



저작자표시-비영리-변경금지 2.0 대한민국

이용자는 아래의 조건을 따르는 경우에 한하여 자유롭게

- 이 저작물을 복제, 배포, 전송, 전시, 공연 및 방송할 수 있습니다.

다음과 같은 조건을 따라야 합니다:



저작자표시. 귀하는 원저작자를 표시하여야 합니다.



비영리. 귀하는 이 저작물을 영리 목적으로 이용할 수 없습니다.



변경금지. 귀하는 이 저작물을 개작, 변형 또는 가공할 수 없습니다.

- 귀하는, 이 저작물의 재이용이나 배포의 경우, 이 저작물에 적용된 이용허락조건을 명확하게 나타내어야 합니다.
- 저작권자로부터 별도의 허가를 받으면 이러한 조건들은 적용되지 않습니다.

저작권법에 따른 이용자의 권리는 위의 내용에 의하여 영향을 받지 않습니다.

이것은 [이용허락규약\(Legal Code\)](#)을 이해하기 쉽게 요약한 것입니다.

[Disclaimer](#)

**Master's Thesis of International Studies**

**Effect of Ambiguity on Policy Implementation:  
Comparative Analysis of South Korean  
Refugee Policy Failure and German Success**

**정책모호성의 정책집행에 미치는 영향:  
한국의 난민정책 실패와 독일의 성공 비교분석**

**February 2021**

**Graduate School of International Studies  
Seoul National University  
International Cooperation Major**

**Nagyeong KANG (강나경)**

**Effect of Ambiguity on Policy Implementation:  
Comparative Analysis of South Korean  
Refugee Policy Failure and German Success**

**Prof. Han JeongHun(한정훈)**


**Submitting a master's thesis of  
International Studies**


**February 2021**


**Graduate School of International Studies  
Seoul National University  
International Cooperation Major**

**Nagyeong KANG (강나경)**

**Confirming the master's thesis written by  
Nagyeong KANG  
February 2021**

Chair            Prof. Moon Woosik (Seal) 

Vice Chair      Prof. Kim Taekyoon (Seal) 

Examiner        Prof. Han JeongHun (Seal) 

## Abstract

The refugee policy of a state has been studied as an outcome of its domestic political decision. Existing research found two patterns in states' refugee acceptance: acceptance of refugees for its national economic interests or reluctance of refugees for the fear of disruption of a state's ethnic homogeneity. However, a state's refugee policy is not simply an output of domestic politics, but it is an outcome of constant tensions with the principles and norms of the global refugee regime. Considering its policy formation structure with its relations to the international refugee regime, this research applies a modified model of Matland to shed light on the effect of policy ambiguity. It compares the two countries' refugee policies in the period of each country's refugee crisis by establishing a firm basis of international refugee regime: South Korean refugee policy (2018-2020), as a case of a policy failure, contrary to German refugee policy (2015-2016), a case of policy success. South Korean policy failure is prompted by a cloud-like refugee status determination process and their access to legal entitlements due to deliberate policy ambiguity. This ambiguity largely appears in discord with the international refugee regime in its definition and categorization in the refugee act. Three major elements prompting policy ambiguity are found: large discretion to the implementation authority, legal fragmentation and contradiction in domestic laws, and the lack of available resources. Conversely, Germany's clock-like refugee status determination process and their access to legal entitlements fully endorse the international refugee regime's norms and principles. Moreover, it further crystallized and specified potential ambiguity in the process of internalization in the domestic legal sphere and amendment process. Finally, this research's finding draws scholarly attention to the necessity to address the effect of deliberate ambiguity on policy failure in the South Korean refugee act by seeking German asylum act as a policy learning model for lowering ambiguity via the legislative process.

**Keyword** : policy ambiguity, policy implementation, refugee policy, refugee legislative act, comparative policy analysis, South Korean refugee act, German asylum act

**Student Number** : 2018-29724

# TABLE OF CONTENTS

<b>ABSTRACT</b>	<b>I</b>
<b>CHAPTER I. INTRODUCTION</b>	<b>1</b>
1.1 Research Background	1
1.2 Research Objective	4
1.3 Structure of the Thesis	6
<b>CHAPTER II. METHODOLOGY</b>	<b>7</b>
2.1 Research Question	7
2.2 Variables and Indicators	8
2.3 Research Method	13
<b>CHAPTER III. REFUGEE POLICY SUCCESS AND FAILURE</b>	<b>22</b>
3.1 International Refugee Regime and the 1951 Convention	22
3.2 Policy Success: German Asylum Policy	23
3.3 Policy Failure: South Korean Refugee Policy	26
3.4 Debates on the Cause of the South Korea's Policy Failure	28
3.4.1 Rule of Law and Democracy	31
3.4.2 Comparison of the Refugee Legislative Act Structure	34
3.4.3 Point of Departure: Ambiguity in Refugee Policy	37
<b>CHAPTER IV. REFUGEE DEFINITION AND CATEGORIZATION</b>	<b>39</b>
4.1 Introduction of the Chapter	39
4.2 Definition and Types of Refugees in the 1951 Convention	40
4.3 South Korea: Localization and Its Spill-Over	42
4.4 Germany: Full Acceptance and Systematic Categorization	47
4.5 Sub-Conclusion	52
<b>CHAPTER V. REFUGEE RECOGNITION PROCEDURE</b>	<b>55</b>
5.1 Introduction of the Chapter	55
5.2 Procedural Principles and Negative Decisions in the International Refugee Regime	58
5.3 South Korea: Constant High Procedural Ambiguity and State Inaction	59
5.4 Germany: Lowering Ambiguity via Legislative Reforms	62
5.5 Comparison of Procedural Ambiguity	63
5.5.1 Pre-Asylum Application Stage and Port of Entry Procedure	63
5.5.2 Regular Procedure	65
5.5.3 Negative Decision	70
5.5.4 Appeal Procedure	71
5.6 Sub-Conclusion	73
<b>CHAPTER VI. REFUGEE'S LEGAL ENTITLEMENTS</b>	<b>77</b>
6.1 Introduction of the Chapter	77
6.2 The Legal Entitlements in the 1951 Convention	78
6.3 South Korea: Constant Ambiguity Restricts Access to Entitlements	80
6.4 Germany: Lowering Ambiguity for Comprehensive Entitlements	81
6.5 Comparison of Legal Entitlements by Category	84
6.5.1 Refugee Status Applicants	84
6.5.2 Protection Decision Beneficiaries	93
6.6 Sub-Conclusion	101
<b>CHAPTER VII. CONCLUSION</b>	<b>108</b>
7.1 Conclusion	108
7.3 Research Implication	111
7.3 Discussion	113
<b>BIBLIOGRAPHY</b>	<b>114</b>
<b>ABSTRACT IN KOREAN</b>	<b>129</b>

## TABLE OF TABLES

Table 1. Industrial Structure in Comparison.....	1 5
Table 2. Ethnic Homogeneity Level in Comparison .....	1 8
Table 3. Key Documents of Analysis .....	2 1
Table 4. Rule of Law in Comparison .....	3 4
Table 5. German Legal Framework for Refugees .....	3 6
Table 6. South Korean Legal Framework for Refugees .....	3 6
Table 7. Contrast of Ambiguity In Definition and Categorization.....	5 4
Table 8. Comparison of Procedural Patterns .....	5 7
Table 9. Procedural Principles of the International Refugee Regime .....	5 9
Table 10. Contrast of Procedural Ambiguity .....	7 6
Table 11. Legal Entitlements in The 1951 Convention .....	7 9
Table 12. Contrast of Legal Entitlement.....	1 0 6
Table 13. Summary of Ambiguity Driven Problems in South Korea and German Solution.....	1 1 2

## TABLE OF FIGURES

Figure 1. Variables and Indicators.....	9
Figure 2. Unemployment Rate in Comparison.....	1 6
Figure 3. Total Natural Resources Rent in Comparison .....	1 6
Figure 4. Aging Population in Comparison .....	1 7
Figure 5. South Korean Historical Trends for Refugee Application (2004-2019).....	1 9
Figure 6. German Historical Trends for Refugee Applications (1953-2015).....	1 9
Figure 7. South Korea's Refugee Status Determination Procedure Diagram .....	6 9
Figure 8. Germany's Refugee Status Determination Procedure Diagram .....	6 9
Figure 9. Refugees' University Enrollment in Germany .....	1 0 0

## List of Abbreviations

- BAMF** Federal Office for Migration and Refugees of Germany  
**AIDA** Asylum Information Database  
**BUMA** Confirmation of Reporting as Asylum Seeker  
**UNHCR** United Nations High Commissioner for Refugees  
**1951 Convention** The Convention Relating to the Status of Refugees  
**1967 Protocol** The Protocol Relating to the Status of Refugees  
**AA** The German Asylum Act  
**AR** The German Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (The Residence Act)  
**ASBA** The German Asylum Seekers Benefits Act  
**SCB** The German Social Code Book  
**AZR** The German Central Register of Foreign Nationals  
**BA** The Federal Employment Agency of Germany  
**BMAS** The Federal Ministry of Labor and Social Affairs of Germany  
**FIM** Integration Measures for Refugees of Germany  
**RA** The South Korean Refugee Act  
**PD** The South Korean Presidential Decree of Refugee Act  
**MOLEG** The South Korean Ministry of Government Legislation  
**MOJ** The South Korean Ministry of Justice  
**MHW** The South Korean Ministry of Health and Welfare  
**PoE** Port of Entry  
**RSD** Refugee Status Determination (Process or Procedure)

# Chapter I.

## Introduction

### 1.1 Research Background

Why do states fail to accept and protect refugees<sup>1</sup> despite the presence of domestic refugee policy, a product of states' internalization of global refugee treaty by voluntarily becoming contracting states? While the global refugee regime is present in global governance, specialized in tackling the global refugee phenomenon states' response to acceptance of refugees, states showed diverging behavior, and many result in failure to provide proper protection. States demonstrate their will to take a common responsibility as a responsible member of the international community by voluntarily signing the 1951 UN Refugee Convention Relating to Status of Refugees (hereinafter "the 1951 Convention") and its 1967 Protocol. Existing studies answered this question by concentrating on the reasons behind states' decisions analyzing either a state's favorable policies based on national interests in socioeconomic benefits or a state's reluctance due to fears of disrupting ethnic homogeneity. This research, however, analyzed the degree of policy ambiguity in South Korea and German refugee policies and examined its impact on policy success and failure by applying a modified model of Matland.

