

## Traffic Policy towards the Current of Refugees and Subscribers Movement in Reforming State Sovereignty

Lisda Syamsumardian, Abdul Rachmad Budiono, Moh. Fadli & Dhiana Puspitawati  
*Brawijaya University, Faculty of Law, INDONESIA*

Received: 1 November 2020 ▪ Accepted: 24 December 2020 ▪ Published Online: 30 December 2020

### *Abstract*

Countries like Indonesia that have immigration routes will look at every foreigner's problem from an immigration point of view. Foreigners who enter Indonesia without travel documents are considered illegal. When referring to concrete cases, generally refugees or asylum seekers may not have complete travel documents. Because it is impossible for them to be forced to leave their country, by first obtaining a visa, passport, or other correspondence. In most cases that occur, refugees or asylum seekers do not have complete travel documents. So, in order to maintain sovereignty in the authority of immigration supervision, it is very important to research related Immigration traffic. The problem raised in this paper is how the monitoring mechanism of immigration traffic, in order to reinforce the concept of sovereignty. In writing this journal the author uses a statutory approach, a case approach, and a sociological approach. The method used in this paper is a normative juridical method so that answers will be found in the form of a descriptive perspective. The conclusion in this paper is that the policy on the flow of refugee movements into Indonesia is not in accordance with the concept of sovereignty, where the regulation of the flow of refugee movements is very vulnerable to the aspects of crime (trafficking in persons, narcotics, prostitution, etc.), in fact the sovereignty of the state become a protector for refugees who come to Indonesia, from international and national crime systems, and that is often misunderstood. So, the suggestion from this research is that immigration should be given space in the framework of supervision for Refugees and Asylum Seekers, which have been under the authority of the Immigration Detention Center (RUDENIM).

**Keywords:** refugees, asylum seekers, immigration control, state sovereignty.

### 1. Introduction

In Mochtar Kusumaatmadja's writing (1982), he states that sovereignty is an essential characteristic of a state, where the state is sovereign, but has its boundaries, namely the space for the highest power to be exercised and limited by the boundaries of the country's territory, outside of its territory the state no longer has such power. In this regard, sovereignty is not seen as something that is unanimous and intact, but in certain limits it has been subject to restrictions in the form of international law and the sovereignty of each other (Hadiwijoyo, 2008).

A sovereign state must still comply with international law, and may not prejudice the sovereignty of other countries, so it can be said that at present state sovereignty is the remainder of the power that is owned within the boundaries set by international law, although it tends to be every country the sovereign has distinctive sovereignty which is reflected in the national policy of the country. Indonesia has the context of sovereignty, namely, internal sovereignty where this

© **Authors.** Terms and conditions of Creative Commons Attribution 4.0 International (CC BY 4.0) apply.

**Correspondence:** Lisda Syamsumardian, Brawijaya University, Faculty of Law, INDONESIA. E-mail: [lisda.fhub@gmail.com](mailto:lisda.fhub@gmail.com).

sovereignty can be demonstrated in the form and structure of the Indonesian state, as a unitary state characterized by the archipelago, as stated in article 25A of the 1945 Constitution, this is basically a manifestation of the geopolitical aspects of the State. Indonesia is an archipelago insight that we know about internal sovereignty, where sovereignty into Indonesia is manifested through the insight of the archipelago. The role of the archipelago's insight is as a manifestation of protecting the entire Indonesian nation and all Indonesian bloodshed. As a sovereign country, Indonesia cannot be separated from participating in solving international problems. Indonesia's position at the 1951 Protocol 1967 convention on the status of refugees is a country that is not a party to the convention. However, Indonesia continues to carry out its obligations as a country that prioritizes human rights, so that Indonesia's position.

In this Convention it is a transit country, and it is imperative for Indonesia to harmonize the National Law with the 1951 Protocol 1967 Convention, but in accordance with the aspects of state sovereignty and human rights as regulated in the 1945 Constitution of the Republic of Indonesia.

