The Boundaries of Implementing a Limited Right to Work for Foreign Refugees in Indonesia

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Abstract
The employment ban on foreign refugees in Indonesia triggers protracted refugee situations, resulting in socioeconomic vulnerabilities. The concept of granting a limited right to work has emerged as a humanitarian solution; however, its implementation is constrained by various legal boundaries and state sovereignty. This study aims to analyze the juridical restrictions on implementing a limited right to work for foreign refugees in Indonesia and to formulate an ideal framework that balances humanitarian commitments with the protection of the domestic workforce. Utilizing a normative juridical research method with a statute approach and a comparative approach, this study examines the harmonization between Presidential Regulation No. 125/2016 and national labor regulations. The results indicate that the primary obstacles to implementing a limited right to work in Indonesia stem from the lack of legal status for refugees as official Foreign Workers and the protectionism of the local job market under the Labor Law. This study concludes that a limited right to work can be implemented in Indonesia under strict conditions, including sector restrictions (limited to the informal sector or self-reliant creative economies), geographic boundaries, and a temporary nature during the resettlement waiting period. The government needs to adopt specific discretionary regulations to legalize this limited work scheme without compromising the economic rights of local citizens.

Keywords: Foreign Refugees; Limited Right to Work; Presidential Regulation No. 125/2016; State Sovereignty; Local Job Market.

Introduction
The movement of refugees across borders due to political conflict, war, and persecution has become a protracted global humanitarian crisis (Ahimbisibwe, 2024). Although Indonesia is not legally a non-state party to the 1951 Refugee Convention or the 1967 Protocol, geographically and strategically, it remains a major transit country in

Southeast Asia for asylum seekers (Karuni, K. D. (2023). Universal humanitarian principles and the international legal principle of non-refoulement which prohibits the return of refugees to dangerous areas enable Indonesia to morally and internationally accept the presence of tens of thousands of foreign refugees within its sovereign territory (Utama, I. G. A. A., et.al. 2020). This principle is widely regarded as having attained the status of customary international law, thereby binding non-signatory states such as Indonesia (Arthur-Ewusie, 2024).

The state is the primary legal subject, the most important, and holds the greatest authority as a subject of international law. Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States states that the primary requirements for the establishment of an independent and sovereign state are a territory with clearly defined boundaries, a population to support the running of government, and a legitimate government capable of establishing relations with various subjects of international law (Wiratmaja, I. G. N. A., et.al. 2019;23).

Based on the provisions of Article 1 of the Montevideo Convention, it is worth noting that the three main requirements a state with clearly defined boundaries, a population supporting the running of government, and a legitimate government have been recognized since the 19th century in Europe. The fourth requirement, the capacity to engage in relations with various subjects of international law, is known as an additional requirement. In addition to states, other subjects of international law, who hold rights and obligations under international law, include individuals, the Holy See, the Vatican, the International Red Cross, and rebels (Sefriani, 2016: 94).

Refugee management in Indonesia is currently guided domestically through Presidential Regulation Number 125 of 2016 concerning the Management of Refugees from Abroad. However, this regulation only focuses on shelter, security, and meeting basic emergency needs, leaving no explicit provision for refugees' socioeconomic rights, including the right to work (Missbach & Adiputera, 2018; Dewansyah & Nafisah, 2021). Fundamental problems arise when the resettlement process by the UNHCR takes years or even experiences total uncertainty (protracted refugee situations). On the other hand, Law No. 6 of 2011 concerning Immigration and Law No. 13 of 2003 concerning Manpower expressly prohibit foreigners without a limited stay permit (ITAS) and a Foreign Worker Utilization Plan (RPTKA) from working. Consequently, foreign refugees find themselves in a state of "status quo hunger," or legal limbo, where they are prohibited from earning a living independently, leading to dependence on international aid, and psychosocial and economic vulnerability, a condition consistent with global patterns of protracted displacement (Kraler, Etzold, & Ferreira, 2024).

This situation has given rise to the urgency of examining the possibility of implementing a limited right to work for foreign refugees. This concept presents a complex legal and sociological dilemma in Indonesia. On the one hand, fulfilling the right to sustain life through work is a universal human right. On the other hand, from the perspective of Pancasila-based social justice specifically the Fifth Principle, "Social Justice for All Indonesians" (Lukito, 2023) the state has a constitutional mandate to prioritize the welfare, economic protection, and employment of its own citizens, given

the still significant domestic unemployment and poverty rates. Providing work space for foreign nationals without strict regulations is feared to trigger horizontal conflict and social jealousy within the local community.

Therefore, an in-depth legal study is needed to formulate proportional legal limitations in the application of limited work rights for foreign refugees. Such legal formulation must be able to bridge two conflicting interests: fulfilling humanitarian values for refugees so they can empower themselves subsistence-oriented in the informal or partnership-based sector, while simultaneously maintaining the country's economic sovereignty and social justice for local communities. Based on this empirical urgency and the lack of normative law, this article is written under the title "Legal Limits to the Implementation of Limited Right to Work for Foreign Refugees Based on Social Justice.".

