

Politics and Law Selective Policy in Handling Rohingya Illegal Immigrants

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Abstract. Relations and political legal processes of selective policy in dealing with Rohingya illegal immigrants in Indonesia. Legal politics as the crucial reason forms the legal and policy framework related to immigration, while selective policy reflects the government's approach in determining priorities, handling, and treatment of certain immigrants, including illegal Rohingya immigrants. The process of handling illegal immigrants involves identification, detention, prosecution, and determination of immigration status, where legal politics and selective policy play an important role. Several relevant legal bases such as the Immigration Law, Human Rights Law, UN Convention on the Status of Refugees, Government Regulations, and Presidential Regulations are used in dealing with Rohingya illegal immigrants. With this legal basis, the government can formulate selective policies that respect human rights, humanitarian principles, and justice. Handling illegal Rohingya immigrants requires a balanced approach between political, legal, humanitarian, and justice interests. The government and relevant stakeholders must work together to manage immigration issues by heed to human rights, justice, and humanity. Thus, handling Rohingya illegal immigrants in Indonesia must be carried out with full wisdom and respect for applicable legal principles.

Keywords: Legal politics, Wisdom, Selective Policy, Illegal Immigrants, Rohingya.

1 Introduction

The presence of illegal immigrants can lead to demographic issues related to socio-economic conflicts, which are directly proportional to an increase in crime rates [1]. It is recorded that approximately 1,600 individuals are registered as asylum seekers with the United Nations High Commissioner for Refugees (UNHCR), all of whom are Rohingya refugees. However, subsequent arrivals of refugees have not been documented or registered by the Indonesian government. The process of seeking asylum is arduous, involving journeys of hundreds or even thousands of kilometers from the refugees' home countries. Not infrequently, most of them experienced death and misfortune on their journey. Asylum seekers use various methods and travel routes. One of them is sea shipping routes. They also cannot immediately arrive at their destination country. Generally, they need to stop over (in transit) in certain countries. In the context of illegal travel to Australia, for example, asylum seekers from the Middle East or other Asian regions often use Indonesia as a stopover place.[3]

Immigrants are people who come from other countries and live permanently in a country. In the past, the term immigrant was not limited to humans as perpetrators, but could also be used for animals and objects that moved across the borders of a country.[4] Initially, this population

movement occurred due to war and natural disasters, so the residents looked for other safer areas. Then the term immigrant was narrowed to humans only after countries experienced developments that automatically created laws and regulations. Law No. 6 of 2011 concerning Immigration regulates that:

“To settle in Indonesian territory, a permanent residence permit is required, which is given to foreign citizens who have valid travel documents. "If the foreign citizen does not have valid travel documents and the permit is not clear, then immigration officials can expel or deport him from Indonesian territory or refuse entry to Indonesian territory."

Based on the Law of the Republic of Indonesia Number 6 of 2011 concerning Immigration, there are 2 (two) important regulatory elements, namely:

- a. Regulation of various matters regarding the movement of people entering, leaving, and staying from and within the territory of the Republic of Indonesia;
- b. Arrangements regarding various supervision not only of foreigners but also Indonesian citizens in Indonesian territory, to uphold state sovereignty.

The relationship between legal politics, selective policy, and the handling of illegal Rohingya immigrants is a complex issue involving political, legal, humanitarian, and public policy aspects. Legal politics is a concept that refers to the influence of politics on the process of legal policy-making and law enforcement, while selective policy refers to policies that are applied selectively to certain groups. In the context of handling illegal Rohingya immigrants, the relationship between legal politics and selective policy reflects the dynamics that influence the approach taken by the government in responding to this problem.

First, legal politics plays a key role in shaping the legal and policy framework regarding handling Rohingya illegal immigrants. The formation of laws, regulations, and policies related to immigration is influenced by political interests, ideology, and the values espoused by the government. In this context, legal politics can influence whether illegal Rohingya immigrants will be considered law violators who must be dealt with firmly or as victims who need protection.

The selective policy in handling Rohingya illegal immigrants also reflects the government's strategy in determining priorities and emphasizing certain immigrant groups. The government can implement selective policies in handling illegal immigrants based on political, economic, or national security considerations. This can create disparities in the treatment of illegal immigrants, depending on their national origin, religion, or ethnic background. Apart from that, legal politics and selective policies can also influence the process of identifying, detaining, prosecuting, and deporting illegal Rohingya immigrants. The choice of legal approach applied by the government towards illegal immigrants can be influenced by political factors and selective policies. This can raise questions regarding justice, human rights, and fair treatment of illegal Rohingya immigrants. In a humanitarian context, legal politics and selective policies can be obstacles or opportunities in providing protection and assistance to illegal Rohingya immigrants. A selective approach in policies handling illegal immigrants can hinder Rohingya immigrants' access to health services, education, and human rights protection. Thus, the relationship between legal politics, selective policy, and the handling of illegal Rohingya immigrants is a complex aspect and requires a deep understanding of political, legal, and humanitarian dynamics. The government and relevant stakeholders need to evaluate the impact of policies implemented in handling Rohingya illegal immigrants to achieve a more just, humane approach under human rights principles.

