

## **Pulling at Both Ends of the String: The Political and Legal Tug in Refugee and Migration Policy in Indonesia**

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**ABSTRACT.** This paper analyzes the complex and often contradictory dynamics of refugee and migration policy in Indonesia, framed within the political and legal tug-of-war that shapes human rights protections. As one of Southeast Asia's key transit and destination countries for refugees and migrants, Indonesia's policy approaches are influenced by both international obligations and domestic political considerations. Despite being a signatory to the 1951 Refugee Convention, Indonesia has not adopted comprehensive national legislation to protect refugees, leaving a gap in the legal framework that often results in ad-hoc, inconsistent practices. This study critically examines the tension between political interests—such as national sovereignty, security concerns, and public opinion—and the legal obligations tied to human rights protections under international law. The research analyzes the roles of domestic political actors, including the government, lawmakers, and civil society, in shaping policies related to refugees and migrants. It also explores the legal frameworks that both constrain and enable state actions regarding asylum seekers, detention, and deportation. Through a review of recent case studies and policy shifts, this paper highlights the challenges of balancing humanitarian obligations with domestic priorities. The analysis underscores the need for a more coherent and rights-based approach to migration and refugee policy in Indonesia, suggesting that the existing legal and political landscape often pulls in opposite directions, undermining effective protection for vulnerable populations. Ultimately, this study contributes to the ongoing discourse on global migration governance, offering insights into how national policies can evolve to better protect refugees while navigating political realities.

**KEYWORDS.** Refugee Policy, Migration, Human Rights, Indonesia, Political Economy, Legal Framework

# Pulling at Both Ends of the String: The Political and Legal Tug in Refugee and Migration Policy in Indonesia

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## Introduction

In recent decades, the world has witnessed a significant increase in the number of migrants and refugees seeking refuge in different parts of the world. Armed conflict, political violence, climate change, and economic instability are some of the main factors driving this wave of global migration.<sup>1</sup> This phenomenon not only poses social and economic challenges,

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<sup>1</sup> This condition has led to an increase in the number of people fleeing their home countries in search of safety and better opportunities. For example, the Syrian Civil War, which began in 2011, displaced millions of Syrians, many of whom sought refuge in neighboring countries like Turkey and Europe. Similarly, the Rohingya crisis in Myanmar has forced hundreds of thousands of Rohingya Muslims to flee to Bangladesh, highlighting the growing need for international protection and asylum systems. *See*

but also raises a variety of political and legal issues, especially related to the protection of human rights<sup>2</sup>.

In the context of migration and refugee policies, countries are often faced with a dilemma between the need to safeguard national sovereignty and the moral responsibility to protect the human rights of migrants and refugees. The migration policy made by a country can reflect internal political priorities, economic strategies, and national security interests. However, at the same time, this policy must also be aligned with internationally recognized human rights norms.

Political and legal debates around migration and refugees also often include sensitive issues such as access to health care, education, and jobs. These challenges become even more complex when considering the various cultural, religious, and domestic policy differences between migrant and refugee host countries. While some countries implement inclusive and progressive policies, which recognize the positive contribution of migrants to the economy and cultural diversity, others may face strong internal political pressure to relax migration rules or even deny the entry of refugees altogether<sup>3</sup>.

In addition, geopolitical dynamics also play an important role in shaping migration and refugee policies. Conflicts between countries, regional alliances, and political exchanges can affect how a country responds to certain waves of migration. Changes in international relations could also

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Byman, Daniel, and Sloane Speakman. "The Syrian refugee crisis: Bad and worse options." *The Washington Quarterly* 39, no. 2 (2016): 45-60; Pearlman, Wendy. "Becoming a Refugee: Reflections on Self-Understandings of Displacement from the Syrian Case." *Review of Middle East Studies* 52, no. 2 (2018): 299-309; Berchin, Issa Ibrahim, et al. "Climate change and forced migrations: An effort towards recognizing climate refugees." *Geoforum* 84 (2017): 147-150; Hartmann, Betsy. "Rethinking climate refugees and climate conflict: Rhetoric, reality and the politics of policy discourse." *Journal of International Development: The Journal of the Development Studies Association* 22, no. 2 (2010): 233-246.

<sup>2</sup> Zolberg, Aristide R., and Peter M. Benda, eds. *Global Migrants, Global Refugees: Problems and Solutions*. (London: Berghahn Books, 2001); Feller, Erika. "Asylum, migration and refugee protection: realities, myths and the promise of things to come." *International Journal of Refugee Law* 18, no. 3-4 (2006): 509-536; FitzGerald, David Scott, and Rawan Arar. "The sociology of refugee migration." *Annual Review of Sociology* 44, no. 1 (2018): 387-406.

<sup>3</sup> Anderson, Angelika. "Issues of Migration." In *Educational Interventions for Refugee Children*. (London: Routledge, 2003), pp. 78-96; Dustmann, Christian, et al. "On the economics and politics of refugee migration." *Economic Policy* 32, no. 91 (2017): 497-550; Chatty, Dawn, and Philip Marfleet. "Conceptual problems in forced migration." *Refugee Survey Quarterly* 32, no. 2 (2013): 1-13.

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trigger shifts in migration and refugee policies, both in terms of restrictions and easing.

From a political and legal perspective, it is important to understand how migration and refugee policies are influenced by international and domestic legal frameworks. A number of international legal instruments, such as the 1951 Refugee Convention and the Universal Declaration of Human Rights, provide a framework for the protection of the human rights of migrants and refugees. However, implementation and adherence to these instruments often vary between countries, depending on existing political, economic, and social factors<sup>4</sup>.

