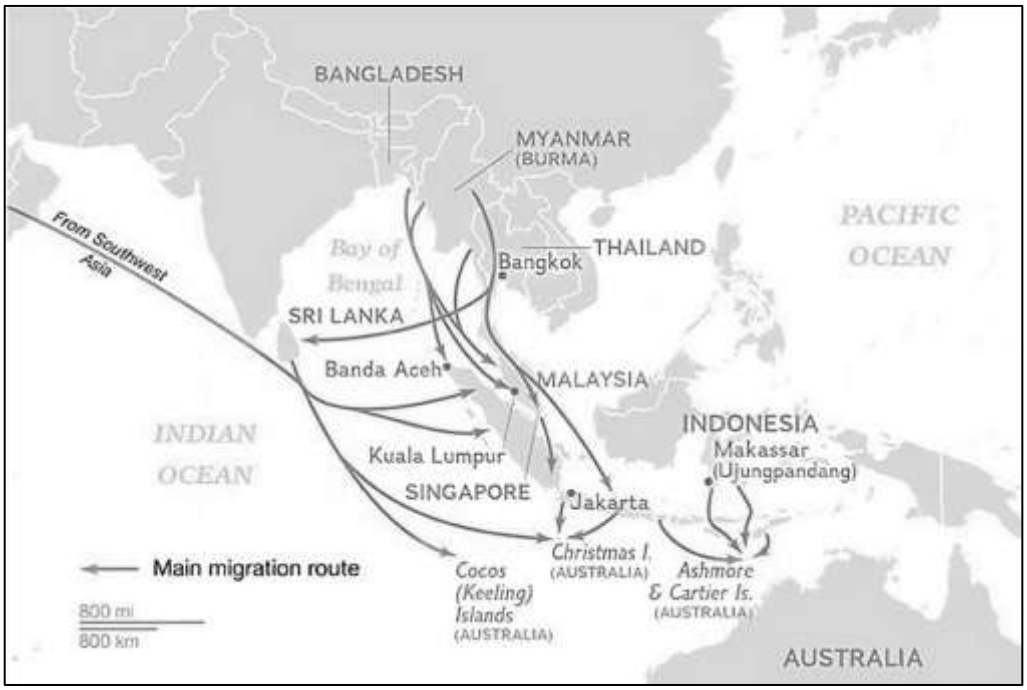

Figure 2. The asylum seekers' movement map in Southeast Asia during the refugee crisis of 2015. Source: IOM, 2016[22]

Taken together, the twin crises originating from the Arab Spring and the war in Ukraine reflect the nature of refugee displacement and the varied responses by regional blocs and nation-states. Within this complex phenomenon, Hungary and Indonesia have opposite models of asylum governance that explain the deeper legal, political, and institutional dynamics. While both countries have experienced mass influx of the asylum seekers and refugees into their territories, the legal responses are different. Hungary, as a member state of the EU and signatories' country of the 1951 Refugee Convention and its 1967 Protocol,

[19] Bahri, "Understanding The Pattern of International Migration : Challenges in Human Right Protection."
[20] Sebastien Moretti, "Keeping up Appearances: State Sovereignty and the Protection of Refugees in Southeast Asia," *European Journal of East Asian Studies* 17, no. 1 (2018): 3–30, https://doi.org/10.1163/15700615-01701001.
[21] UNHCR Indonesia, "Indonesia Yearly Report 2025," Indonesia Yearly Report, 2025, https://reporting.unhcr.org/operational/operations/indonesia.
[22] IOM, "World Congest Migration Routes," IOM Global Updates, 2016, https://weblog.iom.int/worlds-congested-human-migration-routes-5-maps.

has developed a highly legalized and securitized asylum system, whereas Indonesia, as a non-signatory to both instruments, operates in a legal vacuum, without any proper long-term solution[23]. The rationale for comparing these two cases is therefore methodologically strategic rather than incidental, aiming to understand how legal frameworks—or the absence thereof—determine the scope, quality, and consequences of refugee protection in practice.

As previously mentioned, the Hungary legal framework is deeply embedded in the supranational legal order of the EU, requiring compliance with the *Common European Asylum System* (CEAS), the Dublin III Regulation, and several key directives including the Reception Conditions Directive and the Asylum Procedures Directive. Nationally, Hungary has enacted Act LXXX of 2007 on Asylum, which codifies procedures for the recognition of refugee status, subsidiary protection, and temporary protection[24]. However, despite these formal commitments, Hungary has increasingly adopted a restrictive and deterrence-based approach, particularly since the 2015 refugee crisis. Legislative measures such as the *"Stop Soros Law"* (2018) and constitutional amendments have allowed the Hungarian government to criminalize assistance to irregular migrants, limit the role of NGOs, and create physical and legal barriers to asylum access, including the construction of border fences and the designation of "transit zones", though, those two legal approaches are already not in operation since 2018 and 2020[25] . Thus, Hungary presents a compelling case of how a state can operate within a sophisticated legal framework while strategically narrowing the scope of protection.

In contrast, Indonesia represents a legal absence in refugee governance. As a non-signatory to the 1951 Refugee Convention and its 1967 Protocol, Indonesia bears no binding legal obligations under international refugee law. Domestically, its primary policy instrument is Presidential Regulation No. 125 of 2016 on the Handling of Foreign Refugees, a non-legislative executive decree that lacks the force and comprehensiveness of statutory law[26]. It does not provide clear guidelines for *Refugee Status Determination* (RSD), nor does it guarantee refugees access to fundamental rights such as education, healthcare,

[23] Mohammad Bahri, *Between Legal Fortress and Uncertainty: Comparative Analysis of the Refugee Law Frameworks in Hungary and Indonesia*, *Zbornik Radova Pravnog Fakulteta, Novi Sad*, vol. 57, 2023, https://doi.org/10.5937/zrpfns57-44287. pp. 919-922.
[24] AIDA, "Country Report : Hungary" (Geneva, 2020).pp.1-20.
[25] Mohammad Thoriq Bahri, "Hungary and Refugee: From Historical To Legal Development," *Danube* 15, no. 1 (2024): 47–72, https://doi.org/10.2478/danb-2024-0003.pp. 47-72.
[26] Susan Kneebone, Antje Missbach, and Balawyn Jones, "The False Promise of Presidential Regulation No. 125 of 2016?," *Asian Journal of Law and Society* 8, no. 3 (2021): 431–50, https://doi.org/10.1017/als.2021.2.

employment, or freedom of movement[27]. In the absence of a national asylum system, the UNHCR operates as a *de facto* refugee authority, conducting RSD and coordinating basic humanitarian assistance[28]. This heavy reliance on international organizations, combined with the lack of legislative infrastructure, results in prolonged legal limbo, arbitrary detention, and systematic rights deprivation for asylum seekers[29]. The Indonesian case is therefore essential for understanding the consequences of legal absence in refugee governance, where humanitarian assistance is provided in the absence of enforceable legal protections.

Both countries, Hungary and Indonesia have experienced episodes of mass refugee arrivals, making them historically and empirically comparable. Hungary faced a surge in asylum applications during the 2015–2016 European refugee crisis, becoming one of the highest per-capita recipients of asylum claims in the EU. Indonesia, similarly, witnessed the arrival of over 1,000 Rohingya refugees by sea in 2015, with continued inflows from Afghanistan, Sudan, and other conflict zones. Both states became unintended front-line countries in regional migration routes, receiving individuals who were not necessarily aiming to settle but were seeking immediate safety. The shared experience of unexpected migratory pressure, coupled with distinct legal responses, makes this comparative study not only relevant but essential to understanding the broader implications of refugee governance in transit and host states.

The academic and legal relevance of comparing Hungary and Indonesia lies in the normative tension between sovereignty and obligation, legality and informality. Both countries resist the long-term integration of refugees and emphasize temporary or transit-based solutions, yet they pursue these objectives through entirely different legal architectures. Hungary enforces exclusion through a coherent but restrictive legal regime, while Indonesia relies on ad hoc executive action and humanitarian discretion, without the legitimacy or accountability of law. This juxtaposition allows for an examination of how different legal systems manage the same global phenomenon: the arrival of displaced persons seeking protection. More importantly, it enables scholars and policymakers to assess which legal

[27] Bahri, *Between Legal Fortress and Uncertainty: Comparative Analysis of the Refugee Law Frameworks in Hungary and Indonesia*.pp.924-927.
[28] Rohaida Nordin, Norilyani Nor, and Rosmainie Rofiee, "Ineffective Refugee Status Determination Process: Hindrance To Durable Solution for Refugee Rights and Protection," *Indonesia Law Review* 11, no. 1 (2021), https://doi.org/10.15742/ilrev.v11n1.687.pp.71-91.
[29] Bahri, *Between Legal Fortress and Uncertainty: Comparative Analysis of the Refugee Law Frameworks in Hungary and Indonesia*.pp.5-8.

strategies are more sustainable, rights-compliant, and administratively effective in the long term.

The comparison between Hungary and Indonesia is not an arbitrary pairing, but a deliberately constructed legal and political inquiry into how divergent frameworks—one grounded in codified law, the other in humanitarian pragmatism—shape the fate of asylum seekers. It contributes to the growing field of comparative refugee law and provides critical insights into how legal infrastructure—or its absence—affects refugee protection, state sovereignty, and international cooperation. By examining both the effectiveness and ethical limitations of these approaches, this dissertation seeks to inform future efforts to design a legally sound and rights-based refugee framework in Indonesia, drawing lessons from the institutional strengths and weaknesses of Hungary's model.

2. Research Questions

According to the background which has already been elaborated on previously, the research question that this research will answer can be described as follows:

2.1. What are Hungary and Indonesia legal challenges to handling the asylum seekers and refugees who are entering their territories?
2.2. What is the legal gap between Hungary and Indonesia in terms of refugee handling framework?
2.3. According to the explanation above, what are the possible solutions for the Indonesia in handling the asylum seekers?

3. Finding the research gap

Based on the background, there are the identified research gap related to the main research question on this dissertation, which can be explained as follow:

3.1. Research Gap Related to Question 2.1:

3.1.1. *Main research question:* What are Hungary and Indonesia legal challenges to handling the asylum seekers and refugees who are entering their territories?
3.1.2. *Identified Research Gap:* While existing literature provides a significant amount of information on the legal frameworks and societal responses to refugees in Hungary and Indonesia separately, there is a notable lack of comparative analysis that

explores the specific social and legal challenges each country faces in managing refugees and asylum seekers. Most studies tend to focus on legal challenges in one country or social dynamics in another, without simultaneously addressing both aspects in a comparative context. Additionally, the interaction between legal inadequacies and social responses in influencing policy implementation remains underexplored. This gap highlights the need for research that not only compares the challenges faced by Hungary and Indonesia but also investigates how these challenges are interconnected and affect the overall effectiveness of refugee management.

3.2. Research Gap Related to Question 2.2:

3.2.1. *Main research question:* What is the legal gap between Hungary and Indonesia in terms of refugee handling framework?

3.2.2. *Identified Research Gap:* Although there is information available on the refugee policies of Hungary and Indonesia individually, there is a scarcity of research that systematically compares these policies. Specifically, there is limited comparative analysis that examines how these policies have evolved over time in response to changing international pressures and domestic social dynamics. Current studies often overlook how historical, cultural, and political contexts have shaped each country's approach to refugee handling. Additionally, there is a lack of detailed exploration into how these different or similar approaches impact refugees' outcomes, particularly regarding access to legal protection, social integration, and long-term resettlement. Addressing this gap would provide valuable insights into how countries with diverse legal traditions and societal structures manage the complex issue of refugee management.

3.3. Research Gap Related to Question 2.3:

3.3.1. *Main research question:* According to the explanation above, what are the possible solutions for the Indonesia in handling the asylum seekers?

3.3.2. *Identified Research Gap:* The existing literature extensively documents the legal challenges Indonesia faces due to the absence of comprehensive refugee legislation, as well as the social responses from local communities. However, there is a gap concerning practical, actionable solutions that could address the legal vacuum and improve refugee protection in Indonesia. Specifically, there is limited research on

how Indonesia can adopt international best practices, particularly from countries like Hungary, to develop a more cohesive and humane refugee policy. Furthermore, there is a lack of studies offering a detailed roadmap for integrating international norms with local legal systems and cultural contexts in Indonesia. To fill this gap, research is needed that not only identifies potential legal reforms but also considers the socio-political feasibility of these reforms, including community-level interventions and international cooperation mechanisms.

4. Chapter Conclusion and Personal Opinion

The global refugee crisis, driven by continues conflicts, political instability, and regional wars, has significantly shaped the migration landscape of the 21st century. The cases of Hungary and Indonesia exemplify how countries facing similar external migratory pressures may develop profoundly different legal and institutional responses depending on their constitutional frameworks, political will, and international obligations. Hungary, as a signatory to the 1951 Refugee Convention and a member of the European Union, has implemented a highly codified yet increasingly restrictive asylum regime. Through a series of legislative reforms, constitutional amendments, and securitized border mechanisms, Hungary has developed a system that, while legally structured, strategically narrows the space for protection. Conversely, Indonesia's approach is defined by a legal vacuum. As a non-signatory to the Refugee Convention, the country lacks a robust legislative framework to manage asylum seekers, resulting in a reliance on ad hoc presidential regulations and delegation to international agencies such as the UNHCR and IOM.

The comparison between Hungary and Indonesia offers important insights into how the presence or absence of legal infrastructure shapes the experience of displaced populations. While Hungary's restrictive laws limit access to asylum through technical legal tools, Indonesia's lack of binding legal commitments places asylum seekers in a prolonged state of uncertainty and deprivation. Both approaches raise critical questions about the sustainability, humanity, and legality of refugee governance in transit countries. What emerges is a troubling pattern: even in countries not designated as final destinations, asylum seekers face structural exclusion and precarious existence, with limited access to rights and long-term solutions.

From a personal standpoint as a field practitioner within the Indonesian immigration system, I have directly witnessed the consequences of this legal vacuum. In my experience, many asylum seekers enter Indonesia legally as tourists, often accompanied by their families, and subsequently declare their refugee status only after their visa has expired. Due to the lack

of a national legal framework that accommodates or regularizes their presence, the only available option is to transfer them to immigration detention centres for further processing. Unfortunately, this process often leads to the suspension of basic rights, including the right to education, freedom of movement, and meaningful access to healthcare or work. Emotionally, these decisions are not easy. As someone who is legally mandated to uphold existing policies but also personally witnesses the human suffering caused by legal gaps, I often feel disturbed by the ethical tension between duty and compassion. Watching children, who had dreams and ambitions, being placed in confined spaces without access to learning opportunities is a recurring source of moral discomfort in my work.

(a) (b)

Figure 3. (a) An asylum seeker, and her daughter are detained on the one of the Detention Center. (b) Author and one of the asylum seekers who waiting for the interview queue by the Immigration authorities. Source: Author documentation. Source: Author Documentation.

This personal reflection reinforces the central argument of this chapter: that a lack of legal clarity does not equate to neutrality but instead creates a de facto regime of exclusion. In contrast, Hungary's legally restrictive approach illustrates how even a formally advanced legal system can be engineered to deter and limit access to protection. Both models, albeit in very different ways, fail to ensure the full realization of refugee rights. Therefore, any reform of refugee handling in Indonesia must go beyond humanitarian management and instead build a principled, comprehensive, and enforceable legal framework. It must balance the demands of national sovereignty with the imperatives of international solidarity and human dignity. Drawing lessons from both the structural presence and the legal excesses in Hungary's system can help shape a middle path for Indonesia—one that is legally sound, socially just, and administratively practical.

CHAPTER II: RESEARCH METHODOLOGY

This study uses a multi-method approach to evaluate and compare Indonesia's and Hungary's refugee policy and legal frameworks. Given the complexities of asylum and refugee policy, which overlap with humanitarian and legal dimensions, it is critical to use approaches that can adequately capture these intricacies. This study addresses significant difficulties in these two nations' refugee management systems by conducting a rigorous literature review, qualitative analysis, and comparative legal analysis. By integrating these methodologies, the study hopes to present a complete perspective that exposes the strengths, weaknesses, and gaps in each legal system, allowing for a critical evaluation of how national settings affect refugee policies.

The systematic literature analysis serves as the research's foundation, providing a comprehensive evaluation of academic and gray literature related to asylum policies, legal theories, and international standards. This review is supplemented with qualitative examination of written legal texts, laws, and policies from Indonesia and Hungary. The comparative legal analysis expands on this basis by incorporating insights from past studies and legal documents, carefully analyzing the two legal systems to discover differences, similarities, and potential policy improvement areas in Indonesia. The combination of these techniques allows a sophisticated knowledge of refugee policy that takes into account both legal limits and country-specific sociopolitical variables.

1. Systematic Literature Analysis

This research was conducted using a systematic literature analysis framework, which is a widely recognized method for data collection. Literature studies are integral to the research process, involving the review and analysis of books, academic articles, and other written materials relevant to the research topic[30]. Through a thorough literature review, researchers can identify the theories that underpin the research problem and gain insights into the specific field under investigation. Additionally, literature studies enable researchers to explore previous studies related to their topic, allowing them to build on existing knowledge and avoid duplicating efforts[31]. By leveraging the information and ideas gathered from these sources,

[30] Abdullah Ramdhani, Muhammad Ali Ramdhani, and Abdusy Syakur Amin, "Writing a Literature Review Research Paper: A Step-by-Step Approach," *International Journal of Basic and Applied Science* 03, no. 01 (2014): 47–56.
[31] Ramdhani, Ramdhani, and Amin.pp. 166-169

researchers can strengthen the foundation of their study and ensure a comprehensive understanding of the subject matter.

To develop a more effective search strategy for the literature review, the systematic review began with a scoping search to identify key phrases, subject headings, databases, journals, and influential authors. The literature search encompassed both published sources, such as peer-reviewed journal articles and books, and grey literature, including news articles, theses, conference papers, reports, and meeting minutes or resolution documents. This comprehensive approach aimed to minimize bias and provide a more thorough and informed analysis. The academic texts offered reflective and analytical material that helped articulate the purpose of the research and guided the formation of conclusions. Grey literature, which included historical events, decision-making papers, reports, and governmental documents, played a crucial role in supporting the research by offering additional context and insights. The inclusion of grey literature was essential for acquiring a well-rounded understanding of the subject matter.

A literature review is a detailed examination of the literature in a particular field of study. It gives the ability to:

1.1. Look into past studies and see what has already been done.

1.2. Consider theoretical frameworks.

1.3. To see if your study is worthwhile, look for 'gaps' in current knowledge.

1.4. Identify, explain, and justify your research issue or problem.

1.5. Choose the most suitable approach (if applicable).

A literature review is important because it establishes the backdrop for the research and gives a foundation for evaluating the findings. Like an essay, a literature review contains an introduction, body, and conclusion. In this research, the source of the literature review will be taken from:

1.1. Journal Articles, which mostly will be taken from the several journals and Scientific Articles provider, can be divided into the following electronic databases such as:

1.1.1. Scopus;

1.1.2. Web of Science Core Collection.

1.2. Primary Law Source, which contains relevant legal and regulation documents, for the European Union (EU), Hungary, and Indonesia, especially related to the Immigration Law, which can be divided into several databases, as follows:

1.21. European Union Law Databases: https://eur-lex.europa.eu/homepage.html
1.22. Hungary Law Databases: https://www.ogyk.hu/en
1.23. Indonesia Law Databases: https://www.peraturan.go.id

Conducting this research through a literature study analysis is imperative for several compelling academic reasons. Foremost, the intricate and historically nuanced issues surrounding refugees and asylum seekers necessitate a comprehensive understanding of both legal frameworks and socio-political contexts across various regions, which can be effectively achieved through a thorough analysis of existing literature. By systematically reviewing scholarly articles, books, legal documents, and grey literature, this research is positioned to identify significant gaps in current knowledge, particularly in the comparative analysis of refugee management systems between Hungary and Indonesia. Such an approach enables the identification of patterns and divergences in legal practices, thereby facilitating a deeper understanding of how distinct legal systems address analogous challenges.

Moreover, given the sensitive nature of this subject, which intersects with human rights and international law, a literature study ensures that the research is anchored in well-established theories and empirical evidence, thereby enhancing the validity and reliability of the findings. Furthermore, this method allows for the critical examination of theoretical frameworks and past studies, thereby shaping the research questions and methodology. Considering that this research juxtaposes countries with differing legal and socio-cultural contexts, literature analysis provides a nuanced lens through which to explore how these variations influence refugee policies. Consequently, this method not only contributes to a comprehensive understanding of the subject but also justifies the research's necessity by illuminating unexplored areas or inconsistencies within the existing body of knowledge, thus making it indispensable for a rigorous and informed academic inquiry.

2. Qualitative Analysis Method

The research method is one factor that is sufficiently important in conducting research, because the basic research method is a scientific way to get data with a specific purpose, in the law analysis, the qualitative analysis can be utilized to analyze legal instruments

systematically[32] . Qualitative research can be considered the most suitable analysis because this research will be focused on analyzing the data in form of written form such as regulations and laws implemented by a country, in this research, the case is how Hungary and Indonesia handle the refuges. While qualitative research emphasizes the quality side of the entity being studied.

Thus, the process of qualitative research begins by developing basic assumptions and rules of thought that will be used in the research. The data collected in the research is then interpreted. Also, reading Understanding Sociology and Its Basic Theories from Experts In qualitative research, as well as research in the field of sociology, will reveal the social meaning of phenomena obtained through research subjects. This subject is usually obtained from the participants or respondents. That way, later researchers will try to answer how the socio-cultural experience of humans is formed and then gives it meaning. The object of qualitative research covers all aspects or fields of human life, namely humans and everything that is influenced by them. Qualitative research is not as fast as quantitative research in analyzing data. In quantitative research, the raw data is immediately ready to be processed. However, data in qualitative research requires a more in-depth systematic process. An example of quantitative research, for example, is research to answer the question of why some people who live on the slopes of a volcano are reluctant to be evacuated when the volcano erupts. Qualitative research will answer these questions and explore the meaning of "mountain," "disaster," "life" and other aspects of residents who choose not to evacuate. Analysis in Qualitative Research Data analysis in qualitative research is interpreted as an effort to systematically search and organize notes from observations, interviews, and others to increase the researcher's understanding of the case under study and present them as findings. To get that understanding, the analysis needs to be continued by trying to find meaning.

In qualitative research, four stages are interconnected with one another. Sequentially, data analysis in qualitative research starts from the stages of data collection, data reduction and categorization, data display, and conclusion. Qualitative data analysis is integrated into the activities of data collection, data reduction, data presentation, and the conclusion of research results. The explanation of the four stages in qualitative research is as follows.

1.1. Data collection the process of collecting data in qualitative research can be done in various ways, obtained by going directly to the field. This can be done through

[32] Katerina Linos and Melissa Carlson, "Qualitative Methods for Law Review Writing," *The University of Chicago Law Review* 84, no. 1 (2017): 213–38.

observations or observations, questionnaires, in-depth interviews with research objects, document studies, and focus group discussions.

1.2. Data reduction and data categorization, in this stage, the raw data will be filtered. Researchers choose which data is most relevant to be used to support research. Qualitative data can be obtained from interviews and observations. So, sorting is needed to facilitate data categorization. So, the filtered data will be categorized as needed. For example, in research, data is divided by categories of informants or research locations.

1.3. Data display After the data is reduced and categorized, then enter the data display. In this stage of the process, the researcher designs the rows and columns of a qualitative data metric and determines the type and form of data to be entered in the metric boxes. For example, data is presented in narratives, charts, flow charts, diagrams, and so on. Data is organized to make it easier to read.

1.4. Analysis, after the data is displayed, the analysis method for understanding the data by specific measurements is conducted.

1.5. Drawing conclusions After the three processes have been passed, the last step is to conclude. The content of the conclusion should include all the important information found in the study. The language used to describe conclusions must also be easy to understand without being complicated.

3. Comparative Legal Analysis

After analyzing the social and legal background by using the qualitative analysis framework, the results will be analyzed with the Comparative legal analysis methodology to identify the differences and similarities between the Indonesia and Hungary refugee handling policy. The comparative legal analysis itself can be described as the "systematic application of the comparative technique to the field of law. It means the study of, and research in, law by the systematic comparison of two or more legal systems; or of parts, branches, or aspects of two or more legal systems"[33]. In the early development of comparative law methodology, two main arguments developed from the era before World War I, and after World War I, especially after the 1929 financial crisis. Those arguments can be explained in the table 1.

[33] Marieke Oderkerk, "The Importance of Context: Selecting Legal Systems in Comparative Legal Research," *Netherlands International Law Review* 48, no. 3 (2001): 293–318, https://doi.org/10.1017/S0165070X00001340.

Table. 1.The Development Approach for the Comparative Law Analysis.Source: Hoecke, 2016[34]

All Legal Systems Are Comparable	Not Every Legal Systems Are Comparable
Universal Legal System: As argued by Ulrich Drobnig and Kokkini (1969), every legal system is considered equal and universal and can be directly compared[35]	**Different Development Approach:** As Argued by Kamba (1974), not all legal system is at the same level of development, because of the different social and cultural context, so they cannot be directly compared[36]
Versus Approach: As Argued by Sacco (1920) each legal system can be compared with every other legal system[37]	**Legal System is a Product of Culture:** As Argued by Constantinesco (1998), every legal system is a product of a specific social structure and ideology which resulted in legal families, legal classification, and legal tradition[38]

However, the recent development for comparative legal research is more likely to stand to conclude if not every legal system is comparable. Even though the purposes of civil and common law are the same, which means to create harmonization in society, a legal system is a part of life in every country, as are the people for whose needs it was created. Its vulnerability to external influences cannot be separated from its evolution, and the process of evolution is different in every place and cannot be compared[39].

Then, it becomes essential for the legal researcher to define the rights legal system which will be used. Oedekerk (2001), introduced the five guidelines to do a proper legal comparison, which are: (1) Reflective Research, Finding the legal system which fits a topic of the study, without limitation (simplest form of comparative); (2) Formulative Research, Finding the "higher level of development" legal system to upgrade existing legal system; (3)

[34] Mark Van Hoecke, "Methodology of Comparative Legal Research," *Law and Method*, 2016, 279–301, https://doi.org/10.5553/rem/.000010.
[35] Oderkerk, "The Importance of Context: Selecting Legal Systems in Comparative Legal Research."pp. 67-68.
[36] W.J Kamba, "British Institute of International and Comparative Law Fisheries Source : The International and Comparative Law Quarterly , Vol . 23 , No . 2 (Apr ., 1974), Pp . Published by : Cambridge University Press on Behalf of the British Institute of Internation," *British Institute of International & Comparative Law* 23, no. 2 (1974): 471–72.
[37] Michael E Parrish, "Sacco & Vanzetti: The Case Resolved by Francis Russell: Postmortem: New Evidence in the Case of Sacco and Vanzetti by William Young and David E. Kaiser," *American Bar Foundation Research Journal* 12, no. 2/3 (1987): 575–89.
[38] T. P. Van Reenen, "Major Theoretical Problems of Modern Comparative Legal Methodology : The Criteria Employed for the Classification of Legal Systems," *Comparative and International Law Journal of Southern Africa* 29, no. 3 (1996): 71–99.
[39] Joseph Dainow, "The Civil Law and the Common Law: Some Points of Comparison," *The American Journal of Comparative Law* 15, no. 3 (1966): 419, https://doi.org/10.2307/838275.

Supranational Research, Used if the research objective is to formulate new legislation on a supranational level (harmonization or unification); (4) Improved Supranational Research, this selection applies if the compared legal system is in the Supranational level, and needs to be improved; (5) Representative Legal Research, comparison of these representative systems, by examining the parent of legal families[40]. In this research, there is a difference between the legal systems in Hungary in Indonesia, which is defined in table 2.

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Table. 2.The Difference Between Indonesia and Hungary's Legal Background. Source: Bahri, 2023[41]

Hungary	Indonesia
Hungary is a member state of a supranational organization (European Union, EU), which are legally tied to each other[42].	Independent, has no legal bound with any supranational organization
Hungary Asylum Seekers and Refugees management is legally harmonized with the Common *European Asylum System* (CEAS), which managed supranationally by the EU[43].	Non signatories' countries[44].
The legal framework included the standardized procedures in the Asylum Seeker reception which regulated on the Dublin regulation[45]	Have no codified procedures in Asylum Seeker reception, then the "reception" is only based on humanity[46]

Based on the explanation between both countries is crucial due to the significant disparity in their legal frameworks and the socio-legal contexts within which these frameworks operate. Indonesia currently lacks formal legal regulations regarding asylum seekers and refugees, resulting in a legal vacuum that complicates the management of asylum seekers. In

[40] Marieke Oderkerk, "The Need for a Methodological Framework for Comparative Legal Research – Sense and Nonsense of »Methodological Pluralism« in Comparative Law," *Rabels Zeitschrift Für Ausländisches Und Internationales Privatrecht* 79, no. 3 (2015): 589, https://doi.org/10.1628/003372515x14339403063927.
[41] Bahri, *Between Legal Fortress and Uncertainty: Comparative Analysis of the Refugee Law Frameworks in Hungary and Indonesia*.
[42] EUROSTAT, *The EU in the World - 2020 Edition* (Belgium: European Union Eurostat, 2020), https://ec.europa.eu/eurostat/documents/3217494/10934584/KS-EX-20-001-EN-N.pdf/8ac3b640-0c7e-65e2-9f79-d03f00169e17?t=1590936683000.
[43] Anikó Bernát et al., "Borders and the Mobility of Migrants in Hungary," *CEASEVAL* 1, no. 29 (2019): 7–10, http://ceaseval.eu/publications/29_WP4_Hungary.pdf.
[44] Antje Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia," *Refuge: Canada's Journal on Refugees* 33, no. 2 (2017): 32–44, https://doi.org/10.2307/48649576.
[45] EASO, "Description of the Hungarian Asylum System," 2015, https://www.easo.europa.eu/sites/default/files/public/Description-of-the-Hungarian-asylum-system-18-May-final.pdf.
[46] Antje Missbach, "Asylum Seekers' and Refugees' Decision-Making in Transit in Indonesia," *Bijdragen Tot de Taal-, Land- En Volkenkunde, Vol. 175, No. 4 (2019), Pp. 419-445* 175, no. 4 (2019): 419–45, https://doi.org/10.2307/26806654.

contrast, It is imperative to underscore that Hungary's legal framework for asylum is not developed in isolation but is substantially shaped and governed by supranational legal obligations as a Member State of the European Union. Since joining the EU in 2004, Hungary has been required to align its national legislation with the *acquis Communautaire*, including the CEAS. The CEAS is a harmonized legal and institutional framework aimed at ensuring minimum standards for asylum procedures, reception conditions, and recognition of refugee and subsidiary protection status across EU Member States.

Central to the CEAS are five key legal instruments that bind Hungary and all other EU Member States:

1. Directive 2011/95/EU *(Qualification Directive):* Defines who qualifies for international protection and outlines the rights of beneficiaries.
2. Directive 2013/32/EU *(Asylum Procedures Directive):* Regulates procedural guarantees for asylum seekers, including access to legal remedies and timelines for decision-making.
3. Directive 2013/33/EU *(Reception Conditions Directive):* Establishes standards for housing, food, healthcare, and detention conditions.
4. Regulation (EU) No 604/2013 *(Dublin III Regulation):* Determines which Member State is responsible for examining an asylum application, typically the country of first entry.
5. Regulation (EU) No 603/2013 *(EURODAC Regulation):* Mandates fingerprinting and database registration to support the Dublin system.

Hungary transposed these directives into its national law primarily through Act LXXX of 2007 on Asylum, which remains the cornerstone of Hungary's domestic asylum regime. Although Hungary retains some discretion in transposing EU directives into national law, its scope for divergence is limited by the requirement of conformity and consistency with EU norms, enforced by the CJEU. For instance, the CJEU's judgment in Commission v. Hungary (C-808/18) declared several elements of Hungary's asylum law—such as systematic pushbacks, transit zones, and restrictions on access to asylum procedures—as violating the procedures itself.

Furthermore, the CEAS instruments are directly applicable and enforceable through Hungary's constitutional mechanisms and are subject to judicial review by both national courts and the CJEU. In legal doctrine, this reflects a vertical integration of EU norms into Hungary's sovereign legal system, where national asylum decisions must be consistent with EU-wide principles of legality, proportionality, and fundamental rights protection. In practice, this

integration constrains Hungary's ability to implement fully autonomous asylum policies, even when political actors attempt to assert greater control over migration management.

This approach aligns with the Formulative Research methodology, which seeks to analyze legal systems that represent a *"higher level of development"* to inform or upgrade existing frameworks. As Indonesia faces increasing challenges related to asylum seekers and refugees, the absence of a robust legal framework exacerbates these issues, making a comparative legal analysis an urgent step toward legal reform. By examining Hungary's legal approach, shaped by its obligations under the CEAS and the broader EU legal system, this research aims to provide valuable insights that could guide the development of a comprehensive asylum seeker management system in Indonesia. This analysis is particularly timely as the global context of refugee flows continues to evolve, necessitating that countries like Indonesia develop more effective legal and policy responses that align with international standards and human rights obligations. Based on the explanation above, which concluded that Hungary has a more developed legal system compared to Indonesia. This research will be conducted by using Formulative research, which is aimed to find and analyze the "higher level of development" legal system to formulate or upgrade the existing legal system. In this case, Indonesia doesn't have yet any legal regulation to manage asylum seeker who enters Indonesia illegally. Can be concluded that globally, Indonesia will learn from Hungary about the socio-legal development for asylum seeker management.

CHAPTER III: CURRENT SITUATION IN ASYLUM SEEKERS AND REFUGEES HANDLING

1. Observations on International Refugee Law

This part thoroughly examines the intricacies inherent in International Refugee Law (IRL), aiming to provide a nuanced and thorough understanding of its existing legal and normative architecture. As a specialized branch of international law, IRL is devoted to addressing the unique and pressing humanitarian challenges posed by the global phenomenon of forced displacement, representing a distinct and essential subset of international legal principles designed to safeguard the rights and well-being of refugees[47]. The chapter methodically dissects the legal instruments, conventions, and protocols that form its foundation, with particular emphasis on the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, which constitute the bedrock of the international legal framework governing refugee protection and outline the obligations of states and the rights of those who qualify as refugees.

Furthermore, it traces the evolution of IRL from its post-World War II inception to its current application in an increasingly complex and interconnected world, highlighting how IRL has adapted to address the broader array of causes of forced displacement, including armed conflict, persecution, and environmental degradation. Alongside the legal framework, the chapter critically analyzes the normative principles underpinning IRL, such as the principle of non-refoulement, the right to asylum, and the notion of international burden-sharing, which are integral to the functioning of the global refugee protection regime and serve as guiding norms shaping state and international organization behavior in response to refugee crises.

Additionally, the chapter engages with the challenges and criticisms facing IRL in light of contemporary global developments, examining issues such as the securitization of borders, the politicization of asylum, and the tension between state sovereignty and international obligations, providing a balanced and critical assessment of IRL's capacity to effectively respond to the needs of refugees in the 21st century. Ultimately, this chapter seeks not only to elucidate the current legal and normative framework of IRL but also to situate it within the broader socio-political context, contributing to a deeper and more comprehensive understanding of the complexities of International Refugee Law and its pivotal role in

[47] Héléne Lambert, "International Refugee Law," *International Refugee Law*, 2017, 1–525, https://doi.org/10.4324/9781315092478.pp. 4-41.

addressing one of the most pressing humanitarian issues of our time. This chapter endeavors to elucidate the complexities of IRL by clearly delineating its current legal and normative framework. IRL can be regarded as a distinct subset of international law dedicated to a specific humanitarian concern[48].

First, it's important to understand about the IRL, which also serves fundamentally conceived as a supplementary and essential protective framework for individuals who are at considerable risk due to circumstances beyond their control, particularly those related to persecution, violence, or severe human rights violations[49]. At its core, IRL is meticulously designed to protect individuals seeking asylum from persecution, encompassing a broad range of threats that might compel someone to flee their country of origin. This legal framework not only provides safeguards for those who are in the process of seeking asylum but also offers robust protections for individuals who have been formally recognized as refugees under international law. The protections afforded by IRL are grounded in a well-established body of legal principles, including the prohibition of refoulement, which ensures that refugees and asylum seekers are not returned to countries where they face serious threats to their life or freedom.

Moreover, IRL embodies a commitment to upholding the dignity and rights of displaced persons by providing them with the necessary legal status and protections that enable them to seek refuge, safety, and, ultimately, a durable solution to their plight. This legal regime is further reinforced by international cooperation and burden-sharing mechanisms, which are critical in addressing the global nature of forced displacement and ensuring that the responsibility for protecting refugees is equitably distributed among states. In this sense, IRL operates not merely as a set of legal prescriptions but as a dynamic and responsive system that adapts to the evolving challenges of forced migration, ensuring that those at significant risk receive the protection and assistance they need to rebuild their lives in safety and dignity. It is fundamentally designed to serve as a supplementary source of protection for individuals who are at significant risk. Specifically, IRL safeguards individuals seeking asylum from persecution, as well as those who have been formally recognized as refugees[50].

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[48] Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law (3rd Edition)*, 3rd Editio (Oxford: Oxford University Press (OUP), 2007).
[49] Loi Thi Ngoc Nguyen, "Protecting the Human Rights of Refugees in Camps in Thailand: The Complementary Role of International Law on Indigenous Peoples," *Laws* 12, no. 3 (2023): 57, https://doi.org/10.3390/laws12030057.
[50] UNHCR, "1951 Convention Relating to the Status of Refugees," UNCHR Convention and Protocol § (1951).

Furthermore, the establishment of the 1951 Convention Relating to the Status of Refugees (CSR51) and the UNHCR in the aftermath of World War II represents a watershed moment in the development of the international legal framework designed to address the refugee issue on a global scale. The CSR51, adopted on July 28, 1951, and subsequently complemented by its 1967 Protocol, which removed the temporal and geographical limitations initially imposed, laid down a comprehensive and enduring definition of who qualifies as a refugee[51]. Specifically, CSR51 defines a refugee as an individual 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 unable or unwilling to avail themselves of the protection of their country of origin. This definition has become the cornerstone of international refugee protection, providing a clear and standardized criterion that has been adopted by states and international bodies alike.

The CSR51, in conjunction with the 1967 Protocol, not only delineates the rights and entitlements of individuals who are granted asylum but also establishes the corresponding obligations of states that offer asylum. Among these rights are the principle of non-refoulement, which prohibits the expulsion or return of refugees to territories where their lives or freedom would be threatened, and the right to work, education, and access to public relief and assistance[52]. The Convention also imposes obligations on states, including the duty to cooperate with the UNHCR, which was created as part of the broader post-war effort to manage the unprecedented levels of displacement caused by the conflict. The CSR51 and the UNHCR together provided a permanent, structured, and internationally coordinated response to the refugee crisis, which had reached alarming proportions due to the war's widespread displacement, leaving millions of people stateless and in need of international protection. By 1951, Europe alone had over 11 million refugees and displaced persons as a result of World War II, underscoring the urgent need for a comprehensive legal and institutional response[53]. The establishment of these instruments marked a significant shift in international law, moving from ad hoc and often temporary measures to a systematic approach that recognized the enduring nature of refugee crises and the need for long-term solutions[54].

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[51] UNHCR.pp. 18-19.
[52] Jelena Ristik, "The Right to Asylum and the Principle of Non- Refoulement Under the European Convention on Human Rights," *European Scientific Journal, ESJ* 13, no. 28 (2017), https://doi.org/10.19044/esj.2017.v13n28p108.
[53] Natasha Emma YACOUB, "A New History of Refugee Protection in Post-World War Two Southeast Asia: Lessons from the Global South," *Asian Journal of International Law*, 2022, 1–24, https://doi.org/10.1017/s2044251322000510.
[54] Goodwin-Gill and McAdam, *The Refugee in International Law (3rd Edition)*.

Furthermore, CSR51 and its Protocol have since been ratified by the vast majority of the world's nations, affirming their universal applicability and importance in the ongoing efforts to protect and assist refugees globally. This framework has not only facilitated the protection of millions of refugees over the decades but has also served as a foundation for subsequent developments in international human rights law, influencing the evolution of legal norms and practices related to the treatment of displaced persons. The establishment of the 1951 Convention Relating to the Status of Refugees (CSR51) and the UNHCR in the aftermath of World War II marked a pivotal moment in the international legal framework addressing the refugee issue at a global scale. The CSR51, along with its 1967 Protocol, laid down the definition of a refugee and outlined the rights of individuals granted asylum and the responsibilities of nations granting asylum. These instruments provided a permanent and structured response to the refugee crisis, which was exacerbated by the war's widespread displacement.

The 1951 Convention Relating to the Status of Refugees (CSR51) offers a precise and comprehensive definition of a refugee, articulating that a refugee is an individual 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."*[55] . This definition was a pioneering achievement in international law, as it established a clear and standardized legal framework for identifying refugees, which could be applied consistently across various legal frameworks. The CSR51 was instrumental in specifying the grounds for persecution, ensuring that the protection offered to refugees was not arbitrary but based on well-defined legal criteria. The inclusion of *"well-founded fear"* as a standard required that both subjective fears and objective conditions be assessed in determining refugee status, thereby enhancing the rigor, fairness, and consistency of asylum procedures worldwide.

This definition not only laid the groundwork for the development of IRL but also significantly influenced the evolution of national asylum systems. Many states have incorporated the CSR51's criteria into their domestic legislation, thereby aligning their refugee recognition processes following the standard which set by the CSR51. The definition provided by CSR51 has been instrumental in shaping global refugee protection frameworks, directly

[55] UNHCR, "Article 1," Pub. L. No. 1951 Refug. Conv., 15 1951 Refugee Convention 189 (1950), https://doi.org/10.9783/9780812205381.77.

linking to crucial principles such as *non-refoulment*, whereas it restricts the return of refugees to countries where their lives or freedom are threatened[56]. Furthermore, the CSR51 has served as the foundation for regional instruments such as the 1969 *Organization of African Unity* (OAU) Convention and the 1984 Cartagena Declaration, which have expanded the definition to include individuals fleeing generalized violence and other serious violation of public order[57]. With the CSR51 and its 1967 Protocol now ratified by 149 countries, this definition remains a cornerstone of international efforts to protect displaced individuals, reinforcing the global commitment to human rights and providing a legal basis that has safeguarded millions of refugees worldwide.

After understanding the existing legal background in refugee handling, the legal history background is also very interesting. The *"international refugee protection regime"* has undergone a profound and far-reaching transformation, compelling the UNHCR to fundamentally reassess its understanding of refugee emergencies and its role in addressing these increasingly complex challenges[58]. These changes led to new and more intricate patterns of displacement, characterized by the rise of complex refugee crises that were no longer confined to the aftermath of global wars but were instead driven by localized conflicts, state collapse, and prolonged humanitarian emergencies.

In response to these developments, the UNHCR underwent substantial institutional transformation, marked by a significant expansion of its operational capacities and a redefinition of its conceptual approach to international protection. Originally established to address the protection and resettlement needs of refugees in post-World War II Europe, the UNHCR found itself increasingly engaged in a broader range of humanitarian interventions, extending its mandate to include the *protection of internally displaced persons* (IDPs) and those affected by complex emergencies, such as the ethnic conflicts in the Balkans and the genocides in Rwanda and the Great Lakes region of Africa.

The UNHCR's transformation in the post-Cold War era also involved a significant shift in its conceptual framework for international protection. Faced with the protracted nature of many refugee crises, the UNHCR recognized the need for durable solutions that went beyond temporary relief. This led to an increased emphasis on voluntary repatriation, local integration,

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[56] ICRC, "Note on Migration and the Principle of Non-Refoulement," *International Review of the Red Cross* 99, no. 904 (2017): 345–57, https://doi.org/10.1017/S1816383118000152.
[57] Michael Reed-Hurtado, "The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America," *In Flight from Conflict and Violence*, 2017, 141–80, https://doi.org/10.1017/9781316771143.007.
[58] Zofia Przybytkowski, "Enforcing Idealism : The Implementation of Complementary International Protection in Canadian Refugee Law" (Canada, 2010).

and resettlement as integral components of its protection strategy[59]. Additionally, the UNHCR began to advocate more vigorously for international cooperation and burden-sharing among states, acknowledging that the global nature of refugee crises required collective action and shared responsibility. The agency's innovation in protection strategies during this period was further demonstrated by the development of new legal instruments and policy frameworks designed to address the evolving nature of displacement. Notable among these were the 1998 Guiding Principles on Internal Displacement, which provided a normative framework for the protection of IDPs, and the 2000 Agenda for Protection, which outlined a global action plan for strengthening the international refugee protection regime. Through these transformations, the UNHCR emerged as a more adaptable and dynamic organization, better equipped to respond to the increasingly multifaceted challenges of global displacement.

However, the ongoing and emerging crises of the post-Cold War world continue to test the UNHCR's capacity to provide effective protection and assistance, underscoring the need for continued innovation and adaptation in an ever-evolving global context. Since the end of the Cold War, the *"international refugee protection regime"* has undergone a *"radical transformation,"* compelling the UNHCR to reassess its understanding of refugee emergencies and its role in addressing them[60]. The end of the Cold War brought about significant geopolitical shifts, leading to new patterns of displacement and the emergence of complex refugee crises[61]. In response, the UNHCR experienced significant institutional transformation, operational expansion, and conceptual innovation concerning international protection.

In terms of legal history, the 1990s marked a transformative period for the UNHCR, as it became deeply engaged in responding to large-scale humanitarian crises, particularly those in the former Yugoslavia and the Great Lakes region of Africa. These crises revealed the profound limitations of the existing international refugee protection regime, which struggled to address the complexities of modern displacement characterized by ethnic conflict, systemic human rights abuses, and widespread violence. The disintegration of Yugoslavia and the subsequent ethnic cleansing and violence, alongside the Rwandan genocide and the ensuing displacement crisis in the Great Lakes region, highlighted the urgent need for a more

[59] B. S. Chimni, "From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems," *Refugee Survey Quarterly* 23, no. 3 (2004): 55–73, https://doi.org/10.1093/rsq/23.3.55.
[60] Mary Lynn and De Silva, "Norm Circles, Stigma and the Securitization of Asylum: A Comparative Study of Australia and Sweden" (2017).
[61] Thomas Gammeltoft-Hansen and Nikolas F. Tan, "The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy," *Journal on Migration and Human Security* 5, no. 1 (2017): 28–56, https://doi.org/10.1177/233150241700500103.

comprehensive and robust approach to refugee protection[62]. In response to these emerging realities, the UNHCR significantly expanded its mandate and operational scope, moving beyond its traditional role of providing protection and resettlement to include humanitarian assistance, conflict resolution, and post-conflict reconstruction. The agency's involvement in these crises included coordinating emergency relief efforts, facilitating the safe return of refugees, and working to rebuild war-torn communities, reflecting a broader and more integrated approach to addressing the immediate and underlying causes of displacement.

These experiences underscored the necessity for strengthening International Refugee Law (IRL) and related legal frameworks, such as International Humanitarian Law (IHL) and Customary International Law (CIL). The challenges faced in the Balkans and the Great Lakes region illustrated the need for a more holistic and adaptable legal and institutional response to large-scale, complex emergencies. The inadequacies of the existing frameworks in addressing the blurred lines between refugees, internally displaced persons (IDPs), and other vulnerable groups became apparent, highlighting the importance of developing more comprehensive protection mechanisms and enhancing international cooperation. The lessons learned from these crises serve as a critical reminder of the need for ongoing reform and adaptation of IRL to better respond to the evolving nature of global displacement. As the international community continues to confront new and emerging crises, a strengthened commitment to the principles of IRL and the development of complementary legal frameworks are essential to ensuring that the global response to displacement remains effective and relevant in an increasingly interconnected and volatile world.

International Refugee Law has continued to evolve over the years, increasingly intertwining with various fields of international law. Scholars of international law argue that IRL interacts with International Human Rights Law (IHRL) and International Criminal Law (ICL), creating a multifaceted legal landscape. This intersectionality is crucial for understanding the contemporary challenges and opportunities in refugee protection. Several key articles of the CSR51 form the cornerstone of the current legal framework for refugee protection:

1.1.1. Article 1: This article defines a refugee, which has been instrumental in shaping the legal understanding of who qualifies for refugee status. The criteria outlined in Article 1 have been the basis for determining eligibility for international protection.

[62] Andy Storey, "Economics and Ethnic Conflict: Structural Adjustment in Rwanda," *Development Policy Review* 17, no. 1 (1999): 43–63, https://doi.org/10.1111/1467-7679.00076.

1.1.2. Article 31: This article addresses the issue of refugees unlawfully in the country of refuge. It stipulates that states shall not impose penalties on refugees who enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. This provision recognizes the often-precarious circumstances under which refugees flee their countries and seek asylum.

1.1.3. Article 32: This article concerns the expulsion of refugees. It mandates that refugees lawfully in the territory of a contracting state shall not be expelled except on grounds of national security or public order. Expulsion is to be carried out only under due process of law.

1.1.4. Article 33: Known as the principle of non-refoulement, this article prohibits the expulsion or return *("refoulement")* of a refugee to territories where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion. This principle is considered a cornerstone of international refugee protection.

The interaction between IRL, IHRL, and ICL is a significant aspect of the contemporary legal framework. IHRL provides a broader context for the protection of refugees by guaranteeing fundamental human rights that apply to all individuals, including refugees and asylum seekers[63]. This intersection ensures that refugees are afforded a wide range of rights, such as the right to life, freedom from torture, and the right to an adequate standard of living.

Moreover, the CSR51 intersects with ICL, particularly through its exclusion clauses. Article 1F of the CSR51 specifies that individuals who have committed serious non-political crimes, war crimes, or acts contrary to the purposes and principles of the United Nations are excluded from refugee protection[64]. This clause necessitates a careful assessment of the applicant's background to ensure that perpetrators of serious crimes do not benefit from refugee status.

2. Asylum Seeker and Refugees: Understanding the Differences

First, it's quite important to understand the definition of asylum seekers and refugees itself. In terms of general definition, an asylum seeker is commonly defined as "*an individual*

[63] Alice Edwards, "Temporary Protection, Derogation and the '1951 Refugee Convention,'" *Melbourne Journal of International Law* 13, no. 2 (2012): 595–635.
[64] Jennifer Bond, "Excluding Justice: The Dangerous Intersection between Refugee Claims, Criminal Law, and 'Guilty' Asylum Seekers," *International Journal of Refugee Law* 24, no. 1 (February 1, 2012): 37–59, https://doi.org/10.1093/ijrl/eer039.

who seeks refuge from persecution or serious harm in a country other than their own and is awaiting a decision on their application for refugee status"[65]. On the other hand, a refugee can be defined as "*someone unable or unwilling to return to their own country because of a well-founded fear of persecution on account of race, religion, nationality, social group membership, or political opinion"*[66]. As of 2023, there were 32.5 million refugees and 4.3 million asylum seekers worldwide[67]. Those people, who fled from their country as asylum seekers or refugees, are subject to human rights protection, which is regulated under the 1951 Refugee Convention and related legal basis, which consists of access to basic rights, such as food, water, shelter, and education, also the living support access, such as access to the job market, under the non-refoulment principles, which means they cannot be sent back to their home country, freedom of movement, right to liberty and security of the person, and right of family reunification[68].

In detail, according to the UNHCR publication, asylum seekers have various rights that must be respected by all countries, including: *(1) the right to no resistance at the border, (2) no discrimination, (3) safe access for those who abandon their home countries, and humane treatment during their stay in the host country*[69]. The most important one is the non-refoulment principle, which states that destination nations cannot return asylum seekers to their home countries if their condition remains risky and ineligible[70]. Officially, there are two main ways to convert their status from asylum seekers to refugees. The first is the *Refugee Status Determination* (RSD) procedures, which in most countries that ratify the 1951 Refugee Convention will be conducted independently based on national law that is harmonized with the convention, and in non-signatories' countries, the RSD process will be carried out by the local UNHCR office. Second, under the force majeure condition, such as a sudden outbreak of war or a natural disaster that necessitates an emergency, the *"Prima Facie"* as one of the legal procedures will take effect; prima facie itself can be described as the *"simplified"* version of the RSD process; when a large number of people fleeing from their home countries due to the

[65] James C. Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge University Press, 2014), https://doi.org/10.1017/CBO9780511998300.
[66] Matthew Lister, "WHO ARE REFUGEES?," *Source: Law and Philosophy* 32, no. 5 (2013): 645–71, https://doi.org/10.1007/si.
[67] UNHCR, "Ensuring the Safety of Asylum Seekers" (Geneva, 2023), https://www.unhcr.org/sites/default/files/2023-03/background-guide-challenge-1-ensuring-the-safety-of-asylum-seekers.pdf.
[68] Sébastien Moretti, "Southeast Asia and the 1951 Convention Relating to the Status of Refugees: Substance without Form?," *International Journal of Refugee Law* 33, no. 2 (December 24, 2021): 214–37, https://doi.org/10.1093/ijrl/eeab035.
[69] UNHCR, "Ensuring the Safety of Asylum Seekers."
[70] Cipta Primadasa Primadasa, Mahendra Putra Kurnia, and Rika Erawaty, "Problematika Penanganan Pengungsi Di Indonesia Dari Perspektif Hukum Pengungsi Internasional," *Risalah Hukum*, vol. 17, 2021, https://referensi.elsam.or.id/wp-.

prosecution, the officials of the destination countries do not need to follow the official RSD procedure and able to declare the status of refugee immediately as the person entering their territory by presenting their identity[71]. Furthermore, after the legal procedures are conducted and their status as refugees is approved, they have the following rights and protections as stated in the 1951 Refugee Convention (Table 3).

Table. 3.The Rights of Refugees Based on the 1951 Refugee Convention.

Stated rights	Legal Basis of the 1951 Refugee Convention
Personal Rights	
Non-refoulment principles, meaning refugees cannot be sent back to their country of origin	Article 33
Rights of association for refugees	Article 15
Access to courts	Article 16
Wage-earning employment for refugees	Article 17
Self-employment for refugees	Article 18
Rights provided by the government	
Rights to temporary housing	Article 21
Access to public education	Article 22
Equality in Public Relief	Article 23
Rights to labor legislation and social security	Article 24
Administrative assistance	Article 25
Freedom of movement	Article 26
Identity papers	Article 27
Travel documents	Article 28
Fiscal charges	Article 29
Transfer of assets	Article 30
Refugees unlawfully in the country of refugees	Article 31
Naturalization	Article 34

3. Chapter Conclusion and Personal Opinion

The examination of International Refugee Law reveals a sophisticated legal framework that has demonstrated remarkable adaptability since its establishment in the post-World War II era. The 1951 Convention and its 1967 Protocol constitute the bedrock of international refugee protection, establishing the foundational refugee definition and core principles such as non-

[71] UNHCR, "Ensuring the Safety of Asylum Seekers."

refoulement that continue to govern state obligations toward displaced populations. This legal architecture underwent substantial transformation following the Cold War, when displacement patterns evolved from interstate conflicts to complex emergencies characterized by ethnic strife and state collapse. The evolution necessitated significant institutional adaptation by the UNHCR, expanding its mandate to include internally displaced persons and emphasizing durable solutions. The intersection of IRL with International Human Rights Law and International Criminal Law has created a multifaceted legal landscape that enhances protection mechanisms while introducing implementation complexities, particularly in exclusion clauses and refugee status determination processes. The distinction between asylum seekers and refugees underscores the importance of maintaining protection standards throughout determination procedures and highlights the universality of fundamental rights regardless of formal status recognition.

In my personal opinion, the current state of International Refugee Law presents a paradoxical situation where remarkable achievements in establishing universal humanitarian principles coexist with concerning deficiencies that compromise effectiveness in protecting vulnerable populations. The universality of the CSR51, ratified by 149 states, represents extraordinary consensus on humanitarian principles, while flexible interpretation mechanisms have enabled progressive development through state practice and jurisprudence. However, the framework's limitations are increasingly apparent when addressing contemporary challenges such as mass displacement, climate-induced migration, and state collapse situations. The individualistic approach to refugee status determination proves inadequate for large-scale emergencies requiring swift collective responses. The securitization of migration policies has fundamentally eroded the humanitarian character of refugee protection, transforming rights-based assessments into border control exercises and undermining international cooperation. This trend shifts disproportionate responsibility to developing countries hosting most refugees, representing a concerning departure from foundational principles of burden-sharing and international solidarity central to the original protection regime conception.

The future development of International Refugee Law requires building upon existing strengths while addressing deficiencies through complementary protection frameworks, enhanced burden-sharing mechanisms, and procedural reforms that maintain humanitarian character. The international community should develop binding agreements for climate displacement and mixed migration flows, drawing inspiration from regional approaches like the Cartagena Declaration and OAU Convention that demonstrate progressive development without abandoning core principles. Enhanced burden-sharing through binding international

agreements rather than voluntary arrangements is essential to address inequitable responsibility distribution. Procedural reforms must ensure timely, fair, and accessible status determination processes, supported by capacity building investment in developing countries serving as first asylum countries. International Refugee Law represents one of international law's most humane achievements, embodying global commitment to protecting those without state protection, yet its continued relevance depends on sustained political commitment to humanitarian principles over narrow national interests. The current crisis of over 100 million forcibly displaced persons presents both unprecedented challenges and historic opportunities for meaningful reform that preserves core protections while addressing contemporary realities through balanced approaches prioritizing human dignity over political expediency.

CHAPTER IV: LEGAL HISTORY OF INDONESIA MIGRATION

1. Indonesia Migration History

1.1. Unregulated Migration in Colonial Era (1600-1912)

The fall of Constantinople in 1453 was a major event that disrupted the established trade routes between Europe and Asia, leading to the discontinuation of the Silk Road as the main trading route, and pushing European efforts to find alternative paths to the East in order to fulfill their spice needs [72]. Furthermore, the Ottoman Empire's control over this crucial trading hub by imposed new tariffs, restrict European access to valuable commodities like spices. In response, European nations embarked on maritime explorations, seeking direct sea routes to Asia. This period, known as the Age of Exploration, was placed the Portugal and Spain as the first European countries to establish new trading routes, with the key figures such as Vasco da Gama and also Christopher Columbus who significantly altering global trade dynamics. The new trading route, which provides better direct access to the spice's sources, has started the European colonial ventures in Asia, including Portuguese, Dutch, and British expansions, which reshaped regional socio-economic and political landscapes, marking the beginning of widespread European influence in the East[73].

1.1.1. The European Migration to East Indies

Started on the 15th century, European powers, particularly the Portuguese and Spanish, began exploring Southeast Asia to secure direct access to valuable spices, bypassing Ottoman-controlled trade routes. Portuguese explorers, including Vasco da Gama, established early trading posts in the Maluku Islands, which located in the north of the nowadays Indonesian territory, forging alliances with local leaders to monopolize the spice trade. Similarly, Spanish expeditions led by Ferdinand Magellan marked the beginning of Spanish interest in the region. These interactions with Indonesian kingdoms, initially focused on trade and diplomacy, eventually expanded into colonial endeavors, setting the stage for European dominance in Southeast Asia and profoundly impacting the region's socio-economic and political landscape[74].

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[72] Francesco Pegolotti, "The Decline of Overland Trade," *Unesco*, 1993, https://en.unesco.org/silkroad/sites/default/files/knowledge-bank-article/the end of the silk route.pdf.
[73] Ulil Absiroh, "Understanding of History 350 Years Indonesia Colonized By Dutch," *Jurnal Online Mahasiswa (JOM) Fakultas Keguruan Dan Ilmu Pendidikan (FKIP) Universitas Riau* 1 (2017): 1–15, https://www.neliti.com/publications/205480/sejarah-pemahaman-350-tahun-indonesia-dijajah-belanda.
[74] Naniek Harkantiningsih, "Pengaruh Kolonial Belanda," *Kalpataru, Majalah Arkeologi* 23, no. 4 (2014): 67–80.

The arrival of Dutch explorer Cornelis de Houtman in Banten, one of the Indonesia territories nowadays, in 1595 and the establishment of the *Vereenigde Oostindische Compagnie* (VOC) in 1602 by the Dutch revolutionized the international spice trade. The VOC implemented a monopoly system, sought to eliminate competition through military conflict with the Spanish and Portuguese, and employed a *"divide et impera"* a strategy to manipulate local rivalries among the local kingdoms. By fostering internal disputes, the VOC weakened resistance and secured its dominance over the spice trade, profoundly impacting global commerce and setting a precedent for future colonial enterprises[75]. In addition, the Instability and frequent battles characterized the political environment of the Southeast Asian islands at that time, which were still primarily made up of local kingdoms giving a political benefit to the Dutch explorer. In this context, the Dutch explorers' presence, armed with cutting-edge military hardware, was intended to help the regional kingdoms hold onto power and handle the precarious political situation. The goal of this intervention was to establish a balance of power that benefited Dutch colonial interests and stabilize the area. The Dutch gave local leaders military backing and supplies, which helped to reinforce their power and influence in the turbulent political climate[76]. In a short time, VOC defeated the Portuguese and Spanish merchants, also the East India Company (EIC) which was administered by the British Government and began to rule the Indonesian territory.

Moreover, the government of the Netherlands, gave the VOC special rights under the command of Pieter Both, as the first VOC governor-general, which is called *"octroi"*. The octroi rights consist of : (1) rights to carry out a monopoly on the spice trade in the area between the Cape of Good Hope to the Strait of Magellan including the archipelago, (2) rights to recruit employees based on an oath of allegiance, (3) rights to form an army, (4) rights to conduct wars, (5) rights to build forts, (6) rights to enter into treaties throughout Asia, (6) rights to print and issue currency[77]. Those exclusive rights made the VOC become the world first "*multinational company"* and expand the operation by creating cooperation with the many countries around their occupied territory[78]. By using the rights, the VOC declared war on many local rulers, and

[75] Anju Nofarof Hasudungan, "Pelurusan Sejarah Mengenai Indonesia Dijajah Belanda 350 Tahun Sebagai Materi Sejarah Kritis Kepada Peserta Didik Kelas Xi Sman 1 Rupat," *Widya Winayata: Jurnal Pendidikan Sejarah* 9, no. 3 (2021): 129, https://doi.org/10.23887/jjps.v9i3.39395.
[76] Pandu Utama Manggala, "The Mandala Culture of Anarchy: The Pre-Colonial Southeast Asian International Society," *JAS (Journal of ASEAN Studies)* 1, no. 1 (2013): 1, https://doi.org/10.21512/jas.v1i1.764.
[77] Jajang Nurjaman, "Khazanah: Jurnal Pengembangan Kearsipan, 2019, Vol 12(1)," *Jurnal Pengembangan Kearsipan, 2019, Vol 12(1)* 12, no. 1 (2019): 1735–37, https://jurnal.ugm.ac.id/khazanah/article/download/47711/pdf.
[78] Nurjaman.

interfered with their political vision, then began to colonize by occupying the land from the local rulers who were already defeated by the VOC army[79].

VOC also became the first multinational company in the world, which introduced the use of a stocks market, and recruiting of the employee from overseas formally, and built many seaports, cities, and centers of economic activity such as the local market in their occupied land[80]. Furthermore, the VOC implies the local tax in their colonialized territory, which called *contingenten*, described as the tax which implies directly to the farmer, calculated from the occupied land area, and *verplicte leverentien* as the local tax which calculated based on the contract between the local rulers with the VOC. Those policies have a positive impact on the colonial economy and help VOC to develop many facilities to support their activities[81]. Following that, the VOC establishes Batavia, which is now Jakarta, the capital of Indonesia, to serve as the trading operation's business administration in Asia, attracting other migrants from nearby territories such as Chinese, Japanese, and Malayan countries in search of better economic opportunities.