Immigration law in Indonesia is a critical framework ensuring the legality and regulation of foreign nationals within its borders. Foreign nationals entering Indonesia must possess valid

documents by Article 8(1) of Law No. 6 of 2011 concerning Immigration. Enforcement against these individuals focuses on issues such as identity fraud, registration, documentation, issuance of control books, residency permits, permit expiry, illegal entry or overstay, and presence in Indonesia outside monitored operations, especially in areas vulnerable to unauthorized crossings. [5]

The preliminary stages of the criminal justice process—encompassing investigation, prosecution, and adjudication—are conducted by police officers and other designated officials. In cases involving criminal conduct within the immigration domain, Civil Servant Investigators, as stipulated by Article 4 of the Criminal Procedure Code, hold responsibility. Sanctions, as delineated in Article 119(1) of Law No. 6 of 2011 concerning Immigration, may be applied to undocumented immigrants. Nonetheless, there are instances where such individuals are not processed under legal procedures but are instead detained in immigration facilities pending deportation. In adherence to the principle of territorial jurisdiction, Indonesian criminal law applies to all individuals committing offenses within its borders, obligating the state to enforce legal order uniformly within its territory.[6]

Investigation, prosecution, and trial are the initial understanding of the legal process in criminal cases, starting from the process handled by the police as investigating officers and other officers, in the case of enforcing criminal acts in the immigration sector, the authorized party is a Civil Servant Officer. as intended in the provisions of Article 4 of the Criminal Procedure Code which states that an investigator is any police official of the Republic of Indonesia.

Illegal immigrants who do not have travel documents may be subject to sanctions based on Article 119 paragraph (1) of Law Number 6 of 2011 concerning Immigration. From several immigrants we can see that there are illegal immigrants who do not have passports and documents, but they are not processed based on applicable laws and regulations, these immigrants are placed in immigration detention rooms for deportation, in the territorial principle study explains that the criminal provisions in the law Indonesia's invitation applies to every person who commits a criminal act in the territory of the Republic of Indonesia. Criminal law applies to anyone who commits an offense in the territory of that country. A State must uphold the law and maintain legal order in its territory against anyone.[7]

In Indonesia, legal politics regarding illegal Rohingya immigrants is reflected in the approach taken by the government in dealing with immigration issues, including the status of illegal Rohingya immigrants. The position of Rohingya illegal immigrants in Indonesian legal politics is influenced by various factors, such as national immigration policy, international law, and political considerations.

Immigration law politics in Indonesia determines the status of Rohingya illegal immigrants through the legal framework that regulates immigration and immigration issues. Indonesia has Law Number 6 of 2011 concerning Immigration which is the legal basis for regulating immigration policy in Indonesia. This law gives the government the authority to regulate entry, stay, and immigration in Indonesia, including handling illegal immigrants. In determining the status of Rohingya illegal immigrants, Indonesia also refers to international legal principles related to human rights and immigrant protection. As a member of the United Nations (UN) and party to various international instruments, Indonesia is expected to treat illegal immigrants by respecting their human rights, including the right to protection and justice. However, legal politics in Indonesia sometimes face challenges in dealing with illegal Rohingya immigrants, especially in terms of effective and fair handling. Several factors that influence the politics of immigration law in Indonesia in determining the status of Rohingya illegal immigrants include political, economic, and social conditions in the country, as well as pressure from society and related parties.

In practice, the status of Rohingya illegal immigrants in Indonesia can vary depending on government policy and law enforcement. Some Rohingya illegal immigrants may be granted refugee status if they are proven to have experienced persecution or violence in their home country, while others may be considered illegal immigrants and will undergo deportation processes by relevant immigration rules. Thus, legal politics in Indonesia positions Rohingya illegal immigrants as part of a complex challenge in the country's immigration and immigration policy. The government and relevant stakeholders need to take an approach based on the principles of human rights, justice, and humanity in dealing with immigration issues, including in determining the status of Rohingya illegal immigrants.

The problem in this paper is "How is the Legal Politics of Selective Policy in Handling Rohingya Illegal Immigrants?"

2 Method

This paper employed a descriptive-analytical methodology, utilizing data to explicitly depict field-related issues, followed by analytical procedures and conclusion drawing to address the identified problems. [8] The data collection method is through observation and literature study to obtain solutions to problems in preparing this paper. Data collection was achieved through observational techniques and literature review, aiming to provide solutions for the issues addressed in the study. Aligning with the research objectives, the investigation fell within the scope of qualitative research, thereby adopting a qualitative approach. [9] The approach utilized was a normative juridical examination of specific statutory provisions and written laws related to politics, legal frameworks, and selective policies concerning the management of illegal Rohingya immigrants [10]. The research delineated the object of study by concentrating on the regulatory, political, and legal dimensions of particular implementation in the context of handling illegal Rohingya immigrants policy.

