

Application of Immigration Law on Foreign Persons of UNHCR Card Holders Criminal Action (Case Study of Tangerang Immigration Office)

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Abstract: *The flow of global population migration from the country of origin to other countries, has caused various problems, one of which is about refugees (refugee issues). One cannot get refugee status only based on recognition. Then a mechanism was made to determine the eligibility of a person to accept refugee status. In Indonesia this process is carried out by UNHCR as an institution which is an international mandate to protect cross-border refugees and asylum seekers. This research was conducted to find out 1) How to Refugee Handling Procedures in Indonesia in the Immigration Law Perspective; 2) What is the Efforts to Enforce Immigration Laws Against Foreign Refugee Card Holders (UNHCR) Actors in Criminal Acts in Indonesia To Prevent Increased Criminal Rates By Foreigners. This research method uses a normative juridical approach namely research aimed at policy issues in establishing and formulating the Criminal Acts of UNHCR Card Holders and the application of sanctions. The results of this study can be explained that 1) Article 3 of the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 of 2016 concerning the Handling of Illegal Immigrants Who Declare as Asylum Seekers or Refugees states that foreigners who have obtained refugee status from UNHCR in Indonesia his residence permit cannot be disputed while in Indonesia as long as it does not violate laws and regulations. In the event of violations or criminal acts related to a person's status as a refugee, the immigration authority has the authority to conduct Oversight and Investigation; and 2) Foreigners who violate the law in Indonesian territory and receive punishment according to court decisions. After undergoing a criminal sentence process a foreigner may be subject to administrative immigration measures in the form of deportation from Indonesian territory. But the implementation of administrative immigration sanctions against Rafael Nadal encountered obstacles because he was a refugee card holder. As a subject of refugee card holders that has been determined by UNHCR, Rafael Nadal is internationally protected. As based on applicable regulations, foreigners holding a UNHCR card are required to comply with the laws and regulations in force in Indonesia.*

Keywords: Refugees, Immigration Law, Refugee Card Holders

1. Background

The increase in world population is increasing rapidly at the end of the second millennium marked by an imbalance between the birth rate (natality) which is greater than the death rate (mortality) this is partly due to the increased quality of community services and human life expectancy, but also followed by an uneven increase in population resulting in new problems in the life sector¹. The world population currently reaches 7.53 billion people², as well as differences in levels of density between countries resulting in disparities in levels of welfare between countries caused by disputes between countries, factors of poverty, race, religion and culture. This globally results in the flow of human movement not only in the domestic, regional but also in-country or international population migration. Movement of people moving across national borders in an individual or group manner.

The term migration is derived from the Latin word 'migratio' which means the movement of people between countries. Long enough the term migration is only limited to seeing aspects of population movement, without looking at other aspects. This calcic view refers to the International Conference on Emigration and Immigration in 1924 in Rome, giving a definition of immigration as: "Human mobility to enter a country with its purpose to make a living for residence", which means that migration only means moving people to enter a country with the intention to move, have the opportunity to support themselves and settle there³. The flow of global population migration from the country of origin to other countries, causing various problems, namely illegal immigrants, human trafficking, people smuggling, and refugee issue⁴. This problem is an important issue that must be faced by a country and internationally. As the problem in this paper focuses on "refugee issues" which are classic problems that arise in human civilization as a result of fear that greatly threatens their safety, that threat can be caused by reasonable fear of persecution on the grounds of race, ethnicity, religion, nationalities, membership of certain

¹ Alfana, M.A.F., 2017. Mortalitas di Indonesia (SejarahMasaLaludanProyeksikeDepan).

² Suryaningih, R., 2018. AnalisisPengaruhFaktorSosialEkonomiterhadapTingginyaMortalitasPenduduk.Economics Development Analysis Journal, 6(4), pp.458–468.

³ Beckman, L., Is Residence Special? Democracy in the Age of Migration and Human Mobility.Territories of Citizenship.

⁴ Anon, 1994. Refugee Survey Quarterly—Double Issue Out Now. International Journal of Refugee Law, 6(4), pp.659–660.

social groups, and different political opinions and do not want protection from the country of origin. This large-scale population movement is a problem that extends to the problems of a country and internationally.

According to statistics released by the United Nations High Commissioner for Refugee (UNHCR), 2014 has been a year of surge in the number of refugees in the world, since the outbreak of the Syrian war in 2011 which later contributed to a large number of refugee populations.⁵In 2014, there were 55 million displaced people. In addition to covering cross-border refugees, this number also includes domestic refugees or known as Internally Displaced Person (IDP)⁶.