The initial international migration within the Indonesian territories occurred due to the relocation of employees of the VOC, from the overseas to the VOC regional office in the Batavia. This historic movement saw the arrival of over 670,000 employees and their families, marking the establishment of the first international settlement in Batavia[82]. Moreover, spurred by the rapid development of burgeoning cities like Batavia within the Indonesian territories, a subsequent wave of mass migration occurred outside the purview of the VOC administration. This significant movement primarily comprised migrants from China in the 1700s. Over 50,000 individuals, accompanied by thousands of ships, flocked to these emerging urban centers, shaping the cultural and demographic landscape of the region[83]. The Chinese migrants are followed by the migrants who came from the Middle East, and Several European countries, with the main purpose to be involved in international trade as a merchant in Batavia, during this period, many of the people from the Netherlands in the Europe continents are also migrate

[79] Samsi Wahyudi and Ragil Agustono, "Peranan Jan Pieterzoon Coen Di Bidang Politik Dan Militer Tahun 1619-1623," *Jurnal Swarnadwipa* 1, no. 1 (2017): 1–8.
[80] Oscar Gelderblom, Abe De Jong, and Joost Jonker, "The Formative Years of the Modern Corporation: The Dutch East India Company VOC, 1602-1623," *Journal of Economic History* 73, no. 4 (2013): 1050–76, https://doi.org/10.1017/S0022050713000879.
[81] Ahmadin Ahmadin, "Masalah Agraria Di Indonesia Masa Kolonial," *Attoriolog* IV, no. 1 (2007): 55–70.
[82] Amry Vandenbosch, *The Netherlands Indies*, *The Annals of the American Academy of Political and Social Science*, 1st ed., vol. 226 (Leiden, Netherlands: KITLV Press, 1943), https://doi.org/10.1177/000271624322600109.
[83] Patricia Tjiook-Liem, "The Chinese from Indonesia in the Netherlands and Their Heritage: Chinese Indonesian Heritage Center (CIHC)," *Wacana* 18, no. 1 (2017): 1–23, https://doi.org/10.17510/wacana.v18i1.571.

to Netherland Indies (Indonesia territories as today) as a government officer, army or even trader[84]. Recorded from 1800s to 1900, the composition of the citizen in Batavia can be shown in the Table 4.

Table. 4.Composition of the Batavia Citizen in 1890 to 1905.Source: Yudi Prasetyo, *"Komposisi Penduduk Batavia",* Genta, 2(1), 2014[85]

Year	European	Chinese	Arabic/Middle Eastern	East Asian	Locals	Total
1890	10.793	78.925	2.410	162	978.466	1.070.756
1900	13.653	89.064	3.062	252	1.831.974	1.938.006
1905	13.805	92.520	2.772	277	1.999.978	2.109.352

1.1.2. Chinese Migration to East Indies

The migration of Chinese populations to the Indonesian archipelago during the 18th century must be contextualized within the broader dynamics of Qing China's demographic transformation and economic pressures, as well as the VOC's colonial policies in the Dutch East Indies. By the early 1700s, the population in southeastern China—particularly in the provinces of Fujian, Guangdong, and Hainan—had grown substantially. Qing-era sources estimate China's population increased from approximately 150 million in the late 17th century to over 300 million by the early 19th century, creating immense pressure on arable land and traditional livelihoods. Many southern Chinese, particularly those from coastal and riverine areas, were seafarers and traders by heritage and thus naturally oriented toward maritime migration.

Simultaneously, the expansion of the *Vereenigde Oostindische Compagnie* (VOC) created economic pull factors in Java and other parts of the archipelago. The Dutch East Indies developed into a commercial hub where Chinese migrants found opportunities in agriculture (notably sugar production), mining, construction, shipbuilding, and trade. In particular, Batavia (modern-day Jakarta) became a magnet for Chinese immigrants. By the early 1730s, Batavia's Chinese population had grown to an estimated 10,000–15,000 individuals, outnumbering both the Dutch settlers and other foreign Orientals. The VOC viewed the Chinese as both indispensable to the colonial economy—particularly as tax farmers and entrepreneurs—and as a potential demographic and political threat, especially as their population expanded independently of state control.

[84] Yudi Prasetyo, "Dari Oud Batavia Sampai Nieuwe Batavia: Sejarah Ota Batavia 1596-1900," *Genta* 2, no. 1 (2014).
[85] Prasetyo. pp. 6-7.

The Dutch colonial legal framework in the 18th century operated under a system of ethno-legal pluralism. The VOC categorized its subjects into three main legal groups: *Europeanen* (Europeans), *Vreemde Oosterlingen* (Foreign Orientals), and *Inlanders* (Natives/Indigenous peoples). The Chinese were grouped under the *"Foreign Oriental"* category, which placed them outside both the colonial elite and indigenous communities, subjecting them to a distinct set of laws, obligations, and rights. This legal classification was not merely symbolic—it carried substantive consequences in areas such as taxation, residence, travel, punishment, and judicial recourse.

Under this structure, the VOC appointed Chinese officers (*Kapitein, Luitenant*, and *Majoor der Chinezen*) who acted as intermediaries between the colonial state and the Chinese community. These officials, operating within institutions such as the Kong Koan (Chinese Council), had jurisdiction over internal matters such as marriage, inheritance, funerary rites, and communal disputes. The Statuten van Batavia, a codification of VOC colonial law introduced in 1642 and revised in later decades, outlined the legal procedures applicable to various ethnic groups, reinforcing a hierarchical and segregated legal system. Chinese litigants, for instance, were often barred from appealing to the Raad van Justitie (Court of Justice) in the same terms as Europeans and were judged under separate customary procedures unless criminal or commercial violations required VOC intervention.

Furthermore, the legal autonomy granted to the Chinese community was conditioned upon their loyalty and perceived utility to the colonial economy. When unrest grew in the early 1730s, partly due to economic downturns in sugar exports and fears of rebellion, the VOC responded with increasing suspicion. In October 1740, this culminated in the Batavia massacre, when over 10,000 Chinese residents were killed, following rumors of a Chinese-led insurrection. The violence was legally justified under emergency security decrees issued by the Dutch Council of Indies, demonstrating how the colonial legal system could be swiftly bypassed or suspended in favor of extrajudicial collective punishment. After the massacre, surviving Chinese were forcibly relocated to designated ghettos or wijken, and subject to mandatory registration, residential permits, and curfews under the Wijkenstelsel and Passtelsel, early forms of legal segregation that prefigured apartheid-style spatial policies.

1.1.3. Rebellion of the Chinese Migrant

Additionally, unregulated international migration posed a significant challenge to the administration of the VOC in Batavia and its surrounding areas. This was exemplified by the

events of 1740, when tensions between the VOC and migrant communities escalated into a large-scale rebellion, because of the unfair treatment between the migrants and also very high taxes which imposed to the migrant, much higher compared with the locals[86]. The rebellion escalated into violent action, incited by over 10,000 dissatisfied Chinese migrants who opposed the VOC's monopolization of commodities vital to their livelihoods[87]. These commodities, which were sold by the Chinese migrants, were subjected to strict VOC control, leading to heightened economic grievances among the migrant population[88].

The rebellion reached a violent stage, when over 10,000 dissatisfied Chinese migrants clashed with the VOC army, resulting in approximately 38,200 casualties on both sides[89]. This conflict, sparked by the VOC's monopolization of essential commodities, led to revenue inequities between the VOC, locals, and Chinese migrants, posing a substantial threat to colonial authority and stability[90]. The uprising rebellion underlines the dangers of uncontrolled international migration within colonial contexts, straining social structures and precipitating violent resistance against colonial powers. The influx of migrants, driven by economic opportunities and discontent with VOC policies, highlighted the risks of relying on migrant labor within colonial economies. The rebellion served as a cautionary tale, prompting colonial administrations to reevaluate migration policies and labor management to mitigate future unrest and navigate the delicate balance between economic exploitation and social stability[91].

Moreover, the rebellion of 1740 served as a bold reminder of the challenges inherent in managing migrant communities within the VOC's colonial territories. The VOC administration in Batavia struggled to effectively regulate and integrate migrant populations while simultaneously safeguarding its own economic interests and maintaining social order. The uprising underscored the complex dynamics of colonial rule, wherein economic exploitation and social marginalization of migrant communities could fuel resentment and lead to violent resistance against colonial authorities.[92]. Furthermore, the other migrant's rebellion was taking place in 1888, which erupted in the Banten Province of the Dutch East Indies, driven by migrant communities, particularly Chinese settlers, and local farmers against European colonial rule.

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[86] Prasetyo.pp. 8-9
[87] Ardhi Yudisthira, "Pengaruh Terjadinya Tragedi Angke Tahun 1740 Terhadap Bidang Sosial-Ekonomi Di Batavia," *Pesagi* 1, no. 6 (2013).
[88] Harkantiningsih, "Pengaruh Kolonial Belanda.". pp. 66-71.
[89] A. R.T. Kemasang, "The 1740 Massacre of Chinese in Java: Curtain Raiser for the Dutch Plantation Economy," *Critical Asian Studies* 14, no. 1 (1982): 61–71, https://doi.org/10.1080/14672715.1982.10412638.
[90] Kemasang.pp. 60-63.
[91] Kemasang.pp. 67-69.
[92] Syamsul Hadi, "Lasem: Harmoni Dan Kontestasi Masyarakat Bineka," *ISLAM NUSANTARA: Journal for Study of Islamic History and Culture* 1, no. 1 (2020): 163–208, https://doi.org/10.47776/islamnusantara.v1i1.49.

They protested economic exploitation, discriminatory policies, and social injustices imposed by the Dutch administration[93]. The rebellion involved coordinated actions including protests, strikes, and armed resistance between the migrants and the VOC army. Despite facing significant military resistance, the rebels persisted for months before being suppressed by Dutch colonial forces. The uprising underlines the resistance against colonial oppression and highlighted the diverse treatment among migrant and indigenous populations in the Dutch East Indies. One of the most significant reasons of those two rebellions is because the tax was too high, about 33 percent of the total value of the occupied land per year[94].

1.2. Regulated Migration in Colonial Era (1912-1945)

In response to the massive rebellion which ignited by the migrants, the Dutch colonial Government in Batavia is proactively addressing anticipated challenges by establishing an organization which specifically tasked with managing the influx of foreign individuals into the Dutch East Indies territories. This is because the influx of migrants into the Dutch East Indies raised concerns about social and cultural integration, labor management, and the preservation of Dutch colonial interests, which pushes the Dutch colonial government to control the migrants. The establishment of the Immigration Commission aimed to address these challenges by implementing regulations and procedures to govern immigration, including entry requirements, residency permits, and labor contracts [95]. As the responsibilities and scope of this office expanded, it underwent a transformation in 1921, evolving into the *Immigratiedienst* (Immigration Services Department)[96].

During the colonial administration of the Dutch East Indies, the immigration service fell under the purview of the *Director Yustisi*, who oversaw its organizational structure and the formation of various committees to manage visa applications and other essential divisions. Under *Director Yustisi* leadership, the Corps *ambtenaar immigratie*, or the Immigration Civil

[93] Dadi Darmadi, "The Geger Banten of 1888: An Anthropological Perspective of 19th Century Millenarianism in Indonesia," *Heritage of Nusantara: International Journal of Religious Literature and Heritage* 4, no. 1 SE-Articles (July 8, 2015): 65–84, https://doi.org/10.31291/hn.v4i1.62.
[94] M Wahid, "Membaca Kembali Pemberontakan Petani Banten 1888 Dalam Struktur Giddens," *Dedikasi: Journal Of Community Engagment*, 2010, http://jurnal.uinbanten.ac.id/index.php/dedikasi/article/view/1739.
[95] Desinta Wahyu Kusumawardani, "Menjaga Pintu Gerbang Negara Melalui Pembatasan Kunjungan Warga Negara Asing Dalam Mencegah Penyebaran COVID-19," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 3 (2020): 517, https://doi.org/10.30641/kebijakan.2020.v14.517-538.
[96] Absiroh, "Understanding of History 350 Years Indonesia Colonized By Dutch.", pp.1-13.

Servant Corps, experienced significant expansion[97]. To manage the complexities of immigration, the center recruited experienced and highly educated personnel, many of whom were dispatched workers from the Netherlands, known as *"uitgezonden krachten"*[98]. These dispatched workers brought specialized skills and expertise to the immigration office, contributing to its efficient operation and management. Moreover, the influx of Dutch personnel ensured that all key positions within the immigration office were held by Dutch officials.

The newly developed organizational structure of the immigration service which was established in 1921 was designed to handle various aspects of immigration, including visa processing, documentation, and enforcement of immigration laws. Committees were established to streamline these processes, ensuring that the immigration office operated smoothly and effectively. The immigration policy set by the Dutch East Indies government was an open-door policy *(opendeur politiek*[99]). Through this policy, the Dutch East Indies government opened the widest possible way for foreigners to enter, live, and become citizens of the Dutch East Indies, but with the strict control in the territory. The main purpose of implementing the *"open door"* immigration policy was to obtain allies and investors from various countries to develop exports of plantation commodities in the Dutch East Indies region[100]. In addition, the presence of foreigners can also be used to jointly exploit and suppress the indigenous population[101]. Then it can be concluded if the *"open-door"* policy of the Dutch East Indies were designed to attract foreign allies and investors while maintaining strict control to exploit resources and suppress the indigenous population.

The organizational structure of the Dutch East Indies government immigration service, though expanding with the establishment of regional offices, remained relatively simple due to the manageable volume of immigration traffic during that period. During that period, the Immigration policy only focused on three key areas: entry and stay permits, foreign residents' regulation, and citizenship matters, which is quite simple compared by the role of immigration department by today. During this era, the immigration governed by regulations such as the

[97] Chaerul Mundzir, Muhammad Arif, and Aksa Aksa, "Kebijakan Imigrasi Zaman Hindia Belanda (1913-1942)," *Rihlah: Jurnal Sejarah Dan Kebudayaan* 9, no. 1 (2021): 01–12, https://doi.org/10.24252/rihlah.v9i1.17962.
[98] Harkantiningsih, "Pengaruh Kolonial Belanda.", pp. 22-25.
[99] Junior Perdana Sande, "Selective Policy Imigrasi Indonesia Terhadap Orang Asing Dari Negara Calling Visa," *Indonesian Perspective* 5, no. 1 (2020): 92–111, https://doi.org/10.14710/ip.v5i1.30196.
[100] Andi Takdir Djufri, "Fungsi Keimigrasian Menurut Undang-Undang Nomor 9 Tahun 1992," *Jurnal Ilmiah Mahasiswa Jurusan Hukum Ekonomi Syariah* 3, no. 2 (2022): 128–36.
[101] Ralph Rotte and Peter Stein, "Studies and Comments 1 Migration Policy and the Economy: International Experiences Hanns Seidel Stiftung Academy for Politics and Current Affairs," 2002.

Toelatings Besluit (1916), which regulated the Entry and residence permits for foreigner, and Citizenship procedures, *Toelatings Ordonnantie* (1917), which regulated entry permit for the conveyance and its passengers and *Regelings Passport* (1918), which regulated the passport management, these areas were carefully managed to ensure order, security, and sovereignty within the colony[102].

The establishment of the immigration regulations marked an important moment in the governance of foreigners in the Dutch East Indies. These new laws introduced the first formal requirement for foreign residents to register, ensuring that all foreigners residing in the colony were legally obligated to obtain a valid resident permit, and also manage the trade ship along the main harbor, such as Sunda Kelapa harbor which located in Batavia. This regulation aimed to better control and monitor the growing number of foreign nationals, reinforcing the legal framework for immigration and residency in the Dutch East Indies.

As shown in the table 6, between 1913 and the 1930s, the Netherlands Indies witnessed a significant increase in the number of foreigners who holding the valid stay permits. Among the foreign groups, the Chinese population was the largest, numbering 1,233,214 people and making up 2 percent of the total population. Europeans followed with 240,417 individuals, representing 0.4 percent of the population, while Eastern Asians, totalling 115,535 people, accounted for 0.2 percent. In comparison, the native population was vastly larger, with 59,138,067 people, constituting 97.7 percent of the population. This data indicates that although the native residents overwhelmingly dominated the population, immigration and the number of foreigners holding stay permits were gradually increasing during this period.

Table. 5.The number of foreigners holding stay permits comparable to that of Netherlands Indies native residents in 1913-1930s.Source: Mundzir, 2021[103]

Group of Society	Number of the person	Comparable Percentage (percent)
European	240.417	0.4
Chinese	1.233.214	2.0
Eastern Asian	115.535	0.2
Natives	59.138.067	97.7

During this era, also for the first time, the Dutch east indies citizen who are residing outside the territory of Dutch east indies were officially recorded, marking a significant development in tracking the movement of the native population abroad. This information is

[102] Mundzir, Arif, and Aksa, "Kebijakan Imigrasi Zaman Hindia Belanda (1913-1942)."
[103] Mundzir, Arif, and Aksa., pp. 12-15.

detailed in Table 6, which provides insights into the number of the Dutch east indies citizen who are living outside their homeland, reflecting the growing patterns of migration and the importance of legal documentation for Indonesian citizens residing abroad during this period. This initiative was part of the broader efforts to regulate both foreign and native populations under the evolving immigration framework of the Dutch East Indies.

Table. 6.The Dutch east indies citizen who holder the Resident Permit are living abroad (Malaya and Singapore) during 1900 to 1947.Source: Bahrin, 1967[104]

Year	Number
1911-1920	26247
1921-1930	27472
1931-1935	8515
1936-1940	13211
1941-1947	10238
Not Stated	3371
TOTAL	89.654

Despite the unstable period marked by Japan's entry into Dutch east indies territory in 1942, the existing immigration regulations remained largely intact during the Japanese occupation. Surprisingly, there were minimal alterations to the pre-existing regulatory framework, highlighting the enduring influence and resilience of Dutch East Indies immigration law even amidst significant geopolitical shifts[105]. The continuity of immigration regulations during this period underscores their importance in maintaining administrative continuity and preserving order amidst the upheaval of colonial rule.

However, when Indonesia's declare their independence on August 17, 1945, the significance of immigration regulations reached a critical juncture. The newfound sovereignty of Indonesia heralded a seismic shift in immigration policy, as the nation sought to assert control over its borders and shape its own governance. This transformative moment marked the beginning of a redefinition of immigration policies in Indonesia, as the nation embarked on a journey towards self-determination and nation-building. The declaration of independence signaled the need for a fresh approach to immigration regulation, reflective of Indonesia's status as an independent nation charting its own path forward, distinct from its colonial past. Thus, the period following independence witnessed the emergence of new immigration laws and

[104] T Shamsul Bahrin, "The Growth and Distribution of the Indonesian Population in Malaya," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 123, no. 2 (1967): 267–86.
[105] Khairana Zata Nugroho et al., "' De Moelijike Middenweg ': Association Politics between the Dutch East Indie and the Netherlands through Indische Toneel ," *Indonesian Historical Studies* 7, no. 2 (2023): 154–64.

policies tailored to the aspirations and needs of the newly independent Indonesian state, setting the stage for a new era in immigration management.

1.3. Post-Independence Migration Era (1945-1970)

After the Indonesian independence proclamation on August, 17 1945, the Dutch east indies Immigration laws, which are *toelating besluit, telating ordonattie, and passport reigling* were still in use until the mid of 1940s. However, during this moment, the newly independent Indonesia recognized the imperative of shaping its own immigration policies to reflect its unique identity and aspirations. This marked a watershed moment where immigration regulations evolved from a colonial tool of control to a symbol of national autonomy and self-determination[106]. In addition, to overcome the legal vacuum, immigration laws and regulations from the era of the Dutch East Indies government must be revoked and replaced with legal products that are in line with the spirit of independence. During the independence revolution, two Dutch East Indies legal products related to immigration were revoked, namely (a) Toelatings Besluit (1916) changed to *Penetapan Ijin Masuk (PIM)* or Entry Permit regulation, which was included in State Gazette Number 330 of 1949, and (b) Toelatings Ordonnantie (1917) changed to *Ordonansi Ijin Masuk (OIM),* or Entry Permit Ordinance in State Gazette Number 331 of 1949. During the independence revolution, immigration institutions still used the organizational structure and work procedures of the immigration service *(Immigratie Dients)* left behind by the Dutch East Indies.

There were 4 (four) important events after the proclamation of independence of the Republic of Indonesia related to immigration. First, the Repatriation of Allied prisoners-of-war and internees (APWI) and Japanese soldiers; this event was marked by the transport of ex APWI and the disarmament and transportation of Japanese soldiers in Central Java in particular, on the islands of Java and Indonesia in general which were handled by the Djepang Transportation Organizing Committee (POPDA). Despite Japan's surrender in August 1945, the plight of APWI persisted amidst the rising tide of Indonesian independence movements. The young Indonesian freedom fighters, opposed to both Dutch colonialism and Japanese occupation, engaged in revolutionary actions that sometimes targeted Dutch and Japanese individuals. The arrival of Allied forces in Java triggered violent clashes with Indonesian

[106] Anindito Rizki Wiraputra, "Definisi Pengungsi Dan Implikasinya Pada Hukum Keimigrasian Indonesia (The Implication of Defining Refugee in Indonesian Immigration Legal System)," *Jurnal Ilmiah Kajian Keimigrasian* 1, no. 1 (2018): 63–72.

insurgents, who viewed the Allies as allies of Dutch colonialism. In 1946, a cooperative effort between Indonesia and the Allies facilitated the repatriation of APWI. Utilizing the POPDA apparatus, the Indonesian government by the Immigration services successfully evacuated approximately 36,280 APWI, predominantly women and children, to assembly points in Allied-controlled areas. This humanitarian endeavor marked a significant step in post-war reconciliation and reconstruction efforts amidst the complex political landscape of post-colonial Indonesia[107].

Secondly, during the Revolution for Independence in the year of 1950s, the immigration services served as intermediaries in bartering activities, facilitating the acquisition of weapons and airplanes which are very crucial to maintain the independence, because the Dutch army with the help from allies was trying to re-claim the Indonesia territory as their overseas colony [108] .During the struggle for independence, numerous Indonesian freedom fighters frequently embarked on clandestine excursions overseas, especially to neighbouring territories such as Singapore and Malaysia, without the necessity of passports. The internationally meeting, which was established by the Indonesian freedom fighter, is vital for gaining international support, maintaining Indonesia's independence, and getting financial help abroad[109]. The role of the immigration services as facilitators in these transactions underscores the complex and multifaceted nature of the revolution, where diplomatic maneuvering and resource acquisition played pivotal roles alongside armed resistance[110]. Despite the absence of formal documentation, the fighters' travels abroad served as crucial conduits for bolstering the revolution's momentum and garnering support on the international stage, contributing significantly to Indonesia's eventual attainment of independence.

Thirdly, it started immediately after the declaration of Indonesian independence, where a political struggle began with efforts at international recognition and making sure Indonesia's voice was recognized in the international arena. The diplomatic struggle began in earnest with the Inter-Asian Conference held in New Delhi, India. The Indonesian Ministry of Foreign Affairs played an active part in this conference to establish recognition of Indonesia as a

[107] R.H.A Saleh, "Allied Prisoners-of-War and Internees (A.P.W.I.) Di Jawa Dan Repatriasinya Setelah Perang Berakhir" (Universitas Indonesia, 2002), https://lib.ui.ac.id/detail?id=72678&lokasi=lokal.
[108] Lukman Nadjamuddin et al., "Resisting Return to Dutch Colonial Rule: Political Upheaval after Japanese Surrender during the Independence Movement in Sulawesi, Indonesia," *Histories* 2, no. 4 (2022): 426–38, https://doi.org/10.3390/histories2040030.
[109] Benedictus Peter Sinarto, "Memories of Konfrontasi and Anti-Malaysia Sentiment in Indonesia," *Jurnal Empirika* 5, no. 1 (2021): 69–82, https://doi.org/10.47753/je.v5i1.91.
[110] Andrew M Carruthers, "Clandestine Movement in the Indonesia-Malaysia Migration Corridor : Roots , Routes , and Realities," *ISEAS. Yusof Ishak Institute* 58, no. 58 (2017): 1–8.

sovereign country. In the post-independence period, the Ministry was faced with the urgent task of issuing travel documents for government missions abroad. A *"Certificate considered as a passport"* was issued for the first time by the Ministry-a landmark development that made it the first official travel document issued by Indonesia after independence. This travel document symbolized the diplomatic debut of Indonesia on the world stage and the nation's determination to deal with the international community as an independent and sovereign entity. The issuance of this travel document underlined the diplomatic resilience of Indonesia to negotiate the complexities of international relations in the post-colonial era. It laid the foundation for Indonesia's diplomatic engagement and paved the way for its eventual recognition as a sovereign state by the international community. The Indonesian delegation led by H. Agus Salim (the first Indonesia foreign minister) took part in introducing the Indonesian government's *"Diplomatic Passport"* to the international community.

The last key events on the Indonesia immigration history are the establishment of the Immigration office in the Aceh province, as the only unoccupied territory in Indonesia by the Dutch. The establishment of the immigration office in the Aceh provinces is one of the monumental events for the Indonesia government to emphasize to the international world that Aceh is one of the Indonesia territories. Since 1945, Aceh has been in the frontline of nation-building efforts, demonstrating resilience and proactive governance in establishing governmental institutions to support the fledgling nation's administrative structures. Guided by visionary leaders such as Amirudin, Aceh went ahead to establish immigration offices in five cities, exemplifying the dedication of the region to the cause of national unity and good governance during the tumultuous years of the independence revolution. The most important organizational change in 1947 was the transfer of the Immigration Service from the Ministry of Justice to the Ministry of Foreign Affairs.[111]. This strategic decision mirrored Indonesia's growing diplomatic priorities, which recognized that immigration policy plays an important role in shaping the country's international relations and projecting sovereignty in the global arena. Aceh is a prime illustration of Indonesia's current efforts to strengthen its administrative capabilities while consolidating its identity as a sovereign state. For Aceh, this demonstrates its historical significance and the contribution it has contributed to the nation's growth.

Furthermore, Indonesia's transition towards a republican form of governance evolved gradually, with the interim phase as the United States of Indonesia, or *Republik Indonesia Serikat* (RIS), marking a significant chapter in its history. On January 26, 1950, on this

[111] Djufri, “Fungsi Keimigrasian Menurut Undang-Undang Nomor 9 Tahun 1992.”

significant legislative transition, the Dutch East Indies immigration service was formally transferred to the Indonesian government[112]. While many structures and legal frameworks was still depended on the Dutch East Indies period, several framework adaptations were made to ensure alignment with Indonesia's national interests. Notably, the appointment of *Mr. H.J. Adiwinata* as the first Indonesian national as the Head of the Immigration Service underscored Indonesia's commitment to indigenous leadership and representation[113]. However, the organizational structure of the Immigration Service, were still following the *Immigratie Dients* model, maintained simplicity under the coordination of the Minister of Justice, ensuring operational and administrative efficiency. This transitional period was also a pragmatic period of Indonesia's governance, which balanced continuity with the assertion of national sovereignty and identity, finally laying the ground for a unified independent republic.

During the short era of RIS, the immigration office was able to issue three important legal enactments, proof of the quick adaptation of the nation to emerging needs and challenges. First, the Decree of the Minister of Justice RIS Number JZ/239/12, dated 12 July 1950, provided regulations related to passengers arriving in all ports that were not previously determined to be a 'landing port'. This will show the importance of regulatory functions surrounding entry through maritime entry ports. These regulations were proposed for streamlining customs and adding value to security at borders regarding proper accounting and processing at entry ports. The second is RIS Emergency Law Number 40 of 1950 regarding Travel Documents of the Republic of Indonesia. It showed the urgency to standardize travel documents and to provide a legal umbrella regarding the issuance and management of travel documents that were necessary for sea and air transportation, both inside the country and abroad, while paying attention to the facilitation of smooth movement and ensuring national security. Third, the RIS Emergency Law Number 42 of 1950 on Immigration Customs was the milestone to formalize immigration customs procedures and stipulate responsibilities and protocols to govern immigration-related activities at ports of entry. The law, promulgated in the State Gazette of the Republic of Indonesia in 1950, had indicated that the government was serious in effectively implementing immigration regulations[114]. Together, these legal products

[112] Muhammad Alvi Syahrin, Anindito Rizki Wiraputra, and Koesmoyo Ponco Aji, "Indonesian Legal Policy in Treating International Refugees Based on Human Rights Approach," *Law and Humanities Qurterly Reviews* 1, no. 4 (2022): 41–55, https://doi.org/10.31014/aior.1996.01.04.41.
[113] Alamsyah Bahari, "Between the Protection and Humanity: The Implementation of Ultimum Remedium Principle in Immigration Cases," *Indonesian Journal of Advocacy and Legal Services* 2, no. 2 (2020): 123–98, https://doi.org/10.15294/ijals.v2i2.38134.
[114] Wilonotomo and Revinka Dyah Fatcahya, "Analisis Tindakan Administratif Keimigrasian Terhadap Warga Negara Asing Di Indonesia," *Jurnal Ilmiah Kajian Keimigrasian* 1, no. 1 (2018): 97–108.

represent Indonesia proactive approach to immigration governance in a period of transition and underline the nation's efforts to establish robust regulatory frameworks for national security and administrative efficiency.

Furthermore, the establishment of the Parliamentary Democracy Era signified a dramatic shift in immigration employment, with the expiration of the work contract for Dutch nationality employees at the end of the year 1[115]. This event was generated much controversy since it coincided with the period when the Indonesian government made an accelerated effort to boost the immigration service. The period between 1950 and 1960 thus saw the Immigration Office begin to expand rapidly, with a proliferation of immigration offices throughout the archipelago and further designation of landing ports as part of its efforts towards improved border control and traffic regulation. This rapid expansion, however, brought its own administrative problems, such as filling the plethora of vacancies and building the institutional capacity to support the swift development of the organization. Despite these challenges, the decade was marked by a steadfast resolve toward modernization and the strengthening of Indonesia's immigration system. This was in line with the country's readjustment of priorities towards good governance and national security. The efforts made in this era of change gave the immigration office a good foothold to become one of the leading agencies tasked with the responsibility of border management and population movement in Indonesia.

During the era of 1960s, specifically on January 26, 1960, the immigration service achieved significant organizational development by establishing the Immigration Bureau Headquarters in Jakarta, along with the new 26 regional immigration offices, 3 immigration branch offices, 1 immigration inspectorate office, and 7 overseas immigration posts[116]. This period of expansion marked a milestone in the development of Indonesia's immigration infrastructure, significantly enhancing the nation's ability to manage border control and immigration affairs comprehensively. By January 1960, the immigration service had grown substantially, employing a total of 1,256 individuals[117]. Notably, all personnel were Indonesian nationals, reflecting the government's dedication to indigenizing critical institutions and fostering local expertise in immigration management. This included an increase in both administrative staff and technical officers for a strategic and comprehensive approach toward staffing and capacity-building. With an increasingly robust organizational structure and a

[115] Gert Rosenthal, "Economic and Social Council," *The Oxford Handbook on the United Nations* 10319, no. December 1998 (2009), https://doi.org/10.1093/oxfordhb/9780199560103.003.0007.
[116] Mundzir, Arif, and Aksa, "Kebijakan Imigrasi Zaman Hindia Belanda (1913-1942).". pp. 12-17.
[117] Sande, "Selective Policy Imigrasi Indonesia Terhadap Orang Asing Dari Negara Calling Visa.". pp. 44-53.

skilled workforce, Indonesia was well-placed to deal with increasing challenges and complexities in the management of immigration. This position made it a regional leader in border control and population regulation.

In the field of immigration regulation, starting from this period, the Indonesian government had the freedom to change the colonial immigration from the *open door* into a *selective policy*[118]. The selective policy is based on protecting national interests and emphasizes the principle of providing greater protection to Indonesian citizens. The approaches used and implemented simultaneously include the prosperity approach and the security approach. Some of the immigration arrangements issued include: (1) immigration traffic arrangements; i.e. inspection of immigration documents for passengers and crew of ships from abroad carried out on board the ship during the voyage, (2) Arrangements in the field of resident aliens, with the enactment of the Emergency Law Number 9 of 1955 concerning Foreign Residents (State Gazette of 1955 Number 33, Supplement to State Gazette Number 812), (3) Regulations in the field of foreigner supervision, with the enactment of the Emergency Law Number 9 of 1953 concerning Monitoring of Foreigners (State Gazette of 1953 Number 64, Supplement to State Gazette Number 463), (4) Arrangements regarding offenses/criminal acts/criminal events/criminals in the field of immigration, with the ratification of Emergency Law Number 8 of 1955 concerning Immigration Crimes (State Gazette of 1955 Number 28, Supplement to State Gazette Number 807), (5) Regulations in the field of citizenship , during this period an important legislative product was passed regarding citizenship, namely Law Number 2 Years 1958 concerning Agreement Between the Republic of Indonesia and the People's Republic of China Regarding the Issue of Dual Nationality (State Gazette of 1958 Number), (6), and Law Number 62 of 1958 concerning Citizenship of the Republic of Indonesia (State Gazette of 1958 Number 113, Supplement to State Gazette Number 1647), (7) Issues of Chinese descent citizenship, (8) Implementation of Alien Registration (POA)[119].

The era of Parliamentary Democracy has also seen some major developments in the regulation of different aspects of migration, from the newly developed standard operational procedures in issuing of visas and passports to the regulation of the issuance of the international travel documents and also the adjudication of immigration-related offenses, alongside the

[118] Guntur Widyanto and Riri Ardyaningtyas, "Kebijakan Selektif Di Bidang Keimigrasian Menghadapi Pandemi Global Covid-19," *Jurnal Ilmiah Kajian Keimigrasian* 3 (2020): 51–61, https://journal.poltekim.ac.id/jikk/article/download/118/115/.

[119] Bilal Dewansyah, "Perkembangan Politik Hukum Dan Kebutuhan Hukum Keimigrasian Indonesia: Menjawab Sebagian, Melupakan Selebihnya," *Hasanuddin Law Review* 1, no. 2 (2015): 140, https://doi.org/10.20956/halrev.v1n2.88.

evolution in immigration-related legal frameworks[120]. In this era, the major transformations in terms of the legal landscape took place to adapt the dynamic nature of international migration into the working of the immigration systems. Visas, passports, and interstate travel documents emerged as crucial legal instruments facilitating international mobility and regulating the entry and exit of people across national borders. These not only serve as identifiers of nationality but also play a very important role in safeguarding national security interests and regulating the flow of people across international boundaries. The regulatory framework governing the issuance and utilization of these documents underwent refinements to enhance their efficacy and address emerging challenges in migration management.

Moreover, it was a period which characterized by an increased emphasis on combating immigration crimes and compliance with immigration laws and regulations. Efforts had been made to detect, investigate, and prosecute the offenses of illegal entry, human trafficking, and document fraud, which would eventually enhance the integrity of immigration systems and protect migrants rights. Moreover, the need was felt to register the immigration of foreigners and their route toward acquiring citizenship, an act that further developed immigration law toward a variety of needs and situations created within migrant populations. Regulations providing for mechanisms to simplify registering foreign nationals within borders while streamlining the citizenship-acquiring process were essential ways of social integration to culminate into an inclusive society[121].

Several conclusions can be drawn from the preceding description regarding the historical development of Indonesia's immigration authority. One of the most important points in terms of legal developments during the Parliamentary Democracy era was the replacement of the *Regelings Passport*, which had been in effect since 1918, which changed by the enactment of Law Number 14 of 1959 concerning Travel Documents of the Republic of Indonesia[122]. This legislative overhaul marked a significant milestone in the evolution of Indonesia's immigration regime, introducing modernized travel documents that reflected contemporary standards and practices in international travel and migration management. The new law, as published in the State Gazette of 1959 Number 56, Supplement to State Gazette Number 1799, laid the foundation for a more robust and streamlined system of travel

[120] Hilda Masniarita Pohan and Yodi Izharivan, "Inside the Indonesian Migration: A Historical Perspective," *Jurnal Manajemen Maranatha* 16, no. 2 (2017): 145, https://doi.org/10.28932/jmm.v16i2.385.
[121] Bilal Dewansyah, Wicaksana Dramanda, and Imam Mulyana, "Asylum Seeker in the Non-Immigrant State And The Absence of Regional Asylum Seekers Mechanism : A Case Study of Rohingya Asylum Seeker in Aceh-Indonesia and ASEAN Response," *Indonesia Law Review* 7, no. 3 (December 30, 2017): 341, https://doi.org/10.15742/ilrev.v7n3.373.
[122] Jazim Hamidi, *Hukum Keimigrasian*, 2013.

documentation, underscoring the government's commitment to enhancing border security and facilitating lawful migration. Notably, during this period, Indonesia has no legal foundation for its refugee handling strategy because the country's law evolution currently has not addressed asylum seekers or refugees entering its borders[123].

1.4. Indonesia First Experience in Handling the Refugees Mass Movement (1970-1990)

After the fall of Saigon on April 30, 1975, a significant number of Vietnamese citizens fled the country due to political persecution, economic collapse, and fear of retribution under the newly unified communist regime. Following the communist victories in Vietnam, Laos, and Cambodia in 1975, Southeast Asia experienced one of the most prolonged and complex refugee crises of the 20th century. More than three million people fled the region over two decades, triggered by a combination of political repression, ethnic persecution, and economic collapse. In Vietnam, targeted groups included former South Vietnamese military personnel, civil servants, and ethnic Chinese, especially during and after the 1978–79 border conflict with China. In Cambodia, hundreds of thousands fled the Khmer Rouge's genocidal regime. Many of these movements began as internal displacement but gradually expanded across national borders into neighboring countries, particularly Thailand, Malaysia, and Indonesia. The gravity of the crisis marked a turning point for the United Nations High Commissioner for Refugees (UNHCR), transforming it from a legal and diplomatic agency into a full-scale operational body overseeing camps, repatriation, and large-scale humanitarian programs.

A particularly notable phenomenon during this period was the flight of the Vietnamese "boat people." Desperate for safety, tens of thousands fled Vietnam in unseaworthy vessels, braving piracy, storms, and starvation. In 1979 alone, over 54,000 Vietnamese arrived in Southeast Asia by sea in a single month, overwhelming coastal countries like Thailand and Malaysia. In some cases, countries responded by towing refugee boats back to sea, sparking international outrage. This led to the convening of the 1979 Geneva Conference, where a consensus was reached: Southeast Asian states agreed to offer temporary asylum, while Vietnam pledged to stem illegal departures. In return, major resettlement countries such as the United States, Canada, Australia, and France promised to increase their intake of refugees.

[123] Antje Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia: From Immigration Detention to Containment in 'Alternatives to Detention,'" *Refuge* 33, no. 2 (2017): 32–44, https://doi.org/10.7202/1043061ar.

UNHCR was tasked with managing the humanitarian infrastructure, coordinating the logistics of refugee camps, processing, and global resettlement.

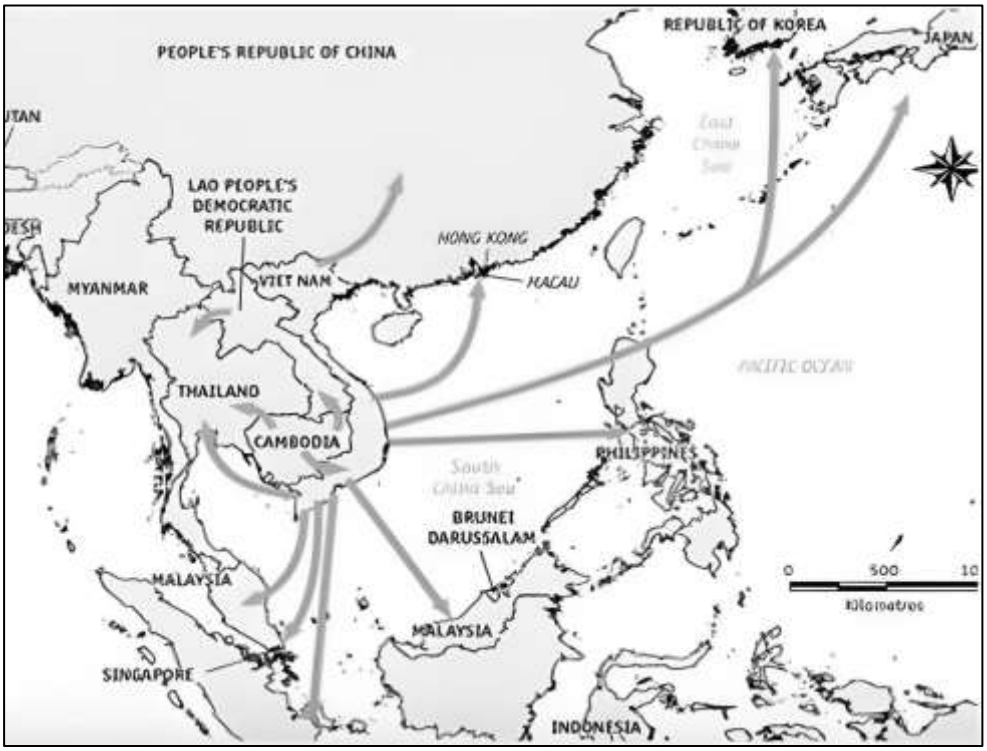

Figure 4. Movement map of the Vietnamese Refugees between 1975-1979. Sources: Hendri, 2022[124]

As the crisis evolved into the late 1980s, international patience began to wane, and the refugee status of many new arrivals was increasingly questioned. In response, the Comprehensive Plan of Action (CPA) was adopted in 1989 as a more structured approach to managing the situation. Under the CPA, newly arriving asylum seekers in Southeast Asia were subjected to refugee status determination procedures. Those found to be genuine refugees were resettled, while those denied were repatriated to Vietnam and Laos, often under monitored conditions with reintegration support. Despite not having ratified the 1951 Refugee Convention, host countries including Thailand, Malaysia, Indonesia, and Hong Kong implemented these procedures in cooperation with UNHCR. The CPA ultimately facilitated the resettlement of more than 530,000 Vietnamese and Laotians, while over 109,000 individuals whose asylum claims were rejected were voluntarily or involuntarily repatriated. The plan was seen as a significant legal and diplomatic innovation in regional refugee management.

Beyond asylum and resettlement, the Vietnamese boat people faced extreme dangers at sea, with piracy being one of the gravest threats. In 1981 alone, 578 women were confirmed to

[124] Zendri Hendri and Rahmad Dandi, "Tinjauan Historis Pengungsian Vietnam Di Pulau Galang 1979-1996," *Takuana: Jurnal Pendidikan, Sains, Dan Humaniora* 1, no. 1 (2022): 59–70, https://doi.org/10.56113/takuana.v1i1.24.

have been raped, and 880 individuals were reported dead or missing. In response, UNHCR initiated an anti-piracy program and partnered with several countries to implement search-and-rescue operations such as DISERO (Disembarkation Resettlement Offers) and RASRO (Rescue at Sea Resettlement Offers). These programs guaranteed resettlement to boat people rescued at sea by merchant ships, thereby incentivizing rescue efforts. However, such programs became difficult to sustain due to logistical constraints and declining political will. Despite these challenges, UNHCR maintained a strong protection presence, advocating for non-refoulement (non-return to danger), fair refugee processing, and the humane treatment of returnees, even in host countries that were not formal parties to international refugee law.

By the mid-1990s, the Indochinese refugee crisis began to draw to a close. Between 1975 and 1995, Southeast Asia had received over 1.43 million refugees. Malaysia hosted 254,495 individuals, Hong Kong took in 195,833, and Indonesia hosted 121,708. The Orderly Departure Programme (ODP), launched in 1979, became a key legal mechanism that allowed more than 500,000 Vietnamese to leave the country through safe and regulated channels. Meanwhile, the United States alone resettled over 1 million Indochinese refugees during this period, followed by significant numbers going to Canada, Australia, and France. Though the CPA successfully balanced the principles of asylum, screening, and repatriation, it also revealed the limitations of international law in regions where states had not signed binding refugee treaties. Nevertheless, this humanitarian experience helped define global standards for burden-sharing, regional cooperation, and the role of multilateralism in large-scale displacement, leaving behind a complex but instructive legacy in refugee protection.

In Indonesia, the establishment of the Vietnamese Refugee Handling and Management Team (P3V) under Presidential Decree No. 38 of 1979 marked a pivotal step in coordinating efforts at both national and regional levels[125]. Collaborating with international organizations such as the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organizations (NGOs), P3V played a crucial role in ensuring the welfare and resettlement of refugees. Additionally, the construction of processing centers, notably on Galang Island, provided essential services and support to refugees awaiting resettlement.

The Indonesian Red Cross (PMI) also played a vital role in providing humanitarian aid and assistance, reflecting the collective commitment to addressing the complex challenges posed by the refugee crisis while following the principles of humanitarianism and human rights.

[125] Moh. Fandik, "Penampungan Orang Vietnam Di Pulau Galang 1975-1979," *Avatara* Vol. 1, no. 1 (2013): 164–72, https://core.ac.uk/download/pdf/230693507.pdf.pp. 89-97.

This collaboration aligns with one of the components of classical liberalism's Kantian triangle approach, which involves international organizations. While Indonesia could have prioritized its national interests and refused to accept refugees, the country chose to act on humanitarian grounds, thereby converting Indonesia's national interest into a shared interest and facilitating cooperation with international organizations. The Indonesian government, UNHCR, and IOM jointly managed the refugees on Pulau Galang by constructing various facilities, including refugee barracks, hospitals, places of worship, and schools. The refugee barracks were divided into six zones, each accommodating 2,000 to 3,000 individuals[126]. Places of worship on Pulau Galang included the Catholic Church Nha Tho Duc Me Vo Nhiem, Quan Am Tu Temple, Protestant Church, and a mosque. From 1979 to 1996, approximately 250,000 Vietnamese refugees resided on Pulau Galang[127].

Life for Vietnamese refugees on Pulau Galang was not devoid of conflict and issues among themselves, despite the provision of various facilities by UNHCR, IOM, and the Indonesian government. Criminal activities such as rape, theft, and even murder could still occur. One example is the case of Tinh Han Loai, who was raped by another refugee and subsequently committed suicide out of shame[128]. Consequently, a prison was also built on Pulau Galang to detain refugees who committed criminal acts.

The facilities constructed by the Indonesian government with assistance from UNHCR and IOM on Pulau Galang were intended to temporarily accommodate Vietnamese refugees until they could either depart for their intended destination countries or return to Vietnam. The Indonesian government then formed *Kogas* (Task Command) which consists of several Government Institution, including the immigration department, tasked with expediting the repatriation of Vietnamese refugees, following the Political and Security Coordination Meeting (Rakor Polkam) held in Jakarta on May 7, 1996. Failure to address the repatriation issue promptly within the set deadline would result in UNHCR ceasing its assistance, making the Vietnamese refugees the responsibility of their home country. *Kogas s*uccessfully evacuated Pulau Galang by September 19, 1996[129].

The legal framework surrounding the Pulau Galang refugee situation is shaped by various international agreements and principles governing the treatment and management of

[126] Antje Missbach, "Waiting on the Islands of 'Stuckedness'. Managing Asylum Seekers in Island Detention Camps in Indonesia from the Late 1970s to the Early 2000s.," *ASEAS - Austrian Journal of South-East Asian Studies* 6, no. 2 (2013): 281–306, https://www.tde-journal.org/index.php/aseas/article/view/2583.
[127] Hendri and Dandi, "Tinjauan Historis Pengungsian Vietnam Di Pulau Galang 1979-1996."
[128] Jonathan London, *Routledge Handbook of Contemporary Vietnam*, 2023, https://doi.org/10.4324/9781315762302.
[129] Hendri and Dandi, "Tinjauan Historis Pengungsian Vietnam Di Pulau Galang 1979-1996.". pp-87-88.

refugees. Despite Indonesia's non-ratification of the 1951 Refugee Convention, the customary international law principles outlined in this convention and its Protocol are generally acknowledged. The UNHCR plays a significant role as the primary international agency responsible for protecting and assisting refugees worldwide. In the context of Pulau Galang, UNHCR provided support and assistance to the Indonesian government in managing the Vietnamese refugee population. Additionally, the IOM may have assisted in facilitating voluntary repatriation efforts for the refugees.

Bilateral and multilateral agreements between the Indonesian government and other countries or international organizations, including UNHCR and IOM, likely addressed specific aspects of the refugee situation, such as refugee status determination and repatriation procedures. Moreover, while Indonesia had not ratified the 1951 Refugee Convention, existing domestic laws and regulations, including immigration laws and administrative policies, guided the management of the Pulau Galang refugee population within Indonesian territory. Overall, the legal framework governing the Pulau Galang refugee situation is characterized by adherence to international humanitarian principles, cooperation with relevant international organizations, and the application of domestic laws and regulations. Currently, Pulau Galang only features monuments, camps, refugee graves, and various facilities once used by refugees. The Indonesian government designated Pulau Galang as an *"Open Museum"* open to the public, serving as a symbol of Indonesia's humanitarian role, especially towards refugees.

1.5. Today Migration Era (1990-Present)

The economic crisis of 1997 not only causes the economic chaos but also served as a catalyst for the basic societal changes in Indonesia. This turbulent period represented the end of the New Order administration, which had been in power since 1965, as well as the birth of the *"reformation"* demand for changes in all aspects of governance and society[130]. Central to this reform agenda were the aspirations for the promotion and protection of human rights (HAM), the establishment of a robust legal framework anchored in the principles of justice and the rule of law, and the eradication of corruption, collusion, and nepotism (KKN) that had long plagued the country [131] . Moreover, there was a resounding call for democratization,

[130] Dede Rosada, "Model Of Democracy In Indonesia," *Advances in Social Science, Education and Humanities Research (ASSEHR), Volume 129* 129, no. Icsps 2017 (2018): 102–5, https://doi.org/10.2991/icsps-17.2018.22.
[131] Melissa Crouch, "The Challenges for Court Reform after Authoritarian Rule: The Role of Specialized Courts in Indonesia," *Constitutional Review* 7, no. 1 (2021): 1–25, https://doi.org/10.31078/consrev711.

emphasizing the need for inclusive political processes and the empowerment of civil society[132]. Alongside these overarching goals, there emerged a growing consensus on the importance of good governance characterized by transparency, accountability, and the effective delivery of public services. Concurrently, the concept of regional autonomy gained traction, reflecting a desire to decentralize power and enhance local decision-making capabilities.

Furthermore, the issue of the immigration assumed significant prominence within the broader societal discourse[133]. As the nation faced the multiple obstacles of transitioning from the existing New Order government to a more inclusive and democratic society, the significance of addressing immigration regulations became clearer. Because immigration policy is inextricably related to fundamental human rights values, the push for comprehensive immigration reform has grown stronger. This reform movement aimed not only to change the legislative frameworks governing immigration, but also to fundamentally reevaluate how migrants' rights were regarded and safeguarded, regardless of country or immigration status[134]. Immigration reform discourses emphasized the need of respecting all people's dignity and fundamental rights, promoting social cohesion, and being inclusive.

Moreover, there was a growing realization among policymakers and civil society actors to introduce greater transparency and accountability into the immigration procedures, and public accessibility on every immigration procedure. The push for transparency and accountability was seen as crucial in mitigating the risks of abuse of power and corruption within the immigration bureaucracy. Calls for reform encompassed various aspects of immigration governance, including visa issuance, border control measures, and the treatment of asylum seekers and refugees[135]. Immigration reform supporters hoped to create a more equitable and just society by tackling systemic challenges and encouraging greater respect for human rights. The debate over immigration reform mirrored broader ambitions for societal transformation toward a more democratic and rights-respecting Indonesia. During this time, Indonesia is experiencing one of the largest refugee crises in history, with the number of refugees rapidly increasing; more information can be found in Figure 4.

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[132] Rosada, "Model Of Democracy In Indonesia.".pp. 102-105.
[133] Gerardo Esquivel, "Essays on Convergence, Migration and Growth," *ProQuest Dissertations and Theses* (1997).
[134] Ichsanoodin Mufty Muthahari and M Almudawar, "Perspektif Hukum Dalam Perlindungan Hak Asasi Manusia Terhadap Pengungsi (Refugees) Dan Pencari Suaka (Asylum Seekers) Di Indonesia Dalam Penanganan Pengungsi Di Luar Negeri Pada Masa Pandemi Covid-19," *Jurnal Ilmiah Universitas Batanghari Jambi* 22, no. 1 (2022): 297, https://doi.org/10.33087/jiubj.v22i1.1777.pp. 297-303.
[135] Gede Maha Aditya Pramana, Intan Nurkumalawati, and Ridwan Arifin, "Policy Evaluation on Immigration Electronic Stamp, Biometric Data, And Autogate Machines in The Context of Geopolitics," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 1 (2022): 41–60.

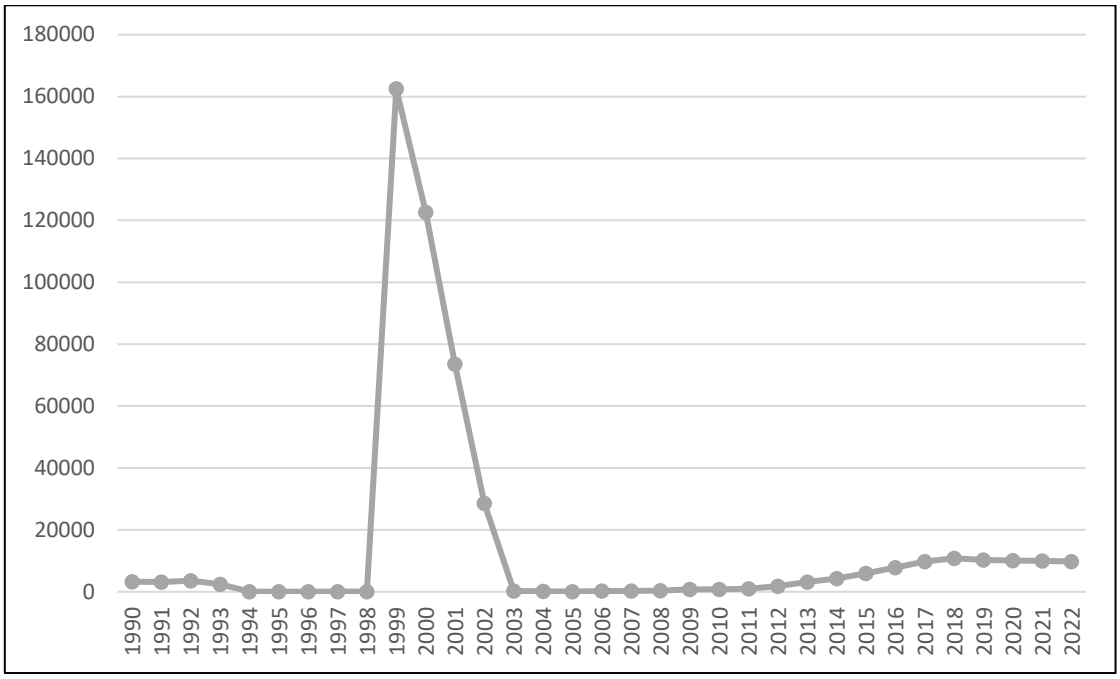

Figure 5. The number of refugees in Indonesia from 1990-2022. Source: World bank, 2023

Furthermore, in 1999, Indonesia faced one of the biggest humanitarian crises triggered by the aftermath of the East Timor independence referendum. East Timor, a former Portuguese colony, had been annexed by Indonesia in 1975, leading to decades of resistance and conflict[136]. This key event, quicky made the number of refugees increased up to 2000 percent, from only 51 refugees in 1998, to 162.192 refugees in 1999 (Figure.4). The opportunity for independence arose when the United Nations organized a referendum in August 1999, allowing the people of East Timor to choose between autonomy within Indonesia or full independence. However, the aftermath of the vote descended into chaos as pro-Indonesian militias, allegedly backed by elements within the Indonesian military, launched a brutal campaign of violence against those perceived to have supported independence. This violence included widespread killings, arson attacks, and forced displacement, targeting civilians, activists, and supporters of independence[137]. As a result, thousands of East Timorese fled their homes, seeking refuge across the border in West Timor, which remained part of Indonesia.

The refugee crisis in West Timor quickly escalated into a humanitarian emergency of staggering proportions. The influx of displaced persons overwhelmed existing resources and

[136] Arrizal Anugerah Jaknanihan, Muhammad Anugrah Utama, and Felice Valeria Thessalonica, "Dua Jalur Penanganan Pengungsi: Analisis Diplomasi Migrasi Di Asia Tenggara," *Jurnal Sentris* 2, no. 2 (2021): 132–51, https://doi.org/10.26593/sentris.v2i2.5013.132-151.
[137] UNHCR, "East Timorese Refugees in West Timor" (Jakarta, Indonesia, 2002).

infrastructure, exacerbating conditions in the already impoverished region. Refugee camps sprang up hastily to accommodate the influx, but they were often overcrowded, unsanitary, and lacking in essential services. Necessities such as food, water, shelter, and healthcare were in short supply, leading to widespread suffering and hardship among the displaced population. Moreover, there were serious concerns about security and safety within the camps, with reports of continued intimidation, violence, and human rights abuses perpetrated by pro-Indonesian militias and other armed groups, to address this problem, the UNHCR give the fund around 5 million dollars[138].

In addition, the international community mobilized a coordinated humanitarian response to provide aid and support to the displaced East Timorese. The United Nations, along with scores of aid organizations and donor countries, labored ceaselessly to deliver emergency relief supplies, establish makeshift shelters, and provide essential services such as healthcare, sanitation, and psychosocial support. Humanitarian workers have faced immense challenges in reaching the affected population and providing the necessary assistance, given the remote and volatile nature of the region. Despite these efforts, the humanitarian response has struggled to keep pace with the scale and urgency of the crisis, leaving many refugees vulnerable to continued suffering and deprivation.

Later, between September 2000 and December 2001, a coordinated effort led by the IOM and the *United Nations Transitional Administration in East Timor* (UNTAET) have received the voluntary repatriation of approximately 17,000 East Timorese individuals from Indonesia, marking a significant milestone in resolving the refugee crisis ignited by the violent aftermath of the 1999 East Timor independence referendum. Recorded at the end of December 2001, the total number of repatriated East Timorese had surpassed 192,000, underscoring the effectiveness of collaborative international initiatives in addressing post-conflict displacement[139]. A detailed *"missing persons"* survey conducted by the UNHCR in East Timor in May 2001 provided critical insights at the sub-district level, revealing that an estimated 74,000 East Timorese individuals remained in Indonesia, with approximately 55,000 expressing a desire for repatriation[140]. These findings not only guided strategic planning efforts but also highlighted ongoing challenges in achieving full repatriation and resettlement for the displaced population. Despite significant progress, sustained international collaboration and evidence-based approaches, such as comprehensive surveys and data analysis, remain crucial

[138] UNHCR.pp. 331-351.
[139] UNHCR.pp. 28-32.
[140] UNHCR.pp.124-145.

in ensuring the safe return and reintegration of remaining refugees, fostering reconciliation, and promoting lasting solutions in the region.

Significant refugee crises, in particular those involving Vietnamese refugees during the 1970s and East Timorese refugees in 1999, have set the pace that Indonesia follows in answering humanitarian needs and its interaction on an international level. The crisis, caused by conflicts and persecution and creating an outflow of hundreds of thousands of fleeing persons, placed the Indonesian government before certain difficulties in addressing them appropriately. Against that background, Indonesia took a very positive lead in affording sanctuary to the aliens who fled their homelands, often under precarious circumstances, onto Indonesian shores. With the estimated arrival of around 800,000 Vietnamese refugees, Indonesia stressed the need for regional collaborative work in trying to solve this humanitarian problem. Similarly, the arrival of more than 200,000 East Timorese refugees after the referendum on independence in East Timor underlined Indonesia's position as a key player in regional responses to displacement.

The Indonesian government's response to these refugee crises extended beyond mere humanitarian assistance, influencing the formulation of policies and legal frameworks to address future challenges effectively. While the Law Number 37 of 1999 concerning Foreign Relations (UU No. 37/1999) did not explicitly focus on refugee issues, its enactment reflected Indonesia's recognition of the importance of international cooperation and diplomacy in managing crises of displacement[141]. By collaborating with key international bodies like the UNHCR and other nations, Indonesia demonstrated its commitment to the humanitarian principles and addressing the needs of refugees within its borders. Moreover, the government's proactive engagement in managing refugee crises strengthened its position as a responsible member of the global community, fostering goodwill and cooperation with international partners.

1.6. Latest Development of Indonesia Migration

The advent of the twenty-first century marked a paradigmatic shift in global governance structures, characterized by what Held and McGrew (2007) conceptualize as *"complex interdependence,"* wherein traditional Westphalian notions of sovereignty encounter

[141] Republik Indonesia, “Indonesia Law No.37/1999 about Foreign Affairs,” Pub. L. No. 37/1999, Lembaran Negara RI 1 (1999).

unprecedented challenges from transnational flows of people, capital, and information[142]. Within this theoretical framework, Indonesia's position as an archipelagic state situated at the intersection of major migration routes presents unique analytical challenges for understanding how middle powers adapt their legal frameworks to accommodate competing pressures of national sovereignty, regional security cooperation, and international humanitarian obligations.

Furthermore, the beginning of globalization heralded a new kind of era marked by the connectedness of all things and a dissolution of traditional boundaries. A world in flux, driven by technological changes and economic integration, started to take shape, offering both unprecedented opportunities and challenges for countries like Indonesia. With the opening up of national borders to a deluge of information and peoples, Indonesia emerged at the intersection of multiple global trends: growing migration, liberalization of trade, and the spread of democratic ideals. Each of these served not only to increase interactions between nations but also added a layer of difficulty in dealing with migration flows and the new transnational issues of terrorism and organized crime[143]. The empirical significance of these trends becomes apparent when examining Indonesia's contemporary role as host to over 12,700 forcibly displaced persons as of 2024, representing a 340% increase from 2010 figures, with demographic composition primarily consisting of Afghan nationals (45%), Myanmar nationals (22%), and Somali nationals (9%), according to UNHCR statistical reports[144].

The theoretical implications of this transformation extend beyond mere policy adaptation to encompass fundamental issues about the nature of state sovereignty in an era of *"graduated sovereignty"* [145], where states exercise differentiated forms of control over territory, population, and resources. Indonesia's approach to refugee governance exemplifies what Gammeltoft-Hansen and Tan (2017) term *"selective protection regimes,"* wherein states provide limited humanitarian accommodation while maintaining strict boundaries around formal legal recognition and permanent settlement opportunities[146].

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[142] David Held and Anthony Mcgrew, *The Great Globalization Debate: An Introduction*, 1st ed. (London: Polity Press, 2007).
[143] Reza Riansyah Abdullah, "Urgensi Dan Inovasi Dalam Pembaharuan Peraturan Teknis Mengenai Paspor Biasa," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 1 (2019): 51, https://doi.org/10.30641/kebijakan.2019.v13.51-68.
[144] UNHCR, "Indonesia Operation Report," Strategy and results, 2024, https://www.unhcr.org/where-we-work/countries/indonesia.
[145] Aihwa Ong, "Neoliberalism as Exception: Mutations in Citizenship and Sovereignty" (Duke University Press, June 28, 2006), https://doi.org/10.1215/9780822387879.
[146] Gammeltoft-Hansen and Tan, "The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy."

1.6.1. From Law No. 9/1992 to Law No. 6/2011

Due to the changing dynamics of globalization and the challenges it posed with respect to immigration and border management, the Indonesian government realized the need to revise its legal framework in order to be more agile and adaptable in facing current challenges. The revision of Law Number 9 of 1992 regarding Immigration was one such strategic step to renew immigration processes, increase security measures, and bring immigration policies into line with prevailing international standards. The comprehensive overhaul of immigration laws added the recent issues of migration today, such as integration of modern technology into immigration operations, the institution of robust structures, and the development of mechanisms of enforcement to effectively combat such transnational crimes as refugee trafficking that happened often in Southeast Asia.

From a doctrinal legal analysis perspective, Law No. 6/2011 represents a significant departure from its predecessor in several critical dimensions. The 1992 legislation operated within a predominantly state-centric paradigm that prioritized territorial control and administrative efficiency over individual rights or humanitarian considerations. The 2011 reform introduced a more complex legal taxonomy that, while maintaining strong enforcement mechanisms, incorporated provisions for technological modernization, enhanced inter-agency coordination, and limited recognition of humanitarian considerations in immigration processing. Articles 8-12 of Law No. 6/2011 establish comprehensive visa categorization systems that include provisions for diplomatic coordination and emergency circumstances, representing a departure from the rigid binary classifications of the previous framework. Furthermore, Articles 75-80 mandate the establishment of sophisticated information management systems and biometric identification protocols, reflecting Indonesia's integration into regional security cooperation mechanisms such as the ASEAN+3 immigration databases.

