



INTEGRATION OF REFUGEE PROTECTION PRINCIPLES IN THE ENFORCEMENT OF CRIMINAL LAW ON HUMAN SMUGGLING IN INDONESIA: A STUDY OF THE ROHINGYA ETHNIC SMUGGLING CASE

Mita Syahfitri Panjaitan^{1*}, Rika Kurniaty², Faizin Sulistio.³

¹ Faculty of Law, Universitas Brawijaya, Malang, Indonesia

² Faculty of Law, Universitas Brawijaya, Malang, Indonesia

³ Faculty of Law, Universitas Brawijaya, Malang, Indonesia

e-mail: mitasyahfitri@gmail.com, rika_kurniaty@ub.ac.id faizinl@ub.ac.id

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Abstract

The increasing influx of Rohingya refugees into Indonesia has created complex legal issues as it involves human smuggling crimes, immigration law, as well as refugee protection and human rights. Rohingya refugees, who are stateless persons and have been subjected to prolonged persecution in Myanmar, are often targeted by transnational organized crime networks that facilitate their illegal cross-border movement. This situation raises questions regarding the extent to which Indonesian criminal law is capable of addressing human smuggling crimes involving Rohingya refugees, integrating international refugee protection principles, and providing adequate protection for refugees as victims. This study is a normative legal research employing conceptual, statutory, and philosophical approaches. The legal materials consist of primary, secondary, and tertiary sources obtained through library research and internet-based documentation, which are then analyzed using deductive, inductive, systematic, interpretative, and comparative methods, as well as case-based analysis of legislation and court decisions related to the smuggling of Rohingya refugees. The findings show that Indonesian criminal law has established a relatively comprehensive normative framework through the Immigration Law, the Indonesian Penal Code, and the ratification of the United Nations Convention Against Transnational Organized Crime (UNTOC) and its Protocol against the Smuggling of Migrants. In addition, the principles of non-penalization, non-refoulement, and humanitarian protection have been substantively integrated into law enforcement practices, although Indonesia has not yet ratified the 1951 Refugee Convention and its 1967 Protocol. This research proposes a victim-oriented criminal law model through the integration of international refugee protection principles, recognition of restitution as a right of refugee victims, and the provision of safe, decent, and humane shelter, in order to achieve legal certainty, substantive justice, and the protection of human dignity.

Keywords: *Human Smuggling, Rohingya Refugees, Refugee Protection.*

Introduction

Forced migration arising from armed conflict, persecution, discrimination, and human rights violations has led to a significant increase in the number of refugees and asylum seekers in various countries. One group affected by this situation is the Rohingya ethnic group from Myanmar, which has long faced systematic persecution and has not been granted citizenship recognition, resulting in their status as stateless persons (Tambunan & Susiatiningsih, 2019). This condition of vulnerability has encouraged many Rohingya refugees to cross borders through irregular routes, often facilitated by human smuggling networks. This phenomenon not only raises immigration-related issues but also creates legal challenges in criminal law, human rights protection, and state responsibility in safeguarding vulnerable groups (Darnela & Nugroho, 2019). Indonesia is one of the transit countries frequently used by Rohingya refugees before proceeding to third countries. In recent years, Aceh and several other regions in Indonesia have experienced an increase in the arrival of Rohingya refugees via sea routes. These arrivals are often associated with human smuggling practices carried out by transnational organized crime networks that exploit the vulnerability of refugees for economic gain. On the other hand, Indonesia faces challenges in clearly distinguishing between smugglers and

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refugees as victims, while ensuring that criminal law enforcement remains consistent with humanitarian principles and international refugee law. Previous studies have generally addressed human smuggling as a transnational organized crime, the implementation of immigration law in irregular migration, and refugee protection from the perspective of human rights and international law. Other studies have also emphasized the importance of applying the principles of non-refoulement and non-penalization in refugee protection, as well as the role of international organizations such as the United Nations High Commissioner for Refugees (UNHCR) in determining refugee status and protection (International Organization for Migration, 2012). In addition, several studies have examined Indonesia's policies in handling foreign refugees through a humanitarian approach, despite Indonesia not being a party to the 1951 Refugee Convention and the 1967 Protocol (MacPherson & Gushulak, 2017).

