

DOCTORAL (PhD) DISSERTATION THESES

Social And Legal Challenges in Refugees Handling
(Comparison Between Hungary and Indonesia)

by

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I. CHAPTER I: INTRODUCTION

1. Background

The extensive movement of people through international migration is one of the most pressing issues confronting many countries throughout the world, and it must be addressed as quickly as possible¹. In the year 2023, 117 million people are displaced, with 5.8 million of them identified as asylum seekers, and 6.9 million of them are refugees, followed by 3.6 million new claims as refugees turned in to the United Nations High Commissioner for Refugees (UNHCR) offices worldwide². The primary reasons for migration from the origin to the destination country are constantly changing, ranging from war and conflict to economic and political factors, and the most recent to be climate change³. Furthermore, the push and pull forces for migration vary by world location⁴. For example, in the European Union (EU) region, most people tend to relocate between EU member states due to language and cultural similarities⁵. People in Tuvalu, a small country in the Pacific region, on the other hand, tend to move due to the drastic climate change that is occurring in the area they live in⁶.

The recent major event, which pushed the biggest displacement issues in the modern era was triggered by the Arab Spring movement, which happened in 2011⁷. Arab Spring can be described as the social media-based revolutionary wave of demonstrations and protests that occurred in the Arab world to end the dictatorship regime⁸. This chain of events took place in most of the Middle East countries as well as North Africa. The movement escalated in December 2010 and ignited the revolution movement in Tunisia followed by Egypt; civil war

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>.

² UNHCR, "GLOBAL TRENDS IN 2023 Trends at a Glance" (Geneva, 2023), <https://reporting.unhcr.org/global-appeal-2024-6383>.

³ M Waldinger and S Frankhauser, "Climate Change and Migration in Developing Countries: Evidence and Implications for PRISE Countries," *Policy Paper - ESRC Centre for Climate Change Economics and Policy, Grantham Research Institute on Climate Change and the Environment*, no. October (2015).

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>.

⁵ Ma Reinart D. Carlos, "On the Determinants of International Migration in the Philippines: An Empirical Analysis," *International Migration Review* 36, no. 1 (2002): 81–102, <https://doi.org/10.1111/j.1747-7379.2002.tb00072.x>.

⁶ Carol Farbotko and Heather Lazrus, "The First Climate Refugees? Contesting Global Narratives of Climate Change in Tuvalu," *Global Environmental Change* 22, no. 2 (May 2012): 382–90, <https://doi.org/10.1016/j.gloenvcha.2011.11.014>.

⁷ 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>.

⁸ Spanos., pp. 93-94

in Libya; civil uprisings in Bahrain, Syria, and Yemen; major protests in Algeria, Iraq, Jordan, Morocco, and Oman, and minor protests in Kuwait, Lebanon, Mauritania, Saudi Arabia, Sudan, and Western Sahara. The Arab Spring revolution movement, especially in Libya, Syria, and Yemen, escalated into a war that resulted in a mass migration of asylum seekers because of the internal displacement issues, with the main destination to the EU, and Southeast Asia territories⁹.

The route used by those asylum seekers to reach the EU territories starts from the Mediterranean Sea, then continues to Greece or directly from their country to Turkey, then continues to Sweden and Germany. In December 2015, a total of 490,280 Syrian refugees arrived in EU territories by sea, and Syrian became the highest number of refugees arriving in the EU territory¹⁰. In 2016, the United Nations identified 13,5 million Syrians in need of humanitarian assistance, of which more than 6 million were internally displaced in Syria, and more than 4.8 million were refugees outside Syria. Turkey is the largest host country with more than 2.7 million Syrian refugees¹¹. On the other hand, more than 300,000 asylum seekers who originated from the Arab spring-affected countries are also sailing into Southeast Asian countries, such as Thailand, Indonesia, and Malaysia in search of international protection¹².

Furthermore, the Ukrainian war, which began on February 24, 2022, also has had a huge impact on the movement of refugees into the EU territories. Many Ukrainians fled to neighboring countries and abroad, notably to Poland, Hungary, and Croatia, as the crisis in their country intensified, especially in areas like Donetsk and Luhansk¹³. Recorded in December 2022, more than 4,5 million refugees entered the EU territory, whereas 90 percent of them are women and children¹⁴. In addition, because of Ukraine's proximity to EU member states, some asylum seekers have been able to travel through Eastern European nations to reach EU borders. The surge of refugees from Ukraine exacerbated already-existing conflicts about immigration laws and humanitarian aid, making it more difficult for EU countries to manage migrant flows. Thus, the Ukrainian conflict brought to light the difficulties associated with

⁹ Fusun Istanbul Dincer, Eyup Karayilan, and Merve Aydogan Cifci, "Refugee Crisis (RC) after the Arab Spring (AS) and Its Impacts on Turkish Tourism Industry: The Case of Istanbul," *Journal of Tourismology* 3, no. 1 (2021): 2–13.

¹⁰ Anselm Hager, "What Drives Migration to Europe? Survey Experimental Evidence from Lebanon," *International Migration Review* 55, no. 3 (2021): 929–50, <https://doi.org/10.1177/0197918320988662>.

¹¹ UNHCR, "Global Trends Forced Displacement in 2020" (Copenhagen, June 18, 2020).

¹² EUAA, "Asylum Report 2022" (Brussels, 2022), <https://doi.org/10.2847/500804>.

¹³ Marcin Grajewski, "War in Ukraine" (Brussels, March 1, 2022), www.europarl.europa.eu/thinktank.

¹⁴ UNICEF, "Ukraine and Refugee Outflow People People Million" (Geneva, 2022), <https://www.unicef.org/media/118666/file/2022-HAC-Ukraine-and-Refugee-Outflow-revised-April.pdf>.

relocating as a refugee and the necessity of concerted international action to properly handle displacement situations.

The EU territory is becoming the main destination because of several reasons. Firstly, is the geographical proximity, because the people who fled from the Middle East, North African countries, and Ukraine can easily cross the Mediterranean Sea and land border to reach the nearest EU territory¹⁵. Secondly, advanced handling schemes for Human Rights Protection for asylum seekers and refugees are also becoming the main reason why the EU was chosen as a destination for asylum seekers and refugees¹⁶. Surprisingly, the smugglers and traffickers who operate in many conflicting countries are also involved in deciding where the main destination of the refugees is, most of the international human trafficker syndicates target the EU territories, as their “*promotional campaign*”¹⁷. This pull factor resulted in a great increase in the number of asylum seekers in the EU, which is from only 263.160 refugee applications turned in 2011 is skyrocketed into 1.255.685 in 2015, this phenomenon continued until it triggered the refugee crisis in the EU territory in the year 2015-2016¹⁸. The uncontrolled mass influx of the asylum seekers has changed the EU policy on border crossing¹⁹.

Based on the fact above, the assistance program for those asylum seekers is planned on a large scale through the UNHCR. The UNHCR facilitate the change of the EU border crossing policy, whereas the refugee application can only be submitted within the embassy of the EU countries, and nearly 1 million asylum seekers have applied for refugee status in various countries, mainly Lebanon, Jordan, Turkey, and Serbia, but the acceptance rate is just under 5 percent²⁰. On the other hand, the EU countries have different attitudes and views toward the refugees who are now flooding their territory. The attitude of some countries that accept refugees with open arms is based on humanism or a sense of humanity and human rights.

¹⁵ Eugene Quinn, “The Refugee and Migrant Crisis: Europe’s Challenge,” *EUROPE IN CRISIS* 105, no. 419 (2016): 275–85.

¹⁶ Simas Grigonis, “EU in the Face of Migrant Crisis: Reasons for Ineffective Human Rights Protection,” *International Comparative Jurisprudence*, January 2017, <https://doi.org/10.1016/j.icj.2017.01.003>.

¹⁷ Katie Kuschminder, Julia De Bresser, and Melissa Siegel, “Irregular Migration Routes to Europe and Factors Influencing Migrants’ Destination Choices Management Summary,” *Maastricht: Maastricht Graduate School of Governance* (2015).

¹⁸ Carlo Amenta, Paolo Di Betta, and Calogero Ferrara, “The Migrant Crisis in the Mediterranean Sea: Empirical Evidence on Policy Interventions,” *Socio-Economic Planning Sciences* 78 (December 1, 2021), <https://doi.org/10.1016/j.seps.2021.101038>.

¹⁹ 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>.

²⁰ Colin Harvey, “Time for Reform? Refugees, Asylum-Seekers, and Protection under International Human Rights Law,” *Refugee Survey Quarterly* 34, no. 1 (2015), <https://doi.org/10.1093/rsq/hdu018>.

Although, countries that reject the presence of refugees are also caused by several factors, namely economic, socio-cultural factors, or even racism²¹.

The EU which is seen as the main destination for the asylum seeker, can no longer bear the additional economic burden for the asylum seeker and refugees, especially since the EU is experiencing an unemployment crisis, among the young generation. Meanwhile, the burden of social security for retirees has increased sharply in recent years, which pushed destination countries even Germany to create a “free jail”, which possesses a social distance and moral closure between the asylum seeker and locals²².

The outnumbered of asylum seekers and refugees, and the more complex social phenomenon between the asylum seeker, and locals pushes the EU to introduce the quota system which was proposed as the administered solution to the asylum seeker problem in the EU²³. Moreover, the quota system is rejected by several member states, including Hungary as an EU member state²⁴. At the same time, Hungary is becoming one of the highest asylum applications in the EU per 100.000 citizens²⁵. The other reason why Hungary rejects the quota system is because of the refugee diaspora phenomenon, the asylum seeker whose refugee status is accepted tend to bring their family to the EU territories, which increase the national threat of terrorism²⁶. The rejection is turned into action by Hungary, sending the asylum seeker to the Serbia territory and increasing the border patrol²⁷. The quota system, which is seen as the most possible solution under the Common European Asylum System (CEAS) failed on many levels²⁸.

Furthermore, in March 2016, the EU is addressing the refugee crisis by conducting the EU-Turkey Agreement signed in the year of 2016, to prevent asylum seekers to enter EU territories by increasing the financial aid to the Turkey Government²⁹. Out of all debate,

²¹ Paul Schoukens and Siemen Buttiens, “Social Protection of Non-Removable Rejected Asylum-Seekers in the EU: A Legal Assessment,” *European Journal of Social Security* 19, no. 4 (2017), <https://doi.org/10.1177/1388262717744708>.

²² 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>.

²³ 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.

²⁴ Boros., pp. 3-4.

²⁵ Attila Juhász and Bulcsú Hunyadi, “Focus on Hungary: Refugees, Asylum and Migration Focus on Hungary: Refugees, Asylum and Migration HEinricH-Böll-Stiftung” (Prague, 2015).

²⁶ Manni Crone et al., “Europe’s Refugee Crisis and the Threat of Terrorism : An Extraordinary Threat?,” vol. 5, 2017.

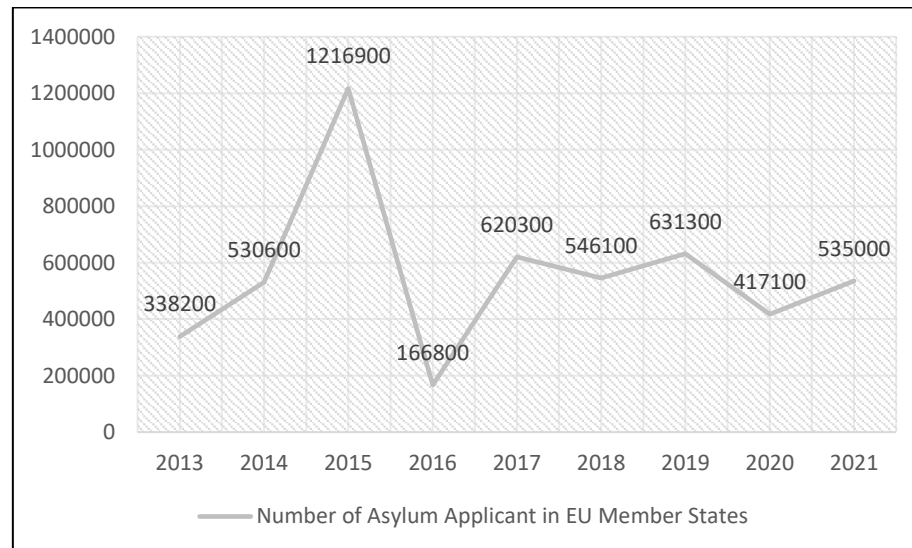
²⁷ Ashley Binetti Armstrong, “CHUTES AND LADDERS: NONREFOULEMENT AND THE SISYPHEAN CHALLENGE OF SEEKING ASYLUM IN HUNGARY,” 2019, <https://perma.cc/8V7X-DM64>].

²⁸ Shams Al Din and Al Hajjaji, “NATO, the EU, and the Arab Refugee Crisis NATO, the EU, and the Arab Refugee Crisis NATO, THE EU AND THE ARAB REFUGEE CRISIS,” *Penn State Journal of Law & International Affairs* 6, no. 1 (2018), <https://elibrary.law.psu.edu/jlia/vol6/iss1/7>.

²⁹ Quinn, “The Refugee and Migrant Crisis: Europe’s Challenge.”

Hungary's policy on the asylum seeker is successfully proven to decrease the number of asylum seeker applications which also reflected the successfulness of Hungary's refugee handling management, in the middle of the increasing number of asylum applicant in the EU member states from 2023-2021 (Fig.1).

Figure 1. The Number of First Time Asylum Seeker Applicant in EU Member States 2013-2021



Source: EUROSTAT, 2022³⁰

Hungary's legal structure has given the immigration officials substantial influence over the flow of asylum seekers entering their territory, as well as the authority to accept or reject every asylum application that comes across their desk. This powerful authority is possible, because of the Hungary's ability to harmonize EU legislation with the national laws, which has allowed the country to tailor its border policies to its specific circumstances³¹. The constitutional amendments and national laws, such as the "Stop Soros" law, introduced in 2018, have equipped Hungary with tools to not only criminalize assistance to illegal immigrants but also the Non-Governmental Organization (NGOs) which working with asylum seekers, reinforcing the government's control over migration³². The most essential factor is that the

³⁰ 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>.

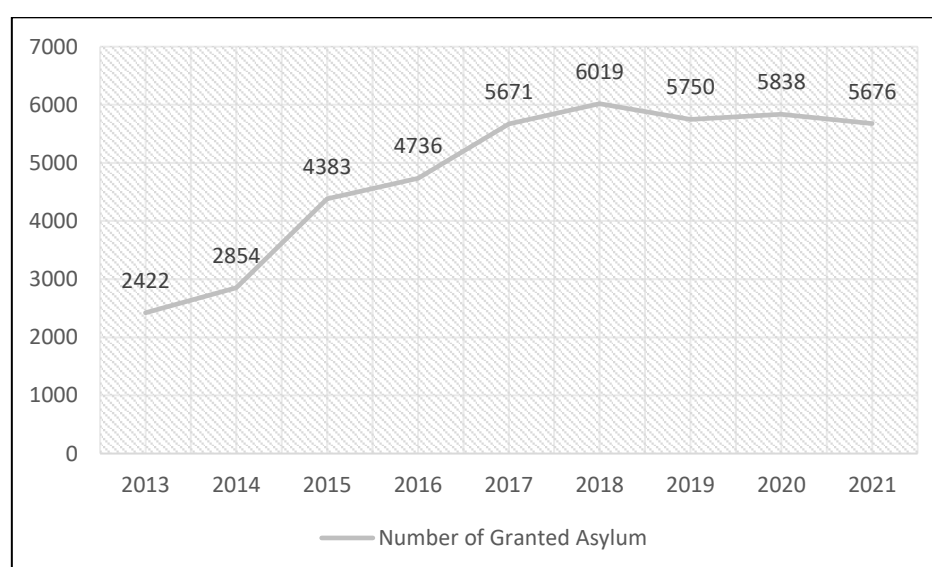
³¹ Boldizsár Nagy, "Special Issue Constitutional Dimensions of the Refugee Crisis Hungarian Asylum Law and Policy in 2015–2016: Securitization Instead of Loyal Cooperation," *German Law Journal* 17, no. 6 (2016): 1033–81.

³² 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>.

Hungary robust legislative framework allows the immigration authorities to make decisions on asylum petitions within a short period of several weeks, which limits the number of asylum applicants and the number of unqualified applicants³³.

This legal authority is also enhanced by Hungary’s independence in carrying out border control, as illustrated by the construction of the Hungarian Border Fence, consequent to their legal sovereignty to control their borders. Despite operating within the EU’s legal frameworks, such as the Common European Asylum System (CEAS) and the Dublin III Regulation, Hungary has adeptly leveraged its legal power to implement stricter national measures that align with its national security interests while remaining compliant with EU regulations. Through these robust legal mechanisms which backed up by Asylum Act.2007, Hungary has effectively controlled the influx of asylum seekers and emerged as a model for other EU states seeking to assert greater national sovereignty over migration issues, indicates by controlled number of granted refugee status from 2013 to 2021 (Fig.2)³⁴.

Figure 2. The Number of Granted Refugee Status under the Legislation of Asylum Act. 2007 in Hungary



Source: IOM, 2022³⁵

³³ Hungarian Helsinki Committee, “Building a Legal Fence: Changes to Hungarian Asylum Law Jeopardise Access to Protection in Hungary” 2007, no. August (2015): 1–6, <https://www.helsinki.hu/wp-content/uploads/HHC-HU-asylum-law-amendment-2015-August-info-note.pdf>.

³⁴ Eszter Kiss, “The Hungarians Have Decided: They Do Not Want Illegal Migrants’ Media Representation of the Hungarian Governmental Anti-Immigration Campaign,” *Acta Humana*, no. 6 (2016): 45–77.

³⁵ IOM, “The Number of Granted Refugee Status Under Asylum Act 2007 in Hungary,” IOM Yearly Report, 2022, <https://hungary.iom.int/migration-hungary>.

Furthermore, the refugee crisis happening in the EU territories as explained previously also spread up into Southeast Asia territories. The first boat of an asylum seeker has been landed in Aceh Provinces, in May 2015, and contains more than 1000 people, those asylum seekers keep coming without any legal and human rights certainty³⁶. As of July 2016, Indonesia hosts 13,474 refugees and asylum-seekers from 48 different countries, of whom 3,548 are female and 9,926 are male. UNHCR Indonesia conducts registration and Refugee Status Determination (RSD) and seeks durable solutions for refugees on behalf of the Government³⁷. The absence of a comprehensive national legal framework for refugee protection limits refugees' enjoyment of fundamental rights, such as freedom of movement (with more than 4,200 currently being arbitrarily detained), access to education and healthcare, and access to birth certificates as a measure to prevent statelessness³⁸.

The number of asylum seekers in Indonesia has been increasing rapidly yearly until present (Fig. 3). One of the main reasons for this are because, in the year 2016, Indonesia applies the Visa Access free for 169 countries worldwide, which was administered by using the President Regulation Number 125/2016 on Visa-Free Visit³⁹. Most of the asylum seekers are originally from the Middle East, and several African countries are escaping from the conflict happening in their region and entering Indonesia as one of the Southeast Asia countries regularly since 2015 as tourist, and declares their status as asylum seeker in the nearest immigration office when their visa is expired⁴⁰. Indonesia itself is only acting as a transit country because many of them are wanted to be accepted as refugees in the recipient countries, such as Australia, Canada, or the United States⁴¹.

³⁶ Zulkarnain Zulkarnain and Indra Kusumawardhana, "Bersama Untuk Kemanusiaan: Penanganan Lintas Sektor Terhadap Masalah Pengungsi Rohingya Di Aceh 2015," *Jurnal HAM* 11, no. 1 (April 28, 2020): 67, <https://doi.org/10.30641/ham.2020.11.67-83>.

³⁷ Karina and Maidah Purwanti, "Indonesia's National Policy on International Migration," *Journal of Law and Border Protection* 3, no. 1 (2021): 115–23.

