

## PROBLEM ANALYSIS OF WORKING REFUGEES IN MAKASSAR CITY

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### ABSTRACT

The refugee problem in Makassar City happens to the working refugee. Some of them work as barbers in a barbershop and as construction workers. The refugees who work are often caught in raids conducted by the Makassar immigration detention center (Rudenim) as a part of supervisory duties. By working, refugees are found guilty of violating the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 of 2016. This paper contains an analysis of the questions that arise regarding the problems of working refugees. For example, what are the rules that refugees must obey? What are the forms of supervision for refugees in Indonesia? What are the main problems experienced by refugees that caused them to violate the prohibition to work? The purpose of writing this paper is to find out the regulation that must be obeyed by refugees and the form of supervision for them who temporarily stay in Indonesia. In addition, this paper also aims to analyze the forms of violations committed by the refugees. This study used qualitative approach to analyze primary and secondary legal materials. The results of the study show that one of the rules that must be obeyed by refugees who temporarily stay in Indonesia is the prohibition of doing any activities to earn wages. The form of supervision is carried out by re-examining the identity and documents of refugees and asking for information as outlined in the examination official report. As a suggestion regarding the management of refugees, the Makassar Rudenim can do refugee monitoring more intensively and provide reporting space for citizens who have information related to violations committed by the refugees.

**Keywords:** problems; refugees; work; form of supervision

### INTRODUCTION

#### Background

International law today has a very significant role regarding the relationship between countries.<sup>1</sup> Countries in the world have different immigration policy systems.

The policy system in a country is influenced by the direction of its foreign policy. Many countries are opening up to the swift flow of immigrants and refugees<sup>2</sup> such as Canada. However, there are countries that do exactly

1 Umar Suryadi Bakry, *Hukum Humaniter Internasional, Sebuah Pengantar*, (Jakarta: Kencana Prenada Media Group, 2019), 92.

2 Moretti Sebastien, "UNHCR and the Migration Regime Complex in Asia-Pacific between Responsibility Shifting and Responsibility Sharing," *New Issues in Refugee Research*, Research Paper No. 283, (2016), 47.

the opposite. For example, Thailand shoots Rohingya refugees from Myanmar who are stranded in this country. These two different practices are a reflection of how the state differently views asylum issue which contains the principle of respect for humanity,<sup>3</sup> Moreover, these humanitarian issues are collided with issues of sovereignty or territorial interest of a country.

There are two patterns of human migration flow to migrate from one country to another, namely legal migration flow and illegal migration flow. Legal migration flow obeys the migratory stages in accordance with official regulations. This type of migration uses valid travel documents through border places regulated in the provisions of a country . Meanwhile, illegal migration flow violates official regulations of a country. This type of migration uses fake travel documents and without going through the border checkpoints regulated in the provisions of a country.<sup>4</sup>

By using historical approach, long before the Covenant on Civil and Political Rights and the Covenant on Economic and Social Rights were made, a convention as an international instrument regarding the protection of refugee rights had been agreed upon by countries through the United Nations.

This convention refers to the Convention Relating to the Status of Refugees, also known as the 1951 Refugee Convention. Sixteen years later, an additional protocol was made to complement the rules in the 1951 Refugee Status Convention. The additional protocol specifically regulates the treatment, respect, protection, and fulfillment

of the refugee rights. The protocol refers to the 1967 Protocol Relating to the Status of Refugees, also known as Protocol Status of Refugees 1967. Similar to the Covenant on Civil and Political Rights and the Covenant on Economic and Social Rights, the 1951 Refugee Status Convention and the 1967 Refugee Status Protocol are legally binding on ratifying countries. Thus, according to sources of international law, the position of conventions and protocols is hard law.

At the regional level of the Association of Southeast Asian Nations (ASEAN), specific arrangements regarding the recognition and respect for international refugees have not existed. Furthermore, there are not any cooperations of countries in protecting and fulfilling the human rights of international refugees. The regulation of human rights in general is only a declaration, namely: ASEAN Declaration of Human Rights (ADHR). This declaration was inaugurated at the 21<sup>st</sup> ASEAN Summit in Cambodia, Phnom Penh on 17-20 November 2012. It is unfortunate seeing that since forty years ago the refugee flow of citizens from one of the countries in ASEAN has started. They flee due to their life security being threatened in their country. This should have been a logical basis for the establishment of hard law related to ASEAN Regional Human Rights instruments which also specifically regulates the recognition and respect for international refugees, as well as the cooperation of countries at the ASEAN regional level in managing refugees.

Asylum is one of the rights given to every human being as a citizen.<sup>5</sup> If a citizen receives inhumane treatment and his human rights violated (especially rights concerning security and life safety) by the government in power, then that person has the right to seek and enjoy asylum from another country.

3 Maya I Notoprayitno, "Suaka dan Hukum Pengungsi Internasional," *Jurnal Cita Hukum*, Vol. I, No. 1 (2013), 101-108.

4 M. Alvi Syahrin dan Setiawan Saputra, "Tindakan Hukum Terhadap Orang Asing Mantan Narapidana yang Memiliki Kartu Pengungsi UNHCR dalam Perspektif Keimigrasian," *Jurnal Ilmiah Kebijakan Hukum*, Vol. 13, No. 2 (2019), 139-164.

5 Widodo, *Hukum Diplomati & Mahkamah Pidana Internasional*, (Yogyakarta: Aswaja Pressindo, 2017), 187.

In line with this, regarding Indonesian national context, the 1945 Constitution of the Republic of Indonesia stipulates that everyone has the right to live and has the right to defend his life. Other articles in the 1945 Constitution also stipulate that the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be reduced under any circumstances.

