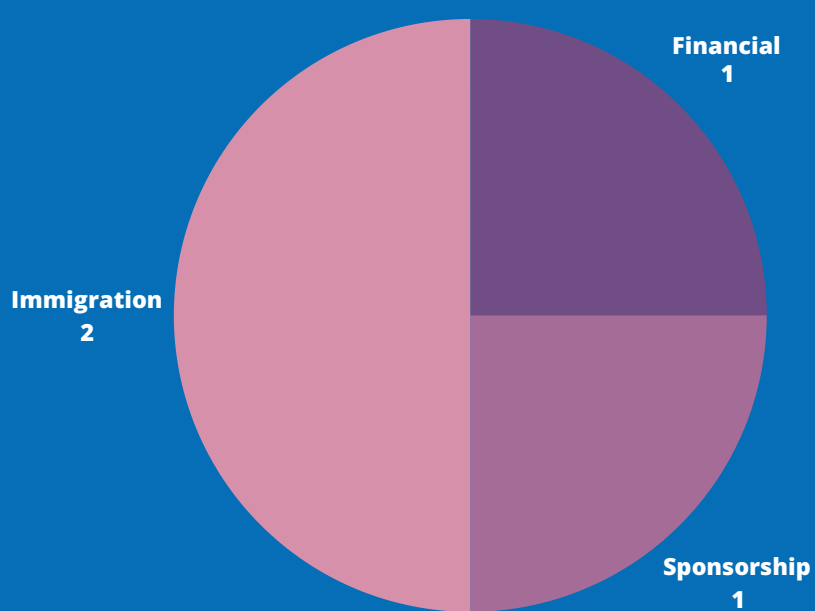


Monthly Legal Brief | September 2024

TOTAL OF REPORTS

Across August 2024, SUAKA has received a total of 4 cases which consists of 4 Person of Concern (PoC) regarding their legal matters. The number of reports has been decreased compared to August 2024 which recorded 10 cases reported to SUAKA. In total, per September 2024, there are 74 legal cases documented by SUAKA this year.



CASE CATEGORIES

SUAKA recorded two new detention cases experienced by refugees and asylum seekers in Indonesia. All two are related to documentation issues which caused by the lack of understanding from the Immigration authorities regarding refugee status process. Apart, SUAKA also recorded one case related to Australian sponsorship process and case of financial aid request.

COUNTRY OF ORIGIN OF THE PoC

There are 4 refugees from 4 different Country of Origin identified in all of those 4 cases reported to SUAKA. Guinea, has been identified as the newest Country of Origin identified from refugee communities this year thus far.

Country of Origin	Number
Guinea	1
Pakistan	1
Myanmar	1
Afghanistan	1

GENDER DIFFERENCES

From all 4 cases identified, 3 refugees were identified as women refugees and 1 of those is men refugees.

CASE-BASED REVIEW

Written Agreement Law in Indonesia

A. Basic Concept of Written Agreement

Agreements or Contracts are regulated in Article 1313 of Indonesian Civil Code. It means “An action of one person or more to bind themselves to another individual or more”. Written Agreements are a form of agreements created by the agreeing parties. There are three types of agreements in Indonesia which consisted of:

- Private Agreements

Agreements between the only involved parties without involving notary. This agreement did not bind any third parties and should the third party deny or reject the agreement, one of the two involved parties are obliged to present every evidence available to prove that the rejection from the third party has no legal basis.

- Agreement with Notary as Witness

This agreement was not created by the Notary. The present Notary only serves as a witness between two parties and to legalize the agreement.

- Notary Deeds

An agreement created by Notary. This is the most powerful and the most legally binding agreement due to its creation by the relevant authority, the Notary.

The essential characteristic of a written agreement is that it captures in documented form the meeting of minds between the parties, detailing their respective rights, obligations, and the terms and conditions they have mutually agreed upon. This written format transforms verbal understandings into concrete, legally recognized evidence that can be relied upon in legal proceedings and provides clarity and certainty to the contractual relationship between the parties involved.

However, due to the nature of the refugees in Indonesia, Refugees are limited to utilize the Agreements as they can't use Notary to create Deeds. However, they can utilize Private Agreement against each other or certain NGOs in example, Loan Agreements, Housing Agreements/Rent or Work Agreement in a limited space such as NGOs or other Organizations.

B. Legal Basis Under Indonesian Law

In the Indonesian legal system, the legal basis for agreements is derived from several complementary legal instruments, with the Indonesian Civil Code/*Kitab Undang-Undang Hukum Perdata* ("Civil Code") serving as the primary foundation, particularly as outlined in Book III regarding agreements. Article 1313 of the Civil Code defines an agreement that makes the basis for understanding this term within the context of Indonesian law.

Additionally, Article 1320 of the Civil Code sets forth four conditions for the validity of an agreement: mutual consent of the parties, legal capacity to enter into an agreement, a specific subject matter, and a lawful cause. Consent in written agreements refers to the genuine and voluntary meeting of minds between parties, where they freely agree to be bound by the contract terms without any defects in their willingness.

Based on Article 1321 of the Civil Code, an agreement becomes invalid, if the agreement occurs due to elements of mistake, coercion, or fraud. Regarding capacity, essentially all people are capable of making agreements. However, Article 1330 of the Civil Code specifically identifies those who are not considered legally capable: minors (individuals under 21 years old or unmarried), persons placed under guardianship, and married women in matters determined by law and in general all persons who are prohibited by law from making certain agreements.

The Indonesian Civil Code distinguishes between agreements that are null and void and those that are voidable. An agreement becomes null and void when it fails to meet the objective requirements of Article 1320: having a specific subject matter and a lawful cause. Such agreements are considered to have never existed and no court declaration is necessary to invalidate them. On the other hand, voidable agreements are those that fail to meet the subjective requirements regarding a specific matter and/or a lawful cause. These agreements remain valid until a court declares them void upon the request of the affected party or their representative.

C. Practical Application of Written Agreement

In the context of daily life in Indonesia, refugees can utilize written agreements for various practical purposes, despite their limited legal status. Personal loan agreements represent one of the most common scenarios where written documentation proves invaluable within refugee communities. When engaging in lending or borrowing money, refugees should create simple yet clear written agreements that outline the fundamental aspects of the arrangement. These documents typically include the names of both parties, the loan amount, repayment terms, and timeline.

Housing arrangements form another critical area where written agreements play a vital role for refugees. While they may face challenges in signing formal rental contracts, refugees can create simple written agreements with property owners or roommates documenting their living arrangements, including details about rent payments, duration of stay, and shared responsibilities. Given the unique circumstances of refugees, these agreements often need to incorporate specific provisions that account for the uncertainty of their situation, such as potential early termination clauses if the refugee's status or location changes.

On daily occasions, despite their limited right to work in Indonesia, refugees can utilize their own written private agreement such as organizational management where refugees can be given a certain roles to manage organizations such as a refugee organizations where the refugees work in managing the advocacy or help another refugees or even another NGOs where the refugees can do volunteer or advocacy roles. Refugees can utilize provisions such as the roles, the right, the obligations, the range of the work they have done with the Organizations and the payment they received for their work.

This Case-Based Review was made based on SUAKA's experiences in legal case assistance and used to provide the general information on the matters. Other implementation outside this review are still possible to applies according to the situation and other factors. For further consultation, please send your inquiries to 081212378252/legalaid@suaka.or.id accordingly.