3 Result and Discussion

3.1 Implementation of Selective Policy in Indonesia in Handling Illegal Immigrants.

Historically, Indonesia's abundant natural resources, particularly plantation commodities with high global market value, made its territory a coveted asset for European powers during the colonial period. Under Dutch East Indies rule, an open-door immigration policy (*opendeur politiek*) was implemented, facilitating extensive foreign entry and residency, including citizenship. However, following Indonesia's independence, the immigration regulations of the Dutch East Indies were abolished and replaced with new laws reflecting the spirit of Indonesian sovereignty. [11]

To maintain national sovereignty, sovereign states are required to implement inspection and supervisory functions for foreign nationals wishing to enter their territories. Each foreign national seeking entry undergoes screening and evaluation, with only those meeting specific criteria permitted entry, following the immigration policies of the respective country. This selective immigration policy is a universally applied principle, including in Indonesia.

The Indonesian Government's examination and supervision of foreigners are grounded in the functions of Indonesian immigration. These functions encompass providing immigration services, enforcing the law, ensuring state security, and facilitating community welfare development (Article 1, Republic of Indonesia Law Number 6 of 2011 concerning Immigration). This framework applies to all foreign nationals from the moment they apply for entry into Indonesian territory, including document verification at immigration checkpoints, monitoring during their stay and activities, and oversight until their departure. The Directorate General of Immigration, under the Ministry of Law and Human Rights of the Republic of Indonesia, is specifically tasked with these functions, in coordination with relevant ministries and state institutions.

The legal basis for Indonesia's selective immigration policy is outlined in Law Number 6 of 2011 concerning Immigration. This legislation mandates that foreigners seeking entry and residence in Indonesia must align with the country's objectives while respecting human values and rights. The policy specifies that only foreigners who contribute positively and do not pose threats to security and public order are permitted to enter and reside in Indonesian territory. This selective policy aims to protect national interests by balancing security and prosperity approaches, ensuring that only those who meet the country's criteria for benefit and safety are allowed entry. [12]

The influx of foreigners, driven by diverse motives and interests, has led to both advantageous and adverse effects. A significant drawback of increased foreign entry is the escalation in immigration violations.[13] Permits for nationals from visa-requiring countries are issued based on their anticipated positive contributions to the country's foreign exchange reserves and their non-threatening nature to public security, following the Indonesian Government's immigration policy. It is crucial to implement rigorous supervision to maintain national sovereignty and minimize the negative issue.

Immigration supervision encompasses a range of activities aimed at collecting, processing, and analyzing immigration data for both Indonesian citizens and foreigners to ensure adherence to immigration laws (Article 1 point 2 of Government Regulation Number 4 of 2017 concerning Immigration Control). This system comprises administrative oversight—such as document verification, fingerprinting, and data management at checkpoints and immigration offices—and field supervision, which includes monitoring, interviews, reconnaissance, and other investigatory measures.[14] Oversight of foreigners from visa-requiring countries is executed with heightened scrutiny and selectivity. Field supervision, while aligned with general practices, is particularly focused on high-traffic areas like hotels, guesthouses, and entertainment venues.[15] Foreigners who violate legal provisions may be subject to administrative measures designed to address threats to public order or breaches of Indonesian regulations.

The designation of visa-requiring countries is based on an in-depth evaluation of each country's conditions, adhering to K.J. Holsti's principles of objective definition, action selection, and the utilization of national resources to achieve strategic interests. This decision-making process is managed by a coordinating team dedicated to national interests. The selective policy ensures that only individuals who are deemed beneficial (prosperity approach) and do not pose risks to domestic security (security approach) are permitted entry. As a result, certain countries identified as vulnerable are categorized as visa-requiring, reflecting Indonesia's selective immigration strategy.[16]

3.2 Politics and Law Selective Policy in Handling Rohingya Illegal Immigrants

In the context of handling illegal Rohingya immigrants in Indonesia, the relationship between legal politics, selective policy, and the process of handling illegal immigrants is an important factor that influences the government's approach to handling immigration issues. The following is a description of the relationship and political legal process of selective policy in dealing with Rohingya illegal immigrants in Indonesia:

1. Legal Politics.

Legal politics is the basis that forms the legal and policy framework related to immigration in Indonesia. The Immigration Law and other related regulations are the basis for determining the rights, obligations, and protection of immigrants, including illegal Rohingya immigrants. Political law also includes aspects of international law that regulate the human rights of immigrants.

