

An Overview of Regulation Policies for Refugees in Malaysia and the Selected European Countries: Current Situation and Future Consideration

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2023

Received | 14 | 11 | 2022 – Accepted 28 | 12 | 2022 – Available online 15 | 01 | 2023

Abstract

Malaysia is one of the most attractive destinations for refugees from different parts of the world. It is a haven country where refugees can venture into new decent lives secured from poverty, discrimination and political pressure. Similarly, certain European countries are also offering attractive privileges to refugees. Nevertheless, such privileges are gradually diminished due to the impacts of the ongoing financial costs that need to be covered by the countries. This research aims to evaluate regulation policies relating to refugees in Malaysia and the selected European countries. It is important to highlight strengths and weaknesses of the existing regulatory policies in these selected countries. This study utilises doctrinal legal methodologies as well as qualitative content analysis. A comparative legal technique is also used to assess regulation measures in Malaysia and selected European countries. As parts of the findings, it was discovered that Malaysia needs to enhance its regulation policies relating to refugees. In comparison to other European countries, German offers an attractive model for refugee integration. Meanwhile, the majority of monies donated in Turkey to sponsor refugees come from local philanthropic initiatives. It is vital, particularly for Malaysia, to consider in providing refugees and asylum seekers with stronger legal protection for their safety. An effective integration system for refugees is a good initiative that the countries should choose to adopt.

Keywords: refugees, refugee integration, Germany, Turkey, and Malaysia.

Acknowledgment: I want to convey my heartfelt thanks to my supervisors for their ongoing supports of my Ph.D. journey and research. Their patience, determination, passion, and vast knowledge are exceptional. Their advices were invaluable during my Ph.D. journey and writing of this article. This article is a by-product of a research project titled “Humanitarian Sukuk: Developing an Alternative Financial Tool in Addressing Refugee Crisis” carried out under the Fundamental Research Grant Scheme (FRGS) with the ID No.: FRGS19-135-0744 awarded by the Ministry of Higher Education (MOHE), Malaysia. The authors acknowledge MOHE and the International Islamic University Malaysia for their immense financial supports.

1.0 INTRODUCTION

Malaysia is one of the most attractive destinations for the greatest number of refugees from different parts of the world. It is viewed as a location where they may live a dignified life free of poverty, prejudice, and political pressure. Similarly, Europe also provides attractive privileges and benefits to refugees. However, these privileges have steadily dwindled as a result of the ongoing financial crisis. Both Europe and Malaysia have laws in place to safeguard refugees and asylum seekers. In comparison to Europe, Malaysia may need to consider providing stronger legal protection or humanitarian framework for refugees. Thus, this research aims to evaluate regulation policies relating to refugees in Malaysia and the selected European countries. It is important to highlight strengths and weaknesses of the existing regulatory policies in these selected countries. This research employs both doctrinal legal techniques and qualitative content analysis. A comparative legal method is also utilized to evaluate regulatory initiatives in Malaysia and the selected European countries.

While best practices should be maintained, the possibility of amendments should be done in upgrading their laws. Relevant international good practices as followed in the selected countries are considered in this regard. Such identification of acceptable best practices is critical for an evaluation and may be considered by Malaysia for an implementation in enhancing its regulatory policies for refugees. This would assist Malaysia to improve the process of integrating refugees into its economic and social life, and simultaneously, reducing its financial responsibility towards them. As a result, a comparison study will be done between Malaysia and Europe, with a greater emphasis on the German’s experiences as a unique model for refugee integration, particularly from a legal standpoint. Furthermore, the research will investigate the strengths and weaknesses of Malaysia’s regulatory policies in relation to refugees. Recommendations will be provided for policymakers and regulators to consider when formulating an appropriate national strategy, as well as for academics to enhance their studies and expand this area of discussion.