Although research on human smuggling and refugee protection has been widely conducted, most studies still address these issues separately. Previous research tends to focus on immigration aspects and humanitarian protection without deeply analyzing how Indonesian criminal law integrates international refugee protection principles in handling human smuggling crimes involving Rohingya refugees (Munawarah, 2023). Furthermore, studies specifically discussing a criminal law model that supports restitution and the provision of adequate shelter for refugees as victims of human smuggling remain very limited.

The novelty of this research lies in its integrative analysis of the relationship between Indonesian criminal law and international refugee protection principles in addressing human smuggling against Rohingya refugees. This study not only examines existing legal frameworks and their implementation in practice but also proposes a victim-oriented criminal law model through the integration of non-penalization and non-refoulement principles, recognition of restitution as a right of refugee victims through asset confiscation mechanisms, and the provision of safe, dignified, and non-detention-based refuge facilities.

Based on this background, this study formulates the following research questions: (1) how does Indonesian criminal law regulate human smuggling against Rohingya refugees; (2) how are international refugee protection principles integrated into the Indonesian criminal justice system; and (3) what criminal law model can support restitution and the provision of adequate shelter for refugee victims of human smuggling. The objectives of this study are to analyze Indonesia's criminal law regulations in handling human smuggling involving Rohingya refugees, to examine the integration of international refugee protection principles into the national legal system, and to formulate a criminal law model that ensures legal certainty, substantive justice, and protection of human dignity for refugees as victims of transnational organized crime.

Method

This research is normative juridical legal research, focusing on the study of applicable legal norms through library research on legislation, legal doctrines, court decisions, and other relevant legal materials. This approach is chosen because the issues studied relate to criminal law regulation concerning human smuggling of Rohingya refugees, the integration of international refugee protection principles into the national legal system, and legal protection models for refugees as victims. The legal norms analyzed in this study include Law No. 6 of 2011 on Immigration as amended by Law No. 63 of 2024, Law No. 21 of 2007 on the Eradication of Human Trafficking, Presidential Regulation No. 125 of 2016 on the Handling of Foreign Refugees, as well as international legal instruments such as the United Nations Convention Against Transnational Organized Crime (UNTOC) and the Protocol Against the Smuggling of Migrants by Land, Sea and Air.

This study employs a conceptual approach, a statutory approach, and a philosophical approach. The conceptual approach is used to examine legal doctrines and scholarly opinions regarding human smuggling, refugee protection, victim restitution, and human rights protection. The statutory approach is conducted by analyzing relevant legal regulations, while the philosophical approach is used to explore the values of justice, utility, legal certainty, and human dignity in the treatment of Rohingya refugees as victims of human smuggling. The legal materials used consist of primary, secondary, and tertiary sources obtained through library research and internet-based searches. All materials are analyzed qualitatively using deductive, inductive, systematic, interpretative, comparative methods, and case-based approaches to achieve a comprehensive understanding of criminal law regulation and victim-oriented protection models in addressing human smuggling against Rohingya refugees.

Results and Discussion

1. Indonesian Criminal Law Regulation in Handling Human Smuggling Cases Against Rohingya Refugees

The regulation of Indonesian criminal law in addressing human smuggling cases involving Rohingya refugees essentially reflects a legal construction that combines a repressive approach toward perpetrators of crime and a humanitarian approach toward victims. Under national law, human smuggling is classified as a serious transnational

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organized crime and is no longer regarded merely as an administrative violation (Junef, 2020). This is reflected in Law No. 6 of 2011 on Immigration, as amended by Law No. 63 of 2024, which explicitly defines human smuggling as the act of bringing a person or group of persons into or out of Indonesian territory illegally for the purpose of obtaining financial or material benefit, whether directly or indirectly, and whether organized or unorganized (Kalangi, Waha, & Gerungan, 2023).

This formulation indicates that the main elements of human smuggling are the existence of a profit motive and a violation of immigration regulations. Accordingly, Indonesian law positions this crime as an offense driven by illegal economic activities that exploit cross-border human mobility. In addition, this regulation expands criminal liability not only to principal actors but also to those who participate in, assist, or facilitate human smuggling. In this context, Articles 55 and 56 of the Indonesian Criminal Code (KUHP) serve as the general legal basis for prosecuting accomplices and aiding parties in human smuggling offenses (Paseki & Sinaga, 2024).

