



Law and Humanities Quarterly Reviews

Sohirin, S., Syahrin, M. A., Aji, K. P., Mirwanto, T., Wiraputra, A. R., & Manda, R. P. (2024). Legal Analysis of the Deportation Process for Final Rejected Persons: Dialectics of International Refugee Law and Indonesian Immigration Law. *Law and Humanities Quarterly Reviews*, 3(1), 163-173.

ISSN 2827-9735

DOI: 10.31014/aior.1996.03.01.113

The online version of this article can be found at:
<https://www.asianinstituteofresearch.org/>

Published by:
The Asian Institute of Research

The *Law and Humanities Quarterly Reviews* is an Open Access publication. It may be read, copied, and distributed free of charge according to the conditions of the Creative Commons Attribution 4.0 International license.

The Asian Institute of Research Law and Humanities Quarterly Reviews is a peer-reviewed International Journal of the Asian Institute of Research. The journal covers scholarly articles in the interdisciplinary fields of law and humanities, including constitutional and administrative law, criminal law, civil law, international law, linguistics, history, literature, performing art, philosophy, religion, visual arts, anthropology, culture, and ethics studies. The Law and Humanities Quarterly Reviews is an Open Access Journal that can be accessed and downloaded online for free. Thus, ensuring high visibility and increase of citations for all research articles published. The journal aims to facilitate scholarly work on recent theoretical and practical aspects of law.



ASIAN INSTITUTE OF RESEARCH
Connecting Scholars Worldwide

Legal Analysis of the Deportation Process for Final Rejected Persons: Dialectics of International Refugee Law and Indonesian Immigration Law

Sohirin Sohirin¹, M. Alvi Syahrin², Koesmoyo Ponco Aji³, Tony Mirwanto⁴, Anindito Rizki Wiraputra⁵,
Radiyta Putra Manda⁶

^{1,2,3,4,5} Polytechnic of Immigration, Indonesia

⁶ Directorate General of Immigration, Indonesia

Correspondence: M. Alvi Syahrin, Polytechnic of Immigration, Indonesia. Email: ma.syahrin@poltekim.ac.id

Abstract

Final Rejected Person (FRP) is a foreigner whose refugee status application is rejected. FRPs are asylum seekers whose refugee status applications are case closed by UNHCR and cannot appeal. Basically, when there is a final rejection of an asylum claim, the subject to FRP has the obligation to leave the territory of the country. But in reality, many problems arise in the implementation of FRP deportations. In the context of carrying out deportations to FRP, many countries also experience difficulties in handling them. The purpose of this study is to determine immigration law enforcement in deportation to FRP by the Jakarta Immigration Detention Center, as well as obstacles in the implementation of immigration law enforcement. The method to be used is normative-empirical. The results of this study explain that law enforcement in the form of deportation of FRP by the Jakarta Immigration Detention Center has not been in accordance with the theory of sovereignty because it is limited by human rights and technical obstacles in forced deportation of foreigners from Indonesian territory. The obstacle to deportation of FRP by the Jakarta Immigration Detention Center is because FRP has no desire to return to the country of origin, making it difficult to carry out deportation. In this study, the author suggests that communication between agencies in handling FRP be improved so that coordination and deportation of FRP can be better in the future. Then it is necessary to develop persuasive methods in handling FRPs, both methods developed with other organizations, as well as other possible methods for the return of FRP to its country of origin. The return of FRP to the country of origin is carried out by involving other parties so that they can return to the country of origin.

Keywords: Final Rejected Person, Deportation, Immigration Detention Center

1. Introduction

The Indonesian government has delegated to the Ministry of Law and Human Rights in this case the Directorate General of Immigration to regulate and supervise the traffic of foreigners in order to guarantee the sovereignty of

the State. In carrying out the process, immigration officers with their authority through applicable national regulations, sometimes experience problems because international regulations already regulate it, such as arrangements regarding asylum seekers and refugees (Syahrin, 2017). Article 14 paragraph (1) of the Universal Declaration of Human Rights of 1948 states that asylum from other countries due to fear of torture is an inherent right of every human being. They must not experience forced expulsion and return while at the border and about to enter a country, which is an inherent right of every asylum seeker. This is known as the principle of non refoulement (Syahrin, 2020).

Asylum seekers are a special category of foreigners intended for protection by applying the principle of non-refoulement stipulated in international law. While awaiting the determination of the application for protection, they must be examined whether the principle of non-refoulement actually applies and, whether or not they can be returned to their state of nationality or origin. During this determination, asylum seekers cannot be expelled, even if they do not legally meet the standard documents or procedures required to enter and/or reside in the country in which they apply for protection (Slingenberg, 2016).

FRPs are foreigners whose refugee status applications are rejected. FRPs are asylum seekers whose refugee status applications are closed by UNHCR, and cannot appeal (Khalid & Ardianto, 2021). Basically when there is a final rejection of asylum claims, causing the subject subject subject to FRP to have the obligation to leave the territory of the country. Ideally, rejected asylum seekers leave their country of their own free will without the need for any intervention. Thus, the main consideration of the return policy is to ensure voluntary compliance. However, in reality there are cases of non-compliance with the obligation to leave. States feel the need to use administrative and immigration legal measures to carry out law enforcement (Syahrin, et al., 2022).