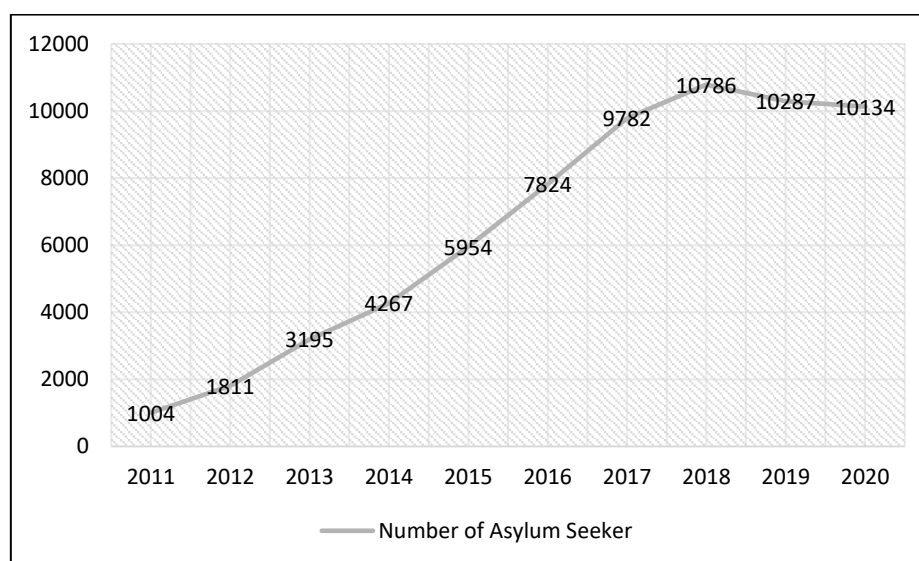
³⁸ M. Ya'kub Aiyub Kadir et al., "The Legal Vacuum on Access to Higher Education for Refugees in Indonesia: Islamic Claim for Aceh Responsibility," *Samarah* 7, no. 1 (2023): 522–54, <https://doi.org/10.22373/sjkh.v7i1.15454>.

³⁹ Aninda Novedia Esafrin, Antikowati, and Gautama Budi Arundhati, "Legal Consequences of Refugees' Visa Misuse to Obtain Indonesian Citizenship," *Indonesian Journal of Law and Society* 1, no. 2 (September 30, 2020): 125, <https://doi.org/10.19184/ijls.v1i2.17479>.

⁴⁰ M Alvi Syahrin, Anindito Rizki Wiraputa, and Koesmoyo Ponco Aji, "Indonesian Legal Policy in Treating International Refugees Based on Human Rights Approach," *Law and Humanities Quarterly Reviews*, 2022, <https://doi.org/10.31014/aior.1996.01.04.41>.

⁴¹ Karina and Purwanti, "Indonesia's National Policy on International Migration."

Figure 3. Indonesia Asylum Seeker Population from 2011 to 2020



Sources: World Bank, 2021

Although, Indonesia position as one of the main destinations for asylum seekers and refugees, in terms of legal framework, Indonesia is not yet ratified the 1951 Refugee Convention nor 1967 Protocols⁴². Then, the consequence is Indonesia does not have a definite policy regarding the handling or mechanism for treating refugees and asylum seekers who come to Indonesia. The government of Indonesia is trying to address this problem by issuing Presidential Decree Number 125/2016 about Overseas Refugees Handling policy, however, because Indonesia is a non-signatory's country, the asylum seeker or refugees is related just like undocumented migrants, sent to the detention center without any rights in terms of work nor education, and they will be sent back to the origin countries if their refugee's status or resettlement request is not accepted⁴³.

Interestingly, Hungary and Indonesia have the same political position. Hungary implemented the "*organized disintegration*" as a political movement to prevent asylum seekers and refugees to be part of the Hungarian citizen, with the spirit of "*protecting the state sovereignty*"⁴⁴. In the same way, Indonesia is implementing the "*selective policy*" as the

⁴² 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>.

⁴³ Tasya Oktaviana and Denada Gaol L Faraswacyen, "Kebijakan Pemerintah Indonesia Dalam Peraturan Presiden Nomor 125 Tahun 2016 Terkait Penanganan Pengungsi Luar Negeri," *Budi Luhur Journal of Contemporary Diplomacy* 4, no. 2 (2020): 161–72, <https://www.unhcr.org/id>.

⁴⁴ Şahizer Samuk, *Can Integration Be Temporary? The (Dis)Integration of Temporary Migrant Workers in Canada and the UK*, IMISCOE Research Series, 2020, https://doi.org/10.1007/978-3-030-25089-8_4.

political structure, which means the government of Indonesia is refusing to accept any kind of asylum seeker or refugees status, and only give the humanitarian assistance needed to the people who are suspected of an asylum seeker or refugee in Indonesia territory⁴⁵. In general, Hungary and Indonesia are only acting as transiting countries, without any political will to receive that asylum seekers or refugees legally⁴⁶.

However, Hungary has a long history of handling refugees, which can be seen in the post-World War I, where more than 400.000 asylum seekers are applying as a refugee to the government of Hungary after the collapse of the Habsburg Dynasty, which was administered by the Trianon Agreement⁴⁷. Indonesia, on the other way, has a lack of legal regulation regarding the refugee handling policy⁴⁸. The asylum seeker and refugees mostly originated from the Middle East, North Africa, and South Asia (Myanmar, Bangladesh, and Laos), only transiting through Indonesia, before reaching their primary destination, such as Australia; however, they cannot enter Australia territories before the UNHCR declaring their status as the refugees, then most of them are “trapped” in Indonesia and treated as undocumented migrants which potentially violating the human rights⁴⁹.

On the other hand, Indonesia as a new destination for refugees and asylum seekers has not had any experience related to asylum seekers and refugees; the Special Detention Schemes was administered as the short-term solution. The detention is creating further problems, such as the lack of rights, segregation, and lack of proper choices for their future, including proper choices in terms of education or access to work⁵⁰. One of the reasons is that Indonesia is a non-signatory country to the 1951 refugee convention and 1967 protocols, then this study will try to compare the social and legal phenomenon in refugee handling between Hungary and Indonesia and conclude the challenges and burden to formulate the legal and social solution for the long-term policy for Indonesia asylum seeker handling policy.

⁴⁵ 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>.

⁴⁶ 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>.

⁴⁷ 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>.

⁴⁸ Ramadhani Puji Astutik and Anita Trisiana, “Formation of Indonesia’s National Law System,” *Jurnal Hukum Prasada* 7, no. 2 (September 21, 2020): 85–90, <https://doi.org/10.22225/jhp.7.2.2302.85-90>.

⁴⁹ UNHCR, “A Transit Country No More: Refugees and Asylum Seekers in Indonesia” (Jakarta, May 1, 2021), www.mixedmigration.org.

⁵⁰ 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>.

1.1. Research Questions

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

- 1.1.1. What do the Hungarian and Indonesia Government face the social and legal challenges to handle the refugees and asylum seekers who are entering their territories?
- 1.1.2. What are the Difference and Similarities between Indonesia and Hungary in terms of refugee handling policy?
- 1.1.3. According to the explanation above, what are the possible legal and social solutions for the Indonesian government in handling the asylum seekers who enter Indonesian territory illegally?

2. Current Situation in Refugee Handling

2.1. 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 refugees⁵¹. 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

⁵¹ H       Lambert, "International Refugee Law," *International Refugee Law*, 2017, 1–525, <https://doi.org/10.4324/9781315092478.pp.4-41>.

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 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 concern⁵².

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 violations⁵³. 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

⁵² Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law (3rd Edition)*, 3rd Editio (Oxford: Oxford University Press (OUP), 2007).

⁵³ 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>.

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 refugees⁵⁴.

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 refugee⁵⁵. 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 assistance⁵⁶. 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

⁵⁴ UNHCR, “1951 Convention Relating to the Status of Refugees,” UNCHR Convention and Protocol § (1951).

⁵⁵ UNHCR.pp. 18-19.

⁵⁶ 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>.

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 response⁵⁷. 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 solutions⁵⁸.

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."* 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 national and international contexts. 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-*

⁵⁷ 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>.

⁵⁸ Goodwin-Gill and McAdam, *The Refugee in International Law* (3rd Edition).

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 with the international standards set by the Convention. The definition provided by CSR51 has been instrumental in shaping global refugee protection frameworks, directly linking to crucial principles such as non-refoulement, which prohibits the return of refugees to territories where their lives or freedom would be threatened⁵⁹. Additionally, the CSR51 has served as the foundation for regional instruments like the 1969 Organization of African Unity (OAU) Convention in Africa and the 1984 Cartagena Declaration in Latin America, which have expanded the definition to include individuals fleeing generalized violence and other serious disturbances of public order⁶⁰. 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. Since the end of the Cold War, 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 challenges⁶¹. The conclusion of the Cold War ushered in significant geopolitical shifts, marked by the dissolution of the Soviet Union, the emergence of new nation-states, and the intensification of intrastate conflicts, ethnic strife, and civil wars. 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

⁵⁹ 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>.

⁶⁰ 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>.

⁶¹ Zofia Przybytkowski, "Enforcing Idealism : The Implementation of Complementary International Protection in Canadian Refugee Law" (Canada, 2010).

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, and resettlement as integral components of its protection strategy⁶². 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 them⁶³. The end of the Cold War brought about significant geopolitical shifts, leading to new patterns of displacement and the emergence of complex

⁶² 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>.

⁶³ Mary Lynn and De Silva, "Norm Circles, Stigma and the Securitization of Asylum: A Comparative Study of Australia and Sweden" (2017).

refugee crises⁶⁴. 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 comprehensive and robust approach to refugee protection⁶⁵. 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

⁶⁴ 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>.

⁶⁵ 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>.

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:

- 2.1.1. 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.
- 2.1.2. 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.
- 2.1.3. 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.
- 2.1.4. 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 seekers⁶⁶. 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 protection⁶⁷. This clause necessitates a careful assessment of the applicant's background to ensure that perpetrators of serious crimes do not benefit from refugee status.

2.2. *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 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*”⁶⁸. 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*”⁶⁹. As of 2023, there were 32.5 million refugees and 4.3 million asylum seekers worldwide⁷⁰. 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 reunification⁷¹.

⁶⁶ Alice Edwards, “Temporary Protection, Derogation and the ‘1951 Refugee Convention,’” *Melbourne Journal of International Law* 13, no. 2 (2012): 595–635.

⁶⁷ 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>.

⁶⁸ James C. Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge University Press, 2014), <https://doi.org/10.1017/CBO9780511998300>.

⁶⁹ Matthew Lister, “WHO ARE REFUGEES?,” *Source: Law and Philosophy* 32, no. 5 (2013): 645–71, <https://doi.org/10.1007/si>.

⁷⁰ 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>.

⁷¹ 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>.

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*⁷². 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 ineligible⁷³. 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 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 identity⁷⁴. 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 1).

Table 1. 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 |

⁷² UNHCR, "Ensuring the Safety of Asylum Seekers."

⁷³ Cipta Primadasa Primadasa, Mahendra Putra Kurnia, and Rika Erawaty, "Problematisasi Penanganan Pengungsi Di Indonesia Dari Perspektif Hukum Pengungsi Internasional," *Risalah Hukum*, vol. 17, 2021, <https://referensi.elsam.or.id/wp->

⁷⁴ UNHCR, "Ensuring the Safety of Asylum Seekers."

| | |
|---|------------|
| 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 |

Source: Author from the 1951 Refugee Convention

2.3. *Current Situation in Refugee Handling*

On the other hand, enforcing the rules and fulfilling the refugee's rights is not always viable. Previous studies, found that there is a legal gap between the 1951 refugee convention and the national migration law, such as in Australia, as one of the ratifying countries is pushing many of the asylum seeker boats to the Indonesia sea, which known as "*turnback policies*,"⁷⁵. Whereas based on the Section 197C of the Migration Act 1958, which allows to "*removing irrelevant persons who enter Australia territories*," recorded from 2013 to 2020, Australia has been pushing back 38 vessels, which had 873 asylum seekers on board, including 57 crew and 124 children⁷⁶. Concerning the previous findings, Mexico, as a ratifying country of the 1951 refugee convention, received 130.627 asylum claims in 2021, which is more than 100 times the number received in 2013. Mexico is also breaking promises by purposefully denying asylum seekers' rights and sending them to a detention center in Tapachula, Mexico, to force them to withdraw their asylum application⁷⁷.

Another significant issue confronting the international refugee protection regime is the fact that not all nations have ratified the 1951 Refugee Convention and its 1967 Protocol. As of May 2019, data from the UNHCR indicates that 149 countries have ratified these foundational instruments, which together establish the legal framework for refugee protection

⁷⁵ Mary Crock, "Refugee Protection in Australia: Policies and Practice," *Revue Européenne Des Migrations Internationales* 35, no. 1–2 (2019): 239–50, <https://doi.org/10.4000/remi.12353>.

⁷⁶ Refugee Council of Australia, "Report on Pushback Practices and Their Impact on the Human Rights of Migrants," vol. 61 (New South Wales, 2021).

⁷⁷ Stephanie Brewer, Lesly Tejada, and Maureen Meyer, "Struggling to Survive: The Situation of Asylum Seekers in Tapachula, Mexico" (New York, NY, US, 2022), <https://www.wola.org/wp-content/uploads/2022/06/FINAL-Struggling-to-Survive-Asylum-Seekers-in-Tapachula.pdf>.

on a global scale⁷⁸. This leaves a notable number of countries—many of which are directly affected by displacement crises—without a formal legal basis for protecting refugees within their territories⁷⁹. The lack of ratification means that these states do not formally commit to the principles enshrined in the Convention and Protocol, including the fundamental rights of refugees and the principle of non-refoulement, which prohibits the return of refugees to places where their lives or freedoms could be endangered.

The reasons for non-ratification are diverse and multifaceted, reflecting a wide range of political, economic, and social factors. In some cases, countries may be reluctant to ratify due to concerns about the potential legal and financial implications of implementing the Convention's obligations, such as the provision of social services, legal rights, and integration support for refugees⁸⁰. Others may have reservations about specific aspects of the Convention, such as the commitment to non-refoulement or the broader implications for national sovereignty and immigration policies⁸¹. Political considerations also play a role, as some countries may view ratification as conflicting with their domestic or regional policies on immigration and asylum⁸². Additionally, there may be issues related to capacity and infrastructure, where countries lack the necessary resources or institutional frameworks to effectively manage and support refugee populations⁸³.

The absence of ratification in certain regions can undermine the effectiveness of the international refugee protection system, as it creates gaps in coverage and inconsistent application of refugee rights across different jurisdictions. This can lead to significant disparities in how refugees are treated and protected, potentially resulting in vulnerable populations being left without adequate legal safeguards. Furthermore, the lack of universal adherence to the Convention and Protocol complicates efforts to promote international cooperation and burden-sharing, essential components of a cohesive and effective global

⁷⁸ UNHCR, “Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection,” no. February (2019): 1–278, <http://www.unhcr.org/3d58e13b4.html>.

⁷⁹ Simone Bertoli, Herbert Brücker, and Jesús Fernández-Huertas Moraga, “Do Applications Respond to Changes in Asylum Policies in European Countries?,” *Regional Science and Urban Economics* 93 (March 1, 2022), <https://doi.org/10.1016/j.regsciurbeco.2022.103771>.

⁸⁰ M.S. Yahya Sultoni, Setyo Widagdo S.H., M.Hum., Herman Suryokumoro S.H., “The Reason of Indonesia Not Ratified Refugee Convention 1951 And,” no. 6 (2013): 1–14, <http://tinyurl.com/jjcun33percent5Cnwww.unhcr.org>.

⁸¹ Shirley Llain Arenilla, “Violations to the Principle of Non-Refoulement Under the Asylum Policy of the United States,” *Anuario Mexicano de Derecho Internacional* 15, no. 1 (2015): 283–322, <https://doi.org/10.1016/j.amdi.2014.09.005>.

⁸² Yahya Sultoni, Setyo Widagdo S.H., M.Hum., Herman Suryokumoro S.H., “The Reason of Indonesia Not Ratified Refugee Convention 1951 And.”

⁸³ UNHCR, “Connecting Refugees: How Internet and Mobile Connectivity Can Improve Refugee Well-Being and Transform Humanitarian Action,” 2016, 1–23.

refugee protection framework. Addressing these gaps requires a concerted effort by the international community to encourage greater ratification and implementation of the 1951 Refugee Convention and its 1967 Protocol, while also supporting countries in building the capacity and infrastructure necessary to uphold the principles of refugee protection. The other major issue is that not all nations in the world have ratified the 1951 Refugee Convention and 1967 Protocols. According to the most recent UNHCR data, 149 nations have ratified the convention through May 2024, which indicates that the other countries do not yet have a legal basis for refugee protection in their territory⁸⁴. The reasons for not ratifying the convention and its protocol vary greatly among countries.

Moreover, the motives which push people to leave their home countries are 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 countries⁸⁵. 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 proximity⁸⁶.

The 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 low number of transnational crime⁸⁷ 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, resulting in collectivizing external border control and shifting refugee responsibility to new member states with minimal standards for refugee protection and weak enforcement mechanisms⁸⁸. Furthermore, in September 2015 the quota system under the Common European Asylum System (CEAS) was proposed as the

⁸⁴ UNHCR, “List of OIC Member States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol,” *Refugee Survey Quarterly* 27, no. 2 (2024): 94–94, <https://doi.org/10.1093/rsq/hdn023>.

⁸⁵ 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>.

⁸⁶ 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>.

⁸⁷ Sergio Carrera et al., “The EU ’ s Response to the Refugee Crisis Taking Stock and Setting Policy Priorities,” *Ceepe Essay*, no. 20 (2015): 9.

⁸⁸ 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>.

administrative solution for the EU to address the refugee crisis, successfully relocating 120.000 refugees along the EU member country⁸⁹.

However, the Visegrad four member states (as 1951 refugee convention signatories countries), including Hungary are abandoned the refugee handling policy, resulting in the ignorance of member states of the CEAS, which potentially violated the human rights standard, such as 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)⁹⁰. However, as a member of the EU, Hungary complied with the 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 Germany⁹¹.

Furthermore, the rise of digital nomadism as a phenomenon that serves to contest traditional theories on migration and point out lacuna in emerging regulatory regimes. Digital nomads often move from Global North to Global South nations because of reasons other than economic imperative; that is, affordability, tropical climate, and internet access. Popular destinations like Bali and Phuket welcome nomads without comprehensive legal frameworks catering to them, unlike Spain, with its regulated visa system for digital workers⁹².

The lack of regulation in migration and refugee laws puts digital nomads into a gray area, where they are neither protected by the laws designed for labor migrants nor those for refugees. Existing laws focus on fixed employment or protection needs and have completely disregarded location-independent work trends. This regulatory gap creates challenges for host countries in harnessing the economic benefits of digital nomadism while managing its potential social impacts, such as gentrification and infrastructure strain⁹³. This study underlines how

⁸⁹ 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 percent0Ahttp://library.fes.de/pdf-files/bueros/kroatien/13787.pdf.

⁹⁰ Nagy, "Special Issue Constitutional Dimensions of the Refugee Crisis Hungarian Asylum Law and Policy in 2015–2016: Securitization Instead of Loyal Cooperation."

⁹¹ 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>.

⁹² Mohammad Thoriq Bahri, "Evidence of the Digital Nomad Phenomenon: From 'Reinventing' Migration Theory to Destination Countries Readiness," *Heliyon* 10, no. 17 (2024): e36655, <https://doi.org/10.1016/j.heliyon.2024.e36655>.

⁹³ Mohammad Thoriq Bahri, "Navigating Indonesia's Golden Visa Scheme Through Comparative Legal Policy Analysis," *International Comparative Jurisprudence* 9, no. 1 (2023): 92–110, <https://doi.org/10.13165/j.icj.2023.06.007>.

urgent it is to include tailored digital nomad policies in migration governance in order to balance economic opportunities with social cohesion.

Furthermore, a study conducted by Bahri (2023), found that Iranian refugees in Turkey use mainly social media, specifically Twitter, in raising their concerns and frustrations regarding resettlement into third countries like Canada and the European Union. Most of the discussions are driven by the refugees themselves, pointing at the inefficiency and slowness of the UNHCR's processes: less than 5% acceptance for resettlement and an average waiting period of more than five years. Sentiment analysis showed generally negative perceptions about the UNHCR, while hashtags and mentions reflected the key issues: human rights, resettlement, and dissatisfaction with current policies. Influential users within the conversation clusters included both refugees themselves and media outlets amplifying these issues. The findings reveal a dire need for legal and administrative reforms; these would include facilitating refugees' access to education and adopting migration mechanisms such as the EU Blue Card scheme that would provide sustainable pathways to either integration or resettlement in solving these challenges⁹⁴.