These two major patterns of states' refugee policy drawn mainly from analysis of decisions examined socioeconomic interests in opening their door to refugees for 'calculated kindness' (Loescher & Scalan, 1986); or closing their door to them for fear of ethnic homogeneity destruction (Castles & Miller, 2009, p.9). Emerging economies seeking national interests in financial aid promise acceptance of refugees (Dreher et al., 2018) or opportunities to increase their national productivity level via controlled income in exploiting the cheap labor of refugees (Choucri, 1993). Such calculated kindness is, therefore, not a surprise to shift to extreme ends as a perception of the people deteriorates to "job thieves" during economic slow-downs in South Korea (Choi & Park, 2020, p.16) and many parts of the shrinking welfare states (Lazaridis & Wadia, 2015, p.4).

---

<sup>1</sup> Refugee used in this paper, otherwise specified, is a higher conceptual term to refer to all of these: asylum seekers, asylum applicants, recognized refugees, humanitarian status holders, and subsidiary protection. This usage is to follow the 1951 convention's use of the term refugees, "the people who has been forced to flee his or her country because of persecution, war, or violence due to well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group." But due to different nature and process held for resettlement refugee, involves the UNHCR's active engagement throughout the program, they are not included in this research's refugee discussion.



Others cited ethnic homogeneity maintenance in East Asia as a prime reason for the government's' reluctance to grant a refugee status (Castles & Miller, 2009, p.9). The economic interest-driven decisions to accept refugees for cheap labor are argued to be not applicable in Japan and South Korea despite a rather rapid population aging because of the salience of the constructed fears towards Islamic culture (Lee Shin-wha, 2019a, p.189). Asia is also well aware “migration and development” are interconnected as it helps both host and origin countries' economies grow by hosting migrant workers from developing states (Ratha, Yi & Yousefi, 2015, p.260). However, the constructed threat in accepting refugees outweighs the perceived benefits in the region. This reluctance was salient in South Korea during the Yemeni refugee crisis in 2018, which was an exemplar case to witness the anti-Islamic discourse carried from Europe, arguing that the arrival of refugees would increase terrorism and sexual crimes in host countries (Choi & Park, 2020). This escalated the public opposition in fear of acceptance of refugees for not only threats of national identity destruction, but for the greater constructed threats of national security.

Existing literature found that cultural-ethnic homogeneity factors or socioeconomic interests shape states' decision in refugee policy mirrors the state's political decision driven by specific reasons at the domestic level. Global public policy studies in normative disciplines also study refugee policy for smooth operation and implementation via strengthening individual states in fully implementing global refugee regime principles and norms to develop a workable and cooperative global governance system with diverse international actors (Bauman & Deardorff Miller, 2012). However, studies connecting the two have been largely absent. This research is drawn in this background focusing on “ambiguity” in a state's refugee policy formation structure to fill this gap in academic literature.

Ambiguity in refugee policy is particularly important in understanding its success and failure for its inevitable ambiguous nature of individual states' refugee policy. A state's refugee policy is a result of constant tension between the complex international refugee regime<sup>2</sup> norms and principles (Jeff Crisp, 2003, p.3) and national sovereignty principles (Bauman & Deardorff Miller, 2012, p.31). In recent

---

<sup>2</sup> Jeff Crisp argues that international refugee regime is composed of institutions, legal instruments, and norms and the new asylum paradigm will emerge base on the notion that refugees and migrants can be managed in an organized manner.

years, this tension became more complex as it combined with “mixed flow<sup>3</sup>” (Lee Byoungha, 2018, p.19), which blurred the boundaries between economic migrants and refugees. Considering this structure of refugee policy and the recent association with the securitization of refugee discourse as a national security threat and examining the degree of ambiguity in a state’s refugee policy as a potential factor attributing to states’ irregular response in global refugee phenomenon can provide a meaningful explanation in understanding states’ unilateral behaviors despite their promised commitment to global refugee regime. This can help understand the problems which have been long-standing obstacles for a smooth operation of the global refugee governance.

Ambiguity in policy may lead to incoherent policy implementation and confuse policy executors for its uncertainties due to an absence of necessary policy means and information for implementation as well as ambiguous language that invites diverse interpretations (Matland, 1995). However, such nature of policy ambiguity in a state’s refugee policy, or migration matters in large, has largely been unexplored save a few cases in immigration and integration policy text (Chock, 1995; Boswell and et al., 2011) and frame ambiguity analysis of migrant and integration policy of municipal levels (Dekker, 2017). Thus, by conducting a comparative policy analysis of two countries’ refugee policy characterized by different degrees of ambiguity, this research sheds light on the impact of the degree of policy ambiguity as a factor attributing to either “policy failure”, for confusion in policy implementation, or “policy success”, for its clarity in policy implementation.

Two countries with similar socioeconomic and cultural ethnic homogeneity conditions but different degrees of policy ambiguity are examined in this research: Germany in the process of the Syrian refugee crisis from 2015 to 2016 and South Korea in the Yemeni refugee crisis from 2018 to 2020. This research reveals the impact of the degree of ambiguity that appeared in the two states’ legislative acts and government documents on each country’s success and failure in refugee policy during each state’s refugee crisis. It aims to confirm South Korea’s deliberate ambiguity was the factor generating confusion in refugee policy implementation due to localization of global refugee norms and principles; skeleton legislation and delegated legislation in which legislative act delegated authority to

---

<sup>3</sup> Lee argues that mixed flow or migration asylum nexus blur the boundaries between migrants and refugees, and the grey area prompts prolonged refugee determination procedure and concerns amongst the host country’s people.

the main ministry in charge without specified policy instruments and distinct policy objectives; fragmentation of individual domestic laws that clash with the Refugee Act. In contrast, it confirms Germany's policy clarity was the factor influencing coherent and uniform policy implementation due to full endorsement of the global refugee policy in domestic asylum act; systematic and specific legislative act with distinct policy objective and crystallized policy programs; omnibus bill in preventing fragmentation of legal contradiction of individual domestic laws. At the conclusion of this comparative analysis, Germany's low ambiguity refugee policy provides valuable implications to resolve South Korea's long-standing problems caused by policy ambiguity.

The policy ambiguity in refugee policy is not a sole policy failure problem of a country at the state level that simply ends with the state's failure in protecting refugees' rights, but it is a greater problem as this failure is detrimental to the common efforts in tackling the refugee phenomenon in global governance. Thus, the main contribution of this research is bringing attention to this long-standing deliberate ambiguity for the South Korean refugee policy failure and refugee protection as well as providing a model for South Korea to decrease ambiguity, which can ultimately identify a way to reduce uncertainties in states' irregular behavior in the global refugee crisis.

## **1.2 Research Objective**

A state's legislative act is a written political will of a government to address the concerned policy problem. A state aims to reach the policy objective by developing specified policy instruments. Therefore, by examining the legislative act of the two governments in policy instruments for the refugee problem, this research proves that an ambiguous language in a legislative act has a higher tendency to result in arbitrary policy implementation, rather than the rational and coherent policy to realize policy objectives.

The process of internalization is an integral part of refugee discussion which carries out in the process of enactment of the global refugee regime into the domestic legal sphere by signing the 1951 Convention and the 1967 Protocol. During this internalization process, ambiguity may decrease when it goes through active public discussion and advisory committees, or it may increase either through political leaders who actively exploit securitized discourse of refuge or simply for the absence of public interests. Active exploitation of securitization of the refugee agenda in the latter case may polarize the stance of relevant actors and citizens at

the state level and brings the rise of state-centered actors for fear of national security threats at the international level. This phenomenon was clearly illustrated in South Korea for its limited public interests on the refugee agenda during the internalization process in 2012 before the Yemeni refugee crisis and its limited home-grown public understanding of the refugee phenomenon. It developed extrinsically from indirect experience via refugee discourse from Europe and North America (Choi & Park, 2020). Hence, the contrasts of the common understanding of the refugees between South Korea and Germany are believed to be drawn in this aspect. The analysis focuses on each state's internalization process of the global refugee regime's norms and principles in the early stage after signing the 1951 Convention.

