



THE LEGAL STATUS OF REFUGEES AS PERPETRATORS OF CRIMINAL ACTS IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

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ABSTRAK

The presence of foreign refugees in Indonesia raises various legal issues, particularly when refugees commit criminal offenses within Indonesian territory. Although Indonesia has not ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the management of refugees is primarily governed by Presidential Regulation Number 125 of 2016 concerning the Management of Refugees from Abroad, alongside the applicable provisions of Indonesian criminal law. This legal framework creates challenges in determining the criminal liability of refugees while balancing the principles of state sovereignty, territorial jurisdiction, and international human rights protection. This study aims to analyze the application of the territorial principle to refugees who commit criminal offenses in Indonesia and to examine the legal certainty of their criminal liability within the Indonesian criminal justice system from the perspectives of national and international law. The research employs a normative juridical method using statutory, conceptual, and case approaches. Legal materials consist of national legislation, international legal instruments, judicial decisions, and relevant academic literature. The findings indicate that refugee status does not exempt an individual from criminal liability. Refugees who commit criminal offenses within Indonesian territory remain fully subject to Indonesian criminal law under the territorial principle, regardless of their nationality or immigration status. Nevertheless, the absence of comprehensive regulations governing the post-conviction treatment of refugee offenders, institutional coordination among law



enforcement agencies, immigration authorities, and the United Nations High Commissioner for Refugees (UNHCR), as well as the relationship between criminal sanctions and the principle of *non-refoulement*, creates significant legal uncertainty. Therefore, harmonizing national legislation with international refugee law is essential to strengthen legal certainty, ensure effective law enforcement, safeguard human rights, and maintain national security in Indonesia.

Key Words: Refugees; Crime; Criminal Responsibility; Criminal Justice System; Refugee Law.

A. PENDAHULUAN

The increased mobility of people across borders due to armed conflict, civil war, human rights violations, and humanitarian disasters has led to a surge in the number of refugees in various regions of the world. According to data from the United Nations High Commissioner for Refugees (UNHCR), the number of refugees and forcibly displaced persons has continued to rise in recent years ¹. Indonesia, although not the final destination for most refugees, is a transit country hosting thousands of refugees from various countries, such as Afghanistan, Myanmar (Rohingya), Somalia, Iraq, Sudan, and Pakistan ². Indonesia's strategic geographic location makes it a key route for refugee migration to destination countries such as Australia and New Zealand ³.

Legally, Indonesia is not a party to the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol Relating to the Status of Refugees ⁴. Consequently, Indonesia does not have a conventional obligation to grant legal status as a country of

¹ UNHCR, "Indonesia Fact Sheet," 2023, <https://doi.org/https://www.unhcr.org/id/wp-content/uploads/sites/42/2024/01/Indonesia-Fact-Sheet-December-2023-final.pdf>.

² Nurul Adhaniah, Dudy Heryadi, and Deasy Sylvia Sari, "The Cooperation of UNHCR and Indonesia on Afghan Refugee Handling in Indonesia," *Andalas Journal of International Studies* X, no. 1 (2021): 51–65, <https://doi.org/https://doi.org/10.25077/ajis.10.1.51-65.2021>.

³ F. Putri, R. W., Putri, Y. M., Ernawati, N., Havez, M., & Sabatira, "Balancing The Principles of Non-Refoulement and National Security in The Protection of Refugee Rights: A Legal and Policy Analysis of Refugee Handling in Australia," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 2 (2024): 372–92, <https://doi.org/https://doi.org/10.29303/ius.v12i2.1391>.

⁴ Ninin Ernawati, "The Legal Consequences of the Application of Two Australian Policies as Members of the 1951 Refugee Convention Reviewed from the VCLT 1969," *Jurnal IUS* 7, no. 1 (2019), <https://doi.org/https://doi.org/10.29303/ius.v7i1.591>.



asylum as stipulated in these two instruments. Nevertheless, Indonesia continues to demonstrate its humanitarian commitment through the issuance of Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad, which regulates the mechanisms for finding, sheltering, securing, and coordinating refugee management with the UNHCR and the International Organization for Migration (IOM). This regulation focuses more on administrative and humanitarian aspects, but does not comprehensively address the legal consequences if refugees commit crimes within Indonesian territory.