However, critical analysis reveals that Law No. 6/2011 maintains fundamental structural limitations regarding non-citizen populations who do not conform to traditional immigrant categories. The legislation's definitional framework, articulated in Article 1, conceptualizes immigration subjects exclusively as *"persons who enter or exit Indonesian territory"* without incorporating international legal distinctions between voluntary migrants and persons in need of international protection. This definitional limitation creates what legal

scholars term a *"protection gap"* [147], wherein individuals fleeing persecution encounter the same legal treatment as voluntary economic migrants or immigration violators.

The new immigration law also reflects Indonesia's commitments to rule of law, integrity of borders, while continuing international cooperation and reciprocity. To that end, Indonesia struck a balance in allowing travel to and from the country while ensuring security with the inclusion of laws on law enforcement enhancement, deterring immigration offenses, and facilitating immigration processing. The new Immigration Bill that was passed demonstrated the democratic commitment of Indonesia to participatory governance and policymaking with very close consultations with relevant stakeholders, backed by fierce scrutiny within the parliament. The passage of Law Number 6 of 2011 concerning Immigration was thus an important landmark in the Indonesian journey of renewing its immigration policy and relating to the challenges of the contemporary world.

The enforcement mechanisms established under Law No. 6/2011, particularly Articles 113-137, demonstrate Indonesia's adoption of what Bigo (2002) terms *"security continuum"* approaches to migration governance, wherein administrative immigration violations are increasingly criminalized and subject to enhanced penalty structures [148]. The legislation establishes administrative sanctions ranging from written warnings to deportation orders, criminal sanctions including imprisonment terms of up to 5 years for certain violations, and institutional sanctions through the mandatory establishment of Immigration Detention Centers *(Rudenim)* with standardized operational procedures across all provincial jurisdictions.

1.6.2. Presidential Regulation No. 125/2016: Humanitarian Innovation within Legal Constraints

In addition, the Presidential Regulation No. 125 of 2016, issued on 31 December 2016, represents a key turn in Indonesia's stance and policy on refugees and asylum seekers. This is an important milestone toward a coherent legal framework for addressing needs and rights related to persecution and conflict. It underscores protection and safety for asylum seekers and refugees, allows for good coordination with UNHCR, ensures basic freedoms and rights, and gives humanitarian assistance and legal validation that together express Indonesia's

[147] B S Chimni, "The Birth of a 'Discipline': From Refugee to Forced Migration Studies," *Journal of Refugee Studies* 22, no. 1 (March 1, 2009): 11–29, https://doi.org/10.1093/jrs/fen051.
[148] Didier Bigo, "Security and Immigration: Toward a Critique of the Governmentality of Unease," *Alternatives* 27, no. SUPPL. 1 (2002): 63–92, https://doi.org/10.1177/03043754020270s105.

commitment to balancing the needs of national security with those of humanity and its commitment to international obligations.

From a legal hierarchy perspective, Presidential Regulation No. 125/2016 occupies a subordinate position within Indonesia's legal system, ranking below parliamentary legislation *(Undang-Undang)* but above ministerial regulations *(Peraturan Menteri).* This hierarchical positioning creates potential conflicts with Law No. 6/2011, particularly regarding detention procedures, penalty applications, and definitional frameworks for non-citizen populations. The regulation's legal innovation lies primarily in its explicit recognition of "refugees from abroad" *(pengungsi dari luar negeri)* as a distinct legal category requiring differentiated treatment from regular immigration violations.

The regulatory framework establishes several progressive elements that represent significant departures from previous Indonesian practice. Articles 5-8 create an inter-ministerial coordination mechanism involving the Ministry of Foreign Affairs, Ministry of Law and Human Rights, Ministry of Social Affairs, Indonesian National Police, and State Intelligence Agency, institutionalizing what previously existed as ad-hoc administrative arrangements. Articles 13-18 enumerate specific rights provisions including access to healthcare services, educational opportunities for children, freedom of movement within designated geographic areas, and protection from refoulement to countries of origin where persecution risks exist.

However, critical legal analysis reveals structural limitations that constrain the regulation's effectiveness in providing comprehensive refugee protection. The regulation's definitional framework, while progressive in recognizing refugee categories, maintains temporal limitations that characterize protection as explicitly temporary, with no pathway to permanent legal status or naturalization. Article 25 establishes maximum residence periods and requires continuous renewal processes that maintain refugees in indefinite legal limbo without long-term resolution prospects.

Furthermore, the regulation delegates crucial RSD functions to UNHCR rather than establishing domestic institutional capacity for protection assessment. While this arrangement facilitates international cooperation, it creates dependency relationships that may compromise long-term policy autonomy and institutional development. The absence of domestic RSD procedures also means that Indonesian authorities lack direct experience in applying international refugee law principles, potentially limiting their capacity to develop more sophisticated protection frameworks in the future.

1.6.3. Constitutional and International Law Dimensions

The legal framework governing refugee protection in Indonesia must be analyzed within the broader constitutional context established by the 1945 Constitution, particularly following the comprehensive amendments adopted during the reformasi period (1998-2002). Article 28G(2) guarantees freedom from torture and inhuman treatment, while Article 28I(4) establishes certain human rights as non-derogable, creating binding constitutional obligations that supersede ordinary legislation. These provisions establish what constitutional scholars' term *"substantive due process"* requirements that may necessitate more expansive interpretations of both Law No. 6/2011 and Presidential Regulation No. 125/2016.

Indonesia's ratification of core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture, creates parallel international legal obligations that influence domestic refugee policy implementation despite the absence of formal ratification of the 1951 Refugee Convention. This creates what international lawyers describe as *"indirect protection obligations"* whereby core human rights principles, particularly non-refoulement, become applicable through general human rights treaty commitments rather than specific refugee law instruments[149].

The Constitutional Court's jurisprudence regarding foreign nationals' rights, particularly Decision No. 69/PUU-XIV/2016 concerning migrant worker protection, establishes precedential authority for extending constitutional protections to non-citizens in vulnerable situations[150]. This jurisprudential development suggests potential legal pathways for challenging restrictive interpretations of refugee protection obligations through constitutional litigation strategies.

1.6.4. Implementation Analysis and Systemic Challenges

The practical implementation of Indonesia's refugee protection framework reveals significant gaps between legal provisions and operational realities. Data analysis indicates that despite Presidential Regulation No. 125/2016's humanitarian provisions, approximately 40% of asylum seekers continue to experience detention periods averaging 3-6 months, with considerable variation across different regional jurisdictions. Geographic analysis reveals

[149] Carlos M. Vázquez, "Direct vs. Indirect Obligations of Corporations under International Law," *Columbia Journal of Transnational Law* 43, no. 3 (2005): 927–59.
[150] Farah Rieza and Iman Jauhari, "Analysis of Constitutional Court Decision No . 69 / PUU-XIII / 2015" 8, no. 4 (2022): 115–20.

systematic disparities in implementation approaches, with Jakarta and Yogyakarta demonstrating more liberal interpretative frameworks compared to border provinces where security considerations typically override humanitarian provisions.

Judicial interpretation patterns demonstrate inconsistent application of the regulatory framework, with district courts adopting varying approaches to reconciling conflicts between Law No. 6/2011's enforcement provisions and Presidential Regulation No. 125/2016's protection mandates. The absence of Supreme Court guidance on hierarchical interpretation creates legal uncertainty that affects both refugee protection outcomes and administrative decision-making consistency. Institutional capacity analysis reveals significant limitations in training programs, resource allocation, and inter-agency coordination mechanisms. Immigration officers receive minimal specialized training in refugee protection principles, while local government authorities often lack awareness of Presidential Regulation No. 125/2016's provisions, creating implementation bottlenecks at the grassroots level where refugees interact with public services.

1.6.4.1. Refugee and Asylum Seeker Perspectives

The lived experiences of refugees provide crucial insights into the practical operation of Indonesia's legal framework. Interview findings reveal consistent patterns of legal uncertainty, bureaucratic complexity, and regional variation in policy implementation.

Interview data consistently indicates confusion and inconsistency in initial processing procedures. Respondent R-001, an Afghan male who arrived in Jakarta in 2018, described his experience:

> *"When we landed at the airport, the immigration officers seemed uncertain about proper procedures. Some treated us as criminals, others appeared sympathetic but lacked clear guidelines. I was detained for three months in Tanjung Pinang facility before UNHCR could conduct an interview. The detention conditions were overcrowded, with limited food provision and no information about legal status or processing timelines."*

Similar experiences were reported by 14 of 18 refugee respondents, indicating systematic gaps in immigration officer training and procedural standardization. Respondent R-007, a Somali female with two children, stated:

> *"Local authorities continuously reference Presidential Regulation 125 regarding our rights, but when attempting to access healthcare or educational services for children,*

they require special permissions that take months to obtain. My daughter could not attend school for two years due to bureaucratic complications."

Extended interviews with refugees residing in Indonesia for 3-7 years reveal persistent challenges with legal documentation and status recognition. Respondent R-012, an Iraqi male living in Bogor since 2017, explained:

"After seven years of UNHCR registration, I still lack formal legal status in Indonesia. Immigration authorities provide quarterly letters stating I am 'under UNHCR care,' but local police sometimes do not recognize these documents. I have been arrested twice for lacking proper identification, despite carrying all UNHCR documentation."

Interviews with refugee families highlight specific challenges regarding children's educational rights. Respondent R-015, a 16-year-old Rohingya refugee, described her educational journey:

"I desired to attend high school like Indonesian children, but schools required special permits. My mother visited numerous offices - immigration, education department, local government - receiving different responses from each. Some officials cited Presidential Regulation 125 as granting educational rights, others claimed only elementary education was covered. I lost two years of schooling during this bureaucratic process."

1.6.4.2. Government Official Perspectives

Interviews with Indonesian government officials at various levels reveal the complexity of implementing refugee policy within existing legal and administrative frameworks.

Front-line immigration officers describe operational challenges in reconciling competing legal obligations. Respondent O-003, a senior immigration officer at Soekarno-Hatta International Airport, reflected:

"Under the 1992 law, we operated with manual processes unchanged since the New Order period. When asylum seekers arrived, we lacked clear guidelines for differentiation from illegal immigrants. Decision-making was entirely case-by-case and ad-hoc, creating inconsistencies across different entry points."

Respondent O-008, an immigration supervisor at a major port facility, explained:

"Presidential Regulation 125 mandates humane treatment and UNHCR coordination, but Law 6/2011 requires detention of illegal entrants. When someone arrives without proper documents claiming asylum, the legal hierarchy remains unclear. Our

supervisors often provide conflicting instructions - sometimes emphasizing compassion, other times strict enforcement."

Immigration officers working in detention facilities describe particular challenges in balancing enforcement and humanitarian obligations. Respondent O-011, a commanding officer at a regional detention center, stated:

"We receive conflicting guidance about detention procedures for asylum seekers. Immigration law requires detention of illegal entrants, but the presidential regulation emphasizes humane treatment. In practice, we detain asylum seekers but attempt faster processing and improved conditions compared to regular immigration violators. However, our facilities were not designed for long-term humanitarian accommodation."

High-ranking officials involved in policy development provide insights into the strategic considerations underlying Indonesia's approach. Respondent O-001, a former Director General of Immigration, explained:

"The primary challenge was achieving inter-ministerial coordination. The Foreign Ministry prioritized diplomatic flexibility, Defense Ministry emphasized security concerns, while Immigration focused on administrative efficiency. The 2011 law represented a compromise, but left many operational details unresolved, particularly regarding non-citizens who did not fit traditional immigrant categories."

Respondent O-002, a former Deputy Director of Immigration Enforcement, added:

"We had to develop expertise through practical experience. The law provided new tools - biometric systems, electronic processing, enhanced detention facilities - but we lacked personnel trained in both technical aspects and humanitarian implications of refugee protection."

Respondent J-001, a district court judge with extensive experience in immigration cases, explained:

"We regularly encounter cases where immigration law and humanitarian regulations appear to conflict. When asylum seekers are charged with illegal entry under Law 6/2011, their legal representation cites Presidential Regulation 125 as defense. However, the regulation does not explicitly override criminal provisions of immigration law. We judges must make interpretive decisions about legal precedence without Supreme Court guidance."

Immigration lawyers describe systematic challenges in representing refugee clients. Respondent L-002, a legal aid lawyer specializing in immigration cases, stated:

"The regulatory framework exists, but operational procedures continue evolving. We spend considerable time educating local authorities about Presidential Regulation 125, as many officials remain unfamiliar with its provisions or interpret them differently. This creates inconsistent protection standards across Indonesia."

The empirical evidence gathered through extensive field research reveals a complex picture of policy implementation characterized by significant gaps between legal intentions and operational realities. The interview data demonstrates that while Presidential Regulation No. 125/2016 represents meaningful progress in formal recognition of refugee rights, its effectiveness remains constrained by structural limitations in Indonesia's administrative capacity, legal hierarchy, and institutional coordination mechanisms.

The systematic nature of implementation challenges identified through interview analysis suggests that Indonesia's approach to refugee governance reflects broader patterns in the country's administrative modernization efforts. The tension between centralized policy formulation and decentralized implementation capacity creates what political scientists' term "implementation gaps" that are particularly pronounced in policy areas requiring specialized technical knowledge and inter-agency coordination.

From a comparative perspective, Indonesia's regulatory approach shares characteristics with other middle-power states that seek to balance humanitarian obligations with sovereignty concerns. However, the specific form of Indonesia's "selective protection regime" - providing limited humanitarian accommodation while maintaining strict boundaries around formal legal recognition - creates unique challenges for both refugee protection and administrative coherence.

This analysis demonstrates that Indonesia's legal framework evolution concerning immigration and refugee policy represents a significant but incomplete transformation toward more sophisticated governance approaches that attempt to balance competing demands of national security, humanitarian obligation, and regional cooperation. The passage of Law No. 6/2011 and Presidential Regulation No. 125/2016 reflects Indonesia's emerging identity as a responsible regional power committed to international norms while maintaining sovereignty over immigration policy decisions. However, the extensive interview data reveals persistent implementation challenges that limit the effectiveness of these legal reforms. The fundamental tension between Law No. 6/2011's enforcement orientation and Presidential Regulation No. 125/2016's humanitarian provisions creates ongoing legal uncertainty that affects both refugee protection outcomes and administrative decision-making consistency. The hierarchical relationship between these legal instruments requires clarification through either Supreme

Court jurisprudence or new parliamentary legislation that provides more coherent integration of enforcement and protection mandates.

2. Legal Perspectives of Refugees Handling Policy

2.1. Political and Legal Position of Indonesia in International Convention about the Refugees Handling Policy

Refugees in Indonesia have to face many challenges as the results of the non-party status to the United Nations Convention relating to the Status of Refugees, which is the Refugee convention 1951 and its 1967 Protocol[151]. This particular situation is significantly impacting their daily lives, resulted in the limited access to basic services such as healthcare, education, and employment opportunities due to their uncertain legal status[152]. Mobility restrictions worsen the difficulties they face by limiting their capacity to travel freely throughout the country or seek lucrative employment. Additionally, enrolling refugee children in schools presents administrative challenges and a lack of adequate documents, creating educational burden. Obtaining work permits is a difficult procedure, limiting refugees' ability to sustain themselves and their families financially.

Despite these challenges, Indonesia has been making concerted efforts to deal with refugee issues through various initiatives. Most importantly, the country allows the UNHCR to operate in its territory for the purpose of undertaking refugee status determination and offering protection since the year of 1979. Indonesia also provides limited protection to refugees on humanitarian grounds, offering temporary stay permits known as KITAS to some, thereby allowing them to stay in the country legally[153]. Indonesia actively involves itself in international and regional forums to work with the neighboring countries and organizations for the solution of the wider refugee crisis in Southeast Asia[154]. It has also organized conferences and dialogues for the regional responses to share best practices in the management of refugee situations. Additionally, the Indonesian government set up a task force to coordinate its

[151] Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia.".pp. 32-44.
[152] Antje Missbach, "Asylum Seekers' and Refugees' Decision-Making in Transit in Indonesia: The Need for in-Depth and Longitudinal Research," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 175, no. 4 (2019): 419–45, https://doi.org/10.1163/22134379-17504006.
[153] Cifebrima Suyastri, Mohammad Thoriq Bahri, and Marhadi Marhadi, "Legal Gap in Refugee Protection in Non-Signatory Countries: An Evidence from Indonesia," *Danube* 14, no. 3 (2023): 193–214, https://doi.org/10.2478/danb-2023-0012.
[154] Marsiyah Daliman and Ridwan Arifin, "Cooperation Initiatives Between the Directorate General of Immigration and the Australian Government on Airports in Indonesia," *Jurnal Ilmu Administrasi: Media Pengembangan Ilmu Dan Praktek Administrasi* 17, no. 1 (2020): 63–76, https://doi.org/10.31113/jia.v17i1.549.

response to the refugee crisis and earmarked more funds to programs aimed at improving the lives of refugees. Indonesia collaborates with international organizations and NGOs in the provision of legal assistance, counseling, and support services to refugees, a situation that indicates the country's care for humanitarian concerns amidst national security considerations.

Presidential Regulation No. 125 of 2016 constitutes another milestone for Indonesia, providing a quasi-formal setting for Indonesian policy towards refugees. While recognizing the presence of refugees, this regulation elaborates upon procedures concerning refugee treatment in Indonesian territory. It is very interesting how PR 125/2016 tries to balance the protection of national security interests with adherence to humanitarian principles by prioritizing security arrangements, coordination with the UNHCR, and protection of fundamental freedoms. Therefore, while the current Indonesian engagement in addressing refugee issues is proactive, its non-party status still has implications for a search for viable solutions. By making legislative provisions, engaging in collaboration efforts, and taking part in international fora, Indonesia is committed to finding solutions for refugees and contributing to common responses to humanitarian crises.

Indonesia's legal and political position in handling refugees is further complicated by its non-party status to the 1951 Refugee Convention and its 1967 Protocol. This status means that Indonesia does not have the authority to determine refugee status or conduct RSD process, tasks typically overseen by the UNHCR under the mandate it received in the UNHCR Statute of 1950. The absence of formal ratification of these international agreement's places Indonesia in a challenging position when addressing refugee issues, as the legal framework for refugee protection is not fully defined within the country's national legislation. Despite these limitations, Indonesia has shown a commitment to providing humanitarian assistance to refugees through various initiatives and collaborations with international partners [155].

In short, Indonesia's approach to refugees is shaped by its non-party status to key international conventions on refugee protection. The country faces legal and political challenges in managing refugee issues due to this status, leading to uncertainties in determining refugee status and providing adequate protection. However, Indonesia has demonstrated a proactive stance in addressing refugee concerns through collaborative efforts with international organizations, legal frameworks such as PR 125/2016, and participation in regional dialogues. By balancing national security interests with humanitarian principles, Indonesia strives to find

[155] Romola Sanyal, "Managing Through Ad Hoc Measures: Syrian Refugees and the Politics of Waiting in Lebanon," *Political Geography* 66 (2018): 67–75, https://doi.org/10.1016/j.polgeo.2018.08.015.

sustainable solutions to alleviate the plight of refugees and contribute to collective responses to global humanitarian crises[156].

2.2. Relevant Law and Regulation in Refugees Handling Policy

In general, Indonesia does not have a comprehensive legal system in place for the handling of refugees, as it is not a signatory to the 1951 United Nations Convention on the Status of Refugees or its 1967 Protocol. However, there are several relevant laws and regulations that have an impact on the treatment of refugees in the country.

2.2.1 Law No. 6 of 2011 on Immigration - This law outlines the rules and requirements for foreign individuals entering and residing in Indonesia. It provides a framework for granting temporary stay permits to the foreigner and details the conditions under which a foreign national can be deported. The temporary stay permits, which are issued based on humanitarian considerations, allow the holder to stay in Indonesia for a limited period of time and engage in activities such as work or study. The permits are valid for six months and can be extended if necessary. However, based on the article 75 of this law, everyone who are entering Indonesia without the proper documentation, will be sent to the detention center, and send back to their country of origin, including those who are refugees or asylum seeker;

2.2.2 Law Number 37 of 1999 on Foreign Relations, governs Indonesia's policy and responsibility in conducting foreign relations and involves issues related to foreigners, which include refugees and asylum seekers. It was instituted to form the basic entry point in controlling interactions of Indonesia with other nations and international organizations, especially to safeguard national sovereignty and interests. Specifically relevant within the context of refugees, there is Article 27 paragraph (2):. It obliges the Indonesian government to regulate and manage the presence of foreign nationals in accordance with national laws and international principles. This article provides a legal basis for addressing the presence of refugees and asylum seekers in Indonesia, despite the country's status as a non-signatory to the 1951 Refugee Convention. It provides support for policy implementation, such as Presidential Regulation No. 125 of 2016, which describes

[156] Nefti-Eboni Bempong et al., "Critical Reflections, Challenges and Solutions for Migrant and Refugee Health: 2nd M8 Alliance Expert Meeting," *Public Health Reviews* 40, no. 1 (2019), https://doi.org/10.1186/s40985-019-0113-3.

temporary measures on refugee handling: identification, accommodation, and cooperation with organizations like UNHCR and IOM. Although it is narrowly given, this provision reflects Indonesia's attempt to discharge its humanitarian obligations while maintaining its legal and political framework;

2.2.3 Presidential Regulation No. 125 of 2016 on the Handling of Refugees from Abroad: The government issued this regulation in Indonesia to give a legal framework to address the issue of refugees and asylum seekers since Indonesia is not a party to the 1951 Refugee Convention. The regulation defines refugees as those fleeing their countries because of threats of persecution and ensures their basic needs are met while awaiting resettlement or return. It assigns responsibilities to various government institutions, including coordination with international organizations like UNHCR and IOM. Although this sets a humanitarian approach for Indonesia, such regulation does not grant refugees permanent legal status or rights; it simply points to a lack of legal protection for refugees within the country.

These laws and regulations provide a basic framework for handling refugees in Indonesia, but the available protection and support for refugees in the country is still limited. The Indonesian government has taken some steps to improve conditions for refugees, but more needs to be done, such as creating a comprehensive legal system for the handling of refugees and increasing funding for support programs. The Indonesian government must continue to take action to ensure that refugees in the country have access to necessary services and protections.

3. Demographic, and Issues in Refugees Handling

3.1. Demographic and Legal Issues Description of Indonesia

Indonesia, with its diverse and highly heterogeneous population, faced with numerous demographic and legal challenges in the handling of refugee populations within its borders. According to statistics from the UNHCR, Indonesia hosted more than 14,000 refugees and asylum seekers by 2021, who originated from the various origins including Afghanistan, Iran, Myanmar, and Sri Lanka[157]. These individuals seek refuge from various reason, such like armed

[157] Mixed Migration Center, "A Transit Country No More" (Copenhagen, Denmark, 2021), https://mixedmigration.org/wp-content/uploads/2021/05/170_Indonesia_Transit_Country_No_More_Summary_Report.pdf.

conflict, political persecution, ethnic violence, and religious discrimination, underscoring the Indonesia's refugee challenges[158]. The rich tapestry of cultures and identities in the nation indeed requires approaches tailored to the unique needs of different refugee communities, further complicating the formulation of effective policies and legal mechanisms that would best protect and support refugees amidst evolving migration dynamics.

Furthermore, Indonesia's strategic geographic positioning as an archipelagic nation in Southeast Asia places it at the nexus of migration routes and geopolitical dynamics, shaping both the inflow of the asylum seekers and refugees and the responses to these issues. This positioning underlined the interconnectedness of Indonesia's refugee management with broader regional and global contexts, requiring collaborative efforts with neighboring countries, international organizations, and multilateral frameworks. By participating in programs like the *Bali Process*[159], Indonesia underlines its commitment to addressing refugee challenges collaboratively[160]. Long-term efforts are required for adequate protection within Indonesia territory when trying to maneuver the very complicated socio-cultural, legal, and geopolitical frameworks that surround refugee issues.

One of the most significant legal issues facing refugees in Indonesia is the lack of a comprehensive legal framework for dealing with them. As non-parties to the convention, asylum seekers and refugees are not granted the same protections and rights as they would in other nations that have signed the treaty[161]. Furthermore, the Indonesian government does not have a dedicated body responsible for the protection and support of refugees, making the handling process more cumbersome and bureaucratic[162]. This lack of central authority for the handling of refugees can result in a fragmented and inconsistent response to the needs of refugees. Despite these challenges, there have been some positive developments in recent years, such as the establishment of a task force to coordinate the response to the refugee crisis and the development of a service center for refugees[163]. These measures indicate the Indonesian government's commitment to improving living conditions for refugees in the country.

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[158] Fithriatus Shalihah and Muhammad Nur, "Observations on the Protection of Refugees in Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 15, no. 4 (2021): 361–84, https://doi.org/10.25041/fiatjustisia.v15no4.2143.
[159] Mohammad Thoriq Bahri, "Immigration Biometric Data Exchange Among ASEAN Member States : Opportunities and Challenges in Legislation," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 3 (2022): 433–56.
[160] The Bali Process Regional Support Office, *Policy Framework for the Regional Biometric Data Exchange Solution* (Jakarta: Regional Support Office The Bali Process, 2011).
[161] Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia: From Immigration Detention to Containment in 'Alternatives to Detention.'"
[162] Kneebone, Missbach, and Jones, "The False Promise of Presidential Regulation No. 125 of 2016?," 2021.
[163] Renatha Ayu Rossdiana, "Masa Depan Di Perbatasan : Pendekatan Humanitarian Pendidikan Pengungsi Anak Di Indonesia," *Jurnal Hubungan Internasional* 15, no. 1 (2022): 53–73, https://doi.org/10.20473/jhi.v15i1.33711.

However, much more must be done to ensure that refugees in Indonesia receive the essential assistance and safety. The government must take action to establish a comprehensive legal framework for dealing with refugees and enhance financing for assistance programs. This would ensure that refugees in Indonesia receive the help and protection they require to rebuild their lives and reach their full potential.

The complexities of conflicts between refugees and local communities in Indonesia are deeply intertwined with resource scarcity, cultural differences, and their subsequent impacts on socio-economic dynamics[164]. Resource scarcity poses a significant challenge, as Indonesia, like many nations, grapples with limited resources such as jobs, housing, and healthcare[165]. When refugees arrive in an area, they often find themselves competing with locals for these essential resources, leading to heightened tensions and potential resentment. This competition exacerbates perceived inequity, with locals fearing that refugees receive preferential treatment or access to resources, further fueling feelings of injustice and exacerbating social divides. Further, the burden on resources stretches public services, affecting both refugees and natives alike when governments are unable to cope with rising demands due to a limited capacity, further fueling social tensions and making fertile grounds for the outbreak of conflict. Secondly, sharing resources and opportunities may be done on a non-equal basis, creating inequality in access that further widens inequalities and sows resentment among communities.

The situation is made worse by the challenges in finding employment, as the language barrier hampers refugees from communicating effectively and settling into the local workforce. Discrimination based on nationality, ethnicity, or religion further marginalizes refugees, with employers often being reluctant to hire them, which exacerbates economic disparities and heightens social exclusion. Moreover, most refugees also experience precarious employment conditions, often being forced to work in the informal economy or receiving very low wages; this can only increase their risk of exposure and dependence on social benefits. Thus, refugees continue to face real barriers toward economic self-sufficiency and social inclusion that prohibit them from serving as a positive force in the community and increase tension between locals and refugees regarding competition for scarce jobs[166].

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[164] Jaknanihan, Utama, and Thessalonica, "Dua Jalur Penanganan Pengungsi: Analisis Diplomasi Migrasi Di Asia Tenggara."

[165] Bilal Dewansyah and Irawati Handayani, "Reconciling Refugee Protection and Sovereignty in ASEAN Member States," *Central European Journal of International and Security Studies* 12, no. 4 (2018): 473–85, https://ssrn.com/abstract=3308116.

[166] Ganesh Cintika Putri, "The Dilemma of Hospitality: Revisiting Indonesia's Policy on Handling Refugees Under International Law," *Jurnal HAM* 13, no. 1 (2022): 113, https://doi.org/10.30641/ham.2022.13.113-130.

Different cultural backgrounds and traditions lead to cultural clashes, adding to misconceptions and friction between refugees and citizens. It is also seen that the existing cultural differences and lack of sufficient cultural knowledge among locals result in increased tension and poor outcomes for social cohesion. Perceptions and stereotypes of refugees may involve prejudice and lead to discrimination, making communication and mutual understanding difficult for different communities[167]. This further aggravates negative stereotypes and stigmatization in policy and public discourse, thereby perpetuating the marginalization of refugees and weakening the building of cohesive societies. Thus, it is relevant to overcome these cultural barriers, fostering intercultural dialogue and understanding for the bonding of trust and solidarity between refugees and locals in this society.

Conflicts among asylum seekers in the temporary shelter for asylum seeker in Kalideres, Jakarta Barat, which houses 1,266 refugees from 10 different countries, including 971 from Afghanistan, 130 from Somalia, and 70 from Sudan, are often sparked by competition for basic daily needs like food, clean water, and baby supplies[168]. While resources are reportedly adequate, cultural differences—such as norms around queuing, resource-sharing, and communication—have led to recurring disputes, particularly between refugees of different nationalities. One such incident on 21 July 2019 involved a clash between African refugees who were accused of cutting in line ahead of Afghan refugees to collect clean water; the situation escalated into physical altercations involving stone-throwing[169]. These incidents have underlined the challenge of managing culturally diverse refugee groups in limited communal spaces where dissimilar behaviors and expectations tend to heighten tensions even when resources are adequate.

Because of these complexities, various solutions and mitigation strategies can be adopted that would help to establish mutual understanding and peaceful coexistence between refugees and local communities. Community-based initiatives for engagement, such as dialogue sessions and joint activities, allow for empathy and the bridging of cultural gaps. Educational programs aimed at promoting cultural awareness and tolerance in schools and community centers are highly instrumental in breaking down stereotypes and fostering inclusivity. More employment is created through these programs for job creation, besides skill

[167] Nicolaus Bayu Wicaksono, Peni Susetyorini, and Kholis Roisah, "Tinjauan Yuridis Pelaksanaan Azas Non-Refoulement Dan Perlindungan Terhadap Pengungsi (Studi Kasus Perlindungan Yang Diberikan Oleh Negara Jerman Terhadap Pengungsi Akibat Konflik Suriah)," *Diponegoro Law Journal* 5, no. 3 (2016): 1–18, https://ejournal3.undip.ac.id/index.php/dlr/article/view/12412/12045.
[168] Adam Prireza, "Baku Pukul Di Kalideres, Pencari Suaka Dari Afrika Biang Onar?," Tempo News, 2019, https://www.tempo.co/arsip/baku-pukul-di-kalideres-pencari-suaka-dari-afrika-biang-onar--725405.
[169] Prireza.pp.1.

development, therefore increasing refugees' employability while avoiding or reducing competition. Legal support for refugees gives them assurance of their rights, defining guidelines on job employment and housing, the right to services. By taking a holistic approach-one that not only fosters the root causes of conflict but also builds social cohesion-Indonesia can provide a more inclusive and resilient society wherein refugees and locals can live in peaceful coexistence and solidarity. It is also important that the Indonesian government ensure access to adequate housing, healthcare, and education, as well as opportunities for refugees to participate in the local economy. This will help in easing tensions between refugees and locals and engender social cohesion. Additionally, the government should provide resources and support for refugees to help them overcome the difficulties they face and integrate into the local community. Conclusion Conflicts between refugees and locals in Indonesia are complex issues that require a multi-faceted approach. By fostering mutual understanding and respect, providing support and resources to refugees, and actively working to reduce tensions between refugees and locals, the Indonesian government and local communities can better create an inclusive and supportive environment for refugees in Indonesia.

3.2. Social, and Cultural Description of Indonesia

Indonesia's management of refugees is deeply rooted in its rich cultural background, societal values, and national ideology. The country's customary law, referred to as *"adat,"* prioritizes community harmony, mutual assistance, and shared obligation [170]. These values foster a hospitable environment where communal assistance is prioritized, positively impacting the treatment and integration of refugees. Communities often come together and provide the refugees with basic needs, such as food, shelter, and medical treatment, so their immediate survival needs are guaranteed[171]. Other than physical, the social structure embedded in *adat* also encompasses emotional and psychological support to a nurturing environment that will enable refugees to heal from their trauma [172].This communal approach ensures that refugees are not only receiving the physical resources they need but also the emotional and social support crucial for their well-being and integration. By

[170] Sukirno, "Kebijakan Ego Sektoral Dan Rendahnya Implementasi Hukum Sebagai Pemicu Konflik Tanah Hak Ulayat," *Jurnal Masalah-Masalah Hukum* 39, no. 1 (2010): 17–26.
[171] Yuliana Primawardani and Arief Rianto Kurniawan, "Penanganan Pengungsi Dari Luar Negeri Oleh Petugas Rumah Detensi Imigrasi Di Provinsi Sulawesi Selatan," *Jurnal Ilmiah Kebijakan Hukum* 12, no. 2 (2018): 179, https://doi.org/10.30641/kebijakan.2018.v12.179-197.
[172] Michaela Hynie, "Refugee Integration: Research and Policy.," *Peace and Conflict Journal of Peace Psychology*, 2018, https://doi.org/10.1037/pac0000326.

involving refugees in community activities and decision-making processes, locals help them regain a sense of agency and belonging, which are essential for rebuilding their lives[173].

Pancasila, the state ideology, promotes principles of humanitarianism and social justice. This ideological framework advocates for policies that ensure the humane treatment of refugees and uphold their rights. Pancasila's five principles—belief in one God, just and civilized humanity, Indonesian unity, democracy guided by inner wisdom, and social justice for all—create a moral compass guiding Indonesia's refugee policy[174]. These principles emphasize the importance of compassion, equality, and collective responsibility, which resonate deeply within the Indonesian cultural and religious landscape. Additionally, Indonesia's religious moderation fosters an environment of tolerance and acceptance, essential for the successful integration of refugees from diverse religious backgrounds. The principle of "Bhinneka Tunggal Ika" (Unity in Diversity) further underlines the importance of embracing cultural and religious differences, promoting a sense of inclusivity and acceptance[175]. This ideological stance not only influences governmental policies but also shapes public opinion and societal behavior towards refugees, reinforcing the values of hospitality and solidarity.

Indonesia's approach to handling refugees, particularly from the Rohingya community and the Middle East who have landed in regions such as Aceh, Sumatera, and Makassar since 2015, is deeply influenced by its rich cultural heritage, societal values, and national ideology. Customary law, known as "adat," emphasizes principles of mutual aid, community cohesion, and collective responsibility, which foster a hospitable environment[176]. These values ensure that refugees are welcomed and supported not only with necessities like food, shelter, and healthcare but also with emotional and psychological assistance. In Aceh, for example, local fishermen were among the first to rescue and aid hundreds of Rohingya refugees in 2015, highlighting the community's spontaneous and generous response rooted in a tradition of hospitality and solidarity[177].

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[173] Samuel Tunggul Jovano and Cornelius Agatha Gea, "Penanganan Pengungsi Yang Bunuh Diri Di Indonesia Berdasarkan Perspektif Hukum Keimigrasian," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 3 (2021): 361–72.
[174] Carly Gordyn, "Pancasila and Pragmatism: Protection or Pencitraan for Refugees in Indonesia?," *Journal of Southeast Asian Human Rights* 2, no. 2 (2018): 336, https://doi.org/10.19184/jseahr.v2i2.8414.
[175] Karel Karsten Himawan, Matthew Bambling, and Sisira Edirippulige, "Singleness, Religiosity, and the Implications for Counselors: The Indonesian Case," *Europe's Journal of Psychology*, 2018, https://doi.org/10.5964/ejop.v14i2.1530.
[176] Antje Missbach et al., "Facets of Hospitality : Rohingya Refugees Temporary Stay in Aceh," vol. 104, 2017.
[177] CNN Indonesia, "Ratusan Pengungsi Rohingya Terdampar Di Aceh," CNN Daily News, 2022, https://www.cnnindonesia.com/nasional/20220306140646-20-767404/ratusan-pengungsi-rohingya-terdampar-di-aceh.

Despite Indonesia's supportive cultural framework, refugee children face significant challenges in accessing education. Language barriers, cultural disparities, and trauma-related issues hinder their academic progress and social integration[178]. The national education system often lacks inclusive policies and culturally sensitive teaching methods, making it difficult for refugee children to adapt and succeed[179]. The education system's focus on Bahasa Indonesia, while crucial for social integration, presents a challenge for refugee children who may not be proficient in the language. Additionally, the trauma many refugee children have experienced can significantly impact their ability to learn and engage in the classroom. These children often require specialized educational support, including language classes and mental health services, which are not always readily available. Moreover, the lack of awareness and training among educators regarding the specific needs of refugee children further exacerbates their struggles[180]. Schools may also lack the resources to implement inclusive educational practices, such as hiring bilingual teachers or developing culturally relevant curricula, leaving refugee children at a disadvantage.

Refugees in Indonesia also encounter legal and social obstacles that affect their integration. Limited access to legal protections and support services, coupled with inadequate resources, compounds their difficulties. The legal framework in Indonesia, while influenced by customary law and national principles, sometimes falls short in providing comprehensive protections for refugees[181]. Negative societal perceptions of refugees further exacerbate these challenges, leading to instances of discrimination and social tension. These perceptions are often fueled by misinformation and stereotypes, which can result in hostility and social exclusion. Refugees may face difficulties in obtaining legal documentation, accessing employment, and securing long-term housing, which are critical for their stability and integration. The lack of clear policies and procedures for refugee protection and support can create an environment of uncertainty and insecurity for refugees, making it difficult for them to rebuild their lives and contribute to the host society.

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[178] Fithriatus Shalihah and Uni Tsulasi Putri, "The Protection of Rights to Education for the Refugee Children During the Covid-19 Pandemic" 499, no. September 1990 (2020): 427–33, https://doi.org/10.2991/assehr.k.201209.322.

[179] P Nugroho Adhi, I Gst Putu Agung, and Bernadette Gitareja, "Challenge and Opportunity to Implement the Right to Education for Child Refugees in Indonesia," *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)* 549, no. Iclhr 2020 (2021): 54–62, https://doi.org/10.2991/assehr.k.210506.009.

[180] P Nugroho Adhi, I Gst Putu Agung, and Bernadette Gitareja, "Challenge and Opportunity to Implement the Right to Education for Child Refugees in Indonesia," 2021, https://doi.org/10.2991/assehr.k.210506.009.

[181] Putri, "The Dilemma of Hospitality: Revisiting Indonesia's Policy on Handling Refugees Under International Law."pp.113-130.

Moreover, the arrival of refugees can strain local resources, leading to competition over jobs, housing, and social services. In economically vulnerable areas, this competition can breed resentment among local populations, who may feel that refugees are receiving preferential treatment or consuming resources that should be allocated to locals[182]. This economic strain is often more pronounced in regions already struggling with poverty and unemployment. Additionally, cultural and religious differences can lead to misunderstandings and conflicts. While Indonesia is known for its religious tolerance, the sudden influx of refugees from different cultural backgrounds can create friction, especially in areas where the local population is less accustomed to diversity[183]. Efforts to integrate refugees into local communities can sometimes be met with resistance, particularly if locals feel that their cultural norms and traditions are being overlooked or challenged. This resistance can manifest in various forms, from social exclusion and verbal hostility to physical violence and discriminatory practices, undermining the integration process and affecting the well-being of refugees.

To mitigate conflicts and promote integration, it is essential to implement inclusive policies and practices. This includes providing targeted language support, culturally sensitive educational materials, and trauma-informed care. Schools, communities, and government agencies must collaborate to create supportive environments that address the unique needs of refugee children. Educators need training on the specific challenges faced by refugee children, including the psychological impacts of displacement and trauma. Efforts to promote positive narratives about refugees can help combat stereotypes and reduce societal tensions. Highlighting the contributions of refugees to local communities and emphasizing shared values can foster a more inclusive and accepting environment. Initiatives such as community dialogues, intercultural exchange programs, and joint community projects can bridge gaps between locals and refugees, fostering mutual understanding and respect. Additionally, providing vocational training and employment opportunities for refugees can alleviate economic tensions and demonstrate the potential benefits of refugee integration to the local economy.

Strengthening legal protections for refugees and ensuring access to adequate support services are crucial steps in enhancing Indonesia's capacity to manage refugee situations effectively. Aligning national policies with international standards and upholding the principles

[182] Petra M. Eggenhofer-Rehart et al., "Refugees' Career Capital Welcome? Afghan and Syrian Refugee Job Seekers in Austria," *Journal of Vocational Behavior* 105, no. January (2018): 31–45, https://doi.org/10.1016/j.jvb.2018.01.004.
[183] Bahri, "Understanding The Pattern of International Migration : Challenges in Human Right Protection.".pp.81-98.

of Pancasila can help safeguard the rights and dignity of refugees. Efforts to strengthen legal protections might include better implementation of existing laws, advocacy for policy changes, and ensuring that refugees have access to legal aid and support services. Establishing clear guidelines and procedures for refugee status determination, as well as providing pathways to citizenship or long-term residency, can create a more stable and predictable environment for refugees[184]. Furthermore, enhancing cooperation with international organizations and other countries can help share the burden of refugee support and improve resource allocation. Addressing the economic challenges, it is important to implement programs that benefit both refugees and local communities, such as job creation initiatives that include skills training for both groups[185]. This can reduce competition and foster a sense of mutual benefit. Cultural exchange programs can also help bridge the gap between locals and refugees, promoting understanding and acceptance.

By leveraging these strengths, Indonesia can develop inclusive and humane policies that promote social cohesion, respect for human rights, and economic integration. Addressing the multifaceted nature of refugee issues requires adaptive strategies that consider the evolving needs of both refugees and local populations. Through inclusive practices, positive narratives, and strengthened legal frameworks, Indonesia can create a supportive context for refugee integration, ensuring that refugees are welcomed and integrated into a society that values diversity and human dignity. This holistic approach not only benefits refugees but also enriches Indonesian society, reflecting its commitment to humanitarian principles and social justice. The successful integration of refugees can contribute to Indonesia's social and economic development, fostering a more diverse and resilient society. By embracing the principles of Pancasila and adat, Indonesia can continue to uphold its tradition of hospitality and compassion, setting a positive example for other nations facing similar challenges.

4. Chapter Conclusion and Personal Opinion

Indonesia's migration history reflects a complex evolution from colonial exploitation to post-independence sovereignty struggles and contemporary humanitarian challenges. The colonial era established migration frameworks centered on economic extraction and ethnic

[184] Anis Widyawati, "Handling Policies Of Asylum Seekers In Indonesia," *South East Asia Journal of Contemporary Business, Economics and Law* 12, no. 4 (2017): 9–17.
[185] Marielle Zill, Ilse Van Liempt, and Bas Spierings, "Living in a 'Free Jail': Asylum Seekers' and Local Residents' Experiences of Discomfort with Asylum Seeker Accommodation," *Political Geography* 91 (November 1, 2021), https://doi.org/10.1016/j.polgeo.2021.102487.pp. 88-97.

stratification, with the VOC's monopolistic policies and the Dutch East Indies' "open door" approach facilitating mass labor migration while sowing seeds of social unrest through discriminatory practices. Post-independence reforms saw Indonesia dismantle colonial legal structures, assert control over borders, and develop national immigration institutions, though Cold War-era refugee crises like the Vietnamese "boat people" and East Timorese displacement exposed systemic vulnerabilities. Today, Indonesia navigates globalization pressures through laws like Law *(Undang-Undang)* No. 6/2011 and Presidential Regulation *(Perpres)* No. 125/2016, which balance security concerns with limited humanitarian protections—yet persistent gaps in refugee rights, social integration, and bureaucratic coherence reveal unresolved tensions between sovereignty and international obligations.

In my opinion, Indonesia's approach to migration and refugees embodies a pragmatic, albeit inconsistent, humanitarianism. While non-ratification of the 1951 Refugee Convention limits formal protections, initiatives like the Galang Island refugee processing (1979–1996) and Perpres 125/2016 demonstrate a genuine commitment to crisis response rooted in cultural values like gotong royong (mutual aid) and Pancasila's social justice principles. However, the lack of a clear pathway to integration—particularly regarding refugees' access to education, employment, and permanent status—perpetuates vulnerability. The state's emphasis on temporary protection, while politically pragmatic, ignores the reality of prolonged displacement (e.g., Afghan refugees stranded for years). To align policy with Indonesia's humanitarian identity, future reforms must prioritize: (1) domestic refugee status determination to reduce UNHCR dependency; (2) inclusive social policies enabling schooling and livelihoods; and (3) regional leadership through ASEAN frameworks to address root causes like the Rohingya crisis.

Historically, migration has shaped Indonesia's socio-economic fabric—from the colonial spice trade's forced labor to today's refugee influxes. Yet the state's treatment of migrants remains a litmus test for its commitment to human rights. The 1740 Batavia massacre and recent Rohingya boat pushbacks reveal how easily exclusionary policies resurface. Conversely, Acehnese fishermen rescuing refugees at sea (2015) and the Galang Island *"Open Museum"* symbolize Indonesia's capacity for compassion. As climate displacement and regional conflicts escalate, Indonesia faces a choice: reinforce barriers or champion a tata kelola kemanusiaan (humanitarian governance) model. This demands courage to transcend political short-termism, recognizing that dignity for migrants—whether Rohingya, Afghan, or Papuan—ultimately fortifies national resilience and moral authority on the global stage.

CHAPTER V: LEGAL HISTORY OF HUNGARY MIGRATION

1. Hungary Migration History

1.1. Migration during Austro-Hungarian Empire

The refugee movement in Hungary before World War I constituted a multifaceted phenomenon deeply embedded within the complex ethnic, legal, and social dynamics of the Austro-Hungarian Empire. This movement, characterized by its diverse origins and destinations, reflects the intersection of state policies, economic pressures, ethnic tensions, and individual survival strategies that defined the late Habsburg period. Understanding this phenomenon requires examining the intricate web of factors that drove displacement, the legal and administrative challenges that shaped refugee experiences, and the broader social transformations that both enabled and constrained population movements. The demographic composition of these movements reveals the profound complexity of the refugee experience in pre-war Hungary, where systematic policies of cultural assimilation intersected with economic modernization to create conditions that rendered traditional minority communities increasingly vulnerable to displacement. The scale and intensity of these movements reflected not merely individual choices but rather the structural transformation of a multinational empire attempting to reconstruct itself along modern nation-state principles, creating fundamental tensions between imperial diversity and national homogeneity that would ultimately prove irreconcilable. The academic literature on this subject demonstrates that refugee movements in this period cannot be understood as discrete events but rather as manifestations of broader processes of state formation, economic modernization, and ethnic mobilization that characterized the late Habsburg period and prefigured the massive population transfers that would follow the empire's collapse.

The legal framework governing refugee movements in pre-war Hungary was characterized by fundamental ambiguities and contradictions that reflected the empire's complex constitutional structure and the tension between imperial unity and national autonomy. The Austro-Hungarian Compromise of 1867 had created a dual monarchy with separate legal systems, establishing that there was no common citizenship in Austria–Hungary: one was either an Austrian citizen or a Hungarian citizen, never both, and Austria–Hungary used two separate passports: the Austrian passport and the Hungarian one Austria-Hungary - Wikipedia. This

legal dualism created immediate complications for population movements, as individuals moving between the Austrian and Hungarian halves of the empire effectively crossed international boundaries despite remaining within the same imperial structure. The practical implications for refugee movements were profound, as displaced persons found themselves navigating not merely different administrative systems but fundamentally different conceptualizations of citizenship, belonging, and legal obligation. The Hungarian Nationality Act of 1868, ostensibly designed to address minority rights, exemplified these contradictions by establishing that all citizens of Hungary, whatever their nationality, constituted politically "a single nation, the indivisible, unitary Hungarian nation," with no differentiation between them except in respect of the official usage of languages. This formulation created a peculiar legal fiction whereby ethnic diversity was acknowledged while political unity was imposed, effectively denying the legitimacy of minority political aspirations while maintaining the pretense of legal equality. The implementation of this framework proved systematically discriminatory, as although the 1868 Hungarian Nationalities Law guaranteed legal equality to all citizens, including in language use, in this period practically only Hungarian was used in administrative, judicial, and higher educational contexts Child Assistance and the Making of Modern Refugee Camps in Austria-Hungary during the First World War | Central European History | Cambridge Core. This divergence between legal theory and administrative practice created a regime of de facto legal apartheid that made effective participation in civic life conditional upon linguistic and cultural assimilation, thereby transforming what should have been a neutral legal framework into an instrument of ethnic pressure that directly contributed to refugee movements.

The absence of a coherent refugee protection framework meant that displaced populations relied on informal networks, religious organizations, and ad hoc arrangements for support and assistance, creating a system of protection that was both unreliable and systematically biased toward certain groups. This legal vacuum created particular hardships for those fleeing persecution, as they lacked formal recognition of their status and had no institutional mechanisms for seeking protection or redress. The complexity was further compounded by the different legal traditions operating within the empire, with Hungarian law following Roman law principles while Austrian law incorporated Germanic legal traditions, creating jurisdictional confusion for migrants moving between different parts of the monarchy. Hungarian citizenship could be revoked after a ten-year absence, and the accuracy of registered residence was uncertain, as not all individuals were recorded by local authorities at their place of residence Why did the minorities in Austria-Hungary resist Germanization and

Magyarization? - demonstrating the precarious nature of legal status for mobile populations. This legal uncertainty was particularly acute for refugees, who might find their citizenship status challenged or revoked precisely because their displacement made it difficult to maintain the continuous residence required by law. The bureaucratic requirements for maintaining legal status often assumed a stability of residence that was incompatible with the refugee experience, creating a catch-22 situation where flight from persecution could result in loss of legal protection. Furthermore, the lack of standardized procedures for documentation and status verification meant that refugees were vulnerable to arbitrary decisions by local officials, who might have political, ethnic, or economic incentives to deny recognition or assistance. The resulting system of legal uncertainty and administrative arbitrariness created conditions that not only failed to protect refugees but actively contributed to their marginalization and vulnerability.

Administrative challenges pervaded every aspect of the refugee experience, from initial displacement through attempts at integration in new communities, reflecting the empire's inadequate institutional capacity to manage large-scale population movements and the political tensions that surrounded minority rights. The empire's bureaucratic apparatus was ill-equipped to handle the complexity of refugee movements, lacking standardized procedures for documentation, registration, and support that could accommodate the linguistic, cultural, and religious diversity of displaced populations. Local authorities often operated with limited resources and conflicting mandates, creating inconsistent responses to refugee needs that varied dramatically by region, ethnicity, and political climate. The linguistic diversity of the empire meant that refugees frequently encountered administrative barriers simply due to language differences, as local officials might not speak the refugee's native language or might deliberately refuse to provide services in non-Hungarian languages as part of broader Magyarization policies. During the dualism era, there was an internal migration of segments of the ethnically non-Hungarian population to the Kingdom of Hungary's central predominantly Hungarian counties and to Budapest where they assimilated Magyarization - Wikipedia, indicating that administrative pressure was systematically applied to encourage both geographic and cultural assimilation. The documentation required for legal residence, employment, and access to services was often difficult to obtain, particularly for those fleeing persecution who might lack official papers or whose documents were not recognized by local authorities operating under different legal systems. This created a class of effectively stateless persons within the empire, vulnerable to exploitation and unable to access basic rights and services that were theoretically guaranteed by law. The bureaucratic maze that refugees

encountered often reflected deliberate attempts to discourage settlement or to force assimilation as the price of administrative recognition, transforming what should have been neutral administrative procedures into instruments of ethnic policy. The complexity of these administrative challenges was compounded by the rapid pace of legal and institutional change during this period, as the empire attempted to modernize its governance structures while managing the political tensions generated by competing national movements. The result was a system of administration that was simultaneously over-bureaucratized and under-institutionalized, creating maximum inconvenience for refugees while providing minimum protection or support.

Magyarization policies constituted perhaps the most significant driver of refugee movements, representing a systematic attempt to transform Hungary into a culturally and linguistically homogeneous nation-state through legal, administrative, and economic pressure that fundamentally altered the conditions of minority existence. These policies, implemented through educational reforms, administrative changes, and economic pressures, created an environment of cultural persecution that made life increasingly difficult for minority populations who wished to maintain their linguistic and cultural identities. The Nationality Act (Act XLIV of 1868) was basically a liberal piece of legislation that ensured the wide use of non-Hungarian languages, allowing all residents to submit petitions to municipalities, counties, public bodies and the government in their mother tongue The Hungarian Refugee Crisis of 1956 and the Challenges of Organizational Adaptation | Wilson Center, yet the implementation of this law was systematically undermined by subsequent legislation and administrative practices that privileged Hungarian language and culture. The closure of minority-language schools, the requirement that official business be conducted in Hungarian, and the preferential treatment given to Hungarian speakers in employment and education created powerful incentives for minorities to either assimilate or leave their ancestral communities. The economic dimensions of Magyarization were particularly insidious, as the state used its power over employment, business licenses, and educational opportunities to pressure minorities into abandoning their languages and cultures, creating a form of economic coercion that complemented legal and administrative pressures. This systematic approach to cultural transformation represented a fundamental departure from traditional Habsburg policies of ethnic accommodation, reflecting the influence of modern nationalist ideology on state policy and the growing pressure to create nationally homogeneous political units. The result was a refugee movement that combined elements of political persecution with economic displacement, as families faced impossible choices between cultural survival and economic

viability, with many concluding that emigration offered the only possibility of maintaining their cultural identity while securing economic opportunity. The academic literature suggests that these policies were not merely reactive responses to minority nationalism but rather proactive attempts to reconstruct Hungarian society along modern national lines, using the power of the state to accomplish what market forces and voluntary assimilation had failed to achieve. The implementation of Magyarization policies thus represents a crucial case study in the use of state power for ethnic engineering, demonstrating how modern administrative techniques could be employed to achieve cultural transformation on a massive scale while maintaining the legal fiction of minority rights and protection.

The social challenges facing refugee populations were compounded by the rapid social changes occurring throughout the empire during this period, as urbanization, industrialization, and the emergence of mass politics created new forms of social tension and competition that affected refugee integration in complex and often contradictory ways. The concentration of industrial development in certain regions created both opportunities for employment and intense competition for jobs, housing, and services, with refugees often finding themselves competing not only with established populations but also with other refugee groups from different ethnic backgrounds. This competition was particularly acute in urban areas, where segments of the ethnically non-Hungarian population migrated to the Kingdom of Hungary's central predominantly Hungarian counties and to Budapest where they assimilated Magyarization - Wikipedia, creating complex dynamics of cultural adaptation and social integration that varied significantly by ethnic group, economic status, and individual circumstances. The breakdown of traditional family structures often accompanied refugee movements, as families made difficult decisions about who would leave and who would remain, with these decisions influenced by factors such as military service obligations, property ownership, and family responsibilities that created new forms of family separation and reconfiguration. The experience of displacement often accelerated changes in gender roles and family dynamics, as refugees adapted to new social and economic environments that might offer different opportunities and constraints than their places of origin, with women sometimes gaining greater autonomy and economic independence while men might experience loss of traditional authority and status. Religious institutions played crucial roles in refugee support networks, providing not only spiritual comfort but also practical assistance with housing, employment, and legal issues, yet the religious diversity of refugee populations and the complex relationship between religious and ethnic identity created challenges for these support systems that often struggled to accommodate multiple traditions and competing claims for

assistance. The relationship between religious identity and refugee status was particularly complex in cases where religious and ethnic identities did not align neatly, with Catholic refugees coming from Hungarian, Slovak, Croatian, or German backgrounds, each with different languages, customs, and political orientations that challenged simple categorizations and required support networks to develop more nuanced approaches to refugee assistance. The cultural dimensions of refugee movements involved both preservation and transformation of traditional practices and identities, as refugees often faced pressure to abandon their languages, customs, and religious practices in order to integrate into new communities, while simultaneously developing new forms of cultural expression that reflected their experiences of displacement and adaptation. The creation of ethnic neighborhoods, cultural organizations, and mutual aid societies represented attempts to maintain cultural continuity while adapting to new circumstances, yet these efforts at cultural preservation sometimes conflicted with the practical necessities of economic survival and social integration, creating ongoing tensions between group solidarity and individual advancement.

The economic integration of refugees involved both opportunities and obstacles that reflected the broader economic transformations occurring within the empire, as the growth of industrial production, transportation networks, and commercial agriculture created new employment opportunities that could attract refugee populations while simultaneously disrupting traditional occupations and social relationships. Labor market competition between refugees and established populations created tensions that often manifested in ethnic or religious terms, with refugees frequently willing to work for lower wages or in more dangerous conditions, creating resentment among established workers and opportunities for employers to exploit both groups through divide-and-conquer strategies. The absence of labor protections and the weakness of early trade union movements meant that these tensions were often resolved through informal violence or political mobilization rather than institutional channels, contributing to the politicization of ethnic differences and the development of competing nationalist movements. The regional variation in economic opportunities created distinct patterns of refugee settlement and integration, with industrial centers offering employment opportunities but also intense competition and poor living conditions, while rural areas might provide more security but fewer economic prospects and greater exposure to traditional forms of ethnic discrimination. The choice of destination often reflected refugees' assessment of these trade-offs, as well as their access to information and support networks in different locations, with the development of transportation networks, particularly railways, both facilitating refugee movements and channeling them toward specific destinations that created new patterns

of population concentration and dispersal. The economic dimensions of refugee movements were further complicated by the empire's customs union, which facilitated trade and labor mobility within the empire while creating barriers to emigration beyond its borders, effectively trapping some refugees within the imperial economy even when they might have preferred to seek opportunities elsewhere. The transformation of traditional agricultural economies through commercialization and technological change created new forms of economic displacement that affected entire communities, with rural refugees often lacking the skills and social capital necessary for successful integration into urban industrial economies, leading to the formation of marginalized communities that remained economically precarious for generations. The academic literature suggests that these economic pressures were not merely byproducts of modernization but were actively shaped by state policies that sought to channel population movements in ways that served national political objectives, using economic incentives and constraints as tools of ethnic policy and demographic engineering.

The political implications of refugee movements extended beyond the immediate humanitarian concerns to shape broader patterns of political mobilization and identity formation, as the experience of displacement often radicalized refugees and made them more receptive to nationalist, socialist, or other political movements that promised to address the root causes of their displacement. Refugee communities became important sources of political support for opposition movements and contributed to the development of transnational political networks that would prove significant in later periods, with displaced populations serving as crucial intermediaries between different national movements and political organizations. The relationship between refugee movements and the development of ethnic nationalism was particularly complex, as displacement often strengthened ethnic identities and grievances while simultaneously creating new forms of inter-ethnic contact and cooperation that challenged simple narratives of ethnic conflict. Refugee communities sometimes developed solidarity across ethnic lines based on shared experiences of displacement, yet the competition for scarce resources and the manipulation of ethnic tensions by political entrepreneurs could also exacerbate conflicts between different refugee groups, creating complex dynamics of cooperation and competition that varied by location and circumstance. The intellectual and cultural contributions of refugee populations to their new communities often went unrecognized but were nonetheless significant, as refugees brought new skills, knowledge, and perspectives that enriched the communities they joined, even as they faced discrimination and marginalization that limited their ability to fully participate in political and cultural life. The cultural mixing that resulted from refugee movements contributed to the cosmopolitan

character of many urban centers within the empire, yet it also generated anxieties about cultural purity and national identity among established populations who feared that their own traditions and privileges might be threatened by demographic change. The relationship between refugee movements and broader processes of modernization was multifaceted and often contradictory, as the displacement of traditional populations could be seen as part of the creative destruction that accompanied economic and social modernization, while the human costs of this displacement raised questions about the price of progress and the responsibility of states to protect vulnerable populations. The refugee experience thus became both a symptom of modernization's discontents and a catalyst for new forms of social organization and political consciousness that would shape the development of modern Central European politics in ways that extended far beyond the immediate period of displacement.

The long-term consequences of pre-war refugee movements extended far beyond the immediate period, establishing patterns and precedents that would prove crucial during and after World War I, as the experience of displacement, the development of support networks, and the legal and administrative challenges encountered laid the groundwork for the massive population transfers that would follow the empire's collapse. The refugee movements of the pre-war period thus represent not merely a historical curiosity but a crucial chapter in the broader story of European migration and displacement that continued throughout the twentieth century and beyond, shaping the demographic, cultural, and political landscape of Central and Eastern Europe in ways that continue to resonate today. The academic analysis of these movements reveals the complex interplay between state policies, economic forces, and social dynamics that created conditions for mass displacement, while also highlighting the agency and resilience of refugee populations who found ways to survive and adapt despite facing systematic discrimination and persecution. The legal and administrative frameworks developed during this period, however inadequate, provided precedents for later efforts to manage population movements and protect refugee rights, even as they also demonstrated the dangers of allowing ethnic considerations to override humanitarian concerns in the formulation of state policy. The social networks and cultural institutions created by refugee communities provided models for later diaspora organizations and contributed to the development of transnational political movements that would play crucial roles in the reconstruction of Central Europe after the empire's collapse. The economic integration strategies developed by refugee populations, ranging from ethnic entrepreneurship to labor organizing, provided important lessons about the possibilities and limitations of minority economic advancement in ethnically diverse societies, while also demonstrating the ways in which economic competition could be mobilized to serve

political ends. The political consciousness developed through the refugee experience contributed to the formation of modern nationalist movements and provided crucial organizational experience for political leaders who would later play important roles in the creation of successor states, while also highlighting the tensions between group solidarity and individual advancement that would continue to shape minority politics throughout the twentieth century. The cultural transformations that accompanied refugee movements, including the development of new forms of ethnic identity and the creation of hybrid cultural practices, provided important insights into the nature of cultural change and adaptation that would prove relevant to later studies of migration and diaspora formation, while also demonstrating the resilience of cultural traditions in the face of systematic pressure for assimilation and the creative potential of cross-cultural contact and exchange.

1.2. First World War to the Second World War

The assassination of Archduke Franz Ferdinand, the King of the Austro-Hungarian Empire, in Sarajevo, Bosnia in 1914 served as the main event that cause the outbreak of the World War I[186]. This catastrophic conflict, often referred to as the Great War, resulted in the disintegration of the Austro-Hungarian Empire, which directly affecting both its Hungarian and Austrian regions. The ensuing peace treaties imposed severe penalties on Hungary, one of the defeated parties, and led to a drastic decline of its borders. Notably, the Treaty of Trianon in 1920 delineated the terms by which Hungary would lose a staggering two-thirds of its territory and a substantial portion of its population. Consequently, Hungary territorial expanse shrank dramatically from 125.000 square miles to only 36.000 square miles, while its population drop significantly from 21 million to a mere 7.5 million[187]. This reshuffling had the consequence of leaving significant numbers of ethnic Hungarians residing within the newly expanded borders of neighboring states such as Czechoslovakia, Romania, Serbia and Montenegro, a geopolitical situation that endures to the present day.

In the initial years following the dramatic border adjustments of 1920, there was a notable and tumultuous movement of people into and out of Hungary. Based on the estimation which made by the Hungarian Statistical Office in 1924, the total Hungarian who involved as refugees which caused by the Trianon agreements is reached up to 400.000 to 500.000 people,

[186] Grayson Myers, "Contradictory Explanations and Elusive Answers : The Historiography of the Sarajevo Assassination Contradictory Explanations and Elusive Answers : The Historiography of the Sarajevo Assassination" 1 (2020).
[187] Gergely Peterffy, "The Impact of The Treaty of Trianon on Hungarian Infrastructure," *COJOURN* 4, no. 2–4 (2019): 61–75.

whereas approximately 200.000 ethnic Hungarians opted to relocate to Hungary, while 25.000 emigrants departed Hungary in search of new lives, many of them making their way to the United States, and the rest were separated in many neighboring countries[188]. However, after 1925, the flow of emigration, and refugee movements experienced a marked reduction, with this trend persisting until the outbreak of World War II.

The outbreak of the Second World War significantly changed the migration patterns in the region. From the year of 1938 to 1941, the Nazi regime rewarded Hungary with a series of territorial expansions, leading to an increase in Hungary's land area by 78.680 square miles and an additional five million people[189]. Unfortunately, this territorial expansion also triggered a significant exodus from Hungary, as many sought refuges from the Nazi regime atrocities. For those individuals who remained in Hungary, or were unable to leave, their suffering intensified considerably. German forces occupied Hungary in March 1944, which marked the beginning of a devastating period during which 440,000 Hungarian Jews were deported within the next four months[190]. By the war's conclusion, the Nazis had managed to exterminate over 560,000 Hungarian Jews, reducing the once-thriving Jewish community to a mere 150,000 individuals, many of whom were concentrated in Budapest[191]. Following the conclusion of the Second World War, Hungary's borders were largely restored to their 1920 configuration. This period witnessed a substantial surge in refugee movements, with over 100,000 people fleeing Hungary.

