

**British Government Policy in Managing Refugee Problems After the
British Exit in 2020: A Review from International Law**

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Abstract

The United Kingdom's withdrawal from the European Union on February 1, 2020, through Brexit (British Exit) has had significant implications for the country's refugee policies. Before Brexit, the UK's refugee policies were subject to the Dublin Convention established by the European Union, which regulated the distribution quota of refugees among member states. This provision was considered detrimental to the UK due to the surge in the number of refugees it was required to accommodate. Post-Brexit, the UK implemented a new policy, the New Plan for Immigration, which has been criticized for being inconsistent with the 1951 Convention On the Status of Refugees. This study analyses the international legal framework concerning refugee protection and evaluates the UK's policies in handling refugees after Brexit. The research employs a juridical approach using historical, statutory, and comparative methods. The secondary data is collected through literature studies and analyzed qualitatively and descriptively. The findings indicate that international refugee protection is governed by the 1951 Convention and its 1967 Protocol, the 1948 Universal Declaration of Human Rights, and other regional legal instruments. Post-Brexit, the UK faces uncertainty in handling asylum seekers as it is no longer bound by the Dublin Convention or the Eurodac system of the European Union. No formal agreement has been established between the UK and the EU regarding asylum management, creating challenges in the UK's immigration policies.

Keywords: brexit; refugees; protection; european union.

Abstrak

Keluarannya Inggris dari Uni Eropa pada 1 Februari 2020 melalui Brexit (British Exit) membawa implikasi signifikan terhadap kebijakan pengungsi di negara tersebut. Sebelum Brexit, kebijakan pengungsi di Inggris tunduk pada Konvensi Dublin yang ditetapkan oleh Uni Eropa, yang mengatur kuota distribusi pengungsi di negara anggota. Ketentuan ini dianggap merugikan Inggris karena lonjakan jumlah pengungsi yang harus ditampung. Pasca-Brexit, Inggris menerapkan kebijakan baru, yaitu New Plan for Immigration, yang mendapat kritik karena dinilai tidak selaras dengan Konvensi 1951 tentang Status Pengungsi. Penelitian ini bertujuan untuk menganalisis kerangka hukum internasional terkait perlindungan pengungsi serta mengevaluasi kebijakan Inggris dalam menangani pengungsi setelah Brexit. Metode yang digunakan adalah penelitian yuridis dengan pendekatan historis, perundang-undangan, dan perbandingan. Data yang

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digunakan merupakan data sekunder yang dikumpulkan melalui studi kepustakaan dan dianalisis secara kualitatif dalam bentuk uraian deskriptif. Hasil penelitian menunjukkan bahwa perlindungan hukum bagi pengungsi secara internasional diatur dalam Konvensi 1951 dan Protokol 1967 tentang Status Pengungsi, Deklarasi Universal Hak Asasi Manusia 1948, serta berbagai instrumen hukum regional lainnya. Pasca-Brexit, Inggris menghadapi ketidakpastian dalam penanganan pencari suaka akibat tidak lagi terikat dengan Konvensi Dublin atau sistem Eurodac Uni Eropa. Hingga saat ini, belum terdapat perjanjian formal antara Inggris dan Uni Eropa mengenai pengelolaan pencari suaka, sehingga menciptakan tantangan dalam kebijakan imigrasi Inggris.

Kata kunci: *brexit; pengungsi; perlindungan; uni eropa.*

1. INTRODUCTION

One of the global issues that has garnered significant international attention is Brexit. Brexit stands for "Britain Exit" or "British Exit." In this study, the author uses the term "British Exit," which refers to the withdrawal of the United Kingdom from the European Union.¹ The primary reason for the British public's push to leave the European Union was immigration issues. The UK believed that the supranational immigration regulations of the European Union, particularly the Dublin Regulation, had caused an overwhelming influx of immigrants into the country, exceeding acceptable limits.

