

International
Institute of
Social Studies



**Legal Consciousness of Community-Based
Refugee Paralegals in Greater Jakarta:
Contestation In-Between**

A Research Paper presented by:

Thomas Aquinas Maswan Susinto
(Indonesia)

in partial fulfilment of the requirements for obtaining the degree of
MASTER OF ARTS IN DEVELOPMENT STUDIES

Major:

SJP

Members of the Examining Committee:

Dr. Jeff Handmaker

Dr. Zeynep Kaşlı

The Hague, The Netherlands

December 2021

Disclaimer:

This document represents part of the author's study programme while at the International Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

Inquiries:

International Institute of Social Studies
P.O. Box 29776
2502 LT The Hague
The Netherlands

t: +31 70 426 0460
e: info@iss.nl
w: www.iss.nl
fb: <http://www.facebook.com/iss.nl>
twitter: [@issnl](https://twitter.com/issnl)

Location:

Kortenaerkade 12
2518 AX The Hague
The Netherlands

Contents

Chapter 1 Introduction	1
1.1. Protractedness as battleground	1
1.2. Justification of and background to the study	4
1.2.1. ‘In-between’ spaces	4
1.2.2. Traces of securitization	5
1.2.3. Analytical concepts and approaches	6
1.3. Research objectives and research questions	6
1.4. Methods of data collection	7
1.4.1. Data collection	7
1.4.2. Limitation of the study	8
1.4.3. Data analysis	9
1.5. Structure of the paper	9
Chapter 2 Socio-legal outlooks into refugees’ legal rights	10
2.1. In searching for refugees’ legal rights	10
2.2. Legal consciousness	11
2.3. Legal translation	12
2.3.1. Mosaic of translation	12
2.3.2. Emergence of refugee paralegals as translation through replication	13
Chapter 3 Analysing refugees’ legal rights	15
Chapter 4 The legal consciousness in survival	17
4.1. Images of law	17
4.2. Survival strategies	19
4.2.1. <i>Ecce homo</i> : between legality and sympathy	19
4.2.2. Abiding and smiling	20
4.2.3. Avoidance: safe passage to the future	21
4.2.4. Framing survivals in the interstices of the green hell	23
4.3. Triptych of consciousness	25
Chapter 5 The role of paralegals in legal translation of rights	27
5.1. Cultural pathways	27
5.1.1. An outlook into a cultural settlement	27
5.1.2. Riding the local culture	29
5.2. Translators’ consciousness in-between cultures	30
Chapter 6 Conclusion	32
References	34
Appendix	41

List of Tables

Table 1. 1 Asylum seekers and refugees detained in December 2014-2018	6
---	---

List of Figures

Figure 1. 1 Percentage of population based on countries of origin	3
Figure 1. 2 Nuances of legal consciousness among refugee paralegals	25

List of Maps

Map 1. 1 Locations of asylum seekers and refugees in Indonesia	2
Map 1. 2 Locations of research participants in Greater Jakarta	8

List of Appendices

Appendix 1. 1 Profile of the research participants	41
--	----

List of Acronyms

EASO	European Asylum Support Office
FIR	First Information Report
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on the Economic, Social and Cultural Rights
IDC	Immigration Detention Centre
IOM	International Organization for Migration
JRS	Jesuit Refugee Service
KYR	Know Your Rights
LBH	Lembaga Bantuan Hukum (Legal Aid Institute)
MCIIP	Management and Care of Irregular Immigrants Project
MPR RI	Majelis Permusyawaratan Rakyat Republik Indonesia (People's Consultative Assembly of the Republic of Indonesia)
NGO	Non-governmental Organization
OBH	Organisasi Bantuan Hukum (Legal Aid Organization)
PRS	Protracted Refugee Situations
RAIC	Refugees & Asylum Seekers Information Centre
RCA	Regional Cooperation Arrangement
RSD	Refugee Status Determination
SMART	Skilled Migrant and Refugee Technicians
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
YLBHI	Yayasan Lembaga Bantuan Hukum Indonesia (Indonesian Legal Aid Foundation)

Abstract

The limited access to legal aid for asylum seekers and refugees living in limbo of Indonesia has given rationale for the genesis of community-based refugee paralegals in Greater Jakarta. The context of living in perennial uncertainty, waiting for durable solutions, and the traces of securitization of refugee issues have consequences on the increasing of domestic legal problems faced by asylum seekers and refugees in Indonesia. The study examines how refugee paralegals contribute to broadening the access to justice for their community, using three interpretive frameworks, namely (a) legal analysis to identify and analyse significant refugees' legal rights, (b) legal consciousness to reveal the images of law and strategies chosen by paralegals, and (c) legal translation to unfold paralegals' potentials and roles as "translators" to refugees' legal rights. The analysis of online semi-structured interviews with eleven paralegals disclosed the themes that were indicative of their legal consciousness and their roles in legal translation as well. Their contribution to improving better access to justice for their community provided insights on the "living law" and their role as "translators" to the refugees' legal rights.

Relevance to Development Studies

Research on the legal awareness of refugee paralegals as part of socio-legal studies supports the alternative idea that development extends human freedom, especially the world's most vulnerable and disenfranchised groups such as asylum seekers and refugees. In-between legal inclusion and exclusion, their survival is the narrative of their legal image and sense of justice. Appreciation of their legal consciousness has the potential to provide policy data to challenge development practices that ignore their rights.

Keywords

Community-based refugee paralegal; legal rights; legal consciousness; legal translation; 'in-between' spaces; securitization

Chapter 1

Introduction

The protracted waiting for durable solutions borne by asylum seekers and refugees in Indonesia has enmeshed them in various limitations to exercising their rights, among others the right to legal counsel. The longer they stay in Indonesia as a transit country, the more they were exposed to domestic legal issues. While *de iure* asylum seekers and refugees' right to legal aid in Indonesia is recognized, the number of lawyers who have knowledge on refugee law and provide legal representation has not been sufficient (SUAKA et al., 2018, p. 14), limiting asylum seekers and refugees' access to legal aid.

Since 2010, UNHCR Indonesia has been open to the presence of lawyers providing "quality legal advice" (JRS Indonesia, 2012) for asylum seekers conducting Refugee Status Determination (RSD) while the number of refugee lawyers was still scarce. The first initiative to build the capacity on pro bono legal representatives in RSD process was conducted by Jesuit Refugee Service Indonesia in June 2012, attended by sixteen lawyers and paralegals of Indonesian Legal Aid Foundation, Jakarta Legal Aid Institute, Surabaya Legal Aid Institute, Pekanbaru Legal Aid Institute, Human Rights Working Group, Mahkota Foundation Medan, and several independent lawyers (*ibid.*). In October 2021, the alumni and alumnae who were still committed to working on refugee issues and providing pro bono service to asylum seekers agreed to form a network named SUAKA, an Indonesian Civil Society Association for Refugee Rights Protection (Stenger, 2012). "Suaka" in Indonesian means asylum.

Almost eight years after the opening of access to legal representation for RSD process, the policy for RSD has changed along with resettlement quota shortage (UNHCR Indonesia, 2017a), prioritizing RSD for (a) asylum seekers who were vulnerable and in need of resettlement (*ibid.*), (b) asylum seekers whose profiles and countries of origin indicated greater possibilities for protection such as Afghanistan and Myanmar, and (b) asylum seekers with little chances to get refugee status (Stenger, 2021). This change resulted in the decreasing need for legal advice for RSD and the increasing need for legal counsel in domestic legal problems (SUAKA, 2021a, p. 9). When asylum seekers or refugees cannot afford to pay a lawyer on their own and the number of pro bono lawyers or legal aid organizations with sufficient knowledge on refugee issues is still limited, they may face challenges all alone without understanding how the legal system in Indonesia works and is implemented. Filling the gap of legal aid for asylum seekers and refugees, SUAKA started an initiative to train refugees in Greater Jakarta as community-based paralegals in 2019 and 2020. The newborn refugee paralegals were immediately excluded from the Regulation of Minister of Law and Human Rights No. 3 of 2021 on paralegal which states that those who can be recruited as paralegals are Indonesian citizens only.

The experiences of eleven community-based refugee paralegals of the Greater Jakarta will be the crux of this study, revealing their legal consciousness and their roles in doing legal translation of refugees' legal rights to enhance the access to justice for their communities. Their beings and doings as "barefoot lawyers" (Maru and Gauri, 2018, p. 2) were dedicated to their communities who were struggling in protractedness as a battleground for claiming justice.

1.1. Protractedness as battleground

The lamentation of the perennial waiting of refugees stranded in Indonesia was voiced out again in a demonstration by mostly Afghan refugees in front of UNHCR office of Jakarta

on 24 August 2021 after the Taliban’s coup d’état in Afghanistan (Budiman, 2021). Several refugee paralegals joined the demonstration that represented their demand for accelerated resettlement, as expressed in a speech delivered by one of the demonstration’s leaders:

“The situation in our country is very chaotic. Innocent people are killed for no reason by the Taliban. Our family is in danger, we can’t think calmly and have been very worried about our family’s condition for the past few weeks. We come together today to show the pain we went through, living life in uncertainty, for nine to ten years, away from our family and relatives. ... We have no other choice. Where else to go? Afghanistan is not safe. We asked from all the UNHCR leaders: where do we have another solution? ... We ask for help... from the Government of Indonesia. Please listen to our voices, please talk to the Indonesian government, the Australian government, and UNHCR, for our resettlement process” (Toghyan Vlogs, 2021, 12:09-15:51).

Map 1. 1
Locations of asylum seekers and refugees in Indonesia



Source: UNHCR Indonesia Monthly Statistical Report August 2021, p. 1.

The voice of the refugees during the demonstration reminded the public that behind the images of evacuations of Afghan refugees in Kabul, there were still 9,992 refugees and 3,351 asylum-seekers in Indonesia as of August 2021 (UNHCR Indonesia, 2021, p. 1) who have been waiting for durable solutions. Of the total 13,343 persons of concern, 7,661 persons were housed in the alternative accommodations (ibid., p. 2) provided mainly by IOM (International Organization for Migration). 19 persons were still detained in immigration detention centres of Jakarta and Surrounding Areas, Makassar, Tanjung Pinang and Batam, and other locations (ibid., p. 2). The rest, around 5,500 persons were surviving independently among Indonesians without regular supports from service providers, mostly in Greater Jakarta (ibid., p. 1).

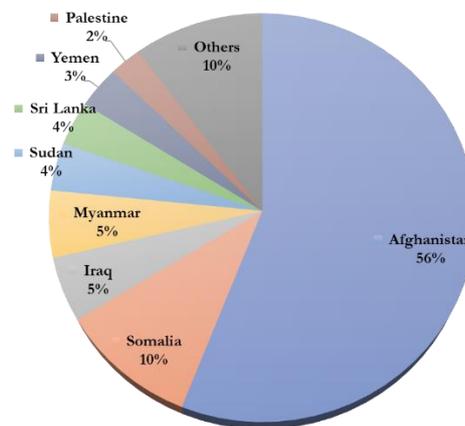
While the government of Indonesia does not recognize the framework of local integration as a durable solution and voluntary repatriation was an option chosen by only a small number of people, which were 1.8 percent of the total 13,657 persons in 2019 (UNHCR Indonesia, 2020, p. 4) and 1 percent of 13,743 persons as of December 2020 (ibid.), most asylum seekers and refugee were in waiting for resettlement to the third developed countries which since 2003 have been countries such as Australia, Canada, United States and New Zealand (UNHCR, 2021a). The decreasing resettlement quotas due to the rising xenophobia and anti-immigrant policies of the third countries entrap the asylum seekers and refugees in Indonesia into years of uncertain waiting. In 2020, only 403 persons or 2.9 percent of total refugee population in Indonesia departed for resettlement (UNHCR Indonesia, 2020, p. 4), compared to the 2019 figure of 663 persons departed for resettlement or 4.8 percent of the total population (ibid.). These figures represented the global trend of 34,400 refugees

worldwide who were granted resettlement in 2020, a third of 107,800 resettled refugees in 2019 (UNHCR, 2021b, p. 3). From January 2021 to August 2021, 331 persons have departed for resettlement under UNHCR schema and 11 under the private sponsorship programme, while 80 persons chose to return to their countries of origin (UNHCR Indonesia, 2021, p. 2).

Looking back in times of Cold War, Indonesia was as a transit for around 145,000 Indochinese refugees mostly from Vietnam between 1975 and 1995, from the total of almost two million refugees of whom 40 percent were boat people (Missbach, 2015b, p. 36). In 1979, Indonesia provided Galang Island, a part of the then Riau Islands Province, as a temporary refugee processing centre as well as “a special tactic in migration control” (ibid., p. 30). Without access to legal aid during the refugee status determination process that was mainly administered by a management committee consisting of navy, army, immigration, and police officers (ibid., p. 37), there were widespread “allegations of corruption, bribery and demands for sexual favours in return for confirmation of refugee status” (ibid., p. 38). Between 1975 and 1995, the total number of resettlements of Indochinese refugees from South East Asia was 1,311,183, of which around 132,000 were from Galang Island (ibid., p. 40).

The first flow of five asylum seekers from Afghanistan and seven from Iran applying for UNHCR Indonesia protection in 1996 (ibid., p. 42) started another phase in the history of Indonesia as a transit country for asylum seekers and refugees from the conflict-ridden countries of the Middle-East. Since 2009, the backgrounds of people seeking asylum and waiting in Indonesia became more diverse with the flows of asylum seekers from countries of Africa, South Asia, and Southeast Asia (ibid., p. 51). The recent composition of asylum seekers and refugees’ countries of origin (Figure 1.1) showed the pattern of diversity, with Afghan populations, mainly Hazaras made up the majority.

Figure 1.1
Percentage of population based on countries of origin



Source: UNHCR Indonesia Monthly Statistical Report August 2021, p. 2.

The refugees in Indonesia were part of at least 15.7 million refugees by the end of 2020 who survived in protracted situations in 30 host countries (UNHCR, 2021b, p. 20). The definition of protracted situations covers those who have been in exile “for 5 years or more after their initial displacement, without immediate prospects for implementation of durable solutions” (UNHCR Executive Committee, 2009). The highlighted protracted situations included the Afghans in the Islamic Republic of Iran and Pakistan, along with South Sudanese in Sudan, Kenya, and Uganda (UNHCR, 2021b, p. 20). Similar situations were identified among South Sudanese and Burundian refugees in the Democratic Republic of the Congo (ibid.). Continuously hosting the largest number of refugees in the world (ibid., p. 2),

Turkey also faced the problems of protractedness of 3.6 million Syrian refugees (Kirişci, 2021, p. 2).

The UNHCR Indonesia's 2017 comprehensive solutions scheme encouraged refugees to optimize their "talents and skills by volunteering to supports other refugees" and take "advantage of educational opportunities", "vocational training programs and online university courses", and "internships and apprenticeships" (UNHCR Indonesia, 2017a). The now and future of asylum seekers and refugees were entrusted much at their own hands. Through refugee-led initiatives providing informal education (Brown, 2018, p. 169) or livelihood activities (*ibid.*, p. 172; Refutera, 2021; VOA, 2021) supported by donations from individuals or NGOs, their identities were contested with the neoliberal entrepreneurial subjectivities that celebrated "self-sufficiency" (Dykstra-DeVette, 2018, p. 179), "self-governing and self-caring" (Sharma in *ibid.*), leaving them in survivability during uncertain waiting. In these streams of empowerment, the creation of refugee paralegals came into the arena of contestation where the legal protection for asylum seekers and refugees remained a gap.