Additionally, significant population exchanges and deportations transpired; roughly 200,000 ethnic Germans were forcibly removed from Hungary, while about 70,000 Slovaks left in exchange for an influx of 70,000 ethnic Hungarians from Czechoslovakia. Moreover, ethnic Hungarians arrived in Hungary from other countries, including 125,000 from Transylvania (now part of Romania), 45,000 from the Vojvodina province of Yugoslavia, and 25,000 from the Soviet Union[192]. With the rise of the communist regime in Hungary in 1948, strict border controls were enforced, making illegal departures a criminal offense[193]. Over the

[188] Gábor Koloh, "The Number of Trianon Refugees," *Regional Statistics* 11, no. 4 (2021): 170–81, https://doi.org/10.15196/RS110408.
[189] Balázs Ablonczy, "The Refugee Experience after the Treaty of Trianon. Between State Practices and Neglect," *The Hungarian Historical Review* 9, no. 1 (2020): 69–89, https://www.jstor.org/stable/26984102.
[190] Géza Jeszenszky, "The Controversy About 1944 in Hungary and the Escape of Budapest's Jews from Deportation. A Response.," *Hungarian Cultural Studies* 13 (2020): 67–74, https://doi.org/10.5195/ahea.2020.388.
[191] Jeszenszky.
[192] János Kristóf Murádin, "The Problem of Transylvania in the Emigration Correspondence of Count Béla Teleki from the End of the Second World War to the Abolition of the Communist Regime," *Acta Universitatis Sapientiae, European and Regional Studies* 19, no. 1 (2021): 14–39, https://doi.org/10.2478/auseur-2021-0002.
[193] András Szalai and Gabriella Gőbl, "Securitizing Migration in Contemporary Hungary," 2015, 1–33.

subsequent eight years, there was a significant decline in the number of Hungarians leaving the country, and the influx of individuals into Hungary also markedly diminished.

1.3. After World War II, and 1956 Revolution

The events of the 1956 Hungarian Revolution brought about a sea change in the country. In the aftermath of the uprising being brutally suppressed by Russian military intervention, an astonishing number of 200.000 Hungarian refugees sought asylum in different countries within three months[194]. Notably, this exodus represented more than 4 percent of Budapest's population and exceeded 12 percent in towns located near the western border with Austria. An astonishing aspect of this migration was the significant *"brain drain"* it entailed. Approximately 90 percent of the refugees were under the age of 40, with 25 percent belonging to professional occupations, and the majority of manual laborers possessed considerable skills[195].

In the year that followed, Hungary's borders were sealed, allowing only a limited number of legal departures, while those attempting to leave the country without permission faced criminal consequences and the revocation of their citizenship[196]. The actual figures regarding legal and illegal emigration were classified, resulting in an unclear understanding of the scale of refugee outflows in subsequent decades. However, current information indicates that during the 1960s and 1970s, more than 50,000 people may have left the country without authorization[197]. Most of those who sought refuge in the West were promptly categorized as political refugees, with only cursory assessments of their specific circumstances.

The 1980s witnessed a decline in the automatic acceptance of Hungarian immigrants as refugees in Western Europe and North America, even if the yearly emigration rate remained at 5.000 people[198]. This shift was attributed to Hungary's unique form of communism, often referred to as "goulash communism," and its more liberal passport regulations, which did not align with the typical characteristics of a repressive regime[199]. Although the number of

[194] Rupert Colville, "Fiftieth Anniversary of the Hungarian Uprising and Refugee Crisis," UNHCR Stories, 2006, https://www.unhcr.org/news/stories/fiftieth-anniversary-hungarian-uprising-and-refugee-crisis.
[195] Koloh, "The Number of Trianon Refugees."
[196] András Bozóki, "The Independent Historical Memory of the Hungarian Democratic Opposition," 2016.
[197] Tibor Frank, "Migrations in the Hungarian History," Hungarian Review, 2016, https://hungarianreview.com/article/20160114_migrations_in_hungarian_history_part_i/.
[198] Irén Gödri, Béla Soltész, and Boróka Bodacz-Nagy, *Immigration or Emigration Country? Migration Trends and Their Socio-Economic Background in Hungary: A Longer-Term Historical Perspective*, *Working Papers on Population, Family and Welfare*, 2014, https://ideas.repec.org/p/nki/wpaper/19.htmlpercent0Ahttps://ideas.repec.org//p/nki/wpaper/19.html.
[199] Heino Nyyssonen, "Salami Reconstructed 'Goulash Communism' and Political Culture in Hungary," *Cahiers Du Monde Russe* 47, no. July (2020): 1–23.

Hungarians granted refugee status in foreign nations decreased during this period, there continued to be more refugees leaving Hungary than entering it. Between 1948 and 1988, Hungary received minimal asylum seekers due to strict border controls, with the admission of refugees being a decision made at a high political level.

Hungary did, however, occasionally provide sanctuary to individuals fleeing political persecution, such as admitting approximately 1,000 Chilean communists in the 1970s and around 3,000 Greek communists escaping the aftermath of the Greek civil war in the 1940s[200]. Additionally, Hungary offered asylum to individual revolutionaries from Africa and Asia. The stringent border controls and travel restrictions in place during this time contributed to the limited number of asylum seekers entering Hungary, with the country primarily serving as a transit point for migrants heading to Western destinations.

The economic restructuring that occurred in Hungary in the late 1980s and 1990s, following neoliberal economic policies and a decline in GDP and job security, had significant repercussions on migration patterns[201]. As Hungary transitioned into a predominantly transit country for migrants traveling to the West after the political and economic system change in 1989, emigration restrictions were lifted, leading to a surge in migration flows through the country. This shift in Hungary's role from a destination to a transit point for migrants was influenced by both internal economic changes and broader geopolitical transformations. The influx of migrants and refugees, including asylum seekers, has posed challenges to local healthcare systems in various countries, including the Netherlands[202]. The increasing prevalence of multidrug-resistant bacteria among asylum seekers has raised concerns about public health and the need for effective screening and healthcare provision for this vulnerable population. The strain on healthcare resources due to the growing number of migrants underscores the importance of developing comprehensive and sustainable healthcare policies to address the diverse needs of asylum seekers and refugees.

The East German refugee crisis in Hungary during 1989 represented a pivotal moment in the collapse of the Iron Curtain and the end of the Cold War, fundamentally altering the relationship between Eastern European communist states and accelerating the process of German reunification. Beginning in the summer of 1989, thousands of East German citizens

[200] Alfonso Salgado, "Making Friends and Making Out: The Social and Romantic Lives of Young Communists in Chile (1958–1973)," *The Americas* 76, no. 2 (2019): 299–326, https://doi.org/10.1017/tam.2018.95.
[201] Attila Juhász and Bulcsú Hunyadi, "Focus on Hungary: Refugees, Asylum and Migration Focus on Hungary: Refugees, Asylum and Migration HEinricH-Böll-Stiftung" (Prague, 2015).
[202] Sofanne J Ravensbergen et al., "High Prevalence of MRSA and ESBL Among Asylum Seekers in the Netherlands," *Plos One* 12, no. 4 (2017): e0176481, https://doi.org/10.1371/journal.pone.0176481.

began arriving in Hungary, ostensibly as tourists, but with the intention of using Hungary as a transit route to reach West Germany. This movement was facilitated by Hungary's relatively liberal travel policies compared to other Warsaw Pact countries, as well as the Hungarian government's growing distance from orthodox communist policies under the leadership of reformist politicians who were increasingly willing to challenge Soviet authority. The crisis escalated dramatically when approximately 600 East Germans took refuge in the West German embassy in Budapest in August 1989, creating a diplomatic standoff that would have far-reaching consequences for both German states and the broader Eastern European political order. The Hungarian government found itself caught between its formal obligations to the German Democratic Republic under existing treaties and its growing desire to align with Western democratic values and institutions, a tension that would ultimately be resolved in favor of the refugees and against the interests of the East German communist regime.

The legal and diplomatic complexities surrounding the East German refugee situation in Hungary were unprecedented in the context of Cold War politics, as they directly challenged the fundamental assumptions of socialist international law and the principle of non-interference in the internal affairs of fraternal socialist states. Under existing agreements between Warsaw Pact countries, Hungary was legally obligated to prevent the transit of East German citizens to the West and to return them to East German authorities, yet the Hungarian government faced increasing pressure from both domestic public opinion and Western governments to respect the human rights of the refugees and allow them to leave for West Germany. The situation was further complicated by Hungary's simultaneous negotiations with the International Monetary Fund and World Bank for economic assistance, making the country's international reputation and relationship with Western institutions a crucial consideration in its decision-making process. The legal framework governing refugee movements between socialist states had been designed to prevent exactly this type of mass exodus, yet the Hungarian government's gradual embrace of human rights principles and its commitment to dismantling the Iron Curtain created an irreconcilable conflict between legal obligations and political aspirations. The resolution of this crisis came in September 1989 when Hungarian Foreign Minister Gyula Horn announced that Hungary would allow the East German refugees to leave for West Germany, effectively abandoning its treaty obligations to the German Democratic Republic and signaling Hungary's definitive break with orthodox communist policies.

The broader implications of the East German refugee crisis in Hungary extended far beyond the immediate humanitarian concerns to fundamentally reshape the geopolitical landscape of Central Europe and accelerate the process of communist collapse throughout the

region. The Hungarian government's decision to allow the refugees to leave represented a direct challenge to the authority of the German Democratic Republic and contributed significantly to the legitimacy crisis that would ultimately lead to the fall of the Berlin Wall just two months later. The crisis demonstrated the growing inability of communist governments to control population movements and maintain the closed borders that were essential to their political survival, while also highlighting the appeal of Western democratic values and economic opportunities to citizens of socialist states. The success of the East German refugees in reaching the West through Hungary inspired similar movements in other Eastern European countries and contributed to the cascade of popular uprisings that would sweep across the region in the final months of 1989. The international attention focused on Hungary during the crisis also enhanced the country's reputation as a leader in the democratization process and strengthened its position in negotiations with Western institutions, ultimately facilitating its transition to democracy and market economy. The refugee crisis thus served as both a symptom and a catalyst of the broader transformation of Eastern Europe, demonstrating how humanitarian concerns could become powerful tools for political change and how the movement of people could undermine the foundations of authoritarian political systems.

The issue of asylum seekers and refugees has become a salient topic in European politics, particularly in the context of the European Union's response to the increasing numbers of refugees from conflicts in the Middle East[203]. The pressure on southern European countries, known as 'frontier countries,' to accommodate and process large numbers of asylum seekers has highlighted the challenges of burden-sharing and the need for a cohesive and equitable asylum policy across the EU. The differing approaches to asylum and refugee policies within the EU have underscored the complexities of managing migration flows and ensuring the protection of individuals in need of international protection. The reception and treatment of asylum seekers in host countries are influenced by a range of factors, including public attitudes, political ideologies, and perceptions of threat[204]. Individuals with stronger right-wing ideological attitudes tend to view asylum seekers more negatively, often perceiving them as economic migrants rather than legitimate refugees. These perceptions can fuel feelings of threat

[203] Olivia Sundberg Diez, Florian Trauner, and Marie De Somer, "Return Sponsorships in the EU's New Pact on Migration and Asylum: High Stakes, Low Gains," *European Journal of Migration and Law* 23, no. 3 (2021): 219–44, https://doi.org/10.1163/15718166-12340101.

[204] Emma Onraet et al., "Reactions Towards Asylum Seekers in the Netherlands: Associations With Right-Wing Ideological Attitudes, Threat and Perceptions of Asylum Seekers as Legitimate and Economic," *Journal of Refugee Studies* 34, no. 2 (2019): 1695–1712, https://doi.org/10.1093/jrs/fez103.

and lead to less favorable reactions towards asylum seekers, highlighting the role of social and political beliefs in shaping attitudes towards migration and asylum.

Hungary's reemergence as a refugee-receiving nation during the 1980s is noteworthy, occurring even before the fall of the communist regime in 1989. This transformation, which gained momentum towards the end of 1987, can be traced back to the enduring consequences of border changes following World War I, which were exacerbated by the communist regimes established after World War II in the Central European region[205]. By the mid-1980s, Hungary's population was approximately ten million, with an additional five million ethnic Hungarians residing outside its borders. Among these, three and a half million lived in neighboring countries, often in close-knit communities. Furthermore, a significant number of ethnic Hungarians were left in Romania because of the Trianon Treaty, with their circumstances growing increasingly dire during the 1980s. The minority status of ethnic Hungarians in Romania compounded their difficulties as they encountered discrimination, increased restrictions on the use of the Hungarian language in schools, and limitations on their children's access to higher education[206]. Furthermore, many of the ethnic Hungarian population in Romania resided in Transylvania, the region bordering Hungary. Equipped with knowledge of the Hungarian language and often having relatives in Hungary, a considerable number of them initially entered Hungary as visitors and chose to stay[207]. Although their status was technically illegal, they were reluctant to return to Romania.

Over 13.000 asylum seekers had applied in Hungary by the end of 1988, with 95 percent of them being ethnic Hungarians from Romania[208]. The Hungarian government did not identify to them as refugees but rather as "aliens provisionally residing in Hungary," yet it did not deport them and even established a Settlement Fund to assist these asylum applicants[209]. More than 54,000 asylum applicants, the majority of whom were from Romania, arrived in Hungary in 1989, as the migration from Romania accelerated, because of the toppling of Ceausescu in December 1989, the numbers keep show an increasing trend until 1990[210]. Fears among ethnic

[205] Anna Seleny, "37Revolutionary Road: 1956 and the Fracturing of Hungarian Historical Memory," ed. Michael Bernhard and Jan Kubik, *Twenty Years After Communism* (Oxford University Press, July 29, 2014), https://doi.org/10.1093/acprof:oso/9780199375134.003.0003.
[206] Balazs Kapitany, "Ethnic Hungarians in the Neighbouring," in *Ethnic Hungarians in the Neighbouring*, 2015, 225–39.
[207] Kapitany.
[208] Andrea Subhan, "Migration and Asylum in Central and Eastern Europe," 1998, 1–5.
[209] Cerasela Voiculescu, "Temporary Migration of Transylvanian Roma to Hungary," *New Patterns of Labour Migration in Central and Eastern Europe*, 2004, 148–66.
[210] Craig Young and Duncan Light, "Multiple and Contested Geographies of Memory: Remembering the 1989 Romanian 'Revolution,'" *Memory, Place and Identity: Commemoration and Remembrance of War and Conflict*, 2016, 56–73, https://doi.org/10.4324/9781315685168-12.

Hungarian populations were heightened by violent battles between ethnic Hungarians and Romanians in Tirgu Mures, Romania, in the spring of 1990, as well as by additional violence in Bucharest over the summer. As a result, more than 18.000 people applied for refuge in Hungary in 1990, more than 17.000 of whom were from Romania[211].

1.4. 1991 Refugee Crisis

Subsequently, a significant influx of asylum seekers occurred following the outbreak of the war between Croatia and Serbia on Hungary's southern border in the summer of 1991. Hungarian border guards were confronted with desperate groups of civilians fleeing the conflict, primarily from the Baranyi triangle, an area near Vukovar in Croatia. Many of these individuals left their homes on very short notice, shell-shocked and disoriented. In the latter half of 1991, more than 54,000 people sought refuge in Hungary, surpassing the entire existing refugee population[212]. It's worth noting that a number of refugees might have entered Hungary without registering with the authorities. A majority of the asylum seekers in 1991 were of Croatian ethnicity.

In 1992, the war zone in former Yugoslavia shifted as Serbian forces initiated an attack on Bosnia and Herzegovina in April. This led to a fresh wave of refugees, predominantly Bosnians, arriving in Hungary. These refugees, too, often fled with minimal notice under desperate conditions. By the end of 1992, over 16,000 new asylum seekers had arrived, with more than 15,000 originating from ex-Yugoslavia, the majority being Bosnians, but also including a significant number of ethnic Hungarians[213]. The influx of refugees slowed in 1993 and 1994, with approximately 5,000 and 3,000 asylum seekers arriving in these respective years. Remarkably, the pattern of refugee flows shifted once again, with the majority of asylum seekers in the latter years being ethnic Hungarians, particularly from the Vojvodina region in Serbia. Despite concerns of renewed fighting in ex-Yugoslavia, the number of refugees residing in Hungary significantly decreased by the end of 1994. By that time, only 1,693 individuals remained in refugee camps, and the government provided financial support to 6,045 refugees living in private accommodations [214]. Although the Serb offensives in July 1995 led to major new refugee movements, very few of those refugees managed to reach Hungary.

[211] Gail Kligman and Rogers Brubaker, "The Ethnicization of Ethiopian Politics," 2000, 0–48.
[212] Subhan, "Migration and Asylum in Central and Eastern Europe."pp.78-88.
[213] Magnus Bjarnason, "The War and War-Games in Bosnia and Herzegovina from 1992 to 1995," 1995.
[214] Bjarnason.pp.56-89.

Hungary took in a total of 133,000 migrants over the period of seven years, from 1988 to 1995. 76,000 of these were from the former Yugoslavia, while 54,000 were from Romania. In 1995, just 7,700 people from the former Yugoslavia were still listed as refugees in Hungary who were getting temporary protection. A further 4,000 individuals, mostly ethnic Hungarians fleeing Romania, received legal refugee status[215]. Regarding those who fled ex-Yugoslavia, approximately 68,000 of them are no longer visible in Hungary. It is widely believed that most Croats have either returned to their homes or relocated to areas not under Serb occupation, accounting for the majority of this decrease. Others who were granted temporary protection in Hungary may have moved to Western Europe, mainly Bosnians, but accurate data is lacking. Among the 7,000 who remained, about a third were Bosnian Muslims, another third was ethnic Hungarians from Vojvodina in Serbia, one-quarter were Croats, and one-tenth consisted of Serbs and Albanians from Kosovo in Serbia.

Regarding refugees from Romania, around 54,000 arrived in Hungary, and 4,000 received official refugee status[216]. However, reliable data concerning the remaining 50,000 refugees are unavailable. A few hundred are reported to have returned to Romania, and several thousand are believed to have moved to and settled in Western countries. Some may have acquired Hungarian citizenship through naturalization, although this is a relatively slow process, suggesting that most applications filed in the late 1980s have not been decided yet. Others may have acquired temporary and permanent resident status, but their exact numbers are unknown. It appears that the majority of the "missing" 50,000 refugees from Romania who came to Hungary are still in the country but have not been officially recognized as refugees[217].

1.5. 2015 Refugee Crisis

The wider European migrant problem reached a turning point in 2015 with the Hungary refugee crisis. This crisis, which is distinguished by an enormous and unexpected flood of refugees and migrants, was principally brought on by ongoing conflicts in the Middle East and North Africa, which began in 2011 on as a result of the Arab Spring social movement that occurred in more than five nations[218]. As a member of the European Union, Hungary has found itself in the center of this crisis as one of the points of entry for refugees seeking asylum who

[215] Gyongyver Demeny, "Intgeration of Refugees in Hungary," *Fundamentum* 1, no. 1 (2007): 116–112.
[216] Demeny.
[217] Hungarian Helsinki Commitee, "Asylum in Hungary," 2015.
[218] Marzena Araźna, "The Arab Spring And Its Influence on European Union Policy Challenges to Human Security in the Arab Countries Nations Development Programme Regional Bureau for Arab States," 2020, http://iris-bg.org/files/stID-2-07-1.pdf,.

are traveling along the Balkan Corridor, which began in Turkey and Macedonia, continued through Greece, and ended in Hungary, Croatia, and Poland[219].

Hungary experienced a substantial increase in the number of refugees and migrants entering the country starting in the summer of 2015. The people in question largely came from conflict-ridden nations like Syria, Afghanistan, and Iraq, driven by the harsh circumstances of war, persecution, and economic challenges[220]. More than a million individuals pass through Hungary on their way to other countries, primarily Austria and Germany, according to the UNHCR, and 174.000 of them are requesting for asylum in Hungary[221]. Under the direction of Prime Minister Viktor Orbán, the Hungarian government initially implemented a strict border control policy. First of all, this included building border barriers along Hungary's southern border with Serbia, which was reportedly done to keep people out while maintaining order[222]. Second, the Hungarian government is attempting to use social media and other methods of propaganda to portray refugees as a threat to Hungarian society[223]. Last but not least, Hungary and the other Visegrad 4 nations oppose quota systems as an administered solution to the migration crisis in 2016[224]. Nonetheless, this approach garnered considerable criticism from various quarters, including prominent human rights organizations. The transit hubs within Hungary, notably Budapest, became overwhelmed by the sheer volume of refugees and migrants passing through. The conditions in these transit zones and train stations were frequently marked by dire circumstances, characterized by inadequate shelter, sanitation facilities, and access to medical care.

The Keleti Railway Station in Budapest emerged as a focal point of the crisis in August 2015[225]. It was here that thousands of refugees and migrants gathered, seeking passage to Western Europe. Initially, Hungarian authorities prevented them from boarding trains bound for Western Europe, resulting in a tense standoff that drew significant international attention.

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[219] Milica Trakilovic, "On This Path to Europe - The Symbolic Role of the 'Balkan Corridor' in the European Migration Debate," in *Cultures, Citizenship and Human Rights*, 1st ed., vol. 1 (London: Routledge, 2019), 49–63.
[220] Bahri, "Understanding The Pattern of International Migration : Challenges in Human Right Protection."
[221] AIDA, "Country Report : Hungary."
[222] Amnesty International, "Fenced Out. Hungary's Violations of the Rights of Refugees and Migrants," 2015, 1–26, https://www.amnesty.org/download/Documents/EUR2726142015ENGLISH.pdf.
[223] Péter Bajomi-Lázár, "An Anti-Migration Campaign and Its Impact on Public Opinion: The Hungarian Case," *European Journal of Communication* 34, no. 6 (December 1, 2019): 619–28, https://doi.org/10.1177/0267323119886152.
[224] Peter Hilpold, "Quotas as an Instrument of Burden-Sharing in International Refugee Law: The Many Facets of an Instrument Still in the Making," *International Journal of Constitutional Law* 15, no. 4 (2017): 1188–1205, https://doi.org/10.1093/icon/mox086.
[225] Bernát et al., "Borders and the Mobility of Migrants in Hungary."

Under mounting pressure and amid criticism from the international community, Hungary eventually altered its approach. The government permitted refugees and migrants to board trains destined for Western European countries and established temporary reception centers to provide humanitarian assistance, a shift that was marked by both humanitarian and political considerations[226].

This crisis was inextricably linked to a broader European challenge, with other EU member states, particularly Germany and Sweden, accepting a substantial number of refugees and migrants[227]. However, it also laid bare internal divisions within the European Union, showcasing disparities in opinion and response strategies regarding the equitable sharing of responsibilities among member states[228]. In response to the 2015 refugee crisis, Hungary, working with other countries along the Balkan route, imposed stricter border controls, added fence, and enacted the "Soros Law," which prosecuted anyone who assisted an unauthorized border crosser[229]. These measures, implemented as a response to the crisis, played a role in the eventual closure of the Western Balkan route, leading to a significant reduction in the flow of refugees and migrants passing through Hungary and neighboring countries.

The 2015 Refugee Crisis had far-reaching ramifications for Hungary and the European Union as a whole. It exposed divisions among EU member states and served as a catalyst for discussions on reforming the EU's refugee and migration policies. This catastrophe highlighted the need for a more coordinated, comprehensive, and humanitarian response to similar emergencies in the future. This would highlight the complexities and difficulties in regulating migration on a continental scale.

2. Legal Perspectives of Refugees Handling Policy

2.1. Political Position of Hungary concerning the Refugee Handling Policy

The political position of Hungary vis-a-vis its policy of handling refugees has been one formed by a complex interweaving of historical experiences, cultural values, economic

[226] Bernát et al.
[227] Ireneusz Pawel Karolewski and Roland Benedikter, *Europe's Refugee and Migrant Crisis: Political Responses to Asymmetrical Pressures*, *Politique Europeenne*, vol. 60, 2018, https://doi.org/10.3917/poeu.060.0098.
[228] David Kaufmann, "Debating Responsibility-Sharing: An Analysis of the European Parliament's Debates on the Common European Asylum System," *European Policy Analysis* 7, no. 1 (2021): 207–25, https://doi.org/10.1002/epa2.1087.
[229] Tamás Boros, "The Hungarian 'Stop Soros' Act : Why Does the Government Fight Human Rights Organisations?," 2018, https://library.fes.de/pdf-files/bueros/budapest/14205.pdf.

conditions, and changing global political realities. Migration into Hungary has gone through different phases, each with different sets of people coming for different reasons, and the government's response towards each wave of migration was determined by the specific context and circumstance that surrounded it.

In the last decades, a refugee crisis in Europe has been the biggest challenge for Hungary, facing a huge increase in refugees and migrants coming into its borders. This has led to a set of political debates and controversies as different groups within the country struggle to find a way to address this issue. One of the most daunting political dilemmas that Hungary currently faces in the context of the refugee crisis is the tension between protection by international law and the right of the country to pursue the protection of its own nationals by ensuring national security and stability. The government has responded to this challenge by implementing a range of measures designed to control the flow of refugees and migrants into the country, including the construction of a border fence, the deployment of border police, and the establishment of detention centers for migrants and refugees. These measures have indeed been criticized by some for being too harsh and inhumane, while others have praised them as necessary for the protection of security and stability in Hungary, thus preserving its sovereignty as a nation.

The government has also contended that such measures are needed in an effort to address the challenges created by the refugee crisis, which entails increased security risks from terrorism, risks to public health and safety, and pressure on public and social services. In the meantime, some quarters have been calling for Hungary to take a more humanitarian and compassionate approach to the refugee crisis, providing greater support and assistance to refugees and migrants in need. These groups further claim that the country is morally obliged to assist refugees and migrants and that the country is under obligation to respect the rights of all individuals, irrespective of status. Briefly, the political stance of Hungary, vis-à-vis its policy on refugee handling, is kaleidoscopic and complex-a reflection of the diverse historical experience, cultural values, and economic conditions of the country against a changing global political order. While the government has taken steps to address the refugee crisis, there is still much work to be done to find solutions that are both effective and compassionate, and that uphold the rights and dignity of refugees and migrants. In finding solutions to this complex and difficult challenge in a responsible and sustainable way, common grounds should be found through joint work by all parties involved.

2.2. Relevant Law and Regulation in Refugees Handling Policy

The core of Hungarian refugee law is based on the 1951 Geneva Convention Relating to the Status of Refugees, which acts as the general framework governing Hungary's attitude toward refugee issues. Besides this main convention, several government decrees have been issued for further elaboration and complementing of the legal framework applicable to refugee affairs. However, it should be considered that most of the practical application and operational procedures in this field have been developed from unofficial, unwritten administrative policies only. These policies have developed organically to fill some major gaps within the current legal framework and as such have played a very important role in the implementation of the refugee laws and regulations in Hungary.

Hungary has a complex and multifaceted legal framework regarding the management of refugees, involving international, domestic, and administrative elements. It aims to deal with asylum procedures, protection of refugees, and the general legal regime governing asylum seekers in Hungary. In order to fully understand the approach taken toward the management of refugees in Hungary, it is necessary to consider the concrete legal articles and provisions that make up this complex framework.

2.2.1. International Legal Framework

In early 1989, Hungary, still under communist rule, took a significant step by becoming a signatory to the 1951 Convention relating to the Status of Refugees, marking the first instance in the Eastern Bloc where a country made such a commitment[230]. Hungary also ratified the 1967 Protocol to the 1951 Convention. This signified Hungary's willingness to align with the international definition of a refugee. However, it introduced a substantial caveat by conditioning its ratification on a narrower interpretation of who qualifies as a refugee, limiting recognition only to those who feared persecution within Europe[231].

This provision, known as the geographic reservation, allowed Hungary to restrict its obligations under the Convention to a specific European subset of global refugees. At present, only four other countries—Malta, Monaco, Madagascar, and Turkey—out of the 132 States

[230] Jessica Anderson, "Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3rd Cycle, 31st Session," vol. 2007, 2005.
[231] Anderson.

party to the Convention and/or the Protocol maintain this geographic reservation[232]. The primary rationale behind Hungary's insistence on this geographic reservation was its apprehension of being inundated by refugees. Dealing with a large number of potential refugees understandably raises legitimate and serious concerns for any nation. Nevertheless, there are questions about whether Hungary's concerns in this regard are well-founded. Notably, none of the other Central European countries that ratified the Convention has opted for the geographic reservation, and none of them have experienced an overwhelming influx of refugees, as the experiences in Poland and the Czech Republic demonstrate[233].

Some have argued that Hungary's geographical position makes it more vulnerable to refugee flows, given its proximity to the Balkans, where it has indeed received thousands of people fleeing conflict, including what happened in 2015 European refugee crisis. However, Hungary has typically not granted refugee status to most of these individuals, instead categorizing them as war victims. While they do receive government assistance, they lack the legal protection or status conferred upon those recognized as refugees under the Convention. Furthermore, since the Balkans are part of Europe, individuals fleeing persecution there are not excluded from receiving protection in Hungary[234].

What the geographic reservation effectively does is prevent those fleeing persecution in Africa and Asia from seeking refuge in Hungary. Another argument made in favor of Hungary's geographic reservation is the fear of becoming a magnet for asylum seekers from other continents[235]. Being one of the Visegrad countries, Hungary boasts a more advanced economy compared to many other Central European states. However, debates about which country has the most robust economy are seemingly irrelevant. What matters is the general perception that the economies in the Czech Republic, Poland, and Hungary are all on the rise and are significantly more stable than the conditions in many nations that trigger massive refugee movements. Still, neither the Czech Republic nor Poland has been overwhelmed by asylum seekers and refugees.

Yet another argument in support of the geographic reservation posits that Hungary's strategic location along transit routes from other continents necessitates this precaution. This argument, too, lacks persuasiveness. The map illustrates that Poland, and the Czech Republic

[232] E. Alper Tarımcı, "The Role Of Geographical Limitation With Respect To Asylum And Refugee Policies Within The Context Of Turkey's EU Harmonization Process," no. December (2005).
[233] Urbański, "Comparing Push and Pull Factors Affecting Migration."
[234] ECRE, "The New Asylum Procedure at the Border and Restrictions to Accessing Protection in Hungary" (Helsinki, September 2015).
[235] Szalai and Gőbl, "Securitizing Migration in Contemporary Hungary."

are centrally located, and foreign airlines regularly operate in Warsaw and Prague. Transit routes from East to West cross not only Hungary but the entire region of Central Europe.

Considering the absence of significant numbers of non-European asylum seekers in the Czech Republic and Poland, as well as Hungary's response to European asylum seekers from former Yugoslavia, there is some skepticism regarding Hungary's insistence on the geographic reservation. The evidence suggests an alternative motive. In light of other laws and practices that favor ethnic Hungarians, it appears that the Hungarian government, consciously or subconsciously, may have adopted the geographic reservation as a means to facilitate the acceptance and protection of ethnic Hungarians from neighboring countries [236]. While Hungary's definition of refugees includes those fleeing persecution anywhere in Europe, not just Hungarians, it is worth noting that few other sizable groups of Europeans, aside from those escaping ethnic cleansing and conflict in former Yugoslavia, are likely to seek refuge in Hungary. When viewed from this perspective, Hungary's ratification of the 1951 Convention essentially allowed the government to establish a form of "law of return" through an international treaty rather than through domestic legislation.

Out of the debate, while legitimate concerns about refugee inflows exist, the narrow application of the geographic reservation prompts a reevaluation of Hungary's underlying motives, including the potential implications for ethnic Hungarians seeking refuge. At the core of Hungary's refugee management system are the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol. These international agreements serve as the cornerstone for defining the legal status of refugees and establishing their rights and protections. Specific articles within these conventions hold particular significance:

2.2.1.1 Article 1A (2) of the 1951 Convention: This article defines a refugee as a person who, owing to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion, is outside their country of nationality and is unable or unwilling to return to it.

2.2.1.2 Principle of Non-Refoulement: The principle of non-refoulement, which is embedded in multiple articles of the 1951 Convention, forbids the return of refugees to any country where they could face persecution or serious harm.

[236] Tarımcı, "The Role Of Geographical Limitation With Respect To Asylum And Refugee Policies Within The Context Of Turkey's EU Harmonization Process."

2.2.2. Domestic Legislation

At the national level, Hungary developed a strong legal framework based on its international law and EU obligations for dealing with the issues of refugees and asylum. The main laws governing the country are found within the Hungarian Act on Asylum, which is provided in Act LXXX of 2007 and dictates rules on the granting of international protection, rights, and duties regarding asylum seekers. In addition to this, the Hungarian Act on Aliens (Act II of 2007) regulates the entry, stay, and detention of foreign nationals, including asylum seekers and refugees. Complementary government decrees and policies ensure the management of detention camps, integration of recognized refugees, and countermeasures against illegal immigration. This framework stands as proof of Hungary's commitment to managing migration flows while trying to balance national security concerns with international humanitarian obligations.

2.2.2.1. Hungarian Constitution

Hungary's constitutional development from 1949 to 2011 in terms of its refugee processing policy demonstrates a journey of profound transformation. From a communist-era constitution that granted sole discretion to the government to provide asylum, Hungary transitioned to a constitutional regime that embraced asylum as a fundamental right and thus brought itself closer to international norms. It has evolved against events in the region and fluctuating political dynamics. In these years, the constitutional changes that Hungary had introduced with regards to refugees, and the policies thereof, were representative of how domestic and international imperatives interact in this field, indicating a very changed attitude of the country toward giving refuge to persecuted people. In the following paragraphs, we go into detail about the concrete constitutional revisions and the corresponding changes in refugee handling policies that took place during this period.

The 1949 Constitution of Hungary, enacted during the communist era, contained an asylum provision, but it was marked by substantial limitations. Article 65 of this constitution stipulated that *"Everyone who is persecuted for his democratic behavior, or for his activity to enhance social progress, the liberation of peoples, or the protection of peace, may be granted asylum."* However, asylum under this provision was entirely at the discretion of the government,

with no legally enforceable right for asylum seekers and no avenue for judicial remedy[237]. This was indicative of the era's political climate where all matters, including asylum, were under the control of the communist regime.

More importantly, in October 1989, Hungary underwent a major constitutional amendment that radically reformed its stance regarding asylum and refugees. Article 65 made asylum a fundamental right of persons persecuted for race, religion, nationality, language, or political reasons. It further protected persons granted asylum from extradition to another state. Most importantly, Article 65(2) had set the requirement that laws adopted concerning asylum were to be done by a two-thirds majority in Parliament, a mechanism designed to make it more difficult for politically popular restrictions on asylum to become law.[238]. The 1989 constitutional revision brought Hungary more in line with internationally accepted refugee definitions and principles[239]. Asylum was no longer a matter of political discretion but a right, and the criteria for asylum were more clearly defined, in accordance with international norms. This constitutional change reflected Hungary's commitment to its obligations under the 1951 Convention Relating to the Status of Refugees and subsequent international refugee instruments.

Following the 1989 constitutional amendment, Hungary did not introduce significant changes to its asylum provisions in the 1998 and 2008 constitutional revisions. These revisions primarily addressed other aspects of the constitution and did not directly impact Hungary's approach to asylum or refugees. During this time, Hungary witnessed fluctuations in asylum application rates due to regional events, with a notable surge in applications during the early 2000s, primarily influenced by developments in the Balkans.

Later, in 2011, Hungary adopted a new constitution, often referred to as the Fundamental Law. This constitution introduced several notable changes with implications for refugee handling. Notably, in the Preamble of the constitution, Hungary's Christian heritage and the protection of Hungarian culture as key constitutional principles[240]. Critics argued that these principles could be used to justify more restrictive refugee policies, particularly given the government's increasingly conservative stance on immigration and asylum during this period[241].

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[237] National Assembly of Hungary, "Act XX of 1949 The Constitution of the Republic of Hungary," Pub. L. No. XX, 1 (1949), http://www.wipo.int/edocs/lexdocs/laws/en/hu/hu047en.pdf.
[238] Gábor Halmai, "The Reform of Constitutional Law in Hungary after the Transition," *Legal Studies* 18, no. 2 (1998): 188–196, https://doi.org/10.1111/j.1748-121X.1998.tb00012.x.
[239] Halmai.pp.1-12.
[240] Government of Hungary, "Hungary ' s Constitution of 2011," Pub. L. No. Act CLIX of 2011, 1 (2011).
[241] Balázs Schanda, "The Christian Roots of Hungary's Fundamental Law," *Central European Journal of Comparative Law* 3, no. 1 (2022): 195–202, https://doi.org/10.47078/2022.1.195-202.

Despite the constitutional provisions, Hungary's handling of refugees and asylum seekers faced various challenges and changes over the years. In the years following 2015, Hungary's approach to asylum and immigration became more restrictive, as reflected in policies such as the construction of border fences and legislative changes that made it harder for asylum seekers to enter and claim protection.

2.2.2.2. Asylum Act 2007

The Hungarian Asylum Act of 2007 was a milestone in Hungary's path of establishing a complete legal framework for the handling of asylum seekers and refugees. In this respect, it is impossible to understand the history leading to this act without considering the wider context of Hungary's asylum policies up to its adoption. In the period after the fall of communism in Hungary, between the 1990s and the beginning of 2000, there was an observed growth in the number of asylum seekers, with the main inflow occurring at the beginning of 2000. The surge was driven by regional conflicts and instability in the Balkans and Eastern Europe. Hungary, as a European Union member state, became a popular destination for individuals seeking asylum and protection[242].

More precisely, in 2004, Hungary joined the European Union and had to align its legislation and practice according to international standards, including on asylum and refugee issues[243]. This was not only to establish legislation but also a workable asylum system able to process and protect asylum seekers. The Hungarian government recognized the need for a more comprehensive legal framework to manage asylum and refugee issues.

Later on, the Hungarian Asylum Act of 2007, formally known as Act LXXX of 2007 on Asylum is enacted, which represented a significant milestone in Hungary's asylum and refugee policies. This act aimed to create a more structured and comprehensive legal framework for managing asylum seekers and refugees, ensuring that Hungary complied with its international obligations and EU requirements. The act was adopted in response to the evolving political and security landscape in the region and the need to manage an increasing number of asylum claims. In summary, Key features of the Hungarian Asylum Act 2007 included:

[242] Szalai and Gőbl, "Securitizing Migration in Contemporary Hungary."
[243] Zsofi Fekete, "Borders and the Mobility of Migrants in Hungary Borders and the Mobility of Migrants in Hungary Borders and the Mobility of Migrants in Hungary Anikó Bernát , Zsófi Fekete , Endre Sik and Judit Tóth RESEARCH ON THE COMMON EUROPEAN ASYLUM SYSTEM ; Nr . 29," no. August (2019).

2.4.2.1 Defining asylum: The act provided a legal definition of asylum, specifying the grounds on which asylum could be granted, in line with international norms.

2.4.2.2 Procedures: It established the procedures for lodging and processing asylum applications, specifying timelines and rights for asylum seekers

2.4.2.3 Protection: The act set out provisions for the protection of refugees and those granted subsidiary protection, in accordance with international standards.\

2.4.2.4 Detention: It outlined the conditions and circumstances under which asylum seekers could be detained, emphasizing the need to respect their human rights.

2.4.2.5 Access to appeal: The act ensured that asylum seekers had access to an appeals process if their applications were rejected.

2.4.2.6 Reception conditions: It addressed issues related to the housing, healthcare, and support for asylum seekers during the application process.

Although the Hungarian Asylum Act 2007 was an important step toward establishing a more sound asylum framework, Hungary's approach to asylum and refugees has been cast by a number of different challenges and changes in the years since its adoption. This includes a shift in government policies and an increased political discourse that has become increasingly critical of the reception of immigration and refugees. In the following years, Hungary implemented further legislative changes and policy measures affecting the asylum procedure, such as the building of border fences and modifications to the eligibility criteria for asylum. These sometimes led to international attention and questioned the compliance of Hungary with EU and international obligations related to asylum and refugee protection.

2.2.2. International Agreements and EU Regulations

Various international agreements and EU regulations have greatly influenced the development and adoption of Hungary's refugee management framework, thus showing the commitment of the nation to adhere to the global and regional standards concerning asylum and refugee protection.

2.2.2.2. The European Convention on Human Rights (ECHR): Hungary's refugee management framework is intricately linked to the principles and obligations outlined in the European Convention on Human Rights (ECHR). The ECHR, which Hungary has been a party to since 1992, guarantees fundamental rights and freedoms to individuals within its jurisdiction, including refugees and asylum seekers. As a signatory to the ECHR, Hungary is obligined to ensure that all individuals on its territory, regardless of their legal status, are afforded the basic human rights and protections enshrined in the convention. This includes the rights to life, liberty, and security, as well as protection from torture, inhuman or degrading treatment, and the right to a fair and impartial hearing. These provisions have a direct impact on the treatment of asylum seekers and refugees in Hungary and require the government to uphold these rights during the asylum process[244].

2.2.2.3. The Dublin Regulation (EU Regulation No. 604/2013): Hungary's approach to managing asylum applications is also influenced by the Dublin Regulation, which is an EU regulation setting out criteria for determining the EU member state responsible for processing an asylum application. This regulation ensures that asylum seekers are directed to the member state that should handle their application based on specific criteria, including family ties, previous residence, and entry points into the EU. Hungary, as an EU member state, is bound by the Dublin Regulation, and its authorities must adhere to the principles established within the regulation when considering asylum claims. This regulation plays a pivotal role in Hungary's responsibility-sharing within the EU regarding asylum seekers[245].

[244] Petra Bard and Károly Bárd, *The European Convention on Human Rights and the Hungarian Legal System* (Budapest: Eötvös Lóránd University, 2016), http://real.mtak.hu/65944/1/Bard_Bard_Comparative_study_on_the_implementation_of_the_ECHR_at_the_national_level_ENG_149_168_u.pdf.

[245] Katrien Desimpelaere, "The Dublin Regulation: Past, Present, Future," *Libstore.Ugent.Be*, 2014, https://libstore.ugent.be/fulltxt/RUG01/002/213/386/RUG01-

2.2.2.4. The Reception Conditions Directive (Directive 2013/33/EU): Hungary's obligations to asylum seekers, including their housing, healthcare, and access to education, are further defined by the Reception Conditions Directive. This EU directive sets minimum standards for the treatment of asylum seekers across member states. It ensures that asylum seekers receive dignified and humane treatment, regardless of the outcome of their asylum application. Hungary, as an EU member, is required to align its domestic policies with the standards set forth in the directive, thus providing a common framework across the EU for the reception and treatment of asylum seekers[246].

Integration of these international conventions and EU regulations into the Hungary refugee management framework allows their asylum policies to be brought under the wider regional and international ambit. This also brings it under the principle of solidarity in shared responsibility within the EU in protecting and treating asylum seekers, by enabling a more coordinated pan-European approach towards asylum and refugee management. These agreements and regulations establish the building blocks of a comprehensive, rights-based, and uniform asylum system both in Hungary and within the European Union.

2.2.3. Technical Regulation in Refugee Handling

Apart from statutory laws, governmental decrees also play a major role in the management of refugees in Hungary. These decrees detail specific administrative procedures, requirements, and criteria for the asylum process, designation of safe third countries, and application of "fast-track" procedures for people from certain nationalities.

The legal framework of Hungary's system for managing refugees is characterized by an intricate interaction of formal decrees, practical implementation, and prevailing biases in favor of ethnic Hungarians. The framework, primarily guided by Act No. 29/1989 on emigration and immigration, 19 October 1989, forms the basis for asylum procedures. Despite the sparse content and gaps, this statute sets the fundamental legal framework, including the essential elements of the refugee recognition procedure. This Act establishes deadlines for applications: the deadline to notify shall be within 72 hours from the moment of crossing the border into

002213386_2015_0001_AC.pdfpercent0Ahttps://lib.ugent.be/fulltxt/RUG01/002/213/386/RUG01-002213386_2015_0001_AC.pdf.

[246] Federica Toscano, “The Second Phase of the Common European Asylum System :,” 2013.

Hungary, while formal applications should be submitted within a further 72-hour period[247]. Although seemingly neutral, these provisions seriously favor ethnic Hungarians who possess facility with the language and will also be supported by friends or family members living in Hungary. This linguistic and logistical advantage constitutes a prejudice, certainly in practice.

Application for refugee status requires individual interviews with state officials who place the onus of proof on applicants. Those who speak Hungarian and have contacts or resources to obtain supportive documentation have a significant advantage. If persecution claims involve ethnic Hungarians in surrounding countries, they are more likely to be recognized, as Hungary is cognizant of the unrest within those communities. Act No. 29/1989 uses the 1951 Convention's refugee definition, based on well-founded fears of persecution on one of the Convention grounds. However, the reservation attached to Hungary's treaty makes it only applicable to events in Europe, thereby effectively making the refugee status available only for Europeans. Although a fair share of recognized refugees is non-ethnic Hungarian, the procedure still follows a pattern highly biased towards ethnic Hungarians.

It also appears from statistics that the majority of asylum seekers do not take part in the formal refugee procedure. They are classified as temporarily protected persons and are not considered for refugee status. This effectively bars them from refugee status in Hungary, creating a two-tier system of treatment. Hungary's legislation includes Law-Decree 19, which provides rights to recognized refugees largely equal to those enjoyed by Hungarian citizens, subject only to very minor exceptions. Recognized refugees are also entitled to naturalization, with a reduced residency requirement. Ethnic Hungarians, who make up the majority of recognized refugees, enjoy even faster-track eligibility for naturalization.

Those classified as temporarily protected persons fall into a second-class category with fewer rights and no recognition from Hungarian law. Most experience difficulties in finding employment or freedom of movement, creating precarious living situations. According to the statute, the government is entitled to establish refugee camps or other forms of asylum shelter facilities. These come in various sizes, conditions, and populations. Some are operated directly by the government; others are run by nongovernmental organizations. Conditions in these camps can be unequal, with camps predominantly inhabited by ethnic Hungarian refugees appearing more desirable than those housing Bosnians and non-Hungarians.

[247] Csaba Békés and Melinda Kalmár, "The Political Transition in Hungary, 1989-90," *Cold War International History Project Bulletin*, no. 12/13 (2001): 73–164.

Freedom of movement also varies between camps, with some imposing restrictions on residents' ability to leave. These limitations can result in a prison-like atmosphere and lead to the creation of a black market for passes, disproportionately affecting women. The Hungarian refugee management system demonstrates a mix of formal legal provisions and their practical implementation, which, on occasion, shows partiality towards ethnic Hungarians. While certain biases can be explained by logistical factors and the timing of refugee movements, such disparities in treatment raise questions about fair refugee management and the limits of preferential treatment under Hungary's law.

2.2.4. Unwritten Administrative Policies:

An unique feature of Hungary's refugee management is the prevalence of unwritten administrative policies. These informal practices, often established by relevant authorities, have evolved to address gaps in the legal framework and significantly affect the practical implementation of asylum procedures. Over the years, Hungary's approach to asylum management has been met with international scrutiny, particularly concerning border control policies, detention practices, and the treatment of asylum seekers. Measures such as the construction of border fences, the operation of transit zones, and the use of *"fast-track"* procedures have generated extensive debate and criticism[248]. These policies have raised questions about Hungary's adherence to international legal standards and human rights principles.

The analysis of reception policies and practices regarding asylum applicants in Hungary underlines the role that a centralized, top-down model of governance plays. A slew of restrictive laws and policies framed migration as a continuing crisis under the current administration, framing the treatment of asylum seekers. A very important moment of this framework was the adoption in 2017 of the so-called "*Soros Law,"* officially the *"Law on the Transparency of Organizations Receiving Foreign Funds,"* which placed tight regulations on NGOs receiving international financing, especially those working for refugees and migrants[249]. So far, this has closed many organizations or significantly decreased their activities, adding to the climate of fear and repression. Beyond serving as an administrative barrier, the law is part of a broader political strategy that portrays migrants as a threat to national security and cultural identity, criminalizing humanitarian efforts and stifling public discourse on migration.

[248] Ayhan Kaya, "Working Papers Global Migration: Consequences and Responses. Turkey Country Report," 2020.pp. 32-55.
[249] Boros, "The Hungarian 'Stop Soros' Act : Why Does the Government Fight Human Rights Organisations?". Pp.1-5

From the point of view of the legal environment, some significant changes in asylum policy take place in Hungary. Following a migration crisis in 2015, the Hungarian government erected the border fence along its southern borders with Serbia and Croatia, with the intention to physically prevent asylum seekers and irregular migrants from entering the border. This fence forms part of a wider approach comprising strategies of border militarization with the use of police authority to deter unauthorized migration[250]. Moreover, Hungary introduced changes to its asylum law, making it mandatory for asylum seekers to file their applications outside the country. Precisely, amendments to the Asylum Act of 2007, which are under Act LXXX, initiated the practice of detention in transit zones along the Hungarian-Serbian border. These transit zones have gradually acquired the status of detention centers, where applicants spend lengthy periods of time and may often be denied legal support and basic services[251]. Traditional reception centers saw their capacity significantly reduced, and many were closed in the wake of the government's restrictive policies. In fact, by the end of 2018, only a handful of asylum applicants stayed in such centers, while the general trend has been the development of an exclusionist, punitive asylum system based on deterrence rather than protection.

The legal landscape further illustrates the impact brought about by Hungary's asylum policies through cases such as that decided by the European Court of Human Rights in *Ilias and Ahmed v. Hungary*. In the present case, the court preliminarily held that the detention of two Bangladeshi nationals within the transit zone for a period of 23 days was a deprivation of liberty. The Grand Chamber overturned this decision in the later judgment, holding that applicants were not deprived of their liberty because entering the transit zone was a *"choice"*[252]. This framing of the law raises concerns regarding the applicability of human rights protections for asylum seekers, as it normalizes a system in which individuals are coerced into accepting conditions that violate their rights, effectively deterring many from seeking asylum altogether.

The report concludes with the call for a wholesale reevaluation of Hungary's asylum and migration governance, emphasizing the need for policies that put humanitarian principles, respect for human dignity, and compliance with international human rights standards at the forefront. The authors insist on the establishment of efficient accountability mechanisms that will guarantee the protection of asylum seekers' rights and provide a response to the systemic violation of human rights that is rooted in the current reception system. The report calls for a

[250] Amnesty International, "Fenced Out. Hungary's Violations of the Rights of Refugees and Migrants.". pp.1-31.
[251] Hungarian Helsinki Committee, "Hungary Continues to Starve Detainees in the Transit Zones," Hhc, 2019, https://www.helsinki.hu/en/hungary-continues-to-starve-detainees-in-the-transit-zones/.
[252] Information Note et al., Ilias and Ahmed v . Hungary [GC] - 47287 / 15 Article 3 (2019).

turn toward a more humane and rights-respecting framework for refugee reception in Hungary, both by addressing the immediate needs of asylum seekers and the political and administrative structures that underpin their suffering.

3. Demographic and Law Issues in Hungary

3.1. Demographic Description of Hungary concerning the refugee handling

Demographically, Hungary is a country located in Central Europe. It has a diverse ethnic composition, with Hungarian being the majority language and ethnicity. The country has a rich cultural heritage, with a mix of different traditions, customs, and beliefs that have shaped the country's identity over the centuries. The arrival of refugees and asylum seekers in Hungary in recent years has brought about significant changes to the country's demographic landscape. The majority of refugees and asylum seekers are from countries in the Middle East and Africa, and are primarily young and male-dominated. There is also a significant number of families with children among the refugees and asylum seekers. This has resulted in the integration of diverse cultural and religious backgrounds into Hungarian society, bringing new perspectives and experiences to the country.

Generally, Hungary faces deep-seated demographic challenges, with a population that has been steadily declining for decades. In 2023, Hungary's population was about 9.59 million, down from 10.7 million in 1980, a significant decline driven by persistently low fertility rates, high emigration, and aging[253]. The fertility rate in Hungary is 1.6 children per woman, far below the replacement rate of 2.1 required to replace the population. This has caused a shrinking workforce and an aging population; today, more than 20 percent of Hungarians are 65 or older. Projections by 2050 show that over 30 percent of Hungary's population could be above the retirement age, placing an unbearable burden on the pension and healthcare systems of the country[254]. Emigration adds to these challenges: An estimated 600,000 Hungarians-mostly young and skilled professionals-have moved abroad since the country joined the European Union in 2004, seeking higher wages and better living conditions in countries such as Germany, Austria, and the United Kingdom[255].

[253] EUROSTAT, "Hungary : Demographic Profiles" (Budapest, 2019).
[254] World Bank, "People , Portraits , Perspectives : Improving Employability for Inclusive Growth in Hungary" (Geneva, 2018), https://documents1.worldbank.org/curated/zh/600591560973242995/pdf/People-Portraits-Perspectives-Improving-Employability-for-Inclusive-Growth-in-Hungary.pdf.
[255] Linda Valkó, "The 'brain Drain' and Hungary's Ostrich Strategy: The Approach of the Government to the Human Capital Flight from Hungary since 2010" (University of Leiden, 2016).

These include the family housing allowance program, known as CSOK, which gives significant financial help to families with at least three children to buy homes, and lifelong tax exemptions for mothers who raise at least four children. Families are also entitled to interest-free loans of up to 10 million forints (approximately €25,000) and subsidies toward family vehicle purchases. Yet, so far, these policies have seen only limited success[256]. Although the birth rate in Hungary has increased modestly from 1.2 in the early 2010s to 1.6 today, it is still well below what it would take to stabilize the population. Critics say the programs mostly benefit wealthier families and do little for poorer ones, who cannot afford to start a family even with the incentives.

Economic inequality creates one of the biggest hurdles to Hungary's demographic growth. The middle class, with which family growth is closely intertwined, barely exists in Hungary due to polarizing income and a lack of economic mobility[257]. It is among the countries of the EU with the highest rate of ownership, but simultaneously facing widespread indebtedness, with numerous households spending a large fraction of their income on repayments. Besides this, the pay gap between Hungary and most Western European countries creates an incentive for skilled labor to leave and work elsewhere, further heightening labor shortages in specific areas like healthcare, construction, and technology. For example, Hungary has a shortage of more than 5,000 doctors and 8,000 nurses, who have moved to countries offering three times higher salaries and better working conditions, especially to the western European countries[258]. Without them, social services are strained in their attempt to meet demand-a manifestation of the economic consequences of a population in decline and on the move.

Migration, however, is a paradox for Hungary-a potential solution to the demographic and labor market crises largely rejected by the local population. While Hungary's shrinking workforce creates an urgent need for foreign labor, the government's strict anti-immigration policies and nationalist rhetoric have fostered widespread public resistance to migration. Hungary has one of the lowest proportions of foreign-born residents in the EU, at just 2 percent of the population, compared to 13 percent in Germany and 12 percent in Austria. Many Hungarians view immigration as a threat to their cultural identity, a sentiment reinforced by

[256] Ildikó Szántó, "Child and Family Benefits to Halt Hungary's Population Decline, 1965-2020: A Comparison with Polish and Romanian Family Policies," *Hungarian Cultural Studies* 14 (2021): 80–99, https://doi.org/10.5195/ahea.2021.429.
[257] Ákos Huszár and Viktor Berger, "The New Hungarian Middle Class?," *International Journal of Sociology* 52 (April 25, 2022): 1–27, https://doi.org/10.1080/00207659.2022.2064093.
[258] Lili Rutai, "Hungary's Healthcare System Struggles as Doctors Leave for Western Europe," Euronews Media, 2023, https://www.euronews.com/my-europe/2023/06/04/hungarys-healthcare-system-struggles-as-doctors-leave-for-western-europe.

government campaigns linking migration to crime, unemployment, and social instability. Yet, sectors like agriculture, manufacturing, and caregiving urgently require workers, and some industries have quietly hired migrants from Ukraine, Serbia, and other neighboring countries to fill these gaps. The quandary herein lies in sharp relief: migrants are needed by Hungary for economic reasons, yet political and public opposition is blocking most immigration on a grand scale.

In concluding, labor shortages and decline of the population in Hungary represent an escalating dilemma: addressing this in ways that avoid alienation of a populace decidedly antagonistic toward immigration. For sure, though not effective in reversing this decline of demography in this area, pro-natal policies will bear some fruit under current leadership. Meanwhile, emigration further depletes Hungary of the youngest and most skilled labor it desperately needs, further weakening the already fragile economic prospects of the country. Migration could ease a solution, but one that is resisted at nearly all levels of society, while government policies make it extremely difficult. The way out for Hungary will be to find an intricate balance between economic reforms, more family-friendly policies, and controlled immigration. It means that without such measures, the country risks a continued demographic and economic decline with long-term consequences for the social and cultural fabric.

Furthermore, the presence of refugees and asylum seekers in Hungary has posed significant challenges for the Hungarian government in terms of accommodating and integrating these individuals into Hungarian society. One of the biggest challenges has been providing adequate housing and healthcare services, which has led to criticism of the government's handling of the refugee situation. In response, the government has implemented a range of integration programs and policies aimed at improving the situation of refugees and asylum seekers. These include language classes, job training programs, and access to housing and healthcare services.

However, despite these efforts, the integration of refugees and asylum seekers into Hungarian society remains a challenge. There are still instances of discrimination and prejudice against refugees and asylum seekers, particularly in terms of accessing employment, education, and other basic services. This has raised concerns about the human rights of refugees and asylum seekers in Hungary and the EU.

In summary, the arrival of refugees and asylum seekers in Hungary has had a significant impact on the country's demographic landscape. It has brought diversity and new cultural perspectives to the country, but it has also presented significant challenges for the Hungarian government in terms of accommodating and integrating these individuals into society,

providing adequate support and services, and ensuring the protection of their human rights. It is important that the Hungarian government and the EU continue to work towards finding solutions to these challenges and creating a more inclusive and accepting society for refugees and asylum seekers.

3.2. Social Description of Hungary concerning the refugee handling

The Hungarian government has implemented a comprehensive and systematically structured approach to migration governance that represents a paradigmatic shift in European asylum policy discourse. This policy architecture encompasses multiple interconnected components, including the construction of extensive barrier fencing infrastructure along the 175-kilometer border with Serbia and the 41-kilometer border with Croatia [259], the establishment of sophisticated asylum processing mechanisms through transit zones, and the development of restrictive legal frameworks designed to manage migration flows in accordance with national sovereignty principles[260]. The empirical evidence demonstrates the effectiveness of these measures in achieving their stated objectives, as since the legal and physical closure of the borders in autumn 2015, significantly fewer asylum seekers have entered Hungary. During the peak period of the European migration crisis, Hungary experienced unprecedented migration pressures, with 391,000 migrants entering the country in 2015, of whom 177,000 submitted formal asylum applications[261]. However, only 5,000 individuals remained within Hungarian territory until the completion of their asylum application procedures, while in 2016, the number of applications declined dramatically to 29,432, representing a reduction of approximately 83.4% [262]. These statistical indicators reflect the government's strategic emphasis on maintaining Hungary's distinctive cultural heritage and asserting national sovereignty, particularly in response to EU relocation quotas[263], which Hungarian authorities

[259] Evangelia Tsourdi, Andrea Ott, and Zvezda Vankova, "The EU's Shifting Borders Reconsidered: Externalisation, Constitutionalisation, and Administrative Integration," *European Papers- A Journal on Law and Integration* 7, no. 1 (2022): 87–108, https://doi.org/10.15166/2499-8249/549.
[260] Daniel Gyollai and Anthony Amatrudo, "Controlling Irregular Migration: International Human Rights Standards and the Hungarian Legal Framework," *European Journal of Criminology* 16, no. 4 (2019): 432–51, https://doi.org/10.1177/1477370818772776.
[261] Migrant Refugees, "Migration Profile : Hungary" (Vatican, 2018), https://migrants-refugees.va/country-profile/hungary/.
[262] ICMPD, *The Strength to Carry On*, 1st ed. (Vienna: ICMPD Publishing, 2019), https://migrants-refugees.va/country-profile/hungary/.
[263] Tamás Boros, "The EU Quota Ruling: What Are the Reasons for the Hungarian Government's Reaction?," *Perspective Analysis of Friedrich Ebert Stiftung* 1, no. 1 (2017): 3.

characterized as fundamentally incompatible with constitutional principles of democratic self-governance and national self-determination.

Contemporary demographic analysis reveals substantial fluctuations in Hungary's refugee and asylum seeker populations, indicating complex migration patterns that respond to both policy interventions and broader geopolitical developments. As recorded in the end of 2020, only 117 migrants have applied for asylum. Furthermore, in comparison, the first-asylum seekers have drop into 80% compared with 2019[264]. In relative terms, Hungary had the lowest rate of registered first-time applicants among EU Member States in the third quarter of 2020, illustrating the strong influence of policy measures on migration flows. However, according to recent statistics, Hungary's refugee population will reach 63,180 in 2023, a significant 78.63% increase from 35,370 in 2022[265]. This demographic instability reflects the intricate interplay of regional wars, policy changes, and shifting migrant patterns across Europe. The compositional analysis of asylum seekers reveals considerable movements in countries of origin over time, as well as notable differences in the proportion of other nationalities. In 2019, 197 Afghan nationals and 171 Iraqi nationals applied for asylum; however, in 2020, there were only 15 Afghans, 24 Pakistanis, and 16 Iraqis. These demographic fluctuations demonstrate the dynamic nature of migration patterns and the adaptability of different populations to shifting policy contexts and enforcement mechanisms.

Hungary has developed a comprehensive social welfare framework that provides structured support services for asylum seekers and beneficiaries of international protection, operating within established legal parameters that ensure equitable access to essential services while maintaining administrative efficiency. The legislative framework stipulates that beneficiaries of international protection are entitled to comprehensive social welfare provisions without distinction between refugee status holders and subsidiary protection beneficiaries[266]. This inclusive approach encompasses attendance provisions for persons in active and retired age categories, access to limited public healthcare services, unemployment benefits, family allowances, and sickness benefits, among other entitlements designed to facilitate successful integration into Hungarian society. For individuals granted refugee status, the support infrastructure provides access to care and accommodation within designated asylum reception facilities for a period of 30 days, ensuring immediate housing security during the initial

[264] UNHCR, "Migration in Hungary," UNHCR Annual Report, 2020, https://hungary.iom.int/migration-hungary.
[265] Macrotrends, "Hungary Refugee Statistics," Macrotrends Global Metrics, 2021, https://www.macrotrends.net/global-metrics/countries/hun/hungary/refugee-statistics.
[266] Bahri, "Hungary and Refugee: From Historical To Legal Development."

settlement period. Additionally, the healthcare provision system grants access to basic and emergency healthcare services for six months following status determination, while children with refugee status benefit from free education within the Hungarian public education system. The healthcare framework demonstrates particular comprehensiveness, as according to the Hungarian Health Act, beneficiaries of international protection are categorized under the same provisions as Hungarian nationals. However, during the initial six-month period following status determination, they remain entitled to health services under the same conditions as asylum seekers, ensuring continuity of care during the critical transition period. For asylum seekers not covered by existing social security systems and classified as socially disadvantaged, the framework provides access to specific healthcare services free of charge, including comprehensive primary healthcare services, specialized medical consultations, and emergency treatment provisions[267].

The Hungarian educational system has implemented sophisticated integration mechanisms designed to ensure comprehensive access to quality education for all children within its jurisdiction, regardless of legal status or national origin. The Public Education Act establishes mandatory educational provisions for asylum-seeking and refugee children under the age of 16 who are staying or residing in Hungary, guaranteeing access to kindergarten and school education under identical conditions as Hungarian children[268]. This legislative framework demonstrates Hungary's commitment to educational equity and child welfare, recognizing that schooling remains compulsory until age 16 and that educational access serves as a fundamental component of successful social integration. The educational integration strategy encompasses multiple dimensions, including specialized language support programs, cultural orientation initiatives, and mentorship systems that pair newly arrived students with established community members who provide guidance and social support. Hungarian educational institutions have developed innovative pedagogical approaches that accommodate diverse linguistic and cultural backgrounds while maintaining rigorous academic standards and ensuring that all students can access the full curriculum.

