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Implications of Non-Refoulement for Refugees and Asylum Seekers Suspected of Serious Crimes from an International Law Perspective

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Abstract: The principle of non-refoulement is a fundamental norm of international law that prohibits countries from returning refugees or asylum seekers to territories where they are at risk of torture, ill-treatment, or serious threats to their life and freedom. Its implementation faces challenges when refugees or asylum seekers are suspected of being involved in serious crimes, such as terrorism, war crimes, or transnational crimes. This study uses a juridical-normative approach by examining international legal instruments, including the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (Article 33 on non-refoulement and Article 1F on exclusion clauses), and the Convention Against Torture (CAT) Article 3. At the national level, the study refers to Law No. 6 of 2011 on Immigration and Presidential Regulation No. 125 of 2016 on the Handling of Refugees from Abroad. The analysis shows that although exclusion clauses allow countries to refuse protection to perpetrators of serious crimes, the principle of non-refoulement remains binding when there is a risk of torture or inhumane treatment. Thus, states need to prioritize alternative mechanisms such as domestic prosecution (*aut dedere aut judicare*), extradition with guaranteed human rights protection, or resettlement in a third country. This study recommends the creation of a comprehensive national refugee law to balance international obligations, human rights protection, and state sovereignty.

Keywords: Non-Refoulement, Refugees, Asylum Seekers, Serious Crimes, International Criminal Law

INTRODUCTION

The principle of non-refoulement is a fundamental norm in international law that prohibits a country from returning refugees or asylum seekers to their country of origin where they face a serious threat to their life, liberty, or physical safety (Gustini, 2023). This norm is the primary foundation of refugee protection, recognized in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (Nyambi, 2025). Its implementation reflects a state's responsibility to respect human rights while upholding international obligations

without compromising national interests (Achnisundani, 2025). Non-refoulement is not merely a moral principle but also a legal obligation binding all states, including those not officially party to the Convention (Setyardi, 2025). This principle emphasizes that the protection of refugees is non-negotiable, especially when they face extreme risks of persecution or violence (Utomo, 2025).

The implementation of non-refoulement faces complex challenges when refugees or asylum seekers are suspected of serious criminal offenses (Nugraha, 2023). Serious crimes can include terrorism, war crimes, crimes against humanity, or transnational crimes such as human trafficking and drug trafficking (Ramadhan, 2023). States have an interest in upholding the law and maintaining public security, while international obligations continue to demand the protection of refugee rights (Ninin Ernawati, 2023). This tension creates a dilemma between maintaining national security and fulfilling international legal responsibilities. This issue demands a thorough understanding of how the principle of non-refoulement can be applied without violating refugee rights or law enforcement obligations.

The significance of this study is crucial for states, law enforcement officials, and international institutions. States need a clear legal basis and mechanisms to handle cases of refugees suspected of serious crimes (Syahrin, 2019). Law enforcement officials must understand the scope of non-refoulement obligations to avoid human rights violations (Nelwan, 2024). This study is also relevant for international institutions such as the UNHCR, which provides operational guidance regarding refugee status and their protection. This research seeks to provide a theoretical foundation to support the formulation of fair law enforcement policies and strategies.

The principle of non-refoulement has a strong basis in international law, particularly through Article 33 of the 1951 Convention Relating to the Status of Refugees (Taufik, 2025). This article prohibits the expulsion or return of refugees to territories where their safety is threatened. The scope of this principle includes serious threats to life, liberty, and physical safety. The principle's primary objective is to ensure refugees receive adequate protection without risk of persecution (Abdul, 2024). The UNHCR's interpretation emphasizes that non-refoulement is absolute in relation to the risk of persecution, including threats to freedom of expression or religion (Sumampouw, 2024).

The exclusion clauses contained in Article 1F of the 1951 Convention allow states to deny protection to individuals who have committed serious crimes. These exclusions target those involved in serious crimes such as war crimes, crimes against humanity, or serious criminal acts that endanger the international community (Wijayati, 2022). The application of these clauses is not absolute, as the risk of torture or inhumane treatment in the destination country remains a major limitation. Article 3 of the CAT emphasizes that states may not return individuals to territories where they risk torture (Saraswati, 2025). The combination of non-refoulement and exception clauses demonstrates a balance between refugee protection and law enforcement against serious crimes.