A refugee policy is important in the discussion of policy ambiguity for its growing securitization trend in refugee discourse. This global securitization of the refugee discourse phenomenon may prevent actors at the state level to establish clear sets of policy objectives, even after identifying a presence of policy problems. In other words, the long-standing ambiguity in the policy that remained unaddressed for a long time may cause a state's inaction for confusion in policy goals and polarized views fueled by the securitization of refugee discourse. It is against this background that the government's response in its efforts to legislative amendments via legislative process is examined as an indicator for policy success.

This is because the high ambiguity in Korea's refugee policy is a result of its political decision, which again serves as an input in affecting political decisions. This currently faced legislative gridlock for skeleton legislation of the refugee act that failed to crystallize policy programs via the legislative process for its deliberate ambiguity which made the state look as if the refugee act fully comply with the principles and norms of the 1951 Convention as a signatory state on façade for its priori natured simple inclusion of the legal clause that are aligned with the Convention. This also contributes to constructing citizens' tilted perception of refugees that they receive all or more social security benefits than Korean nationals. This surfaced in the rumors that the Ministry of Justice had to correct which reported that Yemeni refugees receive more living assistance than Korean War veterans (NEWS1, 2018). However, the truth is not all refugee status applicants but less than 4% received benefits and the assistance amount is less than what it is granted to Korean nationals (MOJ, 2018a, p.10; Segye, 2019). Hence, analyzing this critical deliberate nature of policy ambiguity revealed in policy

instruments and policy objectives in the South Korean refugee legislative act are examined to explain the state's inaction.

Despite the problems it generates, ambiguity can provide an opportunity to identify a new policy objective and policy means as it can serve as a “learning” opportunity in which principles, visions, and technological knowledge are tested (Offerdal, 1984). Germany's response during the recent Syrian refugee crisis since 2015 used political will in addressing the policy ambiguity which enabled systematic legislative changes that adopted specified policy programs and instruments. They used clear policy objectives on the already rather clearly defined terms, categorization, well-operating procedure, and protection of legal entitlements in the legislative act, which is a result of constant learning from its previous refugee acceptance history. Therefore, considering Korea's first experience receiving a perceived large influx of refugees is seen as a crisis and the garnered attention to this policy problem, this can be a valuable time to analyze the current status of South Korean refugee policy in terms of the degree of ambiguity by comparing it with Germany. This comparison is a valuable learning opportunity for South Korea due to its history of multiple large influxes of refugees and constant crystallization of its policy objective and instruments by using identified ambiguity problems.

### **1.3 Structure of the Thesis**

This thesis is structured as follows: the second chapter (II) begins with the methodology of the research that illustrates the research question, variables and indicators, research methods, and finally justification of the case selection and time period. It is followed by the third chapter (III) on refugee policy success and failure using existing literature in examining policy failure in South Korea and policy success in Germany, then focuses on the academic debates on the cause of its failure. From chapter four to six, it demonstrates the findings of comparative analysis contrasting South Korea's deliberately high policy ambiguity to Germany's low ambiguity in definition and categorization (IV), refugee status determination process (V), and finally, refugees' entitlements by categorization (VI). The final chapter concludes the paper by summarizing the findings from the analysis and draws policy implications.

# Chapter II.

## Methodology

### 2.1 Research Question

*Why did South Korea fail to operate refugee policy in due process and due protection of legal entitlement over a handful number of refugees in 2018-2020, while Germany demonstrated little to no problem in its massive influx of Syrian refugees in 2015-2016?*

The South Korean government's inaction in the 2018 Yemeni refugee incident was noticeable. The problem within South Korea's policy mechanism for the refugees, the unorganized policy coordination between the relevant actors from central government, relevant ministries, local governments, and civil society was at the heart of the refugee incident (Song Young Hoon, 2019, p.27). This poor management attributed to social uneasiness to a certain extent and the country underwent a citizen's perceived crisis over 'a handful of refugees' (Foreign Policy, 2018) for its inept preparation in both policy implementation and passive attitude of government; thus, "ambiguous refugee act" was at the center of this discussion (Nocutnews, 2018). The poor policy coordination is believed to be caused by the ambiguity in South Korea's legislative act as the ambiguity prevailed in overall areas of the act from the definition, categorization, procedure, and legal entitlements prevented the state to respond crisis promptly.

The government's far from ideal response to the refugee incident; however, was inevitable. Before the Yemeni refugee crisis in 2018, there was "little to no society-wide discussion" on the agenda (Choi & Park, 2020, p.7). And thirteen legislative amendment attempts are made at National Assembly before the Yemeni refugee incident in 2018 did not address the identified problems of the act due to little concerns. However, the agenda of the refugee has suddenly experienced securitization met with fear of destruction of national identity and constructed ideas that the arrival of refugees is a threat to national security (Lee Shin-wha, 2019b). This threat perception was mixed with the disgruntled youth suffering economic hardship and unemployment which developed outrageous attitude as they perceived refugees as free-riders who would add their tax burdens (Choi & Park, 2020, p.17) rather than a subject who fled from the state failure and war; thus, need international protection. The securitization of the refugee agenda prevented legislators to respond to the crisis quickly. Therefore, this research

analyzes the highly ambiguous refugee legislative act in South Korea and its impact on policy failure.

Germany, on the other hand, had received four large influxes of refugees starting in 1951 which helped the German government to take necessary actions promptly even during the Syrian refugee crisis in 2015. The government developed the federal expellee law (BVFG, Bundesvertriebenengesetz) in accepting ethnic German refugees in neighboring countries after World War II, after West Germany joining as the signatory state of the 1951 Convention before the large influx of refugees in 2015 (Ahn Sung Kyoung, 2016, p.1).

During the 2015 crisis, the federal government adopted prompt measures concerning accelerating the recognition procedure and social integration, while establishing legal bases in the act to send back certain applicants, who are likely to cause problems in Germany or have committed crimes or are from safe countries (Lee Bo-Yeon, 2019; Ahn Sung Kyoung, 2017, p.394). Three new sets of omnibus laws realized systematic changes via legislative packages: Asylpaket I in 2015, and Asylpaket II in March, and July 2016. While the securitization of the refugee agenda prevailed across Europe, the German government's response to the 2015 refugee crisis was with political willingness featuring continued efforts to crystallize the potentially ambiguous clauses in the asylum act.

Therefore, by comparing the degree of ambiguity that appeared in the two countries' refugee policy, this research seeks an answer to the question of why did the South Korean refugee policy fail and what can it learn from Germany's experience.

## **2.2 Variables and Indicators**

This research examines the relations between the degree of ambiguity and its impact on policy success and failure. Variables and indicators employed for this research are clarified in this part

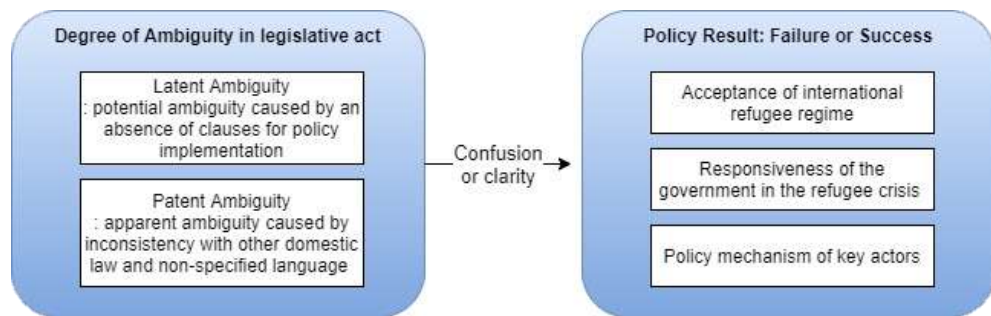
First, ambiguity in policy is "diverse interpretation" or "competitive interpretation of the same clause" in a legislative act, examines both policy instruments and policy objectives as Matland highlighted the importance of the two (1995, p.157-9). It examines the ambiguity of both elements in two indicators: "latent ambiguity", when potential ambiguity is caused by an absent necessary legal clause for policy implementation; "patent ambiguity", when apparent ambiguity is caused by inconsistency with other domestic laws and non-specified use of language that gives large discretionary range, without binding legal bases,

such as the use of the word “may”.

The degree of ambiguity in refugee policy then prompts confusion in policy implementation when ambiguity is “high”, while clarity prompts uniform and coherent policy implementation when ambiguity is “low”. Hence, it argues that the degree of ambiguity results in policy success or failure as the dependent variable.