Other problems arise along with the increasing number of refugees in the world such as security, economic-trade, political instability, and so on. Therefore, in handling refugees, high management, cooperation and integration of the parties in the refugee regime is needed. In the refugee regime, the terms north and south countries are also known, namely the division of states based on two characteristics. The first characteristic is socio-economics. The north country refers to the terms countries with a well-established economy, and advanced trade or industry. The second characteristic is politics. North refers to countries that have certain political influence in the international community. Based on these two characteristics, the north countries include countries in Europe, Russia, the United States, Canada, countries of the Arabian Gulf region, and several countries in Asia, such as Japan, Singapore, South Korea, and China.

In dealing with issues related to handling refugees, countries with more established economic and political capacities in the Middle East region in fact tend to avoid and this has resulted in a build-up in three countries, Lebanon, Turkey, and Jordan, which in this case represent the southern states that have lower economic and political capacity. According to UNHCR⁷, all three are the largest recipient countries in the world.

As of June 30, 2016, Turkey was ranked as the first largest recipient, amounting to 2,773,800 inhabitants⁸. Then, Lebanon ranked second in revenue, based on its relative population, Lebanon received 1,035,700 inhabitants⁹, equivalent to a quarter of the Lebanese population. Means, every thousand Lebanese citizens, 173 of whom are refugees. Third place is Jordan. Every thousand citizens, 89

of whom are refugees. Then, North's reluctance also indirectly contributes to various threats to stability, both for the lives of refugees, recipient countries, and for the global order.

For reasons of protecting themselves from threats that may arise from the presence of refugees in a country, the refugee area is also placed in remote areas that are far from access to basic daily needs, such as logistics, food, water availability, education services and health services¹⁰. Other problems that arise include in Turkey, namely problems related to the concentration of refugees in Turkey¹¹. Turkey is involved in an agreement with the European Union, which entered into force on 20 March 2016 in sending or transferring refugees to other countries. The one-in-one-out principle is one of the agreements between Turkey and the European Union, namely restrictions on immigrants leaving from Turkey for Greece. This restriction only allows one person to enter when one person has left. Those whose requests are rejected will be returned to Turkey and immigrants who have obtained official refugee status in Turkey will be sent and accepted in Europe without review¹². This has an impact on the increasing number of refugees in Turkey and cannot be maximally channeled to other countries around it in accordance with the mandate of the 1951 UN Convention on Refugee Status.

Problems that arise in the handling of refugees that are considered not maximally pose threats to global stability. First, namely what happened in Greece and Germany.both are countries that accommodate large numbers of refugees. Teen refugees - even minors - are forced to get involved in prostitution and drug circles¹³. Prostitution of refugees in the two countries is different from what happened in Lebanon. All CSWs involved are male refugees, in fact, some of whom are still 15 or 16 years old. They are also forced to engage in various kinds of crime, such as stealing, cheating, and so on¹⁴.

One cannot get refugee status based solely on recognition. Then a mechanism was made to determine the eligibility of a person to accept refugee status. The mechanism is called Refugee Status Determination (RSD)¹⁵or Determination of refugee status. In Indonesia this process is carried out by UNHCR as an institution which is an international mandate to protect cross-border refugees and asylum seekers. In addition, in handling refugees in Indonesia, the International Organization for Migration (IOM) is an international non-

⁵ Piotrowicz, R., 1996. Refugee Status and Multiple Nationality in the Indonesian Archipelago: Is there a Timor Gap? *International Journal of Refugee Law*, 8(3), pp.319–346

⁶ UNHCR, Data Statistic 2019 <https://www.unhcr.org/figures-at-a-glance.html>, accessed on 28 Agustus 2019.

⁷ Chaaban, J.M. et al., 2013. Poverty and Livelihoods Among Unhcr Registered Refugees in Lebanon. *Refugee Survey Quarterly*, 32(1), pp.24–49.

⁸ Loescher, G., 2001. The Emerging Independence of the UNHCR Under Auguste Lindt. *The UNHCR and World Politics*, pp.81–101.

⁹ Rahsti, Nonna Garsia. 2017. Upaya United Nations High Commissioner for Refugees (UNHCR) dalam menangani Syrian Refugees Crisis di negaratetangga Suriah (Turki, Irak, Libanon, Yordania) periode 2013-2015.

¹⁰ Jordan INGO Forum, 2018. Syrian Refugee in Jordan, A Protection Overview [PDF Daring]. Tersediadalam <https://reliefweb.int/sites/reliefweb.int/files/resources/JIF-ProtectionBrief-2017-Final.pdf> [Accessed on 22 Agustus 2019]

¹¹ Anderson, J. (2013). Policy Report on UNHCR's Community Technology Access Program: Best Practices and Lessons Learned. *Refuge: Canada's Journal on Refugees*, 29(1), 21-30.

¹² Pertiwi, L. A. (2016). Kompleksitas Rezim di Uni Eropa: Upaya Penanganan Pengungsi dan Pencari Suaka. *Jurnal Ilmu Sosial dan Ilmu Politik*, 19(3), 218-233.