International criminal law stipulates a state's obligation to prosecute or extradite perpetrators of serious crimes through the principle of *aut dedere aut judicare* (Putri, 2021). This principle emphasizes that states must choose between prosecuting the perpetrator themselves or handing them over to a competent state (Fahamsyah, 2022). Types of serious crimes of concern include terrorism, war crimes, genocide, and transnational crimes that harm the international community (Osak, 2023). This obligation arises from various international instruments, including the Rome Statute of the International Criminal Court and specific conventions such as the International Terrorism Convention (Satria, 2025). The application of this principle ensures that perpetrators of serious crimes do not escape legal accountability.

State sovereignty grants a state the right to enforce the law within its territory. This right includes the authority to arrest, detain, and prosecute individuals suspected of committing crimes (Rusadi, 2025). Conflicts arise when international obligations prevent refugees from being returned to their home countries, where they face the risk of persecution. The tension between sovereignty and international obligations demands a legal mechanism that balances the interests of both parties. Legal theory analysis shows that states have discretion in enforcing the law, but cannot ignore internationally recognized human rights obligations (Marentek, 2018).

The interaction between state rights and international obligations requires a careful interpretation of the principle of non-refoulement. States cannot simply deny protection to refugees based on alleged crimes without considering the risk of torture or inhumane treatment. Case-by-case evaluation is necessary to ensure that decisions are made without violating international law. The principles of proportionality and the protection of human rights must guide decision-making (Mardiyanto, 2024). Best practices from other countries demonstrate the need for transparent and fair procedures for determining refugee status. The combination of the principle of non-refoulement, exception clauses, and international criminal law obligations creates a complex normative framework. This framework must be thoroughly understood by policymakers, law enforcement officials, and international institutions. Violation of any one element can have legal implications and international reputational implications for a country. These principles also serve as a guide for developing standard operating procedures for handling refugees suspected of serious crimes. This study presents a theoretical basis for building a protection system that aligns with international law.

A thorough understanding of these principles is the foundation for a just refugee policy. States need to prioritize mechanisms that respect refugee rights while fulfilling international obligations against serious crimes. This study emphasizes balancing national interests and human rights protection. The principle of non-refoulement, if consistently applied, can be an important instrument in maintaining legal integrity and refugee protection. An international law-based approach helps states make legal, fair, and accountable decisions..

METHOD

This research uses a juridical-normative approach with a focus on the study of laws and regulations and a conceptual approach to analyze the implications of the principle of non-refoulement for refugees and asylum seekers suspected of committing serious crimes. The legal approach is carried out by examining relevant international legal instruments, including the Convention Relating to the Status of Refugees 1951 and its Protocol 1967 (Article 33 and Article 1F), as well as the Convention Against Torture (CAT) Article 3, which serve as the normative basis for refugee protection. At the national level, the analysis focuses on Law No. 6 of 2011 concerning Immigration and Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad, including administrative procedures, detention mechanisms at Rudenim, and the roles of related agencies such as Immigration, the Indonesian National Police, the Ministry of Foreign Affairs, and cooperation with UNHCR. A conceptual approach is used to understand the principles of international law, human rights, state sovereignty, and state obligations in enforcing international criminal law, including the concepts of *aut dedere aut judicare*, extradition with human rights guarantees, and resettlement in a third country. The combination of these two approaches allows the research not only to examine positive legal provisions but also to comprehensively evaluate the interaction of international legal norms with national practices and their implications for refugee protection, security interests, and state sovereignty. This investigation is systematically structured through document reviews, case studies, and comparisons of

international practices to produce logical, relevant conclusions that can be used as a basis for policy recommendations.

RESULT AND DISCUSSION

National Legal Framework, Related Regulations, and Implementation of Refugee Management in Indonesia

Indonesia is not a party to the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol, so the legal status of refugees in Indonesia is not specifically regulated in national law. It results in the lack of official recognition for refugees in Indonesia and limited access to formal legal protection. The Indonesian government tends to handle refugees through a collaborative mechanism with the United Nations High Commissioner for Refugees (UNHCR). UNHCR is responsible for registering, verifying identities, and providing temporary documents that enable refugees to access basic protection and services. This situation presents challenges because refugees remain in a vulnerable legal position without a clear national status.