The diagram below illustrates the indicators of the two variables:

**FIGURE 1. VARIABLES AND INDICATORS**



	<b>IV: Policy ambiguity</b>	<b>DV: Policy success or failure</b>
<b>Definition</b>	Degree of competitive and diverse ways of interpretation of the same act in policy means and goals in refugee legislative act.	Policy success occurs when the policy provides the benefits the target of the policy subject “refugees” and achieves its policy objectives of protection of refugees
<b>Indicators</b>	<ol style="list-style-type: none"> <li>1. <b>Latent ambiguity:</b> potential ambiguity caused by an absence of specified clauses for policy instrument articles, and the necessary resources</li> <li>2. <b>Patent ambiguity:</b> apparent ambiguity caused by inconsistency with other domestic law or non-specificity of the language</li> </ol>	<ol style="list-style-type: none"> <li>1. <b>Acceptance</b> of international refugee regime</li> <li>2. <b>Responsiveness</b> of the government in the refugee crisis phenomenon</li> <li>3. <b>Policy mechanism</b> of policy subject’s access to legal entitlements derived from clear and smooth policy mechanism</li> </ol>

A good and successful policy is a policy that provides benefits to the target of the policy subject. This requires a responsive action after a close examination of a policy problem, good policy instruments, and cooperation efforts between relevant authorities and actors to realize the distinct policy objective that they are willing to accomplish. Policy success, thus, occurs when the policy successfully benefits the policy subject, “the refugees” in one’s territory; therefore, it uses the global refugee standards, the 1951 Convention and the 1967 Protocol, as a firm basis to identify this success whether the state’s policy sufficiently protects



the refugees by examining “the acceptance of these international principles and norms.” Besides, as a good policy should be able to adopt changes to reach policy objectives via close examination of new arising policy problems, “a responsiveness of the government” during the refugee crisis is examined. This is crucial as a government’s action in the refugee crisis is an integral part in shifting the cloud-like legislative act to clock-like systematic operations of the policy via “a clear policy mechanism of key actors” in implementing policy.

Ambiguity is the key element of this analysis as the independent variable. Matland suggested three forms of ambiguity in policy (1995, p.157-8): first, the absence of technology or tools needed to reach a policy’s goals simply do not exist; second, uncertainties about the roles of many organizations in what roles to play in the implementation process; third, complex environment which makes it difficult to know which tools to use, how to use them, and what effects they will use. Applying Matland’s three types of ambiguity, this research indicates ambiguity in both patent and latent types appeared in both policy objectives and instruments.

“Patent ambiguity”, as previously defined, is an apparent ambiguity on the face of a legal document caused by the use of uncertain language or inconsistency of certain clauses clashes with other domestic laws<sup>4</sup>. For example, it is non-specified and non-binding legal language use of “may,” can make it hard to implement as it is at the large discretionary range. This is in contrast to the legally binding language of “shall”, for policy executors to implement. It also reveals legal clause inconsistency which happens due to discord with other domestic laws or rules that prevents policy implementation (Klir and Yuan, 1995), for example, failure of policy enforcement can be caused by the discrepancy between the refugee act and social security act or other domestic laws for the refugees’ legal entitlements, although a clause enshrines the benefit in the refuge act. Such discord can result in inaccessibility for the refugees to invoke these rights for this legal contradiction.

“Latent ambiguity”, on the other hand, is a potential ambiguity caused by an absence of legal clauses necessary for policy implementation, which does not appear on the face of the legal instrument but arises from a consideration of extrinsic fact.<sup>5</sup> In other words, the preliminary nature of the act does not elaborate

---

<sup>4</sup> Merriam-Webster. (n.d.). Patent ambiguity. In Merriam-Webster.com legal dictionary. Retrieved November 15, 2020, from <https://www.merriam-webster.com/legal/patent%20ambiguity>

<sup>5</sup> Merriam-Webster. (n.d.). Latent ambiguity. In Merriam-Webster.com legal dictionary. Retrieved December 31, 2020, from <https://www.merriam-webster.com/legal/latent%20ambiguity>

specific policy instruments and programs for street-level bureaucrats to implement the policy as it generates ambiguity. This absence of a necessary legal clause for implementation can serve as a great obstacle as the simple absence of specified articles can result in obstacles in utilizing financial, personnel, and operational resources and impede the implementation process, thus, result in failure of implementation.

Despite the negative aspect of policy ambiguity, it can sometimes serve as a good learning opportunity to crystallize policy objectives in an early stage of policy implementation (Offerdal, 1984; Matland, 1995); however, when a political willingness lacks in addressing the policy problems caused by latent ambiguity, this leads long-standing ambiguity which constantly generates confusion and burdens to street-level bureaucrats, and finally fail in policy implementation knowingly that there is a problem. This is because without the policy objectives to realize, policy measures to achieve, and basic policy instruments, it is not feasible to enforce policies, to begin with (Kang Dong-Ug et al., 2015, p.94).

Additionally, although traditional top-downers believe explicit policy goals are crucial to avoid implementation failure, deliberate and strategic uses of ambiguity often happen to reduce goal conflict in the policy design phase to limit conflict via enhancing ambiguity. Regan also contends that the policy formation phase's implementation results in the sacrifice of policy goals as when the goals become more explicit, actors become mindful of threats to their tufts, so they limit the degree and scope of proposed policy strategy of which changes it would bring (1984). Thus, ambiguity is a necessary condition for developing new policies. Matland also stresses the numerous legislative compromises in politics that depended on ambiguous language by enabling the relevant actors to interpret the same act differently, and this is a natural and inevitable function of a political cycle (Berman, 1978; Baier, March and Saetren, 1986; Matland, 1995).

This confirms a negative correlation between “conflict”, which stems from diverging policy preferences, and “ambiguity”, which derives from the deliberate use of ambiguous language in policy objective to reduce the perception of threats in policy formation stages (Matland, 1995). Therefore, the use of strategic ambiguity, an action to avoid conflict, may result in policy objective ambiguity. And this is likely to become a long-standing policy problem in the absence of political will to reduce ambiguity in a high conflict situation and the deliberate ambiguity continues to reduce the conflicts between actors. While

conflict and ambiguity are two variables used in Matland's framework in the analysis of policy implementation (1995), this research focuses solely on ambiguity to concentrate on the long-standing deliberate ambiguity in South Korean refugee policy, instead of combining with conflict. This is to highlight the ambiguity problem caused by the preliminary refugee act with largely absent policy contents and contradictory legal clauses within the domestic legal sphere and discord with the international refugee regime's norms and principles.

Matland highlights the degree of ambiguity's impact on policy implementation. In case of low ambiguity, it affects the ability of superiors to monitor activities; the likelihood that policy is uniformly understood across different implementation sites; the probability that local contextual factors to play significant roles; the degree to which relevant actors differ across implementation sites (Matland, 1995, p.157-8). Applying Matland's theory to this research, it uses three main indicators in determining the success and failure of refugee policy.

To confirm ambiguity's impact on policy success and failure in this context, three indicators are employed here: the degree of acceptance of international refugee regime in Germany and South Korea's legislative act; responsiveness of the government's refugee crisis after the Yemeni refugee crisis in South Korea in 2018 and Syrian refugee crisis in Germany in 2015 that are exhibited in the forms of responsive actions or inactions; policy mechanism or the coordination between key actors in policy implementation.

First, acceptance of the international regime in a state's domestic legal sphere became a critical issue in tackling the globalized refugee phenomenon. Applying the local contextual factors at the state level, their interpretation of the global refugee treaties serves as a critical role in the operation of global refugee governance and it is indicated in their process of internalization of the global refugee regime's norms and principles. For example, burden-sharing in the EU as a public good was undermined and the free riders trend increased and disproportionate responsibility and strengthening effectiveness has been a focal discussion (Eiko Thielemann, 2017). The full acceptance of the international refugee regime in the internalization process is critical for sustainable operation of the global refugee problem management at the international level while taking localization of the norms and principles can be detrimental as it leads to unilateral behavior of the state and undermines the common efforts at international level for their arbitrary boundaries in policy implementation at global governance. Thus, a

state's domestic refugee legislative act that fully complies with the norms and principles of the global refugee treaties are important in the uncertainties of the global refugee phenomenon.

The second indicator is a state's government's responsiveness towards refugee crisis as a refugee policy with low ambiguity can quickly identify the policy problem with clear policy means and objective and can adopt changes promptly in a short time. High ambiguity, in contrast, inevitably hinders the state's action efficiently as the ambiguity with often lacking policy means and objectives serves as an obstacle to identifying the policy problem in the first place. The political willingness also matters for this as a state with willingness would take actions via systematic legislative amendments to clear the cloud-like policy by adding new legal clauses is possible to implement policies realistically in practice, but it also may leave it deliberately ambiguous when it is unwilling to refine policy clarity. Thus, a successful refugee policy may entail a government's prompt response in addressing ambiguity as the state is possible to identify the problem and is willing to make a cloud-like system more clock-like.

The last indicator is clear policy mechanism and this is particularly important as perfunctory policy lacks a proper channel and access for the refugees to receive legal entitlement and due procedure while it inevitably involves cooperation from other ministries as they deal with welfare, integration, education, and other matters. This policy mechanism is namely, the appropriate actors who put the policies into operation with the appropriate organizations, and policy instrument for policy implementation (Howlett, 2011, p.41-59). Thus, this indicator confirms the policy coordination among the key actors and failure or success in policy operation.