In its development, Indonesia has further strengthened its legal framework through the new Criminal Code, Law No. 1 of 2023 concerning the Criminal Code, as adjusted by Law No. 1 of 2026 on Criminal Code Adjustment. Through Article 457, human smuggling is constructed as an independent criminal offense carrying severe penalties, namely imprisonment ranging from 5 to 15 years and a Category VII fine. This provision replaces the previous fragmented regulatory approach under immigration law, thereby demonstrating harmonization and strengthening of the national criminal justice system in responding to transnational crime.

In addition to national law, this regulatory framework is also inseparable from international legal instruments ratified by Indonesia, namely the United Nations Convention Against Transnational Organized Crime (UNTOC) through Law No. 5 of 2009 and the Protocol Against the Smuggling of Migrants by Land, Sea and Air through Law No. 15 of 2009. These instruments affirm that states are obliged to criminalize migrant smuggling while simultaneously protecting the rights of smuggled migrants. A key principle emphasized in the Protocol is the non-criminalization of migrants, meaning that migrants must not be prosecuted solely for being victims of smuggling (Martha, 2016).

In the context of Rohingya refugees, this provision is directly relevant. Although they enter Indonesian territory without valid documentation, Indonesian criminal law does not position them as perpetrators of human smuggling, but rather as victims of such crimes (Kristin & Dewi, 2017). This approach is further reinforced by Presidential Regulation No. 125 of 2016 on the Handling of Foreign Refugees, which stipulates that refugees must be treated within a humanitarian framework, including the provision of temporary shelters and coordination with international organizations such as UNHCR.

On the other hand, immigration law still provides a basis for law enforcement against those responsible for smuggling networks. Articles 113 and 120 of the Immigration Law specifically regulate criminal sanctions against any person who unlawfully brings people into or out of Indonesian territory for profit. Thus, law enforcement efforts are directed toward intellectual actors, field perpetrators, and organized networks involved in transnational human smuggling. Furthermore, the strengthening of criminal norms through Article 457 of the Criminal Code clarifies that human smuggling is an independent criminal offense with severe penalties, while also reaffirming Indonesia's position in addressing transnational crime. The provision emphasizes that the essential elements of the offense include the purpose of obtaining profit and the act of transporting or facilitating illegal movement of persons.

In the case of Rohingya refugees, Indonesian criminal law must be interpreted proportionally. On the one hand, the state is obligated to firmly prosecute human smugglers who exploit the vulnerability of refugees. On the other hand, the state is also obliged to protect refugees who are victims of conflict, discrimination, and transnational criminal networks (Indah, 2014). UNHCR data indicating thousands of Rohingya refugees in Indonesia, many of whom belong to vulnerable groups such as children and women, further strengthens the humanitarian approach in their treatment.

Thus, it can be concluded that Indonesian criminal law in handling human smuggling cases involving Rohingya refugees forms a comprehensive system that integrates national legal instruments (the Criminal Code and Immigration Law), ratified international legal instruments, and national refugee management policies. This system reflects a balance between strict law enforcement against smugglers and humanitarian protection for refugees as victims, thereby positioning criminal law not only as a repressive instrument but also as a tool for human rights protection in the context of transnational crime.

2. Integration of Refugee Protection Principles under International Law into Indonesia's National Legal Framework

Indonesia's criminal law regulation in handling human smuggling cases involving Rohingya refugees has incorporated international refugee protection principles; however, this integration remains partial, functional, and not yet institutionalized within a comprehensive national refugee law system. Rather than being achieved through the ratification of the 1951 Refugee Convention and the 1967 Protocol, this integration has been carried out through the adoption of fundamental refugee protection values into various national legal instruments, such as the Immigration Law, the new Criminal Code, and humanitarian-based administrative policies.