In addition, legal institutions such as international and regional courts also play an important role in upholding human rights principles in the context of migration and refugees. Cases submitted to these institutions are often turning points in the formulation of migration and refugee policies at the national and international levels.

Thus, this background highlights the complexity of migration and refugee policy dynamics from a political and legal perspective. In addition to being a reflection of a country's political and national security priorities, it should also recognize universal human rights and ensure proper protection for migrants and refugees. A deep understanding of the interplay between political, legal and human rights factors is key to effectively addressing these challenges and developing inclusive and sustainable policies for all parties involved<sup>5</sup>.

This study uses a normative research method, which is a method that focuses on literature review to analyze legal rules and concepts relevant to the problem being studied. This method focuses on secondary data from various legal sources, such as laws and regulations, court decisions, doctrines, books, scientific journals, and other literature. The first step in this normative research is to formulate a legal issue to be analyzed. Once the

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<sup>4</sup> Witte Jr, John, and Johan D. Van der Vyver, eds. *Religious Human Rights in Global Perspective: Religious Perspectives*. (Leiden: Brill, 2023). See also Astariyani, Ni Luh Gede, et al. "Policy on the Right to Education of Refugees in Indonesia and Australia." *Lex Scientia Law Review* 7, no. 1 (2023): 249-276; Permatasari, Adinda Destaloka Putri. "The Government Social Services Policy on Central Europe-Indonesia for Refugee Protection: Are the Laws Sufficient for Refugee Protection in Both Countries?." *The Indonesian Journal of International Clinical Legal Education* 3, no. 1 (2021): 41-56.

<sup>5</sup> Edwards, Alice. "Human rights, refugees, and the right 'to enjoy' asylum." *International Journal of Refugee Law* 17, no. 2 (2005): 293-330; Abdelaaty, Lamis. "The relationship between human rights and refugee protection: an empirical analysis." *The International Journal of Human Rights* 25, no. 10 (2021): 1704-1723.

problem is formulated, data is collected through literature searches and relevant legal documents. The data collected is analyzed through a conceptual approach, which focuses on legal theories, as well as a legislative approach, which compares applicable legal rules to see for consistency or inconsistency with the norms adhered to.

After the data analysis process, the results are synthesized to formulate legal arguments that support or reject the effectiveness or relevance of the rule of law in the problem being studied. In this stage, the researcher also evaluates normative interpretations that can recommend more ideal application or renewal of legal rules if necessary. This research ends by drawing conclusions based on the analysis of the conformity of applicable legal norms with theories or community needs, and presenting appropriate recommendations. With this approach, normative research provides insight into how the law should be interpreted and applied in an ideal context according to existing norms.

## **Migration and Refugee Policy Dynamics Influenced by Political Factors in Global and Regional Contexts**

The dynamics of migration and refugee policies are greatly influenced by political factors in the global and regional context. These political factors include geopolitical dynamics, economic interests, national security considerations, and pressure from internal and external political actors.<sup>6</sup>

### **A. Geopolitics and International Relations**

In global geopolitics, migration and refugee policies are often a mirror of complex interstate relations. Armed conflicts, civil wars, or political crises in a region can trigger waves of refugees who cross national borders, seeking refuge and security in neighboring countries or even in distant countries. For example, the conflict in Syria has caused millions of refugees to flee to neighboring countries such as Turkey, Lebanon, and Jordan, as well as reach Europe, which has subsequently exerted significant political and social

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<sup>6</sup> Martin, Susan F. "Forced migration and refugee policy." *Demography of Refugee and Forced Migration*. (Cham: Springer International Publishing, 2017), pp. 271-303.

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pressure on recipient countries.<sup>7</sup> This illustrates how the dynamics of conflicts and crises in a region can have far-reaching and far-reaching impacts beyond national boundaries.

On the other hand, cooperation between countries in dealing with migration and refugee issues is also an important aspect of global geopolitics. Joint efforts to address refugee crises, share the burden of migration, or resolve conflicts in the refugees' regions of origin can be part of diplomacy and peacekeeping between countries. Examples are agreements between EU countries related to the handling of migrant and refugee waves, as well as cooperation between ASEAN countries in terms of labor migration.<sup>8</sup>

However, in a regional context, the internal political factors of member states often influence migration and refugee policies within regional alliances or blocs. Alliances such as the European Union, ASEAN and the African Union have a role to play in setting common standards and policies related to migration and refugees. However, these policies can be influenced by internal political dynamics in member states, which can sometimes be difficult to reach a strong consensus. Differences in approaches between member states, for example in terms of migrant reception rates or refugee handling policies, can hamper the ability of regional alliances to act effectively.

## B. Economic and Labor Interests

Economic factors play a key role in shaping migration policies in many countries. The need for additional workforce in certain sectors, especially those requiring specialized skills or expertise, is often a major impetus for countries to open their doors to migrants. For example, the

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<sup>7</sup> Aksu Kargın, İnci, and Ibrahim Sirkeci. "Understanding Syrian refugees in Turkey from an environment of insecurity and the conflict model of migration perspective." *Third World Quarterly* 44, no. 5 (2023): 856-871; Ostrand, Nicole. "The Syrian refugee crisis: A comparison of responses by Germany, Sweden, the United Kingdom, and the United States." *Journal on Migration and Human Security* 3, no. 3 (2015): 255-279; Beaujouan, Juline, and Amjed Rasheed. "Syrian Crisis, Syrian Refugees." *Syrian Crisis, Syrian Refugees: Voices from Jordan and Lebanon*. (Cham: Springer International Publishing, 2019), pp. 7-25.