### **2.3 Research Method**

The main purpose of this research is to highlight the problems that occurred due to high ambiguity in the Korean refugee policy by comparing it with an ideal case of Germany which demonstrated low policy ambiguity. Thus, the main research method employed for this research is comparative policy analysis via document analysis of legislative acts and government documents of Germany and South Korea. This section provides: first, the process of the case selection and justification of choosing Germany as a case for comparative analysis with South Korea; second, the key documents employed for the research.

### 2.3.1 Justification of Case Selection

As a comparative refugee policy analysis, this research first collected signatory party states' refugee acceptance rate and their behavior in the global securitization discourse of the refugee phenomenon, and the political will of the state leaders in accepting refugees. The German government's deviation in refugee policies is a clear contrast compared to neighboring states, which is embedded with securitization, thus, the historical development of the German legislative act was examined. While the geographical proximity is often considered as an important element in case selection due to similarities of the culture in neighboring states, Germany was chosen for this clear deviation in refugee policy despite the similarities in socioeconomic and ethnic homogeneity indicators to South Korea, unlike other countries in the Asian region.

During the initial stage of research, Asian countries' common reluctance to accept refugees was identified. The similar patterns<sup>6</sup> to South Korea were particularly salient in Japan, which demonstrated a strong message of "no entry" to those asylum seekers and kept it out of refugee crisis with the closed-door policy (Hidayet Siddikoglu, 2017) suggested that their policies are too similar to compare<sup>7</sup>. Besides, the reluctance has a long history which goes back to the 1970s in accepting Indo-Chinese refugees (Arakaki, 2008, p.17-18). However, the globalized refugee phenomenon escalates and the international community's call for burden-sharing and mixed migration flow for the connectivity in globalization complicates the refugee problem further and a state simply cannot isolate itself fully from such flows anymore, which requires a systematic policy prepared for that purpose.

As a result, Germany was chosen as a case to compare for its similar socio-economic conditions and historical adherence to high cultural and ethnic

---

<sup>6</sup> The main similarities of Japan to South Korean refugee policy mechanism are limited participation of private sectors and restricted delegation of power to provincial government and their focus on resettlement program. Japan supports refugees via resettlement refugee program, which began as a pilot program in 2010 without new adoption of relevant law and now provides a job training and temporary shelter to refugees without recognizing them as a refugee. See more: Choi Yu, 2014.

<sup>7</sup> Japan's refugee policy in terms of ambiguity level is challenging as the country showed relatively low level of ambiguity demonstrated from clear government's reluctance to accept refugees in terms of policy ambiguity, but it has shown an unusual method of policy mechanism in that it accepted and regularized the resettlement refugee program after being carried out in pilot program without changes in the relevant Immigration Control and Refugee Recognition Act. While this resettlement refugee program can also serve as a valuable model to adopt a strategic burden-sharing of refugees as a responsible member state by demonstrating assistance in financial support or providing temporary shelter and job training to refugees, however, this has been already explored already. See more: Jeong Kum Sim, 2020.

homogeneity, but its distinctive comprehensive sets legal framework and clear political willingness of the government in accepting the refugee showed a deviation in state actions. Thus, its contrast, South Korea features deliberate ambiguity and restricted government’s efforts in accepting refugees, and the preliminary refugee policy, contrary to the German advanced and comprehensive policy, can serve as a model to lower ambiguity for policy success.

**A. Socioeconomic factors**

The table and three charts below show similarities in socioeconomic factors of South Korea and Germany including industrial structure, relatively stable unemployment rate, and a similar pattern in aging population rate, which are both above average, as well as high dependency on natural resources that indicates their inevitable concentration on human capital based economic development.

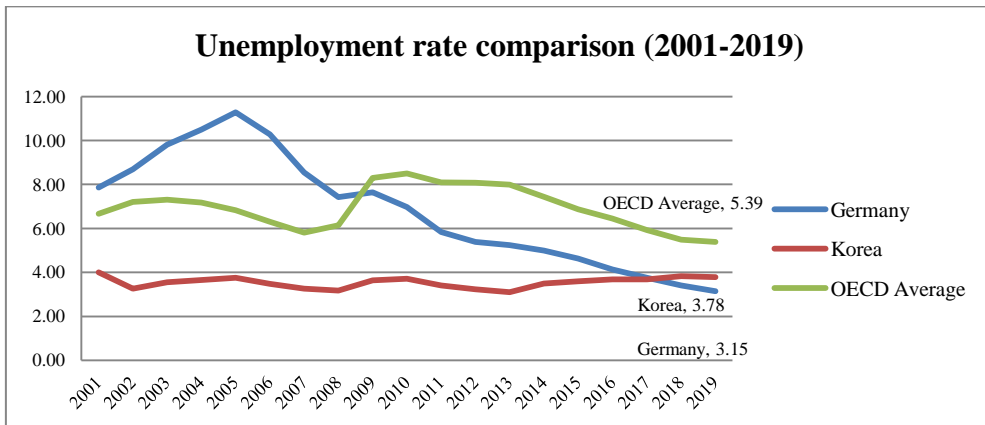
As previously introduced, examining socioeconomic indicators are important as states show ‘calculated kindness’ (Loescher and Scalan, 1986) towards refugees due to national economic interests in accepting refugees, and this can mainly be found in the four socioeconomic indicators here. When states focus on national economic development based on manufacture, it tends to accept refugees as it has the interest to exploit cheap labor of refugees (Choucri, 1993), which is why industry structure and natural resources dependency indicators are included here.

**TABLE 1. INDUSTRIAL STRUCTURE IN COMPARISON**

<b>Industrial Structure</b>	
<b>South Korea</b>	Main export items: Semiconductors, petrochemicals, automobile, wireless equipment GDP/labor by sector: agriculture 2.2%, industry 39.3%, service 58.3%(2017)
<b>Germany</b>	Main export items: Motor vehicles, machinery, chemicals, computer, and electronic products GDP/labor by sector: agriculture 0.7%, industry 30.7%, service 68.6% (2017)

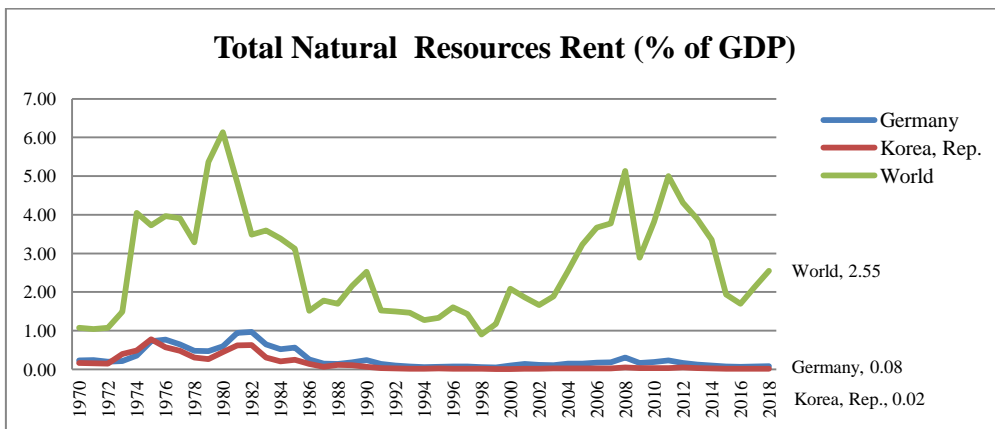
\*Source: CIA World Factbook (2017)

**FIGURE 2. UNEMPLOYMENT RATE IN COMPARISON**



OECD (2020), Unemployment rate (indicator). doi: 10.1787/52570002-en

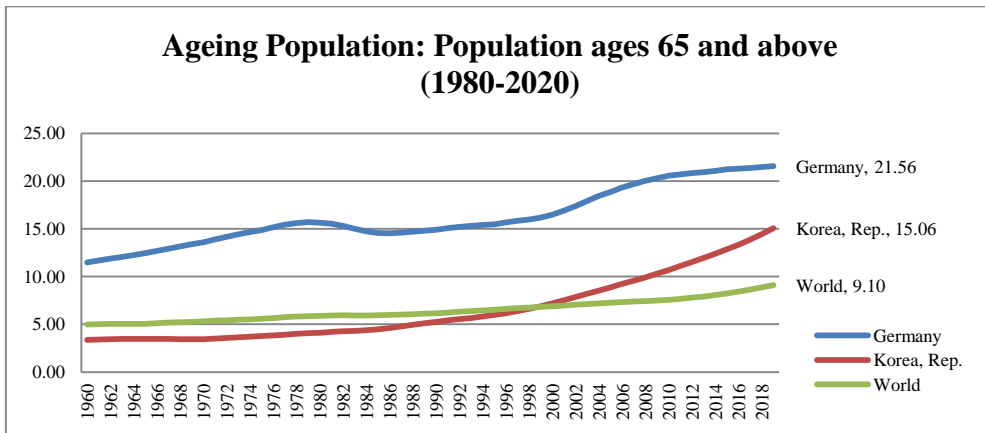
**FIGURE 3. TOTAL NATURAL RESOURCES RENT IN COMPARISON**



Source: World Bank. 2019. Total Natural Resources Rent.