Those who enter and request asylum and protection are then given the opportunity to undergo a refugee status determination process commonly referred to as RSD carried out by UNHCR. If in the process an asylum seeker does not qualify for refugee status, then that person is declared an FRP. Article 13 of the United Nations Covenant on Civil and Political Rights states that deportation of foreigners who enter lawfully into the territory of a country can only be justified if there is a valid legal decision or for reasons of state security. The foreigner shall also be given the opportunity to file a legal challenge to his deportation and shall have the right to request judicial review of the competent authority or designee of his case either by himself or on his behalf. So the decision from UNHCR to grant the foreigner status as FRP is the right reason for the Indonesian side to carry out the deportation.

But in reality, many problems arise in the implementation of FRP deportations. In the context of carrying out deportations to FRP, many countries also experience difficulties in handling them, for example in Europe. The European region has a special term for FRPs that experience obstacles to repatriation, namely Non-Removed Rejected Asylum Seekers so that it becomes the top political agenda in many countries (Atac, 2019). In addition, the problem of FRP deportation is the uncooperative attitude of the country of origin that hinders repatriation. An uncooperative home country will deny that the FRP actually has citizenship. Alternatively, they delay the issuance of travel documents required for return, or may object to the proposed modality of repatriation. Some reverting countries reacted by negotiating readmission agreements (Noll, 1999).

In addition to legal considerations, one of the things that affects is relations between countries, both bilateral and multilateral. Where considerations affecting the implementation of FRP repatriation are in good faith to cooperate from the country of origin, either in the issuance of travel documents or in the reception of individuals in its territory. Other considerations in the development of cooperation of third countries in the framework of returns, for example, with cooperation between transit countries (Noll, 1999).

One of the obstacles to the implementation of deportation for FRPs is an intrinsic constraint in international rules on FRPs. FRP transfers are not fully spelled out in the Refugee Act and the power to detain asylum seekers is very narrow. Section 21(4), which enforces Article 31(1) of the 1951 Convention, protects asylum seekers from being treated as illegal aliens and from criminal proceedings due to unlawful entry into the country of transit or destination. Asylum seekers are only liable for detention and deportation after the revocation of the asylum

permit, which can be done if the holder violates the conditions of the permit or receives a final rejection of their claim [Article 22(6)]. Individuals whose claims are ultimately denied by FRP, are then subject to the provisions of the Immigration Act. An asylum seeker can only be detained if the asylum seeker's permit has been withdrawn in accordance with Article 22(6), and the FRP may be arrested and detained pending his or her status of return by the procedures and place prescribed by the government or for which the ordinance and place must be in accordance with humanitarian standards (Section 23) (Dinbabo & Nyasula, 2015).

In Indonesia itself, the position of FRP is very clearly regulated in the Regulation of the Director General of Immigration Number IMI-0352. GR.02.07 Year 2016. Article 14 Paragraph (2) states that foreigners whose application for refugee status is rejected by FRP by UNHCR subject to immigration administration actions (Syahrin & Ginting, 2019). However, just like other countries, Indonesia still faces many obstacles in the implementation of repatriation, both voluntarily and through law enforcement.

Basically in theoretical review, refugee law and immigration law are separate regimes. These rules overlap and intersect at certain points. One such intersection is where asylum seekers receive a final rejection of their asylum claim and are referred to as FRPs, which are the transition process from the refugee system to immigration authorities. UNHCR and IOM define FRP as persons who, after considering their asylum claim with fair procedures, are found to be ineligible for refugee status, and are not shown to be in need of international protection (and thus) are not authorized to reside in the country concerned (UNHCR-IOM, 1997 in Dinbabo & Nyasula, 2015). One of the FRPs that is the object of research in this paper is the case of GK. He is an Iranian foreigner, who entered Indonesia in 2012 and obtained asylum seeker status that year. GK obtained FRP status in 2017, but at the time of his deportation, GK refused to be repatriated to his home country. Until now, GK is still in the Jakarta Immigration Detention Center with the status of FRP. On the other hand, MH is a foreigner with Pakistani nationality. He has been in the Jakarta Immigration Detention Center since 2013 as an FRP and was successfully repatriated to his country in 2019. These two cases are a form of deportation law enforcement faced by the Jakarta Immigration Detention Center. By comparing the two cases, the author can see how the implementation of law enforcement against FRP through the implementation of deportation and its relation to immigration law in Indonesia. This study will discuss: (1) how is immigration law enforcement in deportation to FRP by Jakarta Immigration Detention Center?, (2) What are the obstacles to the implementation of immigration law enforcement in deportation to FRP by Jakarta Immigration Detention Center?

2. Method

The method to be used is by normative-empirical legal research. In normative legal research will use secondary data, by examining theoretical matters related to legal principles, legal conceptions, views and legal doctrines, regulations and legal systems using secondary data (Muhdlor, 2012). As well as principles, rules, norms, and legal rules in laws and regulations and other documents related to the research being carried out. In this research from a normative point of view, it can be obtained from the 1951 Convention on the Status of Refugees, the 1967 Protocol on the Status of Refugees, Presidential Decree No. 125 of 2016 concerning the Handling of Refugees, and FRP documents on behalf of GK and MH. While the empirical legal approach by looking directly at the field related to the use or implementation of regulations related to the research topic such as by conducting interviews with relevant stakeholders.