1.2. Justification of and background to the study

This study will serve to analyse and justify the role of refugees as community-based paralegals in Greater Jakarta to broaden the access to justice for their communities. The focus on refugee paralegals will contribute to the discourse on community-based paralegals in Indonesia which so far concentrates on Indonesian citizens only, *inter alia* as written by (a) Berenschot and Rinaldi (2018) on paralegalism in Indonesian post-authoritarian regime and legal empowerment programs supported by World Bank and UNDP; (b) Wirya et al. (2020) on the roles of paralegals to improve the right to health for Indonesian vulnerable communities; and (c) Hartanto et al. (2019) on paralegals and women access to justice in Indonesia.

Some researchers have explored the realities of exclusion of refugees in Indonesia to have dignified living such as the prohibition of their right to work (LoCastro et al., 2019), limitations to refugee protection in general, and the securitization of irregular migration (Missbach, 2015a; 2015b), and the lack of political will among local authorities to provide housings for refugees (Missbach et al., 2018; Missbach and Adiputera, 2021; Suyatna et al., 2021). However, there have been no specific studies on the gap in legal aid for refugees and the legal consciousness of refugees in Indonesia.

This section will also provide particular justification to scrutinize the protracted refugee situations through the lens of "'in-between' spaces" and securitization of the refugee issues. Both were provided as terrains where the legal consciousness of refugee paralegals was shaped and contested.

1.2.1. 'In-between' spaces

The dynamics and tensions endured by asylum seekers and refugees within protracted and uncertain waiting in Indonesia can be viewed with the term "'in-between' spaces" (Bhabha, 1994, p. 2). The term describes "moment of transit where space and time cross to produce complex figures of difference and identity, past and present, inside and outside, inclusion and exclusion" (*ibid.*). In those spaces, the subjectivities and identities of asylum seekers and refugees were contested in the grey area of incomprehensive protection.

Within the "'in-between' spaces", asylum seekers and refugees in Indonesia were framed as "guest[s]" (UNHCR Indonesia, 2017a) based on the celebrated narratives of Indonesian hospitality in accepting refugees since the Indochina refugee crisis until the flows of

Rohingya refugees disembarked in coasts of Nanggroe Aceh Darussalam Province of Indonesia in 2009, 2012, 2015 (Rachmah and Pestalozzi, 2016, p. 13), 2020, and in 2021 (UNHCR Regional Bureau for Asia and the Pacific, 2021, p. 2). Derrida (2000, p. 13) analyses the nuances of hospitality, drawing from Benveniste's search of its root meaning in Latin words of "*hospes*" or "guest-master", "*hostis* as host and *hostis* as enemy", and "*potis*" that "unites the semantics of power, mastery, and despotic sovereignty". Noting the contradiction in terminis within the word hospitality (ibid., p. 5), the neologism of "hostipitality" (ibid., p. 3) is proposed to express the complex tension "between hospitality and hostility" (ibid., p. 15) in the encounters between the hosts and the "undesirable guest [*hôte*]" (ibid., p. 3). As a transit country, Indonesia allows asylum seekers and refugees to stay and to wait in its territories. However, they were suffered from various "discrimination, prejudice and marginalisation" (Ilham, 2021).

The in-between situations are also characteristic of "fragmented journeys" which do not define migration of asylum seekers and refugees as simplistic "rapid transition between defined points of origin and destination" (Collyer, 2010, p. 279). In "fragmented journeys", the logic of migration is justified more by an "uncertain future" so that they may be "removed in both time and space from their experiences of departure" (ibid.).

Besides "'in-between' spaces", "limbo" is a term that was often used in journalistic coverages and literature to denote uncertain temporal waiting of asylum seekers and refugees in Indonesia. McNevin and Missbach describe the spatial-temporal dimensions of the waiting as "'luxury' limbo" and "humanitarianization of waiting" (2018, p. 12). The adjective "luxury" refers to the "spatial containment" applied in refugees' accommodations as an alternative to detention, while "limbo" indicates "temporal techniques of border control" (ibid., p. 13) that entrap them in Indonesia and "an absence of meaningful activity ... that fills long period of waiting" (ibid., p. 14).

The years of transit in Indonesia plunged refugees into a "tenebrous sense of survival" (Bhabha, 1994, p. 1), "sense of disorientation" and "a disturbance of direction" (ibid., p. 2) that was extremely evident with thirteen refugees committed suicide according to Sayed (2021a), as also noted by Timmerman (2021), due to losing hope. However, in the haunting limbo, refugees were searching for "interstices" where "the intersubjective and collective experiences of nationness, community interest, or cultural value are negotiated" (Bhabha, 1994, p. 2).

1.2.2. Traces of securitization

The inertia of asylum seekers and refugees' movements in the realm of "'in-between' spaces" of Indonesia was also deeply influenced by the securitization of the refugee issues mainly constructed by the immigration frameworks. Huysmans' concept of "security continuum" describes securitization as an "institutionalized mode of policy-making that allows the transfer of the security connotations of terrorism, drugs traffic and money-laundering to the area of migration" (2000, p. 760).

Indonesia is bound to Bali Process as a regional forum established in 2002 which "arose out of a regional 'securitized' discourse on irregular migration" (Kneebone, 2014, p. 599) with "a focus on policing rather than protection" (Larking, 2017, p. 91) The mission of the forum represents the securitization, namely "to reduce irregular migration in the Asia-Pacific region and support and strengthen practical cooperation on countering people smuggling, trafficking in persons and related transnational crime, including migration and border management and refugee protection" (Regional Support Office-The Bali Process, 2018).

Since 2000, the government of Indonesia was supported by Australia to detain asylum seekers with a significant level of resources to stop asylum seekers from taking boats to

Australia (Nethery et al., 2012, p. 88). The provided funds and capacity buildings on techniques of detention were practices of externalizing the Australian immigration regime by “exporting detention” (ibid.) to Indonesia. The number of people locked in Indonesia’s immigration detention centres in December during the years of 2014-2017 ranged from 24 to 37 percent of the total population (Table 1.1).

Table 1. 1
Asylum seekers and refugees detained in December 2014-2018

	Total population	Asylum seekers and refugees in detention centres
December 2014	11,186	4,168 (UNHCR Indonesia, 2014, p. 7)
December 2015	13,548	4,406 (UNHCR Indonesia, 2015, p. 6)
December 2016	14,405	4,344 (UNHCR Indonesia, 2016, p. 5)
December 2017	13,840	3,299 (UNHCR Indonesia, 2017c, p. 5)
December 2018	14,016	126 (UNHCR Indonesia, 2018, p. 4)
December 2019	13,657	15 (UNHCR Indonesia, 2019, p. 4)

Another externalization strategy applied by Australia was offshore detention in Manus Island of Papua New Guinea and Nauru Island of the Republic of Nauru started in 2001 (Missbach, 2019, p. 433). The externalization was fortified by military Operation Sovereign Border established in 2013 to deter the flows of asylum seekers and refugees’ boats into Australian waters (Australian Government, no date). The model of externalization has been “consistently replicated by the EU” (Martins and Strange, 2019, p. 197), resulting in the agreement such as the 2016 EU-Turkey Statement to end the flows of irregular migration from Turkey to the EU (EASO, 2020) while created limbo situations for refugees in Turkey.

After the collapse of the Indonesian detention regime due to Australian funding cut in 2018 (Missbach, 2018), asylum seekers and refugees in Indonesia were relatively freer but living within “open prison” with the restrictions on refugee rights and uncertainties of waiting for durable solution (Missbach, 2020, p. 9). The confinement creates a “continuum of unfreedom” (ibid., p. 4) by the “withholding of basic rights, such as the right to work” (ibid., p. 4). The alternatives to detention are not the opposite of detention as it “serves the very same purpose” (ibid., p. 3). The “containment techniques that favour self-regulation and self-discipline” and apply “threat of potential (re)detainment” have made asylum seekers and refugees stuck in protractedness (ibid., p. 3).

1.2.3. Analytical concepts and approaches

Three analytical frameworks were applied to analyse the legal rights of refugees surviving in protractedness. First, using the legal analysis, the existing Indonesian laws were observed whether they guaranteed protection for asylum seekers and refugees. Secondly, the legal consciousness provided a particular angle to analyse refugee paralegals’ images of law and their strategies in providing legal aid concerning legal rights. The legal translation is the third approach employed to interpret the paralegals’ potentials as the “translators” (Merry, 2006b, p. 39) of the legal rights in the cultures they were embedded in.

1.3. Research objectives and research questions

The research aims at explaining the legal consciousness of the refugee paralegals that inspired their strategies to protect the rights of their community members in waiting for an uncertain future. The protractedness of refugee situations as characterized by “‘in-between’ spaces” and securitization of refugee issues will be viewed as challenges to the formation and exercise of their legal consciousness. Moreover, the research will analyse their potentials in the process of translating the rights of their community.

This leads me to pose the following research question: How can refugee paralegals in Greater Jakarta contribute to improving better access to justice for asylum seekers and refugee communities? The sub-questions to the research question are as follows:

- a. What legal rights are of particular relevance for refugee paralegals?
- b. How is the legal consciousness of refugee paralegals shaped in the context of protracted waiting for durable solutions?
- c. To what extent can refugee paralegals translate refugees' legal rights through legal aid?

1.4. Methods of data collection

The methodology of this study was “virtual qualitative research” (Roberts et al., 2021, p. 2). My previous encounters with refugees and observing the flourishing refugee-led initiatives in Indonesia motivated me to learn from the ways the newly emerging refugee paralegals advocate their communities. Choosing them as research participants, the primary data was collected through online semi-structured interviews using Zoom and personal communications via WhatsApp application, considering the limitations to have face-to-face interviews due to difficulties to having trips in Indonesia during the COVID-19 pandemic. Thematic questions about the law in the interviews were asked by providing law as both dependent and independent variables as described in Chapter 2.2.

1.4.1. Data collection

The contacts to the refugees-paralegals were managed through SUAKA. In the preliminary design, the research planned to interview five to ten refugee paralegals (a) who attended the 2019 training on community-based paralegals assuming that they had more experiences, (b) who were still active as paralegals, (c) who were leaders and non-leaders of their communities, and (d) who included both women and men. Based on SUAKA's recommendation (Achmadi, 2021a), the research would include those of the 2020 training batch who had experience serving their communities before the training.

Finally, there were eleven paralegals, three females and eight males, who were willing to be research participants after SUAKA circulated the research invitation among 38 paralegals. According to SUAKA (Achmadi, 2021b), many of them were not available due to their housing situations of staying with three or five to eight family members that made them difficult to have interviews. Among eleven paralegals, six of them attended the first training in 2019, while the rest were members of the second batch of 2020 training. They come from diverse countries of origin namely Afghanistan, Pakistan, Iran, Sudan, Somalia, Cameroon, and the Democratic Republic of the Congo. Eight of them provided written informed consent and the other three provided oral consent. As provided in the Appendix 1.1, this study uses pseudonyms for all research participants. The information on their age, gender, country of origin, and period of stay in Indonesia is also provided in Appendix 1.1.

Most of them have university education in their home countries. Only one paralegal could not attend the high school due to the security situation of the home country. The paralegals have been familiar with online meetings platform. After their training, there were several follow-up legal webinar series organized by SUAKA and can be accessed by the public at YouTube. Their habits of attending online meetings during pandemic and access to virtual communication facilities were supportive factors to the online interviews.

Map 1. 2
Locations of research participants in Greater Jakarta



Source: Google, 2021. Additional notes: m (male), f (female), y (years of surviving in Indonesia).

One interview on the initial process of paralegal training was conducted with the Chairperson of SUAKA, Rizka Argadianti Rachmah, while other information on SUAKA programs was collected from other members of SUAKA, Julio Castor Achmadi and Zico Efraindio Pestalozzi, via WhatsApp communications.

1.4.2. Limitation of the study

The lack of ability of the researcher to understand the participant who was not used to speaking English was a barrier to understanding the idea and stories expressed as language skills influence the “self-esteem”, “power”, “construction of knowledge and presentation of self” (James and Busher, 2009, p. 89). The situation was repeated by a written interview whose responses were given in the national language of the participant and the translation into English was checked by the participant. Another participant chose not to turn on the video during a virtual conversation that makes it difficult to grasp the facial expressions and body language of the participant. This limitation encouraged the optimization of reading the tones of the participants’ voices to understand the important points and main messages that the participant would like to convey. Regarding the space for conversation, it was not easy for some refugees who shares a room with fellow refugees to find a suitable time. Unstable internet connectivity also happened several times that interrupted the flows of conversation, especially for the participants who were living outside of Jakarta. However, participants with unstable connectivity did not end up the meeting but continually tried to establish the connection as a sign of eagerness to share experiences and as “unintended benefits” to build rapport between research participant and researcher (Archibald et al., 2019, p. 5).

Some of the participants, especially those who joined the paralegal training in 2020, were new paralegals with fewer experience to handle legal problems in their communities although they can identify the legal problems that happened in their communities and have been active in their communities even before the training. The restrictions during pandemic contributed to their freedom to reach out to their communities. On some occasions, some participants were involved in handling the cases but mainly as interpreters. Some persons had a strategic role as appointed leaders of their communities, while others were not in the position of leadership. Considering the subjectivities and degree of experiences of research participants,

the outcome of this study cannot be generalized as representing the legal consciousness of all trained refugee paralegals.

1.4.3. Data analysis

The primary data collected during interviews were analysed with thematic analysis. The recorded Zoom interviews were transcribed by taking into account the written notes made during interviews. After reading through the transcripts of interviews and taking notes from the transcriptions, the data were processed with the use Atlas.ti software to manually identify codes and to group similar codes into significant themes. The themes abstracted from the codes could be categorised into three themes, which are the image of law, the strategy, and the future. The abstraction led to the interpretation of “connections between themes” (Rubin and Rubin, 2005, p. 231) to see the interrelation between the image of law of refugee paralegals, their strategy for providing legal aid, and the durable solution as a future gaze of their legal consciousness. During the process of interpreting the themes, the initial research questions were revisited and reformulated (*ibid.*, p. 205).

1.5. Structure of the paper

The paper has five chapters after the introduction. In Chapter 2, the analytical perspectives of refugees’ legal rights in Indonesia, legal consciousness, and legal translation will be elaborated. Chapter 3 provides an analysis of refugees’ legal rights in contestation with immigration logic. Chapter 4 analyses the images of law and four strategies of the paralegals that revealed their legal consciousness, summed up in a triptych of consciousness. Chapter 5 sets forth the paralegals’ potentials and roles as the “translator” to refugees’ legal rights. In the last chapter, the conclusion of the study will be presented.

Chapter 2

Socio-legal outlooks into refugees' legal rights

The gap of sufficient legal aid for asylum seekers and refugees during their protractedness will be examined through three analytical frameworks, namely legal analysis of refugees' legal rights, together with the legal consciousness and legal translation of refugee paralegal advisors. In the following chapters, these frameworks will serve as interpretive angles to analyse the nuances of refugee paralegals' experiences to develop better access to justice for their communities in the absence of particular law that protects the legal rights of asylum seekers and refugees in Indonesia.