Refugee management in Indonesia is generally carried out through official registration with UNHCR. This process includes identity verification, interviews, and recording personal data and background information. Each registered refugee will receive a temporary identification document from UNHCR, which can be used to access health services, education, and limited social assistance. This mechanism requires close coordination between UNHCR and government agencies, including the Ministry of Foreign Affairs, the Ministry of Social Affairs, and the Directorate General of Immigration. This system continues to face resource and capacity constraints, resulting in many refugees encountering difficulties accessing basic services.

The number of refugees in Indonesia varies from year to year, with the majority coming from conflict-ridden countries such as Afghanistan, Somalia, Sudan, and Syria. Their presence poses administrative challenges related to aid distribution, access to education, and healthcare. Furthermore, differences in language, culture, and legal status complicate coordination between refugees, the government, and international organizations. Refugees are vulnerable to exploitation or discrimination due to their lack of clear national legal protections. This underscores the importance of collaborative mechanisms between the government and UNHCR to ensure the basic rights of refugees.

The legal status of refugees in Indonesia is limited. Refugees registered through the UNHCR receive temporary documents that allow them to access basic services, but lack permanent residency rights or formal work permits. They remain vulnerable to administrative detention in Immigration Detention Centers (Rudenim) if they are deemed to have violated immigration regulations. Their rights to freedom of movement, access to education, and employment are limited and dependent on government and UNHCR policies. The lack of official recognition of refugee status limits their ability to plan for their long-term lives in Indonesia.

The main obstacles arising from the lack of official recognition of refugee status are legal uncertainty and a higher risk of administrative detention. Refugees lack direct access to national legal mechanisms to challenge detention or deportation. This also complicates government coordination with international agencies in addressing refugees requiring special protection, including vulnerable children and women. This situation poses a risk of human rights violations and limits the effectiveness of UNHCR assistance. The government must find solutions that balance national security and human rights protection.

Law Number 6 of 2011 concerning Immigration serves as the primary legal basis for regulating foreigners in Indonesia. Article 75, paragraph (1) authorizes immigration officials to take administrative action against foreigners who lack valid travel documents or violate

their stay permits. Article 77 regulates the mechanism for filing objections to such administrative actions, with the Minister's decision being final. Meanwhile, Article 78 underscores immigration oversight procedures, including data collection, monitoring of whereabouts, and photographing and fingerprinting foreigners. Although this law does not explicitly regulate refugee status, its implementation needs to be adjusted to align with the principle of non-refoulement and ensure the protection of refugee rights.

Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad provides an operational framework for the Indonesian government. This Presidential Regulation establishes the roles of the central and regional governments and the coordination mechanism between agencies, including Immigration, the National Police, the Ministry of Foreign Affairs, and the Ministry of Social Affairs. Articles 2 through 5 regulate the registration, identification, and handling of refugees, including their access to basic services and temporary protection. This Presidential Regulation also recognizes the involvement of UNHCR in data collection and the provision of temporary identification documents. The implementation of this Presidential Regulation is the government's primary instrument for practically enforcing the principle of non-refoulement.

Immigration Detention Centers (Rudenim) are the primary facilities for detaining refugees deemed to have violated immigration regulations or suspected of criminal activity. At Rudenim, refugees are entitled to basic services such as food, healthcare, and limited access to communication. Detention mechanisms must take into account refugee status and the risk of inhumane treatment, especially for vulnerable groups such as children and pregnant women. Coordination between Immigration, the Indonesian National Police, the Ministry of Foreign Affairs, and the UNHCR is crucial to guarantee basic rights during detention.

Procedures for handling refugees suspected of serious crimes require a clear investigative mechanism. Law enforcement officials can conduct investigations if there are indications of the refugee's involvement in serious crimes such as terrorism or human trafficking. Investigations must continue to respect refugee rights, including the right to a lawyer, the right not to be tortured, and the right to access UNHCR. The duration of detention must comply with Law No. 6 of 2011 and human rights principles. Case studies in Indonesia demonstrate the need for standard operating procedures (SOPs) that integrate national legal obligations and refugee protection.