Indonesia is one of the countries affected by the flow of refugees caused by the humanitarian crisis that occurred in their country of origin. This happens because Indonesia's geographical location is very strategic. Refugees who want to go to Australia, as one of the main asylum countries, can reach this country by sea with first stopping or being stranded in the Indonesian territory.

Indonesia highly respects the principle of non-refoulement<sup>6</sup> or the principle that prohibits expelling or repatriating asylum seekers who are seeking help to enter their main asylum country.<sup>7</sup> This principle is also regulated in Article 33 of the 1951 Convention Relating to the Status of Refugees.<sup>8</sup> Indonesia is not a ratifying country of the convention<sup>9</sup> However,

since this convention has become a general principle in international law,<sup>10</sup> all countries are legally and morally bound to implement these principles without exception (*erga omnes*).

The principle of non-refoulement is a form of initial protection provided by the state as part of the rights possessed by refugees.<sup>11</sup> The United Nations High Commissioner for Refugees (UNHCR) stipulates the principle of prohibiting non-refoulement as the main indication of protection for refugees.<sup>12</sup>

Many countries do the same thing as Indonesia. They have to implement a foreign policy that is humane and accepts foreigners who need humanitarian assistance.<sup>13</sup> In the last twelve years, since 2009, Indonesia has received successive flows of refugees from Myanmar, Sri Lanka and Afghanistan. Previously, Indonesia has been a transit country for Vietnamese refugees (1975-1996) and Timor Leste (1999-2008). Currently, Indonesia is using Regulation of the Director General of Immigration number IMI-0352.GR.02.07 dated April 19, 2016 concerning the Handling of Illegal Immigrants who Claim to be Asylum Seekers or Refugees, and Presidential Regulation of the Republic of Indonesia Number 125 of 2016 concerning Handling of

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- 6 Kadarudin, "International Refugees in Indonesia, Problems and Solutions," *Working Paper*, Junior Faculty Workshop, Centre for International Law, National University of Singapore, (2018): 1-12.
- 7 UNHCR, *The 1951 Refugee Convention Questions & Answers*, (Jakarta: UNHCR Indonesia, 2007), 5.
- 8 Fadli Afriandi dan Yusnarida Eka Nizmi, "Kepentingan Indonesia Belum Meratifikasi Konvensi 1951 dan Protokol 1967 Mengenai Pengungsi Internasional dan Pencari Suaka," *Jurnal Transnasional*, Vol. 5, No. 2 (2014) 1093-1107.
- 9 Ria Rosianna Simbolon, "Penundaan ratifikasi Konvensi 1951 dan Protokol 1967 tentang Status Pengungsi oleh Pemerintah Indonesia," *E-Jurnal Ilmu Hubungan Internasional*, Vol. 2, No. 2 (2014),

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449-460.

- 10 Iin Karita Sakharina and Kadarudin, *Hukum Pengungsi Internasional*, (Makassar: Pustaka Pena Press, 2016), 30.
- 11 Sigit Riyanto, "The Refoulement Principle and Its Relevance in International Law System," *Jurnal Hukum Internasional*, Vol. 7, No. 4 (2010), 731-756.
- 12 Rohmad Adi Yulianto, "Integrasi Prinsip Non-Refoulement dengan Prinsip Jus Cogens Pada Kebijakan Penanganan Pengungsi di Indonesia," *Jurnal Ilmiah Kebijakan Hukum*, Vol. 14, No. 3 (2020), 493-516.
- 13 Kate Jastram and Marilyn Achiron, *Perlindungan Pengungsi*, Buku Petunjuk Hukum Pengungsi Internasional Bagi Anggota Parlemen Nomor 2-2001, Translated by Enny Soprapto and Rama Slamet, (Jakarta: Komisariat Tinggi Perserikatan Bangsa-Bangsa untuk Urusan Pengungsi bekerjasama dengan Uni Antar-Parlemen, 2001), 46.

Refugees from Overseas. In implementing these two legal instruments, the Government of Indonesia establishes cooperation with UNHCR<sup>14</sup> and The International Organization for Migration (IOM). Indonesia has done its role in handling cases of asylum seekers and refugees entering Indonesian territory.<sup>15</sup>

Based on UNHCR data, until the end of December 2020, the cumulative number of refugees in Indonesia was recorded at 13,745 people from 50 countries and more than half of the population came from Afghanistan.<sup>16</sup>

Of this number, refuge points are spread across several regions in Indonesia, namely Aceh, Medan, Makassar, and are concentrated in the Special Capital Region (Daerah Khusus Ibu Kota/DKI) Jakarta. Particularly in Makassar City, data from the Makassar immigration detention center as of February 19, 2021, the number of refugees in Makassar City is 1,674 people.

In practice, there are factual problems related to refugee existence, such as refugees who are placed in Makassar City. Currently, there are several refugees who work as barbers in barber shops, parking attendants in shopping areas, and as construction workers. This situation attracts concern and attention from the Makassar Immigration Detention Center (Rumah Detensi Imigrasi/Rudenim). It is because according to point number 4 of the Refugee Statement Letter which is an attachment to the Regulation of the Director General of Immigration Number IMI-0352. GR.02.07 dated April 19, 2016 concerning Handling Illegal Immigrants stating As Asylum

Seekers or Refugees, refugees may not seek work, or carry out activities related to earning wages. The refugees who worked were then caught in a raid conducted by Rudenim as their supervisory duties. Based on this phenomenon, this paper will focus on analyzing the problems of working refugees in Makassar City.