¹³ Poli, M. E. (2017). *Kebijakan Hungaria Terhadap Krisis Pengungsi Di Kawasan Eropa* (Doctoral Dissertation).

¹⁴ Suyanto, B. (2010). *Masalah sosial anak*. Kencana.

¹⁵ Pobjoy, J.M., The Child and the Refugee Status Determination Process. *The Child in International Refugee Law*, pp.44–78.

governmental organization that is a partner of the Indonesian government based on a Memorandum of Understanding (MoU) with the government of the Republic of Indonesia¹⁶. The aim of IOM itself is to promote orderly and humane migration that benefits all parties by providing services and advice to the country and for migrants and IOM is an international organization that finances with contributions from members of IOM participants. In implementing the transfer of refugees from Indonesia to other countries, UNHCR also collaborated with IOM. This includes domestic movements within Indonesian territory, due to considerations of racial conflict, family unification, and / or other reasons not listed in the Indonesian government budget.

The Immigration Class I Non TPI Tangerang Office in the past 5 years has handled at least two cases involving foreigners holding a UNHCR card who committed a crime. Each of these foreigners committed a crime in the form of drug use and document falsification to obtain a Republic of Indonesia Travel Document in the form of a Passport. The judge's decision has ruled that they are required to serve a sentence at the Correctional Institution (Lapas) during the period specified in the judge's decision. However, the problem is that after they finish serving their sentences, they do not go to deportation. The involvement of UNHCR in preventing foreigners holding a UNHCR card from being deported. By not deporting foreigners who hold a UNHCR card after committing a crime, then this is considered to potentially threaten the Indonesian people by increasing the level of crime by foreigners.

Formulation of the problem

Based on the description above, then the next problem can be formulated as follows:

- 1) What is the Procedure for Handling Refugees in Indonesia in the Perspective of Immigration Law?
- 2) What is the Efforts to Enforce Immigration Laws Against Foreign Refugee Card Holders (UNHCR) Actors in Criminal Acts in Indonesia To Prevent Increased Criminal Rates By Foreigners?

Research purposes

Every study requires a study that can give direction to the research conducted. Based on the description of the background and problems above, the research objectives are as follows

- 1) To find out the Procedure for Handling Refugees in Indonesia in the Immigration Perspective;
- 2) To find out the application of Immigration Laws to Foreigners of Criminal Acts of Refugee Card Holders (Case Study of the Tangerang Immigration Office).

2. Research Methods

Approach Method

The main problem in this study is in understanding the problem of Criminal Actions of UNHCR Card Holders,

especially for foreigners, it is necessary to know that there are other legal regulations at the level of laws relating to the rules of entry and exit of Indonesian territory, namely Act Number 6 of 2011 concerning Immigration. Considering that the Criminal Act of this case is a category of Immigration Law Violations in the territory of Indonesia whose scope is between countries, and in the process every incident must cross the national borders whose provisions are regulated in the Immigration Act. In relation to trafficking in persons which includes recruiting, recruiting, transporting, transporting, transferring, or receiving someone with threats of violence, use of force, abduction, confinement, forgery, fraud, abuse of power or vulnerable position, debt bondage or payment or benefits, so as to obtain the agreement of the person in control of that other person, whether carried out within the state or between countries, for the purpose of exploitation or to cause the person to be exploited¹⁷.

The target of this research is research aimed at policy issues in establishing and formulating criminal acts. The Criminal Act of the UNHCR Card Holder and the application of sanctions, the approach uses a normative juridical approach. The normative juridical approach used initially used positive legal inventory research which was a preliminary activity that was fundamental to conducting legal research. It also uses a systematic study of law that is used to find basic understandings in the legal system as well as research on legal principles that will be used to examine the application of criminal law principles.

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The type of data needed in this study is primary data, that is data obtained in the field and secondary data, namely library research. However, this research is mainly focused on secondary data because the nature of this study is normative, while primary data is used as a support to sharpen the analysis.

Data sources used consist of primary sources and secondary sources. For secondary data obtained through primary materials, namely the laws in force in Indonesia. Secondary legal materials are used in the form of expert opinions, scientific work, articles, papers and research results.

For primary data obtained through interviews with law enforcement officers in this case the judge as the holder of the judicial power who holds the power to impose a criminal offense against the perpetrators of the crime of UNHCR Card Holders, especially for foreigners.

¹⁶ Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 concerning Handling of Illegal Immigration Who Declares Self As an Asylum Seeker or Refugee, Article 1 paragraph (5).

¹⁷ Act Number 21 of 2007 concerning Criminal act of people-trafficking Eradication. Article 1 paragraph 1.

Data Collection Technique

Based on the approach and data in this study, the data collection methods used are:

Literature Study and Document Study, i.e., examining primary and secondary legal materials related to criminal law policies in the handling of the Criminal Acts of UNHCR Card Holders.

