

INTEGRATED AND SYSTEMATIC HANDLING MODEL OF ASYLUM SEEKERS IN INDONESIA

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ABSTRACT

Indonesia is a renowned country of which its strategic geographic location is not safe from the problem of asylum seekers entering the Indonesian territory. Based on UNHCR records, the number of asylum seekers and refugees in Indonesia by October 2015 was 13,405 people. Asylum seekers were placed in several areas in Indonesia. In February 2016, an increase in the number of irregular migrants was 13,829 people including Asylum Seekers (7,560), Refugees (6,269) from 44 countries. Asylum seekers are those who have left their home country in fear of any threat to safety in their home country, thus they seek the international protection. The 1951 Convention Relating to the Status Refugees is a major international instrument in the handling of asylum seekers. Presidential Regulation Number. 125 of 2016 concerning the Handling of Foreign Refugees (Peraturan Presiden No.125 Tahun 2016) currently becomes the latest national instrument for the Indonesian government in dealing with refugees, including those regulated concerning the asylum seekers. However, the Presidential Regulation was not enclosed with technical guidelines on its application. Therefore, it requires model development (from the result of the first year research and have been validated by the Expert) from the FGD results with related stakeholders, that next step is the model application. In this study the problem to review was about how is the development of handling model of Asylum Seekers in Indonesia? The method in this research was sociological juridical content analysis using interactive analysis models with constructivism paradigm of R & D (Research and Development). The research targets were to (1) develop appropriate treatment models for asylum seekers in Indonesia; and (2) apply the model of asylum seekers in Indonesia. Based on the result, that the right handling model of Asylum Seekers in Indonesia is an integrated systematic approach of inter-related agencies including SAR and the Indonesian National Police (POLRI), District/City Government (Pemerintah Kota), Directorate General of Immigration Ministry of Justice and Human Rights (Dirjen. Keimigrasian Kementerian Hukum dan HAM), UNHCR, Immigration Detention Center (Rumah Detensi Imigrasi), Ministry for Foreign Affairs (Kementerian Luar Negeri), International Organization of Migration (IOM), Desk for the Handling of Human Trafficking, Refugees, and Asylum Seekers (P2MP2S) Coordinating Ministry for Political, Legal and Security Affairs of the Republic of Indonesia (MENKOPOLHUKAM) and Foreigner Supervision Team (TIMPORA) Directorate General of Immigration at the Ministry of Justice and Human Rights (Dirjen. Keimigrasian Kementerian Hukum dan HAM).

Keywords: Asylum seekers, refugees, handling, model

INTRODUCTION

Currently the number of asylum seekers and refugees located in Indonesian territory reaches more than 13,000 people (Source: unhcr.org). The asylum seekers are then placed in temporary shelters or the Immigration Detention House (*Rumah Detensi Imigrasi*) in various parts of Indonesia. In February 2016 there was an increase of 13,829 irregular migrants including asylum seekers (7,560), refugees (6,269) from 44 countries (UNHCR).

Nevertheless, asylum seekers are often mingled with foreigners. As a group of migrants, asylum seekers are occasionally subjected to racial hatred, political and economic debate of the country of asylum. Thus it is likely that the asylum seekers are deported or repatriated to their home country or transferred to another country. Indonesia as a country that upholds human rights shall be able to separate these migrant groups and treat them appropriately through equitable ways and procedures for asylum seekers. None shall be arbitrarily deprived of their rights to live, that they are rightful to get protection/asylum from another country including human rights group that must be universally recognized.

From the above description of the background, then the problem as main subject of this research was how is the model development of legal protection for Asylum Seekers in Indonesia?

METHODOLOGY

The paradigm used in the research was Legal Constructivism in the context and contents of the substance of policy formation that is finding the handling model of Asylum seekers in Indonesia especially in Indonesia and analyzing the synchronization between international law and national law in the handling of asylum seekers in Indonesia.