2.1. In searching for refugees' legal rights

Indonesia recognizes the right to asylum as a gateway to search for other refugees' legal rights. The first milestone of the right to asylum in Indonesian law was founded in Prime Minister Circular Letter No.11/R.I./1956 on Political Fugitive Protection following the historic Asia-Africa Conference of 1955 in Bandung, Indonesia (Dewansyah and Nafisah, 2021, pp. 9-10). Referring to the Universal Declaration of Human Rights (UDHR) and Temporary Constitution of the Republic of Indonesia, the Letter associates this individual right to asylum to freedom of religion, freedom of expression, and freedom of assembly (Perdana Menteri, 1956, p. 1).

The second amendment of the Indonesian Constitution in 2000 was another milestone. Adopting Article 14 of UDHR on individual "right to seek and to enjoy in other countries asylum from persecution" (United Nations, no date), the amended Constitution incorporated the right to asylum in Article 28G(2), stating that "[e]very person is entitled to be free from torture or treatment that humiliates human dignity and be entitled to the right to obtain political asylum from another country" (The Constitutional Court of the Republic of Indonesia, 2015, p. 28). The integrated notion on freedom from torture was preceded by the ratification of Convention Against Torture in the Law No. 5 of 1998, while the right to asylum has been included before in Article 28(1) of the Law No. 39 of 1999 on Human Rights (Presiden Republik Indonesia, 1999b). Law No. 37 of 1999 on International Relations in Articles 25, 26, and 27 legitimized the authority of the president to grant asylum and set policies on the refugees (Presiden Republik Indonesia, 1999a).

The Presidential Regulation No. 125 of 2016 Concerning the Treatment of Refugees (Presiden Republik Indonesia, 2016) which does not refer to Article 28G(2) of the Constitution, was the latest law that implemented the authority as stated in the Law on International Relations. It stipulates the procedures for detection, placement, safeguarding, and the immigration supervision of the refugees (*ibid.*), representing the reaction of the government to Rohingya boat people stranded in Aceh (Sadjad, 2021, p. 2). The Regulation adopted the definition of refugee in 1951 Convention 1951 Chapter 1 Article 1A(2) (UNHCR, 2010) with additional note on the role of UNHCR to grant the refugee status (Presiden Republik Indonesia, 2016). For asylum seekers and refugees who are accommodated in shelters designated by local governments, Article 26 of the Regulation states about the provision of clean water, food, clothing, health and sanitary services, and religious facilities provided by international organization engaged in the field of migration (*ibid.*) only for refugees staying in community housings managed mostly by IOM. Asylum seekers and refugees' right to work and right to education are not mentioned in the Regulation. Considering that the recognition of the right to asylum in the Indonesian

Constitution ideally implicates the state's obligation to ensure the basic rights of the asylum seekers and refugees (Dewansyah and Nafisah, 2021, p. 2), the Presidential Regulation has not explicitly stated the rights of the asylum seekers and refugees in Indonesia.

2.2. Legal consciousness

The searching for refugees' legal rights in Indonesia and the sense of gaps in its exercising brings further deepening on the analysis of the legal consciousness of refugee paralegals. The living experiences of refugee paralegals to deal with the law would reveal their objectivities and subjectivities in "aptitude, competence or awareness of the law" as well as in "perceptions or images of law" (Engel in Hertogh, 2004, p. 461) that built their potentials to fulfil the rights of their communities in the absence of comprehensive law that protects asylum seekers and refugees' rights.

Some studies in the area of forced migration have made use of legal consciousness to disclose the experiences of persons of concern related to law. Abrego (2011, p. 338) explored how the undocumented Latinos in the United States experienced illegality from 2001 to 2010 and examined the differences in legal consciousness between first generation who migrated as adults and as children (1.5 generation). Based on the understanding of legal consciousness as "commonsense understandings of the law" (Merry in *ibid.*, p. 341) that is "socially constructed" (Ewick and Silbey in *ibid.*) and "leaves room for shifting interpretations and applications of law" (*ibid.*), Abrego concluded that the legal consciousness of the first generation was informed by fear of detention and deportation, while legal consciousness of the 1.5 generation was shaped by stigma and embarrassment associated with their abnormal status they were aware of from moments of the administrative process in their school that interrogating their status (*ibid.*, p. 353). Another study by Holzer (2013, p. 838) reflected the situations of predominantly Liberian refugees in the Buduburam camp of Ghana and scrutinized how refugees experienced and made sense of law in the camp as the "common place of law" (Ewick and Silbey in *ibid.*, p. 842). She disclosed the contradiction experienced by refugees as the rights holders and wards of international laws who claimed rights through failed legal mobilization of Concerned Women protests during 2007-2008, but simultaneously as persons alienated from Ghana domestic laws (*ibid.*, pp. 841, 865).

This study draws inspiration from the analysis of Hertogh who applies distinction on the conceptions of legal consciousness between what he terms as "an 'American' and a 'European' conception" (Hertogh, 2004, p. 460). The "American" conception is drawn from Pound's socio-legal idea that maps out both distinction and gap between "law in books" which is "the rules that purport to govern the relations of men" and "those that actually govern them" or "law in action" (Pound in *ibid.*, p. 465). The *status quaestionis* of this conception is on "How do people experience (official) law?" (*ibid.*, p. 463). In this conceptual framework, what is considered as law is the "official law" and its "formal legal institutions" (*ibid.*, p. 464) or "the legal systems" (Merry in *ibid.*). Therefore, the legal consciousness research using this framework apply law as independent variable given that "definition of 'law' is provided by the researcher and is not part of the empirical enquiry itself" (*ibid.*).

The "European" concept of legal consciousness is inspired by Ehrlich's socio-legal perspective of the "living law" as "the law which dominates life itself even though it has not been posited in legal propositions" (Ehrlich in Hertogh, 2004, p. 473). Law in this opinion is "a notion (*Gedankengebilde*) that lives in people's head" (Ehrlich in *ibid.*, p. 474), which can be recognized "on the basis of people's attitudes" (Nelken in *ibid.*). To put it succinctly, Ehrlichian legal consciousness refers to "people's own ideas about law, regardless of any 'official' laws" (*ibid.*, pp. 474-475). Legal consciousness has also a similarity with "people's sense of law and right (*Rechtsgefühl*)" (Riezler in *ibid.*, p. 475) or "intuitive law" on "legal

experiences which contain no references to outside authorities” (Petrazycki in *ibid.*). In contrast with Pound’s focus on behaviours of legal officials, Ehrlich was more engaged with behaviours of people in society which he considered as “a plurality of human beings who, in relations with one another, recognize certain rules of conduct as binding, and generally at least, regulate their conduct according to them” (Ehrlich in *ibid.*, p. 473). The major question in this sense is “what do people experience as ‘law?’” (*ibid.*, p. 475). Research on “living law” has law as a dependent variable with the meanings of law is left to the empirical inquiries (*ibid.*). This study provided law as both dependent and independent variables to have more nuanced pictures of legal consciousness lived by refugee paralegals.

Inspired by Hertogh’s analysis of a case study on reactions of Indonesian quarter neighbourhood of Zwolle, Netherlands, on legal values of legality and equality (*ibid.*, p. 467) to analyse the “law in action”, this study also situates the legal consciousness of refugee paralegals as informed by legality and equality as constitutive principles of the Indonesian law. First, the construction of the Indonesian legal system, which *nota bene* was inherited from the Dutch legal system (Butt and Lindsey, 2018, pp. 73, 307), acknowledges “*legalitas formil*” (formal legality) mainly in Criminal Code Article 1(1), stating that “[n]o act shall be punished unless by virtue of a prior statutory penal provision” (Directorate General of Law and Legislation Ministry of Justice, 1982). Second, the principle of equality is enshrined in the Constitution Article 28D(1) which states that “[e]very person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law” (The Constitutional Court of the Republic of Indonesia, 2015, p. 27). The right “to be recognized as an individual and equal before the law” is stated as a human right in Law No. 39 of 1999 on Human Rights Article 4 (Presiden Republik Indonesia, 1999b).

The lives of asylum seekers and refugees that were primarily shaped by existing Immigration Law influenced their experiences on legality and equality. The unresolved “illegality” by the Presidential Regulation which formally is not regulated under Immigration Law, provided ground for exclusion of asylum seekers and refugees to exercise legal rights such as the right to work, as a negation to their equality before the law. However, the inclusion of refugees to access public services such as elementary schools (Shiva, 2021) and Community Health Clinic (Reny, 2021), and their participation in livelihood programs (Sadiq, 2021a; Shiva, 2021) provided proof that there were potential spaces in the lives of asylum seekers and refugees beyond the “binary opposition between legality and illegality” (Kubal, 2013, p. 557) that were open to negotiation and contestation, as well as open to other values that represented the subjective sense of law and justice. In these potential spaces, refugee paralegals paved their way to legal translation.

2.3. Legal translation

2.3.1. Mosaic of translation

Legal rights of refugees reflected in the international laws, interpreted from Indonesian domestic laws, and stated by paralegals left potential spaces for “vernacularization” (Merry, 2006a, p. 219) so that the rights could be fulfilled in the lives of asylum seekers and refugees in limbo. “[V]ernacularization” comprises both “appropriation” and “translation” (*ibid.*) when global human rights are “adapted to local institutions and meaning” (Merry, 2006b, p. 39). In the “appropriation”, the human rights ideas “reframe” and add “new interpretation” to the problems suffered by vulnerable groups (Merry, 2006a, p. 219). Legal translation of human rights involves three facets of “changes in the form and presentation of human rights ideas and institutions” which cover the process of (1) framing of human rights idea into the “images, symbols, narratives, and religious or secular language that resonate with the local community”, (2) tailoring to the “structural conditions” of the contexts where the ideas are

embodied, and (3) defining the target groups (ibid., p. 220). However, legal translation is not equal to “transformation” as the underlying paradigm embedded in localities such as patriarchy remains (ibid.) in contrast with the idea of “autonomy, choice, equality, secularism, and protection of the body” as human rights’ essentials (ibid.). Thus, “vernacularization” of human rights idea conceives contradiction between adaptation of global idea into local context and culture for acceptance, and the adoption of human rights’ essence (ibid., p. 221).

“Translators” or “intermediaries” such as academics, human right defenders, national elites, and NGO leaders carry out a pivotal dimension in the process of “vernacularization” as they “translate the discourse and practices from the arena of international law and legal institutions” to the particular contexts of localities (Merry, 2006b, p. 39). They “refashion” (ibid.) or “translate down” (ibid., p. 42) global rights agenda into local contexts and also “reframe” (ibid., p. 39) or “translate up” (ibid., p. 42) the voice of vulnerable groups in the language and principles of human rights (ibid., p. 39). As actors in the middle, “translators” are powerful as they are “knowledge brokers” between different cultural spheres who can navigate or manipulate others with lesser knowledge (ibid., p. 40), or exercise their expertise in technicalities needed in donor-related bureaucracy such as developing report (ibid., p. 43). At the same time, they are in a vulnerable position of dictation by the international agencies or donors that set agenda and interest upon them (ibid., pp. 40, 42) and rejection by the local communities or vulnerable groups (ibid., p. 40). Setting one foot in the realm of the global discourse on human rights and the other at the centres of human suffering, the “translators” have “double consciousness” (ibid., p. 42).

Culture in the “vernacularization” is not understood as an “essentialized concept” (Merry, 2006a, p. 8) that regards culture as a fixed “set of ideas shared by a collectivity” (Merry, 2010, p. 41) and characterizes a “homogenous entity” (Merry, 2006a, p. 8) of certain societies in the Global South, often “in resistance to human rights” (ibid., p. 14). Contemporary anthropology regards culture differently as “unbounded, contested, and connected to relations of power, as the product of historical influences” (ibid., p. 15) and “resources for change” (ibid., p. 9). By viewing culture as “hybrid and porous” (ibid.), “fluid and changing set of values and practices” (ibid., p. 14), and “open and flexible system” (ibid., p. 28), the new gaze moves beyond essentialization and old 1990s debates between universalism that claimed on the global outreach of human rights and relativism which celebrated local cultures (ibid., p. 8). However, culture is not associated only with the localities given that discourses on human rights at the global fora are shaped by a “culture of transnational modernity” and human rights law per se is a “cultural system” (ibid., p. 16).

The “in-between’ spaces” as negotiated context (Bhabha, 1994, p. 2) serve as a cultural arena for refugee paralegals to exercise their “agency-in-waiting” that “denotes the capacity to act in the present, in everyday time”, based on their experience of displacement and “a critical reflection of the future possibilities framed as waiting and hope” (Brun, 2015, p. 24). Looking into the genesis of refugee paralegals was the first step to track down the process of legal translation.

2.3.2. Emergence of refugee paralegals as translation through replication

The existence of community-based refugee paralegals was a form of “transnational program transplants” (Merry, 2006a, p. 19) that adopted mostly the best practices of the Namati and Legal Empowerment Network (Rachmah, 2021). As categorized in “vernacularization”, Merry (2006a, p. 135) divides the process of transplantation into “appropriation” and “translation”. By “appropriation”, the ideas, institutions, programs, and interventions that have been operational in certain localities and shared in global fora are replicated in another setting (ibid., p. 135). The definition and the role of paralegals (SUAKA and YLBHI, 2020, p. 4) are cited from a guide provided by The Open Society Justice Initiative, one of the

members of Legal Empowerment Network (Namati, no date-a), and from the booklet of Namati (SUAKA and YLBHI, 2020, p. 5). Besides taking the available ideas in the network, SUAKA also shared with the forum a self-help kit for asylum seekers in Indonesia preparing for Refugee Status Determination (RSD) for the first instance (Namati, no date-b) and the appeal stage (Namati, no date-c). In this way, the local initiatives to support asylum seekers in navigating the RSD process “feed back into global circuits” (Merry, 2006a, p. 135) to be available as resources for further appropriation. Namati becomes a resource centre that collects the ideas on legal empowerment from various localities, affirming the characteristics of transplantation as simultaneously “global and local” (ibid.).

The “translation” as the second process of transplantation covers the “process of adjusting the rhetoric and structure of ... programs or interventions to local circumstances” (ibid.). According to Merry, imported and “appropriated programs are not necessarily translated” (ibid.). The elaboration on “specific local cultural narratives and conceptions” as a dimension of translation (ibid., p. 136) has not been a focus in the formation of refugee paralegals, given the diverse cultural backgrounds of asylum seekers and refugees living in multicultural Indonesia (Rachmah, 2021).

The transplantation of the community-based paralegals model is equal to the process of “replication” (Merry, 2006b, p. 44). It happens when transnational designs define the whole basic idea and general strategies (ibid.). The global idea of legal empowerment and the Alternative Dispute Resolution (SUAKA and YLBHI, 2020, p. 24) establish the basic infrastructure of the community-based refugee paralegals. The “hybridization” (Merry, 2006b, p. 44) as the second face of “vernacularization” has not characterized the process of adaptation. Different from replication, “hybridization” is a more interactive process of merging between different “symbols, ideologies, and organizational forms” of transnational domain and localities (ibid., p. 46), by drawing “more extensively on local institutions, knowledge, idioms, and practices”, to give birth to a synthesized hybrid institution (ibid., p. 48). Therefore, there was more production of “replicas” (ibid.) in the genesis of refugee paralegals.