Data obtained through library research, and observations are processed in identification, classification, systematic and analysis. In accordance with the normative **judicial approach** that emphasizes secondary data, then the strategy or approach used in analyzing data is a **qualitative analysis method**. The qualitative analysis used is **descriptive and perspective**, which will try to provide existing data and assess it and then analyze existing problems relating to the application of the criminal law of the UNHCR Card Holder People and contribute in the form of solutions to overcome the problem.

3. Discussion**A. The Application of Immigration Law on the Criminal Case of UNHCR Card Holder Case Study: Rafael Nadal**

Immigration regulations in Indonesia are based on Law Number 6 of 2011 concerning Immigration, which stipulates the procedure for people entering and leaving Indonesian territory which includes administrative and immigration criminal acts against violations of immigration norms. Any person who commits an immigration violation, either an Indonesian citizen or a foreigner, may be subject to sanctions in accordance with the acts committed.¹⁸ In the implementation of punishment or regulations of a country can be seen from the legal system based on certain legal sources of norms. The legal system itself has the highest authority in a sovereign state, a sovereign state has exclusive rights in the form of power, namely:

- 1) Power to control domestic problems;
- 2) Power to receive and expel strangers;
- 3) Special privileges to open diplomatic representation in other countries;
- 4) Full jurisdiction for crimes committed by representatives in their territories. The state is said to be sovereign if a country has the highest authority, namely regulations.

However, this supreme power has its limits, what is meant by boundaries, namely the territory of a country. Understanding sovereignty as supreme power contains two important limitations in itself, namely:¹⁹

- 1) Power is limited to the territorial borders of the countries that possess that power;
- 2) That power ends when the power of another country begins. The principle of state sovereignty stipulates that

the state has power over a territory and the use of territorial rights. Sovereignty means that the state has full power to implement the rules and regulations that apply in a country. Thus it can be interpreted in a state sovereignty that there is an inherent authority or jurisdiction from the sovereignty itself. Jurisdiction is the authority of the state to implement the national legal provisions of a sovereign state.

This is part of the implementation of sovereignty in the state's jurisdiction at the boundaries of its territory inherent in each sovereign state.²⁰ National law in Indonesia which regulates migration of people between countries is contained in the regulation of the immigration. The regulation regulates every person who enters and enters a country. As referred to in immigration regulations for foreigners, there are requirements on how foreigners can be granted visas, entry permits, residence and residence permits or are refused entry into Indonesian territory. With regard to the immigration regulations, every foreigner who has fulfilled the requirements can enter Indonesian territory after obtaining an entry by the immigration official, the application of the entry mark in the process must be in accordance with the selective immigration policy (selective policy).

This policy means that only foreigners who are beneficial, able to contribute to the development of national, social, intellectual and multi-faceted value added for Indonesia can be granted entry permits. In the process of population migration there are various problems that arise, namely illegal immigrants, human trafficking, people smuggling, and refugees. This problem is an important issue that must be faced by a country or internationally. This research will look at what immigration actions carried out against Rafael Nadal are related to his obligations as a foreigner who is in Indonesian territory as a refugee subject by UNHCR to be convicted of committing a specific criminal act. Rafael Nadal is an Iranian citizen who entered Indonesian territory using a passport and visa on arrival through the Ngurah Rai International Airport Immigration Checkpoint in early 2012.

Visit visas on arrival are granted on the basis of benefits, mutual benefit, and do not cause security disturbances. When passing the TPI, the foreigner is granted a residence permit as a sign of entry granted by the immigration official. An entry that is valid as a residence permit for a visit is given to:²¹

- 1) Foreigners who are exempted from having a visa;
- 2) Foreign visa holders of visits;
- 3) Foreigners entering Indonesian territory in an emergency; or
- 4) Transport Equipment Crew. During his presence in the territory of Indonesia, Rafael Nadal to register with UNHCR Jakarta as an asylum seeker.

¹⁸Syahrin, M.A. & Saputra, S., 2019. Tindakan Hukum terhadap Orang Asing Mantan Narapidana yang Memiliki Kartu Pengungsi UNHCR dalam Perspektif Keimigrasian. *Jurnal Ilmiah Kebijakan Hukum*, 13(2), p.139.

¹⁹Subardjo, 2017. Kedaulatan Dan Sistem Perwakilan Di Dalam Negara.

²⁰Tasyrif, Y., 2000. Peraturan Perluasan Yurisdiksi Pidana Di Suatu Wilayah Negara. *Jurnal Hukum & Pembangunan*, 30(1), P.7.

²¹Karyadi, K. & Hestiana, M., 2016. Kualitas Pelayanan Pembuatan Tanda Izin Masuk Daerah Keamanan Terbatas Atau Kartu Pas Orang Di Unit Penyelenggara Bandar Udara Tjilik Riwut Palangka Raya. *Restorica: Jurnal Ilmiah Ilmu Administrasi Negara Dan Ilmu Komunikasi*, 2(2), Pp.34–36.