The increasing complexity of migration patterns—from the mass movement of refugees, driven by conflict to the newly emerging phenomenon of digital nomadism—highlights the deficiencies in the existing legal frameworks in attempts to address diverse migration realities. In as much as the 1951 Refugee Convention and its 1967 Protocol have provided a very important foundational framework for refugee protection, gaps in ratification and implementation continue to be an obstacle to global consistency. Meanwhile, the non-regulated status of digital nomads reveals a gray area in migration and refugee law, which leaves countries unprepared to handle their special needs or tap into their economic potential. This calls for bringing international migration governance into step by including frameworks adapted to new drivers of migration, from survival to lifestyle, that protect and provide opportunities for all parties concerned.

3. Identifying the gap: Refugee Problem in Indonesia

In Indonesia, to apply for protection, refugees must pass through the refugee identification stage which is evaluated through the RSD which conducted by the UNHCR. The

⁹⁴ Bahri, M.T. (2023). Understanding Iranian Refugee Discourse in Turkey on Twitter by Using Social Network Analysis. *Hrvatska i komparativna javna uprava*, 23 (1.), 7-33. <https://doi.org/10.31297/hkju.23.1.5>

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 once⁹⁵. 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 UNHCR on 15 June 1979.

These are complex and multifaceted journeys taken by refugees seeking to reach third countries, which are recognized as refugee recipient nations, and may involve contact with a wide array of people from all different nationalities and walks of life. Through it all, these journeying people often cross into more than one country, either deliberately or due to circumstance. The latter include "*accidental transit*" where the refugees find themselves lost, run low on logistics, or get caught by the local authorities⁹⁶. These interactions and movements are not merely incidental but form a critical part of the refugee experience, as they navigate through legal, social, and cultural landscapes that differ significantly from their own. In addition, the need to stop in transit countries en route, whether briefly or for extended periods, puts refugees in the midst of many other challenges, such as having to negotiate unfamiliar legal systems, risk detention or forced returns, and make do with limited access to resources and basic needs⁹⁷. Such experiences complicate their journey even more, since refugees have to put up with different levels of hospitality or hostility, and may face exploitation, discrimination, or other forms of mistreatment. These experiences collectively contribute to a profound impact on the overall trajectory of the refugee, influencing not only their physical and psychological well-being but also their prospects for successful integration and asylum in the destination country⁹⁸. Such complex dynamics highlight the need for a holistic understanding of the refugee journey, which forms the basis for effective legal and humanitarian responses at both national and international levels.

In Indonesia, many of those refugees endeavoring to reach third countries—those recognized as refugee recipient states under the 1951 Geneva Convention Relating to the Status of Refugees—embark on journeys that are often characterized by significant complexity,

⁹⁵ 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.

⁹⁶ 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>.

⁹⁷ Bahri, "Understanding The Pattern of International Migration : Challenges in Human Right Protection."

⁹⁸ Sara Riva and Gerhard Hoffstaedter, "The Aporia of Refugee Rights in a Time of Crises: The Role of Brokers in Accessing Refugee Protection in Transit and at the Border," *Comparative Migration Studies* 9, no. 1 (2021): 1–17, <https://doi.org/10.1186/s40878-020-00212-2>.

unpredictability, and an array of diverse experiences. These individuals, fleeing persecution, conflict, or other severe adversities, are compelled to navigate perilous routes that frequently involve crossing multiple international borders. Throughout this arduous process, refugees encounter a wide range of interactions with various groups, including fellow refugees, smugglers, local communities, law enforcement officials, and humanitarian actors⁹⁹. These encounters are imbued with distinct cultural, social, and linguistic challenges that can profoundly impact their ability to communicate, seek assistance, and ensure safe passage. The journey is rarely linear; instead, it is marked by numerous detours and delays as refugees are forced to make temporary stops in transit countries. These stops, whether voluntary—driven by the need to replenish resources—or involuntary—resulting from disorientation or encounters with local authorities—add layers of complexity to their journey, exposing them to legal environments that are often ambiguous, unwelcoming, or hostile.

In these transit countries, refugees frequently face significant challenges, including limited or no access to asylum procedures, legal representation, or protection under international law, leaving them vulnerable to human rights violations such as arbitrary detention, exploitation by traffickers, and forced returns¹⁰⁰. The scarcity of basic necessities—such as food, clean water, shelter, and medical care—further exacerbates their plight, as they often live in overcrowded and unsanitary conditions with restricted access to employment or education¹⁰¹. The psychological toll of these experiences is profound, as refugees grapple with the trauma of displacement, uncertainty about their future, and ongoing threats to their safety and dignity. Moreover, social dynamics within refugee populations and between refugees and host communities can give rise to tensions and discrimination, further complicating their ability to secure the protection and support they need. The cumulative impact of these experiences shapes not only the outcomes of asylum claims but also the long-term physical and mental well-being of refugees and their prospects for successful integration into their destination countries. It is imperative that policymakers, humanitarian organizations, and legal practitioners adopt a holistic approach that considers the full spectrum of challenges faced by

⁹⁹ Mohammad Thoriq Bahri, “Understanding Public Responses on Vaccine Passport as Immigration Policy Using the Big Data Analysis,” *AIP Conference Proceedings* 2706, no. October 1953 (2023), <https://doi.org/10.1063/5.0120311>.

¹⁰⁰ 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>.

¹⁰¹ Dewansyah, Dramanda, and 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.”

refugees, ensuring that they receive the protection and support they are entitled to under international law while addressing the root causes of displacement and facilitating durable solutions for their integration.

Furthermore, 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 work¹⁰², 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. That problem will affect several problems later, such as getting health facilities, education, and registering for various other services¹⁰³.

The issue of legal instruments for handling refugees in Indonesia is a deeply complex and multifaceted challenge, exacerbated by the absence of a comprehensive and coherent legal framework tailored to the specific needs and circumstances of refugees. The foundation for handling refugees in Indonesia is established through several key regulations, starting with the 1945 Constitution, particularly Article 28G, paragraphs 1 and 2. These constitutional provisions affirm the fundamental rights of individuals and their family members to protection, emphasizing their right to live free from threats and fear. Moreover, the Constitution recognizes the right of individuals to seek and obtain asylum from other countries, a provision that aligns with international human rights norms. Complementing this constitutional guarantee, Article 28(1) of Law Number 39 of 1999 concerning Human Rights further enshrines the right of every individual to seek asylum and obtain political protection from foreign states. This legislation underscores Indonesia's commitment to upholding human rights and providing a legal foundation for the protection of asylum seekers¹⁰⁴. However, these broad constitutional and legislative provisions do not translate into detailed regulations that address the procedural and

¹⁰² 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>.

¹⁰³ 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.

¹⁰⁴ Judha Riksawan, "Constitutional Rights in Indonesia," *International Journal of Global Community* 1, no. 1(March) (2018): 56–68, [https://doi.org/10.33473/ijgc-ri.vol.1.no.1\(march\).2018.56-68](https://doi.org/10.33473/ijgc-ri.vol.1.no.1(march).2018.56-68).

substantive aspects of refugee protection. The absence of specific legal mechanisms to operationalize these rights leaves refugees in a precarious position, without clear guidelines or protections under Indonesian law, thus exposing them to various forms of vulnerability and legal uncertainty¹⁰⁵.

Further complicating the legal landscape for refugee protection in Indonesia are the provisions found in Law Number 37 of 1999 concerning Foreign Relations, particularly Articles 25, 26, and 27. These articles mandate that the handling of asylum seekers and foreign refugees should be governed by a presidential decree, which must be issued after careful consideration of ministerial recommendations, as well as international law, customary international practices, and relevant national interests. The intention behind this mandate is to ensure that the treatment of refugees and asylum seekers in Indonesia is consistent with international legal standards and that the country upholds its obligations under customary international law, despite not being a signatory to the 1951 Refugee Convention or its 1967 Protocol. However, a significant legal inconsistency arises due to the change in the nomenclature from 'presidential decree' to 'presidential regulation,' as required by Article 7(2) of Law Number 12 of 2011 concerning the Establishment of Legislative Regulations (UP3). Despite this legislative requirement, no such presidential regulation has been issued to date, resulting in a legal vacuum that leaves Indonesia without a clear and enforceable legal basis for managing refugee-related issues¹⁰⁶. This gap creates significant challenges for Indonesia in responding to the realities of refugee flows within its borders, as it lacks a cohesive policy framework that addresses both the immediate needs of refugees and the longer-term implications of their presence in the country.

Given that the entry of foreigners into Indonesia is primarily regulated through immigration procedures, it is critical to examine how existing immigration laws address—or fail to address—the specific status and needs of refugees. Law Number 6 of 2011 concerning Immigration is the primary legal instrument governing the entry, stay, and removal of foreign nationals in Indonesia. However, this law does not contain any provisions specifically dealing with refugees or asylum seekers, thereby categorizing them as illegal immigrants or, in certain

¹⁰⁵ 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>.

¹⁰⁶ 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 Quarterly Reviews* 1, no. 4 (2022): 41–55, <https://doi.org/10.31014/aior.1996.01.04.41>.

cases, as victims of human trafficking¹⁰⁷. This legal classification fails to recognize the unique legal and humanitarian status of refugees, as established under international law, and subjects them to the same punitive measures as other unauthorized migrants.

Consequently, refugees who enter Indonesia are often detained in Immigration Detention Centers, where they are held pending deportation to their countries of origin. This approach not only disregards the protections afforded to refugees under international human rights and refugee law but also places significant strain on Indonesia's detention infrastructure. The detention centers, already overwhelmed by the number of detainees, are not equipped to provide the long-term care and protection that refugees require, particularly those who are fleeing persecution or violence in their home countries¹⁰⁸. This situation highlights the critical need for Indonesia to develop a legal framework that recognizes the distinct status of refugees and provides them with appropriate protections, rather than treating them as mere violators of immigration laws.

The reality on the ground in Indonesia is that thousands of refugees have entered the country, often using it as a transit point while awaiting registration with the UNHCR office in Jakarta. This influx of refugees, many of whom enter Indonesia under the pretense of tourism, further complicates the situation, as the current immigration laws do not distinguish between refugees and other categories of unauthorized migrants. The Indonesian government's response to this issue has been inadequate, despite efforts to address it through the issuance of Presidential Regulation Number 125 of 2016 concerning the Procedures for Handling Refugees from Overseas. While this regulation was a step towards formalizing the management of refugees, it has proven largely ineffective in practice¹⁰⁹. One of the key reasons for this failure is that the regulation delegates the responsibility for refugee management to local governments, many of which lack the necessary funds, resources, and infrastructure to adequately support refugee populations. Consequently, local governments often refuse to accept refugees, leading to a continuation of the legal and humanitarian void. This situation is further exacerbated by the absence of a national policy framework that clearly delineates the roles and responsibilities of various governmental and non-governmental actors in refugee management, leading to

¹⁰⁷ 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>.

¹⁰⁸ Wahyuni Kartikasari, "Modern Migration Pattern in Indonesia: Dilemmas of a Transit Country," *Revista UNISCI* 2020, no. 53 (2020): 23–42, <https://doi.org/10.31439/UNISCI-81>.

¹⁰⁹ Bahri, *Between Legal Fortress and Uncertainty: Comparative Analysis of the Refugee Law Frameworks in Hungary and Indonesia*.

inconsistent and often ad hoc responses to the challenges posed by the presence of refugees in Indonesia.

Compounding these issues is Indonesia's paradoxical position as a non-signatory to the 1951 Refugee Convention and its 1967 Protocol. This status places Indonesia in a difficult situation where, on one hand, the country is committed to certain human rights principles that support the protection of refugees, while on the other hand, it lacks a robust legal framework to implement these principles effectively. The situation becomes even more complicated when considering the implementation of Presidential Regulation Number 21 of 2016, which introduced a visa-free policy for citizens of 169 countries, including those from conflict zones¹¹⁰. This policy, while intended to promote tourism and international relations, inadvertently facilitated the entry of individuals from these conflict zones into Indonesia, often under the guise of tourism. Once in Indonesia, these individuals frequently seek refuge or asylum, further straining the country's already limited resources and legal infrastructure for handling refugees. The lack of a coherent policy or legal framework to address the influx of refugees under these circumstances has led to a situation where Indonesia is ill-prepared to manage the complexities of refugee protection, resulting in significant human rights concerns.

This paradox underscores the urgent need for comprehensive legal reform in Indonesia, one that aligns the country's domestic laws with international human rights standards and provides a clear, consistent framework for the protection and management of refugees. Such reform is essential not only for addressing the immediate challenges posed by the presence of refugees in Indonesia but also for ensuring that the country fulfills its obligations under international law and upholds the principles of human dignity and protection that are at the core of refugee rights.

In some instances, despite the legal ambiguities and the absence of a comprehensive national framework for refugee management, refugees in Indonesia have been welcomed by local communities, who have stepped in to provide protection, temporary, and semi-permanent shelters. A notable example of this community-led response can be seen in the case of Rohingya refugees in North Aceh, where local residents, driven by a sense of moral responsibility and humanitarian concern, have offered shelter and sustenance to these vulnerable populations¹¹¹.

¹¹⁰ 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.

¹¹¹ 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>.

This response is not an isolated incident but rather reflects a broader cultural and religious ethos in Indonesia, where communities often take it upon themselves to aid those in distress, particularly when they share religious ties. In the case of the predominantly Muslim Rohingya refugees, the shared faith with the largely Muslim population of Aceh has likely strengthened these bonds of solidarity and support¹¹². As a result, many refugees, despite their precarious legal status, have found a semblance of safety and community integration in these regions, benefiting from the generosity and compassion of local populations who provide food, shelter, and other forms of assistance, often without any formal government intervention or support.

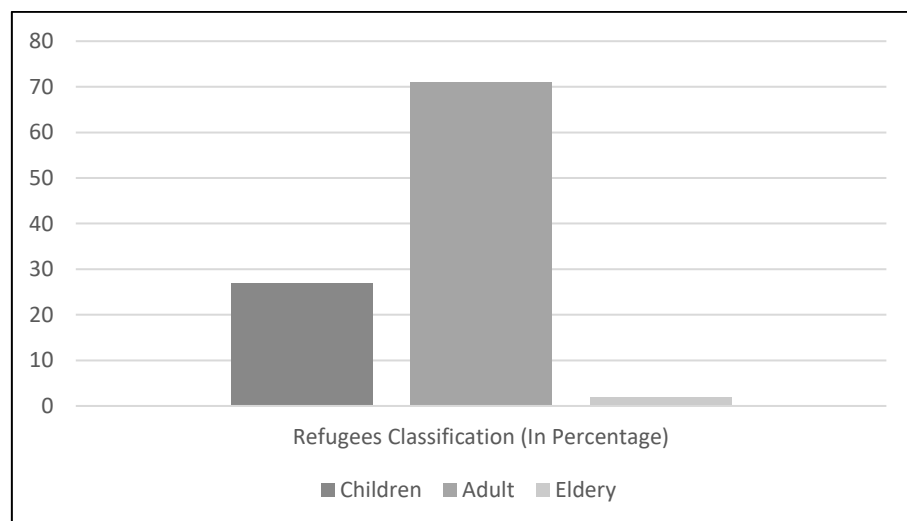
However, this grassroots response by the community starkly contrasts with the legal vacuum that exists at the national level in Indonesia regarding the handling of refugees. The primary cause of this legal void is the failure to issue the necessary presidential regulations as mandated by Law No. 37/1999, which calls for the establishment of a legal framework for handling asylum seekers and refugees. This shortcoming is further compounded by the fact that the issue of refugees is not adequately addressed in Law No. 6/2011 concerning immigration, which primarily focuses on the regulation of legal immigration but does not provide for the unique circumstances of refugees and asylum seekers. In the absence of specific legislation, the Indonesian government has relied on the Regulation of the Director-General of Immigration No. IMI-1489.UM.08.05 of 2010 concerning the Handling of Illegal Immigrants. This regulation, however, categorizes refugees as illegal immigrants due to their inability to meet the standard immigration documentation requirements. As a result, when refugees and asylum seekers enter Indonesia irregularly, they are often placed in a legal limbo, where their cases are coordinated with the UNHCR Jakarta office to determine their refugee status. Once refugee status is granted, these individuals are no longer subject to deportation; however, their living expenses are typically covered by UNHCR, while the Directorate General of Immigration is responsible for overseeing their supervision. Despite this administrative workaround, the legal basis for handling refugees remains weak and does not address the underlying issues of protection and rights that are crucial for refugees' well-being and integration.

As of March 2021, the number of individuals registered with UNHCR in Indonesia included 10,184 refugees and 3,313 asylum seekers, all of whom are defined as refugees under Indonesian law. However, the actual number of refugees present in Indonesia is significantly higher, with more than 23,441 refugees having entered Indonesian territory between January

¹¹² Lindra Darnela, "Islam And Humanity Commodification Of Aid For Rohingya In Aceh," *Al-Jami'ah* 59, no. 1 (2021): 57–96, <https://doi.org/10.14421/ajis.2021.591.57-96>.

and March 2021 alone¹¹³. This disparity underscores the limitations of the current legal and administrative systems in accurately capturing and addressing the refugee situation in Indonesia. The figures also reveal the increasing pressure on Indonesia's capacity to manage and support these populations, especially in the absence of a robust legal framework. The percentage breakdown of these refugee classifications further highlights the diverse and complex nature of the refugee population in Indonesia, with varying needs and challenges that require a more nuanced and comprehensive approach than what is currently provided under existing regulations. This situation calls for urgent legal reform and a more coordinated national response that aligns with international standards and the demonstrated humanitarian values of the Indonesian people.

Figure 4. Classification of the Accepted Refugees Status in Indonesia per March 2021



¹¹³ Skolastika Genapang Maing, “Dilema Tata Kelola Pengungsi Global: Penanganan Illegal Maritime Arrivals (IMA) Di Australia,” *Nation State Journal of International Studies* 3, no. 2 (2020): 207–28, <https://doi.org/10.24076/nsjis.2020v3i2.203>.

Source: Directorate General of Immigration, 2021.

In parallel with these resettlement efforts, it is essential to consider the broader context of refugee arrivals in Indonesia, particularly between January and March 2021. During this period, the UNHCR Indonesia received a considerable number of refugees, categorized based on their countries of origin. The data provided by the Directorate General of Immigration sheds light on the diverse backgrounds of these refugees, which in turn reflects the various geopolitical crises and conflicts driving forced migration. This influx underscores the challenges faced by Indonesia, a non-signatory to the 1951 Refugee Convention, in managing a refugee population with complex needs and diverse cultural backgrounds.

The country-of-origin data, as illustrated in Fig. 5, highlights the primary regions from which these refugees have fled, offering insight into the global nature of the refugee crisis and the specific circumstances that have led individuals to seek refuge in Indonesia. This information is crucial for understanding the demographic makeup of the refugee population in Indonesia and for developing tailored strategies to address their needs. It also emphasizes the importance of international cooperation and burden-sharing in the global refugee regime, as countries like Indonesia continue to receive refugees despite not being formally bound by international refugee law.

While the Bali Process which may protect the refugee, by design, has been instrumental in addressing human trafficking and irregular migration through initiatives such as RBDES, it has been very unsuccessful in realizing its results under ASEAN, particularly Indonesia. Despite its emphasis on cooperation and legal frameworks, there is still a significant gap toward harmonization of data protection laws and practical implementation in biometric systems. This is indeed a failure of implementation of effort in combating human trafficking since this lack of one operational mechanism means traffickers are free to use weak border controls and differential legal protections within ASEAN nations to their advantage. Secondly, over-reliance on theoretically sound mechanisms has clearly had little concrete outcomes needed for the protection of most vulnerable populations, which included trafficked people¹¹⁴.

Bali Process inefficiencies enhance vulnerability for asylum seekers and refugees who find their way to Indonesia. The absence of comprehensive data protection laws and appropriate biometric infrastructure in Indonesia prevents the country from managing refugee registrations and guaranteeing basic rights effectively ¹¹⁵. These gaps contribute to

¹¹⁴ Mohammad Thoriq Bahri, "Immigration Biometric Data Exchange Among ASEAN Member States : Opportunities and Challenges in Legislation," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 3 (2022): 433–456.