In practice, it is undeniable that some refugees have been involved in acts classified as criminal offenses, both minor offenses and crimes that seriously impact public security and order. This phenomenon raises complex legal issues because it brings together two different legal regimes: national criminal law, which focuses on law enforcement, and international refugee law, which emphasizes the protection of individuals fleeing persecution. On the one hand, the state has an obligation to enforce criminal law based on the territorial principle, as reflected in Article 2 of the Indonesian Criminal Code (KUHP), which states that anyone who commits a crime within Indonesian territory is subject to Indonesian criminal law regardless of citizenship or immigration status. On the other hand, refugees remain subjects entitled to human rights protection under various international instruments ratified by Indonesia.

The issue becomes even more complex because refugee status is not identical to that of a foreigner in general. Refugees are a vulnerable group entitled to protection under the principles of international law, particularly the principle of non-refoulement, which prohibits the return of individuals to their country of origin if there is a threat to their life or freedom⁵. However, this principle is not intended to grant immunity to refugees who commit crimes in host or transit countries. Therefore, fundamental questions arise regarding the legal status of refugees as perpetrators of crimes in the Indonesian criminal

⁵ Ninin Ernawati, "The Dilemma Of Australian Pacific Solution: The Non-Refoulement Principle Versus National Security," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law* 6, no. 2 (2019): 340–60, <https://doi.org/https://doi.org/10.22304/pjih.v6n2.a7>.

justice system and how criminal accountability mechanisms are implemented without neglecting the protection of refugees' basic rights.

Current national legal regulations still leave a gap in norms regarding the handling of refugees facing criminal law. Presidential Regulation Number 125 of 2016 does not detail the coordination procedures between the Indonesian National Police, the Prosecutor's Office, the Courts, the Directorate General of Immigration, immigration detention centers, and the UNHCR when a refugee is designated as a suspect, defendant, or convict. Furthermore, there are no clear provisions governing the immigration status of refugees after serving their sentence, the possibility of resettlement, or the criminal implications of the Refugee Status Determination process. This regulatory gap has the potential to create legal uncertainty, disharmony between agencies, and differences in practice in the field.

From the perspective of International Criminal Law and International Refugee Law, refugees who commit crimes can still be held criminally responsible as long as they meet the elements of a crime under national law. In fact, Article 1F of the 1951 Refugee Convention provides the basis for individuals who commit certain serious crimes to be excluded from refugee protection. Although Indonesia has not ratified the convention, its provisions reflect the general principle that refugee protection should not be interpreted as protection against criminals. Therefore, a balance between criminal law enforcement and human rights protection is a crucial aspect that must be realized in the national legal system.

Research on refugees in Indonesia has so far focused primarily on human rights protection, the principle of non-refoulement, immigration policies, and the fulfillment of refugees' socio-economic rights. Meanwhile, studies specifically addressing the legal status of refugees as perpetrators of criminal acts from the perspective of the Indonesian criminal justice system are still relatively limited. This issue is highly urgent given the increasing dynamics of refugee management in Indonesia and the need for legal certainty for law enforcement officials in handling criminal cases involving refugees.



Based on this description, this research is crucial for analyzing the legal status of refugees as perpetrators of criminal acts in the Indonesian criminal justice system, examining the forms of criminal liability that can be imposed, and formulating a model for harmonizing regulations between national criminal law and the principles of international refugee law. The results of this research are expected to contribute to the development of legal science, particularly Criminal Law and Refugee Law, as well as serve as recommendations for the formation of more comprehensive regulations to ensure legal certainty, protection of human rights, and the effectiveness of law enforcement in Indonesia.

B. LEGAL STATUS OF REFUGEES IN THE INDONESIAN LEGAL SYSTEM

The definition of a refugee in international law essentially refers to an individual forced to leave their country of origin due to a serious threat to their safety, freedom, or fundamental rights⁶. Unlike migrants who move voluntarily for economic opportunities, education, or family reasons, refugees move due to compelling circumstances that prevent them from returning to their country of origin without facing a real risk of persecution or harm. Therefore, refugee status is a legal status that provides special protection under international law.