## Problems

Based on the background, the authors formulate three main problems as follows:

1. What are the rules that must be obeyed for refugees who temporarily stay in Indonesia?
2. What is the form of supervision of working refugees conducted by the Makassar immigration detention center?
3. What is the main problem so that the prohibition to work is violated by the refugees?

## Aims

Based on the three main problems as mentioned in the problem formulation, this paper aims to:

1. Analyze the rules that must be obeyed for refugees who temporarily stay in Indonesia.
2. Analyze the form of supervision of working refugees conducted by the Makassar immigration detention center.
3. Find the main problem that causes prohibition to work is violated by the refugees

## Method

This paper used qualitative approach. The type of data used was secondary data<sup>17</sup> which consisted of primary legal material, namely legal instruments. In addition, to provide explanations of primary legal material, the secondary legal material was used, such as books and legal research journals both in

14 UNHCR, *Pengenalan tentang Perlindungan Internasional, Melindungi Orang-Orang yang Menjadi Perhatian UNHCR*, (Jakarta: UNHCR Indonesia, 2005), 53.

15 Fitria, "Perlindungan Hukum bagi Pengungsi di Negara Ketiga: Praktik Indonesia," *Padjadjaran Jurnal Ilmu Hukum*, Vol. 2, No. 1 (2015), 105-125.

16 UNHCR, UNHCR in Indonesia, <https://www.unhcr.org/id/unhcr-di-indonesia>, accessed on December 11, 2021

17 Irwansyah, *Penelitian Hukum: Pilihan Metode dan Praaktik Penulisan Artikel*, (Yogyakarta: Mirra Buana Media, 2020), 173.



physical form and from internet browsing. The collected legal material was then analyzed qualitatively, namely the data that appears in the form of words and not a series of numbers.<sup>18</sup>

## DISCUSSION

### Rules that Must be Obeyed for Refugees who Temporarily Stay in Indonesia

The migration of a person from one country (country of origin) to another can be caused by the violation of their rights in their country of origin, the threat to the security of life for themselves and their families, or the non-recognition of a person's citizenship by the country of origin.

Things like this can happen to anyone at any time. No one wants to become an international refugee, the one who is forced to be a refugee due to life threatening matters and no longer gets protection from the country of origin. However, this situation can happen at any time, because no one can guarantee life safety forever, and no one can guarantee human rights will always be respected both by fellow human beings, and by the state (by the country where refugee citizenship is listed, or other countries where refugee temporarily stay). When human rights of a refugee are violated by his/her country of origin, then that person is entitled to international protection from the the other countries.

State responsibility in international law is an essential element in the practice of international relations.<sup>19</sup> This arises from the consensus between countries,<sup>20</sup> either in the form of an international agreement<sup>21</sup> as well

as in the form of international customs that are practiced and adhered to by countries. The state has a responsibility to protect its citizens. If the government is unwilling or unable to protect their citizens, these citizens can at any time experience serious violations of their rights. Furthermore, they are likely forced to leave their homes, even their families to seek safety in other countries as international refugees. When the government of the refugee country of origin is no longer protecting their human rights, the international community must step in to ensure that these human rights are respected.

Juridically, refugees are people who, due to a well-grounded fear of persecution, for reasons of race, religion, nationality, membership in certain social groups and political parties, are outside their country of nationality and do not want protection from that State.<sup>22</sup> Refugees are a group of people who cross international borders to escape human rights violations and conflicts,<sup>23</sup> even in certain cases a refugee can become stateless at the same time.<sup>24</sup> Displacement can occur due to man-made disasters, such as armed conflicts, changes in political regimes, suppression of fundamental freedoms, abuse of human rights, and so on. Refugees can be moving within the scope of one country's territory or to another country due to differences in political directions.<sup>25</sup> Refugees are individuals

18 Matthew B. Miles and A Michael Huberman, *Analisis Data Kualitatif, Buku Sumber Tentang Metode-Metode Baru*, Translated by Tjetjep Rohendi Rohidi, (Jakarta: UI-Press, 2009), 151.

19 Damos Dumoli Agusman, *Indonesia Dalam Dinamika Hukum Internasional*, (Jakarta: Kenia Media, 2021), 11.

20 Sri Setianingsih Suwardi, *Hukum Perjanjian Internasional*, (Jakarta: Sinar Grafika, 2019), 73.

21 I Wayan Parthiana, *Perjanjian Internasional di*

*Dalam Hukum Nasional Indonesia*, (Bandung: Yrama Widya, 2019), 19.

22 Article 1 of the 1951 Convention.

23 Kadarudin, "Keterkaitan Antara Stateless Persons, Pencari Suaka dan Pengungsi," *Jurnal Pengembangan Ilmu Hukum Gratia*, Vol. VIII, No. 1 (2012), 97-105.

24 Alexander Betts and Gil Loescher (Ed.), *Refugee in International Relations*, (New York: Oxford University Press, 2011), 1.