The number of immigrants in the UK in 2015 was 630,000, consisting of both EU and non-EU immigrants. The UK's population increased from 57 million in 1990 to 65 million in 2015, with an additional 333,000 people arriving in 2016. The Dublin Regulation also had a negative impact on the UK by allowing refugees from EU member states to enter, which further increased the UK's financial burden—according to Migration Watch UK, a British migration research organization, low-skilled EU workers contributed only around £1 in net tax revenue, which tended to have a negative balance for the UK.²

For the British public, exiting the European Union was seen as a solution to the immigration problem. As a result, the UK held the Brexit referendum on June 23, 2016, to decide whether the country should leave or remain in the EU. The vote to leave won

¹ John Cunningham, "What's the Difference Between Great Britain and the United Kingdom?," n.d., <https://www.britannica.com/story/whats-the-difference-between-great-britain-and-the-united-kingdom>, diakses 19 April 2022, pukul 21.00 .

² Elisabeth Perlman, "Brexit Racism: Why Did the UK Vote to Leave the EU?," 2017.

by 52 percent, while 48 percent voted to stay. Voter turnout reached 71.8 percent, equating to more than 30 million people casting their votes, making it the highest voter turnout since the 1992 general election.³

Brexit officially took effect on January 1, 2020. The EU regulations that previously allowed citizens of EU member states to work, live, and settle freely in the UK were no longer applicable. After Brexit, changes occurred in the UK's immigration laws. Many immigrants were concerned about their status following the UK's departure from the EU, particularly as post-Brexit referendum violence began to emerge. Cases such as the vandalism of a mosque in Birmingham in March 2019 served as evidence that racism had become more overt in the UK after the Brexit referendum.⁴

2. RESEARCH METHODS

This study employs several approaches to analyze the issues under examination, namely the statutory approach, the comparative approach, and the historical approach.⁵ The statutory approach is used to examine various regulations related to refugee policies, both within the national law of the United Kingdom and international law. The comparative approach is applied by comparing the UK's immigration policies before and after Brexit, as well as with the policies implemented by other countries in managing refugees. Meanwhile, the historical approach is utilized to understand the background and development of the UK's immigration policies, particularly in relation to its membership in and withdrawal from the European Union. This study is descriptive-analytical in nature, meaning that it not only describes the phenomenon but also analyzes it in depth based on relevant theories and legal frameworks.

The data used in this study consists of secondary data obtained from various sources, such as legislation, academic literature, scientific journals, and official reports from relevant institutions.⁶ The data collection technique is conducted through a literature

³ Indah Sri Lestari, "Penarikan Diri Inggris Dari Uni Eropa Tahun 2016," *EJournal Hubungan Internasional* 5, no. 3 (2017): 1025–40, <http://ejournal.hi.fisip-unmul.ac.id/site/?p=2345> .

⁴ Novi Crhistiatuti, "Polisi Inggris Tangkap 2 Pria Terkait Aksi Perusakan 5 Masjid," 2019.

⁵ Irwansyah, *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel, Edisi Revisi* (Yogyakarta: Mirra Buana Media, 2022).

⁶ Roni Hanitijo Sumitro, *Metodelogi Penelitian Hukum* (Jakarta: Ghalia Indonesia, 2010).

study by examining various legal documents and relevant scholarly references. The collected data is processed descriptively to obtain a systematic and structured understanding of the issues being analyzed. Furthermore, the data analysis technique employed is normative qualitative, which involves analyzing the data based on applicable legal principles and theoretical interpretations that support the explanation of the UK government's policies in addressing refugee issues after Brexit.

3. RESULTS AND DISCUSSION

3.1. Legal Awareness of Faculty of Law Students at Jenderal Soedirman University towards the Prohibition of Online Gender-Based Violence

Legal protection for refugees is currently a crucial issue and has become a shared concern of the international community. The presence of a set of international regulations governing refugees provides legal certainty, ensuring that refugees are recognized as subjects protected by the global community.⁷ The 1951 UN Convention Relating to the Status of Refugees is today's primary foundation for international refugee protection. This convention came into force on April 22, 1954, and has only undergone one amendment, which materialized as the 1967 Protocol. This protocol removed the geographical and temporal limitations set by the 1951 Convention.⁸

The terminology of "refugee," as defined in Article 1 of the 1951 Convention Relating to the Status of Refugees, refers to a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, is outside their country of nationality and is unable or, due to such fear, unwilling to avail themselves of the protection of that country.⁹ The 1951 Refugee Convention is an instrument concerning refugee status based on rights and supported by several fundamental principles, particularly non-discrimination, the prohibition of penalties, and the prohibition of expulsion or return (non-refoulement). The provisions of the 1951 Convention and the 1967 Protocol must be applied without

⁷ Wagiman, *Hukum Pengungsi Internasional* (Jakarta: Sinar Grafika, 2012).