¹¹⁵ Bahri, pp. 447-449

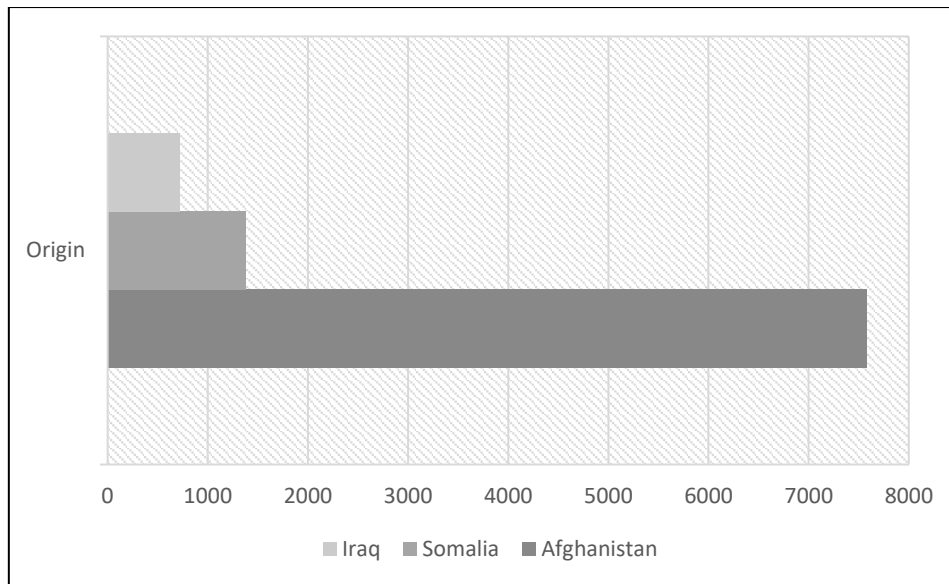
administrative delays, legal uncertainty, and limited access to essential services for refugees, rather than creating a supportive system¹¹⁶. This failure to operationalize a regional biometric exchange framework reflects the broader failure of the Bali Process to address root causes of irregular migration and protect the displaced, who become particularly vulnerable to exploitation and neglect.

Furthermore, the ongoing resettlement processes, alongside the analysis of refugee origins, provide a comprehensive picture of the refugee situation in Indonesia, revealing both the challenges and the opportunities for improving the protection and integration of refugees within the region. Moreover, in 2017, 322 refugees accepted their resettlement decision from the third countries. In detail, 147 refugees are resettled in Australia, 4 refugees are resettled in Canada, and 171 refugees are resettled in the United States of America¹¹⁷. Otherwise, from January to March 2021, the number of origins of refugees accepted by the UNHCR Indonesia based on the Country of Origin, looking from the data provided by the Directorate General of Immigration data is shown in Figure. 5.

Figure 5. The Origin Countries of the Refugees Status Holders in Indonesia.

¹¹⁶ Mohammad Thoriq Bahri, "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, no. 5 (2022): 1–12, <https://doi.org/10.24018/ejpolitics.2022.1.5.40>.

¹¹⁷ Crock, "Refugee Protection in Australia: Policies and Practice."



Source: Directorate General of Immigration, 2021.

Afghanistan, Somalia, and Iraq emerge as the predominant countries of origin for refugees who have been accepted by UNHCR Indonesia, reflecting the severe and ongoing conflicts and humanitarian crises in these regions. Afghanistan, in particular, has seen a significant increase in the number of refugees following the escalation of conflict and instability, especially after the Taliban's resurgence in power¹¹⁸. The worsening conditions in Afghanistan have driven many to flee, seeking safety and stability in other countries, including Indonesia. This surge in Afghan refugees is not merely a response to immediate threats but also a reflection of decades of protracted conflict that has left the nation in a state of perpetual turmoil, prompting successive waves of displacement¹¹⁹. Similarly, refugees from Somalia and Iraq continue to seek asylum due to persistent violence, political instability, and the lack of basic human rights in their home countries¹²⁰. Somalia's ongoing civil strife and Iraq's complex post-war environment, marked by sectarian violence and political fragmentation, contribute to the sustained outflow of refugees seeking refuge in more stable regions.

Moreover, the overall number of refugees and asylum seekers arriving in Indonesia has been on a steady upward trajectory, a trend that is evident in the data presented in table 2. This

¹¹⁸ Riwana Asdiarti and Agussalim Burhanuddin, "The Impact of the Taliban's Return to Power on the Stability of Public Security in Afghanistan," *Jurnal Ilmu Sosial Indonesia (JISI)* 5, no. 1 (2024): 45–61, <https://doi.org/10.15408/jisi.v5i1.39525>.

¹¹⁹ Sebghatullah Qazi Zada et al., "The Fall of Afghanistan: Can the Refugee Protection Regime Handle the New Refugee Wave?," *Indonesian Comparative Law Review* 6, no. 2 (2024): 138–55, <https://doi.org/10.18196/iclr.v6i2.22369>.

¹²⁰ IDMC, "Global Report on Internal Displacement 2021," *GRID 2021* (Canberra, Australia, 2021), https://api.internal-displacement.org/sites/default/files/publications/documents/grid2021_idmc.pdf.

increase highlights the growing pressures on countries like Indonesia, which, while not a party to the 1951 Refugee Convention, finds itself at the forefront of managing significant numbers of displaced individuals. The data underscores a pattern of annual growth in refugee arrivals, driven by a combination of escalating global conflicts, worsening humanitarian conditions in certain regions, and the resultant mass displacements. The steady rise in numbers also suggests that Indonesia is becoming an increasingly significant transit or host country for refugees in Southeast Asia, further complicating the challenges faced by the country in the absence of a comprehensive legal framework for refugee protection.

This upward trend is particularly concerning given the limitations of Indonesia's current legal and administrative infrastructure to effectively manage and support the increasing refugee population. The data from table 2 provides a clear indication of the scale of the issue, revealing not only the growing numbers but also the diversity of the refugee population, which includes individuals from a wide range of cultural, linguistic, and religious backgrounds. This demographic diversity necessitates a more nuanced and sophisticated approach to refugee management, one that takes into account the specific needs of different groups and ensures that they receive adequate protection and assistance. The steady increase in refugee numbers also puts additional strain on Indonesia's resources and highlights the need for enhanced international cooperation and support, both in terms of funding and technical assistance, to help Indonesia cope with the rising demand for refugee protection and services. As these numbers continue to grow, it becomes increasingly critical for Indonesia to develop more robust and effective legal instruments and policies to address the complex challenges posed by the refugee influx, ensuring that the rights and dignity of refugees are upheld in accordance with international human rights standards. Afghanistan, Somalia, and Iraq dominate the Origin countries of the refugees who the UNHCR Indonesia has accepted. The number increased slightly after the war in Afghanistan became worse. On the other hand, the number of refugees and asylum seekers is increasing yearly as seen in Table 2.

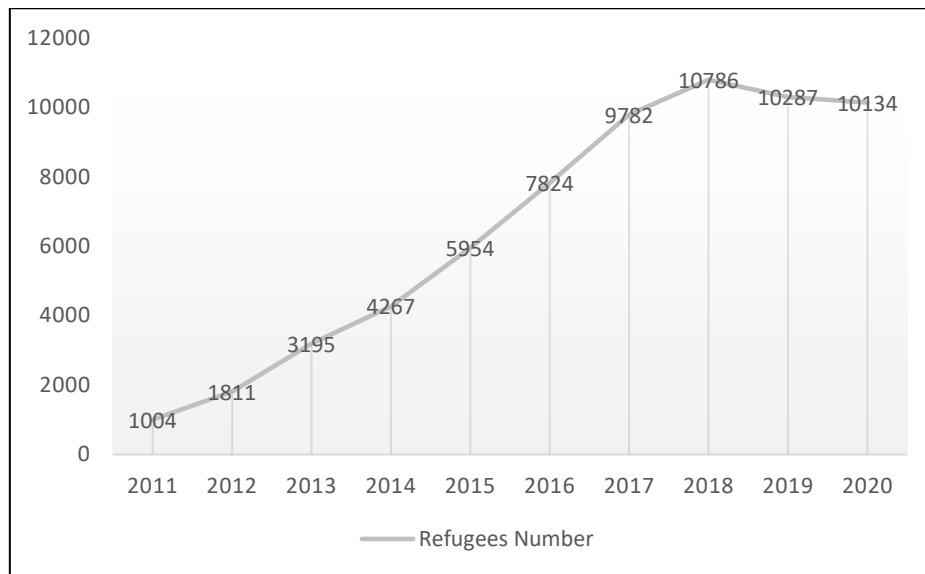
Table 2. Total of Yearly Refugees Who Arrived in Indonesia Territories 2009 – 2016..

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---------------|------|------|------|------|-------|-------|-------|-------|
| Asylum Seeker | 1769 | 2071 | 3233 | 6126 | 7110 | 6916 | 7591 | 6578 |
| Refugees | 798 | 811 | 1006 | 1819 | 3206 | 4270 | 5957 | 7827 |
| Total | 2878 | 2882 | 4239 | 7980 | 10316 | 11186 | 13548 | 14405 |

Source: Directorate General of Immigration, 2021

Furthermore, the developing situation in Indonesia is getting worse because the number of asylum seekers entering Indonesian territory is always increasing yearly as shown in figure 6.

Figure 6. Indonesia Asylum Seeker Population from 2011 to 2020



Sources: World Bank, 2021

Considering the trends in Indonesia's asylum seeker population from 2011 to 2020, it is evident that the country faces an imminent risk of a refugee crisis that could significantly strain its resources and infrastructure. To mitigate this potential crisis, Indonesia must urgently draw on Hungary's experience in refugee management, which, despite its contentious nature, has proven effective in regulating asylum seeker inflows. This situation necessitates immediate legal reforms to establish clear and humane refugee determination procedures, ensuring Indonesia's compliance with international obligations and its preparedness to manage the complexities of increased refugee arrivals. Furthermore, the development of robust social solutions is imperative to foster community resilience, facilitate refugee integration, and prevent social tensions, thereby promoting long-term societal stability. By integrating legal and social strategies, Indonesia can proactively address the challenges of refugee management and avert a crisis that could have profound implications for its social fabric and governance. Based on the literature review above, can be concluded that Indonesia must learn from Hungary's

experience in the refugee handling policy to prevent the refugee crisis which may be happened near future.

4. Concluded research gap

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

4.1. Research Gap Related to Question 2.1:

- 4.1.1. *Main research question:* What do the Hungarian and Indonesian Governments face in terms of social and legal challenges to handle the refugees and asylum seekers who are entering their territories?
- 4.1.2. *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.

4.2. Research Gap Related to Question 2.2:

- 4.2.1. *Main research question:* What are the differences and similarities between Indonesia and Hungary in terms of refugee handling policy?
- 4.2.2. *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.

4.3. Research Gap Related to Question 2.3:

- 4.3.1. *Main research question:* According to the explanation above, what are the possible legal and social solutions for the Indonesian government in handling the asylum seekers who enter Indonesian territory illegally?
- 4.3.2. *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.

II. 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 topic¹²¹. 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 efforts¹²². By leveraging the information and ideas gathered from these sources,

¹²¹ 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.

¹²² 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

systematically¹²³. 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 refugees. 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.

2.1.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

¹²³ 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.

- 2.2.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.
- 2.3.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.
- 2.4. Analysis, after the data is displayed, the analysis method for understanding the data by specific measurements is conducted.
- 2.5.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”¹²⁴. 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 3.

¹²⁴ 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 3. The Development Approach for the Comparative Law Analysis

| All Legal Systems Are Comparable | Not Every Legal Systems Are Comparable |
|--|--|
| Universal Legal System: | Different Development Approach: |
| As argued by Ulrich Drobnig and Kokkini (1969), every legal system is considered equal and universal and can be directly compared ¹²⁵ | 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 ¹²⁶ |
| Versus Approach: | Legal System is a Product of Culture: |
| As Argued by Sacco (1920) each legal system can be compared with every other legal system ¹²⁷ | 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 ¹²⁸ |

Source: Authors, from several publications

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 compared¹²⁹.

Then, it becomes essential for the legal researcher to define the rights legal system which will be used. Oederkerk (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,

¹²⁵ Oederkerk.

¹²⁶ 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.

¹²⁷ 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.

¹²⁸ 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.

¹²⁹ 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>.

Finding the “higher level of development” legal system to upgrade existing legal system; (3) 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 families¹³⁰. In this research, there is a difference between the legal systems in Hungary in Indonesia, which is defined in table 4.

Table 4. The Difference Between Indonesia and Hungary's Legal Background

| Hungary | Indonesia |
|---|---|
| Hungary is a member country of a Supranational Organization (European Union, EU) which are legally bound to each other ¹³¹ . | 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 supranationally by the European Union, and then adapted to the National Law by the Government, then Hungary cannot independently determine the status of refugees ¹³² . | 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 ¹³³ . |
| Have the details procedures in the Asylum Seeker reception, based on the Dublin Procedures ¹³⁴ | 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 ¹³⁵ |

Source: Authors from many Publications

Based on the explanation above, conducting a comparative legal analysis between Indonesia and Hungary's refugee handling policies is crucial due to the significant disparity in

¹³⁰ 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>.

¹³¹ EUROSTAT, *The EU in the World - 2020 Edition*.

¹³² 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.

¹³³ Missbach, “Accommodating Asylum Seekers and Refugees in Indonesia.”

¹³⁴ 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>.

¹³⁵ 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>.

their legal frameworks and the socio-legal contexts within which these frameworks operate. Indonesia currently lacks formal legal regulations regarding asylum seekers and has not ratified the 1951 Refugee Convention or its 1967 Protocols, resulting in a legal vacuum that complicates the management of asylum seekers. In contrast, Hungary, as a member of the European Union (EU), operates under the Common European Asylum System (CEAS), which provides a structured and legally binding framework for asylum seeker management, harmonized across EU member states. This stark contrast between the two countries' approaches underscores the necessity of a comparative analysis to explore how Indonesia might benefit from adopting or adapting elements of Hungary's more developed legal system. The comparative legal analysis is essential not only for highlighting the differences in their legal frameworks but also for identifying potential areas where Indonesia could enhance its legal system by learning from Hungary's experience.

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: 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 needs¹³⁶. 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 East¹³⁷.

Started on the 14th 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 landscape¹³⁸.

¹³⁶ 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](https://en.unesco.org/silkroad/sites/default/files/knowledge-bank-article/the%20end%20of%20the%20silk%20route.pdf).

¹³⁷ 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>.

¹³⁸ Naniek Harkantiningih, "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 enterprises¹³⁹. 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 climate¹⁴⁰. 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 currency¹⁴¹. 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 territory¹⁴². By using the rights, the VOC declared war on many local rulers, and

¹³⁹ Anju Nofarof Hasudungan, "Pelurusan Sejarah Mengenai Indonesia Dijajah Belanda 350 Tahun Sebagai Materi Sejarah Kritis Kepada Peserta Didik Kelas Xi Sman 1 Rupert," *Widya Winayata: Jurnal Pendidikan Sejarah* 9, no. 3 (2021): 129, <https://doi.org/10.23887/jjps.v9i3.39395>.

¹⁴⁰ 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>.

¹⁴¹ 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>.

¹⁴² 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 army¹⁴³.

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 land¹⁴⁴. 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 activities¹⁴⁵. 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 Batavia¹⁴⁶. 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 region¹⁴⁷. 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

¹⁴³ 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.

¹⁴⁴ 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>.

¹⁴⁵ Ahmadin Ahmadin, "Masalah Agraria Di Indonesia Masa Kolonial," *Attoriolog* IV, no. 1 (2007): 55–70.

¹⁴⁶ 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>.

¹⁴⁷ Patricia Tjiok-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 trader¹⁴⁸. Recorded from 1800s to 1900, the composition of the citizen in Batavia can be shown in the Table 5.

Table 5. Composition of the Batavia Citizen in 1890 to 1905.

| 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 |

Source: Yudi Prasetyo, “*Komposisi Penduduk Batavia*”, *Genta*, 2(1), 2014¹⁴⁹

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 locals¹⁵⁰. 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 livelihoods¹⁵¹. These commodities, which were sold by the Chinese migrants, were subjected to strict VOC control, leading to heightened economic grievances among the migrant population¹⁵².

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 sides¹⁵³. 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 stability¹⁵⁴. The uprising rebellion underline 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

¹⁴⁸ Yudi Prasetyo, “Dari Oud Batavia Sampai Nieuwe Batavia: Sejarah Ota Batavia 1596-1900,” *Genta* 2, no. 1 (2014).

¹⁴⁹ Prasetyo. pp. 6-7.

¹⁵⁰ Prasetyo. pp. 8-9

¹⁵¹ Ardhi Yudisthira, “Pengaruh Terjadinya Tragedi Angke Tahun 1740 Terhadap Bidang Sosial-Ekonomi Di Batavia,” *Pesagi* 1, no. 6 (2013).

¹⁵² Harkantiningasih, “Pengaruh Kolonial Belanda.”. pp. 66-71.

¹⁵³ 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>.

¹⁵⁴ Kemasang. pp. 60-63.

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 stability¹⁵⁵.

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.¹⁵⁶ 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. They protested economic exploitation, discriminatory policies, and social injustices imposed by the Dutch administration¹⁵⁷. 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 year¹⁵⁸.

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

¹⁵⁵ Kemasang.pp. 67-69.

¹⁵⁶ 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>.

¹⁵⁷ 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>.

¹⁵⁸ 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>.

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 contracts¹⁵⁹. As the responsibilities and scope of this office expanded, it underwent a transformation in 1921, evolving into the *Immigratiedienst* (Immigration Services Department)¹⁶⁰.

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 Servant Corps, experienced significant expansion¹⁶¹. 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*"¹⁶². 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*¹⁶³). 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

¹⁵⁹ 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>.

¹⁶⁰ Absiroh, "Understanding of History 350 Years Indonesia Colonized By Dutch.", pp.1-13.

¹⁶¹ 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>.

¹⁶² Harkantingsih, "Pengaruh Kolonial Belanda.", pp. 22-25.

¹⁶³ 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>.

region¹⁶⁴. In addition, the presence of foreigners can also be used to jointly exploit and suppress the indigenous population¹⁶⁵. 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 *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 colony¹⁶⁶.

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

¹⁶⁴ 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.

¹⁶⁵ 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.

¹⁶⁶ Mundzir, Arif, and Aksa, "Kebijakan Imigrasi Zaman Hindia Belanda (1913-1942)."

although the native residents overwhelmingly dominated the population, immigration and the number of foreigners holding stay permits were gradually increasing during this period.

Table 6. The number of foreigners holding stay permits comparable to that of Netherlands Indies native residents in 1913-1930s.

| 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 |

Source: Mundzir, 2021¹⁶⁷

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 detailed in Table 7, 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 7. The Dutch east indies citizen who holder the Resident Permit are living abroad (Malaya and Singapore) during 1900 to 1947.

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

Source: Bahrin, 1967¹⁶⁸

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

¹⁶⁷ Mundzir, Arif, and Aksa., pp. 12-15.

¹⁶⁸ 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.

framework, highlighting the enduring influence and resilience of Dutch East Indies immigration law even amidst significant geopolitical shifts¹⁶⁹. 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 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 ordonantie*, 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-determination¹⁷⁰. 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*

¹⁶⁹ 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.

¹⁷⁰ 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.

(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 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 Indonesia¹⁷¹.

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 colony¹⁷². 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

¹⁷¹ 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>.

¹⁷² 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>.

abroad¹⁷³. 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 resistance¹⁷⁴. 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 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

¹⁷³ 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>.

¹⁷⁴ 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.

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.¹⁷⁵ 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 significant legislative transition, the Dutch East Indies immigration service was formally transferred to the Indonesian government¹⁷⁶. While many structures and legal frameworks were still dependent 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 representation¹⁷⁷. However, the organizational structure of the Immigration Service, were still following the *Immigratie Diens* 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

¹⁷⁵ Djufri, "Fungsi Keimigrasian Menurut Undang-Undang Nomor 9 Tahun 1992."

¹⁷⁶ Syahrin, Wiraputra, and Aji, "Indonesian Legal Policy in Treating International Refugees Based on Human Rights Approach."

¹⁷⁷ 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>.

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 regulations¹⁷⁸. Together, these legal products 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 1¹⁷⁹. 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.

¹⁷⁸ 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.

¹⁷⁹ 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>.

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 posts¹⁸⁰. 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 individuals¹⁸¹. 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 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*¹⁸². 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

¹⁸⁰ Mundzir, Arif, and Aksa, "Kebijakan Imigrasi Zaman Hindia Belanda (1913-1942).". pp. 12-17.

¹⁸¹ Sande, "Selective Policy Imigrasi Indonesia Terhadap Orang Asing Dari Negara Calling Visa.". pp. 44-53.

¹⁸² 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/>.

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)¹⁸³.

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 evolution in immigration-related legal frameworks¹⁸⁴. 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

¹⁸³ 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>.