25 Achmad Romsan, et.al., *Pengantar Hukum Pengungsi Internasional: Hukum Internasional dan Prinsip-Prinsip Perlindungan Internasional*, (Bandung: Sanic Offset bekerjasama dengan UNHCR Jakarta, 2003), 1.

or groups of people who seek assistance in the form of protection and asylum from other countries.<sup>26</sup> International protection is only required, if national protection is not provided or does not exist. In this case, the primary responsibility for providing international protection lies with the country in which the individual sought asylum.<sup>27</sup>

Refugees who temporarily stay in Indonesia must comply the applicable laws and regulations, in this case the Presidential Regulation of the Republic of Indonesia Number 125 of 2016 concerning Handling of Refugees from Overseas, particularly in Article 25 letter h and Article 30. This regulation regulates the placement of refugees in shelters that are carried out with the procedure for establishing rules and regulations in shelters by appointed officials. Article 30 of this regulation stipulates that:

- (1) Every refugee is obliged to comply with the rules and regulations at the shelter as referred to in Article 25 letter h, the prevailing customs in the local community, and the provisions of the laws and regulations.
- (2) Every foreigner as a refugee who does not comply with the rules at the shelter and the customs as referred to in paragraph (1) shall be subject to action in the form of a special placement.
- (3) Actions in the form of special placements as referred to in paragraph (2) are determined in the rules of conduct at the shelters as referred to in Article 25 letter h.
- (4) Every refugee who violates the provisions of the laws and regulations as referred

to in paragraph (i) will be processed in accordance with the provisions of the laws and regulations.

In addition, refugees must also comply with the Regulation of the Director General of Immigration number IMI-0352.GR.02.07 dated April 19, 2016 concerning the Handling of Illegal Immigrants who Claim to be Asylum Seekers or Refugees, especially in Article 4 paragraph (4) and paragraph (5) namely asylum seekers and refugees as referred to in paragraph (2) must comply with the provisions of laws and regulations, local community customs, and fill out a statement letter. The format of the statement letter refers to the one listed in the attachment which is an integral part of this regulation of the director general.

The rules that must be obeyed by refugees who temporarily stay in Indonesia are in accordance with the Refugee Statement Letter which is an attachment to the Regulation of the Director General of Immigration number IMI-0352.GR.02.07 dated April 19, 2016 regarding the Handling of Illegal Immigrants who Claim to be Asylum Seekers or Refugees. The Statement Letter must be filled in by refugees who have obtained status from UNHCR as regulated in Article 4 paragraph (4) of this directorate general regulation as follows:

1. Refugees must stay in a place that has been determined by the Directorate General of Immigration, unless written permission has been given to be transferred or issued for certain reasons.
2. Refugees are not allowed to be in the airport or sea port area, unless accompanied by an officer from immigration.
3. Refugees are not allowed to receive guests who stay or stay in the accommodation provided for them.
4. Refugees must comply with applicable regulations in Indonesia, including not being allowed to look for job, carrying out activities related to earning wages,

26 Samuel Tunggal Jovano and Cornelius Agatha Gea, "Penanganan Pengungsi yang Bunuh Diri di Indonesia Perspektif Hukum Keimigrasian," *Jurnal Ilmiah Kebijakan Hukum*, Vol. 15, No. 3 (2021), 361-372.

27 Kadarudin, "Hubungan Indonesia dengan Prinsip *Non Refoulement* dalam Perspektif Hukum Internasional," *Jurnal Ilmu Hukum Amanna Gappa*, Vol. 20, No. 2 (2012), 141.

driving a vehicle without a driver's license and maintaining order in the surrounding environment.

5. Refugees must report themselves to the Indonesian immigration authorities to register themselves periodically once a month.

Referring to point number 4 of the Statement Letter which is an attachment to the Regulation of the Director General of Immigration number IMI-0352.GR.02.07 dated April 19, 2016 regarding the Handling of Illegal Immigrants who Claim to be Asylum Seekers or Refugees, it is very clear that refugees are not allowed to seek work, or carry out activities related to earning wages. Thus, what the refugees in Makassar do, by working as a barber in a barbershop and becoming a construction worker, is a violation of the law.

### **Forms of Supervision of Working Refugees conducted by the Makassar Immigration Detention Center**

Initially, the immigration control authority is carried out by the Immigration Office. Thus, this transfer of authority would have an impact on the capacity and capability of the Immigration Detention Center institution in managing and supervising foreigners who become refugees. With the increase in the implementation of the Rudenim's duties and authorities towards refugees and asylum seekers, as regulated in Presidential Regulation Number 125 of 2016, the immigration institution, in this case the Directorate General of Immigration, is obliged to establish policies that support the duties and authorities of the Rudenim in implementing presidential regulations. It is due to institutionally there has not been any changes in the organizational structure of the division of the detention center's authority in handling refugees and asylum seekers. Therefore, in the implementation of the detention center's duties as a result

of the large number of refugees that the Rudenim has to manage with the limited staff, the absence of institutional changes will affect various other elements such as management, infrastructure, and planning, facilities and infrastructure at the Rudenim. In the context of immigration control, both at the shelter and outside the shelter, Article 35 and Article 36 of Presidential Regulation no. 125 of 2016 concerning the Handling of Refugees from Overseas can be assumed as a form of administrative supervision of immigration. This regulations have not regulate the aspect of respecting the rights of refugees as human beings, especially in terms of respecting the economic, social and cultural rights of refugees, which are human's basic nature.<sup>28</sup>

Makassar was an area that became an international trade route hundreds of years ago. It connected Southeast Asia, Europe, the Middle East and Asia. So as one of the largest cities in Eastern Indonesia, Makassar, South Sulawesi has become one of the main destinations for immigrants from various countries. Of the several provinces that have become refugee destinations in Indonesia, Makassar is one of the cities that host the most asylum seekers. In July 2007, the IOM Makassar Office was reopened with special attention to handling cases of non-regular immigrants. In carrying out its activities, IOM collaborates directly with several government agencies at the regional level, including the Ministry of Law and Human Rights through the Immigration division and the South Sulawesi Regional Police and UNHCR (United Nations High Commissioner for Refugees). Specifically, this program is the provision of humanitarian assistance to refugees and asylum seekers at the request of the government, in this case, immigration which