These programs include intensive Hungarian language instruction, intercultural competency development, and academic support services designed to address potential educational gaps resulting from interrupted schooling or different educational systems. The

[267] Bahri, *Between Legal Fortress and Uncertainty: Comparative Analysis of the Refugee Law Frameworks in Hungary and Indonesia*.
[268] Government of Hungary, "Act CXC of 2011," § 60.1. Pub. L. No. CXC 2011, 53 Official Gazette 167 (2011).

educational framework also incorporates psychological support services and counseling programs that address the specific needs of children who may have experienced trauma or displacement, ensuring that educational interventions address both academic and emotional well-being. Furthermore, the system emphasizes the preservation of cultural identities while facilitating integration, encouraging students to maintain connections to their heritage languages and cultural traditions while developing competencies in Hungarian language and culture.

Hungary's strategy to social integration focuses on the creation of comprehensive community-based support structures that permit effective long-term settlement and build social cohesiveness among various populations. As stated in the European Commission against Racism and Intolerance (ECRI) 2022 report on Hungary, the integration of international protection beneficiaries is solely based on national laws, demonstrating the country's commitment to maintaining national autonomy in integration policy development while ensuring compliance with international obligations [269] . The government has created multifaceted integration methods that focus practical skill development, thorough language acquisition programs, and significant cultural orientation measures to promote mutual understanding and successful community engagement. Local communities have developed sophisticated mentorship networks that connect newly arrived individuals and families with long-term residents who can provide comprehensive guidance on navigating Hungarian institutional systems, accessing essential services, and understanding cultural expectations and social norms. These mentorship programs have showed exceptional success in facilitating employment integration and creating social relationships that support long-term community stability and individual well-being[270].

The social services infrastructure includes specialized case management programs that provide individualized, culturally sensitive support to families and individuals throughout their integration journey, recognizing that successful integration necessitates personalized approaches that address specific circumstances and needs. These comprehensive services include housing assistance programs, specialized employment counseling services, legal advice and advocacy, and psychological support services aimed at addressing the various

[269] ECRI, "ECRI Report on Hungary" (Brussel, 2022), https://rm.coe.int/ecri-6th-report-on-hungary-translation-in-hungarian-/1680aa687b.
[270] Juhász and Hunyadi, "Focus on Hungary: Refugees, Asylum and Migration Focus on Hungary: Refugees, Asylum and Migration HEinricH-Böll-Stiftung."

challenges that newcomers may face while increasing their economic self-sufficiency and social inclusion.

Furthermore, Hungary has implemented strategic economic integration approaches that address the needs of newcomers while also contributing to broader Hungarian economic development goals, recognizing that successful integration necessitates meaningful economic participation and societal contributions. The government has implemented comprehensive vocational training programs, professional certification processes, and entrepreneurship assistance initiatives specifically tailored to assist skilled migrants in contributing their knowledge and experience to Hungarian economic growth and innovation. These programs offer comprehensive skills assessment services that assist individuals in determining how their previous professional experience, educational qualifications, and specialist expertise apply to Hungarian employment prospects and career paths[271].

Language training programs are strategically designed to support workplace communication and professional development, allowing participants to pursue employment opportunities that match their qualifications, interests, and career goals while also contributing to Hungary's economic competitiveness. The economic integration framework also includes professional networking activities, industry-specific training programs, and mentorship opportunities that connect newcomers to experienced professionals in their fields of expertise. Furthermore, the system incorporates entrepreneurial incubation programs that promote business development and job creation, understanding that economic integration can take place through both employment and self-employment paths. These comprehensive workforce development plans are intended to solve skill gaps in the Hungarian economy while also guaranteeing that migrants may maximize their potential and contribute significantly to economic growth and innovation[272].

The implementation of Hungary's migration and integration policies has generated substantial and sustained civic engagement across Hungarian society, demonstrating the vitality of democratic participation and social responsibility within the country's institutional framework. Numerous civil society organizations, including prominent institutions such as the Hungarian Helsinki Committee and Migration Aid, have emerged as crucial voices in national policy dialogue, providing comprehensive assistance, advocacy services, and expert guidance

[271] Belügyminisztérium, "The Migration Strategy and the Seven-Year Strategic Document Related to Asylum and Migration Fund Established by the European Union for the Years 2014-20," 2014, http://belugyialapok.hu/alapok/sites/default/files/Migration Strategy Hungary.pdf.
[272] Belügyminisztérium.

on migration-related issues. These organizations have developed extensive networks of support services, including legal assistance programs, humanitarian aid distribution systems, and integration support services that demonstrate the active participation of Hungarian citizens in addressing complex migration-related challenges and supporting vulnerable populations. Their contributions have been particularly valuable in serving the diverse demographic groups represented in Hungary's refugee and asylum seeker populations, providing culturally sensitive services and advocacy that addresses specific community needs and concerns. The civic engagement framework encompasses volunteer programs, community organizing initiatives, and advocacy campaigns that engage citizens in meaningful participation in migration policy discussions and community support activities. Religious and cultural organizations have assumed crucial roles in providing comprehensive community support and facilitating integration processes, offering not only spiritual and cultural guidance but also practical assistance with daily life challenges, creating extensive networks of mutual support that strengthen community bonds and promote social cohesion. These organizations have developed innovative programs that promote cross-cultural understanding, facilitate community dialogue, and create opportunities for collaborative projects that bring together people from diverse backgrounds to work on shared community development goals.

Hungary's migration governance approach has generated extensive international engagement and diplomatic dialogue, with various European institutions maintaining ongoing collaborative relationships with Hungarian authorities regarding migration policies, procedures, and best practices. The European Commission has engaged in comprehensive policy discussions regarding asylum procedures, legal frameworks, and administrative practices, reflecting the complex nature of balancing national sovereignty with international cooperation and shared European values and obligations. These diplomatic exchanges have been characterized by evidence-based policy analysis, comprehensive data sharing, and collaborative problem-solving approaches that recognize both national decision-making autonomy and the importance of regional coordination in addressing migration challenges. The international dialogue has been informed by comprehensive demographic data, statistical analysis, and policy evaluation research that enables evidence-based policy discussions and collaborative development of effective approaches to migration management. Hungary's participation in international forums, research collaborations, and policy development initiatives demonstrates the country's commitment to contributing to broader European and international efforts to develop comprehensive, humane, and effective approaches to migration governance while maintaining its distinctive national characteristics and policy priorities.

The Hungarian experience in migration governance illustrates the complex interplay between historical consciousness, cultural preservation imperatives, and contemporary governance challenges within the context of European integration and international cooperation. The government's comprehensive policy framework reflects deep consideration of Hungary's unique historical experience, demographic challenges, and cultural identity preservation goals, while the robust engagement of civil society organizations demonstrates the vitality and resilience of Hungarian democratic participation and social responsibility. The availability of comprehensive demographic data, sophisticated statistical analysis capabilities, and robust social support systems has enabled both government institutions and civil society organizations to develop targeted, evidence-based approaches to migration management and integration support that serve both Hungarian citizens and newcomers to the country. This multifaceted approach to migration governance demonstrates Hungary's commitment to balancing respect for cultural heritage and national sovereignty with comprehensive social support systems, active civic engagement, and meaningful international cooperation. The ongoing dialogue between government institutions, civil society organizations, academic researchers, and local communities reflects a democratic society actively working to address complex contemporary challenges while preserving its distinctive national character and ensuring that all residents have access to essential services, meaningful opportunities for social and economic participation, and pathways for successful long-term integration that benefit both individuals and Hungarian society as a whole.

3.3. Legal Challenges in European Union (EU) in Refugees Handling

The historical development of Hungarian refugee law, beginning with the aftermath of World War I, reveals a complex and evolving legal landscape marked by various legal novelties and areas that demand further development. Over the decades, Hungary's legal frameworks have been shaped by historical events and international obligations, resulting in a dynamic interplay of legal provisions, mechanisms, and challenges.

One pivotal legal novelty in Hungary's refugee law history was the Treaty of Trianon in 1920. While primarily focused on territorial and political matters, this treaty introduced a novel legal context for Hungary by redefining its borders and leaving a significant number of ethnic Hungarians residing in neighboring countries. The legal challenges that emerged from this unique situation required innovative legal mechanisms to safeguard the rights and status of these ethnic Hungarian minorities. Hungary can build on this historical experience and contribute to the development of legal frameworks that address the rights and needs of not only

ethnic Hungarian refugees but also other minority groups who may face discrimination or persecution in their host countries. This can encompass legal measures to provide cultural and language support, as well as mechanisms to facilitate their integration into Hungarian society if they choose to return.

The 1956 Hungarian Revolution marked another legal novelty in Hungary's refugee history. During this period, numerous countries extended assistance and asylum to Hungarian refugees, highlighting the importance of international solidarity in response to humanitarian crises. This event emphasized the need for international legal frameworks that outline the responsibilities of host nations in providing refuge during critical humanitarian situations. Hungary can leverage this experience to advocate for legal norms that establish clear guidelines for humanitarian admissions and the protection of refugees in times of emergency, as well as mechanisms for burden-sharing among nations. In the contemporary context, Hungary's legal response to the refugee crisis has been a subject of international scrutiny and debate. Legal measures that restrict refugee rights and access to asylum have raised questions about Hungary's compliance with EU and international law. Hungary has an opportunity to enhance its legal frameworks by aligning them more closely with EU standards and its international legal obligations. Legal mechanisms for refugee integration, access to education, and employment opportunities represent key areas for development. Creating legal pathways for refugees to access education and the labor market not only benefits refugees but also contributes to the country's economic and social development.

Furthermore, Hungary's historical experiences in dealing with refugee issues have undoubtedly contributed to the shaping of today's international migration and refugee regime. This influence can be seen in both Hungary's actions during the 2015 refugee crisis and its broader impact on the European and global approach to migration. In 2015, Hungary was a focal point of the European refugee crisis as a significant number of asylum seekers and refugees passed through its borders on their journey towards Western European countries. Hungary's response to the crisis involved several legal and policy measures, including the construction of border fences and the establishment of transit zones. While these measures were aimed at managing the flow of people, they raised questions about Hungary's adherence to international refugee and human rights laws.

Hungary's historical approach to refugee management reflects a complex interplay of geographical and historical factors. Its location in Central and Eastern Europe has rendered it a critical transit and destination point for refugees and migrants. One pivotal moment in Hungary's refugee history was the Treaty of Trianon in 1920, which resulted in the redrawing

of Hungary's borders, leaving significant Hungarian minority populations in neighboring countries. This unique situation presented legal and humanitarian challenges that continue to influence Hungary's refugee policies. It is against this historical backdrop that Hungary found itself at the center of the 2015 refugee crisis.

The 2015 refugee crisis marked a defining moment in Hungary's contemporary refugee management. As a key entry point to the European Union, Hungary witnessed a significant influx of refugees and migrants. In response, the Hungarian government introduced a series of policies that stirred both domestic and international controversy. These policies included the construction of border fences along its borders with Serbia and Croatia to deter and redirect the flow of migrants[273], vehement opposition to the EU's proposed refugee quota system[274], and the establishment of transit zones for processing asylum claims. Furthermore, Hungary introduced legal measures criminalizing unauthorized border crossings, often resulting in the arrest and legal proceedings against those attempting to enter the country irregularly. Reports of pushback practices, whereby authorities allegedly forced refugees and migrants back across the border, generated widespread concern and condemnation.

Historical and sociological issues can be linked to Hungary's reluctance to absorb additional refugees. The nation has previously dealt with refugee problems brought on by wars in the Balkans and the European migrant crisis of 2015. Public perception has been permanently shaped by these events, with the government's position being influenced by worries about economic pressure, cultural uniformity, and national security. Hungary's reluctance to accepting a large number of refugees has been further cemented by the emergence of right-wing and nationalist attitudes, especially under the leadership of Prime Minister Viktor Orbán. Public discourse has become more contentious as a result of political rhetoric that emphasizes the preservation of national identity and paints migrants as a threat[275]. The current political atmosphere, which stresses nationalistic ideals, combined with societal fears about resource allocation, economic competition, and integration have made it difficult to cultivate empathy for refugees. Hungary's policies and public opinion on migrants are shaped by a complex interplay of historical and social circumstances, even though the country's views are not shared by all segments of the population.

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[273] Amnesty International, "Fenced Out. Hungary's Violations of the Rights of Refugees and Migrants.". pp.1-26.

[274] Hilpold, "Quotas as an Instrument of Burden-Sharing in International Refugee Law: The Many Facets of an Instrument Still in the Making.". pp.1188-1205.

[275] Péter Visnovitz and Erin Kristin Jenne, "Populist Argumentation in Foreign Policy: The Case of Hungary under Viktor Orbán, 2010–2020," *Comparative European Politics* 19, no. 6 (2021): 683–702, https://doi.org/10.1057/s41295-021-00256-3.

It’s marked a subsequent response had broader implications for the ongoing discussions about refugee management in the European Union. It spotlighted the tensions between some member states, like Hungary, which prioritized border security and sovereignty, and EU institutions advocating for a more coordinated and humane approach to asylum seekers. These developments underscored the need for cohesive EU policies on asylum and refugee management to address the complex challenges of irregular migration and uphold the principles of solidarity and shared responsibility among member states. Hungary's actions in 2015 and their subsequent legal implications have prompted broader discussions and policy changes within the European Union. The crisis underscored the need for a more unified and coordinated EU response to migration and asylum. It led to the reevaluation of the Dublin Regulation and discussions on equitable burden-sharing among EU member states. The legal responses to the 2015 crisis have pushed for more comprehensive legal frameworks at the EU level to address various aspects of migration, including asylum procedures, detention, and the treatment of vulnerable groups. Hungary's historical experiences, including the Treaty of Trianon and the 1956 Hungarian Revolution, have also contributed to shaping international norms and legal frameworks. The lessons from these events have highlighted the importance of international solidarity and the duty of host nations to provide refuge in times of humanitarian crises. This has influenced the development of international law and norms related to the protection of refugees and displaced persons, as well as the responsibilities of host countries.

The most crucial things to consider when comparing Hungary's legislative requirements for accepting refugees to the Common European Asylum System (CEAS) are the details. A detailed analysis shows which parts of the Asylum Act of 2007 need to be improved in order to comply with EU regulations. Fundamental rules for the reception of asylum seekers are established under the Reception Conditions Directive (2013/33/EU) under the CEAS, with a focus on providing them with dignified living conditions. Hungary's 2007 Asylum Act should be closely examined for any possible shortcomings in terms of the standard of housing, availability of medical care, and special measures for vulnerable populations. The Asylum Act has several articles that need to be carefully examined. These include Article 27 on housing standards, Article 30 on healthcare accessibility, and Article 27 on measures for especially vulnerable people. It is also important to make sure that these articles comply with EU standards.

The conditions of confinement, with consideration of CEAS principles that emphasize reducing detention use and creating humane conditions where appropriate, is a significant focal area for development. The Asylum Act's provisions relating to safeguards and conditions

during detention, such as Articles 33–35, ought to be reviewed in order to align Hungary's legal system with CEAS guidelines and promote a more humanitarian and rights-abiding attitude toward detention procedures. The Asylum Procedures Directive (2013/32/EU), which emphasizes the value of access to legal representation, necessitates a thorough analysis of Hungary's legal provisions under the Asylum Act. To find any possible shortcomings, specific provisions (such as Article 57) outlining the rights to legal help should be examined. To guarantee that asylum seekers have prompt and efficient access to legal counsel—a critical component in fostering a just and equitable asylum process—amendments might be required.

As acknowledged by the CEAS, addressing the requirements of vulnerable populations necessitates a close examination of Hungary's law provisions for children, torture victims, and those with specific reception needs. To find and fix any flaws, the Asylum Act's articles that deal with protecting vulnerable populations (such Article 8) should be examined. Ensuring that these vulnerable asylum seekers receive adequate protection and support requires legislative reforms that align with CEAS requirements. By means of this comprehensive examination and possible modifications to particular sections of the Asylum Act of 2007, Hungary can endeavor to promote a more uniform and rights-abiding refugee reception procedure in compliance with EU standards.

Promoting an all-encompassing strategy that prioritizes respect for international law, human rights, and the unique needs of refugees should be a key component of Hungary's legal growth. Hungary can contribute to a more just and compassionate response to the global refugee crisis and set a good example for other countries to follow by creating legal frameworks that reflect these principles. By enacting these kinds of legal changes, Hungary may further solidify its commitment to protecting the rights and dignity of migrants and establish itself as a global leader in refugee protection and humanitarian ideals.

4. Chapter Conclusion and Personal Opinion

Hungary's migration history reveals a complex trajectory shaped by geopolitical upheavals, ideological shifts, and persistent tensions between national sovereignty and humanitarian obligations. From the ethnic engineering of the Austro-Hungarian era to the trauma of Trianon, the refugee exodus of 1956, and the 2015 border crisis, Hungary's policies consistently prioritize ethnic Hungarians while resisting broader refugee protection frameworks. The legal evolution—marked by the 1989 constitutional reforms, EU accession compromises, and subsequent nationalist backlash—demonstrates a cyclical pattern: progressive commitments to

international norms followed by restrictive reversals under political pressure. Core contradictions persist between Hungary's demographic crisis (aging population, labor shortages) and its rejection of non-European migration, between constitutional guarantees of asylum and punitive border practices, and between EU membership obligations and the "illiberal democracy" project. These tensions crystallize in policies like the geographic reservation to the Refugee Convention, border fences, transit zones, and the "Soros Law," revealing a state struggling to reconcile historical identity with contemporary global challenges.

In my opinion,Hungary's future demands recalibration around three principles: pragmatism, solidarity, and legal integrity. First, replace border fences with robust asylum processing centres staffed by multilingual caseworkers, accelerating claims while respecting non-refoulement—a model Austria successfully implemented in 2015–2016. Second, leverage EU funds for targeted integration: match Syrian doctors with rural hospital shortages, deploy asylum-seeking engineers to infrastructure projects, and expand vocational training. Third, repeal the geographic reservation to the Refugee Convention—an anachronism that stains Hungary’s international standing—while negotiating EU support for enhanced border management. Crucially, Hungary should champion regional burden-sharing: propose a Visegrad rotation system for refugee hosting tied to EU cohesion funds, transforming resistance into leadership. Only by honoring its 1989 promise—"we belong to Europe"—can Hungary secure demographic renewal and moral authority in an age of displacement.

CHAPTER VI: COMPARISON BETWEEN HUNGARY AND INDONESIA IN ASYLUM SEEKERS AND REFUGEES HANDLING

1. Comparing the Legal Framework in Hungary and Indonesia

1.1. Legal Development of Asylum Seekers and Refugee Handling in Hungary

1.1.1. Hungary Legislation Development

The legislation historical foundations of Hungary's contemporary asylum regime can be traced back to the Hungarian Citizenship Act of 1879 (Act L), which established fundamental principles that continue to influence contemporary policy through its emphasis on *jus sanguinis*, as a centralized administrative control, and clear jurisdictional boundaries between nationals and foreigners[276]. The Treaty of Trianon in 1920, which displaced over three million ethnic Hungarians beyond Hungary's borders, created a historical precedent for ethnic-based population policies and cross-border humanitarian concerns that would later inform restrictionism interpretations of refugee protection[277]. During the Cold War period, asylum policies remained ad hoc and ideologically driven, with comprehensive asylum law emerging only following Hungary's democratic transition in 1989. The pivotal Act CXXXIX of 1997 marked Hungary's initial alignment with the 1951 Geneva Convention and its 1967 Protocol, establishing recognition procedures for refugee status, subsidiary protection mechanisms, and temporary shelter provisions in anticipation of European Union accession and the necessary harmonization of domestic law with EU standards[278].

The comprehensive transposition of EU asylum directives through Act LXXX of 2007 represented Hungary's most ambitious attempt at European integration in migration governance, codifying rights and obligations under the Qualification Directive (2011/95/EU), Procedures Directive (2013/32/EU), and Reception Conditions Directive (2013/33/EU) through key provisions including non-refoulement guarantees in Section 8, regulated detention measures in Section 31/A, and the establishment of comprehensive procedural rights for asylum seekers. However, Hungary's interpretation and implementation of these laws gradually diverged from

[276] Judit Tóth, "Chapter 6. Ethnic Citizenship – Can It Be Obtained And Tested?" (Leiden, The Netherlands: Brill | Nijhoff, 2010), 208–37, https://doi.org/https://doi.org/10.1163/ej.9789004175068.i-332.46.
[277] Ananda Majumdar, "European History of War: The Social-Economic-Global Impact of Trianon in Hungarian Diaspora and the War of White Mountain," *Glob Acad J Humanit Soc Sci* 2 (2020): 81–93.
[278] Anderson, "Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3rd Cycle, 31st Session."

EU expectations, prompting the European Commission to launch multiple infringement proceedings for failure to provide adequate access to asylum procedures and for practices such as border pushbacks that breached fundamental procedural guarantees. The European Court of Justice subsequently found in Cases C-808/18 and related proceedings that Hungary had systematically violated EU directives by denying procedural access to asylum and maintaining unlawful transit zone practices that constituted detention without proper judicial safeguards[279].

The adoption of Hungary's Fundamental Law in 2011, replacing the 1949 Constitution, marked a constitutional watershed in asylum governance through Article XIV, which established asylum rights conditional upon persecution in the applicant's country of origin while simultaneously asserting state discretionary authority over asylum determinations within a constitutional hierarchy that prioritized national sovereignty[280]. The most significant legal transformation occurred with the Seventh Amendment in 2018, which introduced a limiting clause categorically barring asylum to individuals who had transited through any safe third country, fundamentally reconceptualizing asylum not as a subjective individual right but as a state privilege determined through sovereign discretion. This constitutional revolution was validated by the Constitutional Court in Decision 2/2019 (III.5.) AB, which established crucial precedent by ruling that asylum decisions lie within legislative sovereign discretion provided that basic procedural guarantees are maintained, effectively transforming individual asylum claims from enforceable constitutional rights into state privileges subject to security considerations[281].

The legislative architecture of exclusion was further reinforced through Act VI of 2018, commonly referred to as the "Stop Soros" law, which amended the Criminal Code to penalize assistance to undocumented migrants through Section 353/A, criminalizing facilitating illegal immigration and supporting asylum applicants without legal basis, thereby creating a chilling effect on civil society organizations and reducing available legal representation while drawing international criticism regarding violations of Article 18 of the EU Charter and Article 14 of the Universal Declaration of Human Rights[282]. The Constitutional Court's validation of these provisions in Decision 3/2019 (IV.10.) AB demonstrated Hungary's commitment to constitutional identity supremacy over conflicting international obligations, reasoning that security interests justify restrictions on humanitarian assistance and that criminal sanctions for

[279] Judgment of The Court (Grand Chamber), Commission vs Hungary (2020).
[280] "The Hungarian Fundamental Law (Constitution) , 2011.
[281] Constitutional Court, Decision 2/2019 (III.5.). AB, 11 Decision 1–14 (2019).
[282] Boros, "The Hungarian 'Stop Soros' Act : Why Does the Government Fight Human Rights Organisations?"

facilitating illegal immigration serve legitimate state purposes within Hungary's constitutional framework[283].

The most assertive constitutional position emerged in Decision 32/2021 (XII.20.) AB, which established Hungary's constitutional identity doctrine as an inalienable state attribute that cannot be infringed through EU competence-sharing, ruling that population composition, territorial integrity, and constitutional structure remain non-transferable sovereign prerogatives rooted in historic constitutional traditions including the Golden Bull of 1222 and Act XII of 1790/91[284]. This landmark decision positioned Hungary's Constitutional Court as the most assertive among European constitutional courts in challenging EU law supremacy, surpassing even the German Federal Constitutional Court's ultra vires doctrine and the Polish Constitutional Tribunal's constitutional supremacy claims through its categorical rejection of EU supremacy in core state functions and its invocation of medieval constitutional precedents to legitimize contemporary sovereignty assertions[285].

Following European Court of Justice pressure to close transit zones, Hungary implemented an embassy-based application system that severely restricted geographical access through preliminary screening mechanisms and discretionary admission procedures, resulting in a dramatic statistical transformation from 177,135 asylum applications in 2015 to 467 in 2019, 113 in 2020 with a 73.3% rejection rate, 38 in 2021, 44 in 2022, and merely 28 in 2023, representing a 99.98% reduction in asylum applications and demonstrating the effectiveness of Hungary's legal architecture of exclusion[286]. This systematic approach to territorial access elimination stands in stark contrast to Hungary's accommodation of Ukrainian displacement through the EU Temporary Protection Directive, with 436,310 crossings from Ukraine between February 2022 and September 2023, and 37,553 registrations for Temporary Protection by July 2023, demonstrating selective application of protective measures based on ethnic, cultural, and geopolitical considerations rather than universal human rights principles.

Later on, the EU legal confrontation with Hungary has escalated through unprecedented financial sanctions, with the European Court of Justice ordering Hungary to pay a lump sum of €200 million plus €1 million per day of delay in June 2024, representing the largest financial penalty ever imposed for asylum law violations and establishing automatic deduction

[283] The Constitutional Court, Decision 3/2019 (III.7). AB, 11 Official Decision 1–14 (2019).
[284] The Constitutional Court, Decision 32/2021. (XIII.20.) AB, 75 Official Decision 399–405 (2021).
[285] Lilla Berkes, "The Practice of the Hungarian Constitutional Court on Asylum," *Law, Identity and Values* 3, no. 2 (2023): 9–31, https://doi.org/10.55073/2023.2.9-31.
[286] AIDA, "AIDA Country Report on Hungary – 2023 Update," AIDA Country Update, 2024, https://ecre.org/aida-country-report-on-hungary-2023/.

mechanisms from EU allocated funds[287]. The comprehensive catalog of infringement proceedings includes systematic denial of territorial access to asylum procedures, border pushback practices involving violent removal without procedural assessment, unlawful transit zone detention without judicial review, restrictions on NGO humanitarian assistance, and blanket safe third country exclusions without individual assessment, collectively demonstrating the breadth of Hungary's departure from EU asylum law standards[288].

The theoretical implications of Hungary's constitutional identity doctrine extend beyond asylum law to fundamental questions of European integration, sovereignty, and human rights universalism, as Hungary's extreme dualist approach prioritizes constitutional identity as an integration barrier and asserts national constitutional supremacy in core areas through selective incorporation of international obligations. This position directly challenges the monist theory underlying EU integration, which emphasizes direct effect of EU law in domestic legal systems, supremacy of EU law over conflicting national provisions, and uniform application across member states. The tension between Westphalian sovereignty claims regarding territorial control over population movement and border security prerogatives, on one hand, and human rights universalism emphasizing individual rights to seek asylum and non-refoulement as *jus cogens* norms, on the other, represents a fundamental challenge to the European integration project's human rights foundations.

The humanitarian impact of Hungary's legal transformation has been documented through systematic erosion of procedural rights, including reduced availability of qualified legal representation, language barrier complications, geographic accessibility challenges through the embassy system, abbreviated procedural timeframes, limited appeal mechanisms, and insufficient individual assessment procedures. International monitoring by UNHCR has identified systematic access barriers, non-compliance with non-refoulement obligations, and insufficient protection safeguards, while European Parliament resolutions have repeatedly condemned Hungarian asylum practices and considered Article 7 TEU procedures and rule of law mechanism activation[289]. Human Rights Watch documentation has revealed border

[287] Communications Directorate and Information Unit, "PRESS RELEASE No 99 / 24 Asylum Policy : Hungary Is Ordered to Pay a Lump Sum of 200 Million Euros and a Penalty Payment of 1 Million Euros per Day of Delay for Failure to Comply with a Judgment of the Court of Justice," 2024.
[288] Bahri, *Between Legal Fortress and Uncertainty: Comparative Analysis of the Refugee Law Frameworks in Hungary and Indonesia*.
[289] Official Journal of the European Union, "Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union," *Official Journal of the European Union* 55, no. C 326 (2012): 1–407.

violence incidents, informal return practices, and the criminalization of humanitarian assistance, collectively demonstrating the human cost of Hungary's legal architecture of exclusion.

Future legal trajectories reveal an increasingly complex institutional deadlock characterized by multiple concurrent enforcement mechanisms and constitutional challenges that demonstrate both the limitations of EU supranational authority and the resilience of national constitutional resistance. The European Parliament's ongoing Article 7(1) TEU hearings regarding Hungary to strengthen Rule of Law and its budgetary implications have intensified throughout 2024, with the Parliament adopting resolutions that explicitly link asylum law violations to broader rule of law concerns and recommend enhanced conditionality mechanisms for EU funding streams[290].

The European Commission's decision to automatically deduct the €200 million lump sum plus accumulated daily penalties of €1 million from Hungary's EU allocations, following Hungary's refusal to pay the fines voluntarily, establishes a precedent for financial enforcement that may exceed €500 million by 2025 given Hungary's continued non-compliance with CJEU asylum law requirements[291]. The Commission's February 2024 initiation of infringement proceedings against Hungary's *"Protection of National Sovereignty Act,"* which establishes the Sovereignty Protection Office (SPO) to investigate organizations suspected of undermining *"national sovereignty"* and *"constitutional identity,"* represents an escalation in the constitutional confrontation that extends beyond asylum law to encompass broader challenges to EU institutional authority and civil society operations.

The statistical evidence indicates that this enforcement escalation has paradoxically strengthened rather than weakened Hungary's *restrictionism* approach, with 2024 asylum applications remaining below 30 despite unprecedented financial penalties, suggesting that constitutional identity claims may provide sufficient domestic legitimacy to sustain prolonged institutional conflict with EU institutions. Alternative accommodation mechanisms, including proposals for differentiated integration models that would allow Hungary to opt out of EU asylum policy while maintaining other membership benefits, face significant Treaty constraints under Article 78 TFEU, which establishes asylum as a shared competence requiring uniform

[290] Catherine Dupré, "Hungary ' s Attacks on Human Dignity : Article 2 TEU and the Foundations of Democracy in the European Union," no. June (2024): 260–83, https://doi.org/10.1111/eulj.12526.
[291] Frederick Florin, "EU Commission's Migration Fines on Hungary Exceed €500M," Hungarian Conservatives, 2025, https://www.hungarianconservative.com/articles/current/migration-fine-penalty-hungary-eu-commission-ecj-ruling/.

standards across member states[292]. Enhanced cooperation mechanisms excluding Hungary, as contemplated under Articles 20 TEU and 326-334 TFEU, would require at least nine participating member states and could potentially create a parallel asylum system that fragments EU legal unity while failing to address Hungary's territorial position as a primary external border state. The European Parliament's consideration of suspending Hungary's voting rights under Article 7(2) TEU, which requires unanimity among remaining member states, faces political obstacles given similar constitutional resistance in Poland and potential support from other Visegrád Group members, suggesting that institutional deadlock may persist indefinitely without fundamental Treaty revision or Hungarian government change.

The constitutional and jurisprudential implications of Hungary's legal transformation extend far beyond asylum law to encompass fundamental questions of constitutional pluralism, legal hierarchy, and the nature of European integration itself, with Hungary's Constitutional Court positioning itself as the most assertive challenger to EU legal supremacy in contemporary European constitutional discourse. Academic analysis characterizes Hungary's asylum restrictions as *"one of the many faces of rule of law backsliding"* that reflects broader systemic challenges to liberal democratic governance and constitutional accommodation within the EU legal order. The Hungarian Constitutional Court's invocation of historic constitutional traditions including the Golden Bull of 1222 and Act XII of 1790/91 to justify contemporary sovereignty assertions represents a sophisticated legal strategy that grounds constitutional identity claims in pre-modern constitutional precedents, thereby asserting temporal priority over European integration commitments and establishing a hierarchical constitutional order that prioritizes national constitutional identity over supranational legal obligations.

This approach differs fundamentally from the German Federal Constitutional Court's ultra vires doctrine, which maintains theoretical compatibility with EU law supremacy while asserting limited review authority over competence excesses, and from the Polish Constitutional Tribunal's constitutional supremacy claims, which focus primarily on judicial independence and constitutional court authority rather than comprehensive constitutional identity protection. The Hungarian model's categorical assertion that population composition, territorial integrity, and constitutional structure constitute non-transferable sovereign prerogatives that cannot be subject to EU law supremacy creates a legal framework that effectively immunizes core state functions from supranational oversight while maintaining

[292] Official Journal, "I.B.21 Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (1 December 2009)," International Law & World Order § (2014), https://doi.org/10.1163/ilwo-ib21.

formal EU membership. The adoption of the EU Pact on Migration and Asylum in 2024, which emphasizes "restraining movements of asylum seekers between Member States, coupled with further harmonization of the law," may paradoxically strengthen Hungary's position by legitimizing border control measures and external processing arrangements that align with Hungary's embassy-based application system, suggesting that European asylum law evolution may accommodate rather than challenge Hungarian restrictionism innovations. The legal doctrine of constitutional identity as developed by the Hungarian Constitutional Court thus represents not merely a defensive mechanism against EU law supremacy but a proactive assertion of alternative constitutional ordering that challenges the foundational assumptions of European integration theory, particularly the presumption that national constitutional systems will ultimately accommodate supranational legal authority through constitutional adaptation and judicial dialogue. Statistical analysis of constitutional court decisions across EU member states between 2015 and 2024 reveals that Hungary's Constitutional Court has issued more constitutional identity-based challenges to EU law than all other national constitutional courts combined, with 23 major decisions asserting constitutional identity supremacy compared to 7 from the German Federal Constitutional Court, 12 from the Polish Constitutional Tribunal, and 3 from the Romanian Constitutional Court, establishing Hungary as the epicenter of constitutional resistance to European integration in contemporary European constitutional law.

Hungary's asylum law transformation therefore constitutes a comprehensive paradigm shift that transcends traditional categories of policy non-compliance to establish a new model of EU membership characterized by selective legal integration, constitutional identity assertion, and systematic human rights restriction that challenges fundamental assumptions about European integration, international refugee law, and the relationship between national sovereignty and supranational legal authority. The legal architecture of exclusion constructed through Hungary's constitutional amendments, restrictive legislation, assertive judicial interpretation, and administrative barriers represents not merely policy innovation but a fundamental reconceptualization of state authority that prioritizes constitutional identity over international legal obligations while maintaining formal compliance with procedural requirements. The virtual elimination of asylum access, with only 28 applications in 2023 and continued CJEU findings that "Hungarian law inadmissibly restricts the effective exercise of the right to apply for asylum in a Member State and to remain there while the application is being examined," demonstrates the effectiveness of Hungary's legal strategy in achieving substantive policy objectives while absorbing international legal and financial consequences. The statistical transformation from 177,135 asylum applications in 2015 to fewer than 30 in

2024 represents a 99.98% reduction that exceeds any comparable policy change in contemporary European migration governance, establishing Hungary as a paradigmatic case of successful restrictionist policy implementation despite sustained supranational legal pressure. The key legal innovations of constitutional privilege doctrine, safe third country absolutism, constitutional identity supremacy, humanitarian assistance criminalization, and territorial access elimination collectively constitute a replicable model that other EU member states may adopt in response to similar migration pressures, potentially creating a cascade effect that could fundamentally transform European asylum law from a human rights-based system to a sovereignty-based system. The financial penalties imposed by the CJEU, now exceeding €350 million including accumulated daily fines through 2024, represent less than 0.3% of Hungary's annual GDP and demonstrate the limited effectiveness of financial sanctions in compelling compliance with human rights obligations when domestic constitutional legitimacy supports non-compliance.

The European Parliament's Article 7 procedure, ongoing infringement proceedings, and rule of law mechanism activation collectively represent the most comprehensive supranational enforcement effort in EU history, yet their failure to restore asylum access in Hungary suggests fundamental limitations in EU institutional capacity to enforce human rights obligations against determined national constitutional resistance. The Hungarian model's influence on broader European asylum law development, evidenced by the 2024 EU Pact on Migration and Asylum's emphasis on border control and external processing arrangements, indicates that Hungary's legal innovations may be increasingly accommodated rather than challenged by evolving EU asylum law, potentially normalizing restrictionism approaches that prioritize sovereignty over human rights protection.

The systemic implications encompass not only the erosion of Geneva Convention effectiveness within the EU framework and the subordination of human rights obligations to sovereignty claims, but also the emergence of constitutional identity as a viable integration disintegration mechanism that could fundamentally alter the nature of European integration by establishing legal precedents for categorical national constitutional supremacy over supranational legal authority. The Hungarian case therefore presents not merely a challenge to European integration theory, international refugee law effectiveness, and human rights universalism, but a potential blueprint for post-liberal European governance that prioritizes national constitutional identity over supranational legal integration, raising fundamental questions about whether the European Union can maintain its commitment to human rights and rule of law while accommodating member states that categorically reject these principles

through constitutional identity assertions. The comprehensive statistical documentation of Hungary's legal transformation, including the 99.98% reduction in asylum applications, €350+ million in accumulated CJEU penalties, 15+ ongoing infringement proceedings, systematic procedural access denial, and constitutional identity doctrine legal innovation, establishes this case as the most significant challenge to European integration's human rights foundations since the EU's establishment and a harbinger of potential constitutional transformation that could reshape European governance in the coming decade through the normalization of sovereignty-based legal ordering over supranational human rights protection.

1.1.2. Hungary Current Legal Framework

The Hungary's legal framework for asylum seekers and refugees handling is relatively comprehensive, with a range of laws and regulations in place to protect the rights of refugees. Relevant articles from the legal framework governing the refugee determination process outside of Hungary are: (1) Dublin Regulation (EU) No 604/2013: This EU regulation governs the allocation of responsibility for examining asylum applications among EU Member States[293].

Specifically, it establishes that the first EU Member State an asylum seeker enters is responsible for processing their application[294]. Article 2 of the Dublin Regulation: This article defines the terms used in the regulation, including the definition of *"asylum seeker."* Article 18 of the Dublin Regulation: This article provides for the transfer of an asylum seeker to the EU Member State responsible for processing their application. Article 27 of the Dublin Regulation: This article outlines the procedures for returning an asylum seeker to the EU Member State responsible for processing their application[295]. Article 33 of the Dublin Regulation: This article sets out the criteria for determining the EU Member State responsible for processing an asylum application[296].

In addition to the Dublin Regulation, several other legal instruments govern the refugee determination process outside of Hungary. These include (1) The 1951 Convention Relating to the Status of Refugees: This international treaty establishes the legal definition of a refugee and sets out the rights and obligations of both refugees and the countries that host them. The

[293] Council of the European Union, "The Dublin III Regulation," §II.3.1. (2013), Pub. L. No. L.180/31, EU Immigration and Asylum Law (Text and Commentary): Second Revised Edition 345 (2015), https://doi.org/10.1163/9789004222397_007.
[294] Dublin III Regulation
[295] Dublin III Regulation
[296] Dublin III Regulation

1967 Protocol Relating to the Status of Refugees: This protocol extends the scope of the 1951 Convention to include refugees who were displaced as a result of events occurring after 1951.

Hungary's legal framework for refugee handling is primarily based on the Refugee Act of 2007, as amended in 2018. The act provides the legal foundation for the protection of refugees in Hungary and establishes the legal responsibilities of the government and other actors involved in the refugee protection system. The Asylum Act of 2007 defines a refugee in accordance with the CRS 1951[297]. The procedures for obtaining refugee status in Hungary can be explained as follows:

2.1.2 **Registration:** Asylum seekers who arrive in Hungary must register their asylum application with the Hungarian authorities. The registration process includes providing biometric data and other personal information. This first step requires that asylum seekers be registered as soon as possible after they express their intention to apply for asylum[298].

2.1.3 **Interview:** After registration, asylum seekers will be interviewed by a Hungarian official to assess their eligibility for refugee status. During the interview, the asylum seeker will be asked about their reasons for seeking asylum and any persecution they have experienced in their home country. The law requires that asylum seekers be interviewed in a language they understand and that the interview be conducted with due respect for their dignity[299].

2.1.4 **Decision:** Following the interview, the Hungarian authorities will decide on the asylum seeker's application. If the application is approved, the individual will be granted refugee status[300]. If the application is rejected, the individual may appeal the decision to the Hungarian Immigration and Asylum Office (IAO)[301]

2.1.5 **Appeal:** As mentioned above, asylum seekers who have their application rejected may appeal the decision to the IAO. The appeal must be filed within 8 days of receiving the decision[302].

[297] Government of Hungary, "Act LXXX of 2007 on Asylum, § 3.1. (2007).
[298] Government of Hungary, "Act LXXX of 2007 on Asylum, § 35.1 (2007).
[299] Government of Hungary, Act LXXX of 2007 on Asylum, § 37.4 (2007).
[300] Government of Hungary, Act LXXX of 2007 on Asylum, § 36.2 (2007).
[301] Government of Hungary.Act LXXX of 2007 on Asylum, § 45.7 (2007).
[302] Government of Hungary.Act LXXX of 2007 on Asylum, § 71.3 (2007).

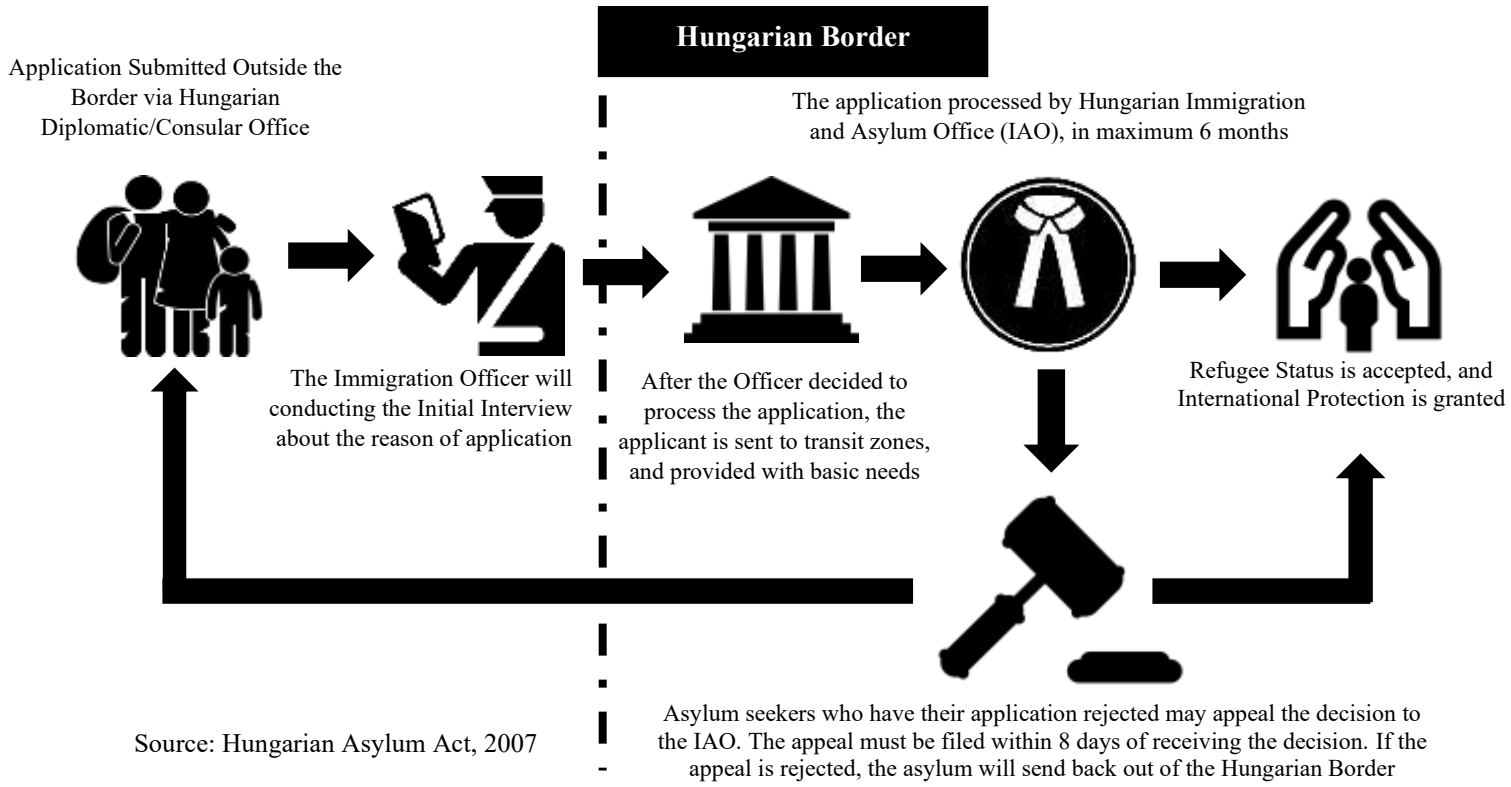
2.1.6 **Second instance decision:** If the appeal is rejected, the asylum seeker may file a second appeal with the Budapest-Capital Regional Court[303].

2.1.7 **Legal remedies:** If the asylum seeker's application is rejected in the second instance, they may file a petition for review with the Hungarian Supreme Court[304].

2.1.8 In case the Refugee Status Determination (RSD) process is rejected after the legal action[305]. The law provides for the removal of unsuccessful asylum seekers from Hungary. This can include deportation, forced return, or voluntary departure under the supervision of the authorities.

It's worth noting that the Hungarian asylum system has been criticized by human rights organizations for its lack of transparency, the use of detention, and limited access to legal assistance for asylum seekers. Additionally, the Hungarian government has made changes to the asylum system in recent years, including the adoption of laws that restrict the rights of asylum seekers and limit access to protection. In summary, how the Hungary handles the refugee who enters its territory can be seen in the Figure 5.

Figure 6. Summary of the Hungarian Refugee Determination Procedures Based on Asylum Act 2007, amended in 2018



Source: Hungarian Asylum Act, 2007

[303] Government of Hungary.Act LXXX of 2007 on Asylum, § 56.1 (2007).
[304] Government of Hungary. Act LXXX of 2007 on Asylum, § 63.1 (2007).
[305] Government of Hungary.Act LXXX of 2007 on Asylum, § 71.1 (2007).

The implementation of Hungary's refugee protection system has been subject to criticism. The United Nations High Commissioner for Refugees (UNHCR) has expressed concerns over the fairness and efficiency of Hungary's procedures for refugee status determination, particularly concerning access to legal assistance and the quality of decisions made by the HIAO[306]. Furthermore, the attitude of the Hungarian government towards refugees has been very controversial. Following the refugee crisis in 2015, Hungary built a fence along its borders with Serbia and Croatia to prevent refugees from entering its territory. The government has been accused of mistreating refugees and violating their human rights[307]. Refugees in Hungary are entitled to several rights under both national and international law. Here are some of the key rights of refugees in Hungary:

2.1.1. **Right to nonrefoulement**: Refugees are protected against being returned to a country where they may face persecution, torture, or other serious human rights violations. This principle is enshrined in international law and is recognized in Hungarian law. Article 2 of the Hungarian Asylum Act 2007 prohibits the return of individuals to a country where they may face persecution or serious harm;

2.1.2. **Right to access to asylum procedures:** Refugees have the right to access to a fair and efficient asylum procedure in Hungary. They have the right to submit an asylum application and to have their case considered in a timely manner. They also have the right to be informed about the procedures and to receive legal assistance. Article 35 of the Hungarian Asylum Act 2007 provides for access to the asylum procedure.

2.1.3. **Right to freedom of movement:** Refugees have the right to move freely within the country and to choose their place of residence in Hungary. However, they may be subject to restrictions on movement in some circumstances, such as while their application is being processed. Article 48 of the Hungarian Asylum Act 2007 provides for freedom of movement for asylum seekers and refugees.

[306] UNHCR, "Beyond Detention," *UN Policy Brief Series*, 2019, https://doi.org/10.5149/northcarolina/9781469653129.003.0005.
[307] Amnesty International, "Fenced Out. Hungary's Violations of the Rights of Refugees and Migrants.".pp.44-45.

2.1.4. **Right to work:** Refugees who have been granted international protection in Hungary have the right to work and to access to vocational training and education. However, they may face challenges in finding employment due to language barriers and discrimination. Article 5 of the Hungarian Asylum Act 2007 provides for the right to work for refugees with international protection.

2.1.5. **Right to education:** Refugee children have the right to access to education on an equal basis with Hungarian citizens. This includes access to primary and secondary education, as well as vocational training and higher education. Article 31/F of the Hungarian Asylum Act 2007 provides for the right to education for refugee children.

2.1.6. **Right to healthcare:** Refugees have the right to access to healthcare services on an equal basis with Hungarian citizens. This includes access to emergency medical treatment, preventative care, and specialized treatment. Article 32 of the Hungarian Asylum Act 2007 provides for the right to healthcare for refugees.

Hungary has passed several restrictive measures concerning refugees and asylum seekers, among them: establishing transit zones at the border, where asylum seekers are detained while their claims are being processed; shortening the time of temporary protection; and putting stricter criteria on family reunification. Furthermore, Hungary's asylum law framework represents one of the most dramatic legal transformations in contemporary European migration governance, constituting a paradigmatic case study in the systematic construction of what may be characterized as a *"legal architecture of exclusion."*[308].

The evolution from a peak of 177,000 asylum applications in 2015 to merely 28 successful applications in 2023 demonstrates not merely policy change but a fundamental reconceptualization of international protection within a sovereign state framework that prioritizes constitutional identity over supranational human rights obligations [309]. This transformation reflects a sophisticated legal strategy that employs constitutional amendment, restrictive legislation, assertive judicial interpretation, and administrative barriers to effectively

[308] Tamás Hoffmann, "Illegal Legality and the Façade of Good Faith - Migration and Law in Populist Hungary," *Review of Central and East European Law* 47, no. 1 (2022): 139–65, https://doi.org/10.1163/15730352-bja10059.
[309] AIDA, "AIDA Country Report on Hungary – 2023 Update."

eliminate territorial access to international protection while maintaining formal compliance with constitutional procedural requirements.

1.2. Legal Development of Asylum Seekers and Refugee Handling in Indonesia

As explained in the previous chapter, Indonesia's asylum and refugee law framework presents a distinctive paradigm in contemporary international protection governance, characterized by the constitutional entrenchment of asylum rights within the 1945 Constitution alongside the systematic absence of comprehensive implementing legislation and the deliberate non-ratification of the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol. This constitutional-legislative dichotomy creates a unique legal architecture wherein asylum seekers possess formal constitutional protection through Article 28G (2), which guarantees *"the right to obtain political asylum from another country,"* while simultaneously experiencing administrative treatment as illegal migrants subject to detention, deportation, and exclusion from fundamental social services[310].

This constitutional guarantee emerged from Indonesia's own experience as a nation whose independence leaders sought refuge in neighboring countries and reflects the Pancasila philosophical foundation emphasizing humanitarianism and international solidarity, particularly the second principle of *"just and civilized humanity"* that theoretically obligates the state to provide protection to those fleeing persecution. However, the constitutional right to asylum exists within a broader legal framework shaped by the Immigration Law No. 6 of 2011, which classifies undocumented migrants, including asylum seekers, as illegal immigrants subject to administrative detention, criminal penalties, and deportation procedures that directly contradict the constitutional protection mandate[311]. The legal paradox is further complicated by Law No. 37 of 1999 on Foreign Relations, which grants the President authority to provide asylum to foreign nationals but lacks implementing regulations that would operationalize this constitutional and legislative framework, creating a situation where constitutional rights exist without effective legal mechanisms for their realization[312].

The administrative framework for refugee protection in Indonesia operates primarily through Presidential Regulation No. 125 of 2016 on Handling of Foreign Refugees, which represents the most comprehensive attempt to bridge the constitutional-legislative gap by

[310] UIN, "Undang-Undang Dasar Negara Republik Indonesia 1945 (Indonesia Constitution)," § 28.G, Pub. L. No. 1, 105 129 (1945).
[311] Republic of Indonesia, "Law of the Republic of Indonesia No. 6/2011 Concerning Immigration" (2011).
[312] Indonesia, Indonesia Law No.37/1999 about Foreign Affairs.

establishing procedural mechanisms for refugee identification, temporary accommodation, and coordination with international organizations, particularly UNHCR. The regulation provides that any migrant who seeks asylum will not be subject to deportation, will be referred to UNHCR, and allowed to stay as long as they hold certification issued by UNHCR, with possible release from detention upon approval by immigration authorities, creating a delegated protection system that effectively outsources refugee status determination to UNHCR while maintaining Indonesian governmental control over territorial admission and residence conditions[313]. This regulatory framework establishes a tripartite division of responsibilities among the Ministry of Law and Human Rights, Ministry of Foreign Affairs, and local governments, with UNHCR functioning as the primary protection actor responsible for registration, status determination, and provision of basic services, while Indonesian authorities retain control over immigration enforcement, detention decisions, and resettlement facilitation. The regulation explicitly prohibits integration into Indonesian society and emphasizes temporary protection pending resettlement to third countries, reflecting Indonesia's strategic positioning as a transit rather than destination country and its unwillingness to provide permanent solutions for refugee populations despite constitutional asylum guarantees.

Despite existing laws, the government of Indonesia has been identifying asylum seekers as illegal migrants under Immigration Law and keeping them inside Immigration Detention Centres (IDCs), with common reports of ill-treatment, creating a systematic pattern of constitutional rights violation that affects thousands of individuals annually while demonstrating the profound disconnect between constitutional guarantees and administrative practice. The Immigration Detention Centres, operating under the authority of the Directorate General of Immigration, have been criticized by human rights organizations for overcrowding, inadequate medical care, restricted access to legal representation, and prolonged detention periods that can extend for years without judicial review, creating conditions that violate both constitutional rights and international human rights standards. Many refugees face administrative or penal measures, including mandatory detention, fines, and deportation, and even if they avoid these measures, they are still excluded from public services, including healthcare and education, and do not have access to adequate housing or employment, establishing a comprehensive system of legal exclusion that renders constitutional asylum rights practically meaningless for most refugee populations. The statistical evidence reveals

[313] Susan Kneebone, Antje Missbach, and Balawyn Jones, "The False Promise of Presidential Regulation No. 125 of 2016?," *Asian Journal of Law and Society*, 2021, https://doi.org/10.1017/als.2021.2.

that between 2016 and 2024, approximately 60% of asylum seekers in Indonesia experienced detention for periods ranging from six months to over three years, with children comprising 30% of the detained population despite Indonesia's ratification of the Convention on the Rights of the Child and constitutional provisions protecting children's rights.

The relationship between Indonesia's asylum framework and international law presents complex questions of state responsibility, constitutional interpretation, and the binding effect of customary international law, particularly the principle of non-refoulement, which prohibits the return of individuals to territories where they face persecution, torture, or threats to life. Indonesia is not a party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, nor does it have a national refugee status determination procedure, yet the constitutional guarantee of asylum rights and Indonesia's ratification of numerous international human rights treaties, including the International Covenant on Civil and Political Rights, Convention Against Torture, and Convention on the Rights of the Child, create overlapping legal obligations that require protection of asylum seekers regardless of formal refugee convention status. The Indonesian Constitutional Court has never directly addressed the relationship between constitutional asylum rights and international refugee law, leaving fundamental questions unresolved regarding the scope of protection obligations, the extent of state discretion in asylum decision-making, and the legal remedies available to asylum seekers whose constitutional rights are violated through administrative action. Academic legal analysis suggests that Article 28G(2) creates positive state obligations to establish effective asylum procedures, provide access to basic services, and ensure protection from refoulement, but the absence of implementing legislation and constitutional court jurisprudence leaves these obligations largely theoretical rather than practically enforceable.

The regional context of Indonesia's asylum framework reflects broader ASEAN approaches to refugee protection characterized by non-interference principles, emphasis on burden-sharing arrangements, and preference for temporary protection pending repatriation or resettlement to third countries, with Indonesia serving as a crucial transit state within mixed migration flows from South and Southeast Asia toward Australia and other Western resettlement destinations. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, co-chaired by Indonesia and Australia since 2002, has established regional cooperation mechanisms focused primarily on border control, human trafficking prevention, and irregular migration management rather than refugee protection, reflecting priorities that emphasize security and migration control over human rights protection. Indonesia's bilateral relationship with Australia regarding asylum seekers has been particularly

complex, with Australia's Operation Sovereign Borders and offshore processing policies creating additional pressure on Indonesia to serve as a buffer zone that prevents onward movement while simultaneously limiting Indonesia's willingness to provide permanent protection given Australian policies that effectively eliminate legal pathways for protection. The 2013 Australia-Indonesia cooperation arrangement on combating people smuggling and trafficking resulted in increased Indonesian enforcement activities, including boat turnbacks, detention operations, and prosecution of smuggling facilitators, but failed to establish complementary protection mechanisms or burden-sharing arrangements that would address the protection needs of asylum seekers stranded in Indonesian territory.

The socioeconomic dimensions of refugee protection in Indonesia reveal significant gaps between constitutional rights guarantees and practical access to basic services, with 68% of refugees and asylum seekers being adults (35% women and 65% men) and 30% being children, yet the majority lacking access to formal education, healthcare, employment authorization, or social services due to their legal status as undocumented migrants despite constitutional protection entitlements. The urban refugee population, concentrated primarily in Jakarta, Bogor, Pekanbaru, Makassar, and other major cities, faces significant challenges including housing insecurity, limited access to education for children, restricted healthcare access except for emergency services, prohibition on formal employment, and vulnerability to exploitation and discrimination due to their precarious legal status. UNHCR data indicates that approximately 40% of refugee families in Indonesia live below the poverty line, with many dependent on international humanitarian assistance, community support, and informal economic activities that place them at risk of arrest and detention for immigration violations. The psychological impact of prolonged uncertainty, detention experiences, and social exclusion has been documented in numerous studies, with high rates of depression, anxiety, and post-traumatic stress disorders among refugee populations, particularly affecting children whose developmental needs are severely compromised by restricted access to education and social services.

The legal remedy mechanisms available to asylum seekers in Indonesia remain severely limited despite constitutional protection guarantees, with administrative courts generally deferring to immigration authority discretion in detention and deportation decisions, criminal courts lacking jurisdiction over immigration-related constitutional rights violations, and the Constitutional Court having never accepted a case directly challenging asylum-related administrative practices as violations of Article 28G(2) rights. The absence of legal aid organizations with expertise in refugee law, combined with language barriers, limited access

to legal information, and the prohibition on formal employment that prevents asylum seekers from funding legal representation, creates systematic barriers to accessing justice that effectively nullify constitutional rights protections. The Indonesian Legal Aid Foundation (YLBHI) and other civil society organizations have provided limited legal assistance in high-profile cases, but the overall capacity for legal representation remains inadequate given the size of the refugee population and the complexity of legal issues involving constitutional rights, immigration law, international law, and administrative procedure. The few successful legal challenges to detention and deportation orders have generally relied on procedural violations rather than substantive constitutional rights arguments, suggesting that Indonesian courts are reluctant to interpret constitutional asylum rights as creating enforceable individual entitlements against administrative action.

The institutional framework for refugee protection in Indonesia involves multiple governmental agencies with overlapping and sometimes conflicting mandates, creating coordination challenges that often result in protection gaps, administrative delays, and inconsistent policy implementation across different regions and institutional levels. The Ministry of Law and Human Rights, through the Directorate General of Immigration, maintains primary responsibility for immigration control, detention management, and administrative processing of undocumented migrants, while simultaneously being tasked under Presidential Regulation 125/2016 with coordinating refugee protection activities and facilitating UNHCR access to asylum seekers. The Ministry of Foreign Affairs plays a crucial role in diplomatic coordination with origin countries, resettlement destinations, and international organizations, but often prioritizes bilateral relationships over refugee protection concerns, particularly in cases involving asylum seekers from countries with strong diplomatic ties to Indonesia. Local government authorities, including provincial governors, district heads, and local police, exercise significant discretion in implementing refugee-related policies, leading to considerable variation in protection standards across different regions, with some areas providing relatively accommodating approaches while others maintain strict enforcement policies that result in frequent arrests and detention of asylum seekers. The military (TNI) also plays a role in border security and rescue operations, particularly for maritime arrivals, but lacks clear policy guidance regarding the treatment of asylum seekers and often defaults to security-focused approaches that prioritize border control over protection considerations.

Contemporary challenges facing Indonesia's asylum framework have intensified following regional crises including the military coup in Myanmar in 2021, the Taliban takeover of Afghanistan in 2021, and ongoing conflicts in Somalia, Syria, and other refugee-producing

countries, resulting in increased mixed migration flows through Indonesian territory and growing pressure on inadequate protection systems and resources. The Afghan refugee population in Indonesia has increased significantly since August 2021, with many former government officials, military personnel, journalists, and human rights activists seeking protection after fleeing Taliban persecution, yet Indonesia's non-recognition of the Taliban government creates additional complications for status determination and potential return considerations. Similarly, the continued influx of Rohingya refugees from Myanmar, despite Indonesia's strong diplomatic relationship with the Myanmar military, creates tensions between foreign policy interests and humanitarian protection obligations, with Indonesian authorities often emphasizing temporary accommodation pending third-country resettlement rather than addressing protection needs within Indonesia. The COVID-19 pandemic has exacerbated existing challenges by restricting UNHCR access to detention centers, limiting legal aid services, suspending resettlement programs, and increasing economic hardship among refugee communities already excluded from government social protection programs, while simultaneously providing justification for enhanced border controls and reduced protection services.

The emerging jurisprudential questions regarding Indonesia's asylum framework center on the constitutional interpretation of Article 28G(2) rights, the relationship between constitutional guarantees and administrative discretion, and the binding effect of international law principles within Indonesia's domestic legal system, with fundamental questions remaining unresolved regarding the scope of state obligations, individual entitlements, and available legal remedies. Academic legal scholarship has increasingly argued that constitutional asylum rights create positive state obligations to establish effective procedures for asylum determination, provide access to basic services during status determination processes, ensure protection from refoulement regardless of formal refugee convention ratification, and establish judicial review mechanisms for administrative decisions affecting asylum seekers, yet these theoretical obligations remain largely unimplemented due to legislative gaps and judicial reluctance to enforce constitutional rights against administrative action. The constitutional principle of human dignity (martabat manusia) embedded within the Pancasila ideology and explicitly referenced in the constitutional preamble provides additional theoretical foundation for robust asylum protection, as does the constitutional guarantee of religious freedom that should protect individuals fleeing religious persecution, but the practical application of these constitutional principles in asylum cases remains limited due to the absence of constitutional court jurisprudence and implementing legislation. The relationship between customary international

law, particularly the non-refoulement principle, and Indonesian domestic law remains unclear, with some legal scholars arguing that customary international law is automatically incorporated into Indonesian law under constitutional provisions recognizing international law, while others contend that formal ratification or domestic legislation is required for international legal obligations to become binding within the Indonesian legal system.

Indonesia's asylum law framework therefore represents a unique paradigm in contemporary refugee protection characterized by the constitutional entrenchment of asylum rights within a legal system that simultaneously lacks comprehensive implementing legislation, maintains non-ratification of core international refugee treaties, and operates administrative practices that systematically violate constitutional protection guarantees through detention, deportation, and service exclusion policies. The constitutional guarantee of asylum rights in Article 28G(2), embedded within the human rights chapter of the 1945 Constitution as amended, creates theoretical legal obligations that remain largely unenforceable due to legislative gaps, administrative resistance, and judicial reluctance to interpret constitutional rights as creating individual entitlements against state action, resulting in a protection system that provides formal rights without effective remedies. The statistical evidence demonstrates the practical consequences of this constitutional-administrative disconnect, with 11,735 refugees and asylum-seekers currently residing in Indonesia, predominantly from Afghanistan, Myanmar, and Somalia, yet the majority experiencing prolonged legal limbo, restricted access to basic services, vulnerability to detention and deportation, and limited prospects for either local integration or third-country resettlement due to Indonesia's strategic positioning as a transit rather than destination country. The delegation of protection responsibilities to UNHCR through Presidential Regulation 125/2016, while providing some procedural safeguards against immediate deportation, fails to address fundamental constitutional rights violations and creates a parallel protection system that operates independently of Indonesian legal institutions and accountability mechanisms.