¹⁸⁴ 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>.

streamlining the citizenship-acquiring process were essential ways of social integration to culminate into an inclusive society¹⁸⁵.

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 Indonesia¹⁸⁶. 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 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 borders¹⁸⁷.

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

In the year of 1970s, Indonesia faced its first challenge in handling refugees as a significant number of Vietnamese citizens fled from the conflict between South Vietnam and North Vietnam, which reach its peak on the fall of Saigon¹⁸⁸. Seeking safety by the boats, these displaced individuals from the Vietnam was arrived on small islands in Indonesia's Riau archipelago such as *Kukuh Island*, *Anambas Island*, and *Laut Island*, imposed the local resources and infrastructure. Furthermore, there are a regional conflict happened between the locals and the Vietnamese asylum seeker because of the cultural difference. To address the crisis and prevent further conflicts, Indonesian authorities relocated those refugees to the

¹⁸⁵ Dewansyah, Dramanda, and 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."

¹⁸⁶ Jazim Hamidi, *Hukum Keimigrasian*, 2013.

¹⁸⁷ 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>.

¹⁸⁸ 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>.

Galang Island (Pulau Galang) in 1979, where they received essential humanitarian assistance including shelter, food, and medical care¹⁸⁹. Pulau Galang became a temporary home for thousands of Vietnamese refugees, highlighting Indonesia's commitment to follow the humanitarian principles and fostering international cooperation to address complex migration challenges. This experience underscored the importance of compassion, solidarity, and respect for human rights in responding to humanitarian emergencies and protecting displaced populations.

Moreover, by the year of 1979, the number of displaced individuals had surged to 183,261, overwhelming nations such as Thailand, Malaysia, and Indonesia¹⁹⁰. Thailand, serving as a major destination for refugees, grappled with the ramifications of this influx. In response, ASEAN members collectively agreed to establish processing centers by February 1979, aimed at providing temporary shelter and facilitating resettlement to third countries, such as Canada, United States and Australia, which ratified by all of the ASEAN member states on 12th Ministerial Meeting in Bali, Indonesia¹⁹¹. This regional initiative underscored the recognition of a shared responsibility to address the humanitarian plight of Vietnamese refugees while mitigating potential social and security challenges. Then, following the Indonesia initiatives, the Pulau Galang is agreed to be a temporary shelter for those refugees.

Following the agreement between the three countries, to manage the flow of refugees and combat illicit activities, joint patrol efforts were initiated among Thailand, Malaysia, and Indonesia. These patrols, conducted across land, sea, and air, sought to intercept unauthorized vessels, and deter human trafficking. Notably, Indonesia launched Operation *Halilintar* in the Riau region which nearest located with the Vietnam, employing a multi-agency approach to tackle smuggling and refugee inflows¹⁹². Led by high-ranking military officials and supported by naval assets, including frigates and submarines, this operation exemplified the concerted efforts to safeguard borders and manage refugee movements.

Furthermore, national governments in ASEAN countries took proactive measures to address the humanitarian needs of Vietnamese refugees. In Indonesia, the establishment of the Vietnamese Refugee Handling and Management Team (P3V) under Presidential Decree No.

¹⁸⁹ Bui Thu Thuy, "Refugee Protection in ASEAN : The Right to Be Recognized as a Refugee" (Hanoi, Vietnam, 2021).

¹⁹⁰ 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>.

¹⁹¹ ASEAN Secretariat, "1982 Joint Communique of the 15 Th Asean Ministerial Meeting 1982 Joint Communique of The" (Bali, Indonesia, 1982).

¹⁹² Fandik, "Penampungan Orang Vietnam Di Pulau Galang 1975-1979." pp.449-557.

38 of 1979 marked a pivotal step in coordinating efforts at both national and regional levels¹⁹³. 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. 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 individuals¹⁹⁴. 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 Galang¹⁹⁵.

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 shame¹⁹⁶. Consequently, a prison was also built on Pulau Galang to detain refugees who committed criminal acts.

¹⁹³ Fandik, pp. 89-97.

¹⁹⁴ Missbach, "Waiting on the Islands of 'Stuckedness'. Managing Asylum Seekers in Island Detention Camps in Indonesia from the Late 1970s to the Early 2000s."

¹⁹⁵ Zendri Hendri and Rahmad Dandi, "Tinjawuan 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>.

¹⁹⁶ Jonathan London, *Routledge Handbook of Contemporary Vietnam*, 2023, <https://doi.org/10.4324/9781315762302>.

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* successfully evacuated Pulau Galang by September 19, 1996¹⁹⁷.

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

¹⁹⁷ Hendri and Dandi, "Tinjauan Historis Pengungsian Vietnam Di Pulau Galang 1979-1996.". pp-87-88.

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 society¹⁹⁸. 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 country¹⁹⁹. Moreover, there was a resounding call for democratization, emphasizing the need for inclusive political processes and the empowerment of civil society²⁰⁰. 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 discourse²⁰¹. 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 status²⁰². Immigration reform discourses emphasized the need of respecting all people's dignity and fundamental rights, promoting social cohesion, and being inclusive.

¹⁹⁸ 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>.

¹⁹⁹ 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>.

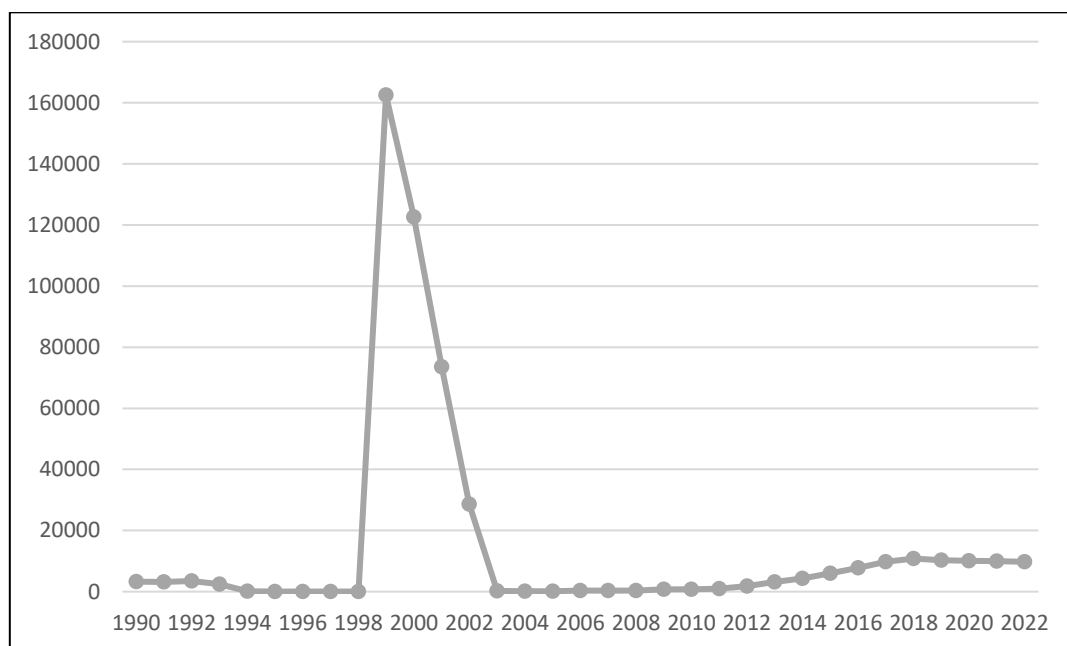
²⁰⁰ Rosada, "Model Of Democracy In Indonesia."pp. 102-105.

²⁰¹ Gerardo Esquivel, "Essays on Convergence, Migration and Growth," *ProQuest Dissertations and Theses* (1997).

²⁰² Muthahari and 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."pp. 297-303.

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 refugees²⁰³. 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 7.

Figure 7. The number of refugees in Indonesia from 1990-2022.



Source: Worldbank, 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

²⁰³ 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.

colony, had been annexed by Indonesia in 1975, leading to decades of resistance and conflict²⁰⁴. This key event, quickly made the number of refugees increased up to 2000 percent, from only 51 refugees in 1998, to 162.192 refugees in 1999 (Figure.7). 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 independence²⁰⁵. 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 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 dollars²⁰⁶.

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.

²⁰⁴ 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>.

²⁰⁵ UNHCR, "East Timorese Refugees in West Timor" (Jakarta, Indonesia, 2002).

²⁰⁶ UNHCR, pp. 331-351.

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. By the end of December 2001, the cumulative number of repatriated East Timorese had surpassed 192,000, underscoring the effectiveness of collaborative international initiatives in addressing post-conflict displacement²⁰⁷. 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 repatriation²⁰⁸. 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 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

²⁰⁷ UNHCR, pp. 28-32.

²⁰⁸ UNHCR, pp. 124-145.

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 displacement²⁰⁹. 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.

Simultaneously, in the early 21st century, 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.

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 aimed to address issues such as the 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.

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

²⁰⁹ Republik Indonesia, "Indonesia Law No.37/1999 about Foreign Affairs," Pub. L. No. 37/1999, Lembaran Negara RI 1 (1999).

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.

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

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 Protocol²¹⁰. 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 status²¹¹. 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.

²¹⁰ Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia.", pp. 32-44.

²¹¹ 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>.

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 legally²¹². 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 Asia²¹³. 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 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

²¹² Suyastri, Bahri, and Marhadi, "Legal Gap in Refugee Protection in Non-Signatory Countries: An Evidence from Indonesia."

²¹³ 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>.

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 ²¹⁴.

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 sustainable solutions to alleviate the plight of refugees and contribute to collective responses to global humanitarian crises²¹⁵.

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

²¹⁴ 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>.

²¹⁵ 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>.

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 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 Lanka²¹⁶. These individuals seek refuge from various reason, such like armed conflict, political persecution, ethnic violence, and religious discrimination, underscoring the Indonesia's refugee challenges²¹⁷. 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 refugees and the international responses to refugee 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. Through engagement in initiatives such as the Bali Process on People Smuggling, Trafficking in Persons, and Related Transnational Crime, Indonesia underlines its commitment to addressing refugee challenges collaboratively²¹⁸. Long-term efforts are required for adequate protection, dignity, and well-being of refugees and asylum seekers within Indonesia's borders when trying to maneuver the very complicated socio-cultural, legal, and geopolitical frameworks that surround refugee issues.

One of the major legal challenges related to refugees in Indonesia is the lack of a comprehensive legal framework for the handling of refugees. The country is not a signatory to the 1951 United Nations Convention on the Status of Refugees or its 1967 Protocol, which

²¹⁶ 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.

²¹⁷ 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>.

²¹⁸ The Bali Process Regional Support Office, *Policy Framework for the Regional Biometric Data Exchange Solution* (Jakarta: Regional Support Office The Bali Process, 2011).

means that refugees are not afforded the same protections and rights as they would be in other countries that have signed the convention²¹⁹. This means that refugees in Indonesia are not entitled to the same level of support and protection as refugees in other countries. In addition, the government of Indonesia does not have a specific agency that is responsible for the protection and support of refugees²²⁰. 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 refugees²²¹. These developments demonstrate the Indonesian government's commitment to improving the conditions for refugees in the country. However, much more needs to be done to ensure that refugees in Indonesia have access to the necessary support and protections. The government must take action to create a comprehensive legal framework for the handling of refugees and increase funding for support programs. This will ensure that refugees in Indonesia have the necessary support and protections they need to rebuild their lives and achieve 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 dynamics²²². Resource scarcity poses a significant challenge, as Indonesia, like many nations, grapples with limited resources such as jobs, housing, and healthcare²²³. 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,

²¹⁹ Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia: From Immigration Detention to Containment in 'Alternatives to Detention.'"

²²⁰ 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>.

²²¹ Renatha Ayu Rosdiana, "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>.

²²² Jaknanihan, Utama, and Thessalonica, "Dua Jalur Penanganan Pengungsi: Analisis Diplomasi Migrasi Di Asia Tenggara."

²²³ 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>.

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 jobs²²⁴.

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 communities²²⁵. 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 supplies²²⁶. 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

²²⁴ 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>.

²²⁵ 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>.

²²⁶ 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>.

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-throwing²²⁷. 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 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.

²²⁷ Prireza, pp.1.

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 obligation²²⁸. 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 guaranteed²²⁹. 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 trauma²³⁰. 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 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 lives²³¹.

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 policy²³². 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

²²⁸ Sukirno, "Kebijakan Ego Sektoral Dan Rendahnya Implementasi Hukum Sebagai Pemicu Konflik Tanah Hak Ulayat," *Jurnal Masalah-Masalah Hukum* 39, no. 1 (2010): 17–26.

²²⁹ 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>.

²³⁰ Michaela Hynie, "Refugee Integration: Research and Policy.," *Peace and Conflict Journal of Peace Psychology*, 2018, <https://doi.org/10.1037/pac0000326>.

²³¹ Samuel Tunggal 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.

²³² 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>.

religious differences, promoting a sense of inclusivity and acceptance²³³. 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 environment²³⁴. 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 solidarity²³⁵.

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 integration²³⁶. The national education system often lacks inclusive policies and culturally sensitive teaching methods, making it difficult for refugee children to adapt and succeed²³⁷. 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 struggles²³⁸.

²³³ 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>.

²³⁴ Antje Missbach et al., "Facets of Hospitality : Rohingya Refugees Temporary Stay in Aceh," vol. 104, 2017.

²³⁵ Indonesia, "Ratusan Pengungsi Rohingya Terdampar Di Aceh."

²³⁶ 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>.

²³⁷ 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>.

²³⁸ 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>.

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 refugees²³⁹. 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.

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 locals²⁴⁰. 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 diversity²⁴¹. 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.

²³⁹ Putri, "The Dilemma of Hospitality: Revisiting Indonesia's Policy on Handling Refugees Under International Law."pp.113-130.

²⁴⁰ 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>.

²⁴¹ Bahri, "Understanding The Pattern of International Migration : Challenges in Human Right Protection."pp.81-98.

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 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 refugees²⁴². 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 groups²⁴³. 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.

²⁴² 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.

²⁴³ Zill, Van Liempt, and Spierings, "Living in a 'Free Jail': Asylum Seekers' and Local Residents' Experiences of Discomfort with Asylum Seeker Accommodation."pp. 88-97.

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.

3.3. Legal challenges of Indonesia in Refugees Handling

Indonesia, as a nation that has not signed the 1951 Convention on the Status of Refugees and its 1967 Protocol, faces numerous legal hurdles in its efforts to protect and support refugees. These challenges not only affect the practical aspects of refugees' lives but also pose significant threats to their human rights²⁴⁴. The absence of a clear definition of a refugee and a national asylum system in Indonesia leaves refugees without any legal status or protection from the Indonesian government, making them highly vulnerable to exploitation and abuse²⁴⁵. This legal ambiguity forces refugees to live in a precarious situation, often without basic rights or access to essential services, which exacerbates their suffering and marginalization. For instance, without official recognition, refugees lack the documentation needed to access public services, secure employment, or enroll in educational institutions²⁴⁶. The lack of a structured legal framework also means there is no formal mechanism to process asylum claims, leaving refugees in a state of legal limbo for extended periods.

One of the most pressing issues is the absence of a national asylum system. Without a structured process to determine refugee status, individuals seeking asylum are left in legal

²⁴⁴ Suyastri, Bahri, and Marhadi, "Legal Gap in Refugee Protection in Non-Signatory Countries: An Evidence from Indonesia."pp.193-214.

²⁴⁵ Kneebone, Missbach, and Jones, "The False Promise of Presidential Regulation No. 125 of 2016?," 2021.pp.413-450.

²⁴⁶ Dewansyah and Nafisah, "The Constitutional Right to Asylum and Humanitarianism in Indonesian Law: 'Foreign Refugees' and PR 125/2016."pp.536-557.

limbo, unable to secure their rights or plan their futures. This lack of legal recognition is compounded by the absence of access to legal representation for refugees, making it difficult for them to defend their rights and seek justice when faced with legal issues²⁴⁷. This gap in legal infrastructure leaves refugees susceptible to arbitrary detention, exploitation by employers, and various forms of abuse, with little recourse to legal protection or support. Moreover, the Indonesian legal system does not have specific provisions for handling asylum seekers, which means that refugees often fall under general immigration laws that do not cater to their unique circumstances and needs²⁴⁸. This situation creates a significant gap in the protection and support framework for refugees, making it challenging for them to integrate into Indonesian society and achieve stability.

Another serious issue is Indonesia's failure to comply with the principle of non-refoulement, or the return of refugees to a country where their life or liberty may be in danger²⁴⁹. These principal forms one of the cornerstones of international protection for refugees, and Indonesia's practice sometimes runs contrary to that obligation. Instances have been reported of refugees being repatriated without proper assessment of their safety upon return, placing them at severe risk of violence and persecution. This amounts to a denial of their human right to seek asylum and also to life and freedom from persecution. Failure to observe non-refoulement exposes not only the lives of refugees to jeopardy but also, more importantly, compromises international efforts to protect those vulnerable and fleeing from active conflict or persecution. Non-refoulement is an important part of international refugee law, and Indonesia's departure from this principal places it in opposition to global norms, weakening its position and credibility on the international stage²⁵⁰.

Additionally, refugees in Indonesia face very limited access to education, healthcare, and employment opportunities, adding to their vulnerability and insecurity. Education is a basic right; however, most refugee children in Indonesia have a number of barriers to going to school. The lack of proper documentation, language barriers, and financial constraints often hamper the chances of refugee children to enroll in school. It affects their personal development and also diminishes the chances of bettering their lives in the future and integrating into society.

²⁴⁷ Reinier Sukarnolus and Dimitri Sitanala, "Perlindungan Hukum Terhadap Pengungsi Lintas Batas Negara Di Indonesia" 24, no. 1 (2018): p-ISSN.pp.30-39.

²⁴⁸ Syahrin, Wiraputa, and Aji, "Indonesian Legal Policy in Treating International Refugees Based on Human Rights Approach."pp.128-137.

²⁴⁹ Yahya Sultoni, Setyo Widagdo S.H., M.Hum., Herman Suryokumoro S.H., "The Reason of Indonesia Not Ratified Refugee Convention 1951 And."pp.1-14.

²⁵⁰ Primadasa Primadasa, Putra Kurnia, and Erawaty, "Problematisasi Penanganan Pengungsi Di Indonesia Dari Perspektif Hukum Pengungsi Internasional."pp.68-83.

Healthcare access is also limited; many of them cannot get medical treatments because they do not have any insurance or financial means to cover the costs. Especially for those with chronic diseases or mental health problems resulting from the traumas they suffered; this situation is very critical. Unable to support themselves and their families, poverty might strike. Without access to financial services and other resources, their contribution to the local economy remains very limited. These are factors that have kept refugees in Indonesian society at a continuously marginalized level and threaten their basic human rights, such as the right to an adequate standard of living, the right to education, and the right to work.

Equally, the issue of statelessness has also been the most dramatic challenge faced by Indonesia, because a number of refugees had no nationality in this country and their nationality was not recognized from any other state. Statelessness makes refugees even more vulnerable because they cannot claim even the most basic services or protection under the law. Without nationality, refugees cannot travel freely, obtain legal employment, or access social services, effectively rendering them invisible and powerless within society. This lack of recognition puts refugees at risk of discrimination and restricts their access to services and opportunities, violating their human rights to nationality and to participate in the political, economic, and cultural life of their community²⁵¹. Stateless refugees face additional hurdles in securing legal documentation, which is crucial for accessing education, healthcare, and legal employment. The lack of nationality or legal status places the stateless refugees in circumstances where they cannot claim their rights or seek redress for grievances, thus always being marginalized and disenfranchised²⁵².

These are indeed multi-faceted challenges that require the Indonesian government to work with the international community in laying down a comprehensive legal framework that identifies the rights and protection of refugees. This includes the formal recognition of refugees as a legal status, which would provide them with the necessary documentation to access services and protection. It would be a structured process for refugee status determination and adequate protection of those in need if there was a national asylum system in place. In addition, allowing refugees access to legal representation will not only help in protecting their rights but also facilitate their navigation through the legal system. Such steps will put Indonesia's refugee policies in line with international standards, increasing its potential for protection and

²⁵¹ 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. 2-24.

²⁵² Ashika L. Singh, "Arendt in the Refugee Camp: The Political Agency of World-Building," *Political Geography* 77, no. September 2018 (2020): 102149, <https://doi.org/10.1016/j.polgeo.2020.102149>.pp.1-19.

integration of refugees. Similarly, collaboration with international organizations at high levels—say, for example, the UNHCR—provides technical assistance in setting up and implementing such frameworks.