28 Yuliana Primawardani and Arief Rianto Kurniawan, "Penanganan Pengungsi dari Luar Negeri oleh Petugas Rumah Detensi Imigrasi di Provinsi Sulawesi Selatan," *Jurnal Ilmiah Kebijakan Hukum*, Vol. 12, No. 2 (2018), 179-196.

continues to this day. On 21 September 2015, IOM signed a cooperation agreement with the Mayor of Makassar in handling refugees and asylum seekers in Makassar City.<sup>29</sup>

If we look at the current condition of Makassar City, we will easily see refugees passing by the side of the road, both on major arterial roads and in alleys around the Tamalanrea and Biringkanaya sub-districts. Based on data from the Makassar immigration detention center, up to February 19, 2021, the number of refugees in Makassar City is 1,674 people. They consist of 1,275 men and 399 women, spread over 22 evacuation points. Of the total 1,674 international refugees in Makassar City, the refugees come from 13 different countries, Afghanistan, Myanmar, Iran, Somalia, Sudan, Iraq, Sri Lanka, Ethiopia, Pakistan, Palestine, Eritrea, Egypt and Yemen.

In Makassar, almost all refugees and asylum seekers are placed in community houses which are managed in collaboration with Immigration, IOM, and the third-party community house providers. Community house or refugee shelter is an accommodation facility for immigrants as an alternative placement outside the detention house. Community house can be in the form of a guesthouse, boarding house, inn, or low-cost hotel. These shelters are generally located in the middle of local residents' settlements. In this place, most refugees and asylum seekers in Makassar City have lived for years while waiting for confirmation from UNHCR to be sent to the main destination countries. The Wisma MSM Community house, for example, one of the refugee shelters in Makassar City, is located in the middle of a local resident's settlement, a housing complex area. This building has four floors, thick and high walls.

Inside, it consists of 27-bedroom units spread over three floors. Each room is equipped with a bed (single and double bed), en-suite toilet, TV, and air conditioning. Meanwhile, outside the room (on the three floors) there are two corridors that are connected to the communal kitchen. The kitchen is equipped with a two-burner gas stove, an aluminum cupboard for food and spices, a refrigerator with a built-in freezer. Other cooking utensils such as pots and pans are hung on the kitchen wall above the gas stove, and some are placed in front of each of occupant's room.<sup>30</sup>

On the fourth floor with an open space model, it is used as a children's play area and clothesline area, as well as a place to put water tanks. Meanwhile, on the ground floor there is a multipurpose hall. It is usually used as a learning place for children, equipped with blackboards, posters of children's learning media that are hung on the walls, bookcases with various genres of book collections, and folding chairs equipped with desk. In addition, on the first floor, next to the stairs leading to the second floor, there is a guard post. The terrace is used as a place to park bicycles as well as a living room. There are 7 refugees from Iran, consisting of 5 women and 2 men. Meanwhile, the total of refugees listed on Wisma MSM Community is 63 people.

Another refugee shelter is the Community house Kost Mustika 2, which is located on Jalan Flamboyan, Mariso District, Makassar City. This community house is located in the middle of local residents' settlements. Generally, the facilities and building models of each community house in Makassar City tend to be similar. It has a multi-storey building model. Only in terms of shape and size each room looks a little different. For example, the shape and size of each floor, living room, and public kitchen at the Mustika 2 Community house looks wider, compared to the Wisma

29 Wandu Abbas, "Comprehensive Migration Governance: Upaya Pemerintah Kota Makassar dan International Organization for Migration untuk Mengatasi Masalah Pengungsi," *Journal of Political Sciences*, No. 2 (2018), 1-6.

30 Rafsanjani, "Imigran di Kota Makassar," *Jurnal Universitas Negeri Makassar* (2019), 1-16.



MSM Community house. Each floor in these two community houses is equipped with a refrigerator and a communal kitchen.<sup>31</sup>

At Mustika 2 Community house, in front of each room, there is a plastic shelf containing various types of vegetables, fruits, and kitchen spices, such as cucumbers, tomatoes, potatoes, onions, and garlic. These ingredients and food are what they process or cook every day. The interesting thing in this community house is that one of the refugees from Afghanistan acts as a voluntary cook. In addition, in front of each room in these two community houses, there are two to three gallons of water. Some of them are filled with water and some of them are empty. At the Wisma MSM Community house, for example, the gallon delivery man came once every two days to replace the empty gallons with the filled ones. Meanwhile, at the Mustika 2 Community house, refugees had to go buy their own gallons of water at the refill water depot, which was not far from the community house. The number of refugees and asylum seekers from Iran in the Mustika 2 Community house is 8 people, with a total number of refugees as many as 58 people.<sup>32</sup> When living their lives and living in community houses, refugees in fact violated the statement letter that was signed after receiving refugee status from UNHCR. The violation is mostly related to earning wage activity.