There is an apparent on-going debate relating to integration of refugees in the host countries. The term “integration” can be used to indicate several meanings. It is viewed historically as a one-way path to becoming a part of a certain community. The word “assimilation” tends to be used in reference to migrants. According to Rytter (2018), the integration process depends on the reaction of the new community that the refugees need to interact. At the same time, they also need to consider institutions that they may need to deal with later on. Possibilities of success in the refugee integration (such as getting jobs) and obstacles that they may need to face (such as unrecognized qualification and skills) are also needed to be considered for the success of refugee integration. In the modern discussion, the refugee integration is treated as a ‘two-way’ process since not only refugees can gain benefits or enjoy certain privileges, the host country should also get its benefits, such as its economic growth and etc.

Based on a report made by the United Nations High Commissioner for Refugees or UNHCR in 2014, there is no hard and fast rule to have a comprehensive process of refugee integration. Nevertheless, it is important to have an efficient refugee integration which depends heavily on a strong legal framework of the host country and the application of regulatory policies that are motivated to protect the refugees in their jurisdictions. An observation is made by UNHCR (2014) which stated:

“There is no “one-size-fits-all” approach to integration. The situation of refugees must be analyzed in the context of the respective host society and with regard to the living and working conditions of nationals. However, it is also clear that international events, discourses and frameworks have an important impact on the integration of refugees and respective policies at the national and local level. There are a number of broad goals of integration that apply across countries. These include efforts to enable refugees to reach and develop their full potential, to protect their human rights, prevent their marginalization, and foster social cohesion and harmonious co-existence”.

The application of refugee integration in the host country remains flexible and should be molded according to suitability, legal structures, and financial facilities for refugee integration. With increasing number of refugees worldwide, even though humanitarian assistance for refugees should be considered, the challenges that are facing by the host countries should not be overlooked.

This research appreciates the practices carried out in Malaysia and the selected European countries in providing protection for refugees. The reflection of discussion and findings can be seen from the organization of this article. After this introductory section, the reality of refugees and regulatory policies in Malaysia is presented in the second section. It follows with the third section that provides the discussion on refugee integration initiatives together with its regulatory policies in Malaysia, German, and Turkey. In the fourth section, a short discussion is provided relating to the protection of refugees as a critical component in achieving sustainable development goals. A brief conclusion is placed at the end of the discussion.

2.0 UNDERSTANDING THE CONTEXT OF REFUGEES IN MALAYSIA

With a projected 80 million displaced by the middle of 2020, the current refugee situation has seen the largest level of displacement since World War II. Of this total, 26.3 million were recognized as refugees, 4.2 million as asylum seekers, and 45.7 million as internally displaced people (UNCHR, 2020). Malaysia is Asia's top refugee and asylum-seeker receiver, with 27,311 asylum applications submitted in 2019. (UNCHR, 2020). The majority of asylum-seekers in Malaysia are from Burma, Pakistan, Yemen, Afghanistan, Somalia, Syria, and Sri Lanka. The top three nationalities account for nearly 89% of all asylum applications. Among these nations, asylum applicants from Syria and Yemen have the greatest percentage of acceptance (with all applications are approved), while Sri Lanka has the lowest (almost 66% of applications are rejected). Applicants from Afghanistan and Somalia obtain affirmative responses in 98.3% and 95.6% of cases, respectively. Meanwhile, all Nigerian applications are denied (World Bank Data, 2019).

Between 2019 and 2020, Malaysia welcomed around 178,600 refugees and 177,000 asylum applicants, respectively, as well as an estimated 10,000 stateless people (who do not have any nationality in any State under the operation of the national law). The refugees (which also includes stateless people and asylum seekers) comprise of 69% men and 31% women. In 2019 and 2020, over half of all asylum applicants and refugees were under the age of 24. The majority demographically is aged under four years old and 18-24 years old. Children and adolescents accounted for 26% of all individuals of concern, 18% were young adults, and 4% have special needs (UNHCR, 2020). In terms of the stateless population, UNHCR counted over 13,100 people. This figure only applies to residents of Peninsular Malaysia. There are no detailed statistics on

stateless people who live outside of the mentioned area (UNHCR, 2020). The largest number of refugees, migrants and asylum-seekers (collectively known as ‘newcomers’) were recorded as undocumented populations. It is estimated that the total number may reach up to between 2 to 4 million people. In the absence of a specific national humanitarian policy for them in Malaysia, the refugees are facing several challenges. These challenges can be traced from the obstacle to have residences, the access to employment, the channel to obtain modest health care and the opportunity to accredited education.