Normatively, before obtaining refugee status, Rafael Nadal must carry out his obligations as a foreigner entering Indonesian territory. During his stay in Indonesian territory, he obtained a residence permit for a certain period of time. In granting a residence permit there is immigration control for foreigners, immigration control for foreigners is carried out at the time of visa application, entry or exit, and the granting of a residence permit is carried out by:

- 1) Collection, processing and presentation of data and information;
- 2) Preparation of a list of names of foreigners subject to Detention or Prevention;
- 3) Supervision of the presence and activities of foreigners in the territory of Indonesia;
- 4) taTng photos and fingerprints; dan
- 5) Other activities that can be legally accounted for.

Various activities of strangers during their stay in the territory of Indonesia in the framework of inspiring supervision to determine the activities and whereabouts of foreigners can be carried out field supervision of foreigners, namely:

- a) supervision of the presence and activities of foreigners in the territory of Indonesia, including checking
 - The presence of foreigner;
 - Foreigner's activities;
 - Completeness of travel documents or residence permits that are owned.

Judging from the requirement of residence permit in the Rafael Nadal case study as a foreigner residing in Indonesian territory, there are several immigration problems against Rafael Nadal. The foreigner has violated the abuse of residence permit which includes abusing activities that are not in accordance with the purpose of granting a residence permit and exceeding the period of his residence permit in Indonesia. Visit visa on arrival is granted.

To foreigners who intend to visit Indonesia in the context of tourism, social, cultural visits, business visits, or governmental duties by considering the principle of benefits. Any foreigner who intentionally abuses or performs activities that are not in accordance with the intent and purpose of granting a residence permit granted to him. In connection with the misuse of his residence permit, Rafael Nadal may be subject to a maximum imprisonment of 5 (five) years and a maximum fine of Rp.500,000,000 (five hundred million rupiah) based on Article 122 (a) of Act Number 6 of 2011. Rafael Nadal is not only abuses immigration residence permits, but also exceeds the period of residence permit or overstay. He entered Indonesia using a visitor visa upon arrival in 2012. The validity of the visitor visa on arrival is for a period of 30 (thirty) days and his immigration permit can be extended for a maximum of 30 (thirty) days. However, during its existence in the territory of Indonesia from 2012 to 2015, there was a difference of 3 (three) years which exceeded the period of residence permit. This may be subject to administrative sanctions for having violated the period of residence permit or overstay based on Article 78 paragraph (3) of Act Number 6 of 2011 which states that foreigners who hold a residence permit that has expired and are still in Indonesian territory more than 60 (sixty) days from the time limit of residence permit subject

to Immigration Administrative Act in the form of Deportation and Determination.²²

Article 3 of the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 of 2016 concerning Handling of Illegal Immigrants Who Declare as Asylum Seekers or Refugees states that foreigners who have obtained refugee status from UNHCR in Indonesia cannot be disputed for their residence permit while in residence Indonesia as long as it does not violate laws and regulations. In this provision only stipulates that only foreigners who after obtaining the status of asylum seekers or refugees from the local UNHCR cannot be questioned for their residence permit.

In the process of determining the status of asylum seekers to refugees through several requirements and stages in the form of interviews conducted by the UNHCR with the foreigner who registered himself. In the process of determining status as a refugee it generally takes 6 months to 3 years. Every foreigner who enters into Indonesian territory legally and registers as a refugee during his / her presence in Indonesian territory, is only an asylum seeker and has not obtained status as a refugee whose residence permit period has expired may be subject to administrative immigration sanctions.

Regarding foreign refugee card holders in the Rafael Nadal case study, the positive immigration law does not contain specifically applicable provisions (*lexspecialis*) for asylum seekers and refugees.²³In the regulation of immigration in Indonesia, it has not specifically regulated the regulation of foreigners who came to Indonesian territory legally and then declared themselves as refugees in the Rafael Nadal case study. This can lead to a legal vacuum in the handling of ex-prisoners who have refugee cards from UNHCR. Every foreigner traveling to the territory of Indonesia, both legally and illegally, has different goals and activities, generally aiming for governmental, educational, socio-cultural, tourism, business, family, journalistic, or singah duties to continue to other countries. However, in the implementation of activities of foreigners in the territory of Indonesia there are regulations that govern a person's behavior to regulate public order.

In the case study of foreigners who violated regulations in Indonesian territory and received punishment according to the court's decision. After undergoing a criminal sentence process a foreigner may be subject to administrative immigration measures in the form of deportation from Indonesian territory. But the implementation of administrative immigration sanctions against Rafael Nadal encountered obstacles because he was a refugee card holder.