3. Discussion

3.1 Immigration Law Enforcement Process with Deportation to FRP

GK according to the documents obtained from the Jakarta Immigration Detention Center is an Iranian citizen who received a UNHCR Asylum Seeker Certificate on October 15, 2012. From the interview with GK it was found that he entered Indonesia alone in 2012 through Soekarno Hatta International Airport without being accompanied by anyone else. From an interview with GK, one month after arriving in Indonesia, he received a

UNHCR card and three months later he was included in IOM protection. From the interview with GK, he obtained FRP status about six or seven years after being interviewed on August 23, 2022.

Based on Article 29 paragraph (1) of Presidential Regulation Number 125 of 2016 explains that asylum seekers who are listed as FRP by UNHCR are placed in Immigration Detention Centers for voluntary return or deportation processes. Article 14 paragraph (2) of the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 of 2016 specifies that the action taken against FRP is an Immigration Administrative Action. In accordance with the Immigration Law in Article 1 number 31 explains that Immigration Administrative Action is an administrative sanction carried out outside the court. Basically, norms related to Immigration Administrative Actions in accordance with Article 75 paragraph (1) of the Immigration Law are carried out on foreigners who carry out dangerous activities that are suspected of endangering public security and order, or do not respect or obey laws and regulations. So basically FRP if Immigration Administrative Action is applied to him, the foreigner, in this case FRP in general can be considered to have committed an immigration violation that deserves to be given Immigration Administrative Action. Article 29 paragraph (1) of Presidential Regulation Number 125 of 2016 explains that the action given is placement in the Immigration and Deportation Detention Center.

In general, the placement of foreigners in Immigration Detention Centers based on Article 83 paragraph (1) is due to several violations such as the absence of a valid stay permit, being in Indonesian territory without having documents, waiting for deportation or expulsion from Indonesian territory or being subject to Immigration Administrative Actions. Basically, GK has fulfilled the overall requirements of placement of foreigners in Immigration Detention Centers because they do not have valid travel documents and asylum seeker letters have expired since he obtained status FRP. In addition, when referring to the definition of deportation, there is an element of coercion, coercive efforts themselves are theoretically part of law enforcement. Law enforcement consists of the process of formulation, application and execution. Execution is the part of the court that is exempt from deportation proceedings, while the formulation is related to the drafting of its regulations. Law enforcement in the case of an application is part of judicial or law enforcement policy (Pramono, 2021) In this case the immigration officer. Coercion itself consists of the first two things, namely in the physical sense such as arrest and detention, but also means restrictions on rights and freedoms (Syamsu, 2016). The enforceability of law enforcement and coercive efforts based on the theory of sovereignty is part of the authority in the implementation of national laws of a country, including Indonesia (Adolf, 2015). Theoretically, much sovereignty is limited by a group of international laws (Institute, 1999), including refugee laws. But for GK's case, since he got the status as FRP, hence the transition of the regulatory regime from the refugee legal system to the immigration legal system (Dinbabo & Nyasula, 2015). So that the conflict arising from refugee law and sovereignty can be denied and the implementation of law enforcement against Gholamreza can be carried out (Lulf, 2019).

Based on the Duty Order of the Head of the Jakarta Immigration Detention Center Number: W.10.IMI.IMI.8-GR.02.01-1857 dated September 14, 2017, GK has been transferred to the Jakarta Immigration Detention Center along with twelve foreigners who were rejected refugee applications by UNHCR. They were taken to the Immigration Detention Center from Community House Kertamukti II, Maysa Cirendeu (East Ciputat) and Pesona Gunung Indah South Tangerang. However, from an interview with the Head of the Registration, Administration & Reporting Section of the Jakarta Immigration Detention Center, it was explained that GK refused to participate in the deportation. Eleven other FRPs were willing to be voluntarily repatriated. From GK's explanation, it is known that he is in trouble with the government in Iran. Therefore, when the repatriation was carried out, GK refused for this reason.

One of the problems faced by GK so he did not want to return, because documents obtained from GK showed that on Sunday, July 5, 2015 he had converted and had been baptized at Bethel Church Indonesia. In Iran, converts are punishable by death (Feller et al., 2003). Therefore, the consideration of GK's deportation to his home country is a potential threat to his life. The Human Rights Committee argued that Article 7 of the International Covenant on Civil and Political Rights prohibits countries where asylum seekers or FRP While in place shall not expose individuals in cooperation with the country of origin to the danger of torture or cruel,

inhuman or degrading treatment or punishment upon return to another country by means of deportation. The Human Rights Committee also ruled that deportation is prohibited if the individual concerned may be at risk of violating the right to life in the country where he or she will be returned, including these grounds considered in the case FRP (Feller et al., 2003). Basically, international human rights law has bound governments to intensively control migration (Ellermann, 2009). So that after the GK change process becomes FRP does not cause forced deportation efforts can be made if he refuses, because human rights considerations cause the implementation of deportation can be hindered, including to GK who is threatened with his life if he is to be flown back.