This increases pressure on local resources and results in financial dependence, loss of dignity, and lack of access to affordable and safe financial services for the refugees. The income support received from non-governmental organization (NGOs) and non-profit organizations are for subsistence only, and lower than an average Malaysia. These obstacles render a continuous dependency of refugees towards the host country. This puts additional strain on local resources resulting in financial reliance. At the same time, it may lead to socio-economic issues such as loss of dignity, lack of access to cheap and secure financial services for refugees, and decreasing financial inclusion. Existing income supports from non-governmental organizations (NGOs) and non-profit organizations are used solely for subsistence. Such funds are usually lower as compare to financial assistances prepared for the ordinary Malaysians. It is understandable that Malaysians are placed as a priority concern by the host country. With the existing gap in financial assistances, the refugees may not have a way out to survival themselves. Ultimately, they may be exposed to involvements in criminal activities or social related problems that may cause the reputation of the host country, such as homelessness and begging on the streets.

In such situations, it is obvious that the behaviors of newcomers be affected and influence their economic and financial choices. They are likely to be using multiple formal or informal ways to make ends meet and to sustain themselves beyond the non-governmental organization needs to be received. Thus, it is essential that they have access to good quality financial tools and information, to integrate properly into the state, to aid to build self-sufficiency in the short and long run, to take advantage of economic opportunities, and to alleviate social and financial risk for themselves and family still living in fragile contexts. It is understandable that refugees will be influenced negatively in their actions, economic activities, and financial decisions in such instances. They are likely to use a variety of official and informal methods to achieve their goals. At the same time, they may be able to support themselves by illicit methods in addition to the non-governmental organization's assistance. As a result, it is critical that they have access to high-quality financial tools and information in order to properly integrate into the state, build self-sufficiency in the short and long term, capitalize on economic opportunities, and reduce social and financial risk for themselves and their families who are still vulnerable. Undeniably, the implementation is crucial and can only be done with a stronger consideration on regulatory policies.

3.0 CURRENT SCENARIO ON REGULATION POLICIES: MALAYSIA, GERMAN, AND TURKEY

This section presents comparative analysis on regulation policies which are relevant in initiatives of refugee integration carried out in Malaysia, German, and Turkey. These three countries are different from demographical background, cultures, languages, religions, geographical locations, and socio-economic matters. However, these countries share a common similarity where they are favorable destinations for refugees who seek for a better place to continue their lives. At the national level, these countries introduce their national policies for refugees and asylum-seekers to lessen their burdens and to assist them to survive. However, with the spread of the global pandemic caused by the deadly COVID-19 virus, certain countries are facing economic downfall where they have to prioritize their own citizens, while placing refugees at the second place.

3.1 MALAYSIA

Malaysia has not ratified the 1951 Refugee Convention or its 1967 Protocol. Meanwhile, the majority of European countries support the said Convention and its Protocol, which emphasize the protection of refugees' human rights. They also chose to follow the legal principles enshrined in the Convention and its Protocol. Despite the fact that Malaysia has not ratified the Convention and its Protocol, Malaysian regulators have never prevented or penalized humanitarian initiatives from being carried out. In Malaysia, all refugees, asylum seekers, and stateless people are treated the same under their immigration laws. There is no process to deport the refugees out or back to their own countries; however, they have to seek formal resolution through the UNHCR. While waiting for the transfer for a new host country, the refugees are exposed to numerous and lengthy processes until their status is established and confirmed. In the absence of special regulatory policies to address the protection of refugees, their welfare and needs, they continue to face significant barriers to achieving their economic survival. At the same time, they have lesser opportunity to contribute back to Malaysian economic development.