In order to handling immigration violations and to accommodate asylum seekers, an Immigration Detention Center is established which aims to deal with immigration procedural violations committed by foreign nationals including asylum seekers. Immigration Detention Center also aims to protect the human rights of foreign nationals so that the impact of procedural violations committed by

them can be minimize while at the same time protecting their human rights during their stay in the territory of the Republic of Indonesia.<sup>33</sup> It was reported that the Makassar immigration detention center officers secured a refugee from Afghanistan, Ali Agha (33 years old). He was caught while working as a barber at a barbershop in Makassar. As a result of his violation, Ali's refugee card was confiscated and later would be examined at the Makassar immigration detention center office. Head of the Makassar immigration detention center, Togol Situmorang, said that Ali had previously been given early warning by Rudenim officers to stop being a barber at a barbershop in the Tamalanrea area. However, he is still insisted. The prohibition from working has been explained, both orally and in writing, which is displayed in 23 refugee accommodations in Makassar.<sup>34</sup>

The Makassar immigration detention center secured two refugees from Afghanistan who were found working in Sengkang, Wajo Regency, on May 18, 2021. The Head of the Makassar immigration detention center Alimuddin said the two Afghan refugees were found working as construction workers with a salary of a hundred thousand a day. They had only been working as construction workers in Sengkang for two days, facilitated by the foreman who had previously employed these two people in Makassar City. In his statement, one of the refugees with the initials AR said he worked so he could send money to his parents in Afghanistan. This is because the money he gets from IOM is only enough for his daily expenses. Alimuddin emphasized that asylum

31 Rafsanjani, "Imigran di Kota Makassar," *Jurnal Universitas Negeri Makassar* (2019), 1-16.

32 Rafsanjani, "Imigran di Kota Makassar," *Jurnal Universitas Negeri Makassar* (2019), 1-16.

33 Villian Febri Morradi, "Peran Rumah Detensi Imigrasi dalam Perlindungan Hak Asasi Manusia Pencari Suaka," *Pandecta Research Law Journal*, Vol. 10, No. 1 (2015), 30-46.

34 DetikNewsOnline, *KerjadiBarbershopdiMakassar, Pengungsi Asal Afghanistan Diamankan*, <https://news.detik.com/berita/d-4910924/kerjadi-barbershop-di-makassar-pengungsi-asal-afghanistan-diamankan>, accessed on December 11, 2021

seekers who have been declared refugees and have a UNHCR card are required to sign a statement beforehand. Their presence in Indonesia, according to him, is only to wait for their departure to the main destination country or to voluntarily return to their country of origin when it is safe. Following up on the two refugee cases, Alimuddin has ordered officers to carry out further inspections, and they will temporarily be placed in the Makassar immigration detention center.<sup>35</sup>

Seeing these conditions, special attention indeed must be paid to the Makassar immigration detention center in carrying out supervision as assigned based on the applicable laws and regulations. The form of supervision carried out by the Makassar immigration detention center on refugees is done based on Chapter V concerning Immigration Supervision in the Presidential Regulation of the Republic of Indonesia Number 125 of 2016 concerning Handling of Refugees from Overseas, namely:

#### Article 33

- (1) The Immigration Detention Center Officer shall supervise the immigration of Refugees.
- (2) Immigration supervision of refugees as referred to in paragraph (1) is carried out when they are found, in shelters and outside shelters, departed to the destination country, voluntary repatriation, and deportation.

#### Article 35

Immigration supervision of refugees at the shelter and outside the shelter is carried out by:

- a. rechecking the identity and documents of Refugees as well as taking photos and fingerprints.
- b. request information as outlined in the minutes of examination and the minutes of opinion for refugees in the context of placement in the Immigration Detention Center; and
- c. provide a letter of data collection or a special identity card for refugees issued by the head of the local Immigration Detention Center as referred to in letter b which is valid for 1 year and can be extended every year.

#### Article 36

- (1) Refugees must report themselves every month to the head of the local Immigration Detention Center as referred to in Article 35 letter c to get a stamp on the special identity card while in the shelter.
- (2) Refugees who do not report themselves for 3 consecutive times without acceptable reasons, are placed in the Immigration Detention House.

### **Main Problem of Prohibition of Work by Refugee Violation**

International refugees, with all kinds of problems they face, have become an undeniable social fact in the political agenda and policies of a country, including in Indonesia.<sup>36</sup> The legal status of refugees seeking protection in Indonesia is a form of humanitarian consideration. In Indonesia every refugee is obliged to comply with all laws and regulations or provisions to create public order. As long as refugees do not do anything prohibited, there will be no expulsion and no punishment for refugees,

<sup>35</sup> Makassar Immigration Detention Center, Rudenim Makassar Amankan 2 Pengungsi yang Kedapatan Bekerja sebagai Kuli Bangunan, <https://www.imigrasi.go.id/en/2021/05/19/rudenim-makassar-amankan-2-pengungsi-yang-kedapatan-bekerja-sebagai-kuli-bangunan/>, accessed on December 11, 2021

<sup>36</sup> Zulkarnain and Indra Kusumawardhana, "Bersama Untuk Kemanusiaan: Penanganan Lintas Sektor Terhadap Masalah Pengungsi Rohingya di Aceh 2015," *Jurnal HAM*, Vol. 11, No. 1 (2020), 67-86.

unless national security demands otherwise. The obligation of the Indonesian state to temporarily accommodate refugees is the settlement of refugee status which is carried out by requesting UNHCR assistance without intervening the process. In addition, Indonesia is obliged to uphold refugee protection which has become part of general international law.<sup>37</sup> It is because protecting refugees is the duty and responsibility of the state. Thus, the cooperation between the state and UNHCR is very important.<sup>38</sup>