Chapter 3

Analysing refugees' legal rights

The right to asylum enshrined in the Indonesian Constitution and Law on Human Rights as explained in Section 2.1., has not been comprehensively implemented in law or regulation that protects the rights of asylum seekers and refugees in Indonesia. Soeprapto (2021, pp. 1-2) indicates two ways of implementation which are ratifying the 1951 Refugee Convention and its 1967 Protocol or passing a law on the protection of asylum seekers and refugees. In Indonesia, the prospect of ratification has been waning along with other Southeast Asia countries like Thailand and Malaysia. The establishment of UNHCR and the 1951 Refugee Convention in the context of the Cold War (Loescher, 2017, p. 78) instilled the perception among Southeast Asia countries of these international refugee regimes as “Eurocentric” (Missbach, 2021).

Indonesia's reluctances to the ratification of the 1951 Refugee Convention and its 1967 Protocol included the socio-economic arguments of estimated “high cost of installing a domestic refugee processing mechanism” (Missbach, 2015b, p. 122) and the high rate of “Indonesians living under poverty” (Liliansa and Jayadi, 2015, p. 340). Another argument was that Indonesia has been applied the Convention “in principle and spirit” (Rachmianto in Wicaksono and Angelia, 2015) as proven in the receptions of refugees in the history of Indonesia. The example of Australia as a party to the Convention breaching legal obligation to protect asylum seekers and refugees was also a disincentive to the accession (Missbach, 2021). In 2006, the Indonesian government has pledged for the ratification (Permanent Mission of the Republic of Indonesia, 2006, p. 3). Presidential Regulation No. 23 of 2011 on National Action Plan 2011-2014 Concerning Human Rights was the last regulation promising the accession to the 1951 Refugee Convention and 1967 Protocol (Presiden Republik Indonesia, 2011a) without any follow-up.

In the absence of a comprehensive law that protects persons seeking asylum in Indonesia, the discourse on asylum seekers and refugees was hijacked by the immigration logic. The hegemonic immigration framework was encouraged by a Regional Cooperation Arrangement (RCA) in 2000 between Australia, Indonesia, and IOM that legitimized the interceptions of asylum seekers who intended to make irregular journeys to Australia and their accommodations (Nethery et al., 2012, p. 95). RCA was followed up by the Australian fully-funded Management and Care of Irregular Immigrants Project (MCIIP) in 2007 that included renovation of the two largest immigration detention centres (IDCs) of Jakarta and Tanjung Pinang and establishment of additional IDCs (ibid., p. 96) which in 2012 have increased to thirteen (Missbach, 2015b, p. 76).

The Indonesian Immigration Law started the term “*imigran gelap*” or “illegal immigrant” that refers to asylum seekers and refugees, stated as an example of “international and transnational crimes” (Presiden Republik Indonesia, 2011b). The law also sets other terms such as “detention” and “detainee” (ibid.). These terms do not exist in former Immigration Law No. 9 of 1992, indicating the influence of the Australian government in the architecture of the new law (Nethery et al., 2012, p. 97).

The centrality of immigration is still reproduced in the Presidential Regulation No. 125 of 2016 concerning the Treatment of Refugees, although it does formally cut off the terminology of “illegal immigrant” for refugees and asylum seekers. The Regulation provides no comprehensive protection to asylum seekers and refugees' rights (Sadjad, 2021, p. 2) and “justifies the transplantation of immigration legal framework” (Dewansyah et al., 2017, p. 353). IDCs are still used for screening, control, and punishment as indicated in Articles 13,

20, and 36 (Presiden Republik Indonesia, 2016). The provision of basic needs to refugees in IOM accommodations mentioned in the Regulation – thus excluding around 41 percent persons of concern (UNHCR Indonesia, 2021, p. 1) who were surviving independently – is more a reflection of “humanitarian” rather than “rights-based approach” (Dewansyah and Nafisah, 2021, p. 2). Moreover, by continuing the delegation of RSD to the UNHCR, the Regulation “fails to acknowledge the constitutional basis of the right to seek asylum in Indonesia” and “the need to protect against *refoulement*” as the state hands over the recognition and rejection of refugee status to the UNHCR (ibid., p. 14).

Along with the projection for a law on asylum seeker and refugee protection (Soeprapto, 2021, p. 2; Rachmah, 2021), SUAKA in collaboration with JRS Indonesia, Sandya Institute, and UNHCR Indonesia has argued for the legal rights of asylum seekers and refugees in “Know Your Rights” (KYR) with the right to asylum as departing point (SUAKA et al., 2018, p. 9). Some highlighted rights are “right to legal counsel”, “right to an adequate standard of living”, “right to health service”, “right to education”, “freedom of assembly, association, and freedom of expression”, “right to birth registration”, “right to mixed marriage” with “Indonesian nationals or with non-refugee foreigners”, and “right to liberty” (SUAKA et al., 2018). The respective right is referred to certain legal basis found in the international and domestic laws, along with the possibilities to exercise it in Indonesia. The rationale for asylum seeker and refugee protection and the fulfilment of their rights in Indonesia is based on the “recognized human rights standard[s] in its Constitution and domestic laws, as well as ratified ... core international human rights treaties” (ibid., p. 3).

The identification of the legal rights of refugees by UNHCR and civil society organizations were not without challenges of exercising in everyday practices. Shiva, a paralegal who has great interest in law appreciated the KYR while trying to be realistic with the realities of refugees’ difficulties to exercise rights:

[KYR is] helpful. But, because refugees don’t have any rights, I would like to call that KYR-you-don’t-have. It’s helpful to know things you cannot do ... so you don’t get in trouble’ (Shiva, 2021).

Apart from identified legal rights from the books of law, most of the paralegals expressed the concern of refugees’ living without comprehensive right to work, right to education, right to health, and right to freedom of movement from city to city. While rights fulfilment has not been comprehensively guaranteed, the paralegals used their legal consciousness to negotiate access to justice for their community often beyond the bounds of legality.

Chapter 4

The legal consciousness in survival

This chapter will explore how refugee paralegals have perceived laws both as independent and dependent variables to reveal their expressions of “law in action” and “living law” and their strategies to strive for legal rights entitlement in daily legal problems. Their images of laws were first of all fit into the category of “law in action”. However, in their ways to settle legal problems, they elaborated certain awareness of “living law”. In strategies performed, there were nuances of sways between legality and illegality as well as between “law in books” or “the ideal”, “the actual in the law” (Ewick and Silbey, 1998, p. xiii), and “living law”. In the face of obstacles to claim equality before the law, they built on equality before the “living law”.

4.1. Images of law

The experience and reflection about the laws and paralegal training contributed to creating the images of law among the refugee paralegals. The question of “how do you feel about the laws, the international laws, and domestic laws?” was provided to explore their images of law as “overtones of feeling (*Gefühlstone*)” (Ehrlich in Hertogh, 2009, p. 3) or “emotional value attached to a norm contains important values” (ibid.). Most paralegals perceive law as an ideal norm that has the power to regulate people’s living with authoritative legality indicating experience of “before the law” (Ewick and Silbey, 1998, p. 46). Sayed, a refugee paralegal from Afghanistan reflected on his image on law this way:

‘The law is made for the citizen, for the human beings to solve the problem, solve the issues, stop crimes. ... If we don’t follow the law, we are criminal, not a good citizen, not good person in the society’ (Sayed, 2021a).

Law was associated with the citizenship or legal membership of individuals to a certain state. However, Sayed also enlarged the scope of the constraint of law upon the non-citizens who were living in a state. Even the association with the law was drawn into the root of persons before any affiliation to state, which is human beings. According to Sayed, in the constraining relation between law and persons, law was constructed as solving the problem of crimes, affirming the character of legality as “relatively fixed and impervious to individual action” (Ewick and Silbey, 1998, p. 47).

Reny, a paralegal from Cameroon, provided a slight difference on the attachment of persons to national law. She put a boundary to herself as a foreigner with the obligation to follow the law.

‘Law of the country is something that has been voted by country. As foreigner, in the country, I just need to follow the law. ... The law of Indonesia is okay because Indonesians have been living the law for years. Me as a foreigner, I would just fight for myself. We, as refugees’ (Reny, 2021).

For her, the law was the product of voting in a country and suitable for citizens. In other words, the law was characterized as “rational” (Ewick and Silbey, 1998, p. 47) through its “appropriateness” (ibid.) for the Indonesians. Indonesian law was a “separate sphere” (ibid.) for her, but at the same time, she had no other choice than to follow it.

A Somalian paralegal, Abshir, added stress on compulsion in following the law. People or communities followed a good or ideal law which was a result of deliberation:

'Rule [is something] that the whole community is forcibly to follow, forcibly to agree. Rule is something that you cannot pass, you must follow. According to government and other international law, before the law becomes a law, there must be discussion. When they see that the law is profitable for the community, then the law is good to follow. It means if you did not follow the law, you will be punished' (Abshir, 2021).

Abshir's opinion pointed to an ideal law that was good for its capacity to bring profit for the community involved in the deliberation of law. The reason for compliance with the law was that the law represented the aspiration of the community.

The ideal about law was also mentioned by Sadiq, a paralegal from Sudan that saw the importance of law in its regulating and organizing function:

'When we respect the law, we live with peace, better life, because no one above the law. Law is organizing our life, you know. They make our lives better' (Sadiq, 2021a).

The images of law expressed by paralegals referred to the written international or national laws. The images of peace and better life were the ultimate hope of the ideal laws. However, the paralegals also indicated the "persistent contradiction between the ideal and the actual in the law" (Ewick and Silbey in Hertogh, 2004, p. 463). Reny expressed the contradiction between "the ideal" in international refugee law and "the actual" in the implementation of Indonesian Immigration Law. According to her, the immigration raids happened sometimes in her area, not far from UNHCR Indonesia office:

'To be sincere, there is no protection for refugees in Indonesia. In any country, immigration is not supposed to arrest asylum seekers and refugees. But in Indonesia, it's the opposite. International law says that refugee is supposed to be protected, not the other way around. ... Every day, they in they out. I have been arrested once. So where is the protection for refugees? Even if you bring asylum seeker or refugee card, immigration people still take you. We go to seek asylum because we need to be protected. You have the document given by the UN but the immigration still checks on you. It's frustrating' (Reny, 2021).

Finding herself "before the law", Reny expressed frustration and feeling of "powerlessness" (Ewick and Silbey, 1998, p. 47) to the way immigration disregarded UNHCR refugee card, as Shiva stated:

'Immigration knows about it [UNHCR ID card]. Sometimes they try to not know about it' (Shiva, 2021).

The lack of significant protection of asylum seekers and refugees in Indonesia brought scepticism to the international refugee regime of its power to protect. Shiva illustrated the international refugee regime as a game that left asylum seekers and refugees unprotected:

'I mean these big countries that created laws and regulations, and all of these are just big game ... I like to call it the war business ... I mean it makes sense to me that way because I have experienced displacements. You create the law and you create the UN, and pretend like you are nice people, trying to take care of people. But you are the ones that make this war, and then you make money out of the war, and then you make the UN, you make money out of the UN. And all these displacements, you don't provide a legal pathway for these people to be able to resettled into different countries or move out of the conflict zones' (Shiva, 2021).

Her position was on the verge of "against the law" (Ewick and Silbey, 1998, p. 48) as she performed "consciousness of being less powerful in a relationship of power" and "assessments that power has produced unfair constraints and opportunities" (ibid., p. 183). However, her "cynical" (Hertogh, 2004, p. 463) stance about the legitimacy of the international refugee regime has not revealed "consciousness of opportunity" (Ewick and Silbey, 1998, p. 183) for a direct action of resistance. As the forms of legal consciousness are

not “permanent or essential aspect of person’s identity or life” (ibid., p. 50), paralegals’ awareness of law at a certain time could not be ossified in the state of “before the law” or “against the law” because it was deeply influenced by specific contexts over time.

4.2. Survival strategies

Paralegals’ images of law inspired their choices of survival strategies to support their community members in legal moments. The strategies performed were exposing vulnerability, avoidance, compliance, and framing the right to work.

4.2.1. *Ecce homo*: between legality and sympathy

Abshir told the story of how he mediated a case of a motorbike accident in 2020 between a Somali refugee and an Indonesian female in Ciputat of Greater Jakarta. Fortunately, the accident did not injure the Indonesian. It just left a bit broken part of her motorbike. At first, the Indonesian called her brother and her parent to come in situ, saying that the Somalian made a problem with her. Then other Somalian refugees called Abshir to come to the scene and help their friend to deal with the Indonesians. Abshir described his efforts this way:

‘I immediately came to the place. I just convinced and told the local that he did not make this problem on purpose. Both of you safe and you don’t have any wound or any problem. Please, can you try to forget this refugee? He does not work; he is not allowed to work. He is not allowed to study. Maybe he is stressed. He fled his own country. So, can you try to forgive this guy? Immediately she changed into positive. Ooo..., he did not attend the school, he did not work. I forgive him, I forgive him. That’s a kind of mediation to solve the problem’ (Abshir, 2021).

Abshir named the strategy to settle that case as “awareness”. He intended to give information to the Indonesians on the struggles and vulnerability of refugees in Indonesia. For him, the strategy proved to be successful. The case was not reported to the police and even there was not any compensation that the Somalian refugee should pay to the Indonesian. Abshir continued his description of the conversation that happened in the scene:

‘They asked: how come you own the motor? Local people are friendly. They can give you anything if you are a close friend. If you housemate of a local, maybe they can give you key to motor to buy food, to go futsal, or to go somewhere. So, we told them that this guy borrowed a motor from a local. Gratefully, the lady forgave the refugee since there is no wound-physical problem. Once she understands the history of the community, she forgave the guy’ (Abshir, 2021).

The case showed that the principle of legality in the practice of riding a motorbike was bypassed. The Indonesian did not problematize that the refugee has violated the Indonesian Law on Road Traffic and Transportation that regulates the driving license and excludes irregular migrants such as refugees for driving motorbikes or cars. The aspect of legality was challenged by the expression of forgiveness and sympathy of Indonesian to the Somalian refugee. Besides, the Indonesian became aware that another Indonesian has lent the motorbike to the Somalian refugee out of trust. The world of ideas and sense of law and justice cannot be explored only within the legal consciousness model of “law in action”. The study on “American” conception of legal consciousness “falls short in analysing people’s *own* definitions” of the concepts such as legality and equality (Hertogh, 2004, p. 471). The mutual sense of justice that was revealed in the encounter mediated by Abshir reflected Ehrlich’s idea on “living law” (ibid., p. 472).

4.2.2. Abiding and smiling

Reny, who has been two years and several months in Indonesia, remembered that every asylum seeker registered to UNHCR Indonesia was given the same message as written in the leaflet given to asylum seekers:

“You must abide by Indonesian laws and respect local traditions, customs, and culture. If you commit a criminal offence in Indonesia, you will be prosecuted and punished according to Indonesian law. UNHCR will not interfere with or try to prevent criminal prosecution if you commit a crime, but will refer you to a legal aid organization for legal representation” (UNHCR Indonesia, 2017b).