The primary basis for the definition of a refugee is found in the 1951 Convention Relating to the Status of Refugees (the 1951 Refugee Convention). Article 1A(2) of the convention states that a refugee is a person who is outside the country of his or her nationality because of a well-founded fear of persecution based on race, religion, nationality, membership of a particular social group, or political opinion, and is unable or

⁶ T. Dragostinova, "Refugees or Immigrants? The Migration Crisis in Europe in Historical Perspective," *Origins: Current Events in Historical Perspective* 9, no. 4 (2016): 1–16, https://doi.org/https://d1wqtxts1xzle7.cloudfront.net/43254628/dragostinova-refugees-libre.pdf?1456895965=&response-content-disposition=inline%3B+filename%3DRefugees_or_Immigrants_The_Migration_Cri.pdf&Expires=1757405028&Signature=JwBcs2KuKk5PmKaf7wYz-sqDuye0FU4qatIiybmH~Bsm9hgE~2frYIYx-6T5~HwyKqhCy83eQfmgMs8aKd2fVcMo-fKO46qwcGLHuwdkA~WRTSnPeVT~b3CEYB5Eal9kpKrzda2CwqajCELXYFIz9zp9EtsISLeb5S6TO3IPgia6Y~b8~Jqjt3tea3FbTUbDjYkE21UeY3qLqbdq~YAuVvhg2o-C6ctUxKN2u1qPLtpj7FxXY33ypLgvF5AgRuMRshjzIjswzdqWZmeWxzTIdSR5Pnie.

unwilling to obtain protection from their country of origin. This definition serves as the international standard used by most countries and international organizations in determining refugee status.

The concept of well-founded fear is a crucial element in determining refugee status⁷. This fear is not only based on a person's subjective feelings but must also be supported by objective circumstances indicating a real threat if the person returns to their home country. Therefore, determining refugee status requires an assessment of the individual's circumstances as well as the political, security, and human rights situation in the country of origin. This approach aims to ensure that international protection is provided to those who truly need it.

In addition to a well-founded fear, the definition of a refugee requires that the individual be outside the territory of their home country. This requirement distinguishes refugees from internally displaced persons (IDPs), who are also forced to flee their homes due to conflict, violence, or disaster, but remain within their own country. International refugees receive protection across borders, while internally displaced persons remain under the jurisdiction of their home country, although that country is often unable to provide effective protection.

Developments in international law demonstrate that the definition of a refugee extends beyond the provisions of the 1951 Convention. Through the 1967 Protocol Relating to the Status of Refugees, the geographical and temporal limitations contained in the 1951 Convention were removed. Initially, the 1951 Convention only applied to persons displaced by events before January 1, 1951, primarily those occurring in Europe. The 1967 Protocol expanded the scope of protection so that the definition of a refugee could be applied to anyone who meets the requirements of the convention, without being limited by time or territory.

⁷ N. Ahmad, N., Ariffin, D. I., & Razali, "A Critical Overview of International Refugee Law and the Non-Refoulement Principle," *Manchester Journal of Transnational Islamic Law & Practice* 21, no. 1 (2025), https://doi.org/https://openurl.ebsco.com/EPDB%3Aged%3A4%3A17791284/detailv2?sid=ebsco%3Aplink%3Ascholar&id=ebsco%3Aged%3A186705309&crl=c&link_origin=scholar.google.com.



In international practice, the United Nations High Commissioner for Refugees (UNHCR) plays a crucial role in determining refugee status through the Refugee Status Determination (RSD) mechanism. This process assesses whether an individual meets the criteria set out in the 1951 Convention and the 1967 Protocol. UNHCR also provides legal protection, humanitarian assistance, and seeks long-term solutions for refugees through voluntary repatriation, local integration, or resettlement to a third country.

International law also develops principles of protection inherent in refugee status. The most fundamental principle is non-refoulement, which prohibits a country from returning refugees to a territory where their life or freedom is threatened. This principle is stipulated in Article 33 of the 1951 Convention and has become part of customary international law. Therefore, this principle binds not only states parties to the 1951 Convention but is also seen as having broader applicability in international practice.