The population aging level of the two countries is one of the main concerns for the two states, which are increasing at a considerable pace as the chart below indicates. It has been said that Germany’s motivation for accepting refugees was to slow down the rapidly aging population (Engler, 2016, p.6). While population aging in South Korea is relatively less significant as Germany, but rapidly catching up with the global North and surpassed the world average since 1999.

**FIGURE 4. AGEING POPULATION IN COMPARISON**



Source: World Bank. 2017. Staff estimates based on age/sex distributions of United Nations Population Division's World Population Prospects: 2019 Revision.

### **B. Adherence to cultural ethnic homogeneity**

Both South Korea and Germany have developed similar concepts of nationality law that are derived from ethnic homogeneity in state development. Germany is now considered as a *de facto* immigrant state with diverse ethnicity and culture after an amendment in immigration law in 2004, which altered the procedure to naturalization to provide easier access to German citizenship to migrants before the amendment. However, Germany long adhered to *Jus Sanguinis* in its Nationality law. Since the beginning of the German Empire, a modern state system, the 1842 Prussia's nationality law<sup>8</sup> remained in Germany and the system is continued in today's German Nationality Act. According to the amendment that took into effect in 2000, a foreigner born in Germany whose parent was born in Germany or moved before 14 years old automatically receives German nationality and his parents' nationality (Nathans, 2004; Seol Dong-Hoon, 2013, p.32-33).

Also, by changing its immigration law in 2004, Germany reduced the minimum residence period for naturalization of 15 years to eight years. Foreign children born in Germany whose parents have stayed legally for more than eight years may, shall have multiple nationalities, but must choose between the German nationality and the nationality of their parents between 18 and 23. Even children born in a foreign country and moved to Germany before the age of 14 can obtain German citizenship when meeting certain requirements with their parents'

<sup>8</sup> Law Respecting the Acquisition and Loss of the Quality of Prussian by a Prussian Subject, and His Admission to Foreign Citizenship, 1884



nationality (Seol Dong-Hoon, 2013, p.32-33). It was not until then that the government finally combined *Jus Soli* in its Nationality Act. In addition, with an amendment of the immigration act in 2004, the growing number of aliens increased, and now it is a *de facto* immigration society, but the long adherence to ethnicity-based Nationality law suggests a similarity to South Korea’s system.

South Korea’s Nationality Act was amended in 1998 by allowing both paternal and maternal pedigree of Korean nationals and grants Korean nationality to a child born in Korea of the person’s stateless parents since 2008. It now pursues principles of *Jus Soli* in nationality law for criminal laws, but *Jus Sanguinis* is applied to overseas Koreans. The recent research of the homogeneity level of the two states is indicated below and this confirms both have relatively high homogeneity levels.

**TABLE 2. ETHNIC HOMOMGENEITY LEVEL IN COMPARISON**

<b>Ethnic Homogeneity Level</b>	
<b>South Korea</b>	2020: 4.9% of foreigners residing in South Korea
<b>Germany</b>	2014: Germans 91.5%, Europeans 6.1%, Turkey 2.4% 2017: Germans 79.9%,(including naturalized Germans 3.5%), Europeans 9%, Turkey 1.8, Poland 1%, Syria 1%

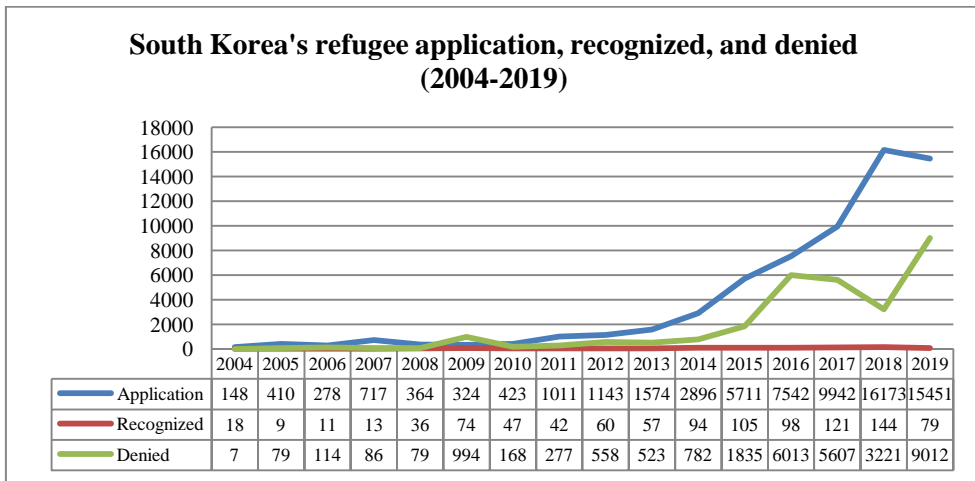
\*Source: CIA World Factbook 2014, 2017; Ministry of Justice, 2020

In short, despite a slight gap between the two countries because of the recent ethnic and cultural diversity rate of Germany, its traditional adherence to *Jus Sanguinis* in nationality law and still the relatively high homogeneity of it was 90% before the acceptance of a large influx of migrants in 2015 indicates its similar cultural homogeneity conditions to South Korea. South Korea’s ethnic and cultural homogeneity was one of the highest records in the world in terms of language, ethnicity, and culture (Kymlicka, 1995, P.196), but a growing number of foreigners recorded around 5% in the year 2020 (MOJ, 2020) suggests that South Korea will continue to experience more influx of migrants, and the necessity to adopt more integration policies to foreigners living in the country to take more multicultural policy. Therefore, Germany was chosen case for comparison considering the country’s shift from ethnicity-based nationality law to *de facto* immigration country that can provide policy implications to South Korea; given the similarities in the socioeconomic and traditional adherence to cultural-ethnic homogeneity and ethnicity-based nationality law and the contrast can suggest meaningful comparative analysis.

### 2.3.2 Justification of Time Period

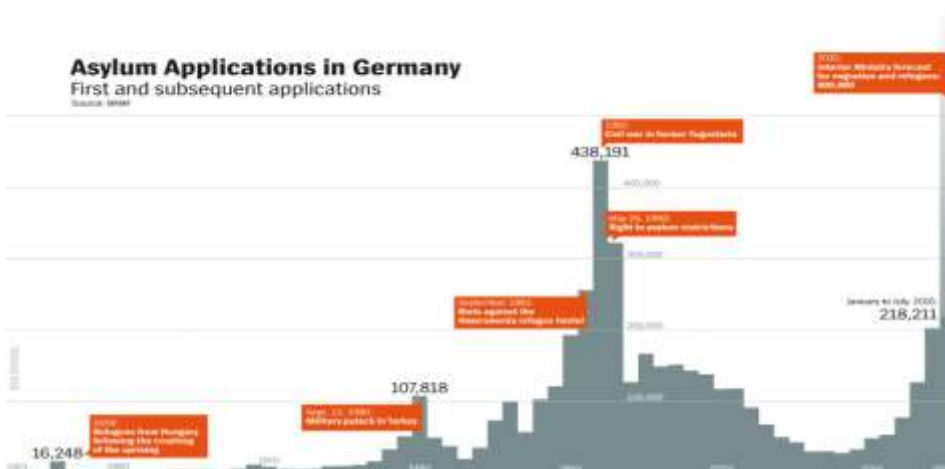
This research compares the refugee policy of Germany from 2015 to 2016 and South Korea from 2018 to 2020 as this is the period that entails similarities in context, socioeconomic and ethnic homogeneity conditions, and the national peak of the historical trends for the refugee applications (see Figure 5 and 6) also similar social context as refugee discourse started to securitize worldwide after the Syrian refugee crisis in 2015.

**FIGURE 5. SOUTH KOREAN HISTORICAL TRENDS FOR REFUGEE APPLICATION (2004-2019)**



Source: Nancen Refugee Rights Center. 2020b.

**FIGURE 6. GERMAN HISTORICAL TRENDS FOR REFUGEE APPLICATIONS (1953-2015)**



Source: SPIEGEL, 2015.

Germany and South Korea's relatively low and stable unemployment rate which is 4.63% for Germany in 2015 and 3.83% for South Korea are relatively stable and the ethnic-homogeneity level before the crisis in Germany which was 91% in 2014 and South Korea 95% in 2020 suggests similarities in socioeconomic and ethnic homogeneity conditions. Germany has experienced large influxes of refugees three times prior to the 2015 Syrian refugee crisis but unlike other previous times, Germany has changed its Nationality Law in 2004 and clearly announced its policy goal to "integrate" refugees.

On the contrary, South Korea made changes in Nationality Act in 2008 to first adopt *Jus Solis* to the child of stateless parents (Art 2(3) Nationality Act) but the Yemeni refugee crisis happened in 2015 was the first crisis happened after these minor changes as *Jus Sanguinis* is still the principle. The government faced major administrative difficulties met with the citizens' hostile attitudes towards refugees, the gridlock at a legislative level while foreigners influx is likely to grow further. This suggests the necessity for the Korean government to adopt a clear policy specifically for the refugees and for migrants' integration in general.