<sup>8</sup> Orbeta Jr, Aniceto, and Kathrina G. Gonzales. *Managing International Labor Migration in ASEAN: Themes from a Six-Country Study*. No. 2013-26. PIDS Discussion Paper Series, 2013; Kikkawa, Aiko, and Eric B. Suan. "Trends and patterns in intra-ASEAN migration." In *Skilled Labor Mobility and Migration*. (London: Edward Elgar Publishing, 2019), pp. 1-24; Hernandez, Carolina G., and Jorge V. Tigno. "ASEAN labour migration: Implications for regional stability." *The Pacific Review* 8, no. 3 (1995): 544-557.

information technology sector in developed countries may need a skilled workforce in the field of technology, so they are actively looking for migrants who have these skills to meet the needs of their industry. This allows these countries to maintain their economic competitiveness and support the growth of key sectors.<sup>9</sup>

On the other hand, economic protectionist policies can also play a role in the formation of migration policies. In situations where there is a high unemployment rate within the country, countries may be likely to adopt policies that restrict migrants' access to the labor market. It aims to protect local workers from competition with migrants who may be willing to work for lower wages. Countries facing political pressure to address domestic unemployment often respond by tightening migration regulations, such as tightening visa requirements or limiting the number of works permit for migrants.

### C. National Security Considerations

The aspect of national security is an important factor influencing migration and refugee policies in many countries. Concerns about the threat of terrorism and cross-border crime often prompt countries to implement strict policies against immigration. For example, rigorous background checks and identities of migrants can be part of a national security strategy to identify potential threats and reduce the risk of crime within the country. In an increasingly complex global context, where terrorist groups can use migrants or refugees as a means to sneak into target countries, national security policy is often a top priority for many governments<sup>10</sup>.

However, such actions can also raise human rights issues. Excessive or discriminatory screening of migrants can violate individual privacy and freedoms, as well as reinforce stereotypes against certain groups. For example, overly strict screening of Muslim migrants can reinforce the

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<sup>9</sup> Syahrin, M. Alvi, Anindito Rizki Wiraputa, and Koesmoyo Ponco Aji. "Indonesian Legal policy in treating international refugees based on human rights approach." *Law and Humanities Quarterly Reviews* 1, no. 4 (2022); Afriansyah, Arie, Hadi Rahmat Purnama, and Akbar Kurnia Putra. "Asylum seekers and refugee management:(im) balance burden sharing case between Indonesia and Australia." *Sriwijaya Law Review* 6, no. 1 (2022): 70-100; Afriansyah, Arie. "Indonesia and the global compacts on refugees and migration." *International Journal of Refugee Law* 30, no. 4 (2018): 684-686.

<sup>10</sup> Kretzmer, David, and Eckart Klein, eds. *The Concept of Human Dignity in Human Rights Discourse*. (London: Brill, 2021).



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stereotype that all Muslims are potential terrorists, which in turn can increase levels of discrimination and intolerance against Muslim communities within the country.

In addition, national security policies can also cause slowdowns or obstacles in the process of legitimate and safe migration. Tightening security controls often prolongs time and increases the cost of the migration process, which in turn can hinder the mobility of people who are entitled to migrate legally. This can create uncertainty and difficulties for migrants who want to leave their country to seek refuge or economic opportunities elsewhere.

On the other hand, there is an argument that overly restrictive national security policies can have a negative impact on the social and economic integration of migrants in destination communities. Migrants who are subject to strict security checks may feel suspicious or unwanted, which can worsen their social and economic isolation. This can create tensions between migrant communities and host communities, as well as increase the risk of radicalization or social alienation among migrants.

### **D. Internal and External Political Pressure**

Internal and external political pressures are important factors shaping migration and refugee policies in various countries. At the internal level, public opinion and political parties have a significant role in determining the direction of government policies related to migration. Public opinion influenced by political views, ideologies, and concerns about the impact of migration on the economy and security is often the basis for political parties to propose or oppose certain migration policies. General elections or referendums related to migration issues can also be an occasion where voters express their preferences for migration policies.<sup>11</sup>

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<sup>11</sup> Peters, Michael A., and Tina Besley. "The refugee crisis and the right to political asylum." *Educational Philosophy and Theory* 47, no. 13-14 (2015): 1367-1374; Birrell, Bob. "The politics of the refugee issue." *People and Place* 1, no. 4 (1993): 9-17. Internal and external political pressures significantly influence migration and refugee policies. Internally, public opinion and political party ideologies play a central role. For example, in many countries, public concerns about the economic and security impacts of migration drive political debates. In the UK, the 2016 Brexit referendum was partly fueled by fears over immigration, leading to a vote to leave the European Union and take control over borders. Political parties, especially in the context of elections, often capitalize on such sentiments to propose policies that reflect public concerns, whether in favor of more open borders or stricter immigration controls. Externally, geopolitical dynamics can also shape policies. For instance, in Europe, the migration crisis of 2015, when over a million refugees, mainly from Syria, fled to Europe, prompted different reactions among EU member states. While Germany, under Chancellor Angela Merkel,

In addition, political pressure from international organizations, NGOs, and the international community also influences migration and refugee policies in many countries. Organizations such as the United Nations (UN), the European Union, and other regional organizations often encourage member states to adopt more inclusive migration policies and pay attention to the human rights of migrants and refugees. NGOs working in the field of human rights and migration can also use political advocacy and public campaigns to influence government policies. In addition, pressure from the international community, including partner countries and international financial institutions, such as the International Monetary Fund (IMF) or the World Bank, can also influence migration and refugee policies through the conditionality of aid or economic cooperation.