However, international law also imposes limitations on refugee protection. Article 1F of the 1951 Convention excludes individuals suspected of committing crimes against peace, war crimes, crimes against humanity, serious non-political crimes before entering the country of asylum, or acts contrary to the purposes and principles of the United Nations. This provision demonstrates that refugee status cannot be used as a means to avoid accountability for international crimes or other serious crimes.

Indonesia is not a party to the 1951 Refugee Convention or the 1967 Protocol. However, the existence of refugees is recognized through Presidential Regulation No. 125 of 2016 concerning the Management of Refugees from Abroad, which defines refugees as foreigners who are in Indonesian territory due to a well-founded fear of persecution in their country of origin and have either obtained refugee status from the UNHCR or are in the process of determining such status. Therefore, although Indonesia has not ratified these international instruments, national practice continues to refer to the definition developed in international law.

Based on this explanation, it can be understood that the definition of a refugee under international law is a legal concept that combines elements of human rights protection, state responsibility, and international cooperation. Refugee status is granted to



individuals who meet certain legal requirements, not solely due to cross-border displacement. This definition serves as the basis for determining the rights, obligations, and forms of protection afforded to refugees, as well as an important basis for analyzing the legal standing of refugees when they encounter the criminal justice system in host countries, including Indonesia.

C. REFUGEE REGULATIONS IN INDONESIAN NATIONAL LAW

Indonesia currently lacks a law specifically regulating the status, rights, obligations, and protection mechanisms for refugees. However, the presence of refugees in Indonesia is accommodated through several sectoral laws and regulations, particularly Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad and Law No. 6 of 2011 concerning Immigration⁸. These two legal instruments serve as the primary basis for refugee management, although their differing orientations and scopes often create problems in their implementation.

Presidential Regulation No. 125 of 2016 is the first regulation in Indonesia to specifically regulate the procedures for handling refugees from abroad. This regulation was enacted by the increasing influx of asylum seekers and refugees to Indonesia, many of whom use Indonesia as a transit country on their way to a third country. Prior to the issuance of this Presidential Regulation, refugee management was largely based on administrative policies and cooperation between the Indonesian government and the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), without a comprehensive national legal basis.

Article 1, paragraph 1 of Presidential Regulation Number 125 of 2016, stipulates that refugees from abroad are foreigners residing in the territory of the Unitary State of the Republic of Indonesia due to a well-founded fear of persecution in their country of origin based on race, ethnicity, religion, nationality, membership in a particular social

⁸ N. Novianti, "Implementasi Perpres No. 125 Tahun 2016 Tentang Penanganan Pengungsi Dari Luar Negeri (The Implementation of Presidential Regulation Number 125 of 2016 on the Handling of International Refugees)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 10, no. 2 (2020): 259–80, <https://doi.org/10.22212/jnh.v10i2.1343>.



group, or political views, who do not desire protection from their country of origin, and who have obtained refugee status from the UNHCR or are in the process of determining their refugee status. This formulation essentially adopts the definition of refugees as stipulated in the 1951 Convention and the 1967 Protocol, although Indonesia itself is not a party to either instrument.

Presidential Regulation Number 125 of 2016 regulates various aspects of refugee management, from the process of finding and sheltering refugees, securing them, to monitoring them while they are in Indonesian territory. This regulation also governs coordination between government agencies, such as the Ministry of Law and Human Rights through the Directorate General of Immigration, the Indonesian National Police, the Indonesian National Armed Forces, local governments, the National Search and Rescue Agency (Basarnas), and other relevant ministries and institutions. In addition, UNHCR and IOM are given space to play a role in the identification process, providing humanitarian assistance, and finding long-term solutions for refugees.

However, Presidential Regulation Number 125 of 2016 places greater emphasis on administrative and humanitarian aspects than on the legal status of refugees as legal subjects within the national system. The regulation does not yet provide detailed provisions on social rights, the right to work, access to education, criminal accountability mechanisms, or the resolution of refugees' legal status after undergoing criminal justice proceedings. Consequently, various legal issues involving refugees must still be resolved through interpretation of various other applicable laws and regulations.