The message on abiding by the laws was internalized by paralegals who have spent various lengths of surviving in Indonesia. Advising community members to obey the law was part of their public awareness. It was a preventative action before getting into complex problems, as shared by Abshir:

‘It is avoiding problem, physical problem, emotional problem. It can be a fear, but it’s avoiding a problem. Hospitalists use one quote, they say: prevention is better than cure. So, it’s the same, avoiding problem is better than solving problem. Even we can say: fear of problem’ (Abshir, 2021).

The compliance to the non-written laws was also informed to the paralegals during the training in the emphasis on politeness while expressing the arguments in front of authorities (ibid., p. 6). Sayed’s reflection in following customs, cultures, or etiquettes was expressed this way:

‘Well, if we don’t follow the tradition, if I passed by in front of some Indonesian guys while they are sitting, if I’m not a little bit bowing and say *permisi* [excuse me], the persons will be angry. ... If we want to live peacefully in the society, we have to accept, respect the law and the culture of the society which is their culture by many-many years’ (Sayed, 2021a).

Abshir reflected that he learned about the local norms and etiquette through experiences. Besides “*permisi*”, he shared any other etiquettes to his community, this way:

‘Smiling, one of local norms. ... When you across people sitting, you have to say *permisi* and smiling. And they will say: *Okay ngga papa, masuk* [Okay, please]. But if you cross them without saying anything, they may bother you, because they think you are careless. Smile means peace. The smile means people are welcoming you. ... Other thing is about noise. Most of Africans, they speak loudly in their rooms or streets. The locals did not like that. That’s our culture to speak loudly but we try to speak slowly like the locals. The other is how to answer people’s greetings. If you just go to the market, you hold something and passing people, maybe people ask you: *Kamu kemana pergi, apa ini?* Where were you going, what’s this? As Africans, this is not our tradition. We tell our community when the locals ask you like that, don’t feel worried. Just tell them the place you are going, or just tell them the place you are not going. ... People sometimes also ask you: *kamu sudah makan?* Did you eat? You have to say: yes. Because mostly when they ask you that, they will not give you food. It’s norm, it’s a tradition’ (Abshir, 2021).

The paralegals and refugees learned the Indonesians are friendly. The way to avoid problems with Indonesians was by the virtue of respect, as stated by Ali:

‘Respect your neighbours, the people. Indonesians respect foreigners’ [Ali, 2021].

The virtue of respect which was simply expressed in greetings and smiles was considered as a golden rule that governs the daily interactions, especially in the rural area or urban settings neighbourhood with high population density, where people still have daily communication. The internal order of the society is determined by “legal norms” or “the

legal command, reduced to practice, as it obtains in a definite association, perhaps of very small size, even without any formulation in words”, which is distinguished from legal propositions (Ehrlich in Eppinger, 2009, p. 38). The binding “rules of conduct” is what Ehrlich calls “law” (ibid., p. 38). Within the nexus between Ehrlichian society and rules of conduct, the paralegals’ experiences showed that respect was the “living law” of the surviving refugees among Indonesians.

4.2.3. Avoidance: safe passage to the future

Another strategy suggested refugee communities avoid reporting to the police to settle legal problems. They found that sometimes their fellow refugees were not aware of possible difficulties in dealing with the police. Sayed shared his experience on this:

‘My friend fights with another refugee. In that scenario, I try to apply [the non-litigation procedure] and what we have from training by SUAKA. Try to solve the issue between each other people without involving the police, because it will be more complicated. He didn’t listen, so he reports to the police. When some police come, they didn’t directly take people to jail. They say that this person reported that he has been beaten by another person. So, I said: let us solve the problem between each other before you take someone to jail. Police agreed and said: solve this between each other. This is not a big issue. We talk and discuss for some hours. Both of them agree and they give hand each other. ... We try to solve between each other before we make it official or legal’ (Sayed, 2021a).

Shiva envisaged the durable solution as an end to strategically avoid going to the police. The first information report (FIR) or police report could have a fatal consequence to the future, as she stated:

‘We try to avoid going to the police. We try to solve things internally. ... If you have a record in the police, it is going to impact your resettlement. And the refugee also, even UNHCR, try as much as possible to solve the problem within refugee organization. UNHCR themselves are not taking the case to the police because it will not benefit any of the parties. Unless Indonesians are involved’ (Shiva, 2021).

Avoiding police and FIR would at least keep refugees safe on their passage towards the future. Ali shared his experience to mediate conflict with a happy ending in terms of the future gaze of resettlement:

‘There were two Pakistani refugees. Fighting because their kids are playing, then fighting. After that, one of them went to police station. Before going to the police, I have told them: don’t go to police station. They didn’t hear me. Then both of them were called by police. Police called interpreter from immigration. Both of them will be resettled at that time. If the police wrote FIR, their resettlement will be cancelled or rejected. Police said to them: go and shake the hands, and finish here. If they don’t shake hands, police will write FIR and put them in jail. At the end, they shook hands. Even UNHCR doesn’t know about that fight. Now, they are already in US’ (Ali, 2021).

Paralegals were aware that the future of resettlement are dimming. The conversations on resettlement were swinging between fear and hope. Rashad, who was staying in the IOM accommodation, expressed his reflection on resettlement, this way:

‘We fear that maybe we will spend more than 10 years here in Indonesia or we will never be resettled. If this happened, really it would be very paralyzing for us because we have spent over a decade here in Indonesia, without having access to real education, work, real document. But I remember that the UNHCR officer, I forgot his name, when he visited our place, said that Indonesia is a transit country and we are not going to be resettled here. If the opportunities of resettlement are reopened again, the priority will be given to UNHCR

Indonesian office, because refugees here are not allowed to access fundamental human rights. This sometimes motivates me to be optimistic that someday I will be resettled to a third country. This was happened last year, end of December' (Rashad, 2021).

On resettlement, UNHCR Indonesia (2017b) states that "resettlement is not an automatic right available to all refugees". Many refugees assumed that resettlement is their right. Countering this assumption, a refugee-led organization, RAIC (Refugees & Asylum Seekers Information Centre) confirms the reality that resettlement is not the right of refugees (RAIC, no date). Although the rate of refugee resettlement is very low globally, Sadiq persistently argued that resettlement is a refugee right based on Indonesian context, this way:

'But in Indonesia, we have special cases actually. Because in other country, refugees have right to work, or they have right to education, they have right to legal process. But in Indonesia no, nothing. Refugee just like... how can I tell that... no nothing completely. So, we have right to resettlement. And here, I lost ten years of my life, even my kids also. So, we fight for that. I feel we have power to fight about it. Some refugee, for example, got angry because in every meeting, the UNHCR office couldn't tell clearly for us that you didn't have right to resettlement. They know if they said that, tomorrow all refugees will be in front of the office. If we don't have right to resettlement, we are waiting here for what in Indonesia without any education, without any work, without any improvement? So UNHCR they try to play with us' (Sadiq, 2021c).

The thought that Sadiq had on the right to resettlement related to the meaning and *raison d'être* of non-litigation service that paralegals did to secure the passage to resettlement of their fellow refugees. At this point, there was unequal contestation between the power of resettlement countries to define the "Good Refugees" (Selm, 2014, p. 517) who are eligible for resettlement, and legal consciousness among refugees to elevate the resettlement to the level of right.

The avoidance strategy was also contested among paralegals in their views on a demonstration to demand accelerated resettlement that happened in front of the UNHCR office on 24 August 2021 after the fall of Kabul. Abshir who did not agree on demonstration tried to reach out to his Somali community to rethink joining the demonstration, without denying refugee's right to freedom of expression:

'Being in front of UNCHR, you will not get resettlement. You have the same chance with those who are staying at their homes. So please avoid, stop bothering the locals, to close the way, to sit aimlessly in front of UNCHR. Don't bother yourselves. Don't bother UNHCR staff. ... Please stay at your homes. There is a mechanism that you can reach UNHCR through email, WhatsApp. Try to write a complaint letter and send an email, you may get a chance to resettle. So, they tell each other. And they know the reality that being in front of UNCHR, they will not be prioritized for resettlement. ... This is the main task the paralegals do. Trying to avoid the problem is the best, not to solve. ... We tell them if they want to make a demonstration, they have to make it peacefully. ... If you are a hundred people and close the road and you are not locals, the locals may bother you, the police may arrest you because you close the road' (Abshir, 2021).

Commenting on the demonstration, Sadiq criticized the moment of doing a demonstration and its possible consequence on refugees:

'Frankly, refugees have the right to protest, because they see it as the only solution always, even if I disagree with them. The time is not right, because the government is preventing the assembly, and Jakarta has a ban during coronavirus outbreak, which poses a threat to all refugees. It will create a bad image among Indonesian society, specifically if the refugees violate the orders of the Indonesian government' (Sadiq, 2021b).

Another Afghan paralegal expressed that he could not but join the demonstration as it was an emotional moment for an Afghan like him:

‘It is really hard for me to stay silent in past days. My sister texted me and she was so worried and helpless to get out of my village [in Afghanistan]. I am so much worried about my family and can’t sleep well in the past week. The only thing I can do is to take a risk and raise voices over prolonged resettlement and this catastrophe going on in there’ (Afghan paralegal in Pestalozzi, 2021).

Sayed, an Afghan, also joined the demonstration as a duty and argued that the refugees keep the order during the demonstration:

‘It was our duty to join that rally to raise our family voice so I was also in the demonstration. We have only one demand which is resettlement. Refugees respect Indonesian law and its citizens. The number of people was too much, police itself blocked the road when they saw too many people. We meant to be just in front of UNHCR office on the sidewalk of the road. We don’t want to cause trouble for public or traffic. [Police] bring a force of motorbike and push people to finish the demonstration. It was at 12 pm. But in the afternoon, 1 pm the road was open for traffic and demonstration continues until 4 pm on the sidewalk of the road’ (Sayed, 2021b).

The agreement and disagreement on refugees doing public protest intersected within the common interest to save the future of resettlement. Eventually, refugees must be free of criminal records in the police clearance letter before being granted resettlement. On the one hand, paralegals preferred to contribute to the order and stability in waiting for resettlement, but on the other hand, the momentous occurrence such as the fall of Kabul encouraged some of them to involve in the demonstration to voice out their distress on resettlement.

4.2.4. Framing survivals in the interstices of the green hell

Shiva expressed a term used by refugees to describe the PRS (Protracted Refugee Situations), namely “green hell” (Shiva, 2021). The adjective “green” refers to the beautiful landscape of Indonesia, while the “hell” connotes the “limbo” – an archaic term meaning “in or on the edge or border” to describe “a state or place in the afterlife for souls who deserved neither salvation nor damnation” (Jacobsen and Karlsen, 2021, p. 5). The in-betweenness of the “green hell” denotes the powerlessness of refugees “to lead the kind of lives they have reason to value” (Sen, 2000, p. 10). Sayed expressed the situation this way:

‘Eight years have been a wasted life here. Doing nothing. It’s really made me sad. In eight years, people can do many things in their lives. While we are still in very good energy in 25-30, it becomes wasted here. We’re still hoping for the bright future’ (Sayed, 2021a).

The “wasted life” indicated the rightlessness, especially with the right to work, as Ali stated:

‘We are just eating and sleeping. We don’t have anything to do. No right to work. We don’t have any rights here. So, what are the refugee rights?’ (Ali, 2021).

In their “wasted life”, the paralegals were involved in many activities in their communities. Ali was active in a refugee-led informal school. Shiva was engaged in a refugee organization that provided advice for asylum seekers in the process of Refugee Status Determination and also health services. Other paralegals, Hassan and Rashad involved in a refugee empowerment project to provide handicraft training for refugees. Some paralegals such as Sadiq, Azra, Shiva, Abshir, and Nasif were trained interpreters that facilitated the works of NGOs. Paralegal with IT skills like Sayed was involved in a digital platform start-up project organized by refugees. Rashad opened an online English class for eleven refugees

in his community with a small number of contributions from his students. Sadiq and Nasif were leaders in their communities that bridged communications with national and international organizations.

Shiva said that all voluntary activities involved by refugees were coping mechanisms to make them busy and forget about their distress about their uncertainties in Indonesia.

'If I don't do anything else, I could go crazy. I make myself busy with fruitful activities for others. I learn a lot also in the process of it. Before doing this, I was so suicidal because I don't have a purpose. I found purpose in these. That is the coping mechanism that I have during waiting. If I don't do those activities then what else I could do? For myself, I can't do anything' (Shiva, 2021).

The involvement in voluntary activities was always oriented first of all for their communities. The altruism as motivation to be paralegals and volunteers in many activities was meaningful, but the aspiration to have personal meaningful life through working and earning a living has not been satisfied. The right to work in Indonesia has not been granted for the refugees due to the impossibility of refugees to fulfil the immigration procedure for accessing formal employment in Indonesia. Nonetheless, there were facts that refugees were working, as the paralegals have been doing. They run the risk of immigration detention. Azra (2021) told that several refugees were caught working as shopkeepers in Cisarua during immigration raids in June 2021 and had to be detained in the immigration office for two weeks.

Mitigating the risk, the meaning of work was framed as "livelihood" which had a more moderate connotation and featured the subsistence refugees needed to survive. Shiva reflected on challenges about doing livelihood:

'Right to work is a sensitive topic. We have changed the word into "refugee livelihood". We do something to survive, get training, collaborate with Indonesians, not taking Indonesian's jobs. It's very difficult for refugees to work with Indonesians, vice versa. Different cultures, different skills, different countries, different settings. They are not compatible to work with each other. Even if Indonesia give work right to refugees, refugees wouldn't be able to work in Indonesian office, insurance company, recruitment company, or export-import. Because they don't have such kind of skills. Most of the refugees are teachers, community workers, doctors, nurses. Not very many, but their professionalism is different. Refugee professional teachers can't teach in Indonesian schools. They would probably do private classes for other refugees, or online classes' (Shiva, 2021).

According to Shiva, the works or livelihoods done by refugees will not harm the Indonesians employment since most of the business was done internally within their communities and the reason for doing livelihood was just to survive during the long waiting in Indonesia:

'Most of the business that happening among refugee community is between themselves: making bread and food from their culture. Make dresses that are appropriate to their culture. They wouldn't make Indonesian *kebaya*; they will make Pakistani dress. They make a livelihood. They make birthday cakes with greetings in Farsi. She makes it for her friends. It's between themselves. Even the online livelihood, they are not really selling with Indonesians. It's more profitable to sell with people who know me, know my language, rather than making online business from zero with Indonesians that so much competition in the market. A waste of time and resources for those persons. And also, because refugees would not be here for a very long time. They want to just survive, not a long-term business' (Shiva, 2021).

The framing of livelihood demonstrated that the "green hell" as "in-between" spaces" contained "interstices" as negotiated space (Bhabha, 1994, p. 2). In the state's exclusion

regarding the prohibition of refugees to work, there were “interstices” of opportunities to build inclusive initiatives “from below” through the experimentations of doing livelihoods, either facilitated by NGOs or done independently as practiced by Skilled Migrant and Refugee Technicians (SMART, 2020).

Paralegals' awareness of the right to work through livelihood activities also makes them reflect on their legitimacy to work as paralegals. In so far as the Indonesian Regulation on paralegal still excludes them, their legitimacy was obtained from the trust of their communities. They do not pay attention to the aspect of the legality of their works from the point of view of the official law. Trust has been the “living law” that enabled the paralegals and the refugee communities to pursue justice “in-between’ spaces”.