### **2.3.3 Document Analysis**

Two countries' refugee legislative acts are compared by establishing a firm basis of international refugee regimes, the 1951 Convention and the 1967 Protocol. During the literature review of the historical development of the legislative acts in the two countries, it identified the changes of legislative acts over time and came up with a list of key documents in the table below.

**TABLE 3. KEY DOCUMENTS OF ANALYSIS**

<b>International Refugee Regime</b>		
	<ul style="list-style-type: none"> <li>- 1951 Convention and the 1967 Protocol</li> <li>- The Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees</li> </ul>	
<b>German and South Korean Refugee Policy Documents</b>		
	<b>South Korea (2018-2020)</b>	<b>Germany (2015-2016)</b>
<b>Key refugee legislative acts</b>	Refugee Act; Presidential Decree; MOJ Ordinance; Immigration Control Act; Social Security Act; National Basic Living Security Act	Asylum Act; Basic Law; Residence Act; Asylum Seekers Benefits Act <sup>9</sup> ; Regulation on Residence; Regulation on Employment; Social Code Book
<b>Policy instrument: government's documents</b>	Handbook of Refugee Status Determination Procedure (MOJ, 2015)	Stages of the German Asylum Procedure (BAMF, 2016) AIDA annual country report (3): 2015 January, 2015 November, 2016 <sup>10</sup>
<b>Legislative response after the crisis</b>	Amendments of presidential decree and the MOJ ordinance as none of legislators <i>draft</i> bill (11) was imposed: 2014145 (2018-06-29); 2014365 (2018-07-12); 2014410(2018-07-13); 2014468(2018-07-17); 2014483(2018-07-18); 2014496(2018-07-19); 2014503(2018-07-20); 2014542(2018-07-25); 2018263(2019-01-21); 2019574(2019-04-04); 2022050(2019-08-21)	Three omnibus bills : Asylum paket I, II, IntegrationsG <sup>11</sup> (Omnibus Bills [Artikelgesetz])
<b>Others</b>	Nancen Statistical Report (2018, 2019); MOJ Human Rights Policy Plan (2019)	AIDA Report by European Council (2015 January; 2015 November; 2016)

<sup>9</sup> While other German legislative documents were attainable, Asylum seekers' benefits act (AsylbLG) was not translated into English, therefore, it used the unofficial Korean translation published by the National Assembly Library for this specific document. The rest of the German legislative documents this research referred to were the German government's English translated version.

<sup>10</sup> AIDA (Asylum information database) is coordinated report by the European Council on Refugees and Exiles of the European Union which provides asylum practices of the 17 EU member states and 3 non-EU member states. It aims to strengthen the implementation of the EU asylum legislation reflecting the highest possible standards of protection aligns with the international refugee and human rights law and based on best practice in each state.

<sup>11</sup> Act on the acceleration of asylum procedures carried out with a form of omnibus bills for systematic and efficient legislative changes.

## **Chapter III.**

### **Refugee Policy Success and Failure**

#### **3.1 International Refugee Regime and the 1951 Convention**

The global refugee regime is an integral part of the discussion of the state's refugee policy success and failure as they set the minimum standards of treatment of refugees in the international community, establishing principles in confirming a state's compliance or non-compliance to international refugee law. The 1951 Convention and its 1967 Protocol are two legal documents that resulted from the international community's attempt to provide asylum and protection when a refugee's government is unwilling or unable to protect his individual rights (UNHCR, 2001, p.3-4).

The 1951 Convention, "Magna Carta" of refugees (Zarjevski, 1988, p.55), codified protection of the refugees in the international community. Signatory states introduce the Convention's principles in domestic immigration legislation as the main principles for the asylum (Hathaway, 1990, p.129). And the 1967 Protocol removed the Convention's time and geographical constraint, which was originally confined only to Europe and the event before 1951 (Art 1, 1967 Protocol).

The 1951 Convention is composed of two main parts<sup>12</sup>: the definition of refugees and persecution in the provisions for inclusion, exclusion, and cessation; legal status of refugees and their rights and duties in their country of refuge (UNHCR, 2019, p.14, para 12). These two parts are internalized in South Korea and Germany's domestic legislative act and analyzed in three chapters following the Convention's structure: definition and categorization of refugee; the principles in the refugee status determination process; the legal status and entitlements of refugees.

---

<sup>12</sup> The UNHCR identifies the convention is composed of three including the implementation of the instruments from the administrative and diplomatic standpoint (UNHCR, 2019, p.14, para 12), but as this research focuses on domestic internalization of the 1951 Convention and the 1967 Protocol. Hence, this aspect is not discussed and focuses on the two abovementioned parts. The Convention is composed of 40 articles covering seven chapters to include: general provisions (I) including definition of refugees and fundamental principles; juridical status (II) which covers juridical rights of the refugees; gainful employment (III) concerning the recognized refugees rights in wage earning employment including self-employment and liberal professions in recognizing their diplomas; welfare (IV); administrative measures (V) in that a refugee can receive in varying degrees from the very low bar to enjoyments of rights in from simple presence, lawful presence, to lawful residence; other chapters concerning executor and transitory provisions (VI) including cooperation with the UN and a state's responsibility to ensure to adopt their laws to comply with the application of the Convention; the final clauses (VII).

While definition and persecution are addressed in the 1951 Convention, the refugee status determination process was not initially specified in the documents, which aimed to allow each contracting state to establish its procedure in the most appropriate way in its constitutional and administrative structure to protect refugees (UNHCR, 2019, p.42, para 189). Therefore, an attempt was made in 1977 in providing principles in the recognition procedure for each contracting state<sup>13</sup>, which is used as an extended document of the 1951 Convention and the global refugee regime's principles concerning the recognition process.

The Convention also includes comprehensive legal clauses about refugees' legal entitlements. The attachment criteria establish rights contingent upon the strength of the bond between the refugee and the host state national, or "assimilative path" (Hathaway, 2005, p.156). This is reflected in benefiting the refugees' core rights in an incremental structure. The nature of the rights is to be defined by the host country and the rights once acquired are retained for the duration of holding the refugee status. The policy implementation of the legal entitlements will be examined to analyze how they internalized these principles in their institutional structures.

From the next section, it provides contextual background on the policy failure of the South Korean refugee policy, contrary to the policy success of the German refugee policy, using existing literature focusing and examines their acceptance of the Convention's principles.

### **3.2 Policy Success: German Asylum Policy**

German asylum legislative act<sup>14</sup> has a long history starting in 1949. West Germany's Basic Law included Article 16a which guaranteed constitutional rights and national protection to the politically persecuted people of the constitution. This enabled the Eastern German refugees who were politically persecuted to safely find asylum in West Germany (Kim Young Sool, 2018, p. 108). As one legal expert called, this inclusion of the clause is mainly due to the Nazi past of Germany (Infomigrants, 2018). Therefore, while the asylum act has been transformed over

---

<sup>13</sup> For more information, see Chapter V Refugee Recognition Process in this thesis. See UN General Assembly. 1977. Addendum to the Report of the United Nations High Commissioner for Refugees Addendum to the Report of the United Nations High Commissioner for Refugees, Supplement No. 12 (A/32/12/Add.1).

<sup>14</sup> Germany uses "Asylum" in a comprehensive sense for all targets that should be protected from diverse types of persecution including the common narrowly defined political persecution. The German law also uses asylum seeker and asylum applicant instead of using refugee in its refugee law. Therefore, in explaining German refugee policy, the term asylum is used instead of refugees due to such use, and in categories that require policy distinction, it is decided to distinguish them.

time in the process of accepting refugees since, by responding to four historically large influxes of refugees, the right to asylum has been perceived as one of the integral constitutional rights in Germany.

With the long history of refugee acceptance, Germany continuously reformed the act to reduce confusion in policy implementation. Therefore, it surfaced little to no confusion in policy implementation during the Syrian refugee crisis despite the rapid growth of securitization of refugee discourse in Europe and the nation's largest application history. In this section, evidence of the policy's success and the debates in the existing literature answering the reasons for the German refugee policy are discussed.

First, unlike South Korea's lack of common understanding of "who are the refugees" German policy executors and the public have a clear understanding of refugees as it has been one of the constitutional rights since West Germany's inclusion of Article 16 in the Basic Law and has fully accepted the 1951 Convention's norms and principles in the domestic legal sphere shortly after signing the Convention in 1951 as the main contracting state. Germany went the extra mile by elaborating the concept that can be abstract to policy executors, "persecution" in diverse aspects including acts, grounds, agents of persecution in the Asylum Act (Art 3a,b,c). This helps for a clear understanding of refugees in the country's refugee agenda and is reflected in its discussion remaining the normal politics and deciding refugee agenda in the sphere of courts, legislature, political parties, and other institutions despite the growing securitization across Europe (Ilgit & Klotz, 2018).

Moreover, even after a record high Syrian refugee applications reached their peak in 2015 a survey found that 60% of German citizens showed confidence that the country can tackle the refugee acceptance problems (Arant, Dragolov and Boehnke, 2017, p.82). While some concerns that the growing popularity of the right-wing AfD would signal the escalated resentment from the people filled with anti-refugee discourse, the overall supportive attitude of German citizens in this survey and their confidence in addressing the biggest challenge in their asylum protection history and decisions in normal politics makes one wonder what is so different about this country.