Furthermore, the existence of refugees cannot be separated from the provisions of Law Number 6 of 2011 concerning Immigration. This law essentially regulates the movement of people entering and leaving Indonesian territory and the supervision of foreigners. From an immigration perspective, every foreigner entering Indonesian territory is required to fulfill immigration requirements, such as possessing valid travel documents and a visa in accordance with statutory provisions. However, in practice, the majority of refugees enter Indonesia without official documents due to emergencies that force them to leave their countries of origin.



The relationship between Presidential Regulation No. 125 of 2016 and Law No. 6 of 2011 demonstrates differing legal approaches to refugees. The Immigration Law views refugees as foreigners subject to the immigration control regime, while Presidential Regulation No. 125 of 2016 positions refugees as a group in need of humanitarian protection. This difference in orientation creates normative tension, particularly when refugees enter Indonesia without valid documents. From an immigration perspective, such actions can be categorized as administrative violations or immigration crimes, but from the perspective of international refugee law, such conditions are common consequences for individuals fleeing the threat of persecution.

Furthermore, Law No. 6 of 2011 does not provide specific regulations regarding procedures for handling asylum seekers or refugees. Regulations regarding detention, deportation, and administrative immigration actions in the law must be aligned with Presidential Regulation No. 125 of 2016 and the principles of refugee protection recognized in international law, particularly the principle of non-refoulement. Therefore, immigration officials are required to balance their immigration law enforcement function with their humanitarian obligations in handling refugees.

The most fundamental problem in managing refugees in Indonesia is the lack of a specific law regarding refugees. Presidential Regulation Number 125 of 2016 holds a lower status than the law, thus limiting its scope and failing to address various substantive aspects that require a statutory legal basis. As a result, many issues concerning the legal status of refugees, their rights and obligations, access to public services, their relationship with the criminal justice system, and post-conviction settlement mechanisms remain unresolved.

The absence of a specific law also results in suboptimal inter-agency coordination in handling refugees in conflict with the law. In practice, refugee management involves the Directorate General of Immigration, the Indonesian National Police, the Prosecutor's Office, the Courts, the Ministry of Law and Human Rights, local governments, UNHCR, and the IOM. However, there are no regulations that explicitly regulate the division of authority, procedures for handling criminal cases, or the status of refugees after serving



their sentences. This condition has the potential to cause inconsistency in the application of the law as well as legal uncertainty for law enforcement officials and refugees themselves.

Thus, the regulation of refugees in Indonesian national law remains partial and has not yet established a comprehensive legal system. Presidential Regulation No. 125 of 2016 provides the administrative basis for handling refugees, while Law No. 6 of 2011 remains the basis for monitoring foreigners. However, the absence of a specific law regarding refugees has resulted in various issues, particularly those related to criminal liability, human rights protection, and legal certainty, which have not been adequately regulated. Therefore, legal reform is needed through the creation of more comprehensive regulations that can integrate the interests of law enforcement, state sovereignty, and refugee protection in accordance with the principles of international law.

D. THE STATUS OF REFUGEES AS FOREIGNERS IN INDONESIA

The legal status of refugees in Indonesia is fundamentally inseparable from their status as foreigners residing within the territory of the Unitary State of the Republic of Indonesia. Although Indonesia is not yet a party to the 1951 Refugee Convention and its 1967 Protocol, the existence of refugees is still recognized through Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad. Within the national legal system, refugees are not positioned as Indonesian citizens or permanent residents, but rather as foreigners who receive special treatment for humanitarian reasons. This status places refugees in a different legal regime than Indonesian citizens or foreigners who enter regularly under immigration regulations.

a. The Principle of State Sovereignty

From an international legal perspective, every state has full sovereignty to regulate who can enter, reside in, and leave its territory. This principle is a fundamental principle of international law, reflected in Article 2 paragraph (1) of the United Nations Charter, which affirms the sovereign equality of all states. Based on this principle, Indonesia has



exclusive authority to establish immigration policies, monitor the presence of foreigners, and take legal action against any violations occurring within its jurisdiction.