4.3. Triptych of consciousness

The intertwining nuances of legal consciousness reflected by refugee paralegals in their image of laws, strategies taken to support their communities, and the rationale behind their strategies can be illustrated in the following interface (Table 1.4).

Figure 1. 2
Nuances of legal consciousness among refugee paralegals



Source: Author's illustration.

Paralegals' images of laws containing the ideal of law, the actual of the law, and the “living law” informed the non-litigation strategies that were chosen by the paralegals to support their communities. The incomprehensiveness of refugee protection in Indonesia and limitations experienced by refugees to significantly exercise their legal rights shaped legal consciousness which inspired survival strategies that explored refugees' vulnerability, manners of compliance with the societal norms, modes of avoiding legal institutions of legal enforcement, and meaning-making of the right to work. The difficulties to work with legal consciousness as “(official) law in action” made the paralegals turn to the realm of “living law” where they found sympathy, forgiveness, respect, and trust as values that were more workable for protection.

The variety of strategies they chose made them and the communities they assisted take a stance to legality. They negotiated with legality as practised by Abshir in the case of a motorbike accident by exposing vulnerability or in the way of borrowing motorbike from

Indonesian. Negotiation with legality was also promoted by Shiva and Sayed when they framed acts of working with livelihood initiatives. Taking distance or hiding from legality was another way taken when Sayed and Ali suggested their friends avoid dealing with the police in everyday legal problems. In their experiences, legality was not only strictly equal to formal laws and legal institutions, but also an “emergent feature of social relations” (Ewick and Silbey, 1998, p. 17). Viewing legality as “embedded in ... daily activities” (ibid.), the paralegals and their community members found experiential bases of being and doing “legal” in their contested status as asylum seekers and refugees who were always vulnerable to be judged illegal.

Each strategy also contained a statement of equality with locals in exercising their rights. Concerning the use of motorbikes, they claimed their freedom of movement. In framing working with livelihood, they strived for the right to work. By respecting the local norms, they survived to live among locals and enjoyed mutual respect in relationships with locals. While the paralegals expressed about refugees’ vulnerability and their lower position compared to the locals, they built on equality from below, which was equality before the “living law” of sympathy, forgiveness, respect, and trust.

The survival strategies had a future dimension which in general was resettlement to the third countries. Day-to-day legal problems that were mediated and negotiated were considered as pathways to an uncertain future. “[D]e facto local integration” (Hovil, 2014, p. 493) of refugees in Indonesia was the field of paralegals’ advocacy that needed to be guarded and cared for as safe as possible. Their protracted waiting did not weaken their hopes for resettlement because it was a durable solution legally recognized by the Indonesian government besides repatriation which temporarily put their safety at risk.

Chapter 5

The role of paralegals in legal translation of rights

The triptych of consciousness of refugee paralegals explained the possibility that the refugees' legal rights could be translated into their lives as persons with cultures. Two cases on how paralegals interpreted cultural mindset and set to open the way for justice showed their roles as “translators” of legal rights. In this elaboration of legal translation, culture was regarded as a flexible “repertoire”, and not essentialized.

5.1. Cultural pathways

The paralegals explored other strategies which were cultural to realize justice and legal rights of their community and legal rights of the refugees. An experience of settling the problem by facilitation of the cultural leaders in their community and other experience to make use of the pervasive culture of corruption in Indonesia indicated the potentials of legal translation.

5.1.1. An outlook into a cultural settlement

The immobility and unfreedoms of asylum seekers and refugees, in conjunction with the disciplines to compliance with laws to broaden safe space for the resettlement, brought the idea of cultural legal problem-solving. The cultural pathways would keep refugees from exposing by police, immigration, UNHCR, or IOM. Rashad told an experience that in June 2021, there was a case of domestic violence in a Sudanese family who were staying in IOM accommodation. IOM and immigration reported the case to the police, then separated the wife and the children into custody. Rashad helped the perpetrator, who was assumed as having a psychological problem, to talk to the police. In this case, Rashad expressed the concern of the Sudanese community on the role of the elders to handle the case:

‘My community sent messages to the leaders to come, to sit together, and discuss: what is the problem, who is guilty, who started this problem. In this case, my people will not make a compromise. I feel like they are leaders and have capabilities and enough experience to intervene and to give help as well. They are the elders. In such a case, they try to find a real solution. If we got the man or woman, we immediately would say: hey you are guilty. We as Sudanese respects people who come to solve the problem between us. When we told them to come to sit together to solve the problem, they will respect our initiative. After that, most of them are Muslims and they are family. It just needs IOM to allow us’ (Rashad, 2021).

Cultural problem solving refers to the idea of justice that could be judged by the discretion of the elders of the community. Exploring cultural ideas on law and justice in settling disputes was one of the non-litigation strategies that were chosen by paralegals. Sayed shared on “the decision of elders who have white and grey hair” as a cultural way to interpret justice in the Afghan community. He reflected a cultural way back home:

‘In Afghanistan, if there were two people are fighting, police do not involve. We have such kind of the elders of the area, they collect all information, they decide, which one is right, which one is wrong. And in the end, they met, the case solved. They say: no more fighting, just befriending with each other. It leaves peacefully. We call it the decision of elders who have white and grey hair. In our culture, try to solve it between each other than go to the police or involve the law. If somebody gets injured with a knife, even if somebody gets killed in a fight, it’s very important in our culture that both parties collect elder people, they decide

the crime between two parties, so in the future, there will be no fight. [The decision:] give some money to the victim's family, and do not fight in the future. ... The murderer is not free, he goes under the law, he got punishment from the government. But even if the government makes him free after the punishment, both families could still have conflict with each other. Then a member of the family tries to kill the ex-murderer. So, we stop this conflict. Those elders from the two parties are getting together to solve the problem, the best way they can. So, it's something cultural in our country' (Sayed, 2021a).

The collaboration between paralegals with more sensitivities on official laws and human rights, and the elders with their cultural perspective contributed to the "living law" that could be beneficial for avoiding complexities. The limit of *forum internum* of the cultural judgment would be the degree and consequence of the cases to the safety of the victim, as noted by Sayed:

'For the small fight, either physical or verbal fight, it doesn't involve the law. If somebody is badly injured with a knife and must go to the hospital, if somebody gets his expensive thing stolen, this involves the law. For those cases, I would suggest they go to the law, involve the law. Law can help us. The police can help you because I cannot help you with your stolen things. I cannot help you if you get injured with the knife and you go to hospital' (Sayed, 2021a).

Another shared experience indicated the tension between cultural values, equality between women and men, and deliberation on justice. Nasif shared an experience of dealing with a case of domestic violence between Yemen refugees 1,5 years ago.

'The family have an issue of domestic violence, verbal [abuse]. As refugees, we tried to manage to solve it, but one of them reported to the police. The police came and told them this is a small thing, not that big issue. So, the police gave them advice: we are not going to do make long process, just let's sit and try to solve instead of make [police] report. It takes a long process which is not good for you. Police gave us options. Whether you do this report, then we can start the process. It wasted time. If you wanted to solve within the community, then fine. So, we took the option to solve this in the community. And both parties agreed and we solved the issue. In the next process, we told both parties, this is wrong, this is right. You have to do it the right way. You are a family. And we gave them some advice not to fight, you are refugees here, the country is welcoming you, you have to do the right thing. If you fight and report to the police, it will affect your refugee process also. In Arabic or Islamic culture, you know that female must respect the male as well, like her husband. The female should not fight the male or the husband. The female should respect the husband. This is cultural. [The female should] not raise the voice in front of the community, the husband, or the neighbour. But in this case, we also kind of convince the husband, what he has done was wrong. Then, when he found out that what he has done is wrong, he accepts and apologize' (Nasif, 2021).

Nasif and his community did not interpret the women's obligation to respect to sustain unequal relationship between women and men. They prioritized a view on justice that person who was proven wrong should apologize. Obligation to respect was not neglected but the judgement on justice should come first. They went beyond the police's perception that domestic violence was just a small thing and could be solved immediately in peace. Merry's note on "internal actors" (2006a, p. 16) in culture provided a reflection on the positionality of Yemeni, Sudanese, or others who involved in solving that problem under the perspective of Arabic or Islamic culture. The reality that they were in Indonesia as a community of different origin backgrounds made them able to take distance from a constraining cultural obligation and apply justice. Their positionality as not fully "inside" or "outside" of the culture confirmed that "boundaries around cultures are never clear and unambiguous" (ibid.).

5.1.2. Riding the local culture

In Chapter 3, Abshir has told a story on how he mediated a case of motorbike accident between a Somali and an Indonesian. Nasif had another story around motorbike. He said that many refugees, including himself, rode motorbikes, especially in the area where there was a significant number of refugees living independently such as around Ciputat. He told the reality like this:

'I do ride a bike. Yes, it's illegal. Not all of the police, but some of them, understand the concept of the refugees and understand being refugees here. Still, they help us, give us chance to ride motorbikes without making any trouble. Here, around Jakarta, the police know very well that they are refugees. In some places a little bit away from Jakarta and some places that don't host refugees, so that refugees are something rare or new for them, once you said you are refugees, they will investigate more. If you make no problems, if there is no serious accident, and if you have full papers and pay the tax, that's fine. Even the local people don't use their names to buy motorbikes. If you want to buy a new motor, you need documents, and it's impossible. Mine is a second one. I still keep Indonesian document as well: the STNK [*Surat Tanda Nomor Kendaraan* or Vehicle Registration Certificate], BPKB [*Buku Pemilik Kendaraan Bermotor* or Vehicle Ownership Book]. In buying bikes, it's between trusted persons' (Nasif, 2021).

The deviation from the principle of legality as exercised by Nasif and other refugees was made possible by the practices of non-compliance to the traffic law, bribery, and corruption around the administration of the driving licence and its law enforcement. A perspective views the problem of police corruption as "constrained by societal norms" (Buttle et al., 2016, p. 445) so that police culture is "more or less reflects the values of the society" of Indonesia (ibid., p. 448).

The interstices for illegality in the legal practices in Indonesia can be viewed as a phenomenon of the legal culture. Merry (2010, pp. 46-47) refers to Friedman's definition of legal culture as "the ideas, values, attitudes, and opinions people in some society hold, with regard to law and the legal system". Every person has individual legal culture and shares communal legal culture (ibid., p. 47). Within the discourse of legal culture, Merry (2010, p. 42) notes that culture is "a repertoire of actions, practices and beliefs that are relatively flexible and open to change". Far from bounded and fixed characteristics, culture is "porous, with ideas and practices that are constantly shifting" (ibid.). As a product of historical trajectory, culture is characterized by "hybridity" that marks a "more dynamic, agentic and historicised way of understanding culture" (ibid.). The culture of corruption in Indonesia can be viewed as a hybrid of the interplay between "colonial corruption" (Kroeze, 2021, p. 187) of Dutch colonialism and local practices such as the "old Javanese customs" in "offering of gifts by subjects to their rulers" (Robertson-Snape, 1999, p. 597).

Refugees have been vulnerable to the practices of corruption in Indonesia, especially during the detention regime (Missbach, 2015b, p. 83). Sayed told refugees' experiences on extortion when he lived in a community housing several years ago:

'Immigration takes money from the refugees to give them accommodation that is provided by IOM. ... When refugees are inside the camp [or detention centre], immigration takes money from refugees to take them outside of the camp, because the camp is like a prison. When people want to go to the accommodation, they also give money to the immigration officers, so that their name can be on the list of the next move. I believe that immigration putting all those laws, all those regulation on refugee to make it more tightened so they can run their own business, they get some benefits from the refugees' (Sayed, 2021a).

The practices of corruption are condemned because they caused refugees to suffer. In another context, the practices provided opportunities for refugees to enjoy riding motorbikes

as the locals do. Refugees had been riding the culture of corruption to make their trips in the city easier.

5.2. Translators' consciousness in-between cultures

The cultural pathways taken by paralegals and their community proved that they had the capability as “translators” (Merry, 2006b, p. 39). They had the potentials to facilitate the realization of refugees' rights in the absence of specific law that protects refugees. In the cultural settlement, the paralegal could facilitate the translation of women's rights in the case of domestic violence by prioritizing justice over the strict interpretation of the cultural obligation of women to respect men. By adapting to the tolerable Indonesian local culture of corruption that undermined the Law on Road Traffic and Transportation, the paralegals and other refugees could exercise their limited freedom of movement. The collaboration between paralegals and the elders of refugee communities is potential to produce survival mechanisms as “hybrids” (ibid., p. 48) that adapt the ideals as written in the international human rights corpus to the cultural terrains that are dynamic and changing in the context of displacement and protracted waiting.

As “translators”, the paralegals had “double consciousness” (ibid., p. 42). On the one hand, they had ideas in mind on refugees' legal rights that they have learned from paralegal training or their self-learning. They as refugees were suffering from the limitations to exercise their rights and from the practices of corruption along the way of displacement in Indonesia. On the other hand, they were bound to their cultural values which are not always in line with the logic of human rights. In the case of riding the culture of corruption, they were also in tension between the ideal of anti-corruption and the chances to expand their freedom of movement.

Their capabilities as “translators” were improved by the paralegal training initiated by SUAKA. In that case, SUAKA members as advisors were “knowledge brokers” (ibid., p. 40) for the paralegals to strengthen their knowledge on international refugee laws and domestic laws, and contribute to shaping paralegals' awareness of refugees' legal rights and the alternative ways to address the legal problems. As elaborated in Chapter 1 about the emergence of paralegals, SUAKA members were also “translators” in the process of reproducing the “replicas” of “transnational program transplants” (Merry, 2006a, p. 19) adapted from the global best practices of community-based paralegals. Identity, roles, and code of ethics of paralegals drawn from the global best practices were provided as refugee paralegals' handbook (SUAKA, 2021b) as well as the administrative documentations need to be collected by refugee paralegals during their services (SUAKA, 2021c).

Along the process of “appropriation” (Merry, 2006a, p. 135), SUAKA briefly introduced the paralegals to the international laws on refugee rights, mainly the principle of non-refoulement which found its basis on Law No. 5 of 1998 on the Ratification of Convention Against Torture (SUAKA and YLBHI, 2020, p. 6). The introduction also covered Law No. 11 of 2005 on the Ratification of the International Convention on the Economic, Social and Cultural Rights, Law No. 12 of 2005 on the Ratification of the International Convention on the Civil and Political Rights, and Laws No. 7 of 1984 on the Ratification of Convention on the Elimination of All Forms of Discrimination Against Women (Rachmah, 2021). Other domestic laws were also introduced at glance, especially the laws that connect to the significant rights for the refugees and often raised questions among the refugees, inter alia The Constitution of the Republic of Indonesia of 1945, Law No. 8 of 1981 on Criminal Procedure, Law No. 39 of 1999 on Human Rights, Law No. 23 of 2006 on Civil Administration, Law No. 6 of 2011 on Immigration, and Presidential Regulation No. 125 of 2016 Concerning the Treatment of Refugees (SUAKA and YLBHI, 2020).