Malaysian government may not seem providing any offer to the refugees any monetary support. The refugees depend on the philanthropic activities as carried out by non-governmental organization (NGOs) and non-profit organizations. It is interesting to note that these non-governmental organization (NGOs) and non-profit organizations received funds for their activities from the government. Thus, it makes the government makes indirect contributions to these charitable initiatives in assisting refugees. The employment for refugees is not limited. However, there is a problem when comes to the acceptance of their qualifications under educational requirements in Malaysia. Sometime, their educational certificates may not follow the required

standards provided by the Ministry of Higher Education in Malaysia. Even for certain groups of refugees, they are not exposed to the formal educational system. Therefore, the refugees depend on jobs with low-income salaries to sustain their families and themselves. Without any valid documentation from UNHCR, they are generally seen as illegal or under-documented migrants under the Immigration Act of 1959/63 (Act 155). For a long term, it is difficult for them to stay lawfully in Malaysia without UNHCR cards while waiting for the transfer process to other host country. Those who do not have any documentation have minimal rights to access to the quality healthcare, education, and employment legally. Nevertheless, many humanitarian assistances come from the local community such as through charitable alms-giving (*sadaqah*), compulsory charities (*zakat*) and donations.

3.2 GERMANY

There is no doubt that refugees and asylum seekers in Germany have a better life than those in many other developing European host countries. Thanks to their regulatory policies on welfare benefits, employment, and training assistances. Germany has signed the 1951 Refugee Convention, as well as the 1954 and 1961 Statelessness Conventions. Following the adoption of the 1951 Convention, it began to accept a large number of refugees in 2016 (Das Bundesamt in Zahlen 2016: Asyl, Migration und Integration). Berlin has the highest refugee density per square kilometre of any city (Katz, Noring, & Garrelts, 2016) and it serves as a hub for refugee integration projects. The discussion in this study is limited to a few regulations and policies that Germany has implemented in favor of refugees. These laws are intended to improve their social and financial situation in order to improve their standard of living, as well as to alleviate the State's staggering financial pressures and expenditures for refugees.

Germany adopts certain national strategies and regulations set by financial regulators and policymakers with the goal of balancing compliance with national and international financial stability principles while protecting the principles of integrity and consumer protection. To achieve this purpose, the government making an effort to determine acceptable identification and risk management procedures for refugees and asylum-seekers. Generally, they are often facing the lack of necessary national identification documents or ID, marriage certificates, and educational certificates. In addition to the lack of stable residence status and the risk of relocation to another country (AFI, 2017). As a result, financial regulators were taking the necessary steps to forge partnerships with stakeholders outside of the financial sector, specifically with national identification authorities, refugee affairs authorities, humanitarian agencies, NGOs, civil society, and the Anti-Money Laundering and Countering the Financing of Terrorism community at the national, regional, and international levels.

The second important intention is to improve their long-term financial resilience, the financial regulators and other stakeholders involved in refugee integration set three significant national regulations which are guidelines for bank account opening, regulation for payment services, and digitalization and use of information and communication technology (ICT) for an inclusive solution. To improve their long-term financial resilience, financial regulators and other stakeholders involved in refugee integration established three significant national regulations. They are: (i) the guidelines for opening of bank account, (ii) the regulatory policy on payment services, and the digitalization, and the use of ICT for an inclusive solution. The Federal Financial Supervisory Authority or BaFIN (*German*: Bundesanstalt für Finanzdienstleistungsaufsicht) authorized all banks to open accounts for asylum-seekers and refugees. The regulator should make sure that the refugees' documents are acceptable to meet the Know-Your-Customer (KYC) requirements (BaFIN, 2018).

Several efforts are taken by the German government to make life easier for refugees and to help them assimilate quickly into the local society. The government has introduced a slew of Fintech into the national market to make payment services more accessible. The Payment Services Supervision Act 2018, or ZAG 2018 is used to governs refugees' rights on the payment services (BMJV, 2017). Continued emphasis on information and communications technology (ICT) is made by the German government. It offers workable options that the Federal Office for Migration and Refugees or BAMF and European Commission can support in order to increase migrant inclusion and facilitate integration (BAMF, 2017; European Commission, 2017).