However, responses to internal and external political pressures may vary depending on the political and security situation in each country. In authoritarian or politically polarized countries, governments may be inclined to resist international pressure and adopt more restrictive migration policies as part of efforts to maintain political control. Conversely, in democratic countries that are more open to international influence and have more inclusive political systems, pressure from international organizations and NGOs can play a greater role in shaping migration policy.

In addition, internal and external political pressure can also create tension between the central government and local governments. In many countries, migration and refugee policies are often a shared responsibility between the central government and local governments. When there are differences of opinion between these two levels of government, especially

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adopted an open-door policy, other countries like Hungary opposed refugee resettlement, driven by political ideology and concerns over national security. Thus, both domestic political pressures—driven by public opinion, political party stances, and electoral concerns—and external geopolitical factors combine to influence migration policy decisions. *See also* Putri, Yunita Ari, Halifa Haqqi, and Satria Rizaldi Alchatib. "Assessing the Implementation of Open-Door Policy in Managing Syrian Refugees in Germany (2015)." *International Journal of Innovative Research and Development* 11, no. 2 (2022): 120-126; Pinkerton, Patrick. "Governing potential: Biopolitical incorporation and the German "open-door" refugee and migration policy." *International Political Sociology* 13, no. 2 (2019): 128-144; Agestia, Ninda Rhetalola, A. Y. U. Aruni, and Novriest Umbu Walangara Nau. "The Implementation of Open Door Policy in Dealing with the Syrian Refugee Crisis (A Case Study of Turkey-European Union Cooperation through the Emergency Social Safety Net Program 2016-2017)." *Journal of Middle East and Islamic Studies* 10, no. 1 (2023): 5; Olejárová, Barbora. "The Great Wall of Turkey: From "The Open-Door Policy" to Building Fortress?." *Border and Regional Studies* 6, no. 2 (2018): 117-133.

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related to the allocation of resources or the placement of migrants and refugees, this can create political tensions that can slow down or hinder the implementation of effective migration policies.

### **The Impact of Migration and Refugee Policies on the Protection of the Human Rights of Migrants and Refugees**

Migration and refugee policies have a significant impact on the protection of the human rights of migrants and refugees, both at the national and international levels. In some cases, such policies can strengthen human rights protections, while in others, they can present serious challenges to the rights of the individuals involved.

#### **A. Access to Health Protection and Services**

Access to protection and health services is one of the important aspects of the human rights of migrants and refugees, and migration and refugee policies have a significant impact in this regard. In some countries, inclusive migration policies can provide better access for migrants and refugees to legal protection, medical care, and mental health services. For example, countries with universal health systems or those with specialized programs for migrants and refugees may provide easy and affordable access to health services. It not only supports the physical and mental well-being of migrants and refugees, but also is the implementation of fundamental human rights principles, such as the right to a decent standard of living and the right to good health.<sup>12</sup>

However, in other countries, restrictive migration policies can be a serious obstacle to migrant and refugee access to health services. Restrictions such as hard-to-meet visa requirements, complicated bureaucracy, or denial

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<sup>12</sup> de Bruijn, Bart. *The Living Conditions and Well-being of Refugees*. University Library of Munich, Germany, 2009; Candappa. "The right to education and an adequate standard of living: Refugee children in the UK." *The International Journal of Children's Rights* 8, no. 3 (2000): 261-270; Ozgumus, A. M., and P. E. Ekmekci. "Refugee health: A moral discussion." *Journal of Immigrant and Minority Health* 21, no. 1 (2019): 1-3; Yaghoub-Pour, Parisa, and Hosein Asl. "Health Rights of Refugees, Immigrants and Asylum Seeker." *Jurnal Cita Hukum* 9, no. 2 (2021); Marouf, Fatma E., and Deborah Anker. "Socioeconomic Rights and Refugee Status: Deepening the Dialogue Between Human Rights and Refugee Law." *American Journal of International Law* 103, no. 4 (2009): 784-796.

of access to healthcare by medical providers can increase the risk of disease, violence, and exploitation. For example, migrants and refugees who do not have adequate access to health services may be forced to use untrained or informal medical services, potentially putting their health at risk further. It violates human rights principles, such as the right to good health and the right to protection from inhumane treatment.

## **B. Revocation of Protection Status and Deportation**

Revocation of protection status and deportation are two aspects of migration and refugee policies that can threaten the human rights of migrants and refugees. In some cases, restrictive migration policies or sudden policy changes can result in the revocation of protection status for migrants and refugees who have been granted protection in the destination country. This could potentially send them back to their home countries where they may face risks of conflict, violence, or persecution. The revocation of such protection status is not only contrary to human rights principles, but also violates the widely recognized principle of non-refoulement in international law, which prohibits the return of individuals to countries where they are at risk of torture or ill-treatment.<sup>13</sup>

Inhumane or arbitrary deportations are also a serious threat to the human rights of migrants and refugees. In some cases, migrants and refugees may face deportation without a fair legal process or a chance to defend their case. Such deportations may violate their human rights to legal protection and due process, as well as increase their risk of torture or inhumane treatment after they return to their home countries. Even when legal proceedings are in place, legal systems in some countries may not ensure that the rights of migrants and refugees are fully recognized and protected, leading to unfair or potentially harmful deportations.