⁸ UNHCR, "Konvensi Dan Protokol Mengenai Status Pengungsi, UNHCR Media Relations and Public" (Jenewa, 2010).

⁹ Wagiman, *Hukum Pengungsi Internasional*.

discrimination based on race, religion, or country of origin. The development of international human rights law has also reinforced the principle that the convention should be applied without discrimination based on gender, age, disability, sexuality, or any other discriminatory grounds.¹⁰

The non-refoulement principle, as stipulated in Article 33 of the 1951 Convention, provides international protection for refugees through a prohibition on expulsion. The article states:

1. No contracting state shall expel or return (refouler) a refugee in any manner to the frontiers or territories where his life or freedom would be threatened because of his race, religion, nationality, membership of a particular social group, or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a grave crime, constitutes a danger to the community of that country.

The above article explains that no state may expel or return an asylum seeker or refugee in any manner to their country of origin where their life and freedom would be at risk. This article embodies the non-refoulement principle, which some international legal scholars categorize as *jus cogens*, meaning a norm accepted or recognized by the international community as a fundamental principle that cannot be violated and can only be altered by a new peremptory norm of international law of the exact nature.¹¹ The non-refoulement principle is built on impartiality and non-discrimination. Humanitarian assistance to refugees must not be diverted for political or military purposes. The primary authority related to the non-refoulement principle lies with the host country.¹²

The Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) has even established that the non-refoulement principle represents a *jus cogens* advancement in international law. Non-refoulement must be respected under all

¹⁰ UNHCR, "Konvensi Dan Protokol Mengenai Status Pengungsi, UNHCR Media Relations and Public."

¹¹ Wagiman, *Hukum Pengungsi Internasional*.

¹² *Ibid.*

circumstances and cannot be modified as a *jus cogens* norm. This fundamental right and principle applies to all individuals regardless of whether a country is a party to the 1951 Convention or whether the person has been officially recognized as a refugee.¹³

Article 13 of the 1948 Universal Declaration of Human Rights (UDHR) states that everyone has the right to freedom of movement and residence within the borders of each state, as well as the right to leave any country, including their own, and return to their country. Article 14(1) of the UDHR also affirms that everyone can seek and enjoy asylum in another country to escape persecution. This universal declaration is the foundational framework for human rights (HR) designed in a general form.¹⁴

The International Covenant on Civil and Political Rights (ICCPR) is a widely recognized international human rights instrument. Its significance is inseparable from its role as the only international instrument that comprehensively outlines civil and political rights, which have been jointly acknowledged by the international community. This instrument not only impacts its member states but also significantly influences non-member states.¹⁵

In addition to international regulations, there are also regional international regulations. In Asia, these include the Manila Declaration of the International Protection of Refugees and Displaced Persons 1980 and the Arab Convention 1994 on Regulating the Status of Refugees in the Arab Countries. In Europe, the European Agreement 1980 on Transfer Responsibility for Refugees applies, while in Africa, the Organization of African Unity (OAU) Convention 1969 Governing the Specific Aspects of Refugee Problems in Africa regulates refugee matters. The Caracas Convention on Territorial Asylum and Diplomatic Asylum 1954 guided territorial and diplomatic asylum guidance in the Americas.¹⁶

¹³ Jun Justinar, "Prinsip Non-Refoulement Dan Penerapannya Di Indonesia," *Jurnal Opinio Juris (Jurnal Hukum Dan Perjanjian Internasional)*: 3, no. 2 (2011): 3.

¹⁴ A. Masyhur Effendi, *Perkembangan Dimensi Hak Asasi Manusia (HAM) Dan Proses Dinamika Penyusunan Hukum Hak Asasi Manusia (HAKHAM)* (Bogor: Ghalia Indonesia, 2005).

¹⁵ Pranoto Iskandar, *Hukum HAM Internasional* (Cianjur: IMR Press, 2013).

¹⁶ Kadarudin Iin Karita Sakharina, *Pengantar Hukum Pengungsi Internasional*. (Yogyakarta: Deepublish, 2017).