HT, UNHCR staff explained that one example of a country that often persecutes is Iran. Iran's penal code prohibits converts, especially since they were already Muslims. If any of its citizens convert then the penalty is death. This is a violation of human rights because everyone has the freedom to profess, convert or not religion, while in Iran the rules are very harsh for example there are FRPs who are Iranian nationals. Then a consultation was carried out to check whether the person was of Iranian nationality certainly caused the person to be threatened.

Basically, GK, according to the evidence shown and information from the UNHCR, is eligible for refugee status because he cannot return to his country after converting. But in reality, GK still gets the status of FRP. From HT's explanation, it is explained that they may not be convincing when they provide information at UNHCR. Many people gave proof that they had been baptized. For example, in GPDI there is a case in Pekanbaru of a church that gives baptism letters easily to refugees but the refugees do not actually convert just because they are given letters to the attention of UNHCR. Suppose again already have a baptism letter document. This is not automatic, so UNHCR standards do not look at documents, unlike legal proceedings in general, which must have two valid pieces of evidence, must convince officers there is an interview process, there is communication in the form of questions. The documents provided are not the main reference because of many countries. For example, Afghanistan, the population administration is not very good, many also come using these fake documents as references. From the case of GK, which has been declared FRP, it means that at least he has gone through a fairly long process and the results have not succeeded in convincing UNHCR. Therefore an appeal can be made, but the officer does not advise to take such action. Instead of waiting in Jakarta, he better find another way, because of course UNHCR only has one mechanism, whether silent or looking for sponsors maybe he has a family in another country. For international protection as a refugee can no longer be granted.

From the results of the interview, it appears that religious conversion is generally the mode for an asylum seeker to obtain refugee documents. Basically, GK obtained baptism documents as a reason for conversion, as explained by UNHCR sometimes only as a justification reason. From the documents obtained it also appears that the conversion was carried out in 2015, three years after he first entered Indonesia and was carried out in Indonesia. Of course, the condition is threatened because the conversion was not obtained from the beginning while in Iran, but after leaving Iran. From GK's explanation, it was found that UNHCR had given the opportunity for an interview once, then the officer stated that the applicant's application was rejected. On the second occasion, an interview will be given, but the results are immediately declared rejected by the application.

HT as UNHCR staff explained how the FRP process is carried out for rejected asylum seekers that refusal to FRP does vary. The specified criterion is the definition of refugee in Article 1 of the Convention. So a person can be accepted and recognized as a refugee if he meets these criteria. It could be that someone who is an asylum seeker has no good reason or persecution. In the UNHCR system has country information, of course, UNHCR will look at country information compared to information collected from reliable sources. From there the officer will compare, because of course the reason for the application being rejected must be because it does not meet the criteria for refugees. There can also be credibility problems stemming from the identity of the applicant, for example the applicant states that he has Rohingya status. But when the officer checked, it turned out that the applicant was from Bangladesh. This is because the Rohingya and Bangladeshis who are on the Myanmar border are physically and look the same and the language is similar. Then it could also be the reason

that the applicant ran away from his country because of chaos after the officer checked it turned out to be safe. People with such a profile are either safe or there is no indication that such a person is threatened in their home country. The third reason for the definition of refugee will be to look at whether a person has a safe place in the country to move, or called an internal slide alternative. For example, there are Kupang people from NTT for the reason of persecution, for example, the person is rushed abroad and UNHCR will check whether the origin of the person is really from Kupang. If true, there will be considerations if the person moves to Bali whether it is safe. It will be assessed whether it can be protected there. If the person moves to Bali or lives in Jakarta, does it have the same threat, because the threat is sometimes only local, not a country-wide threat? Another reason is that there are people who cannot be processed, for example, people who commit gross human rights violations. But people with such criteria have different clauses or people who are excluded from the process may be war criminals. Those are some of the reasons for the rejection of refugee applications and certainly cannot be analyzed individually because it is privacy, but in general it is a picture of why someone is rejected. It will be seen again if there are any new reasons and see if they are acceptable.

In line with the interview, as described in the Procedure Book for Determining refugee status from UNHCR Explain that the applicant's well-founded fear of persecution must be related to his or her nationality state. As long as he has no fear with respect to his nationality state, and he is allowed to take advantage of the protection of that country. He does not need international protection and is therefore not a refugee (UNHCR, 2011). If a person is willing to take advantage of the protection of his or her home country, that willingness usually does not match the claim that he or she is outside that country because of a well-founded fear of persecution. Whenever nation-state protection is available, and there is no reason based on a well-founded fear of refusing it, the person concerned does not need international protection and is not a refugee (UNHCR, 2011). As in the case of citizenship regain, this third termination clause stems from the principle that a person enjoying national protection does not need international protection (UNHCR, 2011). From this explanation, it can be seen that someone in the determination of refugee status usually then receives rejection if after the party UNHCR compare files owned with Country Information. This is done to see the originating fear especially related to the fear of nationality as experienced by the Rohingya ethnic group in Myanmar. In addition, these fears must come from repressive state actions that are not local and may move from their original place within the territory of the same country. As long as a person's citizenship is still recognized, basically that person still receives protection from his state.