The presence of “refugees” and “asylum seekers” is a social phenomenon in international relations, which has a significant impact on the policies of the host country. This also happens in Indonesia, which seeks to provide protection for refugees and asylum seekers who come to Indonesia. In this case, the State's obligation to respect, protect and enforce Human Rights is not only aimed at Indonesian citizens, but also includes citizens from other countries who are in the territory of Indonesia, whether they are legally or illegally (Primawardani, 2018). Refugees have a different meaning from foreigners, the arrival of refugees and asylum seekers to Indonesian territory, have a different immigration administration flow from foreigners, given the flow of foreigners arriving through the Airport and Seaport routes, and with complete official documents (legal), if in the sense of illegal, are foreigners who enter the illegal route and do not have official documents (immigration), in this category foreigners who violate immigration laws can be given immigration sanctions until deportation (Interview with Pria Wibawa, Director of Supervision and Action of the Indonesian Directorate General of Immigration, 2 September 2020).

A strategy is needed to deal with this large flow. For many industrialized countries, migration is an advantage. State policies regarding migration flows and their consequences can be divided into at least three things, namely border control and management, citizenship and integration policies, and policies on diaspora (Adamson, 2007). The state has an interest in controlling its border territorials for reasons such as maintaining control over the population, restricting access to labor markets and public goods, and for maintaining domestic security.

## 2. Research problem

The problem raised in this paper is how the monitoring mechanism of immigration traffic, in order to reinforce the concept of sovereignty. In writing this journal the author uses a statutory approach, a case approach, and a sociological approach. Seeing the condition of the State of Indonesia in the territorial element, where the state carries out jurisdiction over its citizens and all objects and all activities that occur within the territory. Such state sovereignty is also known as territorial sovereignty (Survey and Mapping Center – TNI Headquarters, Indonesian Territory, 2018).

The flow of movement of refugees and like seekers is of concern, because refugees and asylum seekers are vulnerable objects in cases of human trafficking, smuggling and trafficking. Human cross-border mobility is now a business venture and various types of criminal offenses. Although the hidden nature of the phenomenon is not easy to investigate, uncertain and prone to controversy, the evidence is also increasing. Usually, said Pocoud and Guchteneire, strict border

controls are thought to contribute to fighting human trafficking. It is also clear that the more difficult it is to enter a country, the more it requires dependence on smugglers and the more profitable it is from the business aspect. Meanwhile, for the third challenge, related to the cost of migration costs for migrants themselves, the most tragic and clear illustration is the cost of lying to a number of people who die while heading to their destination country, or in transit.

For example at least one migrant dies every day on the border between America and Mexico, most of them hypothermia, dehydration, sunburn or drowning. In Europe in 2016 nearly 3,000 migrants died trying to reach Europe, most of them trying to cross the Gibraltar Strait.<sup>1</sup> The figures may be underestimated because no one really knows how many bodies were not found. In general, the vulnerability of undocumented migrants and their exposure to abuse and to exploitation stems largely from policies that fail to prevent illegal migration, leaving many legal loopholes.

Thus, border policy has become a big ethical challenge, at least according to Peceound and Guchteneire and Iman Santoso (2014) "There are four observations that can be made in this regard. First, the tension between security and human rights covers the response to this phenomenon, since the end of the cold war, migration has increasingly been understood as a security threat and with the growth of migration escalating and the asylum crisis of the 1990s was perceived as a potential source of destabilization of countries. That leaves little room for human rights. Other than that, the idea of security itself is ambiguous. Although a comprehensive understanding of security must include national and human security.

Second, different phenomena will attract different levels of attention and are needed in different ways. For example trafficking in persons is clearly recognized as a violation of human rights and fighting it has become a priority for many governments.

### 3. Results and discussion. Flow of national law policy for handling and supervision of overseas refugees

In the scope of the Indonesian state's authority in handling and supervising refugees, it is important in relation to the position of its laws and regulations, so that Indonesia can know the position and involvement of Indonesia's obligations to refugees.

The 1924 International Conference on Emigration and Immigration in Rome, defines immigration as: "Human mobility to enter a country with its purpose to make a living for residence", which means seeing from a classic perspective, that migration only means moving people entering a country with the intention to have the meaning of moving and settling there. There are 2 (two) patterns of migration flows by people to migrate from one country to another, namely the legal scheme migratory flows and the illegal scheme migratory flows (Syahrin, 2019). Legal schema migratory flows use stages according to official regulations. Migration of population with a pattern of using valid and valid travel documents and through the border regulated in the provisions of a country. Meanwhile, illegal scheme migratory flows use stages that violate official regulations. This migration of population uses a forged travel document mode and does not pass through border places regulated in the provisions of a country. This migration of population uses fake travel document mode and does not pass through border places regulated in the provisions of a country.