The regional context of Indonesia's asylum framework, shaped by ASEAN non-interference principles, bilateral cooperation arrangements with Australia, and mixed migration flows from conflict-affected regions, creates additional pressures that prioritize border control and migration management over human rights protection, despite constitutional obligations that theoretically require prioritization of humanitarian protection for asylum seekers. The institutional framework involving multiple governmental agencies with overlapping mandates, limited coordination mechanisms, and inconsistent policy implementation across regions further complicates efforts to realize constitutional asylum rights, while the absence of

accessible legal remedy mechanisms effectively nullifies constitutional protections for most asylum seekers who lack resources to challenge administrative violations of their constitutional rights. The long-term implications of Indonesia's constitutional-administrative dichotomy in asylum law extend beyond individual protection cases to encompass broader questions about constitutional supremacy, international law obligations, and the rule of law principle that requires governmental compliance with constitutional mandates, suggesting that Indonesia's asylum framework represents both a failure to implement constitutional rights and a broader challenge to constitutional governance that affects the credibility of Indonesia's human rights commitments and democratic institutions. The resolution of these systemic contradictions will require either comprehensive legislative reform that implements constitutional asylum rights through effective procedures and judicial remedies, constitutional amendment that eliminates asylum rights guarantees to align with current administrative practice, or judicial intervention that enforces constitutional rights against administrative violations and establishes binding precedents for asylum protection within Indonesia's domestic legal system, with each alternative carrying significant implications for Indonesia's constitutional order, international legal obligations, and humanitarian protection commitments in an increasingly volatile regional security environment characterized by forced displacement, authoritarian governance, and climate-induced migration pressures that will likely intensify Indonesia's role as a transit country for mixed migration flows in the coming decades.

1.3. Comparative Formulative Legal Analysis Between Hungary and Indonesia

1.3.1. Constitutional Foundations and Normative Hierarchies

The constitutional bedrock of refugee protection reveals fundamentally divergent philosophies of sovereignty and rights enforcement. While both nations establish constitutional provisions addressing asylum, their interpretive frameworks and hierarchical implementation reflect polarized approaches to reconciling national authority with human rights obligations. Hungary exemplifies constitutional instrumentalization—deliberately reshaping foundational texts to serve exclusionary political agendas—while Indonesia demonstrates constitutional neglect, where aspirational guarantees remain operationally inert due to legislative and judicial abandonment. This divergence stems from their distinct historical trajectories: Hungary's post-2010 "illiberal constitutionalism" project actively redefines state identity against supranational norms, whereas Indonesia's 1999-2002 reformasi-era amendments created progressive rights frameworks without corresponding enforcement infrastructures. The resulting protection

paradigms illuminate how constitutional text alone cannot guarantee rights without robust implementation hierarchies and judicial vigilance.

Table. 7.Comparison of the Constitutional Frameworks

Dimension	Hungary	Indonesia
Primary Text	Art. XIV, Fundamental Law (2011) + Seventh Amendment (2018)	Art. 28G(2), 1945 Constitution (Amended 2002)
Nature of Right	State-controlled privilege ("constitutional identity" doctrine)	Individual right ("to obtain political asylum")
Hierarchy Enforcement	Constitutional Court Decisions 2/2019, 32/2021: National identity > EU law	No implementing legislation; administrative practice supersedes constitution
Theoretical Basis	Historic constitutionalism (Golden Bull of 1222)	Pancasila (Principle II: "Just and civilized humanity")

Explanatory Analysis:

Hungary's constitutional engineering represents a deliberate project of *sovereign exceptionalism*. The 2018 Seventh Amendment's insertion of Article XIV(4)—prohibiting asylum for those transiting "safe third countries"—constitutionally codifies the transformation of protection from an individual right to a state-controlled privilege. This doctrinal shift received judicial validation in Decision 2/2019 (III.5.) AB, where the Constitutional Court affirmed parliamentary supremacy over asylum determinations provided "basic procedural guarantees" were maintained.

The growing importance of constitutional dialogue between national courts (including constitutional courts) and international bodies such as the CJEU has prompted significant legal developments. A 2023 amendment to the Hungarian Act on the Constitutional Court now allows the CJEU to request legal opinions from the Hungarian Constitutional Court in pending cases. This mechanism was notably absent in 2019, when a near-conflict arose as the CJEU reviewed the European Commission's interpretation of a provision in Hungary's Fundamental Law[314].

[314] Sandor Szemesi, "Questions Surrounding the Concept of Population in the System of the Fundamental Law and the Act on the Hungarian Constitutional Court," Alkotmanybirosagi Szemle, 2024,

The hierarchy crystallized in Decision 32/2021 (XII.20.) AB, which invoked medieval precedents (Golden Bull of 1222, Act XII of 1790/91) to assert "constitutional identity" as an inalienable attribute superseding EU law and international obligations. This constructs a rigid normative pyramid: **Historic Constitutional Traditions > Constitutional Identity Doctrine > National Legislation > EU Law > International Treaties**.

The Golden Bull reference is particularly significant—this 1222 charter limiting royal power now legitimizes modern exclusionism. By anchoring constitutional identity in pre-modern texts, Hungary creates an immutable sovereignty shield against contemporary human rights norms. The Court's assertion that "population composition belongs to the unalterable core of constitutional identity" (Decision 32/2021) explicitly prioritizes ethnic homogeneity over refugee protection. This constitutional recalibration achieves three objectives: (1) It juridically sanctifies political hostility toward asylum seekers; (2) It neutralizes EU infringement procedures by declaring asylum policy a reserved sovereign domain; and (3) It establishes a template for illiberal constitutionalism where rights exist only when aligned with majoritarian identity politics.

Conversely, Indonesia's Article 28G (2)—enshrined during the 1999-2002 constitutional reforms—establishes asylum as an actionable individual right within the human rights chapter (Chapter XA). Its theoretical foundation derives from Principle II of Pancasila *("Kemanusiaan yang Adil dan Beradab"/*Just and civilized humanity), reflecting anti-colonial solidarity and Indonesia's own history of exiled independence leaders. Yet this constitutional promise suffers fatal implementation flaws. The six-decade failure to enact enabling legislation has created a *constitutional vacuum*, allowing contradictory administrative practices under Immigration Law No. 6/2011 (Art. 83-85) to effectively nullify the supreme norm.

The resulting de facto hierarchy privileges bureaucratic discretion: **Administrative Convenience > Ordinary Legislation > Constitutional Text**. Without Constitutional Court jurisprudence reconciling this conflict (no Art. 28G(2) case has been adjudicated), the provision remains a symbolic artifact rather than an operational right. This inertia stems from structural pathologies: (1) The Constitutional Court's restrictive standing rules (only state institutions may challenge laws) prevent refugee petitions; (2) Legislative paralysis due to nationalist opposition; and (3) Executive preference for delegating responsibility to UNHCR.

https://abszemle.hu/questions-surrounding-the-concept-of-population-in-the-system-of-the-fundamental-law-and-the-act-on-the-hungarian-constitutional-court/.

Consequently, Pancasila's humanitarian principles remain abstract ideals, while immigration authorities implement de facto policies criminalizing asylum seekers under Art. 83 ("foreigners violating residence permits").

The normative divergence is stark: Hungary weaponizes constitutionalism to actively dismantle protection, while Indonesia's constitutional silence enables passive rights erosion. Both systems reveal how textual guarantees crumble without judicial guardianship and legislative concretization.

1.3.2. Legislative Frameworks and Procedural Mechanisms

Legislative architectures operationalize constitutional principles into tangible procedures. Here, Hungary exhibits meticulous design in service of exclusion, while Indonesia manifests legislative abandonment of constitutional obligations through statutory voids and delegation. The Asylum Act (2007/2018) represents Europe's most sophisticated legal exclusion instrument—precisely calibrating procedural formalities to nullify substantive rights. Meanwhile, Indonesia's reliance on Presidential Regulation 125/2016 outsources sovereignty to UNHCR without establishing accountability frameworks. This legislative dichotomy reflects broader governance philosophies: Hungary employs repressive legalism to achieve policy goals through technically compliant means, whereas Indonesia practices deliberate legislative neglect to avoid assuming protection responsibilities.

Table. 8.Legislative and Administrative Architectures

Component	Hungary	Indonesia
Core Legislation	Asylum Act (2007/2018); "Stop Soros" Law (Act VI/2018)	Immigration Law No. 6/2011; Presidential Regulation 125/2016
RSD Procedure	Arts. 35-63 Asylum Act: Formal state-run process	Art. 5 PR 125/2016: Full delegation to UNHCR
Territorial Access	Embassy applications only (Art. 51/A Asylum Act)	Physical presence → Automatic detention (Art. 83 Immigration Law)
Detention Basis	"Security risk" (Art. 31/A); Transit zones (CJEU-ruled unlawful)	Mandatory for "illegal immigrants" (Art. 85 Immigration Law)

Component	Hungary	Indonesia
Appeal Mechanisms	8-day deadline (Art. 56 Asylum Act); Constrained judicial review	No statutory appeals for RSD; Limited immigration hearings

Explanatory Analysis:

Hungary's legislative framework constitutes a precisely engineered *architecture of exclusion*. The Asylum Act's procedural formalisms (Arts. 35-63) create a façade of due process while embedding insurmountable barriers. Article 51/A's embassy application requirement—mandating preliminary screening in Hungarian diplomatic missions abroad—functionally eliminates spontaneous asylum claims, violating the EU Procedures Directive's core territorial access principle (Art. 6). The 8-day appeal deadline (Art. 56) and criminalization of legal assistance under the "Stop Soros" Law (Act VI/2018, Sec. 353/A) systematically nullify procedural guarantees. This legislative calibration achieved devastating effectiveness: asylum applications plummeted from 177,135 (2015) to 28 (2023)—a 99.98% reduction. The system exemplifies *repressive formalism*: maintaining technical compliance with procedural requirements while voiding substantive rights through designed inaccessibility.

Indonesia's legislative landscape reflects *sovereign abdication*. Despite constitutional obligations, Parliament has never enacted a Refugee Act, creating a protection vacuum filled by contradictory instruments. Immigration Law No. 6/2011 Art. 83 categorizes asylum seekers as "illegal immigrants," triggering mandatory detention under Art. 85. Presidential Regulation 125/2016—the primary protection instrument—outsources core state responsibilities to UNHCR through Art. 5 without establishing binding standards or accountability mechanisms. This creates a *delegated non-system* where:

a) **Registration**: Asylum seekers must be apprehended as violators (Immigration Law Art. 83) before referral to UNHCR
b) **RSD**: Conducted entirely by UNHCR without state oversight or appeal to domestic courts
c) **Detention**: Legally mandated despite UNHCR recognition, with release dependent on discretionary immigration approvals

The result is institutionalized limbo: refugees average 5-10 years in legal purgatory without rights determination or durable solutions.

1.3.3. International Obligations and Compliance

Engagement with the international protection regime reveals Hungary's active contestation versus Indonesia's passive avoidance, though both produce rights-violating outcomes.

Table. 9. Comparsion of the International Obligations

Obligation	Hungary	Indonesia
1951 Convention	Party (systematic violations documented)	Non-party
Non-Refoulement	Art. 8 Asylum Act (undermined by pushbacks)	Customary adherence only (no codification)
Key Violations	a) CJEU C-808/18 (unlawful detention) b) Pushbacks (violating Art. 18 Dublin III)	a) CRC Art. 22 (child detention) b) ICCPR Art. 7 (detention conditions)
Enforcement	€200M + €1M/day CJEU fines (2024)	Universal Periodic Review criticism only

Explanatory Analysis:

Hungary engages in *calculated treaty subversion*. As an EU member state, it is bound by the *acquis communautaire* including the Dublin III Regulation (EU 604/2013), Procedures Directive (2013/32/EU), and Qualification Directive (2011/95/EU). Its embassy application system violates Procedures Directive Article 6 (access to procedure), while transit zone detentions breach Reception Conditions Directive Article 8 (detention standards). Pushbacks at the Serbian border systematically violate Dublin III Article 18 (transfer safeguards). Hungary's innovation lies in deploying constitutional identity as a *jurisdictional shield*: citing Decision 32/2021, it contends asylum policy falls within "constitutional identity" and thus beyond EU competence. This bad-faith engagement triggered unprecedented sanctions: the CJEU's 2024 ruling imposed €200 million plus €1 million/day fines—the largest penalty in EU history—for "manifest and persistent disregard" of asylum obligations. Indonesia employs *strategic treaty avoidance*. Non-ratification of the 1951 Convention provides plausible deniability regarding formal obligations, yet its conduct violates:

- **Customary Law**: *Non-refoulement* breaches through Rohingya pushbacks (HRW 2023)
- **ICCPR**: Art. 7 (torture) via detention conditions; Art. 9 (arbitrary detention)
- **CRC**: Art. 22 (refugee child protection) with 30% of detainees being minors
- **CAT**: Art. 3 (non-refoulement) in deportation cases to Afghanistan

ASEAN's non-interference principle insulates Indonesia from regional accountability, while the absence of binding regional courts limits enforcement to symbolic UN criticism. This avoidance creates a protection black hole: without treaty ratification, domestic legislation, or effective monitoring, violations proliferate in legal shadows.

1.3.4. Rights Realization and Humanitarian Impact

The protection outcomes in both states reveal how legal architectures translate into humanitarian consequences. Hungary achieves exclusion through manufactured inaccessibility—rights exist formally but are nullified by procedural barriers. Indonesia perpetuates entrapment through intentional neglect—constitutional guarantees dissolve into bureaucratic limbo. The resulting suffering takes inverse forms: Hungary inflicts violence through pushbacks and detention, while Indonesia imposes slow violence through indefinite deprivation. Both systems share a core pathology: the subordination of human dignity to state interests.

Table. 10..Rights Fulfillment and Humanitarian Impact

Right/Dimension	Hungary	Indonesia
Non-Refoulement	Formal guarantee (Art. 8 Asylum Act); Routine pushbacks	No statutory protection; UNHCR intervenes ad hoc
Work Rights	Art. 5 Asylum Act (status holders only); 94% unemployment among refugees	Criminalized (Art. 122 Immigration Law); Informal economy only
Education	Art. 31/F: Limited access; Segregated schools in transit zones	No legal entitlement; <30% enrollment (UNHCR 2023)

Right/Dimension	Hungary	Indonesia
Healthcare	Emergency care only in detention (Art. 32)	Emergency only (PR 125/2016 Art. 12); No public health access
Protection Outcomes	99.98% reduction in asylum seekers (2015–2023)	11,735 refugees; 0.3% annual resettlement rate

Explanatory Analysis:

Hungary's rights framework functions as *legislative theater*. Statutory guarantees are systematically voided by access barriers:

- **Non-Refoulement**: Art. 8's prohibition is neutralized by "border hunter" units forcing asylum seekers into Serbia (HHC 2023 documented 25,000 pushbacks)
- **Work Rights**: Art. 5's formal work permits ignore employer discrimination and bureaucratic hurdles ensuring 94% refugee unemployment
- **Education**: Art. 31/F's guarantee is restricted to Hungarian-language schools, while transit zone children received 2 hours/week of informal instruction (CJEU C-808/18)
- **Healthcare**: Art. 32's "essential care" excluded chronic conditions, with transit zone detainees denied insulin and psychotropic drugs

The CJEU condemned these violations as "inhuman and degrading treatment" (C-808/18), yet rights remain performative. The system's effectiveness lies in deterrence through calculated suffering—exemplified by transit zones where temperatures dropped to -20°C without heating.

Indonesia's rights deprivation stems from *deliberate exclusionary design*. Presidential Regulation 125/2016's minimalist approach guarantees only:

- **Survival-Level Healthcare**: Art. 12 restricts care to "emergency life-threatening conditions," excluding prenatal care or chronic disease management
- **Ad Hoc Education**: No legal framework for refugee schooling; Jakarta's 12 "learning centers" serve <18% of child refugees
- **Economic Paralysis**: Art. 59 Immigration Law criminalizes work, forcing refugees into exploitative informal jobs

The humanitarian consequences are catastrophic:

1. **Medical Crisis**: 78% of refugees lack healthcare access; tuberculosis rates are 9x national average (IOM 2023)

2. **Educational Apartheid**: 70% of refugee children are unschooled, violating Constitutional Art. 31 and CRC Art. 28
3. **Psychological Torture**: 92% exhibit clinical depression after 3+ years in limbo (JRS 2022 study)

Both systems weaponize legal ambiguity: Hungary maintains plausible deniability through technical compliance, while Indonesia exploits non-ratification to evade accountability. The result is convergent suffering under divergent legal paradigms.

1.3.5. Jurisprudential and Enforcement Mechanism

Judicial systems function as critical sites of rights validation or nullification. Hungary's captured judiciary actively legitimizes restrictive frameworks, while Indonesia's courts evade constitutional scrutiny through procedural avoidance. This divergence reflects broader rule-of-law pathologies: Hungary exemplifies institutionalized repressiveness, where courts become instruments of executive agendas, while Indonesia demonstrates rights-adjudication failure, where judicial passivity enables bureaucratic rights violations.

Table. 11.Legal Remedies and Accountability.

Mechanism	Hungary	Indonesia
Judicial Review	Constitutional Court validates restrictions (Dec. 3/2019)	Zero Art. 28G(2) cases heard by Constitutional Court
Access to Counsel	Criminalized under "Stop Soros" Law (Sec. 353/A)	No state-funded legal aid; <10% representation
Supranational Oversight	CJEU infringement proceedings; Art. 7 TEU activation	Universal Periodic Review only
Civil Society Space	NGOs prosecuted for "facilitating illegal immigration"	Permitted but under-resourced; No protection mandate

Explanatory Analysis:

Hungary’s judiciary has been systematically weaponized to sanctify exclusionary policies. The Constitutional Court’s Decision 3/2019 (IV.10.) AB validated the criminalization of humanitarian assistance under Section 353/A of the Criminal Code, redefining asylum

support as "facilitating illegal immigration." This jurisprudential alchemy accomplishes three objectives:

1. **Neutralization of Legal Advocacy**: By imposing 1-year prison sentences for providing legal information to asylum seekers, the ruling eliminates meaningful legal representation.
2. **Judicial Endorsement of Executive Agenda**: The Court accepted the government's security narrative, ruling that "state sovereignty justifies restrictions on activities threatening constitutional identity."
3. **Procedural Entrapment**: While the Asylum Act maintains appeal mechanisms (Arts. 56–63), the 8-day deadline—combined with attorney criminalization—renders remedies theoretical.

The European Court of Human Rights (ECtHR) has repeatedly condemned these measures. In *Ilias and Ahmed v. Hungary* (2019), the Court found transit zone detention violated Article 5 ECHR (right to liberty), while *N.H. v. France* (2020) condemned pushbacks as collective expulsion. Yet domestic courts consistently prioritize Constitutional Court doctrine over Strasbourg jurisprudence, creating an *enforcement black hole*.

Indonesia manifests *constitutional adjudication avoidance*. Despite thousands of asylum seekers detained under Immigration Law Art. 85—a clear violation of Art. 28G(2)—the Constitutional Court has never accepted a case challenging this practice. This stems from structural barriers:

1. **Standing Restrictions**: Only state institutions or individuals with "constitutional injury" may petition—a near-impossible threshold for detained refugees without legal representation.
2. **Judicial Deference**: Administrative courts review detention only for procedural irregularities (e.g., documentation errors), refusing to examine substantive constitutional claims.
3. **Resource Constraints**: With just 40% of district courts having refugee law training (Supreme Court 2023), judges default to immigration law frameworks.

The sole exception—*2022 Class Action Lawsuit re: Rohingya Detention*—was dismissed on technical grounds, proving the non-justiciability of Art. 28G(2). Without judicial guardianship, constitutional rights become rhetorical artifacts.

1.3.6. Summary of the Legal Analysis

The protection crises in both states stem from constitutional pathologies, though of divergent natures. Hungary represents authoritarian legalism—using formal legal processes to dismantle rights—while Indonesia exemplifies constitutional hypocrisy—enshrining rights without enforcement infrastructures. These models reveal how sovereignty claims and bureaucratic inertia can neutralize protection obligations through inverse yet equally effective means.

Table. 12.Comparative Theoretical Framework.

Analytical Lens	Hungary	Indonesia	Structural Contrast
Constitutional Theory	Sovereignty as *absolute barrier*	Rights as *aspirational symbols*	Assertion vs. Neglect
Implementation Logic	Precision-engineered exclusion	Bureaucratic inertia	Intentionality vs. Negligence
RSD Philosophy	State as gatekeeper	State as bystander	Control vs. Delegation
International Engagement	Active resistance	Passive avoidance	Confrontation vs. Evasion
Systemic Outcome	Effective exclusion (99.98% reduction)	Permanent limbo (5–10-year waits)	Elimination vs. Entrapment

Explanatory Analysis:

Hungary's framework constitutes *repressive constitutionalism*:

1. **Sovereignty as Jurisdictional Weapon**: By embedding "constitutional identity" in historic texts (Golden Bull), Hungary creates immutable barriers against rights integration.
2. **Legislative Precision**: The Asylum Act's calibrated barriers (e.g., Art. 51/A embassy requirement) exemplify *technocratic repression*—using legal minutiae to achieve political exclusion.
3. **Judicial Complicity**: Constitutional Court rulings (2/2019, 3/2019, 32/2021) transform courts from rights guardians to regime legitimizers.

This system's "success" lies in its surgical effectiveness: fewer than 30 asylum applications in 2023 demonstrate near-total exclusion. Yet it operates within *formal legality*, exploiting the EU's institutional weaknesses. The €1 million/day CJEU fines (totaling €350M+ by

2024) are absorbed as sovereignty premiums—less than 0.3% of GDP for achieving ideological goals.

Indonesia embodies *schizophrenic constitutionalism*:

1. **Normative Dissonance**: Art. 28G(2)'s robust guarantee ("right to obtain political asylum") clashes with Immigration Law's criminalization of asylum seekers ("illegal immigrants").
2. **Institutionalized Hypocrisy**: Presidential Regulation 125/2016 outsources protection to UNHCR while authorities detain UNHCR-recognized refugees.
3. **Judicial Abdication**: The Constitutional Court's refusal to adjudicate Art. 28G(2) violates its mandate under Art. 24C(1) to "guard the constitution."

The humanitarian impact reflects *slow violence*:

- **Children**: 2,100+ detained minors develop PTSD after 6+ months in centers (UNICEF 2023)
- **Medical Neglect**: 14 documented deaths from treatable conditions in detention (HRW 2024)
- **Economic Exploitation**: Refugees earn $2/day in informal sectors with no labor protections

1.3.7. Legislative Formulative for Indonesia Asylum Seekers and Refugees Handling

Hungary legislative precision, procedural clarity, and institutional coordination offer technical lessons for Indonesia's underdeveloped system. The table below distills transferable legislative techniques—divorced from Hungary's exclusionary intent—to strengthen Indonesia's constitutional commitment under Art. 28G (2).

Table. 13.Indonesia Legislation Improvement

Hungary's Technical Strength	**Indonesia's Current Gap**	**Proposed Reform for Indonesia**	**Relevant Provisions**
Codified RSD Procedure	No national RSD system; UNHCR dependency	Enact **Refugee Status Determination Law** establishing: a) State-run RSD units•	*Learn from:* Asylum Act Arts. 35-63 *Implement via:* New Chapter in Immigration Law

Hungary's Technical Strength	Indonesia's Current Gap	Proposed Reform for Indonesia	Relevant Provisions
		b) 90-day decision deadlines c) Appeal tribunals	
Explicit Rights Catalog	Rights fragmented across regulations	Codify **Refugee Rights Charter** specifying: a) Non-refoulement guarantees b) Work/education access c) Healthcare tiers	*Learn from:* Asylum Act Arts. 5, 8, 31/F, 32 *Anchor to:* Constitution Art. 28G (2)
Institutional Coordination	Ministry-level fragmentation	Create **National Refugee Agency** with: a) Cross-ministerial authority b) Dedicated budget line c) Regional offices	*Learn from:* Hungarian IAO structure *Mandate via:* Presidential Decree + Ministerial MOUs
Legal Certainty Timelines	Indefinite procedural limbo	Legislate **Binding Processing Deadlines**: a) 30-day initial registration b) 180-day RSD completion c) 60-day appeal windows	*Learn from:* Asylum Act Art. 45(7) *Comply with:* ICCPR Art. 9(3)
Judicial Review Pathway	No asylum-specific appeals	Establish **Asylum Appeals Tribunal** with: a) Specialized immigration judges b) Suspensive effect on removals	*Learn from:* Asylum Act Art. 56 *Enable via:* Supreme Court Regulation (PERMA)

Explanatory Analysis:

Hungary's Asylum Act (Arts. 35-63) demonstrates rigorous procedural architecture—establishing clear registration, interview, decision, and appeal phases. This exacting framework, while weaponized for exclusion in Hungary, offers Indonesia a blueprint for replacing its current ad hoc dependency on UNHCR with state-owned determination mechanisms. Indonesia's absence of national RSD procedures under Presidential Regulation 125/2016 perpetuates a protection vacuum, forcing refugees into indefinite limbo (averaging 5–10 years). By adopting Hungary's structural clarity—but inverting its purpose—Indonesia could establish DGI-run RSD units mandated to:

a) Conduct status determinations within 90 days (vs. current multi-year delays),
b) Provide free legal assistance and qualified interpreters,
c) Enable full judicial review of negative decisions.

Critically, this system must avoid Hungary's procedural traps (e.g., 8-day appeals) by embedding robust safeguards: 60-day appeal windows, automatic suspension of deportations during appeals, and specialized immigration tribunals. Constitutional grounding would derive from Art. 28G(2)'s implied obligation to establish accessible procedures, as reinforced by Constitutional Court Decision No. 133/PUU-VII/2009 on state responsibility for rights implementation.

Rights Catalog: From Fragmented Policies to Legislative Certainty

Hungary's explicit codification of rights (Asylum Act Arts. 5, 8, 31/F, 32)—detailing work authorization, healthcare tiers, and education access—contrasts sharply with Indonesia's reliance on discretionary regulations. Indonesia should leverage this legislative technique to enact a Refugee Rights Charter, explicitly anchoring protections to its constitutional and international obligations. Such a charter would:

a) Codify non-refoulement, as an absolute prohibition (modeled on Asylum Act Art. 8 but without Hungary's safe-third-country loopholes),
b) Guarantee work permits after six months of pending claims (countering Immigration Law Art. 59's criminalization of employment),
c) Mandate school enrollment for children within 30 days of arrival (addressing current 70% non-enrollment).

This framework must exceed Hungary's limitations by including socioeconomic rights (e.g., housing subsidies) and prohibiting discrimination—directly implementing Pancasila's Principle II ("just and civilized humanity") and CRC Concluding Observations (CRC/C/IDN/CO/5-6 ¶42).

Institutional Architecture: Centralizing Fragmented Governance

Hungary's centralized Immigration and Asylum Office (IAO)—despite its exclusionary mandate—exemplifies efficient interagency coordination. Indonesia's current system fractures responsibility across the Directorate General of Immigration (detention), Ministry of Health (emergency care), and local governments (housing), resulting in bureaucratic paralysis. Learning from Hungary's model, Indonesia should establish a *National Refugee Agency (NRA)* with:

a) Cross-ministerial authority to override jurisdictional conflicts,
b) Dedicated provincial branches coordinating resettlement, healthcare, and integration services,
c) Public case-tracking dashboards (like Hungary's asylum statistics portal) to ensure transparency.

To prevent Hungarian-style institutional capture, the NRA must be insulated from political interference through fixed-term leadership and civil society oversight boards—operationalizing Constitution Art. 28H(1) on the right to effective governance.

Procedural Timelines: Legislating Against Limbo

Hungary's strict statutory deadlines (e.g., 15-day registration windows in Art. 35) prove that timeframes can curb administrative delays—though Indonesia must humanize their application. Legislation should impose:

a) 30-day registration deadline for all arrivals (ending Immigration Law Art. 85's indefinite detention),
b) 180-day RSD resolution cap (extendable only for verifiable security checks),
c) 60-day appeal periods with state-funded legal representation.

These timelines would directly combat the psychological "slow violence" of Indonesia's current system, where prolonged uncertainty inflicts severe trauma (92% depression rates per JRS 2022). Crucially, unlike Hungary's Asylum Act Art. 56, appeals must trigger automatic suspension of removals—aligning with ICCPR Art. 13's due process standards.

Judicial Review Pathways: From Avoidance to Accountability

Hungary's multi-tiered appeals system (Asylum Act Arts. 56–63), though functionally neutered by procedural traps, offers Indonesia a structural template for its near-total remedy vacuum. Rejecting Hungary's restrictive model, Indonesia should establish an Asylum Appeals Tribunal featuring:

a) Specialized judges trained in refugee law (currently absent in 100% of district courts),
b) Class action mechanisms for systemic challenges (e.g., detention conditions),
c) Constitutional Court referrals for Art. 28G (2) interpretation.

This tribunal would fulfill Indonesia's obligation under ICCPR Art. 2(3) to provide effective remedies, while Constitution Art. 24D mandates "legal certainty" through judicial oversight.

2. Comparing Political Position Between Hungary and Indonesia

2.1. Hungary Political Strategies

The global refugee crisis has reached unprecedented dimensions in the 21st century, fundamentally challenging the post-World War II international protection regime established through the 1951 Refugee Convention and its 1967 Protocol. According to the United Nations High Commissioner for Refugees (UNHCR), the number of forcibly displaced people worldwide reached a staggering 108.4 million in 2023, representing a 21% increase from 2021 and marking the twelfth consecutive year of growth in global displacement figures. This crisis encompasses not only traditional conflict-driven displacement but also new forms of forced migration resulting from climate change, which displaced an estimated 32 million people in 2023 alone according to the Global Displacement Monitoring Centre. The scale and complexity of contemporary displacement has exposed fundamental weaknesses in the international protection regime, particularly its reliance on state consent and voluntary compliance mechanisms that prove inadequate when domestic political incentives favor restriction over protection. The crisis has also revealed how different models of regional integration either facilitate or impede coordinated responses to displacement, creating a patchwork of protection standards that varies dramatically across geographical regions and institutional frameworks.

The European Union and the Association of Southeast Asian Nations (ASEAN) represent two fundamentally different approaches to regional integration that profoundly shape their respective capacities to address refugee protection challenges. The European Union, established through successive treaties from the 1957 Treaty of Rome to the 2009 Lisbon Treaty, represents the world's most advanced experiment in supranational governance, with legally binding institutions, shared sovereignty in specified areas, and enforcement mechanisms including the Court of Justice of the European Union (CJEU) and financial sanctions. The EU's approach to refugee protection is governed by the Common European Asylum System (CEAS), established through a series of directives and regulations that create binding minimum standards for refugee recognition, reception conditions, and asylum procedures across all 27 member states. This system includes the Dublin Regulation for determining responsibility for asylum applications, the Asylum Procedures Directive establishing common processing standards, and the Reception Conditions Directive

guaranteeing minimum living standards for asylum seekers. The EU framework also includes financial solidarity mechanisms, such as the Asylum, Migration and Integration Fund (AMIF), which provided €9.88 billion between 2014-2020 to support member state protection activities, and the more recent New Pact on Migration and Asylum, which attempts to establish mandatory solidarity mechanisms including financial contributions and relocation quotas.

In stark contrast, ASEAN represents a model of intergovernmental cooperation based on the principles of non-interference, consensus decision-making, and respect for sovereignty enshrined in the 1976 Treaty of Amity and Cooperation and reinforced through the 2007 ASEAN Charter. Unlike the EU's supranational institutions, ASEAN operates through consensus-based decision-making that requires unanimous agreement for all substantive decisions, effectively providing each member state with veto power over regional initiatives. The organization's foundational principle of non-interference in domestic affairs explicitly prohibits ASEAN from addressing issues that member states consider internal matters, including refugee protection policies and human rights violations that generate displacement. This institutional framework has prevented the development of binding regional instruments for refugee protection, despite the presence of significant displaced populations throughout Southeast Asia, including 1.2 million Rohingya refugees, ethnic minorities fleeing conflict in Myanmar, and climate-displaced populations from low-lying island states. ASEAN's approach to displacement relies instead on non-binding declarations, voluntary cooperation, and bilateral agreements that create significant protection gaps and enable burden-shifting between neighbors. The ASEAN Intergovernmental Commission on Human Rights (AICHR), established in 2009, lacks investigative powers, complaint mechanisms, or enforcement authority, serving primarily as a forum for dialogue rather than a protection mechanism.

The complexity of contemporary displacement is further illustrated by the diversity of its sources and the inadequacy of traditional state-centric responses. The ongoing conflict in Ukraine has generated 5.7 million refugees since 2022, making it Europe's largest refugee crisis since World War II and testing the EU's solidarity mechanisms in unprecedented ways. The activation of the Temporary Protection Directive for Ukrainian refugees, the first use of this mechanism since its adoption in 2001, demonstrated both the potential for coordinated European responses and the persistence of unequal burden-sharing, with Poland hosting 1.6 million Ukrainian refugees while other member states provided minimal support. The protracted Syrian conflict continues to produce 6.6 million refugees despite thirteen years of war, with the vast majority hosted in neighboring countries (Turkey hosts 3.7 million, Lebanon 1.5 million, Jordan 1.4 million) that lack the institutional frameworks and financial resources

for permanent integration. The persecution of the Rohingya in Myanmar has created 1.2 million stateless refugees, primarily in Bangladesh's Cox's Bazar camps, while ASEAN's non-interference principle has prevented regional action despite clear evidence of genocide and crimes against humanity documented by UN fact-finding missions and the International Court of Justice.

These displacement crises occur against a broader backdrop where only 35% of the world's refugees have access to formal asylum procedures, while low and middle-income countries shoulder the disproportionate burden of hosting 65% of the global displaced population, according to UNHCR's Global Trends Report 2023. This geographic and economic mismatch between displacement burdens and protection capacities reflects the fundamental inadequacy of the current international protection regime, which relies on the 1951 Refugee Convention's principle of territorial asylum without providing mechanisms for equitable burden-sharing or addressing the root causes of displacement. The result is a system where countries closest to conflict zones bear the heaviest protection burdens, while wealthy countries maintain restrictionist policies that externalize displacement costs to their poorer neighbors. This dynamic is particularly evident in the Mediterranean, where EU policies of externalization have shifted protection responsibilities to North African countries with minimal protection frameworks, and in Southeast Asia, where Australia's "Pacific Solution" has transformed Indonesia and other transit countries into permanent hosts for populations seeking protection.

Within this global context of institutional inadequacy and burden-shifting, the responses of different nations reveal fundamental tensions between sovereignty and international solidarity, between domestic political considerations and humanitarian obligations, and between short-term crisis management and long-term sustainable solutions. This analysis examines two particularly contrasting approaches that exemplify these tensions: Hungary's strategic restrictionism within the European Union framework, and Indonesia's pragmatic ambivalence as a non-signatory transit state in Southeast Asia. These cases illuminate broader questions about the future of international refugee protection and the sustainability of sovereignty-based approaches to displacement in an interconnected world where the traditional Westphalian model of territorial sovereignty increasingly conflicts with transnational challenges that require coordinated responses. The comparison reveals how different institutional contexts—the EU's supranational governance versus ASEAN's intergovernmental cooperation—shape the possibilities and constraints for both restrictionist and accommodative approaches to refugee protection, while demonstrating the human costs of prioritizing sovereignty over solidarity in addressing contemporary displacement challenges.

2.1.1. Hungary Political Strategies

Hungary's exclusion strategy relies heavily on physical infrastructure designed to prevent territorial access and facilitate rapid removal, representing one of Europe's most extensive border militarization projects since the Cold War and demonstrating how liberal democratic states can employ authoritarian methods of population control while maintaining formal democratic institutions. The construction of a border fence system, completed in 2017 at a cost of €1.7 billion and extending 175 kilometers along the Serbian and Croatian borders, represents not merely a physical barrier but a comprehensive surveillance and interdiction system that incorporates cutting-edge military technologies originally developed for battlefield applications. The fence system includes multiple layers of razor wire reaching heights of up to four meters, electronic surveillance systems with motion sensors capable of detecting movement up to 50 meters from the fence line, thermal cameras that operate in all weather conditions, and ground-penetrating radar systems that can detect tunnel construction attempts. The Hungarian government describes this infrastructure as creating an "impenetrable barrier" against irregular migration, and indeed the system has proven remarkably effective in its primary objective of preventing territorial access, with successful border crossings dropping from approximately 391,000 in 2015 to fewer than 3,000 annually since 2018, according to data from the Hungarian National Police. However, this effectiveness comes at enormous human cost, as the physical barriers force asylum seekers into increasingly dangerous crossing attempts, including attempted crossings through minefields left over from the Cold War period and dangerous river crossings that have resulted in multiple drownings, with the Hungarian Helsinki Committee documenting at least 23 deaths along the Hungarian border since 2016.

The fence system was supplemented by a network of transit zones that operated from 2015 until 2020, when the Court of Justice of the European Union (CJEU) ruled them unlawful in the landmark C-808/18 decision, finding that the zones constituted de facto detention centers that violated EU asylum law and fundamental rights standards. These zones, located directly on the border in shipping container facilities surrounded by razor wire and accessed only through Serbian territory, processed asylum claims under conditions that the CJEU characterized as equivalent to detention, with severely restricted movement, limited access to legal counsel, inadequate medical care, and living conditions that multiple UN special rapporteurs described as inhuman and degrading. The zones operated on the legal fiction that asylum seekers were not technically on Hungarian territory and therefore not entitled to the full range of procedural protections guaranteed under EU asylum law, despite being under

Hungarian jurisdiction and subject to Hungarian legal procedures. Even after their formal closure following the CJEU ruling, Hungary maintains similar restrictive practices through embassy-based asylum procedures that require asylum seekers to submit applications at Hungarian diplomatic missions abroad—a requirement that effectively eliminates spontaneous asylum claims and violates the principle of non-refoulement by forcing people to return to countries where they may face persecution in order to access protection procedures. The embassy procedure represents what legal scholars term "jurisdictional manipulation," where states restructure the territorial and temporal dimensions of legal procedures to exclude unwanted populations while maintaining formal compliance with procedural requirements.

The effectiveness of these physical measures in achieving exclusion is demonstrated through Hungary's comprehensive pushback statistics, which indicate that border authorities have conducted approximately 25,000 documented pushbacks since 2016, according to data compiled by the Hungarian Helsinki Committee, though the actual number is likely significantly higher given the clandestine nature of these operations and the systematic destruction of evidence by Hungarian authorities. These pushbacks occur without individual assessment of protection needs, age determination procedures, or consideration of vulnerability factors such as pregnancy, disability, or family unity, in direct violation of EU asylum law, the European Convention on Human Rights, and the 1951 Refugee Convention's prohibition on refoulement. The operations often involve the use of force that has been documented by multiple human rights organizations and European institutions, including the systematic use of pepper spray and police dogs against asylum seekers attempting to cross the border, the confiscation and destruction of personal belongings including identity documents and mobile phones, and physical violence that has resulted in serious injuries requiring medical treatment. Video evidence collected by journalists and human rights monitors shows Hungarian police officers forcing asylum seekers back through gaps in the border fence, often in the middle of the night and in extreme weather conditions, without providing access to asylum procedures or consideration of protection needs. The European Committee for the Prevention of Torture (CPT) documented cases where Hungarian authorities stripped asylum seekers of their clothing in winter conditions and forced them to cross back into Serbia, while the European Court of Human Rights has received over 4,000 individual complaints against Hungary related to pushback operations since 2016. The systematic nature of these practices has been confirmed by the European Commission's Article 7 procedure against Hungary, which found that pushbacks constitute a systematic practice rather than isolated incidents, and by the European Parliament's resolution of September 2021 declaring that Hungary can no longer be considered

a safe country for asylum seekers and calling for the suspension of EU funding to Hungarian authorities involved in border management operations.

The success of Hungary's restrictionist approach cannot be understood without examining its deep integration into the broader political project of Viktor Orbán's Fidesz party and its systematic reconstruction of Hungarian democracy according to what Orbán himself terms "illiberal democracy," a model that maintains electoral competition while fundamentally altering the relationship between majority rule, minority rights, and constitutional governance. Orbán has consistently framed migration as an existential threat to Hungarian and European civilization, employing sophisticated rhetorical strategies that position refugees not as individuals fleeing persecution but as vectors of cultural and demographic change orchestrated by globalist elites seeking to undermine national sovereignty and Christian identity. This framing draws on deep historical narratives of Hungary as a bulwark of Christianity against Islamic expansion, explicitly referencing the Ottoman period (1541-1699) when much of Hungary was under Ottoman rule, and positioning contemporary migration as a continuation of these historical conflicts through different means. The government's messaging apparatus, which includes state-controlled media reaching approximately 80% of Hungarian households, public billboard campaigns costing over €100 million annually, and mandatory "national consultations" sent to all households, consistently portrays migration as part of a coordinated assault on Hungarian identity orchestrated by international organizations, multinational corporations, and liberal political movements. This narrative structure transforms individual policy debates about asylum procedures into civilizational struggles where compromise becomes tantamount to surrender, creating a political environment where restrictionist policies are not merely preferred but presented as necessary for national survival.

The effectiveness of this narrative strategy is reflected in public opinion polling data that reveals the complex relationship between elite messaging, media coverage, and popular attitudes toward migration and refugee protection. Eurobarometer surveys consistently show 72% approval for restrictive migration policies among Hungarian respondents as of 2023, but this support has remained remarkably stable despite Hungary's increasing isolation within the European Union and the imposition of substantial financial penalties by European institutions, suggesting that government messaging has successfully insulated domestic opinion from international criticism. More detailed polling data from the Publicus Institute reveals that Hungarian attitudes toward migration are strongly correlated with media consumption patterns, with consumers of state-controlled media showing significantly higher levels of concern about migration (89% view it as a major threat) compared to consumers of independent media (34%

view it as a major threat), indicating the crucial role of information environments in shaping political preferences. The government has successfully portrayed EU criticism and sanctions as confirmation of its narrative about external pressure to accept unwanted migration, creating a self-reinforcing cycle where international criticism strengthens domestic support for restrictionist policies rather than undermining it. This dynamic reflects what political scientists term "rally around the flag" effects, where external threats or criticism increase support for incumbent governments, but in the Hungarian case, the government has manufactured and sustained these effects through strategic provocation of international institutions and systematic framing of international criticism as evidence of foreign interference in Hungarian sovereignty.

Orbán's approach represents what political scientists classify as "competitive authoritarianism," a hybrid regime type where democratic institutions are maintained but systematically manipulated to consolidate power and eliminate meaningful political competition while preserving the formal appearance of democratic governance. The migration issue serves as a key tool in this broader strategy of democratic erosion, allowing the government to mobilize nationalist sentiment while portraying opposition parties and civil society organizations as traitors aligned with foreign interests rather than legitimate domestic political actors. The effectiveness of this strategy extends beyond electoral politics to encompass fundamental changes in Hungarian political culture and civic engagement, with survey data from the Hungarian Academy of Sciences showing declining levels of political trust, civic participation, and tolerance for political diversity since 2010. The government's anti-migration campaigns have been particularly effective in rural areas and among older voters, who constitute Fidesz's core electoral base, with polling data showing that 87% of rural respondents and 79% of respondents over 65 view migration as a major threat to Hungarian security and identity. This demographic concentration of anti-migration sentiment reflects broader patterns of political polarization in Hungary, where attitudes toward migration correlate strongly with attitudes toward European integration, media freedom, judicial independence, and minority rights, suggesting that migration policy serves as a proxy for broader ideological conflicts about the nature of Hungarian democracy and its relationship to liberal international institutions.

The success of Fidesz's electoral strategy based on migration restrictionism is demonstrated by the party's continued dominance in Hungarian politics despite widespread international criticism and documented democratic erosion. Fidesz won 53% of the vote in the 2022 parliamentary elections, maintaining its two-thirds supermajority that enables constitutional amendments and institutional restructuring, while opposition parties struggled to

develop alternative narratives about migration that could compete with the government's civilizational framing. The election results revealed the extent to which migration has become a defining political cleavage in Hungarian politics, with voters who prioritize migration restriction showing overwhelming support for Fidesz (89% vote share) while voters who prioritize European integration and human rights showing strong opposition support (78% vote share for opposition parties). Post-election surveys conducted by the Hungarian Academy of Sciences indicate that migration attitudes were the strongest predictor of vote choice in 2022, even stronger than economic concerns or assessments of government performance in other policy areas, suggesting that Orbán has successfully transformed migration from a policy issue into a fundamental question of national identity and political allegiance. The electoral success of the anti-migration platform has had demonstration effects throughout Central and Eastern Europe, with similar rhetorical strategies and policy approaches adopted by political parties in Poland (before the 2023 election), Czech Republic, Slovakia, and other countries in the region, indicating that the Hungarian model represents a potentially exportable approach to political mobilization that transcends specific national contexts.

3.1. Hungary Political Strategies

Hungary's restrictionist approach has generated significant economic costs that the government strategically reframes as investments in sovereignty, demonstrating how economic policy can be subordinated to ideological objectives when political leaders successfully construct narratives that transform costs into symbols of national independence and resistance to external domination. The country has absorbed €353 million in fines from the Court of Justice of the European Union between 2023 and 2024, with additional penalty payments of €1 million per day for continued non-compliance with CJEU rulings, representing the largest financial sanctions ever imposed on an EU member state for human rights violations and creating a precedent for the EU's enforcement of fundamental values that extends far beyond migration policy. Rather than viewing these penalties as sanctions that should prompt policy reconsideration, Hungarian officials explicitly describe them as "sovereignty premiums"—the financial price of maintaining national independence within the European integration project and preserving Hungarian democratic self-determination against supranational interference. Prime Minister Orbán has repeatedly argued in parliamentary speeches that these payments represent a fraction of the costs that would be imposed by accepting migrants and implementing EU asylum policies, claiming that hosting refugees would cost approximately €2 billion

annually in social services, education, and security expenses while imposing incalculable cultural and social costs that threaten Hungarian national identity. This economic framing transforms EU sanctions from punitive measures into confirmation of the government's narrative about the costs of European integration and the value of national sovereignty, while providing concrete evidence of the government's willingness to sacrifice immediate economic benefits for long-term political and cultural objectives.

The broader economic analysis reveals the complex relationship between Hungary's EU membership benefits and its selective compliance with EU obligations, illustrating how member states can exploit the benefits of integration while systematically undermining its foundational principles. Hungary receives substantial EU structural funds through the Cohesion Policy framework, totaling approximately €6 billion annually between 2021-2027, representing roughly 3% of Hungarian GDP and funding major infrastructure projects, rural development programs, and educational initiatives that are highly visible to voters and central to the government's electoral appeal. This funding dependence creates a fundamental tension in Hungary's relationship with European institutions, as the government simultaneously benefits from EU financial transfers while refusing to participate in solidarity mechanisms for refugee protection and systematically violating EU fundamental values related to rule of law, media freedom, and minority rights. The European Commission has responded to this selective compliance through the Rule of Law Mechanism, which enables the suspension of EU funding for rule of law violations, but the mechanism's effectiveness remains limited by complex legal procedures and political considerations that prevent rapid implementation. Hungary's strategy of maximizing integration benefits while minimizing obligations reflects what European integration theorists term "cherry-picking," where member states attempt to participate only in aspects of integration that provide net benefits while avoiding costs and constraints, but the Hungarian case represents an extreme version of this phenomenon that challenges the fundamental assumptions of European integration theory about the relationship between membership benefits and compliance with common rules.

This selective compliance strategy extends to Hungary's systematic vetoing of EU migration and asylum policies since 2022, effectively paralyzing European-level responses to the refugee crisis and demonstrating how unanimity requirements in sensitive policy areas enable individual member states to block collective action even when they represent small minorities within the EU institutional framework. Hungary has blocked the EU Pact on Migration and Asylum, which would establish binding solidarity mechanisms and common

processing standards across all member states, the temporary protection directive expansion that would extend protection to non-Ukrainian refugees, and various burden-sharing mechanisms that would redistribute asylum seekers from frontline states to other EU countries based on objective criteria including GDP, population, and unemployment rates. The Hungarian government argues that these policies would compromise national sovereignty by forcing Hungary to accept migrants against its constitutional principles and democratic mandate, while simultaneously imposing disproportionate burdens on Central and Eastern European countries that lack the integration infrastructure and multicultural experience of Western European states. This argumentation strategy positions Hungary as defending not only its own interests but also those of other Central and Eastern European countries against Western European hegemony within EU institutions, creating coalitions of resistance that extend beyond migration policy to encompass broader questions about the distribution of power and resources within the European integration project. The economic implications of this blocking strategy extend beyond immediate policy outcomes to encompass fundamental questions about the sustainability of European integration when member states can systematically obstruct collective action while continuing to benefit from integration in other areas, creating what some analysts term a "collective action trap" where the benefits of membership are maintained while the obligations of membership are systematically avoided.

3.2. Indonesia Political Strategies

Indonesia's approach to refugee protection embodies a fundamental paradox between constitutional aspiration and practical policy implementation that reflects deeper tensions within Indonesian political culture between humanitarian idealism rooted in the independence struggle and pragmatic governance focused on economic development and political stability. Article 28G(2) of the 1945 Constitution, as amended during the democratic transition in 2000, explicitly guarantees that "every person shall have the right to be free from torture, inhuman or degrading treatment, and to seek asylum in another country," representing one of the world's most expansive constitutional provisions for refugee protection and reflecting Indonesia's historical experience as a nation born from anti-colonial struggle and mass displacement during the independence war (1945-1949). This constitutional commitment draws on Indonesia's founding philosophy of Pancasila, particularly the principles of humanitarianism (Kemanusiaan) and social justice (Keadilan Sosial), which emphasize solidarity with oppressed peoples and Indonesia's role as a leader in the Non-Aligned Movement and South-South

cooperation initiatives throughout the Cold War period. The constitutional provision was drafted during the Reform Era (Reformasi) following the fall of Suharto's New Order regime, when human rights advocates and civil society organizations successfully lobbied for the inclusion of comprehensive human rights protections in the amended constitution, viewing refugee protection as part of Indonesia's transformation into a democratic state committed to international human rights standards.

However, this constitutional commitment exists in profound tension with Indonesia's persistent refusal to ratify the 1951 Refugee Convention and its 1967 Protocol, a position that has been maintained across multiple administrations from Sukarno through Jokowi despite repeated recommendations from UN human rights mechanisms, domestic civil society organizations, and international partners including Australia and the United States. This non-ratification strategy reflects a complex calculation that encompasses sovereignty concerns, resource constraints, regional geopolitical dynamics, and domestic political considerations that prioritize economic development and social stability over international humanitarian obligations. Indonesian officials consistently argue that ratification would create unsustainable legal and financial obligations given the country's status as a lower-middle-income developing nation with significant domestic poverty (affecting 26.5 million Indonesians as of 2023), inadequate social services infrastructure, and competing development priorities in education, healthcare, and rural development that require substantial public investment. The non-ratification position also reflects concerns about Indonesia's geographic position as a natural transit route for refugees seeking resettlement in Australia and other developed countries, with officials arguing that formal protection obligations would encourage additional displacement flows that could overwhelm Indonesia's capacity to provide effective protection while creating permanent settlement of populations that view Indonesia as a stepping stone rather than a final destination.

The political dynamics underlying non-ratification reveal the complex interplay between Islamic identity, nationalist ideology, and pragmatic governance considerations that shape Indonesian foreign policy across multiple issue areas beyond refugee protection. Indonesia's Muslim-majority population (87% of 274 million citizens) creates strong public sympathy for Muslim refugees, particularly the Rohingya from Myanmar, but this sympathy coexists with concerns about economic competition, cultural integration, and the capacity of Indonesian society to absorb additional populations given existing ethnic and religious tensions in regions like Papua, Central Sulawesi, and Maluku. Public opinion polling conducted by the Indonesian Survey Institute shows that 68% of respondents support providing temporary assistance to

refugees, but only 23% support permanent settlement or integration, reflecting widespread acceptance of humanitarian assistance combined with strong preferences for temporary solutions that do not involve long-term demographic changes. These attitudes are shaped by Indonesia's own experience with internal displacement, including the forced migration of approximately 3 million people during the 1965-66 political violence, the transmigration programs that relocated 8 million Javanese to outer islands between 1969-2001, and ongoing displacement from natural disasters, ethnic conflicts, and development projects that affects approximately 200,000 Indonesians annually according to the National Disaster Management Agency (BNPB).

The legal framework governing refugee protection in Indonesia is instead established through Presidential Regulation 125/2016, which delegates refugee status determination entirely to the United Nations High Commissioner for Refugees (UNHCR) while maintaining Indonesian state control over territorial access, residence permits, and rights allocation, creating what legal scholars term a "governance hybrid" that combines international expertise with national sovereignty. This delegation arrangement creates a unique governance structure where an international organization exercises quasi-sovereign authority over protection decisions within Indonesian territory, determining who qualifies as a refugee eligible for international protection, while the Indonesian state maintains ultimate control over whether and how those protection decisions translate into practical rights and freedoms. The arrangement reflects what political scientists term "governance without government"—the strategic delegation of complex policy functions to international organizations as a means of managing difficult policy challenges while avoiding direct political responsibility for outcomes that may generate domestic controversy. The Presidential Regulation establishes 13 provinces as designated refugee accommodation areas, primarily in Java, Sumatra, and Sulawesi, but provides minimal guidance about integration services, rights realization, or long-term solutions, creating a framework that acknowledges refugee presence without creating pathways for meaningful protection or self-sufficiency. This regulatory approach enables the Indonesian government to claim compliance with constitutional obligations and international expectations while avoiding the legal commitments and resource allocations that would accompany ratification of international instruments, demonstrating how domestic legal frameworks can be designed to minimize rather than maximize protection outcomes even when constitutional provisions appear to mandate robust refugee protection.

2.2.1. Demographic Reality and Protection Outcomes

As of 2023, Indonesia hosts 11,735 individuals classified as refugees and asylum seekers by UNHCR, representing a significant population requiring protection services despite the country's non-signatory status, but these aggregate numbers mask profound variations in protection outcomes, demographic vulnerabilities, and regional distribution patterns that reflect the ad hoc and politically driven nature of Indonesia's approach to refugee management. The demographic composition of this population reflects broader patterns in regional displacement and the specific conflict dynamics that have shaped South and Southeast Asian security environments over the past two decades: 48% are Afghan nationals, primarily families who fled following the Taliban's return to power in August 2021 and the subsequent collapse of the internationally supported government, representing the largest single nationality group and including significant numbers of former government officials, civil society activists, and women's rights defenders who face particular persecution risks under Taliban rule; 21% are from Myanmar, including both Rohingya Muslims fleeing systematic persecution and genocide in Rakhine State and other ethnic minorities affected by the military coup of February 2021 and the subsequent civil war that has displaced over 1.5 million people internally and forced hundreds of thousands to seek refuge in neighboring countries; and the remainder includes Somalis fleeing the protracted conflict and state collapse that has affected the Horn of Africa for over three decades, Iraqis displaced by sectarian violence and ISIS occupation, Pakistanis from religious and ethnic minorities facing persecution, and smaller numbers from other countries experiencing conflict or severe human rights violations.

The protection outcomes for this population reveal systematic inadequacies in Indonesia's approach that create what refugee advocates term "manufactured vulnerability," where policy choices systematically undermine refugee self-sufficiency and create dependencies that serve neither refugee nor state interests effectively. UNHCR data indicates that refugees face an average stay of 7.3 years in Indonesia, with resettlement rates of only 0.3% annually—effectively creating a permanent population in legal limbo that has no prospect of achieving durable solutions through either local integration, resettlement to third countries, or voluntary repatriation to countries of origin. During this extended period of uncertainty, refugees are prohibited from working in the formal economy, accessing public education, purchasing property, or moving freely within the country, creating conditions that systematically undermine human dignity and violate basic socioeconomic rights recognized in international human rights law. The employment prohibition is particularly devastating given

the extended duration of stay, as it prevents refugees from achieving self-sufficiency and contributing to Indonesian society while forcing them to rely on minimal international assistance or engage in precarious informal work that provides no legal protections and often involves exploitation by employers who take advantage of refugees' vulnerable legal status.

The impact on refugee children represents perhaps the most troubling aspect of Indonesia's protection failures, with 70% of refugee children (approximately 3,200 individuals) not enrolled in formal education due to legal barriers, language obstacles, financial constraints, and bureaucratic impediments that effectively deny an entire generation access to basic educational opportunities. Children represent 40% of the refugee population, including significant numbers who were born in Indonesia but remain stateless due to Indonesian citizenship laws that do not recognize jus soli (birthright citizenship) and the inability of their parents to register births through origin country consular services. These Indonesian-born children face particular vulnerabilities as they grow up without legal status, educational opportunities, or pathways to regularization, creating what child rights advocates term a "lost generation" that will face lifelong marginalization and exclusion from Indonesian society. The psychological impact on refugee children includes high rates of depression, anxiety, developmental delays, and behavioral problems that reflect the trauma of displacement combined with the stress of prolonged uncertainty and social exclusion, with mental health services largely unavailable due to language barriers, cultural stigma, and limited specialized resources for refugee populations.

The detention system represents perhaps the most problematic and systematically abusive aspect of Indonesia's approach, demonstrating how administrative detention can be used as a tool of population control that violates fundamental human rights while serving no legitimate administrative purpose. Despite constitutional guarantees against arbitrary detention (Article 28G of the 1945 Constitution) and Indonesia's ratification of the International Covenant on Civil and Political Rights, 63% of refugees and asylum seekers are held in immigration detention centers for periods exceeding six months, with many individuals detained for years without judicial review, access to legal counsel, or clear criteria for release. The 46 detention centers across the Indonesian archipelago operate with minimal oversight from human rights institutions, inadequate medical care that has resulted in preventable deaths, severe overcrowding that creates health hazards and increases tensions between detainees, and conditions that multiple UN special rapporteurs have characterized as cruel, inhuman, and degrading treatment that may constitute torture under international law. Facilities designed for 100 individuals routinely house 300 or more detainees, creating conditions where infectious

diseases spread rapidly, privacy is nonexistent, and basic sanitation becomes impossible to maintain, while the remote location of many centers makes family visits and legal assistance extremely difficult to access.

The arbitrary nature of detention decisions reveals the absence of due process protections and the systematic violation of procedural rights that characterizes Indonesia's entire approach to refugee management. Detention decisions are made by immigration officials without judicial oversight, legal representation, or clear criteria that would enable individuals to understand the basis for their detention or challenge its legality through established legal procedures. The National Commission on Human Rights (Komnas HAM) has documented cases where pregnant women, unaccompanied minors, elderly individuals, and people with serious medical conditions are held in detention for extended periods without appropriate care or consideration of their vulnerability status, while families are routinely separated with children detained separately from parents in violation of international standards for family unity. The use of detention as a deterrent mechanism is explicitly acknowledged by Indonesian officials, who argue that harsh conditions are necessary to discourage further arrivals and demonstrate that Indonesia is not a desirable destination for refugees seeking international protection, revealing how humanitarian policies can be subordinated to migration control objectives that prioritize deterrence over protection outcomes.

2.2.2 Regional Dynamics and ASEAN Constraints

Indonesia's refugee policies cannot be understood in isolation from the broader Association of Southeast Asian Nations (ASEAN) framework and its foundational principle of non-interference in domestic affairs, which creates a regional governance environment that systematically prevents the development of coordinated responses to transnational challenges including refugee protection, human trafficking, environmental degradation, and cross-border crime that require collective action to address effectively. This principle, enshrined in the 1976 Treaty of Amity and Cooperation and reinforced through subsequent agreements including the 2007 ASEAN Charter and the 2012 ASEAN Human Rights Declaration, effectively prohibits ASEAN from developing binding regional frameworks for refugee protection by treating displacement as a domestic matter that falls within the exclusive jurisdiction of origin states, regardless of whether those states are willing or able to provide effective protection for their populations. The non-interference principle reflects ASEAN's historical experience with decolonization, Cold War geopolitics, and the desire of newly independent states to prevent

external intervention in domestic affairs, but its application to refugee protection creates a systemic governance gap that enables member states to externalize displacement costs to neighbors while avoiding responsibility for addressing the root causes of displacement within their own territories.

The result of this institutional framework is a fragmented approach to refugee protection where individual countries develop policies in isolation from regional coordination, often creating protection gaps, enabling burden-shifting between neighbors, and preventing the development of regional solutions that would distribute protection responsibilities based on capacity rather than geography. The absence of binding regional frameworks contrasts sharply with other regions where organizations like the African Union, the Organization of American States, and even the European Union (despite its current difficulties) have developed comprehensive legal instruments for refugee protection that create enforceable obligations and accountability mechanisms for member states. ASEAN's consensus-based decision-making process, which requires unanimous agreement for all substantive decisions, effectively provides each member state with veto power over regional initiatives, ensuring that the most restrictionist country can block initiatives that would create protection obligations or accountability mechanisms that extend beyond voluntary cooperation and non-binding declarations. This institutional structure reflects what political scientists term the "lowest common denominator" problem in international organizations, where collective action is limited by the preferences of the least cooperative member, but in ASEAN's case, this dynamic is institutionalized through formal consensus requirements that prevent majority coalitions from overriding minority objections.

The absence of regional frameworks is particularly problematic given the inherently transnational nature of displacement in Southeast Asia, where conflicts, persecution, and environmental degradation in one country create displacement flows that affect multiple neighboring states, requiring coordinated responses that address both immediate protection needs and longer-term solutions including addressing root causes of displacement and creating pathways for durable solutions. The Rohingya crisis illustrates these dynamics clearly and demonstrates the human costs of ASEAN's institutional limitations: while Myanmar's systematic persecution and genocide create the displacement, the protection burden falls primarily on Bangladesh (hosting 912,000 Rohingya in Cox's Bazar camps) and secondarily on Indonesia, Malaysia, and Thailand as transit and destination countries, with minimal support from other ASEAN member states or contribution to addressing the root causes of persecution within Myanmar itself. ASEAN's response has been limited to non-binding statements

expressing "concern" and "hope for peaceful resolution" while explicitly avoiding criticism of Myanmar's policies, accountability for international crimes, or establishment of protection mechanisms that would create obligations for member states to contribute to solutions rather than merely expressing diplomatic preferences for resolution.

The political dynamics within ASEAN reveal how the non-interference principle serves the interests of authoritarian and semi-authoritarian governments throughout the region by preventing collective action on human rights issues that could create precedents for intervention in domestic affairs, while simultaneously limiting the capacity of democratic member states to promote human rights and protection standards through regional institutions. Myanmar's military government has consistently used ASEAN's non-interference principle to deflect international criticism and prevent regional action on the Rohingya crisis, while also blocking any regional response to the 2021 military coup that has generated additional displacement and human rights violations affecting ethnic minorities throughout the country. Similarly, other ASEAN member states with poor human rights records, including Cambodia, Laos, and Vietnam, have used the non-interference principle to prevent regional action on issues including forced labor, land grabbing, environmental destruction, and political repression that generate displacement and human rights violations affecting their own populations and neighboring countries.

Indonesia's position within these regional dynamics reflects its complex status as both a middle power seeking regional leadership and a developing country concerned about resource allocation and the potential for external obligations to constrain domestic policy autonomy. Indonesian officials have consistently advocated for "comprehensive solutions" that address root causes of displacement rather than establishing permanent protection mechanisms, but this approach often serves as a justification for continued inaction while displacement continues and protection needs remain unaddressed. The comprehensive solutions discourse reflects legitimate concerns about the sustainability of temporary protection arrangements and the need for political solutions to conflicts that generate displacement, but it also enables continued avoidance of immediate protection obligations while political solutions remain elusive and displaced populations continue to suffer in protracted displacement situations. Indonesian diplomatic initiatives on the Rohingya crisis, including hosting informal consultations and promoting dialogue between Myanmar and Bangladesh, have generated positive international attention but have not translated into concrete protection improvements or sustainable solutions for displaced populations, illustrating the limitations of diplomatic engagement that is not backed by concrete commitments or enforcement mechanisms.

The bilateral dimension of Indonesia's refugee policy is dominated by its relationship with Australia, which has provided approximately $350 million between 2014 and 2023 to support maritime interdiction efforts and prevent boat departures toward Australian territory, creating a complex partnership that aligns Indonesian sovereign interests with Australian migration control objectives while systematically undermining refugee protection outcomes. This financial arrangement, formalized through various memoranda of understanding and technical cooperation agreements, effectively positions Indonesia as Australia's "maritime buffer," intercepting boats before they reach Australian waters and providing detention facilities for populations that Australia refuses to receive, while providing minimal support for protection outcomes or durable solutions that would address the underlying displacement. The arrangement has proven remarkably successful in achieving its primary objective of reducing boat arrivals in Australia, from 20,587 in 2013 to fewer than 100 annually since 2016, but this success comes at the cost of creating a permanent population in limbo within Indonesia that has no prospect of achieving protection or durable solutions through either local integration or resettlement to third countries.