²²Cahyono, SunitBudhi. "TinjauanTerhadapDeportasiWarga Negara AsingKarenaPelanggaran Batas IjinTinggal Dan AkibatHukumOleh Kantor Imigrasi Surakarta (StudiKasusPendeportasian Mohamed Tarek Mohamed Mohamed El Atreiry)." (2009).

²³Schabas, William A. "Lexspecialis? Belt and suspenders?The parallel operation of human rights law and the law of armed conflict, and the conundrum of jus ad bellum." *Israel Law Review* 40.2 (2007): 592-613.

As the subject of refugee card holders determined by UNHCR, Rafael Nadal is protected internationally.

UNHCR requests the Directorate General of Immigration to facilitate its existence while in Indonesia, not to detain or deport and to treat the person concerned in Indonesia, not to detain or deport and to treat the person concerned with humanity in accordance with international standards. During its existence in Indonesia, the cardholder is obliged to comply with the laws and regulations in force in Indonesia. International regulations governing asylum seekers and refugees are found in the 1951 Convention and the 1967 Protocol.

The rights of asylum seekers and refugees are specifically regulated in the 1951 Convention and 1967 Protocol on Refugee Status. The convention regulates obligations by States parties.²⁴The convention is an instrument of status and is based on the rights of asylum seekers and refugees and is supported by a number of basic principles, especially non-discrimination, prohibitions on the imposition of penalties and prohibitions on expulsion or non-refoulement. The principle of non-refoulement as stated in Article 33 paragraph (1) of the 1951 Convention states that no state party will evacuate or return refugees in any way to the borders of areas where their lives and freedoms will be threatened because of race, religion, nationality, membership in certain social groups or political opinions.

However, at present, Indonesia is a country that has not ratified the 1951 Convention and the 1967 Protocol on the Status of Refugees. Indonesia has no obligation to implement the provisions stipulated in the convention.⁴⁶ According to positive Indonesian law, Rafael Nadal may be subject to administrative immigration measures in the form of deportation in accordance with Article 75 jo. Article 78 paragraph (3) of Law Number 6 of 2011 concerning Immigration. Rafael Nadal has committed acts in violation of applicable regulations in Indonesia. In the provisions stated on the refugee card, listed the obligation for each card holder to comply with the laws and regulations in force in Indonesia. The question is, how can a person who commits a crime in Indonesian territory and has been sentenced to prison, but his refugee card is still extended by UNHCR.

Thus there are obligations that are not carried out by Rafael Nadal as the subject of refugee card holders because they have violated the law in Indonesian territory. In the crime that has been carried out by Rafael Nadal in Indonesian territory, the UNHCR should not extend the validity period of the Rafael Nadal refugee card and revoke the status of Rafael Nadal as a refugee subject. This has become one of the basic immigration administrative actions in the form of deportation of Rafael Nadal. Immigration officials are authorized to carry out administrative immigration actions against foreigners residing in Indonesian territory who carry out dangerous activities and are suspected to be endangering

security and public order²⁵ or do not respect or disobey laws and regulations. Immigration administrative measures as referred to in paragraph (1) may be in the form of:

- 1) Inclusion in the list of prevention or deterrence;
- 2) restrictions, changes or cancellation of residence permits;
- 3) prohibition to be in one or several certain places in the territory of Indonesia;
- 4) the obligation to reside in a certain place in the territory of Indonesia;
- 5) charging fees; and / or
- 6) deportation from the territory of Indonesia. As Article 75 paragraph 1 of Act Number 6 of 2011

B. Refugee Handling Procedures in Indonesia in the Immigration Law Perspective

Indonesia is one of the countries that have not ratified the 1951 Convention on the Status of Refugees, so that until now there has been no standard regarding actions against refugees. In order to guarantee national stability and interests, security, state sovereignty and continue to guarantee the benefit of foreigners who traffic through the territory of the Republic of Indonesia, the presence and activities of foreigners in the territory of the Republic of Indonesia need to be monitored and immigration actions if violations occur. This immigration action is carried out appropriately, quickly and thoroughly and in a coordinated manner without neglecting openness in providing services to foreigners. Immigration acts are administrative actions in the field of immigration outside the judicial process. In the implementation of immigration actions, to ensure legal certainty and justice for foreigners affected by immigration. Regarding this immigration act, it is regulated in Republic of Indonesia Government Regulation Number 31 of 1994 concerning Foreigner Oversight and Immigration Acts, including:

Article 24

- 1) The Immigration Act is determined by a written decision by the authorized Immigration Officer.
- 2) The decision referred to in paragraph (1) shall be submitted to foreigners subject to immigration action not later than seven days from the date of stipulation.
- 3) In the case of an immigration action in the form of a refusal to enter the territory of the Republic of Indonesia, the decision of the immigration action by the Immigration Officer at the Immigration Check Point is carried out by bearing a sign of rejection in his passport.