Based on the analysis of national legal instruments, Indonesia has ratified the United Nations Convention Against Transnational Organized Crime (UNTOC) through Law No. 5 of 2009 and the Protocol Against the Smuggling of Migrants by Land, Sea and Air through Law No. 15 of 2009. These instruments serve as an important foundation for harmonizing national law with international standards, particularly in distinguishing between smugglers and smuggled migrants. In addition, under the new Criminal Code (Law No. 1 of 2023 in conjunction with Law No. 1 of 2026), specifically Article 457, human smuggling is regulated as an independent criminal offense carrying a prison sentence of 5 to 15 years, thereby emphasizing criminal liability on perpetrators who profit from such illegal activities. Based on the analysis and findings, the integration of refugee protection principles into Indonesia's national legal system can be identified in several aspects:

First, the principle of non-criminalization of refugees has been substantively adopted within the national legal system. Indonesian law does not treat Rohingya refugees as perpetrators of human smuggling, even though they enter the country without valid documentation. This is consistent with Article 5 of the Migrant Smuggling Protocol, which prohibits the criminalization of migrants as objects of smuggling. In practice, Articles 55 and 56 of the Criminal Code, as well as the Immigration Law, are directed solely at prosecuting perpetrators and facilitators, not refugees as victims.

Second, the principle of non-refoulement has been functionally implemented in Indonesia's national policies. Although Indonesia is not a party to the 1951 Refugee Convention, the treatment of Rohingya refugees demonstrates that the government does not forcibly return them to Myanmar, where conditions remain unsafe. This is reinforced by Presidential Regulation No. 125 of 2016 on the Handling of Foreign Refugees, which stipulates that refugees must be treated within a humanitarian framework and must not be returned to territories where their safety is at risk.

Third, the principle of human dignity protection has also been integrated into national policies. Rohingya refugees in Indonesia are provided with temporary shelters, humanitarian assistance, and basic protection. This indicates that the state's approach is not solely based on immigration enforcement but also considers humanitarian values and human rights principles.

Fourth, the principles of protection of vulnerable groups and the best interests of the child are reflected in refugee management practices. UNHCR data shows that the Rohingya refugee population in Indonesia consists predominantly of children, women, and other vulnerable groups. This condition forms the basis for implementing special protection policies, including access to basic services and protection from exploitation.

Fifth, the division of responsibilities with UNHCR demonstrates the integration of international mechanisms into the national system. Indonesia delegates refugee status determination to UNHCR, while the state focuses on law enforcement against human smugglers and the administrative management of refugees. This reflects a functional harmonization between state authority and international organizations in refugee protection governance.

Thus, it can be concluded that Indonesian criminal law has incorporated international refugee protection principles; however, this integration remains limited and has not yet developed into a fully comprehensive refugee protection system. Indonesia has succeeded in harmonizing international principles within its criminal and immigration law framework, particularly in the context of human smuggling cases involving Rohingya refugees. Nevertheless, there remains significant room for improvement in legislative development, institutional strengthening, and practical implementation.

3. Criminal Law Regulatory Model in Line with International Principles for the Protection of Refugees as Victims, Particularly Regarding Restitution and Adequate Refuge Placement

Based on the three court decisions, it can be observed that criminal law enforcement in Indonesia has generally demonstrated a tendency that is relatively consistent with international principles on refugee protection, particularly in distinguishing the legal positions of human smugglers and refugees as victims. In Decision No. 15/Pid.Sus/2025/PN Ttn, for instance, the panel of judges explicitly described that the Rohingya foreign nationals were in a vulnerable condition, experiencing food shortages, exhaustion, and even fatalities during their journey. Nevertheless, the court emphasized that such humanitarian circumstances could not eliminate the unlawful nature of the smugglers' actions. From this reasoning, it is evident that there is a clear separation between the perpetrators of the crime and the victims of exploitation, which is substantively aligned with international principles of victim

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protection. Furthermore, in Decision No. 259/PID/2021/PT.BNA, the Banda Aceh High Court reaffirmed that the defendant's involvement was limited to assisting the illegal entry of Rohingya foreign nationals into Indonesian territory. However, in its legal reasoning, the court acknowledged that these individuals were persons without official documentation and were in a vulnerable situation. Although the term "refugees as victims" was not explicitly used, the legal construction indicates an implicit recognition that Rohingya foreign nationals are not criminal subjects, but rather individuals in need of protection. This reflects the application of the principle of non-criminalization in national judicial practice.