The principle of non-refoulement should be adhered to. Indonesia should commit to international standards barring the forced return of refugees into danger, making sure that every decision on repatriation is done with full consideration of the safety and well-being of the individual. This commitment would align Indonesia with global human rights norms and protect refugees from persecution. To guarantee non-refoulement, Indonesia should have a robust mechanism of monitoring and evaluation regarding the safety of returnees, along with protocols to avoid forced repatriation. Besides, capacity building should be developed through training on refugee protection and human rights principles among immigration and law enforcement officials.

Furthermore, the government is called upon to make available for refugees basic services and opportunities of education, health care, and employment to supplement integration efforts and dignity. Refugee children should be allowed to study in the national system supported by proper language and cultural support to eventually prepare them with the skills and knowledge required for their future. This would involve increasing access to healthcare for refugees, including mental health services, to meet their immediate healthcare needs and ensure long-term well-being. Creating legal pathways to work for refugees would empower them economically and reduce their reliance on aid. Providing vocational training and employment opportunities tailored to the skills and experiences of refugees can facilitate their economic integration and contribute to local economies.

In a nutshell, Indonesia's legal barriers to the handling of refugees pose a very serious threat to their human rights and well-being. For Indonesia to effectively support and protect refugees, it needs to develop a comprehensive legal framework that recognizes their rights, provides access to legal representation, and adheres to international principles such as non-refoulement. Ensuring access to basic services and opportunities to refugees will go a long way in improving their quality of life and ensuring their full integration into Indonesian society. Such initiatives would help the Indonesian government to uphold its high humanitarian values and international commitments toward providing a safer, more dignified future for the refugees within its borders. By implementing these changes, not only would the lives of refugees improve, but Indonesia would also be perceived as a nation standing for human rights and international solidarity. This research will analyze and try to give a solution for the legal gap faced by Indonesia based on the Hungarian experience in handling the refugees.

CHAPTER IV: LEGAL HISTORY OF HUNGARY MIGRATION

1. Hungary Migration History

1.1. *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 I²⁵³. 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 million²⁵⁴. 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, 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 countries²⁵⁵. 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.

²⁵³ 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).

²⁵⁴ Gergely Peterffy, "The Impact of The Treaty of Trianon on Hungarian Infrastructure," *COJOURN* 4, no. 2–4 (2019): 61–75.

²⁵⁵ Gábor Koloh, "The Number of Trianon Refugees," *Regional Statistics* 11, no. 4 (2021): 170–81, <https://doi.org/10.15196/RS110408>.

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 people²⁵⁶. 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 months²⁵⁷. 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 Budapest²⁵⁸. 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 Union²⁵⁹. With the rise of the communist regime in Hungary in 1948, strict border controls were enforced, making illegal departures a criminal offense²⁶⁰. Over the 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.

1.2. *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

²⁵⁶ Ablonczy, "The Refugee Experience after the Treaty of Trianon. Between State Practices and Neglect."

²⁵⁷ 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/ahca.2020.388>.

²⁵⁸ Jeszenszky.

²⁵⁹ 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>.

²⁶⁰ András Szalai and Gabriella Göbl, "Securitizing Migration in Contemporary Hungary," 2015, 1–33.

three months²⁶¹. 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 skills²⁶².

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 citizenship²⁶³. 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 authorization²⁶⁴. 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 people²⁶⁵. 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 regime²⁶⁶. Although the number of 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

²⁶¹ 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>.

²⁶² Koloh, "The Number of Trianon Refugees."

²⁶³ András Bozóki, "The Independent Historical Memory of the Hungarian Democratic Opposition," 2016.

²⁶⁴ Tibor Frank, "Migrations in the Hungarian History," Hungarian Review, 2016, https://hungarianreview.com/article/20160114_migrations_in_hungarian_history_part_i/.

²⁶⁵ 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.html>percent0Ahttps://ideas.repec.org/p/nki/wpaper/19.html.

²⁶⁶ Heino Nyysönen, "Salami Reconstructed 'Goulash Communism' and Political Culture in Hungary," *Cahiers Du Monde Russe* 47, no. July (2020): 1–23.

around 3,000 Greek communists escaping the aftermath of the Greek civil war in the 1940s²⁶⁷. 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 patterns²⁶⁸. 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 Netherlands²⁶⁹. 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 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 East²⁷⁰. 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

²⁶⁷ 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>.

²⁶⁸ Juhász and Hunyadi, "Focus on Hungary: Refugees, Asylum and Migration Focus on Hungary: Refugees, Asylum and Migration HEinrich-Böll-Stiftung."

²⁶⁹ 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>.

²⁷⁰ 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>.

asylum seekers in host countries are influenced by a range of factors, including public attitudes, political ideologies, and perceptions of threat²⁷¹. 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 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 region²⁷². 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 education²⁷³. 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 stay²⁷⁴. 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 Romania²⁷⁵. The Hungarian government did not identify to them as refugees but rather as "aliens provisionally residing in Hungary," yet it did not deport

²⁷¹ 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>.

²⁷² 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>.

²⁷³ Balazs Kapitany, "Ethnic Hungarians in the Neighbouring," in *Ethnic Hungarians in the Neighbouring*, 2015, 225–39.

²⁷⁴ Kapitany.

²⁷⁵ Andrea Subhan, "Migration and Asylum in Central and Eastern Europe," 1998, 1–5.

them and even established a Settlement Fund to assist these asylum applicants²⁷⁶. 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 1990²⁷⁷. Fears among ethnic 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 Romania²⁷⁸.

1.3. 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 population²⁷⁹. 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 Hungarians²⁸⁰. 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

²⁷⁶ Cerasela Voiculescu, "Temporary Migration of Transylvanian Roma to Hungary," *New Patterns of Labour Migration in Central and Eastern Europe*, 2004, 148–66.

²⁷⁷ 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>.

²⁷⁸ Gail Kligman and Rogers Brubaker, "The Ethnicization of Ethiopian Politics," 2000, 0–48.

²⁷⁹ Subhan, "Migration and Asylum in Central and Eastern Europe."pp.78-88.

²⁸⁰ Magnus Bjarnason, "The War and War-Games in Bosnia and Herzegovina from 1992 to 1995," 1995.

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 ²⁸¹. Although the Serb offensives in July 1995 led to major new refugee movements, very few of those refugees managed to reach Hungary.

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 status²⁸². 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 status²⁸³. 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 refugees²⁸⁴.

²⁸¹ Bjarnason, pp.56-89.

²⁸² Gyongyver Demeny, "Intgeration of Refugees in Hungary," *Fundamentum* 1, no. 1 (2007): 116–112.

²⁸³ Demeny.

²⁸⁴ Hungarian Helsinki Committee, "Asylum in Hungary," 2015.

1.4. 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 nations²⁸⁵. 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 are traveling along the Balkan Corridor, which began in Turkey and Macedonia, continued through Greece, and ended in Hungary, Croatia, and Poland²⁸⁶.

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 challenges²⁸⁷. 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 Hungary²⁸⁸. 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 order²⁸⁹. Second, the Hungarian government is attempting to use social media and other methods of propaganda to portray refugees as a threat to Hungarian society²⁹⁰. Last but not least, Hungary and the other Visegrad 4 nations oppose quota systems as an administered solution to the migration crisis in 2016²⁹¹. 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

²⁸⁵ Aražna, "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."

²⁸⁶ 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.

²⁸⁷ Bahri, "Understanding The Pattern of International Migration : Challenges in Human Right Protection."

²⁸⁸ AIDA, "Country Report : Hungary" (Geneva, 2020).

²⁸⁹ 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>.

²⁹⁰ Bajomi-Lázár, "An Anti-Migration Campaign and Its Impact on Public Opinion: The Hungarian Case."

²⁹¹ 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>.

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 2015²⁹². 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. 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 considerations²⁹³.

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 migrants²⁹⁴. 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 states²⁹⁵. 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 crosser²⁹⁶. 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

²⁹² Bernát et al., "Borders and the Mobility of Migrants in Hungary."

²⁹³ Bernát et al.

²⁹⁴ Ireneusz Pawel Karolewski and Roland Benedikter, *Europe's Refugee and Migrant Crisis: Political Responses to Asymmetrical Pressures*, *Politique Européenne*, vol. 60, 2018, <https://doi.org/10.3917/poeu.060.0098>.

²⁹⁵ 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>.

²⁹⁶ Boros, "The Hungarian 'Stop Soros' Act : Why Does the Government Fight Human Rights Organisations?"

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 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 commitment²⁹⁷. Hungary also ratified the 1967 Protocol to the 1951 Convention. This signified Hungary's willingness to align with the

²⁹⁷ 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.

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 Europe²⁹⁸.

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 party to the Convention and/or the Protocol maintain this geographic reservation²⁹⁹. 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 demonstrate³⁰⁰.

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 Hungary³⁰¹.

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 continents³⁰². 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

²⁹⁸ Anderson.

²⁹⁹ 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).

³⁰⁰ Mariusz Urbański, "Comparing Push and Pull Factors Affecting Migration," *Economies* 10, no. 1 (2022), <https://doi.org/10.3390/economies10010021>.

³⁰¹ ECRE, "The New Asylum Procedure at the Border and Restrictions to Accessing Protection in Hungary" (Helsinki, September 2015).

³⁰² Szalai and Göbl, "Securitizing Migration in Contemporary Hungary."

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 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 ³⁰³. 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:

³⁰³ Tarımcı, "The Role Of Geographical Limitation With Respect To Asylum And Refugee Policies Within The Context Of Turkey's EU Harmonization Process."

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.

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 remedy³⁰⁴. 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.³⁰⁵ The 1989 constitutional revision brought Hungary more in line with internationally accepted refugee definitions and principles³⁰⁶. 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

³⁰⁴ 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>.

³⁰⁵ 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>.

³⁰⁶ Halmai, pp.1-12.

and the protection of Hungarian culture as key constitutional principles³⁰⁷. 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 period³⁰⁸. 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 protection³⁰⁹.

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 issues³¹⁰. 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

³⁰⁷ Government of Hungary, "Hungary's Constitution of 2011," Pub. L. No. Act CLIX of 2011, 1 (2011).

³⁰⁸ 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>.

³⁰⁹ Szalai and Göbl, "Securitizing Migration in Contemporary Hungary."

³¹⁰ Zsöfi Fekete, "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).

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:

- 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 obliged 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 process³¹¹.

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

³¹¹ 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.

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 seekers³¹².

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 seekers³¹³.

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.

³¹² Katrien Desimpelaere, "The Dublin Regulation: Past, Present, Future," *Libstore.Ugent.Be*, 2014, https://libstore.ugent.be/fulltxt/RUG01/002/213/386/RUG01-002213386_2015_0001_AC.pdf percent0Ahttps://lib.ugent.be/fulltxt/RUG01/002/213/386/RUG01-002213386_2015_0001_AC.pdf.

³¹³ Federica Toscano, "The Second Phase of the Common European Asylum System ;," 2013.

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 Hungary, while formal applications should be submitted within a further 72-hour period³¹⁴. 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

³¹⁴ Csaba Békés and Melinda Kalmár, "The Political Transition in Hungary, 1989-90," *Cold War International History Project Bulletin*, no. 12/13 (2001): 73–164.

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.

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 criticism³¹⁵. 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

³¹⁵ Ayhan Kaya, "Working Papers Global Migration: Consequences and Responses. Turkey Country Report," 2020, pp. 32-55.

NGOs receiving international financing, especially those working for refugees and migrants³¹⁶. 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.

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 migration³¹⁷. 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 services³¹⁸. 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.

Conditions in the transit zones are appalling, with strict restriction of the rights of asylum seekers and highly restricted access to basic services. The asylum seekers are prohibited from access to the labor market, leaving them at the mercy of insufficient state support. Food provisions are usually minimal, comprising mostly canned food; asylum seekers also reported that the government uses starvation methods to force them to withdraw their claims and go back to Serbia³¹⁹. Sexual minorities and other vulnerable groups are especially exposed to harassment and abuse in these facilities. In most cases, humanitarian organizations, like NGOs

³¹⁶ Boros, "The Hungarian 'Stop Soros' Act : Why Does the Government Fight Human Rights Organisations?". Pp.1-5

³¹⁷ Amnesty International, "Fenced Out. Hungary's Violations of the Rights of Refugees and Migrants.". pp.1-31.

³¹⁸ 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/>.

³¹⁹ 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>.

and international bodies, are not allowed to access these zones, limiting their monitoring and provision of necessary support and advocacy.

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*"³²⁰. 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 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 with a population of approximately 9.8 million people. 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

³²⁰ Information Note et al., *Ilias and Ahmed v. Hungary* [GC] - 47287 / 15 Article 3 (2019).

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 9.6 million, down from 10.7 million in 1980, a significant decline driven by persistently low fertility rates, high emigration, and aging³²¹. 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 country³²². 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 Kingdom³²³.

In response, the Hungarian government has introduced aggressive pro-natalist policies with the aim of reversing the population decline. 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 success³²⁴. 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

³²¹ EUROSTAT, “Hungary : Demographic Profiles” (Budapest, 2019).

³²² 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>.

³²³ 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).

³²⁴ 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/ahca.2021.429>.

due to polarizing income and a lack of economic mobility³²⁵. 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 countries³²⁶. 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 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

³²⁵ 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>.

³²⁶ 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 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

Hungary is a Central European country with about 9.8 million residents, having a very interesting cultural history that dates back to the Roman Empire. Throughout the course of its history, Hungary has seen waves of migration; refugees and migrants from its immediate region and farther away settled within its borders. Despite this historical exposure to migration, contemporary attitudes and policies toward refugees have become increasingly polarized. The demographic composition of Hungary is predominantly ethnically homogeneous, with

Hungarians constituting more than 90 percent of the population³²⁷. This fact of homogeneity has influenced attitudes toward outsiders, since the lack of multicultural experience can explain skepticism or even hostility towards foreign populations. The European refugee crisis in 2015 marked a critical shift in Hungary's approach to refugee handling.

As a transit country along the Balkan route, Hungary saw a record number of asylum seekers—primarily from war-torn countries like Syria, Afghanistan, and Iraq—its authorities processed more than 177,000 asylum applications in 2015³²⁸. The government, however, headed by Prime Minister Viktor Orbán and the Fidesz party, took a hardline stance. Razor-wire fencing along the borders with Serbia and Croatia, restrictive asylum laws, and the establishment of transit zones to detain asylum seekers symbolized Hungary's rejection of refugees. These were undergirded by government-run campaigns that portrayed migrants as threats to Hungary's security, economy, and cultural identity. What's more, Hungary refused the refugee relocation quotas issued by the European Union on the grounds of defending national sovereignty. The rise of xenophobia in Hungary is closely linked to the government's promotion of nationalist and anti-immigrant sentiments. State-controlled media and government-funded outlets have amplified fears, often portraying refugees as economic burdens or security threats.

Economic concerns, including a shrinking workforce and inequality, have further fueled anxieties, with migrants often viewed as competitors for resources. The emphasis on preserving Hungary's Christian identity has also motivated resistance to predominantly Muslim refugees, framing migration as a threat to the nation's traditions and values³²⁹. This nationalist rhetoric has been crucial in securing consolidated political power for the governing party, appealing to conservative and nationalist segments of society. These policies and rhetoric have brought significant social consequences. Xenophobia has manifested in increased hate speech and discrimination against refugees and other underprivileged groups, with verbal abuses, physical attacks, and workplace exclusion reported³³⁰. Human rights organizations, such as

³²⁷ Ethnic-lingual Pa, "Ethnicity and Religion," *Ethnic and Racial Studies* 20, no. 2 (1997): 235–398, <https://doi.org/10.5840/protosociology2004209>.

³²⁸ 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>.

³²⁹ Lina Trisonia, Mega Nisfa Makhroja, and Mahmuluddin Mahmuluddin, "Identity, Culture, and Security: Hungary's Differing Positions on Muslim and Non-Muslim Refugees in the 2015 and 2022 European Refugee Crisis," *Global Focus* 4, no. 1 (2024): 53–76, <https://doi.org/10.21776/ub.jgf.2024.004.01.4>.

³³⁰ Bajomi-Lázár, "An Anti-Migration Campaign and Its Impact on Public Opinion: The Hungarian Case."

Amnesty International and Human Rights Watch, have criticized the government's stance, documenting the deteriorating conditions for asylum seekers.

Despite the hostile environment, civil society organizations like the Hungarian Helsinki Committee and Migration Aid have worked tirelessly to provide legal assistance, food, and shelter for refugees. Grassroots efforts by some local communities have also sought to integrate refugees into schools and workplaces, challenging the prevailing stereotypes and fostering dialogue³³¹. The Hungarian government's approach has been vehemently criticized by international organizations, such as the European Commission, which launched infringement proceedings due to its restrictive asylum policies. At the same time, though, domestic political considerations and an acute emphasis on sovereignty have considerably diminished the potential of these critiques. Although the government's policies have deepened social divisions, a great number of Hungarians actively oppose the xenophobic stance by participating in protests and volunteer efforts to support refugees. It reflects a deeply divided society, with one side embracing the nationalist rhetoric and the other defending humanitarian principles.

The social description of Hungary regarding refugee handling reflects the complex play of historical, political, and cultural factors. The increasing xenophobia and policies of restraint reflect the fears of cultural change and a political strategy, while resilience from the side of civil society and grass-root initiatives inspire hope for a more inclusive future. These challenges demand a weighted approach that takes into consideration the cultural identity of Hungary while meeting international humanitarian obligations.

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

³³¹ Iraklis Dimitriadis et al., "Local 'Battlegrounds'. Relocating Multi-Level and Multi-Actor Governance of Immigration," *Revue Européenne Des Migrations Internationales* 37, no. 1–2 (2021), <https://doi.org/10.4000/remi.18552>.

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 migrants³³², vehement opposition to the EU's proposed refugee quota system³³³, 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 threat³³⁴. The current political atmosphere, which stresses nationalistic ideals, combined with societal fears about

³³² Amnesty International, "Fenced Out. Hungary's Violations of the Rights of Refugees and Migrants." pp.1-26.

³³³ 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.

³³⁴ 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>.

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.

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.

CHAPTER V: DIFFERENCES AND SIMILARITIES BETWEEN INDONESIA AND HUNGARY REFUGEE HANDLING

1. Comparing the Political Position of Hungary and Indonesia in Refugee Handling

The issue of refugees and asylum seekers has gained significant attention in recent years due to the unprecedented number of forcibly displaced people worldwide. As of 2022, there were over 82 million forcibly displaced people, including refugees, asylum seekers, and internally displaced persons, reports that 26.4 million people were refugees. Of these, 4.1 million were awaiting the outcome of asylum claims, while 48 million people were internally displaced³³⁵. The numbers have continued to rise in recent years due to ongoing conflicts, political instability, and climate change³³⁶. For instance, the war in Syria has led to the displacement of over 6 million Syrians, while the conflict in Yemen has displaced more than 4 million people³³⁷. However, their journey is often perilous, and their reception in their host countries can be uncertain, particularly if they are not legally recognized as refugees³³⁸. The situation has created enormous challenges for both refugees and host countries, leading to a need for a robust legal framework to protect the rights of refugees and ensure their effective integration into their host communities.

However, the response of countries to the refugee crisis varies widely. Some countries have taken measures to provide protection and support for refugees, while others have implemented restrictive policies that limit their access to basic rights and services³³⁹. The treatment of refugees and asylum seekers is governed by national and international legal frameworks, including the 1951 Refugee Convention and its 1967 Protocol, which establish the rights and obligations of both refugees and states.

Hungary is a member of the EU and has been an important point of entry for refugees seeking asylum in the EU, since it acts as the EU's out border that faces east, with 177.135

³³⁵ IOM, "World Migration Report 2022." pp.3-5.

³³⁶ EUAA, "Asylum Report 2022." pp.1-22.

³³⁷ Dylan Lasrado, Sandeep Ahankari, and Kamal K. Kar, "Global Trends Forced Displacement in 2021" (Geneva, 2021), https://doi.org/10.1007/978-3-030-68364-1_10.

³³⁸ Seraina Rüegger, "Refugees, Ethnic Power Relations, and Civil Conflict in the Country of Asylum," *Journal of Peace Research* 56, no. 1 (2019): 42–57, <https://doi.org/10.1177/0022343318812935>.