The flow of global population migration from countries of origin to other countries has caused various problems including illegal immigrants, human trafficking, people smuggling, and cases of refugees. This problem is very important to be traced or researched, because seeing from the point of view of changes in global human movement, by utilizing humanitarian issues, for

---

<sup>1</sup> <https://www.voaindonesia.com/a/hampir-3000-migran-meninggal-di-laut-pada-2016/3430506.html>.

example the issue of refugees, the state must uphold its sovereignty, place a problem in regulations and policies.

With regard to population migration between countries, the Government of Indonesia regulates this in Law Number 6 of 2011 concerning Immigration. Immigration is a matter of the traffic of people entering or leaving the territory of Indonesia and their guardians in the framework of maintaining the upholding of state sovereignty. In immigration regulations, every person who enters or leaves the territory of Indonesia is required to have a valid and valid travel document, except for other matters stipulated by the Immigration Law.

Based on Indonesian immigration regulations, a visa for foreigners which is a certificate of approval for foreigners to enter Indonesian territory is issued by an authorized official at the Representative Office of the Republic of Indonesia. Visas consist of, diplomatic visas, service visas, visit visas and limited stay visas, visas have a function as the basis for granting residence permits granted to foreigners in accordance with their visa residence permit consists of, diplomatic residence permit, official residence permit, visit residence permit, limited stay permit, permanent residence permit. A wide variety of destinations for foreigners at Indonesia includes tourism, official activities, diplomatic, business, family, journalism, clergy, experts, investors and workers (Syahrin, 2015).

The various activities and purposes carried out by foreigners while in Indonesia cause problems caused by violations of not complying with the law. In the immigration regulations in Indonesia it regulates immigration administration and immigration crimes and other general criminal acts for foreigners. Immigration administrative action is an administrative sanction imposed by immigration officials against foreigners outside the judicial process and immigration crime is an activity carried out by every person in certain circumstances and situations violating immigration regulations as referred to in Article 113-136 of Law Number 6 Year 2011 about Immigration. Meanwhile, general criminal acts for foreigners who commit criminal offenses in accordance with the actions committed while in Indonesia (Syahrin & Saputra, 2016).

For foreigners who have committed criminal acts in Indonesian territory, deportation may be carried out. This is based on Indonesian immigration regulations, namely Immigration Officers are authorized to carry out immigration administrative actions against foreigners who are in Indonesian territory who carry out dangerous activities and are reasonably suspected of endangering security and public order or not respecting or not complying with statutory regulations.

However, in the case study efforts to deportation could not be carried out because it was hampered by the status of Ali Reza Khodadad Sharq bin Mojtaba, in this case he committed a criminal act, namely narcotics using Narcotics Group I for himself in accordance with Article 113 paragraph (1) subside Article 111 paragraph (1) more subsidiary to Article 127 paragraph (1) letter (a) of Law Number 35 of 2009 concerning Narcotics on 11 January 2017, the Tangerang District Court sentenced a criminal sentence with imprisonment of 1 (one) year and 8 (months) imprisonment at the Class II A Correctional Institution (LAPAS) Tangerang youth. After serving his sentence, at this writing the status of Ali Reza Khodadad was placed in the Detention Room at the Directorate General of Immigration to wait for a decision on immigration action. However, the person concerned is still the subject of a refugee card holder established by the United Nations High Commissioner for Refugees (UNHCR) (Interview with Pria Wibawa, Director of Supervision and Action of the Indonesian Directorate General of Immigration, 2 September 2020). The card stipulates that deportation cannot be carried out for each refugee card holder because there is a non-refoulement principle which is the principle of prohibiting repatriation to the country of origin.

From the case above, it seems that it limits the authority of immigration control regulated in Presidential Decree No. 125 of 2016, giving the impression that immigration control

has limitations and categories in handling and monitoring of foreigners, in terms of legal or illegal foreigners.

In this matter, law enforcement in immigration violations violated by foreigners is the domain of the Directorate General of Immigration, and if a foreigner violates a criminal act, the sanctions received are from court decisions to deportation. However, when refugees who are found to have violated a criminal act have a different mechanism, a judicial mechanism in accordance with the Criminal Law that is violated, after that, the refugees are returned to the holding center to be given a decision from UNHCR.