To address the threats to the human rights of migrants and refugees resulting from the revocation of protection status and deportation, it is

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<sup>13</sup> Molnár, Tamás. "The principle of non-refoulement under international law: Its inception and evolution in a nutshell." *Corvinus Journal of International Affairs* 1, no. 1 (2016): 51-61; Coleman, Nils. "Non-Refoulement Revised Renewed Review of the Status of the Principle of Non-Refoulement as Customary International Law." *European Journal of Migration and Law* 5, no. 1 (2003): 23-68; Duffy, Aoife. "Expulsion to face torture? Non-refoulement in international law." *International Journal of Refugee Law* 20, no. 3 (2008): 373-390; Moran, Clare Frances. "Strengthening the principle of non-refoulement." *The International Journal of Human Rights* 25, no. 6 (2021): 1032-1052.

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important for countries to comply with their obligations under international law.<sup>14</sup> This includes ensuring that migration and refugee policies are based on human rights principles, such as the principle of non-refoulement, and provide adequate protection for those in need. States must also ensure that fair and transparent legal processes are available to migrants and refugees dealing with revocation of protection status or deportation, and ensure that deportation is carried out only as a last resort after all efforts to find a safe and humane solution have been made.

### C. Conditions of Detention and Improper Treatment

The conditions of detention and inappropriate treatment of migrants and refugees during the migration process are one of the serious impacts of migration and refugee policies that can threaten their human rights. In some countries, the practice of detaining migrants and refugees can be carried out in inhumane conditions, where detention facilities are often overcrowded, lacking basic amenities such as food, clean water, and proper sanitation. In addition, migrants and refugees are also vulnerable to physical or sexual abuse by security guards, who violate their human right to be treated with dignity and respect during their detention periods.<sup>15</sup>

The practice of inadequate detention of migrants and refugees often contradicts fundamental human rights principles, including the right to humane treatment and the right to a decent life. Overcrowding and lack of basic amenities such as proper food, water, and sanitation not only creates unhealthy and unsafe conditions for migrants and refugees, but also increases the risk of disease and violence among them. In addition, physical or sexual abuse by guards constitutes a serious violation of human rights and is unacceptable in the context of handling migrants and refugees.

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<sup>14</sup> Latino, Agostina. "The principle of non-refoulement between international law and European union law." *International Law and the Protection of Humanity*. (Leiden: Brill Nijhoff, 2017), pp. 131-151; Qureshi, Amir Hamza, and Syed Raza Shah Gilani. "Principle of Non-Refoulement, Its Relevance, and Exceptions, A critical Analysis." *Dialogue Social Science Review (DSSR)* 2, no. 5 (2024): 43-53.

<sup>15</sup> Pacurar, Andi. "Smuggling, Detention and Expulsion of Irregular Migrants A Study on International Legal Norms, Standards and Practices." *European Journal of Migration and Law* 5, no. 2 (2003): 259-283; Grant, Stefanie. "Immigration detention: Some issues of inequality." *The Equal Rights Review* 7 (2011): 69-82; Weber, Leanne. "The detention of asylum seekers: 20 reasons why criminologists should care." *Current Issues in Criminal Justice* 14, no. 1 (2002): 9-30.

To address the problem of inappropriate conditions of detention and human rights-violating treatment of migrants and refugees, it is important for countries to comply with international standards governing the handling and treatment of migrants and refugees. This includes ensuring that all detention facilities meet the minimum standards set by international law, including proper health, sanitation, and safety standards. Countries must also conduct adequate training and supervision of guards to prevent physical or sexual abuse of migrants and refugees.<sup>16</sup>

## D. Ethnic or Religious-Based Discrimination and Violence

Ethnic or religious-based discrimination and violence against migrants and refugees is a serious impact of migration and refugee policies that can threaten their human rights. In some countries, restrictive policies or anti-immigrant political rhetoric can reinforce stereotypes and prejudices against certain groups, including certain ethnic or religious groups. This can create an unsafe social environment for migrants and refugees, and increase their risk of becoming victims of discrimination, harassment, or violence. Such discrimination and violence not only violate the human rights of migrants and refugees to live free from discrimination, but also create barriers to their integration into destination societies.<sup>17</sup>

Migration policies based on discrimination or stereotypes can reinforce negative attitudes towards migrants and refugees in society. This can create an inhospitable environment for them and limit their access to jobs, education, health services, and other social protections. This kind of structural discrimination not only violates the human rights of migrants and

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<sup>16</sup> Missbach, Antje. "Accommodating asylum seekers and refugees in Indonesia: From immigration detention to containment in "alternatives to detention"." *Refuge* 33, no. 2 (2017): 32-44; Nethery, Amy, Brynna Rafferty-Brown, and Savitri Taylor. "At the discretion of management: Immigration detention in Indonesia." *Immigration Detention*. (London: Routledge, 2015), pp. 114-124; Reza, Bhatara Ibnu. "Challenges and opportunities in respecting international refugee law in Indonesia." *Protection of Refugees and Displaced Persons in the Asia Pacific Region* (2016): 117-134.

<sup>17</sup> Oberman, Kieran. "Refugee discrimination—the good, the bad, and the pragmatic." *Journal of Applied Philosophy* 37, no. 5 (2020): 695-712; Costello, Cathryn, and Michelle Foster. "(Some) refugees welcome: When is differentiating between refugees unlawful discrimination?." *International Journal of Discrimination and the Law* 22, no. 3 (2022): 244-280; Fozdar, Farida, and Silvia Torezani. "Discrimination and well-being: Perceptions of refugees in Western Australia." *International Migration Review* 42, no. 1 (2008): 30-63.