³³⁹ Gammeltoft-Hansen and Tan, "The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy."

people entering the EU through Hungary in 2015 only³⁴⁰. However, the country's response to the crisis has been controversial, with a restrictive legal framework and a series of policies aimed at deterring asylum seekers³⁴¹. Furthermore, the actions have been widely criticized for their harsh policies towards refugees and asylum seekers. The country has been accused of violating international law and failing to provide adequate protection for those seeking refuge³⁴². The Hungarian government has implemented measures such as building a border fence along its border with Serbia, restricting access to asylum procedures for the asylum seekers who apply for the RSD procedures inside the Hungary territory, and criminalizing the provision of assistance to the asylum seekers, including the person or NGO who evident to assist the asylum seeker with the Soros law³⁴³.

In contrast, Indonesia, a country located in Southeast Asia, has recently taken steps to improve its treatment of refugees and asylum seekers. Despite not being a signatory to the 1951 Refugee Convention and its 1967 Protocol, Indonesia has enacted a new refugee law and established a national refugee legal framework to provide protection and assistance to refugees, which is the Presidential Regulation No. 125/2016, however, challenges remain, including limited resources and a lack of capacity to process and integrate refugees into society³⁴⁴. The lack of consistent legal frameworks for refugee protection has been identified as a critical issue³⁴⁵. Effective legal frameworks are essential to ensure that refugees and asylum seekers receive adequate protection and support. They also help to prevent human rights abuses and ensure that countries are meeting their international legal obligations.

In recent years, studies have highlighted the critical role of legal frameworks in ensuring the protection of refugees and their integration into host communities³⁴⁶. This study will add to this body of literature by examining the legal frameworks governing refugees in Hungary and Indonesia and comparing them to identify any gaps or deficiencies in their refugee

³⁴⁰ Szilvia Borbely, "Integration of Refugees in Greece, Hungary and Italy," *EU Official Journal*, 1, 1, no. 1 (2017): 1–23, [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/614194/IPOL_STU\(2017\)614194\(ANN02\)_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/614194/IPOL_STU(2017)614194(ANN02)_EN.pdf).

³⁴¹ Sabine Hess and Lena Karamanidou, "The Expanding Significance of Borders for the European Migration Regime After 2015," 2015, 45–65.

³⁴² Amnesty International, "Fenced Out. Hungary's Violations of the Rights of Refugees and Migrants." pp.5-10.

³⁴³ Bernát et al., "Borders and the Mobility of Migrants in Hungary." pp.9-21.

³⁴⁴ Kneebone, Missbach, and Jones, "The False Promise of Presidential Regulation No. 125 of 2016?," 2021. pp.431-450.

³⁴⁵ Hathaway and Foster, *The Law of Refugee Status*. pp.34-67.

³⁴⁶ Craig Damian Smith, "Policy Change, Threat Perception, and Mobility Catalysts: The Trump Administration as Driver of Asylum Migration to Canada," *International Migration Review*, 2022, 1–32, <https://doi.org/10.1177/01979183221112418>.

laws. As explained in the methodology part, the study will use a comparative analysis approach to identify similarities and differences between the legal frameworks governing refugees in Hungary and Indonesia. The analysis will focus on several key areas, including the legal definition of a refugee, access to asylum procedures, detention and deportation policies, and refugee integration policies. By examining these key areas, the study aims to identify any gaps or deficiencies in the legal frameworks governing refugees in Hungary and Indonesia.

The chapter will be comparing those countries, and give the significant importance to policymakers and practitioners working on refugee issues, providing insights into how legal frameworks can be improved to better protect the rights of refugees and ensure their effective integration into host communities. The study will also contribute to the academic literature on refugee protection, providing a comparative analysis of two countries with very different legal frameworks. To achieve these aims, this research will draw on a range of academic literature and policy documents. As previously explained in the methodology section, the research will utilize a comparative methodology to analyze the legal frameworks governing refugees and asylum seekers in Hungary and Indonesia.

Table 8. 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 ³⁴⁷ . | 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 ³⁴⁸ . | 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 ³⁴⁹ . |
| Have the details procedures in the Asylum Seeker reception, based on the Dublin Procedures ³⁵⁰ . | Have no procedures in Asylum Seeker reception, then the “reception” of the |

³⁴⁷ EUROSTAT, *The EU in the World - 2020 Edition*.pp.55-67.

³⁴⁸ Bernát et al., “Borders and the Mobility of Migrants in Hungary.”.pp.7-25.

³⁴⁹ Missbach, “Accommodating Asylum Seekers and Refugees in Indonesia.”.pp32-44.

³⁵⁰ EASO, “Description of the Hungarian Asylum System.”.pp.1-22.

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.

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.

2. Relevant Law and Regulation

The study of the refugee law frameworks in Hungary and Indonesia is of critical importance given the global refugee crisis, with more than 82 million people displaced worldwide³⁵². The protection of refugees is an obligation under international law, and it is essential to have effective legal frameworks in place to ensure that refugees' rights are respected. This paper aims to identify legal gaps in the refugee law frameworks of Hungary and Indonesia and to analyze how effectively these frameworks are implemented in practice.

³⁵¹ Missbach, "Asylum Seekers' and Refugees' Decision-Making in Transit in Indonesia: The Need for in-Depth and Longitudinal Research." pp.419-455.

³⁵² IOM, "World Migration Report 2022." pp.4-5.

2.1. Hungary's Refugee Law Framework

As previously described in the chapter IV, Hungary's legal framework for refugees 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. Specifically, it establishes that the first EU Member State an asylum seeker enters is responsible for processing their application. 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. Article 33 of the Dublin Regulation: This article sets out the criteria for determining the EU Member State responsible for processing an asylum application.

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 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 is a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which establishes the rights and obligations of refugees and state parties³⁵³. Hungary has also enacted national legislation to implement these international instruments, including the Asylum Act and the Refugee Act. However, Hungary's refugee law framework is not always implemented effectively in practice³⁵⁴. Human rights organizations have criticized the country's treatment of asylum seekers and refugees. Reports have documented overcrowded and unsanitary living conditions in refugee camps, as well as inadequate access to healthcare

³⁵³ Guy S. Goodwin-Gill, "The Office of the United Nations High Commissioner for Refugees and the Sources of International Refugee Law," *International and Comparative Law Quarterly* 69, no. 10 (2019): 1–41, <https://doi.org/10.1017/S002058931900054X>.

³⁵⁴ Borbely, "Integration of Refugees in Greece, Hungary and Italy." pp.4-67.

and education³⁵⁵. There have also been reports of restrictions on freedom of movement and the use of excessive force by law enforcement agencies³⁵⁶.

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 Refugee Act of 2007 defines a refugee as someone who has a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion, and who is unable or unwilling to seek protection from their home country (Asylum Act of 2007, Article 2). 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 is regulated in Article 35 (1) of the Asylum Act requires that asylum seekers be registered as soon as possible after they express their intention to apply for asylum.
- 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. This step is regulated in the Article 37(1) of the Asylum Act requires that asylum seekers be interviewed in a language they understand and that the interview be conducted with due respect for their dignity.
- 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. If the application is rejected, the individual may appeal the decision to the Hungarian Immigration and Asylum Office (IAO). This step is regulated in Article 45 (7) of the Asylum Act provides for the granting of refugee status to eligible individuals.

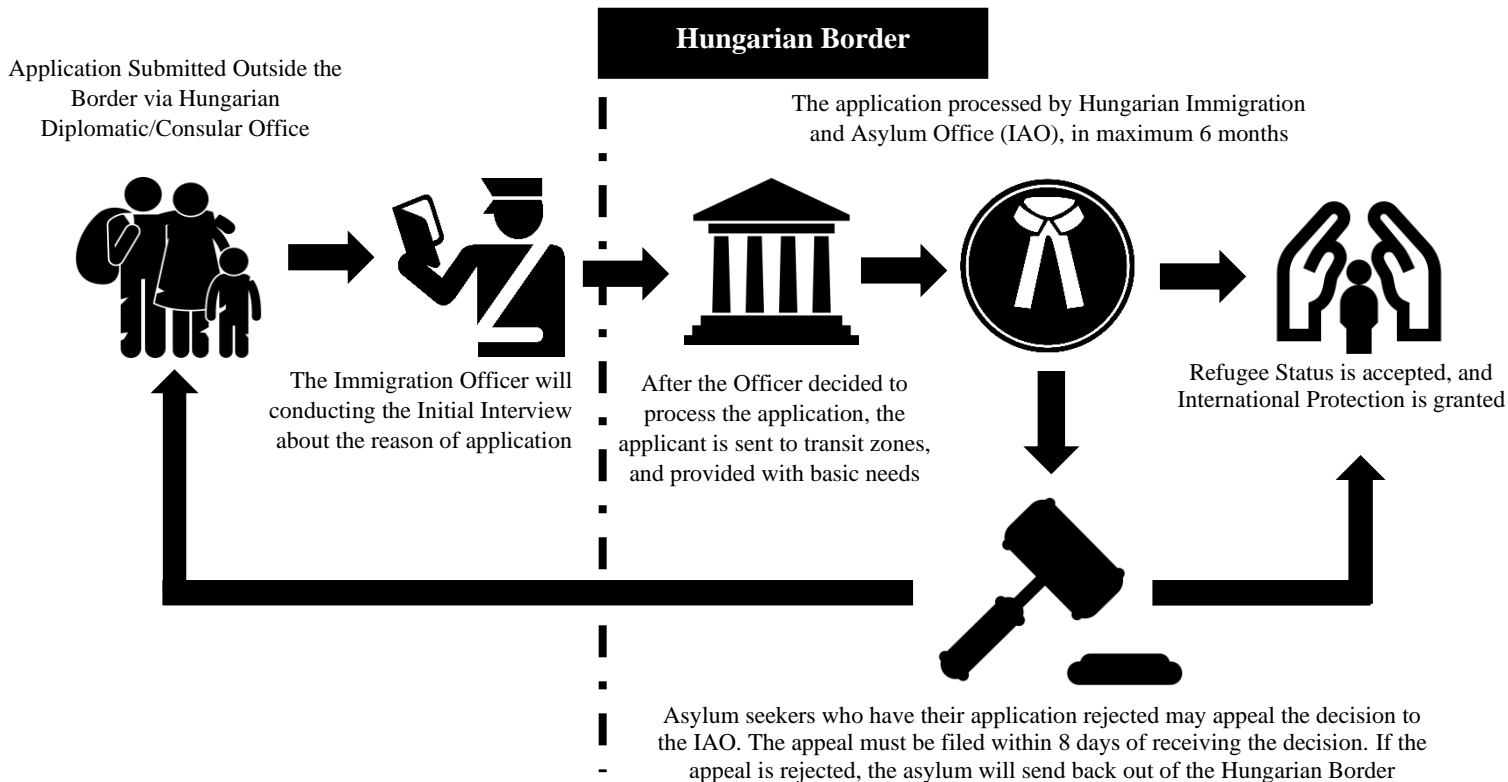
³⁵⁵ Amnesty International, "Fenced Out. Hungary's Violations of the Rights of Refugees and Migrants." pp.33-39.

³⁵⁶ Hathaway and Foster, *The Law of Refugee Status*. pp.441-458.

- 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.
- 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. This step is regulated in Article 56(1) of the Asylum Act provides for the second instance decision-making process.
- 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. Article 63(1) of the Asylum Act provides for the legal remedies available to asylum seekers.
- 2.1.8 In case the Refugee Status Determination (RSD) process is rejected after the legal action, based on Article 71 of the Hungarian Asylum Act 2007 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 8.

Figure 8. Summary of the Hungarian Refugee Determination Procedures Based on Asylum Act 2007 Amended 2018



Source: Author from Hungarian Asylum Act, 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 HIAO³⁵⁷. 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 rights³⁵⁸. 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:

³⁵⁷ UNHCR, "Beyond Detention," *UN Policy Brief Series*, 2019, <https://doi.org/10.5149/northcarolina/9781469653129.003.0005>.

³⁵⁸ Amnesty International, "Fenced Out. Hungary's Violations of the Rights of Refugees and Migrants." pp.44-45.

- 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.
- 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. The European Court of Justice has also censured Hungary's refugee policies, concluding that the country violated EU law by withholding food from asylum seekers detained in these transit zones. These critiques indicate a more thorough reassessment and enhancement of Hungary's refugee protection system. Improvement of the system needs to be done based on the development of equitable and efficient procedures for determination of refugee status, treatment with dignity and respect, and to reconsider restrictive policies and practices undermining the rights and protection open to refugees and asylum seekers in Hungary.

2.2. *Indonesia's Refugee Law Framework*

In summary from the chapter III, Indonesia's legal framework for refugees is less comprehensive than Hungary's, which focuses on the “*humanitarian*” approach³⁵⁹. Indonesia is not a signatory party to the 1951 Convention and its 1967 Protocol and has enacted national legislation related to refugees. Indonesia has also established the Indonesian Office of the United Nations High Commissioner for Refugees (UNHCR) to manage the refugee issue. Indonesia has been praised for its efforts to provide education, healthcare, and other services to refugees, as well as for its willingness to accept large numbers of refugees from conflict-affected countries such as Syria and Myanmar³⁶⁰. However, Indonesia faces challenges in ensuring the full protection of refugee rights, including challenges related to legal status and access to work and education³⁶¹. One of the key legal instruments in Indonesia's legal framework for refugee handling is Law No. 37 of 1999 on Foreign Relations. Article 27 of the law provides that Indonesia will provide protection and assistance to refugees in accordance with international law and the principles of humanity.

³⁵⁹ Syahrin, Wiraputra, and Aji, “Indonesian Legal Policy in Treating International Refugees Based on Human Rights Approach.”. pp.128-137.

³⁶⁰ Primadasa Primadasa, Putra Kurnia, and Erawaty, “Problematisasi Penanganan Pengungsi Di Indonesia Dari Perspektif Hukum Pengungsi Internasional.”.pp.44-51.

³⁶¹ Raden Ajeng Rizka Fiani Prabaningtyas, “Indonesia and The International Refugee Crisis: The Politics of Refugee Protection,” *Journal of Indonesian Social Sciences and Humanities* 9, no. 2 (2019): 131–46, <https://doi.org/10.14203/jissh.v9i2.152>.

Furthermore, the Government of Indonesia issued the Presidential Regulation No. 125 of 2016 on the Treatment of Refugees provides further guidance on the handling of refugees and asylum seekers in Indonesia. The refugee itself, based on Article 1 (1) of that regulation, is defined as the Foreigners who are in the territory of the Unitary State of the Republic of Indonesia due to a well-founded fear of persecution for reasons of race, ethnicity, religion, nationality, membership in certain social groups, and different political opinions are referred to as Refugees, and do not wish to seek protection from their country of origin, and have gained asylum seeker or refugee status from the UN through the High Commissioner for Refugees in Indonesia. In addition to these legal instruments, various ministerial regulations and circulars guide the implementation of refugee protection policies in Indonesia. For example, Ministerial Regulation No. M.02-IZ.01.08 of 2010 sets out the procedures in detention for the refugees, while Ministerial Regulation No. PM.71/HK.110/MENKES/2016 of 2016 outlines the health services that should be provided to refugees and asylum seekers.

In this research, the Presidential Regulation No.125 of 2016 on the treatment of refugees is becoming the focus of concern for analysis. Based on Article 2, the refugee procedures are run under the cooperation between the Government of Indonesia and the UNHCR Indonesia. Furthermore, the government of Indonesia, based on Article 4, is responsible to rescue/evacuation activities, reception, securitization, and immigration surveillance. First, for the rescue responsibility, as stated in Article 6, the investigative agency business in the Search field and Help coordinate and carries out the search for refugees in an emergency in Indonesian territorial seas, which as stated in Article 7, is performed by the National Army, National Police, the ministry that organizes government affairs in the field of transportation, an entity that handles government concerns related to marine security and safety, also known as the marine Security Agency and other relevant ministries/non-ministerial government agencies carrying out tasks in Indonesian territorial waters.

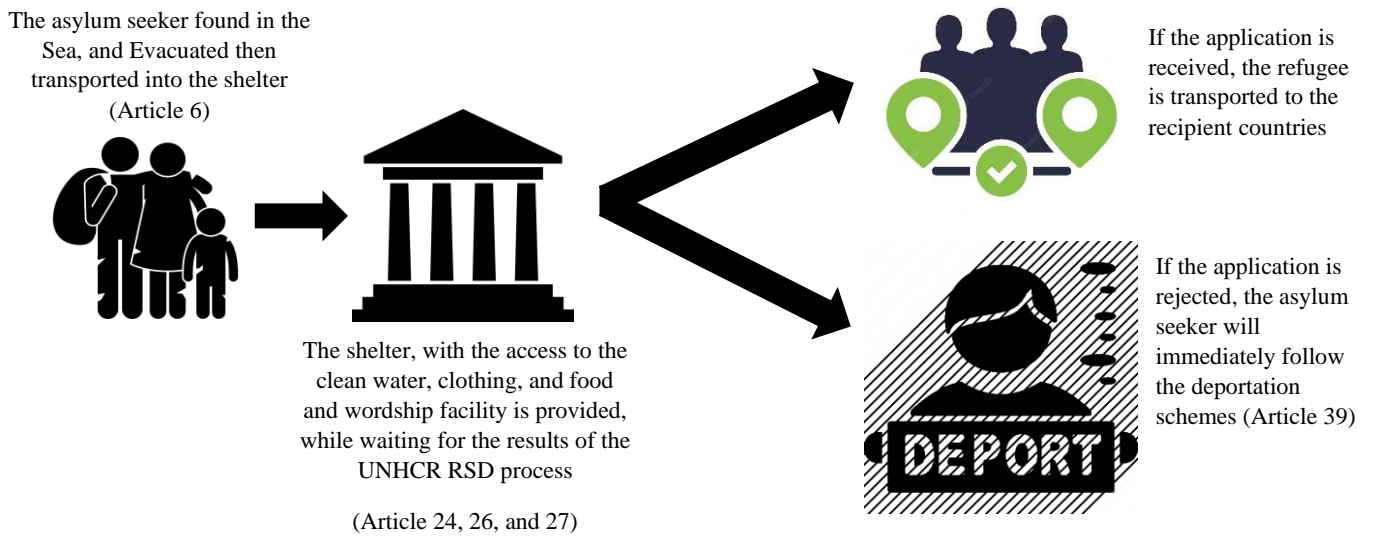
Secondly, the government of Indonesia is also responsible for the reception responsibilities. Whereas after those refugees are rescued from the sea, they must be transported to the reception facilities. The related institution as mentioned previously, must be coordinated with the local government to provide the shelter and its needs as stated in Article 24. The shelter has to facilitate those refugees with a clean water supply, meeting the needs of eating, drinking, and clothing, health and hygiene services, and worship facilities as stated in Article 26. Furthermore, the refugee who are: sick, pregnant, disabled, children, and elderly

can be placed outside the shelter, based on their needs (ex. The refugee who are sick, can be placed in the nearest hospital) as stated in article 27.

Last but not least, there are the securitization duties. As mentioned in Article 31, the refugee must be protected from many forms of offenses. Furthermore, this action has numerous goals, including (1) keeping refugees in shelters, (2) creating a sense of security for the surroundings around the shelter, and (3) creating and socializing regulations that contain obligations and restrictions for refugees, as mentioned in article 32. The Indonesian national police agency is in charge of this mission, with assistance from the local government. The last responsibility is immigration monitoring, which is carried out when refugees are located, both within and outside the shelter, when they are sent to their destination country, when they return willingly, and when they are deported. Technically, the Immigration authorities have several duties, including (1) double-checking the identity and documents of refugees and taking photos and fingerprints, (2) requesting information contained in minutes of inspection and minutes of opinion for refugees in the context of placement in the Immigration Detention Center, and providing a data collection letter or special identity card for refugees issued by the head of the local Immigration Detention Center as stated in article 35.

Furthermore, while those asylum seekers are transiting through Indonesian territory, the Directorate General of Immigration will work with the UNHCR to carry out RSD processes. If the application is accepted by the UNHCR and the refugee status is given, the asylum seekers will be sent to the refugee destination countries and will be subject to the administration of departure by asking for exit permits and not returning to travel documents by the Immigration authorities. If the UNHCR rejects their refugee status, they will be removed to their origin country via the deportation procedures outlined in article 39. In summary, the asylum seeker handling procedures can be seen in figure 9.

Figure 9. Summary of the Indonesia Asylum Seeker Handling Based on Presidential Regulation No. 125/2016.