The research was conducted in category of juridical-sociological law research. This means that the enactment of the law shall be in accordance with the higher rules or the formation in ways that have been established and recognize the implementation of law enforcement process. This research will find a handling model of Asylum seekers in Indonesia especially in Indonesia and analyze the synchronization between international law and national law in the handling of asylum seekers in Indonesia.

This research used hermeneutic approach in qualitative socio-legal research. By this approach the research observed the rule of law to be the basis of policy formulation by considering the chronological laws of its formation process. It was hermeneutically

analyzing the content and context of policy materials. Qualitatively, it interpreted the meaning of articles in the policy that it will obtain the true meaning in sociology, philosophy and juridical.

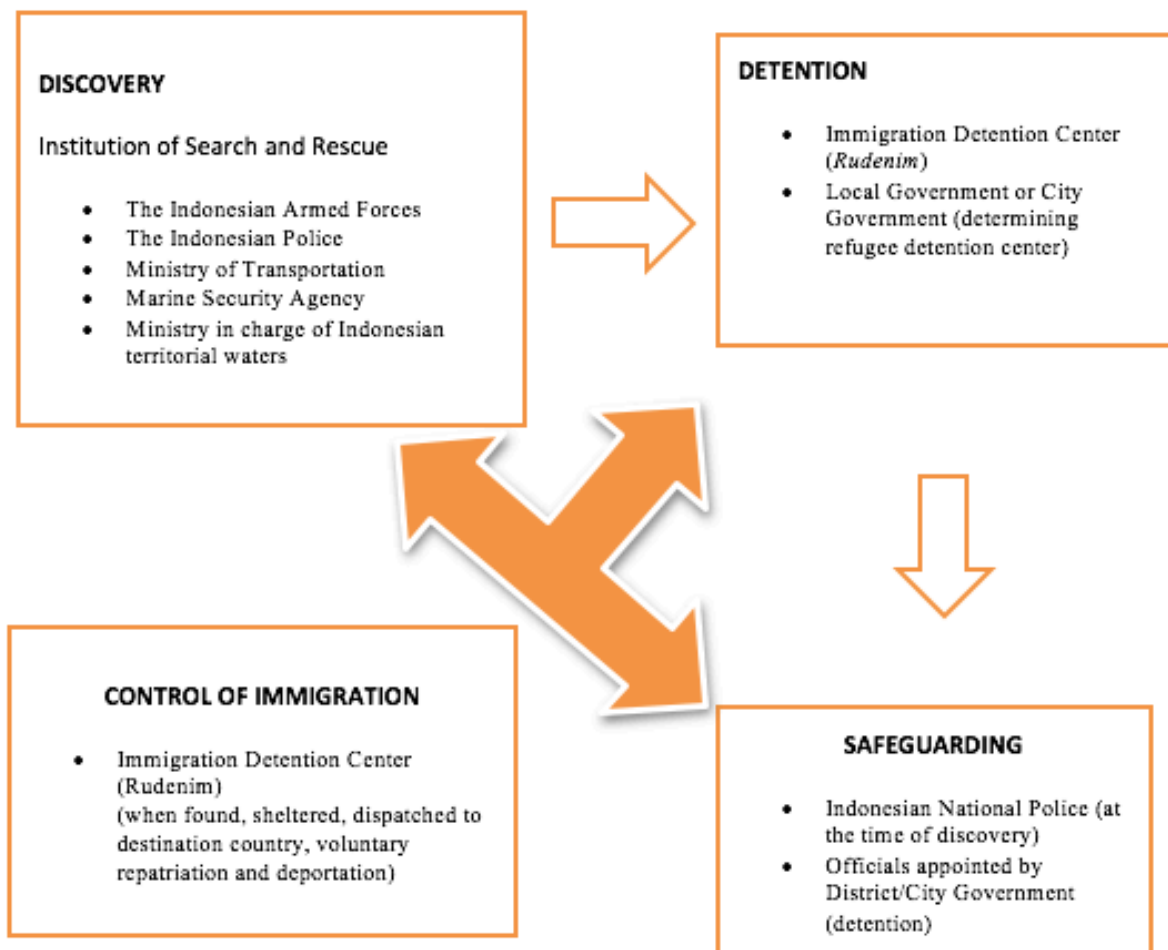
RESULTS AND DISCUSSION

Integrated and Systematic Handling Model for Asylum Seekers

Although Indonesia did not contribute the 1951 Convention, it has attempted to assume its responsibility to protect foreigner asylum seekers entering the Indonesian territory. Based on the results of the research and discussion above, it can be evident that the handling model of Asylum Seekers was performed in an integrated and systematic manner among related institutions as described the following:

The Presidential Regulation No. 125 of 2016 on the handling of foreigner refugees (*Perpres.No.125 Tahun 2016*) can be the basis of implementation of the handling of asylum seekers in Indonesia; however, the Presidential Regulation was not yet equipped with guidance on implementation. Therefore, the inter-related institutions have not clearly recognized their duties and functions in the handling of asylum seekers in Indonesia. From the research result, it is able to formulate the handling of asylum seeker in Indonesia that is Model of Integrated and Systematic Handling which include =

Technical Guidelines on Integrated and Systematic Handling Model



The steps are as follows set forth in articles 5-39 The Presidential Regulation No. 125 of 2016 on the Handling of Foreigner Refugees :

1. DISCOVERY

Article 5-Article 23 sets out about discovery

The discovery of the Refugees in the case of an emergency in the Indonesian territorial waters shall be coordinated and administered by the agency in conducting the concerns in Search and Rescue”.

The institutions in conducting any concerns in the Search and Rescue undertake operations of the Search and Rescue on the vessels allegedly containing Refugees who make emergency calls, may involve the corresponding authority, including:

- a. The Indonesian National Armed Forces ;
- b. The National Police of the Republic of Indonesia;
- c. Ministries performing governmental affairs in transportation;
- d. organizations conducting governmental affairs in marine security and safety or so-called Marine Security Agency; or
- e. Ministries/other non-ministerial government agencies performing duties in Indonesian territorial waters.

The relevant agency that finds the Refugee in an emergency will coordinate with the agency conducting the concerns in Search and Rescue. Communities that find refugees in emergencies will report to the agency conducting affairs in the Search and Rescue. Having found the Refugees in emergency situations, it requires to immediately carry out the following:

- a. transfer the refugees to the rescue ship in case the ship will sink;
- b. take them to the nearest port or land if the safety aspect of the Refugee is in danger;
- c. identify refugees in need of emergency medical help;
- d. handing over foreigners as alleged refugees to the Immigration Detention Centre on the nearest port or land.

In the case that the nearest port or land has no Immigration Detention Centre, the transfer of Refugees shall be conducted to the local Immigration Office.

In the event that the nearest port or near land has no Immigration Detention Centre and the Immigration Office, the transfer of Refugees shall be conducted to the local Police of the Republic of Indonesia.

The Immigration Office and the Police of the Republic of Indonesia who receives the transfer of Refugees shall immediately contact the Immigration Detention Center in its working area to hand over the Refugees.

The measures were set forth in the minutes.

Immigration Detention Officers conducted data collection through examination, included . travel documents; immigration status; and identity.

In case of examination result as that some foreigners declare themselves as Refugees, Immigration Detention Center officers coordinate with the UNHCR.

In the event that Refugees were found dead, the agency conducting affairs in Search and Rescue shall coordinate with:

- a. Police of the Republic of Indonesia through the disaster victim identification team to identify; and
- b. Ministry of Law and Human Rights (*Kementerian Hukum dan HAM*) through the Immigration Detention Center (*Rudenim*) to collect data.

Disaster victim identification and the Immigration Detention House (*Rudenim*) submit information on the results of identification and data collection to ministries conducting government affairs in foreign relations and foreign policy.