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refugees, but also harms society as a whole by limiting the contributions they can make and creating greater social inequalities.

To address the impact of ethnic or religious-based discrimination and violence on migrants and refugees, it is important for countries to adopt policies that respect human rights principles, including in terms of non-discrimination and protection against violence. This involves educating the public about the importance of tolerance and respect for diversity, as well as strengthening laws and policies that prohibit racial or religion-based discrimination in all aspects of life. In addition, law enforcement agencies also need to be held accountable for law enforcement against discriminatory or violent acts against migrants and refugees, to ensure that their human rights are fully respected and protected.

## **Challenges Faced in the Implementation of Migration and Refugee Policies that Pay Attention to Politics, Law and Human Rights**

The implementation of migration and refugee policies is often faced with a number of complex challenges involving political, legal and human rights protection factors. These challenges not only affect the effectiveness of policies, but can also threaten the human rights of migrants and refugees.

### **A. Violation of the Principle of Non-Refoulement**

Violation of the principle of non-refoulement is one of the serious challenges in the implementation of migration and refugee policies that take into account politics, law and human rights. The principle of non-refoulement is an important pillar in international law that aims to protect individuals from the risk of torture, inhuman treatment, or serious threats to their lives or freedoms. This principle is clearly enshrined in various instruments of international law, including the 1951 Refugee Convention and its 1967 Protocol, as well as the Universal Declaration of Human Rights.<sup>18</sup>

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<sup>18</sup> Millbank, Adrienne. "The elephant on the boat: the problem that is the refugee convention." *People and Place* 18, no. 4 (2010): 41-49; Benhabib, Seyla. "The end of the 1951 refugee convention? Dilemmas of sovereignty, territoriality, and human rights." *Jus Cogens* 2, no. 1 (2020): 75-100; Ferracioli, Luara. "The appeal and danger of a new refugee convention." *Social Theory and Practice* (2014): 123-144.

Although the principle of non-refoulement has been widely recognized, many countries still violate this principle in practice. This is especially the case in situations where countries face political or social pressure to deal with migration and refugee issues. In an effort to address this problem, some countries tend to take measures that are contrary to the principle of non-refoulement, such as deporting or refusing migrants and refugees to return to their home countries without considering the risks faced by the individual.

One of the main reasons behind the violation of the principle of non-refoulement is the strong political pressure that requires countries to take decisive action in dealing with migration and refugee issues. Under this political pressure, countries may feel compelled to close their borders or restrict access to migrants and refugees, even if it means violating their obligations under international law. In addition, concerns about the economic, social, and political impacts of large migration flows may also prompt countries to take steps that are contrary to the principle of non-refoulement.

## **B. Improper Conditions of Detention**

The practice of detaining migrants and refugees in unsuitable conditions is one of the serious challenges in the implementation of migration and refugee policies that take into account politics, law and human rights. Although detention can be considered one of the instruments for managing the flow of migrants and refugees, its use often violates their human rights. Many countries still rely on detention as part of their migration policies, especially in situations where they face immense pressure to control migrant flows. However, detention facilities often do not meet internationally recognized human rights standards, increasing the risk of human rights violations of migrants and refugees.

One of the main problems in the detention conditions of migrants and refugees is overcrowding. Detention facilities are often not designed to accommodate large numbers of people, leading to overcrowding and overcrowding. This overcrowding not only creates inhumane living conditions for migrants and refugees, but also increases the risk of disease transmission and internal conflicts between them. In addition, lack of access to adequate health care is also a serious problem in detention facilities, with many migrants and refugees unable to access the necessary medical care.



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In addition, poor hygiene and abuse by guards are also major challenges in the conditions of detention of migrants and refugees. Poor sanitary conditions can lead to the spread of diseases and poor health conditions among those detained. In addition, physical or sexual abuse by guards is not uncommon in detention facilities, which is a serious form of human rights violation. Challenges in addressing this involve improving detention standards, increasing training for guard officers, as well as developing alternatives to more humane detention, such as the use of detention only as a last resort and increasing non-detention.

### C. Ethnic or Religious-Based Discrimination and Violence

Ethnic or religious-based discrimination and violence against migrants and refugees is a troubling issue and often threatens human rights. Anti-immigrant political rhetoric and prejudice against certain groups are often the main triggers for discrimination and violence in the context of migration policies. In many countries, migrants and refugees are often subjected to negative stereotypes and stigmatization rooted in their ethnic or religious differences. This can lead to unfair treatment, rejection, or even violence against them.<sup>19</sup>

Political rhetoric that reinforces negative attitudes toward migrants and refugees can influence public views and create an atmosphere that is unfriendly to them. Political leaders who use language or narratives that demean or blame migrants and refugees often reinforce prejudice and pave the way for discriminatory actions by other individuals or groups in society. This can lead to discrimination in access to jobs, housing, health services, and education, as well as an increased risk of physical or verbal violence.

This challenge emphasizes the importance of efforts to create an inclusive environment and respect diversity in society. Public education that promotes tolerance, respect for differences, and understanding of human rights for all individuals, regardless of immigration status or nationality, is an important step in addressing ethnic or religious-based discrimination and violence. In addition, decisive action is needed from the government to strengthen anti-discrimination laws and effective law enforcement

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<sup>19</sup> Pretorius, R. "Political refugees as victims of prejudice, discrimination and abuse." *Acta Criminologica: African Journal of Criminology & Victimology* 17, no. 2 (2004): 131-142; Al Hashmi, Rufaida. "Cultural injustice and refugee discrimination." *Law and Philosophy* (2024): 1-20.

mechanisms to protect migrants and refugees from discrimination and violence. This includes active monitoring of cases of discrimination, provision of fair access to the justice system, and fair enforcement of the law against perpetrators of hate-based crimes.