AHY as Spokesperson at the Embassy of the Republic of Iran when asked about if there is someone who claims to be your citizen but he does not have documents. Is there a mechanism prepared by the embassy in checking citizenship status through various stages, and these stages have been regulated in the country's law. Regarding refusal to repatriate FRP while there is no violation, the person concerned can return home if they want to return to their country.

The Iranian embassy also did not see any violations committed, because the conversion was carried out outside the Iranian state, so it was not recorded institutionally in Iran. The Iranian embassy also explained that it is legitimate if the person wants to return to his country. If document constraints are a problem, the Iranian Embassy has prepared the necessary process for making citizenship documents.

However, there are other possible technical obstacles that could have been accepted if GK did not voluntarily want to return to his country. During the deportation flight, he may refuse to sit on the plane. Consequently pilots who have the authority to decide who will be transported on board, may decide to refuse GK who physically resists, because pilots cannot guarantee the safety of the flight if they resist (Rosenberger et al., 2018). DP as Head of the Registration, Administration and Reporting Section at the Jakarta Immigration Detention Center when asked about if FRP Refusing to be sent home, what actions are taken by the Immigration Detention Center, he explained that no action can be taken, let alone coercive actions.

Unlike MH who is a Pakistani citizen. Based on the Letter of the Head of the Jakarta Immigration Detention Center Number: W.10.IMI.IMI.8-GR.02.03-1784 dated November 11, 2019, it is known that he has entered the Immigration Detention Center since May 31, 2013. Then voluntarily discharged since Tuesday, November 12,

2019. MH obtained an emergency passport from the Pakistani government for one trip with a SS067407 number. AVR is voluntary repatriation with assistance, where the transfer is cooperative, convenient, and equipped with logistical and financial support from IOM. In some cases, IOM providing financial assistance to returning migrants to start new businesses in their home countries (Webber, 2013). AVR alone to be applied, a FRP, asylum seekers or refugees, must show good behavior, as an entrepreneur who is able to manage themselves and develop themselves. In some countries a letter of good conduct (Carta de Buena Conducta) is a prerequisite for gaining access to this AVR (Khosravi, 2018). From this can be seen the comparison between GK and MH. In terms of sovereignty, law enforcement is not enough by force alone, but with appropriate methods to remove a person who has been subject to Immigration Administrative Action must use persuasive methods. Not only in Indonesia itself, in some places that use the method AVR, as mentioned above, even provides certain rewards and financial support in order to remove unwanted people the state present in its territory. Theoretically, the movement of migration flows from the country of origin, to the destination country, one of the reasons is economic problems (Santoso, 2014), so that the program AVR is a solution that can help repatriation from FRP.

DK, the Head of the Registration, Administration and Reporting Section at the Jakarta Immigration Detention Center explained, when asked about his experience communicating with FRP and hearing their explanation regarding the reasons usually stated by FRP for refusing to return to their country of origin, that maybe his country is in conflict, if he returns again the person will be threatened. The factor that seeks asylum is when the country is at war or its safety is threatened or there is conflict. But most FRPs seeking asylum exist for irrelevant reasons. For example, looking for a better livelihood. It is not an urgent matter to be designated as a refugee. This shows that many of the FRPs are only related to economic constraints. Therefore, to return to their countries, it certainly needs to encourage economic improvement, because IOM has encouraged several countries to implement the program. For example, one foreigner who had been designated as an FRP on behalf of D. Initially as an IOM program was to be repatriated to his country but the FRP refused to return to Sri Lanka. He just wants to go back to Canada because there is a guarantor (uncle) in Canada. After being given a passport, his uncle would try to lobby the Canadian government to accept him into his country.

What is described above shows that other solutions other than coercive law enforcement can actually make expenditure settlement effective FRP from the territory of Indonesia. Sovereignty theories related to law enforcement by force in the form of deportation are not always effective in repatriation FRP, especially the purpose of migrating from a FRP Not related to the existence of repressive threats from the state, but from economic constraints faced in the country of origin. Of course, with a persuasive approach, it will actually streamline immigration law enforcement in the context of expelling foreigners from Indonesian territory. As is known that the purpose of immigration policy is selective immigration policy, that is, only people who provide benefits to the State of Indonesia are allowed to enter Indonesian territory (Santoso, 2014). Meanwhile, GK was interviewed about how he supported himself during the FRP, she explained that she lived in an immigration detention center and received food from the immigration detention center. This shows that the presence of GK itself is detrimental to Indonesia because it has to provide accommodation and food for itself. Meanwhile, law enforcement in the form of deportation cannot be done. Over time, GK has been admitted to the Immigration Detention Center since September 15, 2017, which has been running for five years until 2022. If you look at Article 85 paragraph (2) of the Immigration Law which regulates the detention period, there are five years left for GK to be in the Jakarta Immigration Detention Center. After that he can be outside the Immigration Detention Center. Of course, all law enforcement in coercive efforts as previously described can no longer be carried out to GK. Therefore, the potential for disruption of sovereignty in terms of limited law enforcement can extend to GK cases because if he reaches ten years, he can be expelled from the Immigration Detention Center.