State sovereignty also grants the Indonesian government the authority to determine the mechanism for handling refugees entering Indonesian territory. Although Indonesia has not ratified the 1951 Refugee Convention, the government has chosen a humanitarian approach through Presidential Regulation Number 125 of 2016. This approach demonstrates that the exercise of state sovereignty is not solely oriented toward territorial security but also considers respect for human rights and universal humanitarian values.

However, the principle of sovereignty is not an absolute authority. In the development of modern international law, the exercise of state sovereignty must still adhere to international obligations, particularly the protection of human rights. One such restriction is the principle of non-refoulement, which prohibits returning an individual to a country where they are likely to face persecution, torture, or a serious threat to their life. Although Indonesia is not yet a party to the 1951 Convention, the principle of non-refoulement is widely recognized as part of customary international law and is therefore an important consideration in national refugee policy.

In the context of criminal law, the principle of sovereignty also means that any refugee who commits a crime in Indonesian territory is subject to Indonesian criminal jurisdiction based on the territorial principle, as stipulated in Article 2 of Law Number 1 of 2023 concerning the Criminal Code (KUHP). Therefore, refugee status does not eliminate the state's authority to conduct investigations, inquiries, prosecutions, and even criminal penalties against perpetrators of crimes in accordance with national law.

b. Refugees as Legal Subjects

As foreigners residing in Indonesian territory, refugees remain legal subjects capable of exercising rights and being subject to legal obligations. In legal theory, a legal subject is any party that can support rights and obligations in a legal relationship. Therefore, refugees have legal standing that allows them to participate in legal proceedings, whether as victims, witnesses, or perpetrators of criminal acts.



The recognition of refugees as legal subjects is reflected in various provisions of national laws and regulations that guarantee the right of every person to legal protection and equal treatment before the law (equality before the law). This guarantee aligns with Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that every person has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law. The use of the phrase "every person" indicates that this protection is not only extended to Indonesian citizens, but also to foreigners, including refugees.

As legal subjects, refugees who commit crimes do not enjoy immunity from prosecution. They remain responsible for any criminal acts committed in accordance with the provisions of the Criminal Code and other laws and regulations. In the criminal justice process, refugees have the same status as other defendants, including the right to obtain legal assistance, use an interpreter if necessary, present a defense, and receive a verdict from an independent and impartial court.

In addition to being perpetrators of crimes, refugees can also be victims of crimes entitled to legal protection from the state. In such circumstances, law enforcement officials are obliged to provide the same protection as other victims, regardless of citizenship or immigration status. This approach reflects the principle of universal human rights protection, which is the foundation of the modern criminal justice system.

c. Rights and Obligations of Refugees While in Indonesia

Although not Indonesian citizens, refugees still have a number of rights guaranteed under national law and international legal principles. These rights include the right to protection from violence, the right to humane treatment, the right to basic health services, the right to humanitarian assistance, the right to practice one's religion and beliefs, and the right to a fair legal process when confronted by law enforcement officials. Furthermore, refugees have the right to submit a status determination application to UNHCR and receive protection during the process.

In addition to their rights, refugees are also burdened with various obligations while in Indonesian territory. One of the primary obligations is to comply with all



applicable national laws, including criminal law, administrative law, and immigration regulations. Refugees are obliged to respect legal norms, public order, local customs, and comply with regulations established by the government and shelter managers. Violations of these obligations may result in sanctions in accordance with applicable laws and regulations.

In practice, the scope of refugee rights in Indonesia remains limited due to the absence of specific legislation comprehensively regulating their legal status. For example, refugees do not yet have the right to formal employment as stipulated in the 1951 Refugee Convention. As a result, most refugees rely on assistance from international organizations such as the UNHCR and the International Organization for Migration (IOM), as well as support from local governments and humanitarian agencies. This situation indicates that the protection provided by Indonesia remains primarily humanitarian in nature and does not fully accommodate the social and economic integration of refugees.