## **D. Lack of Consistency and Harmonization in Policy**

The lack of consistency and harmonization in migration and refugee policies is a serious challenge in protecting the human rights of migrants and refugees at the regional and international levels. Differences in policy approaches between countries and regions often create gaps where migrants and refugees become vulnerable to human rights abuses or violations. For example, some countries may have stricter procedures for providing protection to migrants and refugees, while others may prioritize border control or deportation. These disparities not only create uncertainty for migrants and refugees, but can also result in inequalities in the protection of their human rights.<sup>20</sup>

This challenge emphasizes the importance of cooperation and coordination between countries in the development of migration policies that are consistent and meet human rights standards. Closer regional and international cooperation is needed to address gaps in the protection of the human rights of migrants and refugees. It involves an open dialogue between countries to understand the shared challenges faced in managing migration and refugee flows, as well as to identify best practices in human rights protection.

In addition, harmonization of migration and refugee policies at the regional or international level can help create a more stable and predictable environment for migrants and refugees. With a uniform framework or regional agreement, countries can work together to strengthen monitoring mechanisms, improve coordination in addressing migration crises, and provide more effective human rights protections to migrants and refugees across the region.

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<sup>20</sup> Head, Michael. "Refugees, global inequality and a new concept of global citizenship." *Australian International Law Journal* 2002 (2002): 57-79; Rae, Fiona. "Border-controlled health inequality: the international community's neglect of internally displaced persons." *Medicine, Conflict and Survival* 27, no. 1 (2011): 33-41.

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However, the challenge of achieving consistency and harmonization in migration and refugee policies is not easy. Differences in national interests, internal politics, and policy priorities between countries can be significant obstacles. Therefore, strong political commitment, careful diplomacy, and close cooperation between countries are needed to address these challenges and ensure that the human rights of migrants and refugees are fully respected and protected. With joint efforts, it is hoped that regional and international cooperation can improve conditions for migrants and refugees, as well as provide better protection of their human rights in the future.

## **The Role of Legal Politics in Building an Inclusive Legal Framework and Effectively Protecting the Human Rights of Migrants and Refugees**

The role of political law in building an inclusive legal framework and effectively protecting the human rights of migrants and refugees is critical in addressing the complex challenges faced by these populations. In an ever-changing global context, migration and refugee policies have become a major focus for many countries around the world. However, to ensure that these policies not only cover practical aspects, but also meet the necessary human rights standards, an approach based on inclusive and progressive legal politics is needed.

### **A. Formulate and revise relevant legal regulations**

Formulating and revising relevant legal regulations is a crucial step in ensuring the protection of the human rights of migrants and refugees. The process of making laws, regulations, and other rules should be based on fundamental human rights principles, to ensure that their rights are properly recognized and respected. Legal regulations must consider a variety of aspects, from migrant status and refugee status determination procedures to access to essential services such as health, education, and housing.<sup>21</sup>

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<sup>21</sup> Parekh, Serena. "Does ordinary injustice make extraordinary injustice possible? Gender, structural injustice, and the ethics of refugee determination." *Journal of Global Ethics* 8, no. 2-3 (2012): 269-281; Hashimoto, Naoko. "Refugee protection and assistance." *Handbook on Humanitarianism and Inequality*. (London: Edward Elgar Publishing, 2024), pp. 352-366; Weissbrodt, David, and Michael Divine. "Unequal access to human rights: The categories of noncitizenship." *Citizenship Studies* 19, no. 8 (2015): 870-891.

Legal regulations must clearly regulate the status of migrants and the procedures for determining refugee status. This involves establishing a clear and transparent mechanism for determining whether a person is eligible for refugee status based on internationally recognized definitions and criteria. This process must ensure that migrants and refugees in need of protection gain access to their rights without discrimination, and that they are not returned to countries where they are at risk of torture or inhumane treatment.

In addition, legal regulations must also ensure equal access to essential services such as healthcare, education, and housing for migrants and refugees. This means ensuring that migrants and refugees have the same rights as local residents to access the health services needed to meet their medical needs, including access to emergency care and mental health services. Similarly, they must have equal access to education for their children, as well as access to decent and safe housing to live in.

Legal regulations should also take into account other rights related to the human rights of migrants and refugees, such as the right to work and participate in the lives of local communities. This involves establishing policies that allow migrants and refugees to participate in the labour market fairly and without discrimination, and have equal access to economic and social opportunities. In this regard, legal regulations must ensure that migrants and refugees are not only recognized as recipients of protection, but also as members of society who contribute to the social and economic development of the host country.

## **B. Ensuring effective protection through the legal system**

Ensuring effective protection through the legal system is a crucial aspect in safeguarding the human rights of migrants and refugees. To achieve this, it is necessary to strengthen law enforcement mechanisms that are able to handle human rights violations firmly and fairly. This involves increasing the capacity of law enforcement agencies to deal with complex challenges related to migration, including abuse, discrimination, and violence that migrants and refugees may experience.<sup>22</sup>

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<sup>22</sup> Dembour, Marie-Benedicte, and Tobias Kelly, eds. *Are Human Rights for Migrants?: Critical Reflections on the Status of Irregular Migrants in Europe and the United States*. (London: Routledge, 2011); Mattila, Heikki S. "Protection of migrants' human rights: Principles and practice." *International Migration* 38, no. 6 (2001): 53-71.