3.2 Barriers to Immigration Law Enforcement with Deportation to FRP

3.2.1 Legal Policy as a Factor in Deportation to FRP

FRP in legal regulation, entered into the regime of Presidential Regulation Number 125 of 2016. The regulation for FRP is only regulated in Article 29 paragraph (1) related to the process of voluntary return or deportation in accordance with laws and regulations. Article 42 paragraph (3), regulates the sharing of data related to FRP shared by three elements, namely the Ministry of Foreign Affairs, the Ministry of Law and Human Rights and the United Nations. Any data from each party is shared between parties through UNHCR to several other parties. Article 43 paragraph (2) of Presidential Regulation Number 125 of 2016 also explains that the ministry that organizes foreign relations and foreign policy communicates with representatives of the country of origin to provide travel documents and facilitate repatriation for FRPs. If the provision cannot be implemented, then the Ministry of Law and Human Rights will carry out the repatriation process in collaboration with UNHCR and IOM.

Legal constraints related to the handling of FRP in general, that the regulatory regime that regulates FRP itself is only at the level of Presidential Regulation, while deportation and placement in Immigration Detention Centers themselves are regulated in the Immigration Law. Of course, these two regulations are not connected in one continuity, so there is a vague position of FRP is a person subject to Immigration Administrative Action for violations so that they must be subject to detention and deportation. This legal certainty is certainly needed for clear legal implementation for FRPs. Basically, detention and deportation are actions with clear prerequisites as stipulated in the Immigration Law. So that detention and deportation based on Presidential Regulation Number 125 of 2016 have an indirect correlation and do not explain which prerequisites in the Immigration Law are the appropriate reasons for detention and deportation. Article 29 paragraph (1) of Presidential Regulation Number 125 of 2016, there is a clause in accordance with laws and regulations, which of course will refer to the Immigration Law. However, it is not clear in what cases the FRP then meets the conditions of detention and deportation, because as discussed earlier, the FRP is a process of changing from a refugee regulatory regime, to an immigration regulatory regime. This will certainly cause FRP to explain the prerequisites for the implementation of detention as stipulated in Article 83 paragraph (1), whether in Indonesia without having a stay permit, being in Indonesian Territory without having a valid travel document. Foreigners are subject to Immigration Administrative Action for cancellation of residence permit or violation of order and security, pending deportation. While in FRP administration, when viewed in GK and MH files, the main reason for detention is their FRP status. While AVR itself, is a system that is only mentioned in Presidential Regulation Number 125 of 2016.

Article 14 paragraph (2) of the Regulation of the Director General of Immigration of 2016, states that FRP is given Immigration Administrative Action. The legal basis of this regulation refers to the Immigration Law and Government Regulation Number 31 of 2013 concerning the Implementation Regulations of Law Number 6 of 2011 concerning Immigration. The 2016 Regulation of the Director General of Immigration should serve for further arrangements of a technical nature and do not have the authority to establish new policies (Indrati, 1998). In addition, the function of the Director General Regulation of 2016 is the implementation of technical policies from the Ministerial Regulation such as the formulation and implementation of policies, ministries in their fields, the preparation of norms, standards, procedures and criteria in their fields, as well as the provision of technical guidance and evaluation and implementation of administration in the field under which it is under its authority, as well as carrying out further regulation of the provisions in the Ministerial Regulation (Indrati, 1998). While as mentioned earlier, related FRP, there is no regulatory regime from the Immigration Law to the Government Regulation on the Implementation of the Immigration Law, nor the relevant Ministerial regulation FRP aforementioned. So that the setting FRP The 2016 Regulation of the Director General of Immigration still does not have a formal basis to be regulated in the regulation.

Regarding the exchange of information, it is known that during his assignment at the Immigration Detention Center, there were no obstacles because the authority of the Immigration Detention Center was not extensive. The Immigration Detention Center is only a communication with UNHCR and IOM, related to data that there is no MOU between UNHCR or IOM and immigration. So UNHCR coordinates with the Ministry of Foreign Affairs. But the data deployment has been stopped. So the Immigration Detention Center is actively updating its data. For example, data collection to CH because now there is no data sharing with IOM. So the Immigration Detention Center made a system related to this refugee data. Now the Immigration Detention Center conducts

data collection to register refugees from CH a week for three times. There was an incident when a summons was made, it turned out to be information from IOM that the person had been resettled. Actually related to resettlement, although the authority of the Immigration Detention Center, there should be information sharing. If from the rules related to resettlement, the Immigration Detention Center should be involved, it does not mean that technically, but the Immigration Detention Center accompanied. So the obstacle is communication with related agencies.