Sources: Author from Presidential Regulation No. 125/2016.

In addition to these legal protections, there have been numerous reports of human rights violations against refugees and asylum seekers in Indonesia. For instance, a report by Human Rights Watch from 2018 documented evidence of arbitrary detention, limitations on freedom of movement, and police harassment of refugees and asylum seekers in Indonesia³⁶². One of the major gaps under Indonesian law is the absence of a specific law on refugees. The lack of a specific law on refugees limits the legal protection that can be accorded to refugees under Indonesian law and provides less accountability of authorities for violation of rights of refugees³⁶³. Besides, some have faulted Indonesia's policy on temporary protection as not sustainable to refugees. Also, not having a track leading to permanent residency or citizenship in Indonesia for refugees implies an unstable future for them, and this may work to the detriment of integration.³⁶⁴ While the legal framework on refugee handling in Indonesia may be informed by international norms and standards, further enhancements are needed to guarantee appropriate protection and support for refugees and asylum seekers. The gaps in the legal framework should be addressed, as well as the enhancement in the capacity of government agencies to provide adequate protection and services to refugees and asylum seekers.

³⁶² UNHCR, "Beyond Detention." pp.5-22.

³⁶³ Moretti, "Southeast Asia and the 1951 Convention Relating to the Status of Refugees: Substance without Form?" pp.214-233.

³⁶⁴ Francesco Castelli, "Drivers of Migration: Why Do People Move?," *Journal of Travel Medicine* 25, no. 1 (2018): 1–7, <https://doi.org/10.1093/jtm/tay040>.pp.1-7.

3. Analyzing the legal gap between Indonesia and Hungary

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"*³⁶⁵. 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"*³⁶⁶.

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 status³⁶⁷. Whereas refugee status 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

³⁶⁵ 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.

³⁶⁶ Bahri, *Between Legal Fortress and Uncertainty: Comparative Analysis of the Refugee Law Frameworks in Hungary and Indonesia*.pp.2-13.

³⁶⁷ Government of Hungary, "Act LXXX of 2007 on Asylum," Pub. L. No. Act LXXX of 2007 on Asylum, 1 Official Gazette 1 (2007), <https://doi.org/10.2307/j.ctv1r4xdbn.6>.

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 resettlement³⁶⁸. 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 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

³⁶⁸ Bahri, *Between Legal Fortress and Uncertainty: Comparative Analysis of the Refugee Law Frameworks in Hungary and Indonesia*.pp.913-943.

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 country³⁶⁹. 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 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.

³⁶⁹ Bahri, pp.930-934.

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 opinion³⁷⁰. 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,

³⁷⁰ Lister, "WHO ARE REFUGEES?".pp. 645-671.

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 reunification³⁷¹.

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 countries³⁷². The armed conflict resulted in the mass influx of people, called the “war flow” 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 proximity³⁷³.

The 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 crime³⁷⁴ 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 protection and weak enforcement mechanisms³⁷⁵. 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 country³⁷⁶.

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)³⁷⁷. 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

³⁷¹ Moretti, “Southeast Asia and the 1951 Convention Relating to the Status of Refugees: Substance without Form?”.pp.214-237.

³⁷² Abel et al., “Climate, Conflict and Forced Migration.”.pp.239-249.

³⁷³ Storey, “Armed Conflict in Asylum Law: The ‘War-Flow.’”.pp.1-32.

³⁷⁴ Carrera et al., “The EU ’ s Response to the Refugee Crisis Taking Stock and Setting Policy Priorities.”.pp.27-29.

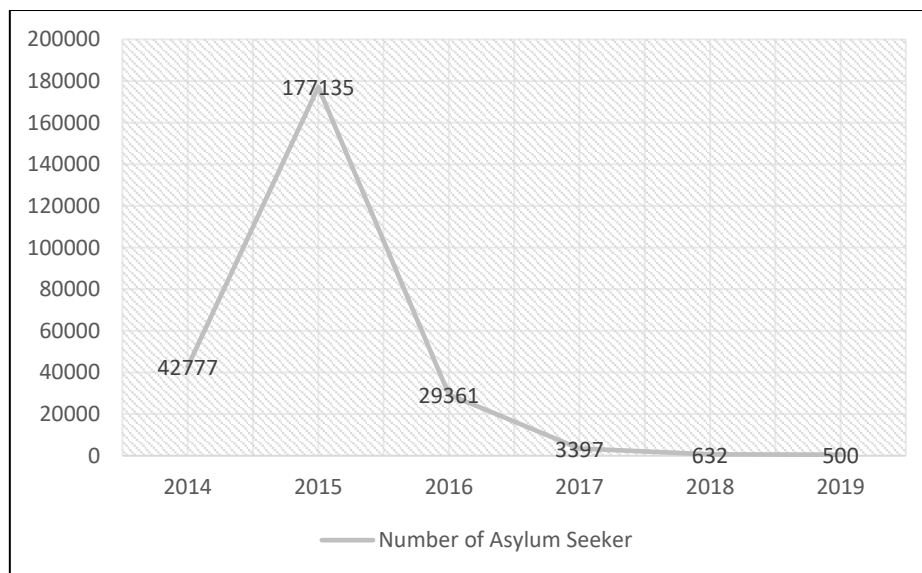
³⁷⁵ Byrne, Noll, and Vedsted-Hansen, “Understanding the Crisis of Refugee Law: Legal Scholarship and the EU Asylum System.”.pp.871-892.

³⁷⁶ Senada, “The Relocation of Refugees in the European Union.”.pp.1-12.

³⁷⁷ Nagy, “Special Issue Constitutional Dimensions of the Refugee Crisis Hungarian Asylum Law and Policy in 2015–2016: Securitization Instead of Loyal Cooperation.”. pp.1034-1082.

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 Germany³⁷⁸. 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 time³⁷⁹. Most of the asylum seeker is going into the EU through Hungary, because of 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 states³⁸⁰. 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 10.

Figure 10. 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

³⁷⁸ Kilibarda, “Obligations of Transit Countries under Refugee Law: A Western Balkans Case Study.”

³⁷⁹ 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.

³⁸⁰ Bodo Weber, “The EU-Turkey Refugee Deal and the Not Quite Closed Balkan Route,” *Friedrich Ebert Stiftung*, no. June (2017): 23.

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 recognized³⁸¹. 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 territory³⁸². 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 2019³⁸³.

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 once³⁸⁴. 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 work³⁸⁵, which means that their daily needs are not well fulfilled.

³⁸¹ 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>.

³⁸² 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>.

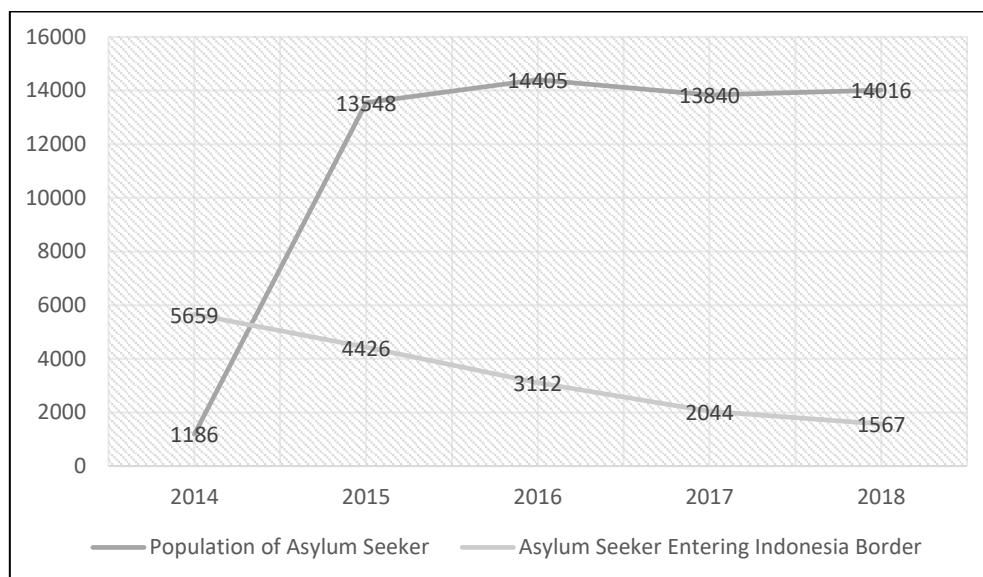
³⁸³ Juhász and Hunyadi, "Focus on Hungary: Refugees, Asylum and Migration Focus on Hungary: Refugees, Asylum and Migration HEinrich-Böll-Stiftung."

³⁸⁴ Holzer, "The 1951 Refugee Convention and the Protection of People Fleeing Armed Conflict and Other Situations of Violence." pp.1-42.

³⁸⁵ Dewansyah and Nafisah, "The Constitutional Right to Asylum and Humanitarianism in Indonesian Law: 'Foreign Refugees' and PR 125/2016." pp.536-557.

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 status³⁸⁶. That problem will affect several problems later, such as getting health facilities, education, and registering for various other services³⁸⁷. 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.

Figure 11. Comparison between Population of Asylum Seeker and Asylum Seeker who Officially Entering Indonesia as Asylum Seeker.



Source: *Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 175, 4 (2019); 10.1163/22134379-17504006

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

³⁸⁶ Ball, Butt, and Beazley, "Children and Families on the Move: Stateless Children in Indonesia." pp.1-4.

³⁸⁷ 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.

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 ³⁸⁸ .

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 status³⁸⁹. 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 countries to refugee receiving countries is very low, less than 5percent yearly³⁹⁰. Politically, Indonesia has refused the UNHCR recommendation to ratify the 1951 refugee convention, through the House of Representatives official meeting³⁹¹. 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

³⁸⁸ Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia: From Immigration Detention to Containment in 'Alternatives to Detention.'" pp.28-31.

³⁸⁹ 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>.

³⁹⁰ 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/>.

³⁹¹ Markus Junianto Sihalo, "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>.

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.

CHAPTER VI: THE NEED OF LEGAL AND SOCIAL REFORM IN INDONESIA

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)³⁹². 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*"³⁹³. 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 pending³⁹⁴. This legal distinction is crucial because the rights and protections available to asylum seekers differ significantly from those afforded to recognized refugees³⁹⁵. 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 action³⁹⁶.

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

³⁹² UNHCR, "Article 1," Pub. L. No. 1951 Refug. Conv., 15 1951 Refugee Convention 189 (1950), <https://doi.org/10.9783/9780812205381.77>.

³⁹³ Government of Hungary, Act LXXX of 2007 on Asylum.

³⁹⁴ UNHCR, "Ensuring the Safety of Asylum Seekers."pp.1-32.

³⁹⁵ Suyastri, Bahri, and Marhadi, "Legal Gap in Refugee Protection in Non-Signatory Countries: An Evidence from Indonesia."pp.193-234.

³⁹⁶ Bahri, "Understanding The Pattern of International Migration : Challenges in Human Right Protection."pp.81-94.

regulation falls short of fully addressing the distinction between asylum seekers and refugees, 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 yearly³⁹⁷. 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 years³⁹⁸.

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 protection³⁹⁹. 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 detention⁴⁰⁰.

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 obligations⁴⁰¹. 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

³⁹⁷ UNHCR, "A Transit Country No More: Refugees and Asylum Seekers in Indonesia." pp.3-43.

³⁹⁸ Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia." pp.32-44.

³⁹⁹ 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>.

⁴⁰⁰ Republic of Indonesia, "Indonesia Law No. 6 /2011 on Immigration," 6 Lembaran Negara RI § (2011).

⁴⁰¹ Kneebone, Missbach, and Jones, "The False Promise of Presidential Regulation No. 125 of 2016?," 2021.

entitled to protection under international law could be forcibly returned to situations of danger before their claims are fully assessed⁴⁰².

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 aid⁴⁰³. 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

⁴⁰² Syahrin, "The Implementation of Non-Refoulement Principle to the Asylum Seekers and Refugees in Indonesia." pp.168-178.

⁴⁰³ Suyastri, Bahri, and Marhadi, "Legal Gap in Refugee Protection in Non-Signatory Countries: An Evidence from Indonesia."

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 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 health⁴⁰⁴.

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 needs⁴⁰⁵. 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

⁴⁰⁴ Putri, "The Dilemma of Hospitality: Revisiting Indonesia's Policy on Handling Refugees Under International Law." pp.113-130.

⁴⁰⁵ 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>.

and humanely, witness the EU experience in managing the Ukrainian refugees⁴⁰⁶. These frameworks establish not only clear legal distinctions between asylum seekers and refugees but 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.⁴⁰⁷ 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 adjudication⁴⁰⁸.

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 control⁴⁰⁹. Unlike Canada's inclusive system, Hungary restricts access to legal representation

⁴⁰⁶ 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>.

⁴⁰⁷ FEANTSA, "Country Fiche: Canada" (Toronto, 2021).pp.1-23.

⁴⁰⁸ 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>.

⁴⁰⁹ Lenneke Teunisse, "The Legality of the Hungarian Röszke Transit Zone" (Tilburg Law School, 2021).

and has limited the right of asylum seekers to appeal decisions, creating significant barriers to fair asylum proceedings.

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 conditions⁴¹⁰. 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 law⁴¹¹. 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 obligations⁴¹². 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 practically⁴¹³. 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 market⁴¹⁴. These conditions not only

⁴¹⁰ 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.

⁴¹¹ Segarra, "Dismantling the Reception of Asylum Seekers: Hungary's Illiberal Asylum Policies and EU Responses." pp.43-63.

⁴¹² Korte, "'Who Is the Animal in the Zoo?' Fencing In and Fencing Out at the Hungarian-Serbian Border. A Qualitative Case Study." pp.453-474.

⁴¹³ 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>.

⁴¹⁴ 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 society⁴¹⁵. 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

⁴¹⁵ 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 law⁴¹⁶. 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 body⁴¹⁷. 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 timeframe⁴¹⁸. 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 employment⁴¹⁹. 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 refugee as an individual who has a well-founded fear of persecution because of his race,

⁴¹⁶ UNHCR, "Refugee Status Determination (RSD)," UNHCR Standard Procedures, 2020, <https://emergency.unhcr.org/protection/legal-framework/refugee-status-determination-rsd>.

⁴¹⁷ Dewansyah and Nafisah, "The Constitutional Right to Asylum and Humanitarianism in Indonesian Law: 'Foreign Refugees' and PR 125/2016." pp.112-121.

⁴¹⁸ Prabandari and Adiputera, "Alternative Paths to Refugee and Asylum Seeker Protection in Malaysia and Indonesia." pp.4-7.

⁴¹⁹ Suyastri, Bahri, and Marhadi, "Legal Gap in Refugee Protection in Non-Signatory Countries: An Evidence from Indonesia." pp.193-214.

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 refugee⁴²⁰. 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 refugees⁴²¹. 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, through its Article 9, protects against arbitrary detention and promotes a right of liberty and

⁴²⁰ 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>.

⁴²¹ Syahrin, "Diskursus Skema Pengawasan Pengungsi Setelah Penerbitan Peraturan Presiden Nomor 125 Tahun 2016 Tentang Penanganan Pengungsi Dari Luar Negeri Dalam Perspektif Keimigrasian." pp.71-84.

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 decisions⁴²². Adopting similar procedural protections in Indonesia would 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.

⁴²² 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>.

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 questions⁴²³. 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 protected⁴²⁴. 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 even when they do not qualify for refugee status under international law⁴²⁵. These various

⁴²³ FEANTSA, "Country Fiche: Canada." pp.224-227.

⁴²⁴ UNHCR Brazil, "Brazil Plan of Action : Final Implementation Report 2024-2024" (Rio De Janeiro, 2023), [/www.acnur.org/sites/default/files/2023-12/Brazil-Plan-of-Action-final-implementation-report 2014-2024.pdf](http://www.acnur.org/sites/default/files/2023-12/Brazil-Plan-of-Action-final-implementation-report%202014-2024.pdf).

⁴²⁵ 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>.

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 migration⁴²⁶. 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 handling⁴²⁷. 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 the 1951 Refugee convention and 1967 Protocol which extend the geographical proximity.

⁴²⁶ Andrea Crippa et al., “Conflict as a Cause of Migration,” *MPRA Paper* 2, no. 112327 (2022): 1–9, <https://ideas.repec.org/p/prapa/mprapa/112327.html>.

⁴²⁷ Storey, “Armed Conflict in Asylum Law: The ‘War-Flaw.’” pp.1-32.

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 resettlement⁴²⁸.

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 rights⁴²⁹.

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 immigrants or victims of human trafficking who must be placed in the Immigration Detention

⁴²⁸ UNHCR, "A Transit Country No More: Refugees and Asylum Seekers in Indonesia." pp.33-45.

⁴²⁹ Suyastri, Bahri, and Marhadi, "Legal Gap in Refugee Protection in Non-Signatory Countries: An Evidence from Indonesia." pp.1-32.

Center before deportation to the country of origin⁴³⁰. 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 funds⁴³¹.

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 visa⁴³².

Indonesia's status, which until now has not been a party to the 1951 refugee 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 experience expulsion, except in certain very clear circumstances (article 32); Exemption from

⁴³⁰ Bahri, "Understanding The Pattern of International Migration : Challenges in Human Right Protection.", pp.81-98.

⁴³¹ Keith Mark Nyende, "Refugee Local Integration: Local Governments as Stakeholders in the Implementation of the Comprehensive Refugee Response Framework in Uganda," 2021.

⁴³² 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>.

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) ⁴³³.

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 children⁴³⁴. 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 law⁴³⁵.

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), who refused the ratification draft handed by the Ministry of Law and Human Rights of the

⁴³³ 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>.

⁴³⁴ Detention Watch Network, “The Case Against ‘Alternatives To Detention,’” 2022.pp.22-25.

⁴³⁵ Republic of Indonesia, “Presidential Regulation No.125/2016 on Handling of Foreign Refugees,” Pub. L. No. 125/2016, 1 (2016).

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 code⁴³⁶.

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 reward⁴³⁷. 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 market⁴³⁸.

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 2021⁴³⁹. 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

⁴³⁶ Soewarto, "Manpower Act of Indonesia: Guide Book," 2023, pp.7-9.

⁴³⁷ 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>.

⁴³⁸ Missbach, "Accommodating Asylum Seekers and Refugees in Indonesia: From Immigration Detention to Containment in 'Alternatives to Detention.'" pp.32-43.

⁴³⁹ 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 government⁴⁴⁰. 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 worker⁴⁴¹. 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

⁴⁴⁰ 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>.

⁴⁴¹ Kuo Wei Yen and Li Chuan Liu Huang, "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 will⁴⁴².

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

⁴⁴² 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 issue⁴⁴³.

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,

⁴⁴³ 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 mechanism⁴⁴⁴ .

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 standards⁴⁴⁵.

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

⁴⁴⁴ Primawardani and Kurniawan, "Penanganan Pengungsi Dari Luar Negeri Oleh Petugas Rumah Detensi Imigrasi Di Provinsi Sulawesi Selatan." pp.4-16.

⁴⁴⁵ 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 services⁴⁴⁶. 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 integration⁴⁴⁷ .

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 IDC⁴⁴⁸. 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 schemes⁴⁴⁹.

⁴⁴⁶ 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>.

⁴⁴⁷ 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>.

⁴⁴⁸ 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.

⁴⁴⁹ 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 unusual⁴⁵⁰. 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 themselves⁴⁵¹.

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 Surabaya⁴⁵². 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 Sunnis⁴⁵³.

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

⁴⁵⁰ Indonesia, “Ratusan Pengungsi Rohingya Terdampar Di Aceh.”, pp.1.

⁴⁵¹ Missbach et al., “Facets of Hospitality : Rohingya Refugees Temporary Stay in Aceh.” pp.33-45.

⁴⁵² 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>.

⁴⁵³ 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 population⁴⁵⁴. 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 violations⁴⁵⁵. 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

⁴⁵⁴ 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.

⁴⁵⁵ 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 refugees⁴⁵⁶. 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

⁴⁵⁶ 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.⁴⁵⁷ 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 fraud⁴⁵⁸. 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

⁴⁵⁷ 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.

⁴⁵⁸ 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 huge⁴⁵⁹. 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) 2016/679⁴⁶⁰. 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' rights⁴⁶¹.

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

⁴⁵⁹ 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>.

⁴⁶⁰ 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>.

⁴⁶¹ 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 practices⁴⁶².

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 technologies⁴⁶³. 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

⁴⁶² 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>.

⁴⁶³ 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.

VII. 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 Immigratie* (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.

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