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First, there needs to be comprehensive training and education for law enforcement officers on the human rights of migrants and refugees. It aims to improve their understanding of the issues faced by this population as well as relevant legal procedures. With a better understanding, law enforcement officers will be better able to identify and handle cases of human rights violations effectively, as well as provide timely protection to victims.

In addition, it is necessary to strengthen cooperation between law enforcement agencies, non-governmental organizations, and other institutions that play a role in protecting human rights. Close cooperation between these various parties can strengthen monitoring and law enforcement mechanisms, so that human rights violations can be detected more quickly and dealt with effectively. Thus, ensuring effective protection through the legal system involves concerted efforts from various parties to increase the capacity and responsiveness of law enforcement agencies in addressing human rights violations of migrants and refugees.

### C. Ensuring fair and equal access to justice

Ensuring fair and equal access to justice is an important aspect of protecting the human rights of migrants and refugees. This involves upholding their right to a fair and objective judicial process, without discrimination or prejudice. Every individual, including migrants and refugees, should have the same right to legal aid and transparent access to justice.<sup>23</sup>

Migrants and refugees have equal access to legal aid. This means that they should be provided with adequate access to legal aid services that can help them understand their rights, obtain adequate legal representation, and face the judicial process with more confidence. In this context, it is important for countries to ensure that there are organizations or institutions that can provide legal assistance to migrants and refugees, both provided by government and non-governmental organizations.

Furthermore, the judicial process must be carried out transparently and objectively, without any misappropriation or discrimination. This includes the right to access information about legal proceedings, get notified of their rights, and have the opportunity to give evidence and testimony fairly.

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<sup>23</sup> Owen, David. "Human rights, refugees and freedom of movement." *Zeitschrift für Menschenrechte* (2014): 50-65; McAdam, Jane, and Tamara Wood. "The Concept of "International Protection" in the Global Compacts on Refugees and Migration." *Interventions* 23, no. 2 (2021): 191-206.

## D. Adapting legal regulations to the latest developments

Adapting legal regulations to the latest developments is a must in dealing with migration and refugee issues. In the face of the ever-changing dynamics in this issue, legal regulations must be able to adapt quickly to meet the needs and protection of the human rights of migrants and refugees. This includes actively monitoring recent developments in migration and refugee issues, such as changes in migration patterns, new refugee trends, or discoveries related to human rights protection.<sup>24</sup>

When there is a significant development or change, it is necessary to be ready to revise or change existing legal regulations in accordance with new needs. This could involve the establishment of new laws, regulations, or policies that are more relevant and responsive to current conditions. For example, when there is a new refugee crisis or the discovery of special protection needs for certain groups of migrants, legal regulations should be able to be amended or adjusted to include better protection for them.<sup>25</sup>

In addition, it is important to ensure that law enforcement practices are also updated in line with changes in legal regulations and recent developments in migration and refugee issues. This involves ongoing training and education for law enforcement officers so that they can better understand new or revised legal regulations, and apply them effectively in their daily practice. Thus, the conformity of legal regulations with the latest developments is an important foundation in ensuring that the human rights of migrants and refugees are effectively protected and responsive to evolving conditions.

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<sup>24</sup> Arifin, Ridwan. "Revealing the Other Side of Human Rights Issue: How We Look to the Existed Various Problems." *Journal of Indonesian Legal Studies* 2, no. 1 (2017): 79.

<sup>25</sup> See Gordyn, Carly. "Pancasila and Pragmatism: Protection or Pencitraan for Refugees in Indonesia?." *Journal of Southeast Asian Human Rights* 2, no. 2 (2018): 336-357; Taylor, Savitri, and Brynna Rafferty-Brown. "Difficult journeys: accessing refugee protection in Indonesia." *Monash University Law Review* 36, no. 3 (2010): 138-162; Utami, Mumpuni Tri. "The Implementation of Non-Refoulement Principle in Case of Rohingnya." *The Digest: Journal of Jurisprudence and Legisprudence* 1, no. 2 (2020): 197-222; Syahrin, M. Alvi, and Yusa Shabri Utomo. "The Implementation of Asylum Seekers dan Refugees Law Enforcement in Indonesia After Presidential Decree Number 125 of 2016 on the Treatment of Foreign Refugees." *Jurnal Ilmiah Kajian Keimigrasian* 2, no. 2 (2019): 83-96; Muhtada, Dani, Suhadi Suhadi, and Rayyan Alkhair. "The protection of civil rights for the Shi'ite refugees of Sampang, East Java: a systemic governance approach to restore the refugees' Rights." *Indonesian Journal of Islam and Muslim Societies* 12, no. 2 (2022): 231-256.

### Conclusion

This study highlights the profound tension between political and legal pressures shaping Indonesia's migration and refugee policy. While Indonesia is a signatory to the 1951 Refugee Convention, the absence of comprehensive national legislation results in a fragmented and inconsistent approach to refugee protection. The paper demonstrates that political interests—ranging from national sovereignty to security concerns—often conflict with Indonesia's legal obligations under international human rights law. Public opinion, influenced by political ideologies and concerns over the economic and social impacts of migration, further complicates policy formulation. Through the analysis of case studies and policy trends, this paper underscores the need for a more cohesive and rights-based approach to refugee and migration policy in Indonesia. By aligning domestic policies with international human rights standards, Indonesia can create a more stable and effective framework for the protection of refugees and migrants. Ultimately, this study contributes valuable insights to the global conversation on migration governance, offering recommendations for a balanced and humanitarian policy response amidst the political and legal tug-of-war that defines the current landscape.

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