Meanwhile, Decision No. 257/PID/2021/PT.BNA presents a similar pattern of reasoning, in which the judges emphasized that the defendant's actions were organized and profit-oriented, while the Rohingya foreign nationals were positioned as individuals transported without valid documents and in a defenseless condition. In this ruling, the court consistently did not classify refugees as perpetrators of legal violations, but rather as objects of human smuggling crimes. Thus, there is a consistent judicial approach that places full criminal responsibility on smugglers rather than on refugees.

A deeper analysis shows that these three decisions also indicate that international principles of victim protection have begun to be internalized within national judicial practice, although they have not yet been explicitly articulated in the form of recognized refugee status under the 1951 Refugee Convention. The principle of non-refoulement, for example, is not explicitly mentioned, but it is reflected in the practice of not prosecuting refugees and in the tendency of law enforcement authorities to place them under administrative and humanitarian handling mechanisms rather than criminal punishment systems.

However, from a normative perspective, a gap remains between international standards and national legal practice. This is evident from the absence of explicit provisions in national legislation that formally recognize refugees as victims of human smuggling crimes. As a result, the protection of refugees largely depends on the discretion of law enforcement officers and judicial interpretation in each case, which may lead to variations in legal application, particularly in cases with similar characteristics.

Thus, it can be concluded that criminal law enforcement in the three decisions generally demonstrates an approach consistent with international principles of refugee protection, particularly in distinguishing between perpetrators and victims and applying the principle of non-criminalization. However, this conformity remains implicit and has not been formally institutionalized within the national legal system. Therefore, stronger regulatory provisions are needed to ensure that the protection of refugees as victims of human smuggling can be implemented more consistently, certainly, and in accordance with applicable international legal standards. Furthermore, the identification of the conformity of criminal law enforcement in Rohingya smuggling cases with international legal principles is presented as follows:

Table 4.1 Identification of the Conformity of Criminal Law Enforcement with International Principles in the Protection of Rohingya Refugees

No	Analytical Aspect	Decision No. 259/PID/2021/PT.BN A	Decision No. 257/PID/2021/PT.BN A	Decision No. 15/Pid.Sus/2025/P N Ttn
1	Character of Rohingya Foreign Nationals' Legal Position	Positioned as objects of human smuggling, not as perpetrators of immigration offenses	Viewed as victims of a smuggling network, although not explicitly referred to as "refugees"	Explicitly recognized as a vulnerable group and victims, considering humanitarian conditions and vulnerability
2	Criminalization Approach toward Refugees	No criminalization of Rohingya foreign nationals	No criminal proceedings against Rohingya foreign nationals	No criminalization; focus entirely on smugglers
3	Principle of Non-Penalization of Refugees (no	Implicitly complied with, as refugees were	Complied; Rohingya foreign nationals were not prosecuted	Fully complied; the court clearly distinguished

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	punishment for illegal entry)	not charged as defendants		between victims and perpetrators
4	Recognition of Refugee Vulnerability	Not a primary focus of judicial consideration	Partially acknowledged through factual narratives during trial	Clearly acknowledged as a vulnerable group requiring humanitarian protection
5	Compliance with the Protocol on Smuggling of Migrants (UNTOC)	Aligned: prosecution focused on participants in smuggling activities	Aligned: prosecution based on active roles of offenders	Highly aligned: links human smuggling, illegal maritime travel, and money laundering as organized crime
6	Humanitarian Consideration Principle	Not explicitly formulated	Considered to a limited extent	Explicitly considered, but not used as a justification for acquittal
7	Separation between Humanitarian Aspects and Law Enforcement	Still normative and implicit	Beginning to appear in judicial reasoning	Clearly distinguished: humanitarian aspects are acknowledged, but crimes remain punishable
8	Protection of Human Dignity	Not explicitly stated	Implied through absence of refugee criminalization	Explicitly affirmed through recognition of inhumane travel conditions
9	Victim-Oriented Justice Approach	Limited	Moderate	Strong, as victim testimony serves as key evidence
10	Balance between State Sovereignty and Human Rights	Emphasizes immigration control and state sovereignty	Relatively balanced	Most balanced, integrating national law and human rights values
11	Implications for International Refugee Protection Principles	Shows implicit recognition of international principles despite Indonesia not being a party to the 1951 Convention	Demonstrates functional application of international principles	Shows real harmonization between national criminal law and international principles
12	Overall Level of Conformity	Fairly compliant	Compliant	Highly compliant and progressive