Implementation issues arise from the legal vacuum regarding domestic status determination for refugees. There is no official mechanism for determining the legal status of refugees in Indonesia, so any handling of cases depends on official interpretation and cooperation with the UNHCR. This creates legal uncertainty and the potential for abuse of authority. Conflicts between international obligations and state sovereignty arise when refugees suspected of serious crimes are extradited or detained. This issue highlights the need for clearer national regulations to balance legal interests and refugee rights.

Operational challenges also include limited resources, inter-agency coordination, and substandard detention procedures. Refugees often face limited access to basic services, including health and education, due to limited facilities and budgets. The risk of human rights violations increases if detention procedures do not follow international standards. The gap between refugee practices and international law demands reform of national regulations. Recommendations include the creation of a comprehensive national refugee law to guarantee the rights and protection of refugees while fulfilling international legal obligations.

Analysis of the Implications of International and National Law for Refugees and Asylum Seekers Suspected of Serious Crimes

The principle of non-refoulement stipulates that refugees or asylum seekers may not be returned to their country of origin if there is a serious threat to their life or freedom. This provision is enshrined in Article 33 of the 1951 Convention Relating to the Status of Refugees, which prohibits direct or indirect expulsion or return. Countries dealing with refugees suspected of serious crimes often face a dilemma between protecting the rights of refugees and enforcing national laws. Law enforcement against serious crimes can be limited due to the risk of violating the principle of non-refoulement. Decisions to detain or extradite refugees must consider the possibility of torture, execution, or inhumane treatment in the destination country.

The case of refugees suspected of involvement in serious crimes demonstrates the complexity of implementing this principle. Law enforcement officials in Indonesia must weigh the risk of return to their country of origin against the serious threat to the refugee's safety. Analysis of international law shows that Article 3 of the Convention Against Torture (CAT) reinforces the prohibition on return if there is a risk of torture. This principle limits deportation and detention policies, requiring law enforcement to adjust procedures to avoid violating international obligations. This protection applies even if the refugee is suspected of committing a serious crime, as long as the risk of persecution remains high. The conflict between national interests and international obligations is clearly evident when a state seeks to extradite suspects of serious crimes. Governments have the right to protect public security, enforce the law, and prevent transnational crime. However, these rights must be balanced with the obligation to respect the rights of refugees and avoid actions that put them at risk of torture or inhumane treatment. This analysis demonstrates the need for flexible national legal policies based on human rights principles. An approach that prioritizes human rights protection helps reduce the risk of violations of international law.

Article 1F of the 1951 Convention provides an exception for individuals who have committed serious crimes, including war crimes, crimes against humanity, or serious criminal acts abroad. This exception allows states to deny refugee protection to perpetrators of serious crimes. The application of this clause is limited when there is a risk of torture or inhumane treatment if the individual is returned to their country of origin. States must interpret this exception carefully to avoid violating the principle of non-refoulement. This approach emphasizes the importance of risk assessment before decisions on detention or deportation are made.

States can interpret Article 1F with the precautionary principle, ensuring that individuals who commit serious crimes remain protected from serious threats. In some cases, refugees suspected of serious crimes may still not be returned to their country of origin due to the risk of persecution or torture. This is illustrated by the cases of refugees linked to armed conflicts in Syria or Africa, where deportation could threaten their lives. This interpretation balances the rights of refugees with the state's obligation to maintain public security. Careful application helps prevent potential serious human rights violations.

Alternative mechanisms provide a practical solution for dealing with refugees suspected of serious crimes. One mechanism is domestic prosecution (*aut dedere aut judicare*), where a state prosecutes individuals on its own territory. This mechanism allows for law enforcement without violating the principle of non-refoulement. Domestic prosecution procedures must ensure due process and the protection of refugees' rights. This strategy balances international obligations and national security.

Extradition with human rights guarantees is the second mechanism. The state receiving the extradition request is obliged to provide guarantees that the individual will not be subjected to torture, execution, or inhumane treatment in the destination country. This

mechanism complies with the provisions of CAT Article 3 and the principle of non-refoulement. The challenge lies in ensuring the validity of guarantees and the ability to monitor their implementation. Extradition with human rights guarantees is a common practice in European countries as a solution for suspects of serious crimes.