Asylum seekers and refugees travel hundreds or even thousands of kilometers from their countries of origin. They use various ways through different travel routes, such as through sea, air, or land. Asylum seekers and refugees from the Middle East and Asia, generally, have to stop in certain countries. Indonesia often becomes a favorite transit country since refugees pass through Indonesia on their way to Australia. According to the confession of several sources of immigrants from Iran who were in Makassar, the route they took before going to Indonesia started from the International Airport in Iran. By using the air route, they traveled to Malaysia. From Malaysia, they continued their journey to Indonesia by air or sea route. Batam and Medan are usually used as destination cities or stopovers. Consequently, a lot of refugees are held back by the immigration authorities in Medan and Batam. On the other hand, several refugees from Malaysia immediately took routes to Jakarta, Kupang, Denpasar, and other cities in Indonesia. Geographically, Indonesia is in a strategic area as a transit country or temporary residence for refugees

and asylum seekers across countries before heading to the third countries, one of which is Australia. Apart from Indonesia's strategic position, Indonesia's status as a country that ratifies the General Declaration of Human Rights is one of the factors that attracts refugees and asylum seekers to Indonesia. In Indonesia, not all of thousands of refugees and asylum seekers can be accommodated in the thirteen detention houses owned by the Indonesian government. The Iranian refugees and asylum seekers are no exception. Due to limited facilities, they stayed in several areas in Indonesia, one of which is Makassar City.<sup>39</sup>

The condition and situation of refugees in Makassar is certainly a reflection of various problems that may also occur in other refugee areas such as Aceh, Medan, and DKI Jakarta. According to the author's analysis, there are three main problems related to work bans, or prohibition of doing activity to get wages, namely:

#### 1. Resettlement Problem

The essential factor for the survival of refugees is international protection, considering that they no longer have national protection from the government of their country of origin.<sup>40</sup> A permanent solution for refugees is a situation that ends their displacement by solving the problems they face so that they can live normally, one of which is resettlement.<sup>41</sup> The prolonged process of UNHCR negotiations and diplomacy related to resettlement or placement of refugees to the main asylum countries is the main problem that causes refugees to

37 Rose Mawarni Marbun, "Perlindungan Hukum terhadap Pengungsi Afghanistan yang Berada di Indonesia Berdasarkan Hukum Internasional," *E-Journal Gloria Juris Law*, Vol. 3, No. 1 (2014), 110-116.

38 Kadarudin, "Penanganan Pemerintah Indonesia Terhadap Pengungsi Rohingya Menurut Konvensi 1951," *Jurnal Hukum Internasional Jurisdictionary*, Vol. VI, No. 1 (2010), 101-116.

39 Rafsanjani, "Imigran di Kota Makassar," *Jurnal Universitas Negeri Makassar* (2019), 1-16.

40 Atik Krustiyati, "Kebijakan Penanganan Pengungsi di Indonesia: Kajian dari Konvensi Pengungsi 1951 dan Protokol 1967," *Law Review*, Vol. XII, No. 2 (2012), 171-196.

41 Iin Karita Sakharina and Kadarudin, *Pengantar Hukum Pengungsi Internasional: Perbedaan Istilah Pencari Suaka, Pengungsi Internasional, dan Pengungsi Dalam Negeri*, (Yogyakarta: Deepublish, 2017), 226.

violate the rules that they must obey, in particular the prohibition of looking for job, or carrying out activities to get paid. As an illustration, Rohingya refugees from Myanmar have been around since 2012, it means that they have been living in Makassar for 9 years without certainty when they will be departed to the main asylum country.

Reflecting on the national and foreign policies of the three main asylum countries, namely the United States, Canada, and Australia, Canada is a country that has the highest potential for the resettlement process of refugees in Indonesia, including refugees in Makassar. In 2021, for example, Canada had a plan to resettle 36 thousand refugees in the country.<sup>42</sup> However, looking at the performance of UNHCR in the last three years, it seems that this will be difficult to actualize. UNHCR has never been transparent in reporting the number of refugees in Indonesia who are successfully resettled to main countries or who are successfully repatriated voluntarily to their countries of origin.

Regarding the flow of human movement as refugees, various rules and policies have been agreed by various countries and international institutions to deal with this refugee problem. This is important considering the impact caused by refugees can affect the stability and security of a country. It affects the country of origin, the transit country, and the destination country. Although the emergence of refugees is caused by various factors, especially the prolonged conflict in their country of origin, this situation remains a responsibility of the international community. In March 2018, a refugee applied for an Indonesian

passport at the Makassar immigration office. However, the data provided as a condition for making a passport are falsified data. The reason is that they want to travel to Australia using an Indonesian passport. In this case, at the time of applying for a passport, the refugee kept his identity a secret and concealed his identity as a refugee. It is because he had lived in Makassar for about five years so his appearance and Indonesian language are similar to Indonesians.<sup>43</sup>

Nearly half of the immigrants in Makassar City are relocated from other regions or cities in Indonesia, including immigrants from Iran. Some of them, initially came, from the Rudenim Denpasar, Rudenim Kupang, Rudenim Manado, and several other cities in Indonesia. Meanwhile, several other immigrants fled from their country of origin, temporarily stayed in other countries and took the 'direct' route to Makassar. Immigrants moving from other cities or countries, upon arrival in Makassar City, will be temporarily placed at the Makassar immigration detention center before they are placed in a community house (shelter). Generally, refugees in Makassar City live in community houses, under coordination between IOM, the community house manager, and the Makassar immigration detention center. Immigrants from Iran who stay in Makassar City can be seen as just trying to merely survive. In other words, they live in an uncertain situation or condition. Likewise, immigrants from other countries also experience this uncertainty. During the process, a lot of them are repatriated to their home countries voluntarily. Even though they have a residence permit in Indonesia,

42 Tempo Online, Kanada Bakal Tambah Kuota Masuknya Pengungsi, <https://dunia.tempo.co/read/1540531/obat-aborsi-di-amerika-serikat-makin-mudah-diakses-bisa-dikirimkan-lewat-pos>, accessed on December 11, 2021

43 Wandu Abbas, "Comprehensive Migration Governance: Upaya Pemerintah Kota Makassar dan International Organization for Migration untuk Mengatasi Masalah Pengungsi," *Journal of Political Sciences*, No. 2 (2018), 1-6.



their activities are very limited. Both men and women are legally unable to earn a living, either formally or informally.<sup>44</sup>

## 2. Cost of Living Problem

Based on the information, the cost of living for the refugees is borne by IOM. Refugees who are adults are given Rp. 1,250,000/person/month, and refugees who are children are given Rp. 500,000/person/month. Considering the nominal value, it is certainly not surprising that there are refugees who violate the prohibition of working.