The binding force of these regional international regulations depends on their form as agreements. Treaties and conventions require ratification to be legally binding on a state (legally binding). In contrast, declarations generally do not require ratification, meaning they are only morally binding (morally binding) and do not have legal enforceability.¹⁷

3.2. Handling of Refugees in the United Kingdom After the British Exit from the European Union (British Exit)

Asylum and migration policies in Europe fall under the shared competence of the European Union. Following Brexit, immigrants in the UK have faced severe threats, primarily due to the implementation of the New Plan for Immigration by the British government, which has been widely criticized for being highly unfavorable to immigrants. Additionally, immigrants have been subjected to various forms of threats from specific individuals, including hate speech conveyed through symbols and words in brochures, leaflets, or cards intentionally distributed in immigrant residential areas, as well as murals painted on walls. Such hate speech, whether directly or indirectly, has instilled fear and anxiety among immigrants. Many British citizens regret these acts of racism, as the UK has long been known as a country that upholds human rights. Regardless of the situation, immigrants are individuals whose human rights must be protected.¹⁸

The UK and the EU did not agree regarding asylum policies in the Trade and Cooperation Agreement (TCA), which primarily focuses on trade and cooperation. As a result, by the end of the Brexit transition period on December 31, 2020, the Dublin III Regulation, Eurodac, and all other instruments of the Common European Asylum System (CEAS) ceased to apply in the UK. During the negotiations, the British government explicitly rejected involvement in Dublin III as a third party. Initially, the UK expressed interest in maintaining access to Eurodac but ultimately failed to secure it. The British government proposed two draft agreements to the EU regarding specific elements of the regulations, such as the transfer of unaccompanied asylum-seeking children and the return

¹⁷ Sefriani, *Hukum Internasional Suatu Pengantar* (Jakarta: Rajawali Pers, 2016).

¹⁸ Poddar, *European Migrant Crisis: Financial Burden or Economic Opportunity?* (Pennsylvania: University of Pennsylvania, 2016).

of irregular migrants. However, the EU rejected both proposals, stating they were not within the EU's mandate under the TCA. The EU also did not propose alternative agreements on post-Brexit asylum cooperation, resulting in a continued lack of agreement.¹⁹

Brexit has significantly impacted the British government's decisions regarding asylum policies. Some aspects remain unchanged due to the UK's previous non-participation in certain EU areas before Brexit. EU and third-country nationals were already required to present identification documents to enter the UK before Brexit. Given its gatekeeping position, the UK's geographical location, and the Dublin Regulation's stipulation that the first country of entry is responsible for processing asylum applications, seeking refugee status in the UK has become increasingly difficult. Moreover, the Dublin Regulation previously assigned the UK a substantial refugee quota, which the country found burdensome. In 2015, the UK received approximately 630,000 immigrants from the EU and non-EU countries, increasing its population from 57 million in 1990 to 65 million in 2015, with an additional 333,000 arrivals in 2016. This influx has had significant economic, social, and cultural consequences for the UK.²⁰

The UK remains a signatory to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The non-refoulement principle stipulates that refugees must not be expelled or returned to a country where they face serious threats to their life or freedom. It has become a customary norm of international law and remains applicable in the UK. This principle applies to all bilateral discussions between the UK and third countries. However, since the UK is no longer part of Dublin III or Eurodac, there is significant uncertainty regarding how the government will handle asylum seekers arriving in its territory. Historically, the UK's legal system concerning refugees has been influenced by the theory of monism with the primacy of international law. However, following Brexit, the UK is shifting toward a monist approach, prioritizing national law.²¹

¹⁹ Sarah Overton, "UK Asylum Policy After Brexit," 2022.