The political economy of this bilateral relationship reveals how migration control partnerships can create perverse incentives that prioritize deterrence over protection while generating economic benefits for recipient governments that become dependent on external funding for basic government functions. The Australian funding supports Indonesian maritime surveillance capabilities, detention center operations, and border management infrastructure that serves broader Indonesian security interests beyond refugee interdiction, including counter-terrorism, anti-piracy, and fisheries enforcement activities that contribute to Indonesian maritime security. However, the funding arrangement also creates incentives for Indonesian authorities to maintain harsh conditions for refugees as a means of demonstrating to Australia that Indonesia remains an undesirable destination, while simultaneously creating bureaucratic interests within Indonesian immigration and security agencies that benefit from continued refugee flows and the associated Australian funding. This dynamic illustrates what development economists term "aid dependency," where recipient governments become reliant on external funding for basic functions and develop interests in maintaining the conditions that justify continued aid flows, even when those conditions involve systematic human rights violations and the perpetuation of human suffering. its status as both a middle power seeking regional leadership and a developing country concerned about resource allocation. Indonesian officials have consistently advocated for "comprehensive solutions" that address root causes of displacement rather than establishing permanent protection mechanisms. This approach

reflects legitimate concerns about becoming a permanent host country for regional displacement, but it also enables continued inaction while displacement continues.

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2.2.3. Economic Constraints and Development Priorities

The economic dimensions of Indonesia's refugee policies reflect broader tensions between humanitarian obligations and development priorities in a middle-income country with significant poverty and inequality. Government support for refugees amounts to approximately $0.83 per person per day, compared to UNHCR's recommended minimum of $4.75 per day for basic needs. This disparity reflects not only resource constraints but also political calculations about the relative priority of refugee protection versus domestic social programs. The prohibition on refugee employment represents a significant economic inefficiency that affects both refugees and Indonesian society. Economic analysis by the Center for Strategic and International Studies Indonesia suggests that allowing refugee employment could generate approximately $47 million annually in additional economic activity, while reducing the fiscal burden of providing basic support. However, the policy persists due to concerns about labor market competition and political opposition from domestic constituencies.

The broader economic context includes Indonesia's position as a lower-middle-income country with a per capita GDP of $4,256 as of 2023, significant rural poverty affecting 12.4% of the population, and competing development priorities in education, healthcare, and infrastructure. From this perspective, refugee protection appears as an externally imposed obligation that diverts resources from domestic development priorities, particularly given the absence of significant international support for protection costs.

2.3. Comparative Analysis: Models of Exclusion and Accommodation

The comparison between Hungary and Indonesia reveals two distinct but related strategies for managing refugee protection obligations in ways that prioritize state interests over humanitarian commitments. Hungary's approach can be characterized as "strategic restrictionism"—the systematic use of legal, physical, and political mechanisms to eliminate protection obligations while maintaining formal compliance with international law. This strategy relies on exploiting legal loopholes, constitutional amendments, and physical deterrence to achieve exclusion while avoiding direct violation of non-refoulement principles.

Indonesia's approach represents "pragmatic ambivalence"—a strategy that avoids formal obligations through non-ratification while providing minimal accommodation to manage immediate humanitarian and political pressures. This approach allows Indonesia to claim humanitarian credentials through constitutional provisions and limited protection activities while avoiding the legal obligations and resource commitments that would accompany ratification of international instruments.

Both strategies reflect what migration scholar James Hampshire terms "liberal constraint" theory—the proposition that liberal democratic states face inherent tensions between exclusionary immigration policies and liberal legal norms. Hungary resolves this tension through constitutional authoritarianism that subordinates liberal norms to majoritarian sovereignty, while Indonesia avoids it through non-ratification that prevents the emergence of legal constraints on state discretion. The effectiveness of these strategies in achieving state objectives varies significantly. Hungary has successfully eliminated asylum applications and burden-sharing obligations within the EU framework, though at substantial financial and reputational costs. Indonesia has successfully avoided formal protection obligations while managing immediate humanitarian crises, but has created a permanent population in limbo that generates ongoing costs and international criticism.

2.3.1. Rights Realization and Protection Outcomes

The human consequences of these policy approaches reveal their fundamental inadequacy from a rights-based perspective. In Hungary, the 94% unemployment rate among the small number of refugees granted protection, combined with segregated education systems and social exclusion, demonstrates that formal rights recognition means little without accompanying integration support. The average stay of 27 days before removal or departure

reflects not efficient processing but rather the creation of conditions so harsh that refugees self-deport or attempt dangerous onward movement.

Indonesia's protection outcomes are characterized by prolonged limbo rather than outright exclusion, but the human costs are equally severe. The 7.3-year average stay in conditions of legal uncertainty, combined with employment prohibitions and detention practices, creates what Liisa Malkki terms "a form of social death" where individuals exist in legal limbo indefinitely. The psychological impacts on refugee populations, particularly children, include high rates of depression, anxiety, and developmental delays that reflect the dehumanizing effects of prolonged uncertainty.

The gendered dimensions of these policies reveal additional layers of vulnerability. In Hungary, the 15% of asylum seekers who are women face particular risks during pushback operations, including sexual violence and separation from children. In Indonesia, women refugees face exploitation in informal labor markets, given their exclusion from formal employment, while pregnant women in detention frequently lack adequate prenatal care, resulting in maternal and infant mortality rates significantly above national averages.

The relationship between these countries and international oversight mechanisms reveals the limitations of existing compliance systems. Hungary's absorption of €353 million in EU fines demonstrates that financial sanctions may be insufficient to compel compliance when governments view non-compliance as politically beneficial. The Hungarian government's framing of these penalties as "sovereignty premiums" illustrates how sanctions can be reinterpreted to reinforce rather than undermine restrictionist policies.

Indonesia's relationship with international mechanisms reflects the broader limitations of the treaty-based system when countries remain non-parties. While Indonesia has received 14 recommendations related to refugee protection through the Universal Periodic Review process, its non-ratification of core instruments limits the formal mechanisms available for accountability. The primary leverage comes through bilateral relationships, particularly with Australia, but these relationships often prioritize migration control over protection outcomes. The effectiveness of international advocacy and pressure also varies significantly between the cases. Hungary faces intense criticism from European institutions, human rights organizations, and media, but this criticism has limited impact on domestic policy due to the government's successful framing of external pressure as confirmation of foreign interference. Indonesia faces less international attention despite arguably more severe protection gaps, reflecting the lower visibility of transit country situations and the absence of binding legal frameworks.

2.3.2. Regional and Global Implications

Hungary's successful resistance to EU migration policies has broader implications for European integration and the future of common asylum systems. The failure of financial sanctions to compel Hungarian compliance raises fundamental questions about the EU's capacity to enforce solidarity mechanisms when member states view non-compliance as politically beneficial. The Hungarian model has influenced policy debates in other EU countries, with similar restrictionist approaches emerging in Poland (before the 2023 election), Italy under previous governments, and various regional governments across Europe.

The crisis also reveals the limitations of the Dublin Regulation and burden-sharing mechanisms when countries at the external borders refuse to participate in redistribution schemes. Hungary's strategy of eliminating asylum procedures while maintaining EU membership creates an anomalous situation where a member state benefits from EU structural funds while refusing to participate in fundamental aspects of the common asylum system. This selective compliance model challenges core assumptions about the relationship between membership benefits and obligations within the European project.

The broader implications extend to questions about differentiated integration and the future of EU asylum policy. Some analysts propose allowing member states to opt out of asylum obligations in exchange for increased financial contributions, while others argue for stronger enforcement mechanisms including suspension of voting rights or structural fund access. The Hungarian case suggests that without fundamental reforms to enforcement mechanisms, the EU asylum system will continue to face systematic undermining by member states that view restriction as politically beneficial.

Indonesia's approach reflects broader patterns of non-ratification and minimal compliance throughout Southeast Asia, where only two ASEAN member states (Cambodia and the Philippines) have ratified the 1951 Refugee Convention. This regional pattern creates a protection gap affecting millions of displaced persons, from Rohingya fleeing Myanmar to ethnic minorities displaced by conflict in southern Thailand and other regional crises. The absence of regional protection frameworks in Southeast Asia contrasts sharply with developments in other regions, including the 1984 Cartagena Declaration in Latin America and the 1969 OAU Convention in Africa. ASEAN's consensus-based decision-making and non-interference principles have prevented the development of binding regional instruments, despite repeated displacement crises that clearly demonstrate the need for coordinated approaches.

Indonesia's role as a regional middle power creates particular responsibilities and opportunities for leadership on refugee protection. The country's historical experience with displacement, including the massive population movements following independence and the 1965-66 political upheavals, provides both moral authority and practical experience relevant to contemporary challenges. However, domestic political considerations and resource constraints have prevented Indonesia from exercising regional leadership on protection issues.

Table. 14.The Comparison of the Legal Framework in Refugee Handling Between Indonesia and Hungary.

Hungary	**Indonesia**
Hungary is a member country of a Supranational Organization (European Union, EU) which are legally bound to each other[315].	Independent Country, with legal independence, but a member of a supranational organization (ASEAN)
Hungary Asylum Seeker Schemes are Legally regulated by the Common European Asylum System (CEAS), which is issued and managed supranational by the European Union, and then adapted to the National Law by the Government, then Hungary is enable to independently determine the status of refugees[316].	Have no Law regarding Asylum Seeker Management, and also do not ratify the 1951 Refugee Convention and 1967 Protocols. Then, legally Indonesia has no responsibilities for asylum seeker accommodation[317].
Have the details procedures in the Asylum Seeker reception, based on the Dublin Procedures[318].	Have no procedures in Asylum Seeker reception, then the "reception" of the asylum seeker by the Indonesians in some provinces is only based on humanity[319].

Source: Authors

The comparative element in the analysis would then provide an analysis of similarities and differences between Hungary and Indonesia's legal framework conditions. Such a comparison could point to areas that may need improvement in one or both countries, as well as best practices that other countries could adopt. It might compare the procedure of refugee status determination in each country, such as the criteria for determining refugee status and the timeframe to make decisions. Such a comparison allows the identification of areas where the legal frameworks should be improved, such as ensuring that procedures for refugee status determination are fair and efficient.

[315] EUROSTAT, *The EU in the World - 2020 Edition*.pp.55-67.
[316] Bernát et al., "Borders and the Mobility of Migrants in Hungary.".pp.7-25.
[317] Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia.".pp32-44.
[318] EASO, "Description of the Hungarian Asylum System.".pp.1-22.
[319] Missbach, "Asylum Seekers' and Refugees' Decision-Making in Transit in Indonesia: The Need for in-Depth and Longitudinal Research.".pp.419-455.

Besides, the comparative analysis might also identify what factors affect the implementation of refugee law in each country. For instance, it could compare political will, public attitudes about refugees, and the role of NGOs and civil society organizations in Hungary and Indonesia. This analysis may provide insight into the challenges and opportunities for the implementation of refugee law frameworks and inform policy recommendations for governments and NGOs working on refugee issues. A qualitative legal comparative doctrinal analysis provides a sound framework for analyzing the legal frameworks of Hungary and Indonesia concerning refugee protection. This approach enables an integrated understanding of the legal frameworks and their applicability in reality for the purposes of making policy recommendations and interventions to better protect the rights of refugees in these countries and beyond.

3. Comparing Rights Access: Between Hungary Asylum Act 2007 and Indonesia Presidential Regulation 125/2016

The absence of RSD process in Indonesia has serious implications for the welfare and rights of refugees in the country. Without a functioning RSD process, asylum seekers are unable to gain the proper access for the international protection and transiting in the Indonesia territory under the of uncertainty and also detention. As noted by the UNHCR, *"prolonged and unjustified detention of refugees and asylum seekers is a serious concern, as it can lead to further harm and vulnerability"*[320]. Moreover, the lack of proper RSD procedures makes it difficult to identify and refer cases to UNHCR for refugee status determination, which puts a significant burden on the Indonesian government and hampers the provision of effective protection to refugees. The UNHCR has urged the Indonesian government to *"develop a clear and transparent mechanism for identifying and referring asylum seekers and refugees for RSD, in line with international standards"*[321].

3.1. Comparing the Refugee Status Determination (RSD) Procedures

The most identified difference between the Hungary Asylum Act 2007 and Presidential Regulation 125/2016 is the RSD procedures. In the Hungary Asylum Act 2007, According to article 1, Hungary's authorities may acknowledge the refugee's status[322]. Whereas refugee status

[320] UNHCR, "Conclusions Adopted by the Executive Committee on the International Protection of Refugees; 1975-2009 (Conclusion No. 1-109)" 2009, no. 1 (2009): 1–205.
[321] Bahri, *Between Legal Fortress and Uncertainty: Comparative Analysis of the Refugee Law Frameworks in Hungary and Indonesia*.pp.2-13.
[322] Government of Hungary, Act LXXX of 2007 on Asylum, 2007.

may be granted to an alien who qualifies as a refugee in accordance with the Geneva Convention on the Status of Refugees as stated in Section 7, Paragraph 1. Also, Hungary has the rights to set the eligibility status based on the Hungarian Fundamental Law, as stated in Article 6, Paragraph 1, which must be met the criteria stated in the Geneva convention, Article 1, as stated in Article 7, Paragraph 1. This right is including the applicant's personal circumstances and the overall condition in the applicant's country of origin as stated in section 18 paragraph 1.

From these points, Hungary has the right to accept or reject the refugee status of someone who are asylum seeker. The Asylum Act of 2007 also sets out several factors that must be taken into account when assessing an asylum application, including the current situation in the applicant's country of origin, the credibility of the applicant's statements, and any documentation or other evidence that supports their claim. The authorities are also under the obligation to consider individual circumstances of the applicant, which include age, gender, and personal vulnerabilities or risks that an applicant is faced with in case of his or her return to their country of origin. According to section 19, paragraph 1st, the reliability of the applicant, the reasonableness of his or her statements, and the validity of the papers supplied shall be assessed. Such a well-based legal system assists Hungarian authorities to decrease the number of asylum seeker application.

On the other hand, Indonesia does not have a formal refugee determination process. Despite its not a signature country to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, Indonesia also has not enacted any domestic legislation on refugees and asylum seekers. This means that no procedures for the assessment of asylum claims or the determination of refugee status have been established in Indonesia. As a result, asylum seekers in Indonesia face considerable barriers to exercising their rights and protections. Many asylum seekers live in limbo, unable to work legally or access education and healthcare, and without a pathway to regularization or resettlement[323]. The absence of a regular refugee determination procedure also exposes asylum seekers to the threats of arrest, detention, and deportation because they do not have any status in Indonesia as legal residents.

It had notwithstanding these setbacks taken initial efforts in some ways on issues related to asylum seekers and refugees. In 2016, the Government started a two-year pilot project for providing temporary accommodation to refugees and asylum seekers that included access to

[323] Bahri, *Between Legal Fortress and Uncertainty: Comparative Analysis of the Refugee Law Frameworks in Hungary and Indonesia*.pp.913-943.

nutrition, healthcare, and several protection mechanisms. In 2018, this policy was continued beyond the stipulated duration by the Government, already now providing aid to more than 14,000 in 2021 alone in Indonesia. However, the protection of asylum seekers and refugees in Indonesia remains precarious without a formal legal framework for refugee protection. The call has been made time and again by many organizations and advocates that the government should adopt legislation that recognizes and protects the rights of refugees and asylum seekers in the country.

3.2. Comparing the Access to the Basic Right

The Hungarian Asylum Act 2007 lays down the procedure for recognizing refugee status, and it provides certain protection for the realization of basic rights for refugees. Under the Act, asylum seekers have equal access to healthcare, education, and employment as Hungarian citizens according to Article 18, Paragraph 1. The fairness and transparency of the asylum system in Hungary have been questioned, however, and the Act has come under criticism from human rights organizations for its inability to offer adequate protection for the rights of refugees.

For medical attention, refugees in Hungary get treated in the general and the most standard conditions, offering healthcare to citizens and inhabitants of Hungary, refugees inclusive, and asylum seekers alike. Nonetheless, there have been reported gaps in the level of health care provision across Hungary; some concerns relate to waiting times, lack or total depletion of pharmaceuticals, or poor personnel levels in any particular field. Moreover, the access to mental healthcare services among refugees and asylum seekers is limited, which can have a significant impact on their well-being and ability to integrate into society.

Regarding education, the Education Act of 2011, Article 39, provides for free education for all citizens, residents, refugees, and asylum seekers. However, there have been concerns raised about discrimination against Roma children in the education system, which can impact their ability to access quality education. Additionally, the lack of specialized support services for refugee children, such as language support or counseling, can make it difficult for them to fully participate in the education system. Regarding employment, refugees in Hungary have the right to work under certain conditions, including holding a valid work permit and having a valid residence permit. At the same time, however, there have been reports of job discrimination against refugees and asylum seekers because employers are simply leery of hiring individuals because they have refugee status or don't have Hungarian language skills.

On the other hand, Indonesia does not have a formal legal framework on refugee protection, and refugees and asylum seekers face significant challenges in accessing basic rights. While the 2016 Presidential Regulation 125/2016 prohibited refugees and asylum seekers from having work permits to access public services such as healthcare and education, the actual practice of this regulation on the ground has been inconsistent in line with the Constitution of the Republic of Indonesia, Article 28D (1). Educationally, though the Constitution guarantees all Indonesians the right to education, there are major gaps in the education system that affect refugees and asylum seekers. Most of the refugees and asylum seekers in Indonesia cannot access education due to language barriers, lack of documentation, and financial constraints. Additionally, there is a shortage of specialized support services for refugee children, such as language support or counseling. Regarding employment, refugees and asylum seekers in Indonesia are not allowed to work legally, which can make it difficult for them to support themselves and their families. This can also limit their ability to fully integrate into society and participate in the local economy.

In other words, even as Hungary and Indonesia have different legal mechanisms for the protection of refugees, both countries face enormous challenges in terms of ensuring that refugees and asylum seekers have access to such basic rights as healthcare, education, and employment opportunities. While Hungary has a more formal legal framework for the protection of refugees, its execution has been criticized for failing adequately to address the needs of refugees. In Indonesia, the absence of a formal legal framework for refugee protection has left refugees and asylum seekers in precarious situations characterized by limited access to fundamental rights and significant barriers to integration.

3.3. Comparing the Access to the Citizenship

The legal framework for granting citizenship to refugees in Hungary is based on Act LV of 1993 on Hungarian Citizenship, which sets general conditions for naturalization. These requirements include residence in Hungary legally for usually eight years and the passing of a Hungarian language proficiency test in order to show integration. However, refugees fall under the purview of added provisions in the Asylum Act 2007, especially Article 22, which provides that a refugee who has been granted asylum enjoys the same rights and duties as a Hungarian citizen. The right to vote and be elected in national and local elections, the right to healthcare, and the entitlement to social services. While this law supposedly facilitates the integration of refugees into Hungarian society, its implementation has been criticized on the grounds of

inequity and delays in procedures. Many refugees have also complained of long waiting periods and administrative barriers in trying to obtain citizenship, which calls into question Hungary's commitment to ensuring a truly inclusive framework for those seeking refuge.

A significant feature of Hungary's citizenship policy is the grant of citizenship to ethnic Hungarians abroad. It has been pursued through the adoption of a law amending the Citizenship Act in 2011 that accelerates naturalization procedures for ethnic Hungarians who are residents of neighboring states like Romania, Serbia, and Ukraine. Minimal residency is required, and the advantages are much more substantial than those under procedures applicable to all other foreigners, including refugees. While the policy is designed to strengthen cultural and historical ties with ethnic Hungarians beyond Hungary's borders, it has inadvertently created a dual system that prioritizes ethnic connections over humanitarian considerations. This disparity reflects a broader ethnonationalist tendency within Hungary's immigration and citizenship policies, which prioritize cultural homogeneity over the inclusion of diverse populations. Critics, including international human rights organizations, argue that such a selective approach violates Hungary's obligations under international law, particularly the 1951 Refugee Convention and its 1967 Protocol, which call for equal treatment of refugees in host countries.

By contrast, Indonesia offers a completely different legal and institutional setup. The law governing Indonesia's citizenship policies is Law No. 12 of 2006 on Citizenship, and it applies to all foreigners uniformly, including refugees. This law has drawn out the naturalization process for at least five consecutive years of residency, fluency in Indonesian, and the passing through a long, convoluted process. Unlike Hungary, Indonesia has no special provisions or options even for refugees, regardless of the reason or time they stay in the country[324]. This makes it a legal vacuum with a lack of refugee-specific naturalization mechanisms that prolong the state of uncertainty. This is further reflected in the general lack of clarity on Indonesia's citizenship policies and its broader approach to refugee integration, given that refugees are rarely included in any formal pathways toward permanent residency or citizenship. The ambiguity in this law has raised substantial criticism from both domestic and international stakeholders, who are calling for reforms to align with global norms and standards on refugee protection.

The difference in Hungary and Indonesia's legal framework is thus a reflection of their different socio-political philosophies and policies on the integration of refugees. While the policy of Hungary provides a clear route to citizenship for some refugees, the policy remains

[324] Bahri.pp.930-934.

ethnocentric and selective, favoring ethnic Hungarians over other groups. The ethnocentric approach within Hungary's policies is emphasized by the expedited naturalization of ethnic Hungarians abroad, proving that Hungary focuses on maintaining its national identity rather than promoting greater inclusiveness. While the procedural barriers and narrow policy provisions of nonethnic Hungarian refugees in obtaining refuge in Hungary show systemic prejudices within its citizenship framework, Indonesia presents a case where there is complete absence of refugee-specific provisions-an issue not just of systematic but fundamental levels, concerning the very lack of recognition and integration mechanisms in legal and policy frameworks for refugee status. Refugees in Indonesia face prolonged periods of legal limbo, as the country's legal system does not account for their unique vulnerabilities and needs. This omission reflects Indonesia's broader hesitancy to commit to international refugee protection norms, as it has yet to ratify the 1951 Refugee Convention or its 1967 Protocol.

On the global level, these divergent approaches reflect both countries' needs to tackle huge gaps in their respective systems. Hungary, being a member of the European Union, has come under greater pressure regarding its refugee policies. The ECJ has constantly found Hungary in breach of EU laws on various occasions, one being that it was found to have denied food to asylum seekers confined to border transit zones. Such decisions underpin systemic defects in Hungary's treatment of refugees and its incomplete compliance with EU standards on refugee protection. While Indonesia engages actively in ASEAN, emphasizing regional solidarity, nothing has been done regarding making a sound legal framework to incorporate refugees. Non-action places refugees at potential risks of exploitation and restriction on basic rights, including the vagaries of an unknown destiny.

The divergences that exist between Hungary and Indonesia's legal frameworks on granting citizenship to refugees have bigger repercussions in the balance of interests between nation-states and international obligations. While Hungary's prioritization of ethnic belonging does provide a pathway to some, it commonly excludes non-ethnic Hungarian refugees from equal opportunities. Indonesia's lack of specific provisions on refugees shows an even deeper humanitarian gap, with many refugees not having clear pathways to stability or integration. Both countries have much work to do in order to ensure that refugees are protected and given fair opportunities to rebuild their lives. Aligning national laws with international standards is crucial in addressing these disparities and fostering a more inclusive approach to refugee protection.

4. Comparing the Impact of Difference Approach

First, is very important to understand the difference between asylum seekers and refugees themselves. An asylum seeker can be defined as someone whose application for asylum has yet to be approved, on the other hand, a refugee can be defined as someone unable or unwilling to return to their own country because of a well-founded fear of persecution on account of race, religion, nationality, social group membership, or political opinion[325]. Those people, who fled from their country as asylum seeker or refugees, are subject to human rights protection, which is regulated under the 1951 Refugee Convention and related legal basis, which consist of access to basic rights, such as food, water, shelter, and education, also the living support access, such as access to the job market, under the non-refoulment principles, which means they cannot be sent back to their home country, freedom of movement, right to liberty and security of the person, and right of family reunification[326].

The motives which push people to leave their home countries always developing, from conflict, and economic to climate migration, however from the 1900s to the 2015-2016 refugee crisis, armed conflict is dominating the main reason for people to leave their home countries[327]. The armed conflict resulted in the mass influx of people, called the "war flaw" is opening the world's eyes, to the importance of the legal basis in refugee handling, also becoming the main reason to develop the universal legal basis in refugee handling, which is 1951 Refugee convention and 1967 Protocol which extend the geographical proximity[328].

Th EU refugee crisis happened in 2015, triggered more than 1 million refugees entering the EU border, from the middle east and north Africa, enter EU from the sea and land border, is well administered because of the established legal basis, such as the 1951 refugee convention which resulted in the low number of transnational crime[329] is successfully reshaping the EU migration handling policy on the migration framework, because there is an abdication of key duties under international and EU law, resulted in collectivizing external border control and shifting refugee responsibility to new member states with minimal standards for refugee

[325] Lister, "WHO ARE REFUGEES?".pp. 645-671.
[326] Moretti, "Southeast Asia and the 1951 Convention Relating to the Status of Refugees: Substance without Form?".pp.214-237.
[327] Guy J. Abel et al., "Climate, Conflict and Forced Migration," *Global Environmental Change* 54 (January 1, 2019): 239–49, https://doi.org/10.1016/J.GLOENVCHA.2018.12.003..pp.239-249.
[328] Hugo Storey, "Armed Conflict in Asylum Law: The 'War-Flaw,'" *Refugee Survey Quarterly* 31, no. 2 (2012): 1–32, https://doi.org/10.1093/rsq/hds005..pp.1-32.
[329] Sergio Carrera et al., "The EU ' s Response to the Refugee Crisis Taking Stock and Setting Policy Priorities," *Ceeps Essay*, no. 20 (2015): 9..pp.27-29.

protection and weak enforcement mechanisms[330]. Furthermore, in September 2015 the quota system under the Common European Asylum System (CEAS) was proposed as the administrative solution for the EU to address the refugee crisis, successfully relocating 120.000 refugees along the EU member country[331].

Hungary's on the other hand, responding the refugee crisis by building the fence along the border, which shows Denial, a deterrent, obstruction, retribution, and free riding are all signs of a lack of unity and a violation of the law (international, European, domestic)[332]. However, as a member of the EU, Hungary complied with the Common European Asylum System (CEAS), which bridging between the local refugee handling law through Act LXXX of 2007 on Asylum with the 1951 Refugee Convention, resulting in the smooth processes for asylum seeker and refugee management, in 2017, the number of an asylum seeker in Hungary is reaching 2.1 percent of citizen, one of the highest numbers in Europe after Germany[333]. Hungary also faced a significant inflow of migrants entering its borders as a final destination, with over 400,000 asylum seekers entering the country in 2015 alone, far beyond the country's capacity to manage a major influx of people at one time[334]. Most of the asylum seeker is going into the EU through Hungary, because the its position, which included in the "Balkan route", which connects the Middle East, and Mediterranean region to the EU territory, where people tend to migrate from Middle East to Greece via Macedonia and Turkey entering through Bulgaria and continue to Hungary as the directly bordered EU member states[335]. Furthermore, Hungary is successfully to decrease the number of asylum seeker, who entering their territory by imposing the "legal fortress" as immigration policy, which "legally" successful in decreasing the number of asylum seekers as shown in figure 7.

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[330] Rosemary Byrne, Gregor Noll, and Jens Vedsted-Hansen, "Understanding the Crisis of Refugee Law: Legal Scholarship and the EU Asylum System," *Leiden Journal of International Law* 33, no. 4 (2020): 871–92, https://doi.org/10.1017/S0922156520000382..pp.871-892.

[331] Šelo Šabić Senada, "The Relocation of Refugees in the European Union," no. September (2017): 10, https://bib.irb.hr/datoteka/914374.The_Relocation_of_Refugees.pdf%0Ahttp://library.fes.de/pdf-files/bueros/kroatien/13787.pdf..pp.1-12.

[332] Boldizsár Nagy, "Special Issue Constitutional Dimensions of the Refugee Crisis Hungarian Asylum Law and Policy in 2015–2016: Securitization Instead of Loyal Cooperation," *German Law Journal* 17, no. 6 (2016): 1033–81.. pp.1034-1082.

[333] Pavle Kilibarda, "Obligations of Transit Countries under Refugee Law: A Western Balkans Case Study," *International Review of the Red Cross* 99, no. 904 (2017): 211–39, https://doi.org/10.1017/S1816383118000188.

[334] WHO Regional Office for Europe, "Joint Report on a Mission of the Hungarian Ministry of Human Capacities and the WHO Regional Office for Europe," 2016, http://www.euro.who.int/__data/assets/pdf_file/0016/317131/Hungary-report-assessing-HS-capacity-manage-sudden-large-influxes-migrants.pdf?ua=1.pp. 2-36.

[335] Bodo Weber, "The EU-Turkey Refugee Deal and the Not Quite Closed Balkan Route," *Friedrich Ebert Stiftung*, no. June (2017): 23.

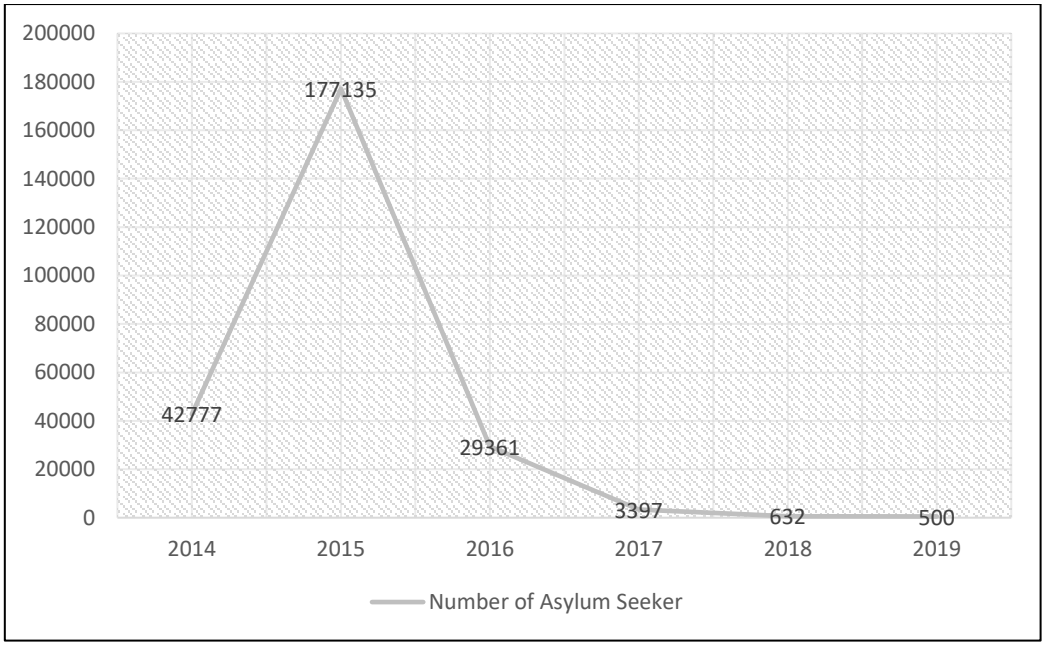

Figure 7. Number of Asylum Seeker who Entering Hungary during 2014 to 2019.Source: UNHCR, 2019. https://www.unhcr.org/ceu/hungary-facts-on-refugees

Notwithstanding Hungary's legal framework for dealing with refugees, the government is using a "*one-of-a-kind"* strategy to dealing with asylum seekers. In Hungary, the refugee handling legal system is guided by the CEAS as its supranational framework, Constitution of Hungary, the Law on Asylum (LXXX. of 2007), and the Aliens Act (II. of 2007). Under those legal systems, Hungary is required to offer international protection for asylum seekers, including lodging, education, health care, and access to the labor market when their refugee status is recognized [336]. However, politically, under the Orban administration, Hungary has the very unique approach to manage the refugee who entering the country. The Hungarian response to migration consists of three components: selective border closure, a number of deterrents, and governmental racist discourse and propaganda efforts in order to minimize the number of refugees in the Hungary territory[337]. Hungary's legal fortress successfully managed the refugee problem with a political approach backed up by legal force, rejecting more than 90percent of asylum claims in 2019[338].

[336] Tamás Hoffmann and Fruzsina Gárdos-Orosz, "Populism and Law in Hungary - Introduction to the Special Issue," *Review of Central and East European Law* 47, no. 1 (2022): 1–11, https://doi.org/10.1163/15730352-bja10058.
[337] Annastiina Kallius, "The East-South Axis: Legitimizing the 'Hungarian Solution to Migration,'" *Revue Européenne Des Migrations Internationales* 33, no. 2–3 (2017): 133–55, https://doi.org/10.4000/remi.8761.
[338] Juhász and Hunyadi, "Focus on Hungary: Refugees, Asylum and Migration Focus on Hungary: Refugees, Asylum and Migration HEinricH-Böll-Stiftung."

In Indonesia, to apply for protection, refugees must pass through the refugee identification stage which is evaluated through the RSD (Refugee Status Determination procedure) by the United Nations High Commissioner for Refugees (UNHCR). The procedure for determining the refugee status is carried out through registration and interviews, in this interview later it can be determined whether it is appropriate to be granted refugee status if rejected, and refugees can appeal once[339]. The existence of the UNHCR representative office in the Indonesian capital, Jakarta, is based on an agreement between the government of the Republic of Indonesia and the United Nations High Commissioner for Refugees (UNHCR) on 15 June 1979.

Refugees who plan to reach third countries (refugee recipient countries based on the Geneva Convention 1951 about Refugees) will interact with various individuals from different countries. They will even stop in several countries to get to the destination country, either voluntarily or forced due to getting lost, lack of logistics, or being caught by local authorities. In Indonesia, there are a lot of problems faced by refugees who waiting to be replaced by the refugee recipients' countries. Firstly, they are not allowed to work[340], which means that their daily needs are not well fulfilled.

Secondly, children and youth asylum seekers will have difficulty accessing the education that they should get, even though education is one of the rights that is recognized as a fundamental right for humans. Thirdly, children born to husband-and-wife refugees will have difficulty regarding their child's immigration status, which potentially leads to stateless immigration status[341]. That problem will affect several problems later, such as getting health facilities, education, and registering for various other services[342]. The adoption of that legislation has created a new phenomenon in which the number of asylum seekers entering Indonesian territory is increasing rapidly, as indicated by the enormous number of asylum seekers declaring their status on Indonesian territory.

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[339] Vanessa Holzer, "The 1951 Refugee Convention and the Protection of People Fleeing Armed Conflict and Other Situations of Violence" (Geneva, September 5, 2012), www.unhcr.org..pp.1-42.

[340] Bilal Dewansyah and Ratu Durotun Nafisah, "The Constitutional Right to Asylum and Humanitarianism in Indonesian Law: 'Foreign Refugees' and PR 125/2016," *Asian Journal of Law and Society* 8, no. 3 (2021): 536–57, https://doi.org/10.1017/als.2021.8.. pp.536-557.

[341] Jessica Ball, Leslie Butt, and Harriot Beazley, "Children and Families on the Move: Stateless Children in Indonesia," *Migration and Mobility: CAPI Field Research Report*, no. May 2014 (2014)..pp.1-4.

[342] On September 25, 2015, the UN General Assembly adopted resolution No. A/RES/70/1 which discusses the determination, implementation, and review of the SDG's Sustainable Development Goals agenda which was proclaimed for 15 years from 2015 to 2030 as a continuation stage. of the Millennium Development Goals (MDG's). The goals on the agenda of the SDG's include three main dimensions (Economic, social, and environmental) which are translated into 17 goals and are targeted at 169 targets, among the main targets of the SDG's are education, a world with an adequate level of education for all the world's population at all levels, health services and social protection for all the world's population.

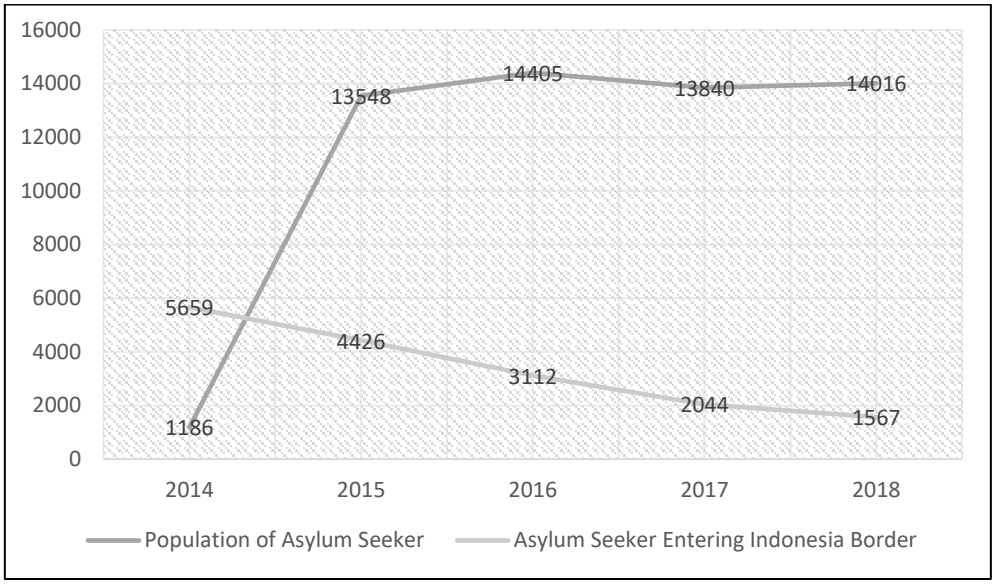

Figure 8. Comparison between Population of Asylum Seeker and Asylum Seeker who Officially Entering Indonesia as Asylum Seeker. Source: Bijdragen tot de taal-, land- en volkenkunde[343]

The rapid increase in the number of asylum seekers in Indonesia continues, with no proper solution, particularly in terms of the availability of legal frameworks in the processing of asylum seekers and refugees. Legally, Indonesia's refugee handling legal system is guided by Law No. 37/1999 on Foreign Relations, Law No. 6/2011 on Immigration, and Minister of Justice and Human Rights Regulation No. M.HH-01.GR.01.06 of 2012 on Procedures for Handling Refugees, which recognizes the principles of non-refoulement and non-penalization of asylum seekers, and provides for temporary protection for refugees [344] .

However, the legal system for the refugee itself is not conform yet with the 1951 refugee convention and 1967 protocols. Because Indonesia is a non-signatory country to those international agreements, it has no authority to grant refugee status[345]. As a result, Indonesia is highly reliant on UNHCR refugee status determination; however, the acceptance rate of UNHCR refugee determination for third-country resettlement from Indonesia as transit

[343] Widjajanti Dharmowijono, "No Title," ed. Daradjadi, *Bijdragen Tot de Taal-, Land- En Volkenkunde* 169, no. 2/3 (January 12, 2025): 375–77, http://www.jstor.org/stable/43817884.
[344] Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia: From Immigration Detention to Containment in 'Alternatives to Detention.'". pp.28-31.
[345] Dita Liliansa and Anbar Jayadi, "Should Indonesia Accede to The 1951 Refugee Convention and Its 1967 Protocol?," *Indonesia Law Review* 5, no. 3 (2015), https://doi.org/10.15742/ilrev.v5n3.161.

countries to refugee receiving countries is very low, less than 5percent yearly[346]. Politically, Indonesia has refused the UNHCR recommendation to ratify the 1951 refugee convention, through the House of Representatives official meeting[347]. This phenomenon, will run just like snowball, and create bigger problem in the future.

The excessive detention period under Immigration Law No. 6/2011 is also a serious concern for the welfare and rights of refugees in Indonesia. The 10-year maximum detention period for immigration-related offenses, including asylum seekers and refugees, is excessive and contravenes international human rights law. The IRRI has noted that "prolonged detention can cause significant harm to the mental and physical health of refugees, particularly vulnerable groups such as children and women" (IRRI, 2019). Furthermore, the lack of proper judicial review and access to legal representation for refugees in Indonesia undermines the protection of their rights and well-being. As noted by the IRRI, "the lack of access to legal representation and effective judicial review means that asylum seekers and refugees have little or no recourse to challenge detention or decisions affecting their rights" (IRRI, 2019).

In contrast, Hungary's legal framework for refugee protection has been criticized for implementing a legal fortress approach that violates international human rights law and fails to provide adequate protection to refugees. The restrictive asylum laws and criminalization of irregular migration in Hungary create significant barriers for refugees to access protection and violate their rights to seek and enjoy asylum. The UNHCR has called on Hungary to *"bring its laws, policies, and practices in line with international human rights standards and to ensure that refugees and migrants are treated with dignity and respect".* In conclusion, while Hungary's legal framework for refugee protection is characterized by a legal fortress approach that violates international human rights law, Indonesia's legal framework faces significant challenges due to the absence of proper RSD procedures and the excessive detention period under Immigration Law No. 6/2011. Both countries need to address the gaps and shortcomings in their legal frameworks to ensure the protection of refugees' rights and welfare.

[346] ECRE, "UNHCR Urges States to Create Safe Passages – Less than 5 percent of Resettlement Needs Met in 2018," ECRE Weekly Bulletin, 2018, https://ecre.org/unhcr-urges-states-to-create-safe-passages-less-than-5-of-resettlement-needs-met-in-2018/.

[347] Markus Junianto Sihaloho, "Anggota DPR Setuju Indonesia Tak Ratifikasi Konvensi Pengungsi, Ini Alasannya (Members of Parliament Agree That Indonesia Has Not Ratified the Refugee Convention, Here's the Reason)," Berita Satu Portal, 2019, https://www.beritasatu.com/nasional/568313/anggota-dpr-setuju-indonesia-tak-ratifikasi-konvensi-pengungsi-ini-alasannya.

5. Chapter Conclusion and Personal Opinion

This dissertation concludes by reaffirming the urgent need for Indonesia to establish a comprehensive, legally binding national asylum framework in response to the increasingly complex migration dynamics affecting the country. Indonesia's current approach, which relies on Presidential Regulation No. 125 of 2016 and delegates refugee status determination (RSD) entirely to international agencies, is inadequate in ensuring legal protection, institutional coordination, and long-term solutions for asylum seekers and refugees. The absence of codified procedures and a centralized asylum authority has led to policy fragmentation and legal uncertainty, leaving thousands of individuals—many of whom are highly vulnerable—in a state of prolonged legal limbo without access to education, employment, or healthcare. In contrast, Hungary, while not without criticism, offers a structured legal model supported by national legislation, judicial oversight, and formal refugee recognition pathways, enabling it to assert control over its borders while upholding minimum obligations under international law.

As an immigration officer in Indonesia, I have encountered numerous cases that reflect the practical challenges of operating in a legal vacuum. Often, asylum seekers arrive legally on short-term visas—as tourists or pilgrims—but once their visas expire, they declare their intention to seek asylum. In the absence of a domestic legal mechanism to assess or process these claims, my only viable option has frequently been to place them in immigration detention facilities for further coordination with UNHCR. This course of action, while legally defensible under current immigration law, is personally distressing, especially when families with young children are involved. I have seen firsthand how detention interrupts children's education, causes psychological strain, and isolates individuals from meaningful social interaction. These experiences have deeply influenced my view that a rights-based legal framework is not only a matter of international obligation but also a domestic necessity for ethical governance.

The comparative analysis between Hungary and Indonesia offers a valuable lesson: that having a structured legal foundation—regardless of the country's political stance—is preferable to an ad hoc, discretionary system. Legal certainty enables immigration officials to act within clear parameters, ensures procedural fairness, and protects the rights of asylum seekers. From my perspective as both a scholar and practitioner, I believe that Indonesia should not merely rely on humanitarian goodwill or external organizations to manage refugee protection, but must take sovereign responsibility by legislating a comprehensive asylum law. Such legislation should include institutional mandates, procedural safeguards, minimum standards of protection, and pathways for integration or resettlement. Ultimately, Indonesia

must shift from reactive containment to proactive legal governance—one that balances national security with compassion, sovereignty with solidarity, and policy enforcement with human dignity.

CHAPTER VII: SOLUTION FOR INDONESIA ASYLUM SEEKERS AND REFUGEES HANDLING POLICY

By comparing the legal and social perspectives of refugee handling in Hungary and Indonesia, it is obvious that Indonesia can learn a lot from Hungary's approach to regulatory frameworks and social access for refugees. Whereas Hungary has developed clear legal structures and mechanisms for social integration, Indonesia faces challenges in both areas. These issues will only be solved if Indonesia implements serious legal reforms to create more coherent protection and clear guidelines on refugee status determination, asylum procedures, and long-term residency rights. This chapter is going to focus on two major parts of suggested reforms to Indonesia's management system: legal and social remedies for refugees.

First, the need for legal change will be assessed by assessing the gaps in Indonesia's current legal framework and drawing parallels to Hungary's more organized refugee law system. This research will highlight areas where Indonesia's legal approach falls short, particularly in terms of establishing refugee status, describing asylum processes, and protecting refugees' rights. Resolving these inadequacies can help Indonesia further fortify its legal framework with regard to managing refugees, closer to the best international standards. It would also look into some of the social alternatives for improving such a legal reform through an increase in community-driven project adoptions. Measures on integrating refugees to promote social cohesion and to allow them to contribute significantly to Indonesian society, as implemented from experiences in Hungary and the global best practices, are explored in this section.

Social programs providing education, vocational training, and job opportunities, and access to healthcare and other essential services, can empower refugees. Additionally, this should be extended to involve local populations and make people feel solidarity and shared responsibility for the successful integration of immigrants. Indonesia can move closer to a truly humane future if it adopts a holistic approach that will combine legal change with inclusive social policy.

1. The Legal Reform for Refugee Handling in Indonesia

1.1. Urgent Need to Define the Difference Between the Asylum Seeker and the Refugee

One of the most pressing issues for Indonesia in developing a coherent legal framework for refugee protection is the need to clearly define the difference between asylum seekers and

refugees. While these terms are often used interchangeably in colloquial discourse, they hold distinct meanings under international law, with important legal implications for the rights and protections afforded to individuals. The 1951 Refugee Convention and its 1967 Protocol, which provide the core legal standards governing refugee protection globally, define a refugee as a person 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"* (Article 1A(2), of the 1951 Refugee Convention)[348]. This definition sets a high bar for establishing refugee status, requiring both a subjective element (the individual's fear of persecution) and an objective element (the legitimacy of that fear based on prevailing circumstances).

The concept of an asylum seeker based on the Hungarian Asylum Act 2007, on the other hand, refers to *"individuals who are seeking international protection but whose status as refugees has not yet been legally determined"*[349]. Unlike refugees, whose need for protection has been formally recognized, asylum seekers are individuals in the process of applying for that recognition. International law does not provide a specific legal definition of *"asylum seeker"* as it does for *"refugee,"* but the term is generally understood to apply to individuals whose claims for protection are still pending[350]. This legal distinction is crucial because the rights and protections available to asylum seekers differ significantly from those afforded to recognized refugees[351]. The failure to clearly define this distinction in national law can lead to confusion and inconsistencies in the treatment of individuals seeking protection, in some cases, the confusion leads to bad treatment by the officials, such as classifying the asylum seeker as an illegal migrant, and most of them likely to end in the detention center without any further legal action[352].

In Indonesia, the absence of clear legal definitions for asylum seekers and refugees has created significant challenges in the implementation of refugee protection policies. Presidential Regulation No. 125 of 2016 concerning the *Handling of Refugees from Abroad* is currently the primary legal instrument addressing the issue of refugees in Indonesia. However, this regulation falls short of fully addressing the distinction between asylum seekers and refugees,

[348] UNHCR, Article 1.
[349] Government of Hungary, Act LXXX of 2007 on Asylum, 2007.
[350] UNHCR, "Ensuring the Safety of Asylum Seekers.".pp.1-32.
[351] Suyastri, Bahri, and Marhadi, "Legal Gap in Refugee Protection in Non-Signatory Countries: An Evidence from Indonesia."pp.193-234.
[352] Bahri, "Understanding The Pattern of International Migration : Challenges in Human Right Protection.".pp.81-94.

focusing primarily on the practical aspects of managing refugees after they have been recognized by the UNHCR Indonesia in Jakarta, which creates further problems because only less than 5 percent of an asylum seeker who entering Indonesia are accepted as refugees yearly[353]. Legally, this thing is stated on the Article 1(1) of the PR 125/2026 regulation defines refugees as individuals who are recognized by UNHCR or another competent authority as having refugee status. However, it does not define or regulate the status of asylum seekers, leaving individuals in this category in legal uncertainty for extended periods, which in most cases most of them are already waiting more than 5 years[354].

Furthermore, the lack of a clear distinction between asylum seekers and refugees in Indonesia's legal framework also has implications for compliance with the principle of *non-refoulement*, a cornerstone of international refugee protection[355]. Non-refoulement, as enshrined in Article 33(1) of the 1951 Refugee Convention, prohibits the expulsion or return ("refoulement") of a refugee to a country where they would face threats to their life or freedom on account of race, religion, nationality, membership of a particular social group, or political opinion. The legal absence on this matter is creating further problems, because as stated in Article 72 (1) of the Indonesia Immigration Law No. 6/2011, the person who enters Indonesia illegally without proper documents, which stated as passport or visa, is declared to violate the immigration law and subjected to detention[356].

Indonesia's huge legal gap could potentially violate human rights. Because, even though Indonesia is not a member to the Refugee Convention or its 1967 Protocol, the principle of non-refoulement is widely accepted as a rule of customary international law, binding all nations regardless of their treaty obligations[357]. Asylum seekers, whose claims have not yet been adjudicated, may nonetheless be at risk of refoulement if their legal status is not adequately protected during the asylum process. In practice, Indonesia's reliance on UNHCR for RSD has led to delays in processing asylum claims, increasing the risk that individuals who may be entitled to protection under international law could be forcibly returned to situations of danger before their claims are fully assessed[358].

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[353] UNHCR, "A Transit Country No More: Refugees and Asylum Seekers in Indonesia" (Jakarta, May 1, 2021), www.mixedmigration.org..pp.3-43.
[354] Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia.".pp.32-44.
[355] M. Alvi Syahrin, "The Implementation of Non-Refoulement Principle to the Asylum Seekers and Refugees in Indonesia," *Sriwijaya Law Review* 1, no. 2 (2017): 168–78, https://doi.org/10.28946/slrev.Vol1.Iss2.41.pp168-178.
[356] Republic of Indonesia, "Indonesia Law No. 6 /2011 on Immigration," 6 Lembaran Negara RI § (2011).
[357] Kneebone, Missbach, and Jones, "The False Promise of Presidential Regulation No. 125 of 2016?," 2021.
[358] Syahrin, "The Implementation of Non-Refoulement Principle to the Asylum Seekers and Refugees in Indonesia.".pp.168-178.

Moreover, the inability to make a clear distinction between asylum seekers and refugees in Indonesia's legal framework has brought about operational difficulties to the government and humanitarian organizations providing support and assistance to these displaced individuals. Without clear legal guidelines from asylum seekers versus those of refugees who have gained recognition, government agencies and international organizations, such as UNHCR, are left with gray areas in which they find themselves treating asylum seekers inconsistently. For instance, in Indonesia, asylum seekers are often detained in immigration detention facilities while their claims are being processed; they often have limited access to essential services like healthcare, education, and legal aid[359]. This practice is in sharp contrast to the protection extended to refugees under the 1951 Refugee Convention, which stresses that refugees should not be penalized for their illegal entry or presence in a country, provided they present themselves to the authorities without delay and show good cause for their illegal entry (Article 31).

Another critical area where legal reform is urgently needed in Indonesia is in the procedural rights of asylum seekers. According to international law, asylum seekers have the right to an efficient and fair procedure to determine their status, inclusive of access to legal representation, the right to appeal negative decisions, and in presenting evidence in support of their claim. For instance, in the EU, the Asylum Procedures Directive sets detailed procedural standards that member states are to implement in processing asylum claims in order to guarantee the needed procedural guarantees for applicants. Indonesia does not have a national refugee status determination system but relies on UNHCR to conduct RSD on its behalf. This reliance on an external body has led to significant delays in processing asylum claims, leaving asylum seekers in legal limbo for extended periods of time. Legal reform in Indonesia should therefore include the establishment of a national RSD system that provides asylum seekers with clear procedural rights and ensures that their claims are processed in a timely and efficient manner.

Moreover, the lack of a clear legal distinction between asylum seekers and refugees also has important implications for the rights and protections afforded to these individuals under international human rights law. Refugees, once recognized, are entitled to a range of rights under the 1951 Refugee Convention, including the right to work (Article 17), the right to education (Article 22), and the right to public relief and assistance (Article 23). These rights

[359] Suyastri, Bahri, and Marhadi, "Legal Gap in Refugee Protection in Non-Signatory Countries: An Evidence from Indonesia."

are based on the understanding that refugees, having been forced to flee persecution, are entitled to a certain level of protection and support in their host countries. However, asylum seekers, whose claims have not yet been adjudicated, are often denied access to these rights due to their uncertain legal status. In Indonesia, asylum seekers are frequently denied access to employment, education, and healthcare, which significantly impacts their ability to live with dignity while their claims are being processed. This situation contravenes Indonesia's obligations under international human rights law, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Indonesia is a party. Article 6 of the ICESCR, for example, recognizes the right of everyone to work, while Article 12 recognizes the right of everyone to the highest attainable standard of physical and mental health[360].

The social consequences also include the failure to draw a line between asylum seekers and refugees. In Indonesia, as in many countries, public perceptions of asylum seekers and refugees are often made through misconceptions and stereotyping, with asylum seekers frequently being viewed as *"illegal immigrants"* or economic migrants rather than individuals in need of protection. This misunderstanding leads to xenophobia and discrimination against the displaced persons, further exacerbating their potential to become productive members of a local community and hindering them from getting much-needed help and assistance. For example, recently in January 2024, in the Sidoarjo Area, East Java region, the locals forcibly move thousands of Rohingya to *"isolated"* regions, in order to separate them from the locals without proper access to the basic needs[361]. By legally defining the difference between asylum seekers and refugees in its legal framework, Indonesia can help to combat such negative perceptions and create greater public awareness of the challenges faced by displaced people. Public awareness campaigns, coupled with legal reforms, are a vital part of the process to reduce stigma and promote social integration of asylum seekers and refugees.

In contrast, those countries which have instituted a wide-reaching legal framework for asylum seekers and refugees have generally been able to manage flows much more effectively and humanely, witness the EU experience in managing the Ukrainian refugees[362]. These frameworks establish not only clear legal distinctions between asylum seekers and refugees but

[360] Putri, "The Dilemma of Hospitality: Revisiting Indonesia's Policy on Handling Refugees Under International Law.".pp.113-130.
[361] BBC Indonesia, "'Rohingya Di Sidoarjo', 'Rohingya Minta Tanah', 'Menlu Retno Usir Rohingya' – Bagaimana Narasi Kebencian Dan Hoaks Bekerja Menyudutkan Etnis Rohingya?," BBC Daily News, 2024, https://www.bbc.com/indonesia/articles/c03y7n3k12lo.
[362] Mohammad Thoriq Bahri, "Assessing EU Readiness to Manage Ukrainian Refugees: From Openness to Legal Limitation," *Danube* 14, no. 2 (2023): 131–52, https://doi.org/10.2478/danb-2023-0009.

also provide structured processes for the determination of refugee status and afford protection. They represent a balance between state sovereignty and international legal obligations, notably the 1951 Refugee Convention and its 1967 Protocol. Examples of this include Canada and Hungary; their approaches vary, however, in terms of inclusiveness and the extent of rights protection.

Canada has been referred to as a model with one of the most progressive and inclusive legal frameworks. For this reason, under the IRPA, Canada clearly legally differentiates between asylum seekers-those whose claims for refugee protection have been submitted, but not yet processed-and recognized refugees.[363]. The IRPA assures that asylum seekers receive crucial legal protections, such as access to legal representation and social services, including a right to work while claims are being processed. It is this legal distinction, along with the rights granted, that avoids the sort of legal limbo so frequently seen in countries with less developed systems. Social services, health care, and labor rights combine to give the asylum seekers the right to a minimum standard of living, hence promoting social inclusion in respect of the commitment that Canada has toward international standards for human rights, specifically ICESCR. It follows the rights-based approach that is inclusive in allowing the asylum seeker to live a life with dignity, while they are contributing members even prior to their claim's final adjudication[364].

In contrast, Hungary represents another model, reflecting a more restrictive, security-oriented approach to the management of refugee flows. Hungary, since the 2015 European migration crisis, has adopted an increasingly restrictive asylum policy within its legal framework based on control and deterrence. While Hungary is a contracting party to the 1951 Refugee Convention and the CEAS, its asylum laws have been amended to shift the focus towards reducing the number of asylum seekers who manage to enter the country. Hungarian law places severe restrictions on asylum seekers, including the establishment of transit zones along the Serbian border where asylum applications are processed under conditions of heavy control[365]. Unlike Canada's inclusive system, Hungary restricts access to legal representation and has limited the right of asylum seekers to appeal decisions, creating significant barriers to fair asylum proceedings.

[363] FEANTSA, "Country Fiche: Canada" (Toronto, 2021).pp.1-23.
[364] Didem Doğar, "Unrecognizing Refugees: The Inadmissibility Scheme Replacing Article 1F Decisions in Canada," *International Journal of Refugee Law* 35, no. 4 (2023): 370–403, https://doi.org/10.1093/ijrl/eeae001.
[365] Lenneke Teunisse, "The Legality of the Hungarian Röszke Transit Zone" (Tilburg Law School, 2021).

Furthermore, Hungary does not afford asylum seekers with the same access to social services seen in Canada; instead, Hungarian policies favor detention or being confined in transit zones under really harsh conditions[366].It has also led to the criminalization of irregular entry, where asylum seekers and migrants are treated as security threats. Human rights organizations have criticized Hungary's approach as violating the principle of non-refoulement, among other key human rights provisions guaranteed under EU law[367]. The restrictions on asylum seekers' rights to work, education, and healthcare not only exacerbate their vulnerability but also hinder their ability to integrate into Hungarian society.

While the legal system of Hungary has succeeded in limiting the number of asylum seekers, partly due to physical barriers such as border fences and accelerated asylum procedures, it does raise questions with regard to international obligations[368]. However, such an approach raises concerns over adherence to international obligations and the long-term social consequences of marginalizing asylum seekers. Hungary's policies, in placing security considerations above human rights, represent a model of deterrence rather than one of integration or protection.

Contrasts to Canada and Hungary, Malaysia and Thailand would provide examples of states with an incomplete legal framework in place regarding refugees and asylum seekers. Both countries host a substantial population of refugees and are not parties to the 1951 Refugee Convention. Therefore, asylum seekers in Malaysia and Thailand are significantly vulnerable legally and practically[369].Without a legal framework to differentiate asylum seekers from irregular migrants, both countries have used detention as a primary response. Asylum seekers are detained for long periods under immigration laws that do not consider their protection needs. For example, in Malaysia, asylum seekers are often treated as undocumented migrants, denied access to legal representation, health care, or the labor market[370]. These conditions not only

[366] Stefania Carrer, "The Confinement of Asylum-Seekers in Transit Zones Amounts to Unlawful Detention . Hungary Condemned by the ECtHR for Multiple Violations of the Convention," no. 1 (2017): 1–6.
[367] Helena Segarra, "Dismantling the Reception of Asylum Seekers: Hungary's Illiberal Asylum Policies and EU Responses," *East European Politics* 40, no. 1 (2024): 43–63, https://doi.org/10.1080/21599165.2023.2180732..pp.43-63.
[368] Kristina Korte, "'Who Is the Animal in the Zoo?' Fencing In and Fencing Out at the Hungarian-Serbian Border. A Qualitative Case Study," *Journal of Borderlands Studies* 37, no. 3 (2020): 1–22, https://doi.org/10.1080/08865655.2020.1787188..pp.453-474.
[369] Thillai Raja Pertheban et al., "The Impact of Proactive Resilience Strategies on Organizational Performance: Role of Ambidextrous and Dynamic Capabilities of SMEs in Manufacturing Sector," *Sustainability (Switzerland)* 15, no. 16 (2023), https://doi.org/10.3390/su151612665.
[370] Laurence Todd, Adli Amirullah, and Wan Ya Shin, "The Economic Impact of Granting Refugees in Malaysia the Right to Work," *Policy Ideas* 60, no. 1 (2019): 1–44, www.ideas.org.my.

exacerbate the vulnerability of asylum seekers but also contradict international human rights standards, such as the right to work and protection from arbitrary detention.

The legal and social consequences of such a policy gap are deep. In Malaysia and Thailand, asylum seekers are denied basic rights and their lives can be precarious, often in the shadows of society[371]. Without the protection of the law, little opportunity for meaningful integration into the host country is created, so asylum seekers rely on informal networks and humanitarian assistance to survive. Furthermore, the countries continue to struggle with refugee flows due to systemic inefficiencies and violations of human rights caused by the absence of a formal legal difference between refugees and irregular migrants.

From these comparative examples, it would thus appear that comprehensive legal frameworks, such as the one in Canada, are a necessity in the management of refugee flows while at the same time considering the rights of those seeking protection. Although the Hungarian model has succeeded in reducing the number of refugees, it has done so at the expense of human rights and thus constitutes a trade-off between security-oriented policies and humanitarian obligations. Contrasts are evident in countries like Malaysia and Thailand, which, without a clear legal framework to handle refugees, pose immense challenges in the area of protection and fair treatment.

These examples are particularly important for Indonesia, which still does not have a comprehensive legal framework on refugees and asylum seekers. Indonesia could strive for a balanced approach between the rights-based system of Canada and the concerns on border security management in Hungary to achieve a more effective and humane system. By setting clear legal distinctions and protections for asylum seekers, and allowing access to basic services, Indonesia can bring its policies in line with international standards and develop a more sustainable, rights-respecting approach to managing refugee flows.

As can be seen from the above analysis, defining the distinction between asylum seekers and refugees is not only a question of legal precision but a necessary step toward fair and humane treatment of persons seeking protection in Indonesia. Indonesia can take guidance from the principles laid down in the 1951 Refugee Convention to establish a legal framework that would give clarity to government agencies, humanitarian organizations, and displaced individuals themselves. Indonesia can ensure that both asylum seekers and refugees have all their rights and protections by coming up with clear legal definitions of asylum claims and

[371] Muzafar Ali, Linda Briskman, and Lucy Fiske, "Asylum Seekers and Refugees in Indonesia: Problems and Potentials," *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 8 (July 26, 2016): 22, https://doi.org/10.5130/ccs.v8i2.4883.

procedures for handling such claims, while at the same time meeting its commitments arising from international human rights law. Legal reform in this respect is urgently needed, not only to ameliorate the situation of the displaced persons themselves but also to provide Indonesia with the potential for a much more humane and effective response to the challenges of forced migration.

1.2. The Needs to Develop the Procedures for the Refugee Status Determination (RSD)

As identified from the foregoing analysis, one of the more serious problems that Indonesia has faced in dealing with asylum seekers and refugees has been the lack of a national procedure for RSD. RSD is the legal and administrative process by which a country determines whether an individual who applies for asylum qualifies as a refugee under international law[372]. Without a formal national procedure, Indonesia relies heavily on the UNHCR to conduct RSD on its behalf. This reliance brings many challenges. First, it limits Indonesia's capacity to directly manage the asylum process, effectively outsourcing a core function of state sovereignty to an international body[373]. This, in turn, leads to inconsistencies and delays because the UNHCR, with limited resources and overworked, cannot always efficiently process or process within a reasonable timeframe[374]. These delays mean continued uncertainty for asylum seekers who may spend years in limbo, living in precarious conditions without access to fundamental rights such as healthcare, education, and employment[375]. Indonesia must, therefore, consider the creation of a national RSD system that would not only reflect greater control over its immigration and refugee policies but also allow the country to meet its obligations under international human rights law.