Source: Processed by the Researcher

Based on Table 4.1, it can be generally stated that the enforcement of criminal law in the three analyzed decisions is consistent with international principles of refugee protection, particularly in the context of Rohingya ethnic refugees as victims of human smuggling. This conformity is reflected in the absence of criminalization of Rohingya foreign nationals, the imposition of punishment focused on smugglers, and a clear distinction between victims and perpetrators of criminal acts. This practice is in line with the principle of non-penalization of refugees and the victim-protection approach as recognized in the Smuggling of Migrants Protocol and relevant international legal norms on refugee protection (IOM, 2012). However, from a more ideal perspective of implementing international principles, the adjudication of Case Number 259/PID/2021/PT.BNA and Case Number

257/PID/2021/PT.BNA does not yet fully reflect an optimal refugee protection approach. Although the substance is generally aligned, recognition of refugee vulnerability and humanitarian considerations remains implicit and has not been explicitly formulated, particularly regarding restitution and appropriate refugee placement (refuge) within judicial reasoning. In other words, refugee protection appears more as a consequence of the absence of criminalization rather than as a result of a clearly articulated human rights-based protection approach, and it has not yet achieved adequate provision of proper refugee placement.

In contrast, Decision Number 15/Pid.Sus/2025/PN Ttn demonstrates an approach that is closer to the ideal standard in handling human smuggling cases involving Rohingya refugees. In this ruling, the panel of judges not only firmly enforced criminal law against the perpetrators but also explicitly acknowledged the position of refugees as a vulnerable group and victims of organized transnational crime. However, this decision still does not provide restitution and appropriate refugee placement for asylum seekers, in this case the Rohingya ethnic community.

Thus, it can be concluded that although all three decisions are generally consistent with international refugee protection principles, the level of their ideal implementation varies. The two decisions at the appellate court level demonstrate a functional and normative form of compliance, whereas Decision Number 15/Pid.Sus/2025/PN Ttn represents a more progressive judicial practice that is closer to an ideal model. Nevertheless, in terms of restitution and appropriate refugee placement, the ideal standard has not yet been achieved. This indicates that Indonesian criminal law enforcement in human smuggling cases involving Rohingya refugees is on the right track, but still requires strengthening so that refugee protection principles are not only applied implicitly but are also explicitly and consistently stated, particularly regarding proper refugee placement in every court decision.

Based on the normative construction and analysis of the three decisions, it can be formulated that a criminal law model aligned with international principles of refugee protection as victims—especially concerning restitution and proper refugee placement—fundamentally has a strong foundation in both international law and Indonesian national law. The main principle is that migrant smuggling is an organized transnational crime, while refugees who become objects of smuggling must be positioned as victims who cannot be criminalized solely based on their immigration status. This principle is explicitly regulated in the Protocol against the Smuggling of Migrants by Land, Sea and Air (2000), particularly Articles 2 and 5, which affirm that the main purpose of the Protocol is the protection of migrants' rights and the prohibition of criminalization based on illegal status.

Within the national legal framework, this principle has been incorporated through various provisions, including Article 120 of the Immigration Law, which centralizes criminal liability on smugglers, as well as Articles 86 and 136 paragraph (3), which explicitly exclude victims from both criminal punishment and repressive immigration administrative measures. Furthermore, in its later development, the Indonesian National Criminal Code (KUHP) through Article 457 has also adopted the offense of human smuggling as part of the national criminal law system. Thus, normatively, there is alignment between national law and international principles, particularly in clearly separating perpetrators from victims.

Moreover, analysis of court decisions shows that an ideal regulatory model does not stop at punishing perpetrators but must also include comprehensive protection for refugees as victims, including restitution, recovery, and appropriate placement (refuge). Therefore, this study identifies several criminal law models that can be developed as normative solutions consistent with international principles while remaining compatible with national law.

First, the model of normative and functional separation between perpetrators and victims is the main foundation of refugee protection. This model emphasizes that all law enforcement mechanisms must be directed exclusively at smugglers, while refugees must be treated as legal subjects entitled to protection. This separation is crucial to prevent disguised criminalization through prolonged administrative detention, which still potentially occurs in practice. This model also strengthens the implementation of the non-penalization principle as stipulated in the 2000 Protocol.