The concept of immigration control in Presidential Decree 125 of 2016 and the Immigration Law Number 6 of 2011 is very different, seeing the position of refugees and foreigners in the statutory regulations is clearly different, so the handling is different. In the same sentence from the nomenclature "Immigration Control" but has a different meaning and meaning, it can be seen in the handlers and their supervisors, if we examine the implications that arise, in acts that violate the laws of RI, between refugees and foreigners, the treatment differentiated, so that the enforcement of immigration law and Indonesian law cannot be carried out equally between refugees and foreigners.

The category of law enforcement must reflect certainty, justice and benefit (Radbruch, 2012). Sajipto Raharjo identifies the nature of law in its basic values and implications in the meaning of essence or philosophy, in terms of sociological and juridical values. In fact, law must reflect the values that can be accepted in society, in its implementation which is reflected in the applicable regulations. In regulating refugees, it appears that both national and international legal aspects are involved.

#### 4. Conclusion

The policy on the flow of refugee movements into Indonesia is not in accordance with the concept of sovereignty, where the regulation of the flow of refugee movements becomes very vulnerable to the aspects of crime (trafficking in persons, narcotics, prostitution, etc.). Indonesia, from the international and national criminal systems, and that is often misunderstood. So the suggestion from this research is that immigration should be given space in the framework of supervision for Refugees and Asylum Seekers, which have been under the authority of the Immigration Detention Center (RUDENIM).

#### Acknowledgements

This research did not receive any specific grant from funding agencies in the public commercial, or not-for-profit sectors.

The authors declare no competing interests.

#### References

- Adamson, F. B. (2007). International Migration and Nation Security: Maximizing benefits and minimizing risks. Presented in *The 2007 Atlantic Conference on Migrant and Migrant Integration in The Atlantic Region*, 22-24 March 2007, Seville, Spain, published in *International Security*, 31(1), Summer 2006.

- Center for Survey and Mapping (PUSURTA) – TNI Headquarters, Indonesian Territory (2018). *Legal Basis and Problems*. Jakarta.
- Hadiwijoyo, S. S. (2008). *Batas Wilayah Negara Indonesia dimensi permasalahan, dan strategi penanganan (Sebuah tinjauan empiris dan yuridis) [Indonesian state boundary dimensions of the problem, and strategy for handling (An empirical and juridical review)]*. Jakarta: Gaya Media.
- Kusumaatmadja, M. (1982). *Pengantar hukum internasional, Buku I, Bagian Umum [Introduction to international law, Book I, General Section]*. Bandung: Bina Cipta.
- Radbruch, G. (1961). *Einführung in die rechtswissenschaften*. Koehler Verlag.
- Raharjo, S. (2012). *Ilmu hukum [Legal studies]*. Bandung: Ciyta Aditya Bakti.
- Santoso, M. I. (2014). *Diaspora globalisme, keamanan dan keimigrasian [Diaspora globalism, security and immigration]*. Bandung: Pustaka Rekacipta.
- Syahrin, M. A. (2015). *Imigran ilegal, migrasi atau ekspansi? [Illegal immigrants, migration or expansion?]*. Depok: Akademi Imigrasi.
- ... (2016). *Eksodus warga negara Tiongkok: Antara kebijakan dan penyelundupan [The exodus of Chinese citizens: Between policy and smuggling]*. Depok: Politeknik Imigrasi.
- Primawardani, Y. (2018). *Penanganan pengungsi dari luar negeri oleh petugas rumah detensi imigrasi di provinsi Sulawesi Selatan [Treatment to international refugees by the officials of immigration detention center in the province of South Sulawesi]*. *Legal Policy Scientific Journal*, 12(2), 179-197. <http://dx.doi.org/10.30641/kebijakan.2018.V12.179-197>
- Syahrin, M. A., & Saputra, S. (2016). *Tindakan hukum terhadap orang asing mantan narapidana yang memiliki kartu pengungsi UNHCR dalam perspektif keimigrasian [Legal action against foreigners. Ex-prisoners with UNHCR refugee cards from an immigration perspective]*. *Legal Policy Scientific Journal*.
- ... (2020). *Interview with the Director for Supervision and Action of Indonesian Immigration, Mr Pria Wibawa, Jakarta, 2 September 2020, at the Directorate General of Immigration, Jakarta.*