Resettlement in a third country is an effective third option. Refugees who cannot be returned to their country of origin are placed in a third country willing to provide protection and undergo legal procedures. This mechanism minimizes the risk of violating the principle of non-refoulement. Challenges to this mechanism include negotiating with the third country and the readiness of legal and social facilities to accommodate refugees. Examples of third-country implementation can be seen in the Syrian refugee relocation programs of several European countries.

The implementation of non-refoulement impacts Indonesia's immigration policy. The duration of refugee detention in detention centers (Rudenim) must be adjusted to ensure it does not exceed reasonable limits. Refugees' rights to access a lawyer, the right to appeal, and access to the UNHCR must be guaranteed. This procedure requires the government to align operational practices with international human rights standards. Other impacts include the need for training of law enforcement officers and standard operating procedures (SOPs) that adhere to the principle of non-refoulement.

Immigration policies that consider the principle of non-refoulement encourage the government to develop humane detention mechanisms. Refugees' rights to basic services, education, and health care must be guaranteed throughout the legal process. Failure to guarantee this right could potentially lead to international prosecution and criticism from human rights organizations. The defense must be combined with law enforcement against serious crimes. This approach balances national security interests and international obligations.

A comparative study demonstrates Australia's practice of detaining refugees in special centers with limited legal protections, but still ensuring an assessment of the risk of return. Several European countries emphasize status determination procedures, where refugees' status is assessed before detention or deportation. Risk assessments and human rights guarantee mechanisms are standard practices to ensure the principle of non-refoulement is not violated. This analysis provides lessons for Indonesia in developing national legal mechanisms that align with international standards.

Lessons learned from other countries emphasize the need for clear legal guidance, officer training, and inter-agency coordination. Adaptation of best practices must take into account national legal capacity and resources. Law enforcement against refugees suspected of serious crimes can be carried out through domestic mechanisms, extradition with human rights guarantees, or resettlement in a third country. This approach maintains a balance between public security and refugee rights.

The implementation of the principle of non-refoulement in Indonesia can be optimized through national regulations that combine security interests with human rights protection. Integration of alternative mechanisms, rigorous risk assessment, and humane detention procedures is key to success. Implementing international experience can serve as a reference for improving the effectiveness of refugee policies. This analysis shows that compliance with international law and human rights principles must remain the basis for legal decision-making regarding refugees suspected of serious crimes.

CONCLUSION

The application of the principle of non-refoulement presents a complex dilemma between international obligations, refugee rights, and state sovereignty. States must detain or extradite refugees suspected of serious crimes, but remain bound by the prohibition on return to their country of origin if there is a serious threat to their life or freedom, as stipulated in Article 33 of the 1951 Convention Relating to the Status of Refugees and Article 3 of the Convention Against Torture. Exceptional clauses, such as Article 1F of the 1951 Convention, provide flexibility for states to refuse protection to perpetrators of serious crimes, but do not absolve them of the obligation to protect against torture or inhumane treatment. This conflict requires states to develop balanced legal and policy mechanisms, including humane detention, legal access, assessment of the risk of return, and alternatives such as domestic prosecution, extradition with human rights guarantees, or resettlement in a third country. A comparative analysis of practices in Australia and European countries highlights the importance of standardized procedures, inter-agency coordination, and mechanisms for protecting refugee rights consistent with international law.

Legislative proposals and operational policies are crucial steps to strengthen national legal frameworks. A National Refugee Bill could include a clear status determination mechanism, an exception procedure for suspects of serious crimes, human rights protections, and access to courts or other legal settlement mechanisms. Standard operating procedures (SOPs) for authorities should include guidelines for establishing evidence, guarantees of non-refoulement, humane detention procedures, and procedures for handling extraditions in accordance with international obligations. The implications of international cooperation are also crucial, through bilateral or multilateral agreements governing the admission of refugees or asylum seekers suspected of serious crimes, so that countries can effectively and sustainably balance protection obligations with national security interests.

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