Economic problems are the most frequent reason for refugees in violating regulations. All refugees experience it. Economic need is basic need for life. Consequently, if the problem of economic needs is not properly resolved, it will cause various problems in the refugee camps. For example, according to the rules that have been agreed and issued by IOM as the person in charge and manager of accommodation and funding for the refugees in Makassar, the total amount of funds obtained by the refugees is Rp. 1.250.000/person. This financial assistance is provided monthly by IOM for refugees. Refugees work secretly since they are not allowed to work in transit countries. However, in several cases in Makassar, there are still refugees who have part time job to fulfill their needs. Generally, they work in the non-formal sector such as construction workers. Some of them have been caught and have received sanctions from the immigration authorities, but many are still working. Their understanding of using Indonesian language makes it easy for them to get a job.<sup>45</sup>

## 3. Employer Problem

Not many people know how refugees and asylum seekers live their daily lives in Makassar City in two different environments, namely in the community house and in the local community. In other words, they are in a state of survival. They are people who flee from their homes (country of origin) to foreign lands (Indonesia) for temporary residence. They stay in the temporary shelter before being placed in the destination country. Many of them return to their country of origin voluntarily, or under certain conditions that make them being deported. In supporting the basic needs of life (clothing, food, and shelter) to survive in Makassar City, refugees and asylum seekers rely solely on accommodation assistance from IOM. The Government of Indonesia has partnered with IOM through the Agreement on Cooperation in Handling Irregular Migration, Internal Refugees, Border Management and Immigration signed in 2000. This agreement forms the legal basis for IOM's operations in Indonesia. In every collaboration with government agencies, IOM always signs MoUs with relevant local and national government agencies. The absence of job opportunities for refugees in Indonesia has also triggered refugees to experience a situation that slowly makes them experience depression. It is because they are in the waiting period for years to get placement process to a third country.<sup>46</sup>

If you look at the case of two refugees from Afghanistan who were found to be working as construction workers with a salary of 100 thousand per day in Sengkang, Wajo Regency, there were employers who employed them. Thus, employers also have a big role in why refugees dare to violate the rules

44 Rafsanjani, "Imigran di Kota Makassar," *Jurnal Universitas Negeri Makassar* (2019), 1-16.

45 Wandu Abbas, "Comprehensive Migration Governance: Upaya Pemerintah Kota Makassar dan International Organization for Migration untuk Mengatasi Masalah Pengungsi," *Journal of Political Sciences*, No. 2 (2018), 1-6.

46 Rafsanjani, "Imigran di Kota Makassar," *Jurnal Universitas Negeri Makassar* (2019), 1-16.

particularly the prohibition on carrying out activities related to getting wages. Employers or those who employ refugees in Makassar in non-formal sectors like this are part of a chain phenomenon. The resettlement problem and the problem of living costs are also mutually supporting factors so that refugees dare to violate the rules that have been signed on their refugee letter of statement. This phenomenon can also occur in other refugee areas in Indonesia, such as in DKI Jakarta, Medan, and Aceh.

## **CLOSING**

### **Conclusion**

The rules that must be obeyed for refugees who temporarily stay in Indonesia are (1) refugees must stay in a place determined by the Directorate General of Immigration, unless written permission has been given to be transferred or issued for certain reasons; (2) Refugees are not permitted to be in the airport or sea port area, unless accompanied by an officer from immigration; (3) Refugees are not allowed to receive guests who stay or stay in the accommodation provided for them; (4) Refugees must comply with applicable regulations in Indonesia, including not being allowed to look for work, carrying out activities related to earning wages, driving a vehicle without a driver's license and maintaining order in the surrounding environment; and (5) Refugees must report themselves to the Indonesian immigration authorities to register themselves periodically once every 2 weeks. The form of supervision carried out by the Makassar immigration detention center towards the refugees in the shelters and outside the shelters is carried out by (a) re-examining the identity and documents of the refugees as well as taking photos and fingerprints; (b) requesting information as contained in the minutes of examination and

minutes of opinion for refugees in the context of placement in the Immigration Detention Center; and (c) providing a data collection letter or special identity card for refugees issued by the head of the local Immigration Detention Center which is valid for 1 year and can be extended annually. There are three main problems that cause the prohibition to work was violated by the refugees in Makassar. They are the problem of resettlement, the problem of living costs, and the problem of employers. These problems make refugees dare to violate the prohibition of carrying out activities related to earning wages.

### **Recommendation**

Based on these conclusions, the authors can recommend three things, namely:

Refugees should be aware of their existence in a transit country. They must comply with all applicable regulations in the related country.

The supervision carried out by the Makassar immigration detention center must be more intensive. The immigration detention center must also provide a reporting space for citizens who have informations related to violations committed by the refugees.

Considering that a lot of refugees have stayed in Makassar for nine years, UNHCR should be able to accelerate the resettlement process mainly to Canada.

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