Research Method

The type of research used by the author in this study is normative legal research. According to Soerjono Soekanto and Sri Mamudji, normative legal research is defined as legal research conducted by examining library materials and statutory documents (Ishaq, 2017:66; Negara, 2023). This approach relies on the analysis of legal norms, principles, and doctrines rather than empirical field data (Negara, 2023). The type of research used is normative legal research, so the approaches in this study are the statute approach, the case approach, and the historical approach. The sources of legal materials used are primary, secondary, and tertiary legal materials. The legal material collection technique used is the document study technique and the legal materials are evaluated, interpreted, argued, and discussed descriptively.

Results and Discussions

Legal Contradictions: National Legal Sovereignty and International Humanitarian Instruments

The implementation of employment rights for foreign refugees in Indonesia stands at a crossroads between protectionist national legal norms and international humanitarian commitments. As a country that has not ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, Indonesia is legally under no international obligation to open its domestic labor market to foreign refugees. The consequences of this legal position are strongly reflected in Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad. This Presidential Regulation limits the role of government agencies to shelter, security, and immigration supervision, leaving no room for the fulfillment of economic rights, including the right to work (Dewansyah & Nafisah, 2021; Putri, 2022).

From a positive legal perspective, the prohibition on employment for refugees is reinforced by Law No. 13 of 2003 concerning Manpower in conjunction with Law No. 6 of 2011 concerning Immigration. Under this legal regime, any foreigner seeking to work in Indonesia is categorized as a Foreign Worker (TKA). To become a formal foreign worker, there are rigid administrative requirements, such as having a corporate sponsor,

valid immigration documents (such as a KITAS), and paying the Foreign Worker Utilization Compensation Fund (DKP-TKA). Foreign refugees, who in fact fled their country of origin without complete documentation (undocumented or irregular migrant status), are automatically unable to meet these legal-formal requirements.

As a result, a legal vacuum (rechtsvacuum) exists that locks refugees in a vulnerable situation: they are prohibited from working, but the resettlement process by UNHCR takes years or even decades. This absolute restriction has sociological and legal implications in the form of a proliferation of illegal refugee workers in the informal sector, which actually harms immigration oversight and eliminates potential retribution for the state (Nola, 2020).

Reconstruction of Limited Employment Rights Based on Social Justice Theory

The concept of "Limited Work Rights" generally refers to restrictions on workers' rights resulting from the implementation of modern employment systems, such as the contract system (PKWT), outsourcing, gig economy work schemes (online motorcycle taxi/freelance partnerships), or restrictions on work rights for vulnerable groups (people with disabilities and migrant workers) (Todolí-Signes, 2017; Stewart & Stanford, 2017; Shepherd, 2025). In the current legal reality, employment regulations often lean more toward exploitative market-driven legal certainty than humanitarian protection. Therefore, legal reconstruction that is, restructuring, improving, and reformulating these limited work rights is necessary to view workers not merely as factors of production but as whole human beings.

Rawls stated that justice can be achieved if the legal system is designed from a position of impartiality (the Veil of Ignorance) (Wenar, 2021). His two key relevant principles are: Equal Liberty Principle: Everyone has an equal right to basic liberties, including the right to work and earn a decent living. Difference Principle: Social and economic inequality is only permissible if it provides the greatest benefit to the least advantaged. In this context, contract/partnership workers are the most disadvantaged group and must be legally protected.

The Pancasila Theory of Social Justice (Principle 5), which states "Social Justice for All Indonesian People," is a concept of justice derived directly from the Indonesian philosophy of life (Lukito, 2023). This theory has unique characteristics that distinguish it from Western theories of justice (such as capitalism and communism), although it shares with Rawls' theory of justice as fairness a concern for protecting the least-advantaged members of society (Fikri, Rambe, & Fatmawati, 2023).

Social justice in the 5th Principle is not merely the equitable distribution of economic benefits, but rather a condition in which all citizens have equal opportunities, rights, and obligations to develop their human potential with dignity. Synthetic Nature (Balance): This justice rejects radical individualism (capitalism) that allows exploitation, but also rejects absolute collectivism (communism) that eliminates private property. Humanistic Justice: Justice must be based on humanity (Principle 2) and divinity (Principle 1). This means that economic development must not sacrifice human dignity.

In Pancasila legal philosophy, social justice encompasses three dimensions of legal relations: Distributive Justice (State to Citizen): The state is obliged to distribute justice to its citizens in the form of providing public facilities, social assistance, health insurance, decent wages, and equal access to education. Legal/Commutative Justice (Citizen to Citizen): Everyone must treat others fairly regardless of ethnicity, religion, race, or social status. Before the law (equality before the law), everyone's rights are equal. Contributive Justice (Citizen to State): Citizens are obliged to participate in developing the nation according to their capacity, for example by regularly paying taxes or complying with applicable laws for the common good.