Furthermore, there are improvements made to a number of Acts under the German law to facilitate the refugee integration. The right to asylum is treated as a constitutional right in Germany and it is granted to everyone who flee any political persecution (BMJV, 1993). Immigration laws provide rules for admission and handling of refugee claims. These can be seen from:

- (i) the Asylum Act where details of the process and consequences of granting or denying asylum are provided;
- (ii) the Residence Act has the rules concerning entry, stay, exit, and employment of foreigners; and,
- (iii) the Asylum-Seekers' Benefits Act which provides nature and benefits that may be received by asylum applicants.

Additionally, Germany offers refugees various paperwork and welfare advantages at three separate stages of the asylum process to help them to settle in the country easily. These stages are:

- (i) Stage I: Arrival and registration. In this stage, the refugees received an official document namely a "Proof of arrival card" which authorizes the holder to stay in Germany and to receive social services;
- (ii) Stage II: Asylum procedure. In this stage, the government provides the refugees a document known as the "certificate of permission to reside". It is used as ID (that indicates the holder is an asylum

- applicant) and he/she can stay in Germany lawfully. The holder has an obligation to stay at the reception facility; and,
- (iii) Stage III: Integration or return. In this final stage, the asylum-seekers or refugees get their residence visa for 1 to 3 years which can be extended to a long-term stay visa.

3.3 TURKEY

While Turkey is a signatory member to the 1951 Convention. It restricts refugees to persons from Europe. Despite this constraint, it offers non-European migrants shelter and temporary asylum while the UNHCR seeks long-term solutions abroad. Turkey continues to host the most refugees in the world, as the number of individuals forcibly displaced globally due to conflict, violence, and persecution reaches historic highs. Turkey presently shelters over 3.6 million registered Syrian refugees, as well as approximately 320,000 people of concern from other countries. The UNHCR has an active and direct role in advising the government on the protection of individual non-European asylum seekers. It collaborates with Turkish authorities to guarantee that asylum seekers reach safety, are not imprisoned, are not subject to refoulement, and have access to interim asylum proceedings. The Office determines refugee status (RSD) for non-European asylum seekers and resettles recognized refugees.

The Government established the National Action Plan on Migration and Asylum in April 2005, which serves as a road map for the creation of a comprehensive asylum system. The proposal calls for the establishment of a dedicated agency for asylum and migration, as well as a regional network of receiving centers and other refugee-protection measures. It also envisions the elimination of the 1951 Convention's geographical limitation by 2012, giving a timetable for the phase-out of UNHCR's operational involvement in Turkey. In recent years, Turkey has made considerable headway in establishing its integration policy. The MIPEX evaluation was conducted in 2015, with a focus on policies in effect in 2014. In their work with Refugees International, our colleagues Cindy Huang and Jimmy Graham observe that Turkey has expanded formal labor market access for refugees and that over 7,000 enterprises have been formed by Syrians. While considerable progress has been made in this area, many refugees still do not have access to the official labor market.

Other new policies include funding education through the Conditional Cash Transfer for Education and a work permit program for Syrians, though this is a divisive policy that restricts refugees from working in the provinces where they are registered, which are frequently not where the larger labor markets are.

4.0 PROTECTION OF REFUGEES AS A CRITICAL COMPONENT FOR SUSTAINABLE DEVELOPMENT GOALS

It is better to provide a brief discussion on the protection of refugees and sustainable development goals (SDGs) in order to strengthen this research. Additionally, certain figures from the United Nations' (UN) data collection and how the UN views them in relation to the SDGs.

The world was introduced to the 1951 Convention, in 1951, with the agreement of 145 countries who are the member states of UN. A person designated as a refugee has the right under this convention not to return to a location where he risks grave threats to his life or freedom. It is consistent with Article 14 of the 1948 Universal Declaration of Human Rights, which affirms individuals' freedom to seek shelter from persecution in other countries (UNDHR, 1948). This right is now recognized under international customary law (UNCHR, 2018). According to Article 1 of the 1951 Refugee Convention, a refugee is "...a person who has been forced to flee his or her country because of persecution, war, or violence... has a well-founded fear of such persecution because of race, religion, nationality, political opinion, or membership in a particular social group." (Refugee Convention, 1951; CARE, 2018). Due to such extreme persecution, the refugees are concerned for their life and their freedom. A refugee must be given appropriate protection by the asylum nation in accordance with the stated agreement and its 1967 Protocol in order to safeguard his life and freedom.