Ministers of Foreign Affairs shall submit a information on the death and handling of the body of the victim to the diplomatic representative of the victim's country of origin (Consular Notification). In the event that the victim's country of origin agrees to have the funeral conducted in the territory of Indonesia, the National Police of the Republic of Indonesia shall coordinate with the local district/city government to bury the body. In case within a period of 1x24 hours that the victim's country of origin provides no clarification on the handling of the victim's body, Police of the Republic of Indonesia coordinates with the local district/city government to bury the body. In the event of a request by the victim's family to repatriate the victim's body to the country of origin but the diplomatic representative of the victim's country of origin cannot process the repatriation, the minister conducting government affairs in foreign affairs and foreign policy shall cooperate with the international organization dealing with humanitarian affairs to repatriate the victim's body.

Further provisions on the procedures for the discovery of Refugees in an emergency in the territorial waters of Indonesia shall be set forth by Regulation of the Head of the agency conducting concerns in Search and Rescue after coordinating with the Minister.

Relevant institutions that discovered Refugees on the mainland coordinate with the Indonesian Police for safeguarding. Communities that find refugees in the mainland shall report to the Indonesian Police for safeguarding.

Police of the Republic of Indonesia shall hand over Refugees to the Immigration Detention House. The measures shall be set forth in the minutes.

Immigration Detention Officers (*Rumah Detensi Imigrasi*) conducted data collection through examination of a. travel documents; immigration status; and c. identity.

In case of examination that some foreigners declare themselves as Refugees, Immigration Detention House (*Rumah Detensi Imigrasi*) officers coordinate with the UNHCR.

In the event that Refugees were found dead, Police of the Republic of Indonesia assigns the disaster victim identification team to make identification. Police of the Republic of Indonesia coordinates with ministries conducting governmental affairs in law and human rights (*Kementerian Hukum dan HAM*) through the Immigration Detention House (*Rumah Detensi Imigrasi*) to collect data.

The disaster victim identification team and the Immigration Detention House (*Rudenim*) submit information on the results of identification and data collection to ministries conducting government affairs in the field of foreign relations and foreign policy (*Kementerian Luar Negeri*).

Based on the information, the minister conducting government affairs in the foreign relations and foreign policy shall submit a Consular Notification containing information on the death and handling of the victim's body to the diplomatic representative of the victim's country of origin. In case the victim's country of origin agrees to have the funeral conducted in the territory of Indonesia, the National Police of the Republic of Indonesia shall coordinate with the local district/city government to bury the body. In case within a period of 1x24 hours the victim's country of origin provides no clarification on the handling of the victim's body, Police of the Republic of Indonesia coordinates with the local district/city government to bury the body. In the event that the victim's family requests to repatriate the victims' body to their home countries but diplomatic representatives of the victims' country of origin cannot process the repatriation, the minister conducting government affairs in foreign relations and foreign policy cooperates with international organizations in dealing with humanitarian affairs to repatriate the victim's body.

2. DETENTION

Article 24-Article 29 sets out about detention

The Detention Immigration House coordinates with the local district/city government to transfer and locate refugees where they find the shelters. In case that the shelters are unavailable, refugees can be located in temporary accommodation areas. The temporary accommodation areas shall be determined by the regent/mayor. In the case of local government uses local property for Refugees shelter, its use shall be in the utilization of borrow and use between local governments and Ministry as central government concerned with the laws and regulations. Placement of Refugees at the shelters is carried out by procedures:

- a. Transfer of Refugees by the Immigration Detention Centre to the officials designated by the local district/city government provided with minutes of hand over of the Refugee by enclosing receipt of Refugee property except immigration documents such as travel documents, stay permit documents and visas;
- b. Refugee Reception at the detention centers is recorded in the register book of detention;
- c. Storage and transfer of Refugee property are recorded in register book of goods storage and delivery;
- d. Records of Refugees for those who leave temporary shelters in the register book of temporary exit and entry;
- e. Placement of refugees in the room is based on family, sex, age, nationality, race, ethnicity and religion;
- f. Separation of refugees who suffer infectious and harmful disease shall be referred to hospitals or other health care facilities;
- g. The granting of special identity card for Refugees by the Immigration Detention Centre;
- h. Establishment of the order at the shelter by the appointed official referred to in letter a.