SUAKA has not established a working relationship with the refugee paralegals because it does not yet have the status as OBH (*Organisasi Bantuan Hukum*/Legal Aid Organization) that can hold paralegals accountable (Rachmah, 2021). It is emphasized in the code of ethics that the paralegals are accountable more to the community they assist voluntarily. The relationship between paralegals and SUAKA as “knowledge brokers” is fluid without paralegals’ obligation to report to SUAKA while the paralegals could freely consult SUAKA in any legal matters. This unbound relationship makes possible the difference in the production of meanings on the interpretation of laws and legal problems between SUAKA and the paralegals since SUAKA cannot impose “frames” on paralegals regarding discourses on laws as if ignoring the “contestation over meaning” (Merry, 2006b, p. 41).

Chapter 6

Conclusion

This study has answered the research question: How can refugee paralegals in Greater Jakarta contribute to improving better access to justice for asylum seekers and refugee communities? It all started with the identification of the right to asylum written in the Indonesian Constitution and Law on Human Rights. Furthermore, other refugees' legal rights were drawn either from several laws which ratified most of international human rights conventions and covenants or from refugee paralegals' reflections. Most paralegals identified that their communities suffered from barriers to exercise their right to work, right to education, right to health, and right to freedom of movement. However, they expressed also subversive ideas that arose out of urgent necessities and years of protractedness. The paralegals contested the official statement that resettlement is not a refugee right by proposing a negation that resettlement is a right. The denial of refugee right to work was challenged by the practices of livelihood ventures to restate the right with a different frame.

The paralegals' awareness of refugees' limitations to exercise their rights led to further steps to uncover their legal consciousness using the perspective of "law in action" and "living law". Applying the law as both independent and dependent variables, this study examined legal values of legality and equality to see the possibilities of "law in action" as a way to justice as well as opening to other values that potentially revealed the character of "living law" from the strategies chosen by paralegals. Surviving "'in-between' spaces", the experiences of paralegals could not be approached solely from the legal principle of legality because they were prone to be stereotyped with illegality by hegemonic immigration logic. Likewise, the principle of equality could not work significantly as long as the protection of refugees' rights has not been recognized in a comprehensive law and the immigration law still "irregularizes" (Menjívar, 2006, p.1001) asylum seekers and refugees as illegal immigrants. The alternative values of sympathy, forgiveness, respect, and trust then emerged as expressions of a sense of justice and right or the "living law".

The triptych of legal consciousness (Figure 1.2) in the intertwined dynamic between (a) images of laws that comprised of "law in the books" and "living law", (b) survival strategies chosen by paralegals to settle legal issues, and (c) the vision of resettlement as an end of the battle for justice, illustrates the dynamics on how the awareness of law encouraged paralegals to find ways to facilitate their community to feel the sense of justice. Every component of the triptych could inform each other as each is the dimension of legal consciousness that is dynamic and open to changes. The vision on resettlement could ignite other strategies as well as other images of laws. Similarly, the existing strategies could inspire other images of laws and be directed to another alternative of a durable solution. Furthermore, the images of laws have the potentials to generate other survival strategies and give rise to another idea of a durable future.

The cultural pathways assumed by paralegals situated them as "translators" of refugees' legal rights at the contesting encounters between universal human rights and cultural values of the refugee community or localities where asylum seekers and refugees were integrated. Their genesis as community-based paralegals by training was a replica produced through the "transplantation" of paralegalism available in the global network into the gap of access to legal aid experienced by refugee communities in Greater Jakarta. Moreover, the cultural turns that were explored to deal with legal situations served as the beginning of "hybridization". The searching for "hybrids" would go beyond mere consideration of efficiency celebrated in alternative dispute resolution by making immediate peace to close the legal cases.

Considering the fluidity of cultures that asylum seekers and refugees experience along their displacement trajectories, working on more “hybrids” in legal aid would enrich the study on the ways paralegals facilitate “de facto local integration” during perennial waiting for a durable solution.

References

- Abrego, L. J. (2011) 'Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants', *Law & Society Review*, 45(2), pp. 337-370.
- Abshir (2021) Interviewed by Maswan Susinto [Zoom], 9 August.
- Achmadi, J. C. (2021a) WhatsApp message to Maswan Susinto, 13 July.
- Achmadi, J. C. (2021b) WhatsApp message to Maswan Susinto, 2 August.
- Ali (2021) Interviewed by Maswan Susinto [Zoom], 3 August.
- Archibald, M. M., Ambagtsheer, R. C., Casey, M. G., and Lawless, M. (2019). 'Using Zoom Videoconferencing for Qualitative Data Collection: Perceptions and Experiences of Researchers and Participants', *International Journal of Qualitative Methods*, 18, pp. 1-8. doi:10.1177/1609406919874596.
- Australian Government (no date) *Operation Sovereign Border*. Available at: <https://osb.homeaffairs.gov.au/> (Accessed: 11 September 2021).
- Azra (2021) Interviewed by Maswan Susinto [Zoom], 24 July.
- Berenschot, W. and Rinaldi, T. (2018) 'Paralegalism in Indonesia: Balancing Relationships in the Shadow of the Law', in Maru, V. and Gauri, V. (eds.) *Community Paralegals and the Pursuit of Justice*. Cambridge: Cambridge University Press, pp. 139-164.
- Bhabha, H. K. (1994) *The Location of Culture*. London and New York: Routledge.
- Brown, T. M. (2018) 'Building Resilience: The Emergence of Refugee-Led Education Initiatives in Indonesia to Address Service Gaps Faced in Protracted Transit', *Austrian Journal of South-East Asian Studies*, 11(2), pp. 165-181. doi:10.14764/10.ASEAS-0001.
- Brun, C. (2015) 'Active Waiting and Changing Hopes: Toward a Time Perspective on Protracted Displacement', *Social Analysis*, 59(1), pp. 19-37. doi:10.3167/sa.2015.590102.
- Budiman, Y. C. (2021) 'Afghan refugees in Indonesia call for expedited resettlement', *Reuters*, 24 August. Available at: <https://www.reuters.com/world/asia-pacific/afghan-refugees-indonesia-call-expedited-resettlement-2021-08-24/> (Accessed: 17 October 2021).
- Butt, S. and Lindsey, T. (2018) *Indonesian Law*. Oxford: Oxford University Press.
- Buttle, J. W., Davies, S. G., and Meliala, A. E. (2016) 'A cultural constraints theory of police corruption: Understanding the persistence of police corruption in contemporary Indonesia', *Australian & New Zealand Journal of Criminology*, 49(3), pp. 437-454. doi:10.1177/0004865815573875.
- Collyer, M. (2010) 'Stranded Migrants and the Fragmented Journey', *Journal of Refugee Studies*, 23(3), pp. 273-293. doi:10.1093/jrs/feq026.
- Derrida, J. (2000) 'Hostipitality', *Angelaki*, 5(3), pp. 3-18. doi:10.1080/09697250020034706.
- Dewansyah, B., Dramanda, W., and Mulyana, I. (2017) 'Asylum Seekers in A Non-Immigrant State and the Absence of Regional Asylum Seekers Mechanism: A Case Study of Rohingya Asylum Seekers in Aceh-Indonesia and ASEAN Response', *Indonesia Law Review*, 3, pp. 341-366. doi:10.15742/ilrev.v7n3.373.
- Dewansyah, B. and Nafisah, R. D. (2021) 'The Constitutional Right to Asylum and Humanitarianism in Indonesian Law: "Foreign Refugees" and PR 125/2016', *Asian Journal of Law and Society*, First View, Cambridge University Press, pp. 1-22. doi:10.1017/als.2021.8.
- Directorate General of Law and Legislation Ministry of Justice (1982) *Penal Code of Indonesia*. Available at: <https://www.refworld.org/docid/3ffc09ae2.html> (Accessed: 9 November 2021).

- Dykstra-DeVette, T. A. (2018) 'Resettlement Rhetoric: Challenging Neoliberalism in Refugee Empowerment Initiatives', *Southern Communication Journal*, 83(3), pp. 179-191, doi:10.1080/1041794X.2018.1437925.
- EASO (2020) *2.3 EU-Turkey Statement*. Available at: <https://easo.europa.eu/asylum-report-2020/23-eu-turkey-statement#142> (Accessed: 19 June 2021).
- Eppinger, M. (2009) 'Governing in the Vernacular: Eugen Ehrlich and Late Habsburg Ethnography', in Hertogh, M. (ed.) *Living Law: Reconsidering Eugen Ehrlich*. Oxford and Portland: Hart Publishing, pp. 21-47.
- Ewick, P. and Silbey, S. S. (1998) *The common place of law: stories from everyday life*. Chicago and London: The University of Chicago Press.
- Google (2021) *Greater Jakarta*. Available at: https://www.google.com/maps/d/edit?mid=1_UmpO-S4ybP2jzj11W8CoZqdqGma0PoU&usp=sharing.
- Hartanto, R. V. P., Liestyasari, S. I., Budiati, A. C. (2019) 'Paralegals and Women Access to Justice: Making Access to Justice of Women Victims of Violence Effective', *International Journal of Recent Technology and Engineering*, 8(1S), pp. 11-16.
- Hertogh, M. (2004) 'A 'European' Conception of Legal Consciousness: Rediscovering Eugen Ehrlich', *Journal of Law and Society*, 31(4), pp. 457-481.
- Hertogh, M. (2009) 'From 'Men of Files' to 'Men of the Senses': A Brief Characterisation of Eugen Ehrlich's Sociology of Law', in Hertogh, M. (ed.) *Living Law: Reconsidering Eugen Ehrlich*. Oxford and Portland: Hart Publishing, pp. 1-17.
- Holzer, E. (2013) 'What Happens to Law in a Refugee Camp?', *Law & Society Review*, 47(4), pp. 837-872.
- Hovil, L. (2014) 'Refugee Integration', in Fiddian-Qasmiyeh, E., Loescher, G., Long, K., and Sigona, N. (eds.) *The Oxford Handbook of Refugee and Forced Migration Studies*. Oxford: Oxford University Press, pp. 488-498.
- Huysmans, J. (2000) 'The European Union and the Securitization of Migration', *Journal of Common Market Studies*, 38(5), pp. 751-777.
- Ilham (2021) 'We never invited you to come here', *Inside Indonesia*, Edition 144: April-June 2021. Available at: <https://www.insideindonesia.org/we-never-invited-you-to-come-here> (Accessed: 18 October 2021).
- Jacobsen, C. M. and Karlsen, M. -A. (2021) 'Introduction: unpacking the temporalities of irregular migration', in Jacobsen, C. M., Karlsen, M. -A., and Khosravi, S. (eds.) *Waiting and the Temporalities of Irregular Migration*. London and New York: Routledge, pp. 1-19.
- James, N. and Busher, H. (2009) *Online Interviewing*. SAGE Publications Ltd: London.
- JRS Indonesia (2012) *Training for Pro Bono Legal Representatives*. Available at: <http://jrs.or.id/en/campaigns/urban-refugees/pelatihan-bagi-pengacara-pro-bono/> (Accessed: 13 October 2021).
- Kirişci, K. (2021) *Revisiting and going beyond the EU-Turkey migration agreement of 2016: an opportunity for Greece to overcome being just "Europe's aspis"*. (ELIAMEP Policy Paper #64). Available at: <https://www.brookings.edu/wp-content/uploads/2021/04/Policy-paper-64-Kirisci.pdf> (Accessed: 15 October 2021).
- Kneebone, S. (2014) 'The Bali Process and Global Refugee Policy in the Asia-Pacific Region', *Journal of Refugee Studies*, 27(4), pp. 596-618. doi:10.1093/jrs/feu015.
- Kroeze, R. (2021) 'Colonial Normativity? Corruption in the Dutch-Indonesian Relationship in the Nineteenth and Early Twentieth Centuries', in Kroeze, R., Dalmau, P., and Monier, F. (eds.) *Corruption, Empire and Colonialism in the Modern Era: A Global Perspective*. Singapore: Palgrave Macmillan, pp. 173-208. doi:10.1007/978-981-16-0255-9.

- Kubal, A. (2013) 'Conceptualizing Semi-Legality in Migration Research', *Law & Society Review*, 47(3), pp. 555-587.
- Larking, E. (2017) 'Controlling Irregular Migration in the Asia-Pacific: Is Australia Acting against its Own Interests?', *Asia & the Pacific Policy Studies*, 4(1), pp. 85-103. doi:10.1002/app5.166.
- Liliansa, D. and Jayadi, A. (2015) 'Should Indonesia Accede to the 1951 Refugee Convention and Its 1967 Protocol?', *Indonesia Law Review*, 3, pp. 324-346. doi:10.15742/ilrev.v5n3.161.
- LoCastro, M., Alfath, D., and Hu, G. (2019) *Unlocking the Economic Potentials of Indonesia's Refugee Community: A Survey on Labour Characteristics*. Jakarta: Sandya Institute. Available at: <https://drive.google.com/file/d/1Nn3g3dsJU4L5VIF7iY8k9OWSFLoqGxxS/view> (Accessed: 8 November 2021).
- Loescher, G. (2017) 'UNHCR's Origins and Early History: Agency, Influence, and Power in Global Refugee Policy', *Refuge*, 33(1), pp. 77-86.
- Martins, B. O. and Strange, M. (2019) 'Rethinking EU external migration policy: contestation and critique', *Global Affairs*, 5(3), pp. 195-202. doi:10.1080/23340460.2019.1641128.
- Maru, V. and Gauri, V. (2018) 'Paralegals in Comparative Perspective: What Have We Learned across These Six Countries?' in Maru, V. and Gauri, V. (eds.) *Community Paralegals and the Pursuit of Justice*. Cambridge: Cambridge University Press, pp. 1-42.
- McNevin, A. and Missbach, A. (2018) 'Luxury limbo: temporal techniques of border control and the humanitarianisation of waiting', *International Journal of Migration and Border Studies*, 4(1/2), pp. 12-34. doi:10.1504/IJMBS.2018.091222.
- Menjívar, C. (2006) 'Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States', *American Journal of Sociology*, 111(4), pp. 999-1037.
- Merry, S. E. (2006a) *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago and London: The University of Chicago Press.
- Merry, S. E. (2006b) 'Transnational Human Rights and Local Activism: Mapping the Middle', *American Anthropologist*, 108(1), pp. 38-51.
- Merry, S. E. (2010) 'What Is Legal Culture? An Anthropological Perspective', *Journal of Comparative Law*, 5(2), pp. 40-58.
- Missbach, A. (2015a) 'Transiting asylum seekers in Indonesia: Between human rights protection and criminalisation', in Pietsch, J. and Clark, M. (eds.) *Migration and Integration in Europe, Southeast Asia, and Australia: A Comparative Perspective*. Amsterdam: Amsterdam University Press, pp. 115-135.
- Missbach, A. (2015b) *Troubled Transit: Asylum Seekers Stuck in Indonesia*. Singapore: ISEAS-Yusof Ishak Institute.
- Missbach, A. (2018) *Falling through the cracks*. Available at: <https://www.policyforum.net/falling-through-the-cracks/> (Accessed: 14 May 2021).
- Missbach, A. (2019) 'Asylum Seekers' and Refugees' Decision-Making in Transit in Indonesia: The Need for In-depth and Longitudinal Research', *Bijdragen tot de taal-, land- en volkenkunde*, 175, pp. 419-445. doi:10.1163/22134379-17504006.
- Missbach, A. (2020) 'Substituting immigration detention centres with 'open prisons' in Indonesia: alternatives to detention as the continuum of unfreedom', *Citizenship Studies*, pp. 1-14. doi:10.1080/13621025.2020.1859193.
- Missbach, A. (2021) 'Nothing to Celebrate? Indonesia, UNHCR and the 1951 Refugee Convention', *Völkerrechtsblog*, 11 May. doi:10.17176/20210511-090816-0. Available at: <https://voelkerrechtsblog.org/nothing-to-celebrate/> (Accessed: 20 October 2021).
- Missbach, A., Adiputera, Y., Prabandari, A., Cintika, G., Swastika, F. Y., and Darningtyas, R. (2018) *Stalemate: Refugees in Indonesia — Presidential Regulation No 125 of 2016*. Melbourne: Centre for Indonesian Law, Islam and Society, Melbourne Law School, The University of Melbourne (CILIS Policy Paper, 14).