A regulation or policy is considered aligned with the 5th Principle if it meets the following indicators:

1. Protection of Vulnerable Groups: The policy favors economically disadvantaged groups (such as daily laborers, contract workers, or those with disabilities).
2. Equitable Access: The absence of monopolies or oligarchies that unlawfully control the livelihoods of many.
3. Equitable Prosperity: A significant reduction in the gap (gini ratio) between the poor and the rich.

Reconstructing limited employment rights based on social justice theory does not mean eliminating the flexible work systems required by modern industry. Rather, it aims to balance the unequal bargaining position between employers and workers. Through this reconstruction, labor law shifts from its original capitalist-liberal nature (pursuing market efficiency) to a humanistic-protective one (preserving the human dignity of workers), ensuring that economic progress does not sacrifice the fundamental rights of the working class.

Regulatory Formulation: Legal Limitations and Implementation Mechanisms in Indonesia

In Indonesia, the process of lawmaking cannot be carried out haphazardly or unilaterally. The entire rule-making process is bound by a strict system to prevent overlapping regulations, abuse of power, or disregard for citizens' constitutional rights. Regulatory formulation is the stage of planning, drafting, and discussing a law until it is enacted into law.

Based on Law No. 12 of 2011 concerning the Formation of Legislation (most recently amended by Law No. 13 of 2022), regulatory formulation must go through the following five standard stages:

1. Planning: The draft law is included in the National Legislation Program (Prolegnas) by the House of Representatives (DPR) and the Government, or the Regional Legislation Program (Prolegda) at the regional level.
2. Drafting: The creation of an Academic Paper (scientific research on the urgency of the regulation) and an initial draft of the regulation. At this stage, the principle of meaningful participation must be applied, namely the public's right to have their opinions heard, their considerations taken into account, and their input explained.

3. Discussion: The draft is discussed jointly by the legislative (DPR/DPRD) and executive (President/Regional Head) institutions to reach mutual agreement.
4. Ratification: The jointly agreed-upon regulation is ratified with the signature of the Head of State (President) or Regional Head (Governor/Regent/Mayor).
5. Promulgation: The regulation is entered into the State Gazette or Official News by the Ministry of Law to officially bind the entire public (legal fiction).

The government may not arbitrarily restrict human rights. Restrictions on citizens' rights (such as restrictions on work rights or restrictions on freedom) are only legally valid if they meet the requirements in Article 28J paragraph (2): They must be stipulated by law (not by subordinate regulations such as Presidential Regulations or Regional Regulations). They must aim to guarantee recognition and respect for the rights of others. They must meet just demands in accordance with moral considerations, religious values, security, and public order.

After a regulation is promulgated, an implementation and oversight mechanism is in place to ensure that the regulation is effective, fair, and has legitimate coercive power (enforcement). Socialization: The government is obliged to disseminate new regulations so that the public is aware of their rights and obligations. Issuance of Implementing Regulations: Laws often require technical Government Regulations (PP) or Ministerial Regulations (Permen) to be enforced in the field. Law Enforcement: Law enforcement officials (police, civil servant investigators/PPNS, prosecutors, judges) monitor and impose sanctions (which can be administrative, civil, or criminal) on parties who violate these regulations.

The relationship between formulation, legal boundaries, and implementation mechanisms can be described as a system of checks and balances. A good formulation must consider legal boundaries from the outset (both the hierarchy of regulations and the constitutional rights of the public), so that when the implementation mechanism is implemented, the regulation is effective, fair, authoritative, and cannot be easily overturned by judicial institutions (the Constitutional Court or the Supreme Court).

Conclusion

Foreign refugees in Indonesia are trapped in a legal vacuum (rechtsvacuum) regarding the fulfillment of their economic rights. As a non-ratifying country of the 1951 Convention, Presidential Decree No. 125 of 2016 only views refugees from the perspective of humanitarian emergencies and immigration. This absolute work ban is reinforced by the Employment Law and the Immigration Law, which block access for undocumented individuals, forcing refugees into the illegal and unsupervised informal labor sector. The application of social justice based on the concept of Justice as Fairness by John Rawls and the Fifth Principle of Pancasila gave birth to the concept of "Limited Right to Work." This concept successfully balances the basic right to life (right to livelihood) for refugees without violating the rights of local citizens to decent work (Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia). This restriction positions refugees not as economic competitors, but as independent and empowered legal subjects. Legal restrictions on limited work rights can be implemented

safely through four instruments, namely: restrictions on employment in specific non-formal sectors (creative/digital industries), micro-business partnership schemes (self-employment) involving local residents, restrictions on geographic scope (zoning/special areas), and the issuance of special work permits that are fully controlled by the Indonesian immigration authorities.

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