District/city governments establish shelters for refugees. Shelters for Refugees shall meet the criteria:

- a. close to health care and worship facilities;
- b. located within one district/city as Immigration Migration Center;
- c. supportive security conditions.

The shelters may be facilitated by the international organization in the migration through ministries conducting governmental affairs in the law and human rights subsequent to coordinating with the Minister.

Facilities by international organizations shall be basic facilities for refugees in the shelters.

The basic necessity facilities shall include:

- a. clean water supply;
- b. need of food, drink and clothes supply;
- c. health and hygiene services; and
- d. worship facilities.

In the case of health facilities and worship facilities letters c and d are unavailable, local district/city governments may seek outside the shelter by observing the ease of access range. Refugees with special needs can be located outside the shelters facilitated by international organizations in the migration affairs subsequent to obtaining a permit from the minister in charge of government affairs in the law and human rights through working unit in dealing with immigration affairs. Permits are exempted in emergency situations and placements outside the shelters within one district/city.

Refugees with special needs include those who are: sick; pregnant; persons with disabilities; child; and elderly.

Placement outside the shelter for Refugees with special needs shall be conducted with the aim of providing special care, provided that:

- a. have treatment by medical personnel as needed;
- b. child refugees are provided with care based on the principle of best interest for them;
- c. the ailing refugees and require care are placed in health care facilities; and
- d. refugees suffering with infectious and dangerous diseases are referred to hospitals or other health-care facilities.

Refugees can be transferred from one shelter to another in connection with family unification, hospitalization and placement to the third country. The displacement of refugees shall be coordinated by the Immigration Detention Center (*Rumah Detensi Migrasi*). The displacement of refugees may be facilitated by international organizations in the migration affairs after obtaining permit from ministers holding legal affairs in the law and human rights through the Immigration Office.

Asylum seekers whose refugee status request is denied and finally rejected by the UNHCR are placed at the Immigration Detention Center for the Voluntary Repatriation or deportation process in accordance with the provisions of the laws and regulations. In addition to the asylum seeker whose refugee status request is rejected and finally rejected, Refugees for placement process to the third country may also be located at the Immigration Detention Center.

Each refugee shall comply with the rules of the shelter letter h, the prevailing customs in the local community, and the provisions of laws and regulations. Any foreigner as refugee who does not comply with the order in the shelter and customs shall be subject to special placement. Any measures of special placement shall be determined in the order of the shelter Article 25 letter h.

Any refugee violating the provisions of the laws and regulations as referred to in paragraph (1) shall be processed in accordance with the provisions of laws and regulations.

3. SAFE GUARDING

Article 30-Article 32 sets out about safe guarding

Safeguarding of Refugees at the time of discovery is carried out by the National Police of the Republic of Indonesia. Government agencies and local communities who find Refugees shall undertake necessary safeguards and coordinate with or report to the Indonesian Police.

Government agencies shall be obliged to create safe conditions in order to avoid crime.

Safeguarding of Refugees at the shelters shall be carried out by the appointed official in Article 25 letter a, in coordination with the local Police of the Republic of Indonesia:

- a. keep refugees remain in shelters;
- b. create safety for the environment around the shelter;
- c. create and disseminate the order containing obligations and prohibitions for Refugees

4. IMMIGRATION CONTROL

Article 33-Article 39 sets out about immigration control

Immigration Detention Center Officers conduct the Refugees immigration control. The refugees' immigration control shall be carried out at the time of discovery, in shelters and outside shelters, discharged to destination country, Voluntary Repatriation and deportation.