- Missbach, A. and Adiputera, Y. (2021) 'The Role of Local Governments in Accommodating Refugees in Indonesia: Investigating Best-Case and Worst-Case Scenarios', *Asian Journal of Law and Society*, First View, Cambridge University Press, pp. 1-17. doi:10.1017/als.2021.5.
- Namati (no date-a) *Open Society Justice Initiative*. Available at: <https://namati.org/network/organization/open-society-justice-initiative/> (Accessed: 7 September 2021).
- Namati (no date-b) *Refugee Status Determination- Self Help Kit for First Instance*. Available at: <https://namati.org/resources/refugee-status-determination-self-help-kit-for-first-instance/> (Accessed: 7 September 2021).
- Namati (no date-c) *Refugee Status Determination- Self Help Kit for Appeal Stage*. <https://namati.org/resources/refugee-status-determination-self-help-kit-for-appeal-stage/> (Accessed: 7 September 2021).
- Nasif (2021) Interviewed by Maswan Susinto [Zoom], 4 August.
- Nethery, A., Rafferty-Brown, B., and Taylor, S. (2012) 'Exporting Detention: Australia-funded Immigration Detention in Indonesia', *Journal of Refugee Studies*, 26(1), pp. 88-109. doi:10.1093/jrs/fes027.
- Perdana Menteri (1956) *Surat Edaran Perdana Menteri No. 11/R.I./1956*. Available at: <https://suakaindonesia.files.wordpress.com/2019/02/se-pm-ri-tentang-perlindungan-pelarian-politik.pdf> (Accessed: 4 November 2021).
- Permanent Mission of the Republic of Indonesia (2006) *Commitment and voluntary pledges of Indonesia in the field of Human Rights*. Available at: <https://unwatch.org/wp-content/uploads/2009/12/indonesia-pledge.pdf> (Accessed: 20 October 2021).
- Pestalozzi, Z. E. (2021) WhatsApp message to Maswan Susinto, 1 September.
- Presiden Republik Indonesia (1999a) *Undang-Undang Republik Indonesia Nomor 37 Tahun 1999 tentang Hubungan Luar Negeri*. Available at: https://legalitas.org/download/write_pdf.php?url=pdf/undang-undang/1999/Undang-Undang--37-tahun-1999.pdf (Accessed: 20 October 2021).
- Presiden Republik Indonesia (1999b) *Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 tentang Hak Asasi Manusia*. Available at: <https://www.komnasham.go.id/files/1475231474-uu-nomor-39-tahun-1999-tentang-%24H9FVDS.pdf> (Accessed: 20 October 2021).
- Presiden Republik Indonesia (2011a) *Peraturan Presiden Republik Indonesia Nomo 23 Tahun 2011 tentang Rencana Aksi Nasional Hak Asasi Manusia Indonesia Tahun 2011-2014*. Available at: <https://peraturan.go.id/common/dokumen/ln/2011/ps23-2011.pdf> (Accessed: 9 November 2021).
- Presiden Republik Indonesia (2011b) *Undang-Undang Republik Indonesia Nomor 6 Tahun 2011 tentang Keimigrasian*. Available at: <http://jogja.imigrasi.go.id/download/undang-undang/uu-no.6-tahun-2011.pdf> (Accessed: 20 October 2021).
- Presiden Republik Indonesia (2016) *Peraturan Presiden Republik Indonesia Nomor 125 Tahun 2016 tentang Penanganan Pengungsi dari Luar Negeri*. Available at: <https://peraturan.bpk.go.id/Home/Download/33141/Perpres%20Nomor%20125%20Tahun%202016.pdf> (Accessed: 21 October 2021).
- Rachmah, R. A. (2021) Interviewed by Maswan Susinto [Zoom], 6 August.
- Rachmah, R. A. and Pestalozzi, Z. E. (2016) *Barely Living: Research on Living Conditions of Rohingya Refugees in Indonesia*. Jakarta: LBH Jakarta.
- RAIC (no date) *Resettlement*. Available at: <https://www.raicindonesia.org/resettlement/> (Accessed: 10 September 2021).
- Rashad (2021) Interviewed by Maswan Susinto [Zoom], 30 July.
- Refutera (2021) *About us, Welcome to Refutera Online Store*. Available at: <https://refutera.com/about-us/> (Accessed: 16 October 2021).

- Regional Support Office-The Bali Process (2018) *Strategic Plan for the Regional Support Office of the Bali Process 2018-2020*. Available at: [https://www.baliprocess.net/UserFiles/baliprocess/File/RSO%20Strategic%20Plan%202018%202020%20\(003\).pdf](https://www.baliprocess.net/UserFiles/baliprocess/File/RSO%20Strategic%20Plan%202018%202020%20(003).pdf) (Accessed: 17 May 2021).
- Reny (2021) Interviewed by Maswan Susinto [Zoom], 24 July.
- Robertson-Snape, F. (1999) 'Corruption, collusion and nepotism in Indonesia', *Third World Quarterly*, 20(3), pp. 589-602.
- Roberts, J. K., Pavlakis, A. E. and Richards, M. P. (2021) 'It's More Complicated Than It Seems: Virtual Qualitative Research in the Covid-19 Era', *International Journal of Qualitative Methods*, 20, pp. 1-13. doi:10.1177/16094069211002959.
- Rubin, H. J. and Rubin, I. S. (2005) *Qualitative Interviewing (2nd ed.): The Art of Hearing Data*. Thousand Oaks: SAGE Publications, Inc.
- Sadiq (2021a) Interviewed by Maswan Susinto [Zoom], 22 July.
- Sadiq (2021b) WhatsApp message to Maswan Susinto, 28 August.
- Sadiq (2021c) WhatsApp message to Maswan Susinto, 31 August.
- Sadjad, M. S. (2021) 'What Are Refugees Represented to Be? A Frame Analysis of the Presidential Regulation No. 125 of 2016 Concerning the Treatment of Refugees "from Abroad"', *Asian Journal of Law and Society*, First View, Cambridge University Press, pp. 1-16. doi:10.1017/als.2021.3.
- Sayed (2021a) Interviewed by Maswan Susinto [Zoom], 23 July.
- Sayed (2021b) WhatsApp message to Maswan Susinto, 1 September.
- Selm, J. V. (2014) 'Refugee Resettlement', in Fiddian-Qasmiyeh, E., Loescher, G., Long, K., and Sigona, N. (eds.) *The Oxford Handbook of Refugee and Forced Migration Studies*. Oxford: Oxford University Press, pp. 512-524.
- Sen, A. (2000) *Development as Freedom*. New York: Alfred A. Knopf.
- Shiva (2021) Interviewed by Maswan Susinto [Zoom], 2 August.
- SMART (2020) *About us*. Available at: <https://smartforglobal.org/about-us/> (Accessed: 10 September 2021).
- Soeprapto, E. (2021) 'Foreword', *Asian Journal of Law and Society*, First View, Cambridge University Press, pp. 1-2. doi:10.1017/als.2021.1.
- Stenger, L. (2012) 'SUAKA'. JRS Indonesia. Unpublished.
- Stenger, L. (2021) WhatsApp message to Maswan Susinto, 13 October.
- SUAKA (2021a) *Laporan Tahunan Suaka 2020*. Available at: <https://suakaindonesia.files.wordpress.com/2021/01/laporan-tahunan-suaka-2020.pdf> (Accessed: 14 May 2021).
- SUAKA (2021b) *Refugee Community-Based Paralegal Handbook, Book 1 - Refugee Community-Based Paralegal Introduction & Code of Ethics*. Available at: <https://suakaindonesia.files.wordpress.com/2021/04/refugee-community-paralegal-handbook-1-introduction-ethics.pdf> (Accessed: 7 September 2021).
- SUAKA (2021c) *Refugee Community-Based Paralegal Handbook, Book 2 - Documentation for Legal Aid Provision*. Available at: <https://suakaindonesia.files.wordpress.com/2021/04/refugee-community-paralegal-handbook-2-documentation.pdf> (Accessed: 7 September 2021).
- SUAKA, JRS Indonesia, Sandya Institute, and UNHCR Indonesia (2018) *Know Your Rights: A Handbook for Refugees and Asylum Seekers*. Available at: <https://suakaindonesia.files.wordpress.com/2018/12/know-your-rights-handbook.pdf> (Accessed: 14 May 2021).

- SUAKA and YLBHI (2020) 'Refugee Community-based Paralegal Training II: Advancing Refugee's Legal Knowledge towards Inclusive Indonesian Society, Training Module'. 2nd edn. Edited by Stenger, L. Unpublished.
- Suyatna, I. N., Arsika, I. M. B., Satyawati, N. G. A. D., Nordin, R., and Jones, B. (2021) 'Assessment of the Responsibility of Local Governments in Indonesia for the Management of Refugee Care', *Asian Journal of Law and Society*, First View, Cambridge University Press, pp. 1-23. doi:10.1017/als.2021.4.
- The Constitutional Court of the Republic of Indonesia (2015) *The 1945 Constitution of the Republic of Indonesia and Law of The Republic of Indonesia Concerning the Constitutional Court*. Jakarta: The Office of the Registrar and the Secretariat General of the Constitutional Court of the Republic of Indonesia. Available at: <https://www.mkri.id/public/content/infoumum/regulation/pdf/uud45%20eng.pdf> (Accessed: 9 November 2021).
- Timmerman, A. (2021) 'In Indonesia, desperation grows for refugees trapped in limbo for years', *The New Humanitarian*, 22 March. Available at: <https://www.thenewhumanitarian.org/news-feature/2021/3/22/in-indonesia-desperation-grows-for-refugees-trapped-in-limbo-for-years> (Accessed: 10 September 2021).
- Toghyan Vlogs (2021) *Afghan Refugees are Protesting in Front of UNHCR Office, Jakarta- Requesting UNHCR to Resettle Them*. Available at: https://www.youtube.com/watch?v=I9Zplm_T5AM (Accessed: 4 September 2021).
- UNHCR (2010) *Convention and Protocol Relating to the Status of Refugees*. Geneva: UNHCR.
- UNHCR (2021a) *Resettlement Data Finder*. Available at: <https://rsq.unhcr.org/en/#sn1L> (Accessed: 22 May 2021).
- UNHCR (2021b) *Global Trends Forced Displacement in 2020*. Copenhagen: UNHCR Global Data Service. Available at: <https://www.unhcr.org/60b638e37/unhcr-global-trends-2020> (Accessed: 14 October 2021).
- UNHCR Executive Committee (2009) *Conclusion on Protracted Refugee Situations No. 109 (LXI) – 2009*. Available at: <https://www.unhcr.org/excom/exconc/4b332bca9/conclusion-protracted-refugee-situations.html> (Accessed 15 October 2021).
- UNHCR Indonesia (2014) 'Monthly Statistical Report December 2014'. Unpublished.
- UNHCR Indonesia (2015) 'Monthly Statistical Report December 2015'. Unpublished.
- UNHCR Indonesia (2016) 'Monthly Statistical Report December 2016'. Unpublished.
- UNHCR Indonesia (2017a) *Comprehensive Solutions for Persons Registered with UNHCR in Indonesia*. Available at: <https://www.unhcr.org/id/wp-content/uploads/sites/42/2017/10/Poster-on-Comprehensive-Solutions-ECHO-Oct-2017.pdf> (Accessed: 13 October 2021).
- UNHCR Indonesia (2017b) *Information for Asylum Seeker in Indonesia*. Available at: <https://www.unhcr.org/id/wp-content/uploads/sites/42/2017/05/Information-Leaflet-for-Asylum-Seekers-English-Feb-2017.pdf> (Accessed: 10 September 2021).
- UNHCR Indonesia (2017c) 'Monthly Statistical Report December 2017'. Unpublished.
- UNHCR Indonesia (2018) 'Monthly Statistical Report December 2018'. Unpublished.
- UNHCR Indonesia (2019) 'Monthly Statistical Report December 2019'. Unpublished.
- UNHCR Indonesia (2020) *Fact Sheet Indonesia December 2020*. Available at: <https://reporting.unhcr.org/sites/default/files/UNHCR%20Indonesia%20fact%20sheet%20-%20December%202020.pdf> (Accessed: 14 October 2021).
- UNHCR Indonesia (2021) 'Monthly Statistical Report August 2021'. Unpublished.
- UNHCR Regional Bureau for Asia and the Pacific (2021) *Left Adrift at Sea: Dangerous Journeys of Refugees Across the Bay of Bengal and Andaman Sea*. Available at: <https://www.unhcr.org/asia/611e15284> (Accessed: 18 October 2021).

- United Nations (no date) *Universal Declaration of Human Rights*. Available at: <https://www.un.org/sites/un2.un.org/files/udhr.pdf> (Accessed: 4 November 2021).
- VOA (2021) *Former Indonesian Beauty Queen Runs Business That Empowers Refugees*. Available at: <https://www.voanews.com/episode/former-indonesian-beauty-queen-runs-business-empowers-refugees-4659961> (Accessed: 16 October 2021).
- Wicaksono, K. and Angelia, M. (2015) 'Ini Alasan RI Belum Ikut Konvensi PBB Soal Pengungsi', *Viva*, 22 May. Available at: <https://www.viva.co.id/berita/dunia/629261-ini-alasan-ri-belum-ikut-konvensi-pbb-soal-pengungsi> (Accessed: 20 October 2021).
- Wirya, A., Larasati, A., Gruskin, S., and Ferguson, L. (2020) 'Expanding the role of paralegals: supporting realization of the right to health for vulnerable communities', *BMC International Health and Human Rights*, 20(8), pp. 1-10. doi:10.1186/s12914-020-00226-y.

Appendix

Appendix 1. 1
Profile of the research participants

No	Pseudonym	Age	Gender	Country of origin	Duration of stay in Indonesia
1	Sadiq	35	Male	Sudan	10 years
2	Sayed	33	Male	Afghanistan	8 years
3	Cyril	50	Male	Democratic Republic of the Congo	2 years
4	Azra	31	Female	Afghanistan	7 years
5	Shiva	30	Female	Iran	8 years
6	Hassan	25	Male	Afghanistan	6 years
7	Rashad	24	Male	Sudan	4 years
8	Abshir	22	Male	Somalia	6 years
9	Ali	30	Male	Pakistan	8 years
10	ReNy	34	Female	Cameroon	2 years
11	Nasif	37	Male	Sudan	10 years