From the results of the interview when compared with Article 42 paragraph (3) it is clear from who shared the data, and through whom the data was given to the recipient of the data. However, from the regulation, there is no mention of the obligation to provide data and share data between institutions, so it is possible to unilaterally terminate the sharing of data and information related to this FRP issue. In addition, there is an MOU between the Government of Indonesia and UNHCR. However, all MOU regulatory bodies only mention the nomenclature of the Government of Indonesia in general, while the signatory to the MOU is the Ministry of Foreign Affairs, so it is not stated where UNHCR must share the data. It is certain that UNHCR will share the data with the Ministry of Foreign Affairs. In reality, the person dealing with the FRP is the Directorate General, starting from the entry stage to the stage of exit of the FRP from Indonesian territory. So that the most interested party and need data related to FRP is the Directorate General of Immigration. Both in terms of management of return, placement, transfer and administration of other FRPs with the most interest is the Directorate General. But unfortunately the Directorate General of Immigration is not given enough space to quickly access and receive directly data and information about this FRP. This is because the existing arrangements have not given more space to the Directorate General in handling this FRP problem. FRP subjects are foreigners who are certainly subjects who should be under the supervision and administration of the Directorate General. But unfortunately, the intermediary process with the Ministry of Foreign Affairs will hinder information related to this FRP. UNHCR is a party that is in direct contact with FRP, just like the Directorate General which is a government apparatus that is in direct contact with FRP. The presence of the Ministry of Foreign Affairs between UNHCR and the Directorate General has made communication between the two have gaps, so that the handling of cases related to FRP is also not optimal. Both apparatuses regulate the same subject, namely FRP. But in fact, it does not have clear communication and coordination rules and is instead carried out by the Ministry of Foreign Affairs which does not directly handle FRP.

Article 42 paragraph (3) of Presidential Regulation Number 125 of 2016 regulates parties who receive information about FRP, but it is not explained for what and what information related to FRP will be used. This makes the arrangement useless and has no direction for the information to be used by the relevant agencies. In addition to data exchange, Presidential Regulation Number 125 of 2016 concerning Refugees should also regulate coordination between FRP handling agencies which is only intended for institutions that directly handle FRP cases. In general, stakeholders in Presidential Regulation Number 125 of 2016 do have a coordinating function related to refugees and asylum seekers, both in terms of discovery, securing treatment and other handling. However, it must be distinguished because this FRP is no longer included in the refugee law arrangement, but has entered into the immigration law regulation as explained earlier. So it is no longer relevant if information related to FRP is shared with other parties who do not deal with FRP cases.

Presidential Regulation Number 125 of 2016 has regulated voluntary return. However, there is no institutional coordination process and policy direction development to encourage voluntary repatriation programs. So that voluntary repatriation will only be carried out if the FRP wishes, not initiated in the form of a program that can encourage this FRP to want to return. As for FRPs, voluntary repatriation is part of effective law enforcement (deportation) to remove these FRPs from Indonesian territory. This voluntary return should also be part of the policy regulated in Presidential Regulation Number 125 of 2016.

3.2.2 Law Enforcement as a Factor in Deportation to FRP

From the results of previous interviews with the Security Council when asked about the difficulties in handling FRP, it is known that in handling FRP, although the person carrying out the deportation is the Directorate General of Immigration, coordination with other parties, including UNHCR and IOM. UNHCR because it is the

first party to deal with these refugees, of course, the data and documents owned are certainly more complete. While carrying out deportation, data related to nationality and travel documents are needed so that it can be done more easily in repatriation. Regarding cases such as GK refusing to go home, whether there is a country that has refused FRP repatriation, it may not happen that the person refuses, while the Immigration Detention Center cannot force it. The action taken is only in the form of persuading to return to his country which is a non-formal or persuasive action.

The interview shows that technically, persuasive methods need to be developed in handling FRPs, such as GK refusing to be deported, because human rights rules, as well as aviation rules, can hinder the law enforcement process in the form of deportation. The path that must be taken is indeed a persuasive method, if it involves another organization, namely IOM, then the solution is AVR. But whatever solution is used, it still needs to develop policies that support law enforcement to be able to exercise their authority and can increase their capacity to implement these persuasive methods.

3.2.3 Facilities and Infrastructure as Factors Inhibiting Deportation to FRP

Facilities and infrastructure are an important part of law enforcement to run smoothly needed in deportations FRP. Of course, it is access to means of travel between countries, such as travel documents and access to means of transportation repatriation from FRP (Soekanto, 2016). Administrative measures are required for the transfer of asylum, in particular the procurement of identity documents, both in terms of legal proceedings and travel arrangements (Ellermann, 2009). The main obstacle to the means of deportation was that GK revealed that he entered Indonesia through Soekarno Hatta Airport. This shows that he has the documents to enter Indonesia. There is a mode of foreigners who will seek asylum in Indonesia who use air routes to enter Indonesian territory using passports from their country. Then after that when they arrived in Indonesia they threw away their documents and came to UNHCR To obtain asylum seeker documents (Soekanto, 2016). From the results of previous interviews with HT, as Staff UNHCR When asked about the determination process FRP, The existence of documents is actually a clue that they still receive protection from their country. So basically it can still be worked on for some FRP who lost their documents such as MH who obtained an emergency passport from his country, including with GK.