Second, the victim's right to restitution model places refugees as subjects entitled to compensation for all losses suffered during the smuggling process. Restitution includes not only material losses but also physical suffering, psychological trauma, and exploitation experienced during the journey. Within the national criminal law context, this mechanism can be integrated through asset forfeiture instruments derived from criminal proceeds, including money laundering offenses, so that crime proceeds can be redirected for victim recovery.

Third, the asset forfeiture model for victim recovery strengthens the role of criminal law as a limited restorative justice instrument. Assets obtained from human smuggling crimes function not only as instruments of punishment but also as a source of funding for restitution and rehabilitation of refugee victims. Thus, the state not only punishes perpetrators but also ensures tangible and measurable victim recovery.

Fourth, the model of humane and proper refugee placement (refuge) is a crucial aspect of victim protection. Article 87 of the Immigration Law, which currently regulates placement in Immigration Detention Centers, needs to be interpreted progressively as a humanitarian shelter mechanism based on protection rather than detention. Refugee

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placement must guarantee the fulfillment of basic rights such as health, food, security, and psychosocial support, while avoiding prolonged detention practices that may violate human dignity.

Fifth, the model of return based on the principles of non-refoulement and human dignity emphasizes that the repatriation of refugees can only be carried out if it does not pose risks to their life safety or human rights. Therefore, before any return or relocation, the state must ensure an individual assessment of refugees' conditions and provide safe and appropriate temporary placement.

Sixth, the integrated national and international coordination model highlights the importance of synergy between law enforcement agencies, immigration authorities, local governments, and international organizations such as UNHCR and IOM. This coordination functions not only in prosecuting perpetrators but also in ensuring protection, emergency response, and sustainable and humane refugee placement.

Thus, based on the foregoing discussion, it can be emphasized that the ideal criminal law model for protecting refugees as victims of human smuggling must be integrative, not only oriented toward repressive measures against perpetrators but also toward restorative and humanitarian protection for victims. This model is consistent with international principles under the Protocol against the Smuggling of Migrants by Land, Sea and Air (2000), while remaining within the framework of Indonesian national law.

However, as reflected in the analysis of court decisions, the implementation of this model in practice is still not fully optimal. Refugee protection remains largely implicit, particularly in terms of restitution and proper placement, which have not yet become an integral part of judicial decisions. Therefore, normative and operational strengthening is required so that refugee protection does not end at recognition as victims but is realized concretely through recovery mechanisms and placement consistent with international humanitarian standards.

Conclusion

This study shows that the regulation of Indonesian criminal law in handling human smuggling cases involving Rohingya ethnic refugees has established a relatively comprehensive normative framework that is aligned with international legal principles. National law, through the Immigration Law, the Criminal Code (KUHP), the Law on the Eradication of Trafficking in Persons (TPPO), as well as international instruments such as UNTOC and the Migrant Smuggling Protocol, has positioned perpetrators as the primary subjects of criminal responsibility, while simultaneously recognizing refugees as victims who cannot be criminalized. This indicates a paradigm shift toward a more humane and human rights-based approach, although in practice there are still challenges in clearly distinguishing between perpetrators, victims, and transnational network actors.

The scientific contribution of this research lies in affirming that harmonization between national criminal law and international principles of refugee protection has substantively taken place, although it has not yet been fully institutionalized. This study also develops a normative argument on the importance of integrating victim protection models into criminal law, particularly through the principles of non-penalization, non-refoulement, and recognition of refugee vulnerability as the foundation of a more progressive legal protection framework.

However, this study has limitations as it does not include direct empirical testing of all law enforcement actors in the field and does not deeply examine comparative aspects with other countries regarding the implementation of restitution mechanisms and refugee placement. Therefore, future research is recommended to expand empirical and comparative analysis, particularly concerning the effectiveness of restitution implementation and non-detention-based shelter models for refugees who are victims of human smuggling.

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Author Contribution Statement

Mita, as the author, is responsible for the formulation of the research idea, data collection, normative analysis, and preparation of the final manuscript. The entire writing, revision, and finalization process was conducted independently by the author.

Artificial Intelligence (AI) Usage Statement

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Conflict of Interest

The author declares that there is no conflict of interest in this research, whether financial or non-financial, that could have influenced the objectivity of the research findings and the preparation of this article.

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