Article 25

- 1) Any foreigner subject to immigration can file an objection to the Minister within three days from the date of receipt of the Immigration Act Decision.
- 2) The appeal as referred to in paragraph (1) does not delay or hinder the implementation of the immigration action decision.

²⁴Ade, Christian. *Kerjasama Pemerintah Indonesia Dengan International Organization For Migrant Menurut Konvensi 1951 Dan Protokol 1967 Tentang Pengungsi*. Diss. Fakultas Hukum, 2017.

²⁵Syahrin, Muhammad Alvi. "Penerapan Wewenang Penyidik Pegawai Negeri Sipil dalam Mela kukan Penyidikan Tindak Pidana Keimigrasian." *Seminar Nasional Hukum Universitas Negeri Semarang*. Vol. 4. No. 01. 2018.

Article 26

- 1) Filing an objection as referred to in Article 25 is carried out by the foreign national concerned or his authorized representative.
- 2) Legitimate representatives referred to in paragraph (1) are: a. the parent or guardian responsible for the stranger; b. the entrepreneur or sponsor responsible for the arrival of the foreigner in Indonesia; or c. others who have special authorization.

Article 27

- 1) Filing an objection as referred to in Article 25 is made in writing through the Director General of Immigration by attaching evidence that can be used as a reason for the objection.
- 2) The Director General of Immigration no later than 21 (twenty one) days from receiving the submission of objection as referred to in paragraph (1), submit an objection.

Article 28

- 1) The Minister gives a decision no later than 30 (thirty) days from the date of receipt of the objection from the Director General of Immigration.

Article 29

- 1) The Minister in giving a decision can refuse or accept the submission of an objection.
- 2) Ministerial Decree as referred to in paragraph (1) is final.

Article 30

- 1) Provisions regarding Immigration Officials who are authorized to carry out immigration actions, immigration enforcement procedures, filing and objection examination are further regulated by Ministerial Decree.

Article 31

- 1) Foreigners may be placed in Immigration Quarantine for the following reasons: a. Being in the territory of the Republic of Indonesia without having a valid immigration permit; b. In order to await expulsion or deportation; or c. In order to wait for the Ministerial Decree regarding the submission of objections.

Then Article 75 of Act Number 6 Year 2011 concerning Immigration regulates immigration actions, as follows:

Article 75

- 1) Immigration Officials are authorized to carry out Immigration Administrative Acts against Foreigners who are in the Territory of Indonesia who carry out dangerous activities and should be suspected to endanger public security and order or do not respect or disobey laws or regulations.
- 2) The Immigration Administrative Act referred to in paragraph (1) may be in the form of:
 - Inclusion in the list of prevention or deterrence;
 - Restrictions, changes, or cancellations of residence permits;
 - Prohibition to be in one or several specific places in the Territory of Indonesia;
 - The requirement to reside in a certain place in the Territory of Indonesia;

- Charging fees; and / or
- Deportation from Indonesian Territory.

Then the authority that can be exercised in handling this case is the authority of immigration to conduct surveillance and investigation. This action takes the form of collecting data, analyzing and determining whether something is being monitored in accordance with predetermined standards or in accordance with applicable regulations. Alien control covers aspects related to their existence and aspects of their activities, namely the process of activities in the field of immigration that collects data and information, analyzes and determines the presence of people since their entry into Indonesian territory and their activities while in the territory of the Republic of Indonesia. Supervision can be done by:

- a) Administrative oversight supervised by using administrative data available at the agency that conducts supervision.
- b) Coordinative supervision of supervision carried out by several agencies involved in supervision by providing mutual input according to their respective fields.
- c) Supervision in place with a field operation carried out by Immigration and or together with other agencies which is carried out coordinatively.

In investigations other than the police of the Republic of Indonesia as general investigators, investigations can also be carried out by Immigration Officers who are appointed as Civil Servant Investigation Officers (PPNS). PPNS is only authorized to investigate immigration actions, the authority is:

- a) Receive reports of visa misuse or immigration related acts.
- b) Summon, examine, search, arrest and detain a person who is suspected of carrying out an act concerning immigration.
- c) Checking and or confiscating letters, documents, travel documents, or objects related to immigration.
- d) Calling people to hear their statements as witnesses.
- e) Conduct checks in certain places suspected of having letters, documents, travel documents or other objects related to immigration.
- f) Taking fingerprints and images / photos of the suspect. As a result of the investigation, the immigration investigator is sent to the Prosecutor's Office through the Police investigator for further processing.

In the literature review explained that the definition of a refugee is a person or group of people who leave an area to avoid a disaster or disaster. This disaster can take the form of floods, landslides, tsunamis, fires, etc. that are caused by nature. It can also be a disaster caused by human activity directly. For example war, nuclear leak, and bomb blast. While the understanding of immigrants is someone who comes from another country and lives in a country. It can be seen from the definition of the term refugees and immigrants, that refugees are one form of displacement of foreigners themselves. In order to avoid equality of treatment between people smuggling for purposes contrary to the law with refugees aiming to escape fear and seek a better life, it is important for us to know the standard of treatment for refugees based on the 1951 convention on Refugee Status.