In the context of the criminal justice system, the balance between refugee rights and obligations is crucial. On the one hand, the state is obliged to guarantee respect for the basic rights of refugees during the legal process, including the right to a fair trial and humane treatment. On the other hand, refugees are obligated to be held accountable for any criminal acts they commit, just like other legal subjects. Therefore, refugee status does not constitute immunity from legal proceedings, but it should also not be an excuse for the state to diminish or ignore the basic rights inherent in every human being. This approach reflects the balance between the principles of state sovereignty, the rule of law, and the protection of human rights in the Indonesian legal system.

E. REFUGEES AS CRIMINAL OFFENDERS IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

The presence of refugees in Indonesia is essentially regulated by Presidential Regulation Number 125 of 2016 concerning the Handling of Refugees from Abroad. However, this regulation does not provide specific provisions regarding the resolution mechanism if a refugee commits a crime within Indonesian territory. Consequently, when

a refugee commits an act that meets the elements of a crime, the general principle applies that everyone within Indonesian jurisdiction is subject to national criminal law. This principle is a manifestation of state sovereignty, as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a state based on the rule of law. Therefore, refugee status does not confer immunity from criminal law enforcement.

The application of criminal law to refugees is based on the territorial principle as stipulated in Article 2 of the Criminal Code (KUHP) (Law No. 1 of 2023), which stipulates that Indonesian criminal provisions apply to anyone who commits a crime within the territory of the Unitary State of the Republic of Indonesia. The phrase "every person" indicates that the subject of criminal law is not limited by citizenship or immigration status. Therefore, refugees, asylum seekers, foreign nationals, and Indonesian citizens have equal standing before criminal law as long as the crime is committed within Indonesian territory.

This principle aligns with Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which guarantees equality before the law for everyone. Although refugees receive humanitarian protection under international law, this protection does not eliminate criminal responsibility for unlawful acts. Therefore, law enforcement officials cannot discriminate against perpetrators of criminal acts simply because they have refugee status. The only difference is the protection of basic rights during the judicial process.

From a criminal procedure perspective, the investigation process for refugees continues to comply with Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP). Indonesian National Police investigators have the authority to conduct inquiries, searches, arrests, detentions, searches, and seizures if sufficient preliminary evidence is available, as stipulated in the KUHAP. There is no provision in the KUHAP that provides an exception for refugees from being prosecuted criminally. Therefore, all stages of the legal process are carried out in accordance with the principle of due process of law.



However, in practice, challenges arise when refugees do not possess official identity documents or use registration cards from the UNHCR. This situation complicates suspect identification, identity tracing, and cross-border coordination. Therefore, law enforcement officials generally coordinate with the Directorate General of Immigration, UNHCR, and the International Organization for Migration (IOM) to confirm the identity and legal status of the individual. This coordination is not intended to determine criminal liability, but rather to support the effectiveness of the law enforcement process. From an immigration law perspective, Law Number 6 of 2011 concerning Immigration distinguishes between foreigners in general and refugees who receive treatment based on Presidential Regulation Number 125 of 2016. Although refugees are not subject to specific immigration administrative measures simply because they enter Indonesian territory illegally as a consequence of seeking international protection, such protection does not apply if they commit general crimes. In such situations, criminal law mechanisms still take precedence over consideration of immigration administrative measures after the court decision has obtained permanent legal force.

Furthermore, prosecutorial authority remains with the Indonesian Prosecutor's Office in accordance with Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Indonesian Prosecutor's Office. The Public Prosecutor conducts case file reviews based on evidence obtained by investigators without considering the perpetrator's citizenship status. This demonstrates that the Indonesian criminal justice system prioritizes the principles of legality and objectivity of evidence, rather than an individual's administrative status.

During court proceedings, refugees have the same rights as other defendants under the provisions of the Criminal Procedure Code, including the right to legal assistance, the right to present witnesses for defense, the right to use an interpreter if they do not understand Indonesian, and the right to file legal challenges to court decisions. Fulfillment of these rights also implements Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which guarantees recognition, guarantees, protection, and fair legal certainty for everyone.



The right to an interpreter is a crucial aspect in cases involving refugees. Many refugees come from Afghanistan, Myanmar, Somalia, Sudan, Iraq, and other countries where Indonesian is not a language proficiency. Therefore, providing an interpreter from the investigation stage through trial is part of the right to a fair trial. Without an interpreter, a suspect's confession or statement could potentially violate the principle of due process of law and could affect the validity of evidence in court.