2. Selective Policy Wisdom.

The selective policy in handling Rohingya illegal immigrants reflects the approach chosen by the government in determining priorities, handling, and treatment of certain immigrant groups. These policies may be influenced by political considerations, national security, and other factors that influence immigration policy.

3. Process for Handling Rohingya Illegal Immigrants.

The process of handling Rohingya illegal immigrants in Indonesia involves the process of identification, detention, prosecution, and determining their immigration status. In this process, legal politics and selective policy play a role in determining the approach the government will take, whether as law violators who must be dealt with firmly or as individuals who need protection.

4. Protection and Human Rights.

In dealing with Rohingya illegal immigrants, it is important to pay attention to their protection and human rights. Legal politics and selective policies must ensure that illegal Rohingya immigrants are treated fairly, humanely, and by internationally recognized human rights principles.

5. Law Enforcement and Justice.

The process of handling Rohingya illegal immigrants must also pay attention to aspects of law enforcement and justice. The application of the law must be carried out transparently, proportionally, and based on applicable legal procedures, without discrimination or abuse of power.

Thus, the relationship and political-legal process of selective policy in dealing with Rohingya illegal immigrants in Indonesia is a complex aspect and requires a balance between political, legal, humanitarian, and justice interests. The government and all relevant stakeholders should work together to address immigration issues with an approach that respects human rights, justice, and humanity.

Handling Rohingya illegal immigrants in Indonesia with a selective policy, there are several legal bases used. The following are several relevant legal bases that can be used in the legal politics of selective policy to deal with illegal Rohingya immigrants in Indonesia, along with their articles:

1. Law Number 6 of 2011 concerning Immigration.

Article 107: States that foreigners who enter Indonesian territory without permission are considered illegal immigrants.

Article 109: States that illegal immigrants can be subject to administrative or criminal sanctions by applicable legal provisions.

2. Law Number 39 of 1999 concerning Human Rights.

Article 27: Guarantees the human rights of everyone, including immigrants, to obtain protection and justice.

3. UN Convention on the Status of Refugees 1951.

Article 31: States that states that are not members of the Convention may not expel refugees to territories where they risk persecution.

4. Government Regulation Number 31 of 2013 concerning the Implementation of Law Number 6 of 2011 concerning Immigration.

Article 119: States that illegal immigrants can be allowed to apply for protection to the government Presidential Regulation Number 125 of 2016 concerning Combating Transnational Crime.

Article 12: States that handling illegal immigrants must be carried out by respecting human rights and humanitarian principles.

With this legal basis, the Indonesian government can formulate a selective policy based on legal principles, human rights, and justice in dealing with illegal Rohingya immigrants. It is important to note that handling illegal immigrants must be carried out with full wisdom and balance between national interests, humanity, and applicable legal principles.

4 Conclusion

The selective immigration policy serves as the foundational framework for regulating the entry of foreign nationals into Indonesia. Codified in Law No. 6 of 2011 concerning Immigration, this policy's essential principles require a rigorous screening process for all individuals seeking admission. Entry and residency in Indonesia are permitted only for those foreign nationals who contribute positively and do not pose a threat to security and public order. The primary aim of this policy is to safeguard Indonesia's national interests, particularly its sovereignty and security, which could be compromised by the unregulated entry of foreigners. The selective immigration policy of Indonesia is predicated on a dual approach that harmonizes security and prosperity considerations. In addressing the issue of illegal Rohingya immigrants, the interaction between legal politics, selective policy, and immigration management procedures is paramount. This article provides an in-depth analysis of the interrelations and legal-political mechanisms of the selective policy in the context of managing illegal Rohingya immigrants in Indonesia.

Legal politics is the basis that forms the legal and policy framework related to immigration. The Immigration Law and other related regulations are the basis for determining the rights, obligations, and protection of immigrants, including illegal Rohingya immigrants. Selective policy, on the other hand, reflects the government's chosen approach in determining priorities, handling, and treatment of certain immigrant groups, such as illegal Rohingya immigrants. The process of handling Rohingya illegal immigrants involves identification, detention, prosecution, and determination of their immigration status. In this process, legal politics and selective policy play a role in determining the approach to be taken by the government. The protection and human rights of immigrants must also be considered in handling Rohingya illegal immigrants. Some of the relevant legal bases include the Immigration Law, the Human Rights Law, the UN Convention on the Status of Refugees, Government Regulations, and Presidential Regulations. With this legal basis, the government can formulate a selective policy that respects human rights, humanitarian principles, and justice in dealing with illegal Rohingya immigrants. Handling illegal Rohingya immigrants requires a balanced approach between political, legal,

humanitarian, and justice interests. The government and relevant stakeholders need to work together to address immigration issues by paying attention to human rights, justice, and humanity. Thus, handling Rohingya illegal immigrants in Indonesia must be carried out with full wisdom and respect for applicable legal principles.

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