As explained earlier, the effectiveness of deportation law enforcement is one of persuasive approaches. Facilities and facilities needed in law enforcement in the form of physical and psychological, including increasing law enforcement budgets for education, training assessments, and other activities (Ellermann, 2009). Budgeting is needed in order to increase capacity for the ability of Immigration Detention Center officers to take a persuasive approach. In addition, budget preparation is needed, both budget sources from outside institutions, such as: IOM and the Indonesian side itself to be able to take a persuasive approach in repatriation FRP.

4. Conclusion

From the results of the discussion above, it can be concluded that several things as the first about the enforcement of the deportation law against FRP by the Jakarta Immigration Detention Center has not been in accordance with the theory of sovereignty because it is limited by human rights and technical obstacles in efforts to forcibly remove foreigners from Indonesian territory. In addition, the obstacles in law enforcement of deportation of FRP by the Jakarta Immigration Detention Center are caused because FRP has no desire to return to the country of origin, making it difficult to carry out deportation.

Author Contributions: All authors contributed to this research.

Funding: Not applicable.

Conflict of Interest: The authors declare no conflict of interest.

Informed Consent Statement/Ethics Approval: Not applicable.

Acknowledgments: The authors would like to thank the Jakarta Immigration Detention Center, UNHCR, and IOM for their assistance and contributions in helping to complete this research.

References

- Adolf, H. (2015). Aspects of the State in International Law. *CV. Keni Media*.
- Atac, I. (2019). Deserving Shelter: Conditional Access to Accommodation for Rejected Asylum Seekers in Austria, the Netherlands, and Sweden. *Journal of Immigrant and Refugee Studies*, 17(1), 44–60.
- Dinbabo, M. F., & Nyasula, T. (2015). African Human Mobility Review. *African Human Mobility*, 2(1), 332–361.
- Ellermann, A. (2009). States against Migrants: Deportation in Germany and the United States. *Cambridge University Press*. <https://doi.org/https://doi.org/10.1017/CBO9780511626494>
- Feller, E., Turk, V., Nicholson, F., & UNHCR. (2003). Refugee Protection In International Law: UNHCR's Global Consultations on International Protection. *Cambridge University Press*.
- Indrati, M. F. (1998). Legal Science. Kanisius.
- Institute, U. C. (1999). States and Sovereignty in the Global Economy (D. A. Smith, D. Solinger, & S. C. Topik (eds.)). *Routledge*.
- Khalid, F., & Ardianto, B. (2021). Stateless Person Dalam Tinjauan Hukum Nasional Dan Hukum Internasional Di Indonesia. *Uti Possidetis : Journal of International Law*, 1(3), 277–309.
- Khosravi, S. (2018). After Deportation: Ethnographic Perspectives. *Spinger*.
- Lulf, C. (2019). Conflict Displacement and Legal Protection Understanding Asylum, Human Rights and Refugee Law. *Routledge*. <https://doi.org/https://doi.org/10.4324/9780429449628>
- Muhdlor, A. Z. (2012). Development of legal research methodology. *Jurnal Hukum dan Peradilan*, 1(2), 189–206.
- Noll, G. (1999). Rejected Asylum Seekers : The Problem of Return. *International Migration*, 37(1), 22.
- Pramono, B. (2021). Law Enforcement in Indonesian Waters. *Scopindo Media Pustaka*.
- Rosenberger, S., Verena, S., & Nina, M. (2018). Protest Movements in Asylum and Deportation. *Spinger*.
- Santoso, M. I. (2014). Immigration Perspectives on Human Migration. *Pustaka Reka Cipta*.
- Slingenberg, L. (2016). The Reception of Asylum Seekers under International Law: Between Sovereignty and Equality. *International Journal of Refugee Law*, 28.
- Soekamto, S. (2016). Factors affecting law enforcement (16th ed.). *Rajafindo Persada*.
- Syahrin, M. A. (2017). The Implementation of Non-Refoulement Principle to the Asylum Seekers and Refugees in Indonesia. *Sriwijaya Law Review*, 1(2), 168-178.
- Syahrin, M. A. (2020). Conflict of Regulation Norms for Handling of Foreign Refugees in Selective Immigration Policies: Critical Law Studies and State Security Approaches. *Nurani: Jurnal Kajian Syaria'ah dan Masyarakat*, 20(1), 67-82.
- Syahrin, M. A., Wiraputa, A. R., & Ponco Aji, K. (2022). Indonesian Legal Policy in Treating International Refugees Based on Human Rights Approach. *Law and Humanities Quarterly Reviews*, 1(4).
- Syahrin, M. A., & Ginting, B. P. (2019). Juridical interpretation of the Regulation of the Director General of Immigration Number IMI-0352. GR.02.07 of 2016 on Handling Illegal Immigrants Who Declare Themselves as Asylum Seekers or Refugees in Selective Immigration Policy: A Hierarchy Theory Approach to Legal Norms. *Jurnal Kajian Ilmiah Keimigrasian*, 2(1), 109–128.
- Syamsu, M. A. (2016). Criminal Conviction and Two Basic Principles of Criminal Law. *PT. Kharisma Putra Utama*.
- UNHCR. (2011). Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees. *UNHCR*. <https://www.refworld.org/docid/4f33c8d92.html>
- Webber, F. (2013). The Migration Apparatus: Security, Labor, and Policymaking in the European Union. *Race & Class* 55, 1.