Immigration control over Refugees at the time of detection is done by inspection and data collection.

Immigration control of Refugees in shelters and outside shelters is carried out by:

- a. re-check ID identity and documents as well as taking photos and fingerprints of the Refugee.
- b. inquire for information contained in the investigation reports and the minutes of the hearing for the Refugees in the context of placement in Immigration Detention Centre; and
- c. provides data collection letter or special identity card for Refugees issued by the head of the Immigration Detention Center in letter b locally valid for 1 (one) year and shall be renewed annually.

Refugees shall report monthly to the head of the Immigration Detention Center in Article 35 letter c locally to obtain a stamp on special identity card in the shelter. Refugees who have not reported themselves for 3 (three) times consecutively for unacceptable reason, are placed in the Immigration Detention Center. Immigration control in order to transfer Refugees to destination country is done by:

- a. receive notification of approval by the United Nations through the High Commissioner for Refugee Affairs in Indonesia containing names of the approved Refugees and assigned to the destination country;
- b. complete departure administration by applying exit non-return permit on travel document; and
- c. perform safeguarding of departure from the shelter to the nearest immigration checkpoint.

Immigration Control of Refugees in the context of Voluntary Repatriate is done by:

- a. Receive the Refugee request to return to their home country voluntarily;
- b. complete departure administration by applying non-return exit permit on travel document; and
- c. perform safeguarding of departures to the nearest immigration checkpoint.

Voluntary Repatriate shall be carried out in accordance with the provisions of laws and regulations.

Immigration control of asylum seekers of which their requests for refugee status are rejected by the United Nations through the High Commissioner for Refugees in Indonesia conducted by:

- a. receive notification of refugees' refusal status from the United Nations through the High Commissioner for Refugees in Indonesia;

- b. coordinate with the appointed official in Article 25 letter a to release asylum-seekers of which their refugee status has been rejected from the shelter and located at the Immigration Detention Center;
- c. prepare administrative process of deportation outside Indonesia; and
- d. perform safeguarding to the nearest immigration checkpoint.

CONCLUSION

Based on the results of the research and discussion above, it can be evident that the handling model of Asylum Seekers is an integrated management model conducted systematically among related institutions. Each institution or agency has its own roles and duties as stipulated in Presidential Regulation Number 125 of 2016 (*Perpres No. 16 Tahun 2016*) on the handling of foreigner refugees. Given these stipulations, every agency must coordinate well and shall be mutually accountable, that integrated management model for asylum seekers in Indonesia can be realized. These institutions are:

1. SAR, The Indonesian Armed Forces (*TNI*) and the Indonesian Police (*POLRI*) teams as the agencies at the discovery in both land and water areas.
2. Regency or City Government provides temporary accommodation.
3. Directorate General of Immigration at the Ministry of Justice and Human Rights.
4. UNHCR as an organization in determining the status of refugees.
5. Rudenim is a shelter for both asylum seekers and refugees.
6. The Ministry of Foreign Affairs is in charge of voluntary repatriation (*AVR*).
7. International Organization of Migration (*IOM*).
8. Desk Handling for the Smuggling of People, Refugees, and Asylum Seekers (*P2MP2S*) of Coordinating Ministry for Political, Legal and Security Affairs of the Republic of Indonesia and Foreign Alert Monitoring Team (*TIMPORA*) Directorate General of Immigration at the Ministry of Justice and Human Rights.

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Rule & Convention

International Covenant on Civil and Political Rights

Konvensi tentang Penentangan Penyiksaan dan Kekejaman lain, Penghukuman atas Perlakuan yang Merendahkan atau Tidak Manusiawi Tahun 1984

Konvensi Wina tahun 1961 tentang Hubungan Diplomatik

Rancangan Peraturan Presiden Republik Indonesia tentang Penanganan Orang Asing Pencari Suaka dan Pengungsi

The 1951 Convention Relating to the Status of Refugees

Universal Declaration of Human Right 1948

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