So far, our society has likened refugees to illegal immigrants. Of course this makes a negative image for the refugees themselves. The obstacles faced by refugees to obtain proper treatment in the destination country or transit country are the many countries that have not yet participated in the 1951 Refugee Status Convention (Text of the 1951 Relating to the Status of Refugees) and the 1967 Protocol on the Status of Refugees (Protocol Relating to the Status of Refugees 1967).

So it is not uncommon for the presence of refugees in transit countries or destination countries, forcibly repatriated. Such treatment is clearly contrary to the principles of international law that have been recognized by civilized countries. International obligations inherent to any country that considers themselves part of the international community, regardless of whether the country is a member of international organizations such as the United Nations (UN), members of other international organizations, or participants or not participants of an international convention for treat refugees humanely.²⁶

In other words, the 1951 Convention on Refugee Status is a standard of humanitarian treatment to be applied to refugees and to provide protection of human rights to refugees. Therefore, as part of the international community, all countries are required to uphold refugee protection standards that are now part of international law. No refugee can be returned to an area or country where his life or freedom is threatened.

This effectively meant that no refugee could be refused entry into the country where he sought protection. Text of the 1951 Convention Relating to the Status of Refugees It was created in Geneva on July 28, 1951 and was later amended into Protocol Relating to the Status of Refugees 1967. The reason the 1951 Convention was presented by the United Nations was because for each country to be responsible and ensure that the rights of its citizens were respected, international protection was only needed if national protection was not provided or did not exist.

At that time, the main responsibility for providing international protection rests with the country where the individual seeks asylum. Every country has a general duty to provide international protection as an obligation that is based on international law, including international human rights law and customary international law. So countries that are participants / signatories to the 1951 Convention on refugee status and / or the 1967 Protocol have obligations as stated in the legal instruments set out in the 1951 Convention (on the legal framework for the protection of refugees and asylum seekers).

The government has not made efforts to ratify or in other words Indonesia has not become a party state of the Convention. This Convention requires parties to apply

international human rights standards to refugees and to consider other special rights that reflect the loss of refugee protection from the government of their home country.

4. Conclusion

The Indonesian Law of Immigration has not set specific regulations regarding foreigners who have entered legally into Indonesian territory and then declared themselves refugees.

Article 3 of the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 of 2016 concerning Handling of Illegal Immigrants Who Declare as Asylum Seekers or Refugees states that foreigners who have obtained refugee status from UNHCR in Indonesia cannot be disputed for their residence permit while in residence Indonesia as long as it does not violate laws and regulations. In the event of violations or criminal acts related to a person's status as a refugee, the immigration authority has the authority to conduct Oversight and Investigation.

In the Rafael Nadal case study as a subject of refugee card holders, there is an obligation that has not been carried out by violating the law in Indonesian territory. Foreigners who violate the law in Indonesian territory and get punishment according to court decision. After undergoing a criminal sentence process a foreigner may be subject to administrative immigration measures in the form of deportation from Indonesian territory. But the implementation of administrative immigration sanctions against Rafael Nadal encountered obstacles because he was a refugee card holder. As a subject of refugee card holders that has been determined by UNHCR, Rafael Nadal is internationally protected. As based on applicable regulations, foreigners holding a UNHCR card are required to comply with the laws and regulations in force in Indonesia.

5. Suggestion

The policy of the Indonesian government namely the existence of a government that did not ratify the Geneva Convention in 1951 and the New York Protocol in 1967 made Indonesia not have regulations in responding to refugees entering Indonesian territory. So, if there are refugees present to enter the territory of Indonesia, the government will make a separation by considering whether a person is legal. On the other hand, the government should be more serious in working with organizations such as UNHCR, IOM, and various other humanitarian organizations.

In the Rafael Nadal case study, UNHCR should not have extended the validity of the Rafael Nadal refugee card and revoked the status of Rafael Nadal as a refugee subject. So then this can be one of the basic implementation of immigration administrative measures in the form of deportation of Rafael Nadal. The Immigration Official has the authority to carry out administrative immigration actions against foreigners residing in Indonesian territory based on what the foreigners do is dangerous and should be suspected

²⁶Suryokumoro, H., Nurdin, N. & Ikaningtyas, I., 2013. Urgensi Penanganan Pengungsi/Migran Ilegal Di Indonesia Sebagai Negara Transit Berdasarkan Konvensi Tentang Status Pengungsi 1951 (Studi Di Kantor Imigrasi Kota Malang). Arena Hukum, 6(3), Pp.408-432.

of endangering public security and order or not respecting or disobeying the laws and regulations.

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