The United Nations has worked to protect and ensure the lives and freedom of refugees all around the world ever since it was founded. Under the authority of the United Nations, the United Nations High Commissioner for Refugees (UNHCR Report, 2021) was established, and they estimated that there were around one million refugees in 1951. However, since then, this number has increased. According to estimates, there are currently "...17.5 million refugees, an additional 2.5 million refugees cared for by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and more than 25 million internally displaced people." (OHCHR, 2018).

While everyone is dedicated to achieving the Sustainable Development Goals (SDGs), it is crucial to focus on the security and sustainability of all refugees, or at the very least those who are looking for protection within nations. The existence of refugees and their safeguards must be considered in determining the ultimate effectiveness of SDGs. Additionally, the SDGs' main objective is to address the world's environmental, political, and economic issues (UNDP, 2018). The UNHCR asserts that the SDGs "cannot be implemented without taking into account the rights and needs of refugees, internally displaced people, and stateless people" in a world that is "increasingly affected by climate change, poverty, and violence" (UNHCR, 2018). As a result, the protection of refugees is essential to achieve the SDGs in their entirety. The key ideas which are relevant to refugees can be seen in the SDGs 2030 Agenda as follows:

- (i) Paragraph 4: Nobody will be left behind... and that all nations, peoples, and parts of society will achieve their goals and objectives;
- (ii) Paragraph 23: “All... refugees, internally displaced individuals, and migrants are among those whose needs are represented in the Agenda. We decide to take more effective steps and actions in accordance with international law to eliminate hurdles and limits, boost support, and address the particular needs of persons living in complex humanitarian catastrophes and terrorism-affected regions” (SDGs, 2012).

As a result, the member states that ratified the 1951 Convention must incorporate refugee protection into their nation’s sustainable governance and development policy in order to attain SDGs. The refugees must, above all, get enough financial help to enable them to support themselves and their families in the long period of time.

5.0 FUTURE CONSIDERATION AND CONCLUSION

There is clear evidence that the majority of refugees in Malaysia find themselves in protracted situations (spending more than five years), in a legal limbo (long legal processes for establishing their refugee status from UNHCR), or in a stateless situation. In such situations, they often are facing several barriers to stabilizing their livelihoods and ensuring better integration. For this reason, it is critical that introduce a new policy as a comprehensive solution addressing refugees hosted in Malaysia in order to reduce their vulnerability and improve their long-term resilience. It is also obvious that Germany is the best model that can help Malaysia to introduce comfortable regulations aim to settle the economic situation for refugees and also for the country's economic development. With the current situation of the COVID-19 pandemic, the refugees’ situation is expected to become worse than previously. The pandemic will affect negatively their social and economic well-being, particularly their ability to meet their basic needs, to deal with emergencies and to make investments to build their capacities.

For this reason, the Malaysian government must take into account the future considerations of refugees when taking new decisions. Some of the recommendations for future considerations are:

- (i) Improving the standard of registration and improving documentation processes;
- (ii) Providing easier documentation to refugees, asylum-seekers and stateless as soon as they arrive in the country;
- (iii) Seeking to achieve greater reduction of statelessness and assisting the majority of refugees to acquire nationality;
- (iv) Involving all stakeholders who can either directly or indirectly facilitate the integration of refugees at the social and economic levels;
- (v) Improving access to the financial sector for refugees who want doing their own business; and,

(vi) Improving financial capability and consumer protection.

Generally, it is worth noting that refugees have a big impact on the economy of the host countries, even on their sustainable development. This is why the host countries should understand the critical presence of refugees in their countries. They should try to implement new regulatory policies towards refugees that may influence positively their economy, as well as the livelihood of refugees.

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