While the 1951 Refugee Convention and its 1967 Protocol provide the legal framework for international refugee protection, neither defines the specific procedures that states should follow in determining refugee status. The Convention does, however, outline the criteria an individual must meet to be recognized as a refugee. Article 1A(2) of the Convention defines a

[372] UNHCR, "Refugee Status Determination (RSD)," UNHCR Standard Procedures, 2020, https://emergency.unhcr.org/protection/legal-framework/refugee-status-determination-rsd.
[373] Dewansyah and Nafisah, "The Constitutional Right to Asylum and Humanitarianism in Indonesian Law: 'Foreign Refugees' and PR 125/2016.".pp.112-121.
[374] Atin Prabandari and Yunizar Adiputera, "Alternative Paths to Refugee and Asylum Seeker Protection in Malaysia and Indonesia," *Asian and Pacific Migration Journal* 28, no. 2 (2019), https://doi.org/10.1177/0117196819850946..pp.4-7.
[375] Suyastri, Bahri, and Marhadi, "Legal Gap in Refugee Protection in Non-Signatory Countries: An Evidence from Indonesia.".pp.193-214.

refugee as an individual who has a well-founded fear of persecution because of his race, religion, nationality, membership of a particular social group, or political opinion and who is unable or unwilling to return to his home country because of such persecution. While Indonesia has signed neither the Refugee Convention nor its Protocol, the principle of non-refoulement prohibiting return to face persecution or serious harm has attained the status of customary international law norm, which binds whether as a matter of formal treaty obligations or not. For this reason, Indonesia, too, is bound by the principle of non-refoulement without being a party to the Convention. The absence of a national RSD system creates a serious risk of violating this principle, given that persons who may be entitled to refugee protection under international law might have been deported or returned in a manner inconsistent with such protection without prior determination.

The absence of a comprehensive national procedure for RSD in Indonesia is a major gap in the country's legal framework. Presidential Regulation No. 125 of 2016, which details the procedures for handling refugees from abroad, does not provide a clear, structured process for determining whether an individual is a refugee[376]. Instead, it largely defers this responsibility to UNHCR, as stated in Article 3 of the Regulation, which mentions UNHCR's role in identifying and managing refugees[377]. However, the law does not detail how the RSD process is to be conducted within Indonesia's jurisdiction, including procedural safeguards, timelines, and mechanisms for appeals. This uncertainty is not only for asylum seekers but also for government agencies responsible for managing refugee flows and ensuring that international standards are upheld. A national RSD system would bring clarity in ensuring due process for all seeking protection in concert with international norms.

One of the most striking single issues arising from Indonesia's reliance on UNHCR for RSD is the significant delays in processing asylum claims. Because of limited resources, UNHCR is often unable to process claims in a timely manner, leaving asylum seekers in a state of legal limbo for extended periods. These delays can last years, during which asylum seekers have limited access to basic rights and services. Many of them stay in immigration detention facilities that limit the freedom of movement and render them helpless in getting health services, receiving education, or using legal redress mechanisms. This directly violates international standards on human rights, which are accorded to everyone under the ICCPR. The ICCPR,

[376] Kneebone, Missbach, and Jones, "The False Promise of Presidential Regulation No. 125 of 2016?," 2021.
[377] M. Alvi Syahrin, "Diskursus Skema Pengawasan Pengungsi Setelah Penerbitan Peraturan Presiden Nomor 125 Tahun 2016 Tentang Penanganan Pengungsi Dari Luar Negeri Dalam Perspektif Keimigrasian," *Jurnal Ilmiah Kajian Keimigrasian* 2, no. 1 (2019): 71–84..pp.71-84.

through its Article 9, protects against arbitrary detention and promotes a right of liberty and security of a person. Prolonged detention without a proper legal procedure or explanation given might amount to a violation of this right. According to Article 12 of the International Covenant on Economic, Social and Cultural Rights, states are under obligation to ensure access to the highest attainable standard of health. The current situation in Indonesia, where asylum seekers are often left without adequate medical care while awaiting decisions on their refugee status, demonstrates a failure to meet these obligations.

The lack of a national RSD system in Indonesia also creates problems regarding the principle of non-refoulement, which is a crucial part of international refugee law. Non-refoulement under Article 33(1) of the 1951 Refugee Convention prohibits a state from returning refugees to territories where their life or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. While Indonesia is not a party to the Convention, the principle of non-refoulement has become customary international law; in other words, it binds all states whether or not they are signatories to the Convention. Relying on UNHCR for RSD, Indonesia is also likely to put asylum seekers at risk of refoulement, particularly where their claims are not processed in a timely manner or before their protection needs are adequately assessed. In such a case, it falls upon Indonesia to create a national RSD system to protect these individuals from being returned or otherwise removed to another country where they may be subject to persecution.

In bridging these gaps, Indonesia has to establish a national RSD system that incorporates clear procedures and safeguards for asylum seekers. The system would detail specific steps in processing the claim for asylum, which include the submission of applications, interviews, assessments, and issuance of decisions. Most importantly, the system should provide asylum seekers with legal representation, interpretation, and the ability to present evidence in support of their claims. These procedural safeguards are crucial to ensuring a fair and effective asylum process. For instance, the European Union's Asylum Procedures Directive 2013/32/EU establishes a sound framework to ensure asylum procedures are fair, making sure that applicants receive information about the process, access to legal assistance, and the right to appeal negative decisions[378]. Adopting similar procedural protections in Indonesia would

[378] T H E European Parliament et al., "Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 Laying down Standards for the Reception of Applicants for International Protection," Pub. L. No. Directive 2013/33/EU, EU Immigration and Asylum Law : A Commentary 96 (2016), https://doi.org/10.5040/9781782257615.0029.

help ensure that asylum seekers are given a fair opportunity to present their claims and that decisions on their status are made in a timely and transparent manner.

Besides procedural safeguards, Indonesia's national RSD system needs to spell out the right to appeal in case an asylum application is denied. This is especially so in order to ensure that international human rights law is adhered to, allowing individuals the right to challenge decisions against them affecting their basic rights. It is an essential part of due process, as it provides an opportunity for asylum seekers to appeal if they believe that their claim was assessed incorrectly. Without a sound appeal process, asylum seekers risk being wrongly denied protection and are thus more likely to face refoulement or other forms of human rights violations. The right of appeal has been codified in many countries, from Canada and Australia, so that asylum seekers face judicial review of decisions leading to refugee status and independent oversight on such questions[379]. Indonesia should follow these examples by incorporating a robust appeals mechanism into its national RSD system.

This would also allow Indonesia to show more ownership of its responsibilities towards refugees, instead of exclusively relying on UNHCR. In developing its own RSD procedures, Indonesia could make its asylum system more in line with the country's interests and available resources, while still sticking to international legal standards. This would also give the Indonesian government more flexibility in reacting to changes in the global refugee landscape, such as increases in the number of asylum seekers arriving in the country due to regional conflicts or other crises. For example, some countries like Brazil have integrated their RSD systems at a national level with larger migration policies, thereby offering them the ability to better manage flows of refugees while at the same time ensuring that those in need of protection are identified and protected[380]. A national RSD system in Indonesia could similarly help the country improve its capacity to manage asylum claims and ensure that refugee protection is handled in a consistent and legally sound manner.

Additionally, Indonesia could consider providing complementary forms of protection for those who may not meet the strict definition of a refugee under the 1951 Refugee Convention but who nevertheless face serious risks if returned to their home countries. Many countries, including those of the European Union, have introduced complementary protection mechanisms with the aim of granting asylum seekers legal status and access to basic rights

[379] FEANTSA, “Country Fiche: Canada.”.pp.224-227.
[380] UNHCR Brazil, “Brazil Plan of Action : Final Implementation Report 2024-2024” (Rio De Janiero, 2023), /www.acnur.org/sites/default/files/2023-12/Brazil-Plan-of-Action-final-implementation-report 2014-2024.pdf.

even when they do not qualify for refugee status under international law[381]. These various means of protection include humanitarian visas, subsidiary protection, or temporary protected status; each can provide a legal route to protection. Complementary protection mechanisms being developed in Indonesia would help ensure a greater number of displaced individuals have the protection they require and allow the asylum system to focus on the claims most important for refugee status.

Finally, in addition to measures specific to RSD itself, Indonesia should also make broader legal reforms with a view to ensuring that general protection of refugees and asylum seekers is enhanced at the national level. It could go so far as revising existing laws-for example, Presidential Regulation No. 125 of 2016-to provide further clarity concerning the rights and responsibilities for asylum seekers and refugees while putting in place a comprehensive legal framework on RSD. It could also involve the creation of specialized institutions, such as an independent refugee board or tribunal, to oversee the RSD process and ensure that decisions are made in accordance with international legal standards. Such institutions would provide greater accountability and transparency in the asylum process while helping to ensure that individuals seeking protection are treated fairly and that their rights are respected. Reforms of this nature would enhance Indonesia's compliance with international law, while also developing a more humane and efficient refugee protection system.

1.3. The Needs to Give and Restrict Access for the Asylum Seeker and Refugee

The displacement issues, which push people to leave their origin countries are always developing, from armed conflict to the natural disaster. Furthermore, counted from the year of 1900s to 2015, which resulted in the EU refugee crisis, armed conflict is dominating the main reason for people to leave their home countries, which is categorized as forced migration[382]. The armed conflict resulted in a mass influx of people, especially in the Post World War II era, which was called the *"war flaw"* opening the world's eyes, to the importance of the legal basis in refugee handling[383]. The war flaw, which was reflected by millions of Europeans who migrate to the United States and Australia, also became the main reason to develop the universal legal basis in refugee handling to create equality in international protection, which is

[381] Peter Stepper, "The Visegrad Group and the EU Agenda on Migration: A Coalition of the Unwilling?," *Corvinus Journal of International Affairs* 1, no. 1 (2016): 1, https://journals.lib.uni-corvinus.hu/index.php/cojourn/article/view/27.
[382] Andrea Crippa et al., "Conflict as a Cause of Migration," *MPRA Paper* 2, no. 112327 (2022): 1–9, https://ideas.repec.org/p/pra/mprapa/112327.html.
[383] Storey, "Armed Conflict in Asylum Law: The 'War-Flaw.'".pp.1-32.

the 1951 Refugee convention and 1967 Protocol which extend the geographical proximity. However, until December 2022, only 149 countries have ratified the agreement, of which Indonesia is not one of them.

In Indonesia, to apply for protection, refugees must pass through the refugee identification stage which is evaluated through the RSD by the UNHCR. The procedure for determining the refugee status is carried out through registration and interviews, in this interview later it can be determined whether it is appropriate to be granted refugee status if rejected, and refugees can appeal once. To carry on the evaluation process for the asylum seeker, the UNHCR representative office in Indonesia is established, based on an agreement signed on June 15, 1979, between the government of the Republic of Indonesia and the UNHCR. Then, for the refugee whose status is granted by the UNHCR, those to plan reach third countries (refugee recipient countries based on the Geneva Convention 1951 about Refugees) or who are their status is rejected, will keep staying in Indonesia, as the transiting countries waiting for their resettlement[384].

However, there are a lot of problems faced by refugees who waiting to be replaced by the refugee recipients' countries. Firstly, they are not allowed to work, Second, children and youth asylum seekers will have difficulty accessing the education that they should receive because there is no specific regulation that allows refugee children to enter formal education in Indonesia, and the administration of education admission is preventing them from entering formal education, despite the fact that education is recognized as a fundamental right for humans. Thirdly, children born to husband-and-wife refugees will have difficulty regarding their child's immigration status, which potentially leads to stateless immigration status. That problem will affect several problems later, such as getting health facilities, education, and registering for various other services, ending in the unfulfillment of basic human rights[385].

Legally, in the Indonesian constitution, Article 28G of the 1945 Constitution paragraphs 1 and 2 recognize the rights of individuals and family members to protection and a sense of security from threats, and fear, and recognizes the right to obtain asylum from another country. However, legally seeing that the entrance for foreigners to enter Indonesia is through immigration procedures, it is necessary to look at how immigration regulations regulate the legal status of refugees in Indonesia. Law Number 6 of 2011 concerning Immigration does not regulate the issue of refugees, thus positioning refugees who enter Indonesia as illegal

[384] UNHCR, "A Transit Country No More: Refugees and Asylum Seekers in Indonesia.".pp.33-45.
[385] Suyastri, Bahri, and Marhadi, "Legal Gap in Refugee Protection in Non-Signatory Countries: An Evidence from Indonesia.".pp.1-32.

immigrants or victims of human trafficking who must be placed in the Immigration Detention Center before deportation to the country of origin[386]. Whereas in reality thousands of asylum seekers came to Indonesia to transit and register themselves as refugees at the UNHCR Jakarta office, then based on the existing Immigration Law, all of them are categorized as illegal immigrants and must be placed in detention houses, considering the feasibility, capacity, and other humanitarian factors, the detention procedures potentially violate the human rights. Although 2016, the government issued Presidential Regulation Number 125 of 2016 concerning the procedures for handling Refugees from Overseas, that regulation fails to be implemented effectively. That regulation entrusts the refugees to be redistributed to the local government, but the local government refuses to receive them, because of the lack of funds[387].

Indonesia's Government, which is not a ratifying country for the 1951 Convention and the 1967 protocol, places it in a paradoxical situation, on the one hand, the rules that discuss human values tend to be more inclined to the protection of refugees, and on the other hand, Indonesia does not have a legal basis for regulating technical issues of refugee protection. The situation on the ground becomes more complicated when hundreds, even thousands of asylum seekers are already in Indonesia, and most of them are entering Indonesia as a tourist. The *"onboard declaration",* which means many asylum seekers are disguised as tourist phenomenon occurs because, in 2016, the Indonesian government implemented presidential regulation number 21 of 2016 regarding visa-free which allows 169 countries, including conflicting countries to enter Indonesia freely without any visa[388].

Indonesia's status, which until now has not been a party to the 1951refugee convention and 1967 protocol, has made Indonesia addressing the problems of refugees in Indonesia's territory limited, it would be different if the Indonesian government chose to ratify the 1951 refugee convention and 1967 protocol. However, many Indonesian law experts, argued that there are several articles in the convention that cannot be fulfilled by the Government of Indonesia.

Based on the UNHCR, the minimum rights which will be granted to the asylum seeker and refugees can be defined as follows : (1) The right not to be repatriated (refueled) to a country where the refugees have reason to fear persecution (article 33); The right not to

[386] Bahri, "Understanding The Pattern of International Migration : Challenges in Human Right Protection.". pp.81-98.
[387] Keith Mark Nyende, "Refugee Local Integration: Local Governments as Stakeholders in the Implementation of the Comprehensive Refugee Response Framework in Uganda," 2021.
[388] Rizky Octa Putri Charin, "Refugees and Asylum Seekers in Indonesia Amid the Spread of COVID-19: Case Study of Refugees and Asylum Seekers in Pekanbaru," *Indonesian Perspective*, 2021, https://doi.org/10.14710/ip.v6i2.43546.

experience expulsion, except in certain very clear circumstances (article 32); Exemption from the penalty for illegally infiltrating a State Party to this Convention (art. 31);); Right to work (article 17); The right to own a house (article 21); The right to obtain education (article 22); The right to obtain public assistance (article 23); The right to freedom of religion (article 4); The right to obtain legal services (article 16); Freedom of movement within the territory of the state (article 26); The right to obtain an identity card (article 27) [389].

From the several minimum rights stated by the UNHCR as mentioned previously, the right of non-refoulment, the right not to experience expulsion, and exemption from the penalty for illegal infiltrating a state party (Article 33, 32, 31) are well accommodated by the Indonesia Government. To accommodate the rights, Alternative Detention is developed, which is implemented by the guidance of Presidential Regulation No. 125/2016 on Handling of Refugees from Abroad. The alternative detention mechanism sends the asylum seeker outside of the detention center to alternative places, such as the local shelter, and provide those asylum seekers with basic needs such as food, water, and even internet access, in some shelter they even have small parks for the children[390]. Also, the rights to obtain public assistance, the right to freedom of religion, the right to obtain legal services, and the right to obtain an identity card are well accommodated, the asylum seeker is receiving public assistance from the local government, and even access to the lawyer and psychologist for the consultation purposes about the progress of the RSD which conducted by the UNHCR. Furthermore, the right to obtain an identity card is also accommodated by the government of Indonesia by issuing the *"asylum seeker identity card",* which is legally based on Presidential Regulation Number 125 of 2016 concerning the handling of refugees from abroad, especially in Article 35 letter C, the identity card besides functioning as identification, also functions to oblige refugees to report to the immigration detention center each month, and as the basis for the criminal code implementation, in case if the asylum seeker breaking the law[391] .

However, argued that the (1) Right to work, (2) Right to obtain an education, and (3) Right to Freedom movement within the territory of the state, are becoming the biggest obstacles for the Indonesian government to ratify the 1951 refugee convention. The rejection of those articles to be implemented was also reflected by the member of the national parliament (DPR),

[389] Maja Janmyr, "The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda," *International Journal of Refugee Law* 33, no. 2 (December 24, 2021): 188–213, https://doi.org/10.1093/ijrl/eeab043.
[390] Detention Watch Network, "The Case Against 'Alternatives To Detention,'" 2022.pp.22-25.
[391] Republic of Indonesia, "Presidential Regulation No.125/2016 on Handling of Foreign Refugees," Pub. L. No. 125/2016, 1 (2016).

who refused the ratification draft handed by the Ministry of Law and Human Rights of the Republic of Indonesia in 2019, but in the same event, the head of the representative also give a speech if Indonesia commits to helping the asylum seeker, within the framework of humanity. Then, this research will analyze the legal burden of the specific articles, for Indonesia to keep its position as a non-signatory's country from the perspective of legal and social context, to understand deeper about the main reason why Indonesia does not ratify the 1951 refugee convention until now.

1.3.1. Rights to Work

Article 17 of the 1951 refugee convention stated if *"The Contracting State shall accord to refugees lawfully…, as regards the right to engage in wage-earning employment"*, the article requires state parties to the Convention to provide jobs for refugees. Based on the legal and social conditions; to fulfill these requirements, the government of Indonesia is still unable to meet the conditions. In terms of a legal norm, as regulated in Government Regulation No. 34/2021, Article 2.1, states, *"Every Employer, must prioritize the Indonesian Nationals as an employee in any kind of position",* also in Article 5.1, states if *"The employer only can recruit foreign nationals, for this kind of position only: (1) Director or Commissioner, (2) Foreigner who work in the fields of education, digital economy, and oil and gas sector".* Concluded if legally, the foreigner who works in Indonesia must be an investor, owner or director of an established company, or sent by his/her country because of specific expertise in the field of education, digital economy, and oil and gas sector. After meeting those requirements, the foreigners who work in Indonesia have to be guaranteed by the company and officially registered before that foreign worker enters Indonesian territory by using the official working visa.

Furthermore, to work legally in Indonesia, referring to the general provisions of Law no. 6/2011 on immigration, the foreign worker shall have the kind of documents: Article 1 Paragraph: (13) Travel Documents, which are official documents issued by authorized officials of a country, the United Nations, or other international organizations to travel between countries that contain the identity of the holder. Immigration Documents/visas are Travel Documents of the Republic of Indonesia and Stay Permits issued by Immigration Officers or foreign service officials. Can be concluded that every foreign worker is required to have valid and valid Travel Documents (Passport and Passport-Like Travel Documents) and have a valid and valid Visa unless otherwise stipulated based on this Law and international agreements (see

provisions of Article 8 Paragraph (1) and (2) of the Migration Law), otherwise, they will be categorized as an illegal worker, and sanctioned under the Indonesian criminal code[392].

Based on Law no.6/2011 on immigration, Article 39, the working visa only can be issued for who are: experts, researchers, students, investors, the elderly, and their families, as well as foreigners who are legally married to Indonesian citizens, who will travel to Indonesian Territory to reside for a specified time. limited; or to join to work on ships, floating equipment, or installations operating in the territorial waters of the archipelago, territorial sea, continental shelf, and/or the Indonesian Exclusive Economic Zone. Legally, no regulation allows asylum seeker or refugee to work in Indonesian territory. This analysis is also supported by several previous publications, as argued by Sianturi, a worker or laborer is anybody who works for cash or other sorts of reward[393]. Along with those concepts, the employer-employee relationship based on a labor agreement that contains components of work, wages, and orders, must comply with Indonesian labor regulations, and asylum seeker and refugees based on the Indonesian labor regulation, doesn't have any rights to work legally in Indonesia. Missbach further suggested that the limitation on asylum seekers and refugees working is due to a lack of legal regulation *"bridging"* the International Convention into national-level regulation, resulting in a lack of regulation to grant permission for asylum seekers and refugees to enter the labor market[394].

From a social standpoint, the main reason is that the number of unemployed people in Indonesia is still relatively high, which reach up to 4.5 percent in 2021[395]. The high unemployment is also becoming the primary reason for the Indonesia House Representative to reject the ratification of the 1951 refugee convention as the priority for the formation of national laws in 2020. Also, for medium to low-skilled, non-managerial jobs, the government only allows them to be done by Indonesian nationals who are protected by social security programs, with the goal of not only improving worker quality but also providing a safety net.

Furthermore, in Indonesia, only 6 percent of the total population has a higher education degree (bachelor level or above), which means that low-middle skills jobs, needed only a junior

[392] Soewarto, "Manpower Act of Indonesia: Guide Book," 2023.pp.7-9.
[393] Marupa Hasudungan Sianturi and Nino Viartasiwi, "Advocating the Temporary Rights to Work for Refugees and Asylum Seekers in Transit in Indonesia," *Indonesia Law Review* 11, no. 3 (2021), https://doi.org/10.15742/ilrev.v11n3.2.
[394] Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia: From Immigration Detention to Containment in 'Alternatives to Detention.'".pp.32-43.
[395] Ike Farida, "Indonesia The Social Security and Unemployment Trends during COVID-19 Pandemic in Indonesia" 6, no. 20 (2022): 27–36.

or high school certificate and need to be protected by the government[396]. This is also becoming the main reason why the government of Indonesia only allows investors, owners, and high managerial jobs which can be filled by the foreign worker.

The other reason is the potential for horizontal conflict between the locals and the asylum seeker. In 2019, more than 198 cases were filed concerning the conflict between the foreign worker and the local worker[397]. In several provinces, such as South Sulawesi and West Java, the locals held a demonstration to cut the contract of the foreign worker who works in several industries, who the locals believe will take over their job. Also in the North Sumatra provinces, thousands of people have held a demonstration against the local authorities, about the plan to relocate the asylum seeker to Medan city, and give them direct access to the asylum seeker to become a voluntary worker in state-owned enterprises.

Concluded, the right to work, which is stated in Article 17 of the 1951 Refugee Convention is legally and socially quite hard to be implemented properly. Firstly, from a legal perspective, the government is limiting the number of foreign workers by implementing strict procedures for non-Indonesia nationals to work, then it seems impossible for the asylum seeker to enter the job market. Secondly, from a social perspective, low-middle skills job is highly protected by the government, because most Indonesian are working in this sector and only 6 percent of Indonesian can work at a high-level managerial job that requires a university degree. Lastly, the horizontal conflict between the local worker and foreign worker is always developing, then involving the asylum seeker in the job market can be a high-risk policy to do so.

1.3.2. Rights to Obtain Education

The second obstacle is to prove the rights of education for the asylum seeker, which is stated in Article 13, of the 1951 Refugee Convention. Legally, Indonesia is not a ratified country that is not responsible to provide access to education for refugees. However, it's not that simple, Indonesia is a ratified country for the United Nations Convention on The Right of Childs 1989, then Indonesia should provide the access to asylum seekers to join formal education. The Convention on the Rights of the Child provides special international law

[396] Yasmine Soraya, "The Heterogeneous of State and State Governance: Case of Indonesian Irregular Migrants in the Netherlands," *Indonesian Journal of International Law* 17, no. 3 (2020): 413–28, https://doi.org/10.17304/ijil.vol17.3.793.
[397] Kuo Wei Yen and Li Chuan Liuhuang, "A Review of Migrant Labour Rights Protection in Distant Water Fishing in Taiwan: From Laissez-Faire to Regulation and Challenges Behind," *Marine Policy* 134 (December 1, 2021), https://doi.org/10.1016/j.marpol.2021.104805.

obligations associated with children and sets several guiding principles on child protection, which can be summarized as follows : (a) The best interests of the child must be a key consideration in all effect action against children, including seekers asylum and refugee children ; (b) There should be no discrimination race, color, gender, language, religion, politics or other opinions, origin national, ethnic or social status, property, disability, birth or status other, or on a status basis, activities, opinions expressed, or beliefs of the child's parents, guardians law or family members ; (c) Every child has basic rights to live, survival and self-development to the fullest possible; (d) Children must be guaranteed to have the right to express their views freely; (e) Children have the right to unity family and the right not to be separated from their parents against their will[398].

The legal norms of the convention also push the parties' country, as summarized as follows: Article 20(1) of the CRC stipulates that a child who is deprived of his family environment temporarily or temporarily permanent, or for the sake of interest his own best can not be left to remain in the environment, entitled to protection and special assistance provided by the state : (f) Articles 20 (2) and (3) of the CRC require States Parties shall, accordingly with their national law to ensure alternative treatments for kids like that. (g) Article 22 of the CRC requires States parties to take appropriate steps to ensure those children who are seeking refugee status or refugees who are recognized, whether accompanied or not, receive protection and assistance rights. (h) Article 37 of the CRC requires States Parties to ensure that detention/detention of children is used only as last resort for some time.

Furthermore, to implement that International Convention, the Indonesian government issued Presidential Decree Number 36 of 1990, which make sure that those children must refer to the Convention on Rights at every level and phase of their development. Also, the Indonesian government enacted several legislation and regulations, including Law Number 23 of 2002 on Child Protection and Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection. Then, legally it must be no problem for the asylum seekers, especially those who are still of education age, to attend formal school.

However, from the legal perspective, several obstacles related to the procedures and legal formal step is identified. Based on Presidential Decree No.36/1990, means that anyone over the age of 18 is eligible to attend the formal education provided freely by the government. The right to education is also discussed in the previous paragraph, specifically in article 22

[398] UN, "General Comment n. 11. Indigenous Children and Their Rights under the Convention," *Convention on the Rights of the Child* 11, no. 11 (2009).

paragraph 1, which states that *"State Parties must take appropriate steps to ensure that a status-seeking child refugee or the deemed as a refugee, according to international law and procedure or applicable domestic, whether or not followed or followed by their parents or by any other person, shall receive proper protection and humanitarian aid in the acquisition of existing rigors".* For children of refugees or asylum seekers to be registered in a public elementary school in Indonesia, the school must meet administrative requirements. One administrative requirement is described in Article 8 of the Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 17 of 2017 concerning the Acceptance of New Students at Kindergarten, Elementary School, Junior High School, School High School, Middle School Vocational, or other form Equivalent, namely: *"The age requirement as referred to in Article 4, Article 5 paragraph (1), Article 6 letter a, and Article 7 paragraph (1) letter and is proven by a certificate of birth."*. Then, from a legal perspective, the legal document, which is the certificate of birth to join formal education is becoming the main obstacle.

From a social standpoint, integration challenges might be tough for children who need to attend school in Indonesia. Many school principals in Indonesia demand pupils to be able to speak Bahasa Indonesia, which is impossible for them to learn in a short time and a local style, and many schools still perform entry tests as a legal requirement. Also discovered that in several community schools (not formal schools), many asylum seeker children found it difficult to follow instructions and become a member of the local children's community, and they chose to quit the school as a result of this type of integration issue[399].

The Government of Indonesia in cooperation with the UNHCR is trying to tackle the Integration problem by establishing the Refugee Learning Center (RLC), which uses the children's origin language as the primary language, and restricts this school only to the children of the asylum seeker, these initiatives can provide the children of asylum seeker solution to attend the education, and in 2021, almost 70 percent of children of the refugee can going to the school again. Furthermore, as a long-term solution, the Government of Indonesia also issued the Presidential Regulation No. 78 of 2021 Article 6. The contents of this article include data collection and mapping of the basic and specific needs of children in emergencies and the provision of legal assistance, assistance, physical, psychological, and social rehabilitation child in an emergency, including removing the legal formal barrier to asylum seeker children to attain the formal education. In conclusion, if in the future, the barrier to joining formal education,

[399] Daniel Suryadarma and Gavin W. Jones, *Education in Indonesia*, *Education in Indonesia*, 2013, https://doi.org/10.2307/3023860.

both legally and socially is tried solved by the government of Indonesia as soon as possible, then, the right to education may not become the primary burden for the refugees to attend the education in Indonesia while on transit.

1.3.3. Right To Freedom Movement Within the Territory of The State

In Article 26, of the 1951 refugee convention, the state parties should permit the asylum seeker and refugees the freedom of movement within the territory of the state. Indonesia is not a signatory of the 1951 refugee convention, but legally Indonesia ratify the 1948 Universal Declaration of Human Rights (UDHR), which stated if: 'Everyone has the right to life, liberty, and the security of one's person' (Article 3) and 'No one shall be subjected to arbitrary arrest, detention, or exile' (Article 4). (Article 9) . These were later incorporated into Article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Indonesia, which guarantees personal liberty and security and prevents arbitrary deprivation of such rights. Article 12 of the same legislation, which addresses constraints on freedom of expression, The freedom of movement, even if Indonesia does not ratify the refugee convention, is already applied under the UDHR and ICCPR framework, by implementing the Alternative Detention (ATC) schemes, rather than Immigration Detention Center (IDC) as the traditional detainee mechanism[400] .

The ATC schemes under the framework of UDHR and ICCPR is implemented after the Human Rights Watch issued a damning report, Barely Surviving: Detention, Abuse, and Neglect of Migrant Children in Indonesia, in June 2013, highlighting the plight of hundreds of jailed minor asylum seekers and refugees in immigration detention centers. Exactly one year later, the United Nations High Commissioner for Refugees (UNHCR) launched a new worldwide policy, *"Beyond Detention 2014-2019,"* to assist states in ending the detention of asylum seekers and refugees. The three main goals agreed upon under this strategy are "(1) to end the detention of children; (2) to ensure that alternatives to detention (ATD) are available in law and implemented in practice; and (3) to improve conditions of detention, where detention is necessary and unavoidable, to meet international standards[401].

There is no unified legal definition of what constitutes ATD. While some scholars define ATD as a set of policies and practices used by sovereign states to better manage immigration

[400] Primawardani and Kurniawan, "Penanganan Pengungsi Dari Luar Negeri Oleh Petugas Rumah Detensi Imigrasi Di Provinsi Sulawesi Selatan.".pp.4-16.
[401] UNHCR, "Beyond Detention.".pp.1-32.

that does not involve incarceration, Sampson et al. have proposed a set of minimum standards that must be met to qualify as ATD, including respect for fundamental rights, meeting basic needs, legal status and documentation, legal advice and interpretation, fair and timely case resolution, and regular review of placement decisions . ATD is defined in this article as the physical and spatial housing of asylum seekers and refugees outside of prison-like settings, which could be in a shelter or even an apartment, especially for women and children asylum seekers and refugees.

However, the implementation of the ATD is characterized by a lack of rights in that persons residing in ATD are barred from working and have trouble obtaining education, developing a dependency on aid and services[402]. Despite high levels of control and surveillance, such as curfews, limited visiting privileges, a limited radius of mobility, and regular police checks, also discovered a lack of physical protection for ATD inhabitants, who are afraid of attacks and encroachments by the locals. ATD maintains containment zones with semi-permeable borders, which give minimal safety to asylum seekers and refugees while also preventing genuine integration[403] .

The Makassar (South Sulawesi Provinces) ATD facilities were established in 2011 when the International Organization for Migrants (IOM) began employing two hotels to house asylum seekers and refugees who could not be put in the local IDC[404]. Since then, the number of ATD facilities has rapidly increased; in June 2013, there were already 10 ATD facilities in use, and 12 in January 2015. In April 2016, Makassar was home to 2,036 asylum seekers and refugees, 1,165 of whom were under IOM supervision. While the majority of them were housed in one of the 14 ATDs in the city and its outskirts, 196 were still being kept in an IDC in Makassar under IOM supervision. Unlike in other towns, no women or children were arrested at the IDC in Makassar, indicating the government's success in implementing the ATD schemes[405].

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[402] Ni Luh Gede Astariyani et al., "Policy on the Right to Education of Refugees in Indonesia and Australia," *Lex Scientia Law Review* 7, no. 1 (2023): 249–76, https://doi.org/10.15294/lesrev.v7i1.62964.
[403] Harriet Macey, "Safe Zones: A Protective Alternative to Flight or a Tool of Refugee Containment? Clarifying the International Legal Framework Governing Access to Refugee Protection against the Backdrop of Safe Zones in Conflict-Affected Contexts," *International Review of the Red Cross* 104, no. 919 (2022): 1455–75, https://doi.org/10.1017/S1816383122000078.
[404] Antje Missbach, Yunizar Adiputera, and Atin Prabandari, "Is Makassar a 'Sanctuary City'? Migration Governance in Indonesia after the 'Local Turn,'" *Austrian Journal of South-East Asian Studies* 11, no. 2 (2018): 199–216.
[405] UREF, "Makassar City : Refugee Profiling," UREF News, 2020, https://rdiuref.org/city-profile/makassar-city-profiling/.

The refugee camps in Aceh, on the other hand, are the consequence of impromptu emergency reactions that have been extended over time as improvised solutions, producing the camps in Aceh ATD by coincidence. In general, Indonesia had not seen any refugee camps since the Indochinese refugees were held on the island of Galang from the late 1970s to the mid-1990s, therefore the Aceh camps were unusual[406]. In May 2015, 1,807 asylum applicants from Myanmar's persecuted Rohingya ethnic and religious minority arrived in Aceh, Sumatra's northernmost province. Aceh has no IDCs to house them, while IDCs in neighboring provinces are already full. Even though other Rohingya have previously arrived in Indonesia and endured the standard detention procedures, this current batch stands out. In short, legally, the government of Indonesia is following the International UHDR and ICCPR about the freedom of movement for asylum seekers and refugees, but it cannot be implemented as the *"freedom of movement within countries",* because there is a lot of *"social risk"* which may be dangerous for the asylum seeker and refugee themselves[407].

From the social security perspective, the ATD also can *"protect*" the asylum seeker and refugees, because there are many rejections of local asylum seekers and refugees in Indonesia, especially in a big city such as Jakarta and Surabaya[408]. In Jakarta, more than 1000 asylum seekers are rejected by the locals, because of cultural and security issues. The cultural-related issues, which lead to the threat to security in Indonesia are caused by the large number of refugees in Indonesia who come from different backgrounds, they bring understandings or ideology from their country. to Indonesia, as happened in Yogyakarta city, on October 20, 2015, where 30 refugees from Afghanistan and Myanmar were celebrating Asyura Day, is prosecuted by the locals. The Asyura Day celebration is for Shia people, that, of course, becomes a concern and a separate security threat for the Indonesian people, the majority of whom are Sunnis[409].

In the long term, with the increasing number of refugees in Indonesia, it is feared that it will have a social impact on society, the presence of foreigners in the local community with different backgrounds will certainly open up great opportunities for social friction to occur between refugees and the community local. Apart from opening up opportunities for social friction with local Indonesian communities, the presence of refugees in Indonesia is also feared to open doors for transnational crimes, such as human trafficking and smuggling, where in

[406] Indonesia, "Ratusan Pengungsi Rohingya Terdampar Di Aceh.".pp.1.
[407] Missbach et al., "Facets of Hospitality : Rohingya Refugees Temporary Stay in Aceh."pp.33-45.
[408] Angga Nurdin Rahmat, "Realisme Dalam Kebijakan Penolakan Pengungsi Dan Migran Oleh Hungaria Tahun 2015-2018," *Jurnal Dinamika Global* 5, no. 01 (2020): 47–64, https://doi.org/10.36859/jdg.v5i1.192.
[409] Bersama Islam, "Beda Hari Asyura 10 Muharram Bagi Muslim Dan Agama Syiah," Bersama Islam Daily News, 2015, http://www.bersamaislam.com/2015/10/beda-hari-asyura-10-muharram-bagi.html.

reality the condition of refugees is very vulnerable, and have a great risk of to involved into smuggling and human trafficking related crime.

Human smuggling and trafficking have a very neat network, making it difficult to overcome and eliminate. Asylum seekers, are currently the object of greatest interest to the perpetrators of these human smugglers, because basically, the refugees in Indonesia are aware of Indonesia's position as a non-state party to the 1951 refugee convention and 1967 protocol, so many of the refugees are those in Indonesia want to be able to immediately enter the countries that are parties to the convention which will guarantee their lives and welfare more, and their destination country is Australia so that they can get to Australia more quickly, many of them are willing to pay people smugglers to take them to Australia as the refugee recipient countries . Thus many perpetrators of these acts of human smuggling use local Indonesian people to carry out their actions, many of them take advantage of fishermen who have dropped out of school or with poor economic conditions so not a few Indonesian residents have become victims of this kind of international syndicate.

More than that, refugees in Indonesia are often used to commit crimes such as smuggling illegal drugs or narcotics from abroad to Indonesia. The condition of refugees who are very convincing to get help makes the perpetrators of crimes take advantage of it to import drugs into Indonesia because asylum seeker is identified by the cartels as low-risk but high-profit smuggler. Concluded that the implementation of the ATD is not only legally compliant, but also very beneficial for the refugees themselves, because, from the social security perspective, it can prevent the asylum seeker to have friction with the locals, becoming victims of human trafficking, and preventing them into the involvement of the transnational crimes.

After analyzing the articles that burden Indonesia to ratify the 1951 Refugee convention and 1967 Protocol, the rights to work, rights to obtain an education, and freedom of movement within the country are still becoming big obstacles, from legal and social perspectives. Moreover, Indonesia as the Non-signatory States have recently participated in the following negotiations: first, in the General Assembly negotiations leading to the adoption of the 2016 New York Declaration for Refugees and Migrants - which set out the principles that would guide the global response to refugee displacement; second, in the General Assembly negotiations leading to the adoption of the Global Compact on Refugees (GCR) in December 2018; and third, in the first Global Refugee Forum in late 2019. Pakistan, UNHCR, and numerous other "long-standing defenders of the refugee cause" co-convened the latter.

2. Social Concept in Refugee Handling in Indonesia: The Needs of ATD

Addressing the challenges in refugee management in Indonesia involves remaking traditional detention practices toward alternatives that are fully compatible with the principles set out in the Global Compact on Refugees. The GCR, adopted by the UN General Assembly in December 2018, marks a paradigm shift in global approaches to managing refugee population[410]. Its core emphasis is to engender international solidarity and shared responsibility, with particular focus on moving away from conventional detention practices. The GCR does not consider detention facilities that are often restrictive and increase the vulnerability of refugees by limiting their access to essential services; instead, it advocates for community-based solutions and legal pathways that respect the dignity and rights of refugees. This will involve such other measures as community-based accommodation and family-based care, which will allow the integration of refugees into the host societies in a much more respectful and supportive manner. These alternative approaches have been designed to provide the needed support to refugees while alleviating the negative impacts commonly associated with traditional detention centers. By embracing these humane solutions, the GCR seeks to make the management of refugees more dignified and effective in order to improve their well-being and integration.

In the context of Indonesia, the existing legal framework for managing refugees, primarily governed by Law No. 6 of 2011 on Immigration and Presidential Regulation No. 125 of 2016 on the Handling of Refugees, predominantly revolves around detention as a primary method of control. This legal framework reflects a historical approach that prioritizes confinement in detention centers, which often results in significant challenges such as prolonged detention periods, inadequate living conditions, and potential human rights violations[411]. Detention centers not only impose psychological and social burdens on refugees but also substantial financial and administrative costs on the state. This traditional model of detention, while intended for the management and monitoring of refugees, often leads to adverse results, including heightened trauma and reduced prospects for successful societal integration. In line with the principles of the GCR, Indonesia needs far-reaching legal reforms that break with this traditional detention-oriented approach and move toward a model that encompasses more modern alternatives. Article 16 of the GCR itself encourages the

[410] Hilpold, "Quotas as an Instrument of Burden-Sharing in International Refugee Law: The Many Facets of an Instrument Still in the Making."pp.3-5.
[411] Doğar, "Unrecognizing Refugees: The Inadmissibility Scheme Replacing Article 1F Decisions in Canada.".pp.370-403.

establishment of laws on procedures and alternatives to detention, suggesting provisions such as open reception centers where refugees may stay with controlled freedom of movement. These centers would serve the refugees with the most vital services and support with necessary oversight, thus becoming more humane and effective than traditional methods of refugee management.

Further, it is critical to include international standards for human rights in Indonesia's domestic law to take a more progressive approach to managing refugees. The ICCPR and the CAT provide the foundation of minimum standards regarding the treatment of individuals, including refugees[412]. These conventions outline the protection of individuals from arbitrary detention and inhumane treatment and call for the respect and protection of their rights and dignity. Indonesia has not ratified the 1951 Refugee Convention, which provided the basic guidelines for refugee protection, but it often invokes the Convention's principles to guide its actions. These international norms, when integrated into Indonesia's legislative and policy frameworks, enable the movement away from the detention-based model toward one characterized by humane treatment, consistent with internationally accepted standards. The application of this would thus help directly with some of the immediate concerns over refugee treatment and lead towards a more equitable and rights-respecting system of refugee management.

Socially, alternative detention practices implemented in different countries provide Indonesia with useful models. The Scandinavian countries of Sweden and Norway have successfully put in place community-based detention alternatives that emphasize the integration of refugees into society in a manner that respects their dignity and rights. These models involve housing refugees in reception facilities with full services, from legal to medical and social support, while also involving the local communities in integration. This model has tended to improve the quality of life for refugees and their relationship with the host communities. Similarly, Australia's Community-Based Detention Program allows asylum seekers to stay in approved community housing, with access to vital services and support, enabling them to settle more easily into Australian society. These practices illustrate the advantages of adopting supportive, community-oriented approaches rather than depending on traditional detention centers. They show that refugee populations can be managed humanely

[412] Muhammad Ardiansyah Arifin, Owen Maskintama, and Nugroho Adhi Pratama, "Indonesia Abuse of Defamation Clause in Article 27 Section (3) of Electronic Information and Transaction Law," *South East Asia Journal of Contemporary Business, Economics and Law* 23, no. 1 (2020): 25–33, https://doi.org/10.1016/b0-08-043076-7/02840-0.Ibid.

and effectively, reducing many of the detriments associated with detention and improving overall integration outcomes.

Any effective approach to Indonesia's refugee handling challenges must therefore be multi-faceted, entailing significant legal reforms complemented by the development of robust social support programs. Revision of Indonesia's immigration and refugee management laws in line with the principles set out under the GCR marks a significant turning point toward more humane and effective refugee management. It would mean the establishment of community-based accommodation systems that would support refugees with their needs and at the same time reduce the dependence on detention centers. Besides, educational and vocational training for refugees is also crucial for their economic empowerment, self-sufficiency, and reduction of state burdens in the long run. Public awareness campaigns should also be carried out to enlighten local populations about the rights of refugees and the advantages of alternative detention approaches. Such campaigns help create a more accepting atmosphere, thus reducing social tension between refugees and local communities.

Further, it will develop the integration process when host families are being involved and trained in this way. Supporting refugees will include engaging residents of a particular area in offering refugees care and support, allowing Indonesia to develop into a more integrated and empathetic society. Overall, Indonesia can develop a more humane and effective refugee management system by embracing the principles of the GCR and adopting alternative forms of detention. The approach addresses both immediate challenges and the broader goal of promoting human rights and dignity for all individuals involved.

Nevertheless, integrating alternative detention models with the legally enforced system in Indonesia, which is rooted historically, is a tall order. Indonesia's legal system has been developed based on history that had always maintained policies of stringent control and detentions. This might pose obstacles for any historical transition into prioritizing alternative forms of detention. Integration of new approaches means revising established laws and practices to accommodate more humane and rights-respecting methods. The process of transition entails overcoming the resistive forces of change within the legal and administrative systems and transcending the inertia of established norms.

The main challenge is integrating biometric systems into a legal enforcement framework that is based on historical grounds. For instance, biometric technologies, including fingerprinting and facial recognition, are proposed to bring about efficiency in the monitoring and management of refugees living in community-based settings. These technologies can improve oversight and reduce the risk of absconding, contributing to more effective refugee

management. There are several concerns, however, with the integration of biometric systems. Privacy and data security issues are paramount, as the handling of biometric data must comply with international privacy standards to protect refugees' rights. There is also the risk of misuse or unauthorized access to biometric information, which necessitates stringent safeguards and oversight mechanisms.

Administrative and resource challenges further complicate the integration of alternative detention models. In fact, setting up and sustaining community-based reception facilities, training personnel, and providing support programs all require considerable financial and logistical investments. Integrating biometric systems into existing infrastructure involves substantial technological investments and capacity-building efforts. Such challenges require very careful planning and coordination between government agencies, non-governmental organizations, and local communities. In addition, the effective management of resources and investment in infrastructure will ensure that all alternative detention approaches are put into practice.

Another critical challenge is that of legal and policy alignment. The alignment of Indonesia's legal and policy frameworks with international standards and GCR principles encompasses complex legal reforms, from the revision of existing laws and drafting of new regulations to ensuring that policies support humane treatment of refugees. Furthermore, such an alignment of national policies to international best practices calls for continuous dialogue and collaboration with international organizations and stakeholders. Completeness and effective implementation of legal reforms are the real keys toward humane and truly effective refugee management. Moving Indonesia toward alternative modes of detention in conformity with the GCR requires a multi-dimensional approach to resolve legal, social, and practical problems. Indonesia has the chance to build a more humane and effective refugee management system through revising its legal framework, responsibly integrating biometric technologies, and investing in community-based support systems. Such an approach would be vital in responding to both current challenges and broader interests for a just and equitable response to refugee crises at the global level. Ensuring human rights and dignity for all parties is fundamental in building a compassionate and inclusive society.

3. Surveillance Solution: The Needs in Biometric-Based Law Enforcement

The adoption of biometric technologies in law enforcement has radically transformed surveillance and identification practices, brought several advantages and presenting a range

of challenges. Biometric systems include fingerprint recognition, facial recognition, and iris scanning; they provide much greater accuracy in identifying individuals than traditional methods, which can be susceptible to human error or subjective judgment. For instance, fingerprint recognition relies on the analysis of the complex patterns of ridges and valleys in the fingerprints of a person, which remain the same during one's life. The facial recognition technology assesses the unique features of an individual's face, such as the distance between eyes and the shape of the nose. Indeed, a comprehensive study shows that modern biometric systems, in controlled environments, are capable of yielding error rates as low as 0.01 percent and are hence highly reliable for applications in criminal investigations and border control settings.[413]. This accuracy is vital for preventing wrongful arrests and ensuring that law enforcement operations are based on precise identification, thereby improving the overall efficacy of the justice system.

Biometric-based surveillance solutions also majorly boost security through better real-time monitoring and tracking. The resultant technologies will be quite useful in highly secured areas, including a border control station and critical infrastructure installations. Capable of fast and reliable verification of identities, the biometric systems prevent unauthorized access and help detect prospective security threats. For example, biometric technologies can be applied in border control to speed up the processing of individuals, hence reducing queues and increasing efficiency in security checks. The International Journal of Information Security explains that biometric technologies enhance the level of security by a huge margin since it provides an avenue for continuous monitoring, minimizing the risks involved in identity fraud[414]. In public safety, such as in large events or sensitive areas, biometric systems can help in crowd control and access to restricted zones, thus helping in creating a safer environment and an effective response to security incidents.

Another critical efficiency in which biometric technologies become proficient is in data management. Offshoots of the system have developed large databases of information that can quickly be tapped into and analyzed. These capabilities are certainly welcomed whenever large-scale operations need to be managed, such as refugee populations or major national security operations. Biometric databases will easily allow the processing of identifications, doing it almost instantaneously and saving so much precious time required for a manual check

[413] Anna Lodinová, "Application of Biometrics as a Means of Refugee Registration: Focusing on UNHCR's Strategy," *Development, Environment and Foresight* 2, no. 2 (2016): 91–100.
[414] Debnath Bhattacharyya et al., "Biometric Authentication: A Review," *International Journal of U- and e-Service, Science and Technology* 2 (September 1, 2009).

to process volumes that are huge[415]. Biometric systems, by automating and facilitating the process of verification, enhance record-keeping accuracy and timely updates of information. It is now more efficient in handling vast volumes of datasets by law enforcement agencies in ensuring the integrity of operations.

Despite these advantages, the use of biometric surveillance technologies brings about significant legal and ethical concerns with regard to privacy and data protection. Because of the personal nature of this information, biometric data is sensitive in nature, and thus stringent regulations are called for to ensure the protection of privacy rights of individuals. The General Data Protection Regulation applies within the European Union with a high bar in respect to processing personal data, which also includes biometric data. The processing of biometric data is explicitly dealt with by Article 9 of the GDPR, together with the requirement for explicit consent from the person and needing to process such data for legitimate purposes only. Regulation (EU) 2016/679[416]. The same or similar level of protection would need to be applied for Indonesia to follow international standards regarding privacy. Robust protection of personal data means giving the utmost care to sensitive biometric data, securing it from unauthorized access and misuse, and protecting individuals' rights[417].

Another important consideration in deploying biometric surveillance systems concerns ethics. There is a great risk of misuse of biometric data, including unauthorized surveillance or tracking. This demands the putting in place of a complete guideline and oversight mechanisms that regulate the use of biometric technologies. The Human Rights Watch calls for transparency in the collection and use of biometric data, ensuring that people have clear information about how their data is handled. Furthermore, there is a need to address potential biases inherent in biometric systems. Technologies such as facial recognition have been found to be inaccurate, especially while assessing individuals from certain demographic groups, leading to disproportionate impacts. These are the very same biases that need regular auditing and updating to make biometric systems fair and functioning equitably.

Biometric technologies face a very serious problem in the integration process into Indonesia's historically-based legal enforcement system. The legal framework of Indonesia, focused traditionally on control and detention, might not be the best one to integrate modern

[415] Masitoh Indriani and Amira Paripurna, "Biometric Data Sharing in Addressing Irregular Migration and Security Issues within The Bali Process Framework for Indonesia and ASEAN Member States," *Journal of Southeast Asian Human Rights* 4, no. 2 (2020): 449, https://doi.org/10.19184/jseahr.v4i2.17289.
[416] Benedita Menezes Queiroz, "The Impact of EURODAC in EU Migration Law: The Era of Crimmigration?," *Market and Competition Law Review* 3, no. 1 (2019): 157–83, https://doi.org/10.7559/mclawreview.2019.318.
[417] Bahri, "Immigration Biometric Data Exchange Among ASEAN Member States : Opportunities and Challenges in Legislation.".pp.453-446.

biometric surveillance technologies. For instance, the Law No. 6 of 2011 on Immigration and the Presidential Regulation No. 125 of 2016 on the Handling of Refugees may need amendments to address the specific requirements and implications of using biometric data. This integration involves revising existing laws to align with contemporary standards and address technological advancements. Such amendments will ensure that the legal framework is updated to accommodate such biometric technologies while also addressing privacy and security concerns in accord with international practices[418].

Biometric technologies face a very serious problem in the integration process into Indonesia's historically-based legal enforcement system. The legal framework of Indonesia, focused traditionally on control and detention, might not be the best one to integrate modern biometric surveillance technologies. For instance, the Law No. 6 of 2011 on Immigration and the Presidential Regulation No. 125 of 2016 on the Handling of Refugees may need amendments to address the specific requirements and implications of using biometric data. This integration involves revising existing laws to align with contemporary standards and address technological advancements. Such amendments will ensure that the legal framework is updated to accommodate such biometric technologies while also addressing privacy and security concerns in accord with international practices.

Public perception and acceptance of the biometric surveillance technologies are very crucial for their successful implementation. Engaging with the public to address their concerns and build trust is vital for effective deployment. Public awareness campaigns can be used to educate people on the benefits and safeguards associated with biometric surveillance, leading to increased acceptance. The transparency and proactive public engagement are key factors in gaining support for biometric technologies[419]. Clearly articulating the purposes, benefits, and safeguards of biometric systems, as well as ensuring robust privacy protections, would help law enforcement agencies create trust and be assured of the public being supportive of these technologies.

Addressing the potential for misuse of biometric data is a fundamental concern. Unauthorized access or misuse of biometric information can undermine the effectiveness of surveillance systems and infringe on individuals' privacy rights. In order to reduce these risks, clear guidelines and oversight mechanisms should be established regarding the use of

[418] Tyler Choi, "Biometrics Secure UNHCR Direct Cash Payments to Ukrainian Refugees," Biometric Update Series, 2022, https://www.biometricupdate.com/202204/biometrics-secure-unhcr-direct-cash-payments-to-ukrainian-refugees.
[419] Queiroz, "The Impact of EURODAC in EU Migration Law: The Era of Crimmigration?".pp.8-16.

biometric technologies. The Electronic Frontier Foundation advocates for strong legal protections and oversight to ensure that biometric data is used solely for authorized purposes and that deviations from established guidelines are subject to scrutiny (EFF, 2024). Developing a comprehensive legal framework that effectively implements these protections is crucial for maintaining public trust and ensuring that biometric technologies are used responsibly.

Inasmuch as biometric-based surveillance solutions make a big difference for the police—higher accuracy in identification, increased security, and efficiency of data management—their integration has many legal, ethical, and practical problems that must be weighed. This implies making privacy concerns negligible, trying to reduce ethical risks as much as possible, embedding it within traditional legal systems, and answering administrative and resource demands. Done and with the trust of the public, leveraging on all these challenges means the implementation of biometric solutions without loss of essential liberties within law enforcement.

4. Chapter Conclusion and Personal Opinion

This dissertation has underscored the critical role of national legal frameworks in shaping the effectiveness, fairness, and sustainability of refugee governance. Through a comparative analysis of Hungary and Indonesia, it became clear that legal infrastructure plays a decisive role in determining how states respond to forced migration. Hungary, despite political controversies, provides a highly institutionalized and legally codified asylum system that grants the state procedural control and regulatory clarity. In contrast, Indonesia operates in a legal vacuum, where refugee protection is largely outsourced to international agencies like UNHCR, resulting in prolonged legal uncertainty and limited access to fundamental rights for asylum seekers. This legal absence does not only impair the state's ability to manage migration effectively but also raises serious humanitarian and administrative concerns.

From my professional experience as an immigration officer in Indonesia, I have witnessed firsthand how this lack of domestic legal clarity creates significant challenges at the operational level. Often, asylum seekers enter Indonesia legally using tourist or social visas, only to declare their asylum status once the visa expires. Without a clear national mechanism for status determination or temporary protection, our only administrative recourse has been to place such individuals in detention facilities pending further coordination with UNHCR. This procedural gap often results in their loss of access to education, healthcare, and livelihood

opportunities. It is emotionally distressing, particularly when families with children are involved. The absence of a national asylum law leaves immigration officers with limited tools to act humanely, despite their personal and professional commitment to humanitarian values.

In light of these realities, this dissertation not only offers a comparative legal evaluation but also calls for urgent legal reform in Indonesia. The research reaffirms my belief that a dedicated national refugee law is essential—not only to uphold international obligations, but also to empower immigration institutions and officers with a legal framework that is both protective and enforceable. Drawing selective lessons from Hungary's codified legal structure, Indonesia can develop a tailored, rights-based, and contextually appropriate system that respects state sovereignty while protecting the dignity of displaced individuals. For immigration practitioners like myself, such reform would provide the much-needed clarity and confidence to carry out our duties effectively, ethically, and in line with both national interest and international human rights standards.

VIII. CONCLUSION AND RESEARCH FINDING

1. Conclusion

The refugee crisis remains one of the most critical challenges globally, with numerous countries grappling with the complexities of accommodating displaced populations. Indonesia and Hungary, while geographically and culturally distinct, share a similar political stance on the issue—marked by cautious or resistant approaches toward asylum seekers and refugees. Indonesia, a nation with a diverse population and a largely Muslim demographic, often encounters refugees from conflict-prone countries such as Myanmar, Afghanistan, and Iran, particularly along its northern regions, including North Aceh. Despite its humanitarian efforts, Indonesia lacks a comprehensive legal framework for refugee protection, relying instead on Presidential Regulation No. 125/2016, which provides temporary shelter but falls short of offering long-term solutions or clearly defining refugee rights. Without established refugee-specific laws, Indonesia faces a persistent legal vacuum, often relying on local community support rather than state intervention, which can create inconsistent refugee responses across regions.

Hungary, on the other hand, has a robust legal framework but adopts a stringent, highly regulated approach, reflecting its strong stance against immigration, especially since the 2015 European migrant crisis. In contrast to Indonesia's flexible but legally limited framework, Hungary enforces strict border controls and detention measures under asylum laws, including criminal penalties for those aiding undocumented migrants. Hungary's laws, including the so-called "Stop Soros" legislation, restrict NGOs from supporting refugees, reflecting broader resistance within the EU against immigration. The Hungarian approach prioritizes national security and cultural preservation, contrasting with the more community-based acceptance in Indonesia. Together, Indonesia and Hungary illustrate the varied ways nations are handling the refugee crisis—revealing both the effectiveness and limitations of their approaches within the broader global discourse on asylum policies and human rights.

Hungary's approach to immigration and asylum is rooted in its historical experiences, particularly the Treaty of Trianon in 1920, which had a profound impact on the nation's identity and territorial integrity. The treaty, signed after World War I, saw Hungary lose two-thirds of its territory and a significant portion of its population, creating a national trauma that shaped its views on sovereignty and external influences. As a result, Hungary developed a strong emphasis on national security and preserving its cultural identity. These sentiments resurfaced

during the 2015 migrant crisis, where Hungary's government implemented strict border controls and legal measures, such as constructing border fences and passing the "Stop Soros" law, to limit the influx of migrants. The government justified these actions by invoking national security concerns and the desire to protect Hungarian culture, framing immigration as a potential threat reminiscent of past experiences of territorial loss and cultural dilution.

Indonesia's immigration history is influenced by its colonial past and the establishment of national institutions post-independence. Under Dutch rule, immigration control was primarily used to regulate the movement of the colonial population and laborers from different parts of the archipelago. Following independence in 1945, Indonesia established the *Dienst Immigrate* (Immigration Service) in 1950, formalizing the country's immigration policies to safeguard national sovereignty and control entry and exit points. Indonesia's immigration policies have traditionally focused on border security and national stability rather than accommodating refugees. The Immigration Law No. 6/2011 further cemented Indonesia's focus on regulating foreign entry but lacked specific provisions for asylum seekers and refugees. Consequently, Indonesia's handling of refugees has been ad hoc, guided by humanitarian principles rather than structured legal obligations. This historical context underlines why Indonesia has not prioritized formal refugee protection, despite growing numbers of displaced persons arriving due to regional conflicts and other crises.

A comparative legal analysis between Hungary and Indonesia highlights significant gaps in Indonesia's handling of asylum seekers and refugees, underscoring areas where Hungary's more structured framework can offer valuable insights. One of the most critical gaps in Indonesia's legal system is the absence of a clear definition of "asylum seeker" and "refugee." Unlike Hungary, which aligns with EU standards and international conventions that clearly categorize asylum seekers and refugees, Indonesia's legal framework lacks such definitions. This absence creates ambiguity and hinders the consistent application of legal protections or limitations for these groups. While Indonesia's Presidential Regulation No. 125/2016 provides basic guidelines for accommodating refugees temporarily, it does not address the fundamental distinctions in legal status, leaving Indonesia without a standardized approach to classifying and managing displaced individuals.

In addition to definitional clarity, Indonesia lacks a formal Refugee Status Determination (RSD) system, which is critical for assessing asylum claims. Hungary's legal system, despite its restrictive policies, offers an established procedure to determine refugee status through its asylum laws, aligning with both the EU's Common European Asylum System and the 1951 Refugee Convention. This process allows Hungary to assess applications and

determine who qualifies for asylum under its jurisdiction, granting approved individuals specific protections and obligations. Indonesia, by contrast, has not established a formal RSD mechanism, relying instead on the UNHCR for these determinations, which limits the government's role in the decision-making process. Establishing an RSD system in Indonesia could create a structured approach to asylum claims, allowing the government to assess applications more consistently and transparently, thus providing a foundation for both humanitarian support and regulatory oversight.

Alternative to Detention (ATD) programs present a viable solution for Indonesia's current challenges in managing asylum seekers and refugees. In the absence of a comprehensive legal framework specifically addressing refugee rights and responsibilities, ATD offers a temporary yet effective way to manage displaced populations without resorting to indefinite detention. ATD programs allow asylum seekers to live in designated areas under supervised conditions, avoiding the need for restrictive detention centers. This approach is not only more humane but also aligns with Indonesia's humanitarian values, as it provides basic rights and dignity to those awaiting resettlement or refugee status determination. Indonesia currently relies heavily on temporary detention for managing asylum seekers due to the lack of a formal Refugee Status Determination (RSD) process within its legal system. With ATD, Indonesia can manage asylum seekers in ways that balance security concerns with humanitarian commitments. These programs could involve supervised community-based arrangements, where asylum seekers receive shelter, access to healthcare, and some degree of freedom to move within regulated areas. ATD also has the potential to reduce strain on detention facilities, mitigate public opposition to detention practices, and offer a constructive stopgap solution while Indonesia works toward establishing a comprehensive legal framework for refugees.

Implementing ATD programs could also prepare Indonesia for future legal developments by testing mechanisms for community integration and managed support for refugees. With growing numbers of displaced people in Southeast Asia due to regional conflicts and environmental factors, ATD programs could set a precedent for more structured support. As a temporary solution, ATD programs offer Indonesia the flexibility needed to handle current refugee challenges while paving the way for future reforms, such as the establishment of an RSD system and the development of clear legal definitions and protections for refugees and asylum seekers.

2. Research Finding

2.1. Indonesia Operates in a Legal Vacuum on Refugee Governance

The dissertation finds that Indonesia, as a non-signatory to the 1951 Refugee Convention and its 1967 Protocol, lacks a formal legal framework for managing asylum seekers and refugees. Its current reliance on Presidential Regulation No. 125 of 2016 is insufficient, non-binding, and leaves key aspects of refugee protection—such as refugee status determination (RSD), rights to work, education, and healthcare—entirely in the hands of international organizations like UNHCR. This legal vacuum not only undermines state sovereignty but also results in systematic rights deprivation and institutional fragmentation. This study offers a novel contribution by identifying the urgent legal need for codification in a country that is increasingly becoming a transit hub for displaced populations.

2.2. Hungary Illustrates a Paradox of Strong Legalism and Restrictive Practices

Hungary, although bound by the EU legal framework and a signatory to the 1951 Convention, has demonstrated that robust legal infrastructure does not necessarily guarantee liberal refugee protection. Since 2015, Hungary has enacted a securitized and deterrent-based asylum regime, including restrictive border laws, “Stop Soros” legislation, and transit zone policies (until 2020), while still maintaining legal compliance with EU and national standards. The novelty of this research lies in highlighting Hungary as a selective model—not for its politics, but for its legal codification techniques that Indonesia could emulate in designing a more accountable refugee system.

2.3. Legal Structure Determines the Scope of Protection and Accountability

A central finding of the dissertation is that the presence or absence of a codified asylum law directly shapes the quality, consistency, and legitimacy of refugee governance. While Hungary’s legal system enables procedural clarity and judicial oversight, Indonesia’s reliance on delegated humanitarianism creates gaps in protection, arbitrary enforcement, and prolonged legal limbo. The research contributes new theoretical insight by demonstrating how law acts as both an enabler and limiter of refugee rights, depending on the political will and institutional design underpinning it.

2.4.Formulative Comparative Legal Approach Reveals Actionable Solutions

The study introduces a formulative comparative legal methodology as its primary research innovation. Unlike previous literature that either describes country-specific models or critiques them from a normative standpoint, this research selectively identifies transferable legal instruments from Hungary that could be adapted to Indonesia's context. This includes: legal definition of refugees, codification of asylum procedures, principles of non-refoulement, and the establishment of a centralized asylum authority. This methodological contribution fills a significant gap in Global South refugee studies, where legal transposition has often been overlooked.

2.5.Policy Recommendations Grounded in Lived Experience and Institutional Gaps

Drawing from the author's professional experience in Indonesian immigration services, the study identifies real-world challenges faced by frontline officers in the absence of legal clarity. Asylum seekers often enter Indonesia legally on tourist visas, then declare asylum once their visa expires, leading to detention without legal recourse. This practice, while administratively necessary, raises profound ethical and legal concerns. The study's novelty lies in connecting macro-level legal analysis with micro-level operational realities, providing a uniquely grounded perspective that informs both academic discourse and policy reform.

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