On the other hand, the presence of refugees as perpetrators of criminal acts must also be viewed from the perspective of human rights protection. Indonesia is not yet a state party to the 1951 Refugee Convention, but it has ratified various human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) through Law Number 12 of 2005. Therefore, the treatment of refugees who are suspects or defendants must continue to respect the rights not to be tortured, the right to legal assistance, the right to a fair trial, and the right to be treated humanely during detention.

If a refugee is sentenced to imprisonment, the sentence is carried out in accordance with the provisions of Law Number 22 of 2022 concerning Corrections. Refugee status does not eliminate the rights of prisoners, including the right to counseling, health services, humane treatment, and protection from discrimination. However, after serving a sentence, resolving the immigration status of refugees becomes a more complex issue because Indonesia does not have a deportation mechanism against the country of origin if the action has the potential to violate the principle of non-refoulement.

The principle of non-refoulement is a fundamental principle of international refugee law, prohibiting the return of individuals to a country where they are at risk of persecution, torture, or a serious threat to their life. Although Indonesia has not ratified the 1951 Refugee Convention, this principle has been recognized as part of customary international law and is reflected in various human rights instruments that Indonesia has ratified. Therefore, after serving a sentence, refugees cannot be immediately returned to their country of origin if there is a risk of human rights violations. In practice, the Indonesian government coordinates with the UNHCR to determine long-term solutions



such as resettlement in a third country, voluntary repatriation when conditions are safe, or other forms of resolution consistent with international law.

Another issue is the lack of a mechanism explicitly regulating coordination between law enforcement officials, the Directorate General of Immigration, UNHCR, and the IOM when refugees commit crimes. This lack of norms often creates uncertainty regarding post-trial placement, supervision of released refugees, and the division of authority between agencies. This situation indicates that Presidential Regulation No. 125 of 2016 still focuses on humanitarian aspects and administrative handling, and has not comprehensively integrated the dimensions of the criminal justice system.

Based on this analysis, it is understood that the Indonesian legal system, in principle, has an adequate basis for processing refugees who commit crimes through the application of the Criminal Code, the Criminal Procedure Code, the Immigration Law, and the Correctional Law. However, these regulations remain partial because they do not specifically regulate the relationship between the criminal justice process and the legal status of refugees. Therefore, the establishment of more comprehensive regulations is needed, either through a revision of Presidential Regulation No. 125 of 2016 or the creation of a specific law regarding refugees, which clearly stipulates inter-agency coordination, post-conviction handling mechanisms, protection of refugee rights during the judicial process, and synchronization between the interests of national law enforcement and the obligation to respect human rights.

F. CONCLUSION

Refugees who commit crimes within Indonesian territory remain subjects of criminal law and are subject to the national criminal justice system based on the territorial principle as stipulated in Article 2 of Law Number 1 of 2023 concerning the Criminal Code (KUHP). Refugee status does not grant them immunity from investigation, prosecution, court hearings, or the implementation of criminal penalties. Law enforcement against refugees is carried out based on the provisions of the Criminal Code, the Criminal Procedure Code, Law Number 6 of 2011 concerning Immigration, and Law

Number 22 of 2022 concerning Corrections, while still guaranteeing the principles of equality before the law, due process of law, and the protection of human rights as guaranteed in the 1945 Constitution of the Republic of Indonesia and various human rights instruments ratified by Indonesia.

Nevertheless, legal regulations in Indonesia still leave a gap in norms regarding the mechanism for handling refugees as perpetrators of crimes, particularly regarding coordination between law enforcement officials, the Directorate General of Immigration, UNHCR, and IOM, as well as resolving the legal status of refugees after serving their sentences. Presidential Regulation No. 125 of 2016 does not comprehensively regulate the relationship between the criminal justice system and the refugee protection regime, potentially creating legal uncertainty in practice. Therefore, regulatory reform is needed through the development of a specific law regarding refugees or the revision of Presidential Regulation No. 125 of 2016 to create legal certainty that balances the interests of law enforcement, human rights protection, and respect for Indonesia's sovereignty.



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