²⁰ *Ibid.*

²¹ *Ibid.*

In March 2021, the UK announced the New Plan for Immigration. This legislation includes provisions that pave the way for offshore processing centers for asylum claims. Clause 12 states that asylum applications must be submitted directly at designated locations. Additionally, the law stipulates that asylum claims from EU nationals (Clause 13) or individuals with connections to a safe third country will be deemed inadmissible (Clause 14).²²

The New Plan for Immigration allows authorities to reject applications based on an individual's presence or travel through a third country. The regulation also outlines the government's plan to introduce a Rebuttal Presumption, enabling asylum seekers to return to all European Economic Area (EEA) member states and other designated safe countries. Furthermore, the new law introduces a criminal offense for individuals entering the UK without valid authorization (Clause 37). The offense applies to individuals who enter the UK illegally, but asylum seekers are not considered to have entered the UK until they disembark and pass immigration control. Asylum seekers can also face prosecution upon arrival in UK territorial waters before technically entering the country. This provision clarifies that asylum seekers can be prosecuted for arriving in UK territorial waters even before they physically set foot in the UK.²³ The UK has implemented its asylum policies without EU cooperation, and under the New Plan for Immigration, the British government intends to deport inadmissible asylum seekers.²⁴

In summary, there are six key points in the UK's New Plan for Immigration:²⁵

- a. Restricting asylum access by introducing a two-tier approach, allowing only legal arrivals to access complete protection under the 1951 Refugee Convention.
- b. Declaring that many asylum applicants are inadmissible and ineligible to claim asylum in the UK.
- c. Introducing the possibility of externalization or sending asylum seekers to another country designated by the Home Secretary as a safe location.

²² *Ibid.*

²³ "New Plan for Immigration Policy Statement" (n.d.).

²⁴ *Ibid.*

²⁵ UNHCR UK, "RUU Kebangsaan Dan Perbatasan," n.d.

- d. Introducing a new criminal offense for asylum seekers in the UK without entry clearance.
- e. Modifying asylum procedures and protections, including expedited appeal processes, centralized age assessments, and stricter evidentiary standards.
- f. Restricting access to the National Referral Mechanism for victims of human trafficking.

The externalization policy has led the UK government to seek to transfer some asylum seekers to Rwanda. The British government has also threatened asylum seekers who refuse relocation to Rwanda with deportation to their country of origin. The UK Home Office has offered asylum seekers the option of either being flown back to the conflict zones they fled from or being sent to Rwanda, an East African country that has signed a deportation agreement with the UK.²⁶

The UK's new immigration policies have raised widespread concerns, with many critics arguing that the country's reputation as a human rights defender is now in question. The principle of non-refoulement, as enshrined in Article 33 of the 1951 Convention, has been violated in cases where refugees are sent to Rwanda. Additionally, the principle of the right to self-determination appears to have been undermined by the UK government's actions. International law must, in principle, regulate the treatment of foreigners, ensuring that their fundamental rights are protected.²⁷

CONCLUSION AND SUGGESTION

The legal protection of refugees under international law is regulated through various instruments, primarily the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, which establish the non-refoulement principle and the rights and obligations of refugees. Other relevant instruments include the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, UN General Assembly Resolution 428 (V) on the UNHCR Statute (1950), and

²⁶ Unggul Wirawan, "Inggris Kembalikan Pencari Suaka Jika Menolak Ke Rwanda," *Berita Satu*, 2022, <https://www.beritasatu.com/news/936441/inggris-kembalikan-pencari-suaka-jika-menolak-ke-rwanda>, diakses pada 29 Mei 2022 pukul 09:21 .

²⁷ Wagiman, *Hukum Pengungsi Internasional*.

regional regulations such as the Dublin III Regulation of the European Union. Following Brexit in 2020, the UK is no longer bound by Dublin III or Eurodac, creating uncertainty in handling asylum seekers due to the absence of a formal agreement with the EU regarding asylum application processing. Although the UK remains a party to the 1951 Convention and the 1967 Protocol, the New Plan for Immigration introduced after Brexit restricts asylum access, introduces the return of asylum seekers to third countries, and criminalizes unauthorized entry, posing challenges to refugee protection in the UK.

The UK should promptly negotiate an agreement with the European Union or its member states to establish a precise mechanism for processing asylum applications and reduce legal uncertainty for asylum seekers. The New Plan for Immigration should be evaluated to ensure alignment with the non-refoulement principle under the 1951 Convention and international human rights standards. The asylum system must be more transparent and practical, ensuring a fair, swift, and non-discriminatory process while avoiding the criminalization of asylum seekers arriving without authorization. Cooperation with UNHCR and other humanitarian organizations should also be strengthened to enhance global refugee protection mechanisms. Through these measures, the UK can maintain control over its immigration policies while upholding its international obligations in refugee protection.

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