The long history of four large influxes of refugee acceptance experiences prepared the government to develop a more systematic response over time. First, in 1953, the government developed the federal expellee law (BVFG,

Bundesvertriebenengesetz) in accepting ethnic German refugees in neighboring countries after World War II after West Germany joining as the signatory of the 1951 Convention; second, in the 1980s after Turkey Coup d'Etat; third, in 1992 after Yugoslav Wars, which affected the government to amend the Basic Law and enact asylum procedure act (Asylverfahrensgesetz) to control the large influx of refugees and also establishing a quota system between central and sixteen state governments in the Asylum Procedure Act (Ahn Sung Kyoung, 2016, P.1).

The transformation of the German asylum act since 1992 to the Syrian refugee crisis can be summarized as follows: first, the asylum act restricted and controlled a further influx of refugees coming into Europe reached after reaching its peak and public concerns increased in 2016; second, Asylum Act focused on speedy RSD process by adding more countries like Kosovo, Montenegro, and Albania in the safe countries of origin list to reject applicants from those relatively safe countries without persecution grounds; third, the government worked closely with local governments in setting the regional quota of refugee acceptance and promised to announce it each year; fourth, it strengthened information sharing system of refugees including refugees' data for relevant government agencies and person in charge to refer; lastly, it has expanded the scope of family asylum applications (Ahn Sung Kyoung, 2016, P.27-28).

Therefore, when it has reached its largest refugee application peak with 890,000 new asylum applications prompted by the Syrian civil war and Balkan migration in 2015 (CNN, 2019), the federal government was able to adopt prompt measures even during the crisis with the previously well-established system of asylum policy mechanism, which helped identify the policy problems quickly. It established clear policy objectives to accelerate time for asylum recognition procedure and to realize a successful social integration of refugees while establishing legal clauses in the legislative act that allows returning certain applicants who are likely to cause problems in Germany or have committed crimes or are from safe countries act (Lee Bo-Yeon, 2019; Ahn Sung Kyoung, 2017, p.394). By adopting these new sets of changes in omnibus laws, it aimed to tackle the chaos in refugee acceptance mechanism via three legislative packages: Asylumpaket I in 2015 and Asylumpaket II in 2016 March and July.

There have been diverse explanations on Germany's motivation in accepting a large influx of Syrian refugees in 2015. For example, Kim Young Sool argued that it was both normative and interest-based (2018) and cited as 'as



pragmatic as idealistic' that the government took actions based on the pragmatic mindset as Germany needs more young workers to ease negative consequences of the shrinking population (Guardian, 2015). Whether it be a 'calculated kindness' (Loescher and Scalan, 1986) or not, it is worth noting to pay attention to their success as the German government's bold decision to take refugees and its deviation of state behavior amidst the rise of securitized refugee agenda in Europe. And Germany's motivation also is reflected in the responsive action in quickly adopting legislative acts in the process of refugee acceptance in 2015 and 2016; thus, Germany can provide meaningful implication to other countries for its value of clear and systematic policy operation to countries with highly ambiguous policy.

### **3.3 Policy Failure: South Korean Refugee Policy**

Since the South Korean government became a signatory state to the 1951 Convention and the 1967 Protocol in 1992, and not long after it enacted the stand-alone Refugee Act in the domestic legal sphere two decades since then in 2012 as the first country in Asia, and becoming a second state to implement legislation on the resettlement of refugees in 2014; the concerns over policy failure grew in scholarly discussions of the policy. This is believed to be caused by South Korea's rather symbolic gesture not driven by its willingness to provide asylum and international protection to refugees as a responsible member of the international community in this monumental moment in enacting domestic refugee law. Therefore, the legislative act had a large room for improvement, and policy objectives and policy instruments were not elaborated in the Refugee Act on purpose. This section illustrates the empirical evidence of the policy failure of the Korean refugee act and the problems.

South Korean refugee policy is a typical example of policy failure and exhibits diverse problems as it fails to realize the fundamental objectives of refugee policies, protecting the refugees in due process and due legal entitlements to refugees who failed to receive their governments' protection. The policy failure is present in its localization of the refugee regime's principles and norms; the confusing and unilateral policy implementation for procedural and legal entitlements; state inaction during the Yemeni refugee incident in 2018.

First, the South Korean refugee act took localization of the global refugee regime's norms and principles and demonstrates an apparent contradiction to the 1951 Convention in overall areas from definition of refugee, categorization, procedural rights, and entitlements. Specific legal clauses of the South Korean

refugee Act that clash with the Convention's principles and norms are examined in the analysis chapter, but this part will cover the main problem caused by taking localization of the definition and categorization of refugees.

The discord with the 1951 Convention's refugee definition generates the most critical problem, diverse interpretation, and perception of "who are the refugees" in South Korean refugee policy mechanism and the public's misunderstanding in conceptualizing them. Shortly after the Yemeni refugee incident in South Korea in 2018, the people's movement calling for the abolishment of the refugee act to withdraw from the 1951 Convention and 1967 Protocol conveniently collected 710,000 petitions. The use of words, "fake refugees" was phenomenal and was used even by the main ministry in charge, the Ministry of Justice (MBC, 2018). The authority, which supposed to regulate and implement refugee policy impartially via a clear policy mechanism and principles internalized from the global refugee regime's principles and norms, was also influenced by the securitized discourse and used these words while stressing a more traditional security-based approach in refugee status determination but took limited efforts in crystallizing the current problematic cloud-like refugee policy.

The pattern in the refugee status recognition process also failed to fully comply with the principles of the international refugee regime. It showed inconsistent policy implementation, unethical practices, and long and tedious refugee status determination procedures. The average time for an application to receive refugee status took three to five years, or more than 20 years including court decisions (Hankyoreh, 2018b); large volumes of typically 415 cases per staff in 2018 were assigned to the first instance authority (NANCEN Refugee Center, 2019); the interview transcripts of 55 applicants from Arabic spoken regions were falsified (Hankyoreh, 2019; NANCEN Refugee Center, 2020b).

Researchers cited the refugee status determination process's procedural problems in the legislative act (Kim Hwan Hak and et al., 2016) already before the Yemeni refugee incident. These problems include the long procedure without a specified time frame, an absence of necessary legal clause concerning appeal procedure, and port of entry applications' confusing procedure which is argued to be beyond the delegated authority granted to the MOJ for deciding referral or non-referral decisions not the procedure for airport applicant. The lack of accelerated procedure for promptly granting and rejecting refugee status or not limiting abusive applications with multiple attempts without new changes in the application content

causes further procedural implementation failure. The appeal procedure without specified clauses for conditions for appeal but it rejects most applications at first instance burdens the administrative and judicial system.

Also, the entitlements and benefits of refugee status applicants and refugees are problematic and fail to comply with the 1951 Convention. This is because large lack of efforts to clarify clauses that concern roles covered by other ministries. In particular, protection focusing on rationing, public relief, and medical support is problematic as there is no policy instrument available for a recognized refugee to invoke these rights and the linguistic obstacles and limited awareness at the provincial level serve as another main challenge to refugees (Choi You & Kwon Cheery, 2017, p.152).

The main department in charge of the refugee status determination procedure and legal entitlements are covered by the MOJ while the welfare should be separately discussed with the MHW and education with MOE and labor opportunities with MOEL, but there is no central authority that covers areas of cooperation across all ministries for the refugees' entitlements. Additionally, the fragmentation of individual laws restrains refugees from receiving the services in the refugee act and no entity functioning as one integrated channel for social service (Kim Dae-keun, et al., 2018, p.42). The government and legislative institution failed to take responsive action during the Yemeni refugee incident as none of the 11 legislative draft acts passed the national assembly and only minor changes were realized in lower-level laws in presidential decree and ordinance of the Ministry of Justice<sup>15</sup>.

Since its enactment of the refugee act in 2012, the administration developed presidential decree and an enforcement rule of the refugee act in 2013 (promulgate number 24628) in areas of delegated authority of the Ministry of Justice is pronounced in the legislative act, but the contents of the Refugee Act remained the same. The current refugee legislative act is composed of three key legal documents: the refugee act enacted in 2012, the presidential decree enacted in 2013, and the MoJ's enforcement rule of the refugee act with minor changes.

### **3.4 Debates on the Cause of South Korea's Policy Failure**

Then why did the South Korean refugee policy fail? There are diverse explanations, but the legislative process and politicization of the refugee agenda are two main

---

<sup>15</sup> The inaction of the South Korean government is further illustrated in the following subsection in Chapter III Subsection 3.4.

explanations illustrated in academic literature. This section finds the answer to the reasons why South Korean refugee policy failed using the existing literature and argues the degree of ambiguity in refugee policy as an important point of departure in understanding policy failure in South Korea.

Examining the legislative process is one way to anticipate the foreseen policy failure from the beginning. Although the original draft bill in 2009 was developed to resolve the refugee determination process's problems in promptness, transparency, and fairness and to improve entitlements of refugees and asylum seekers (National Assembly Bill, 2009, bill number 4927). This policy objective is originally drawn by drafters, human rights lawyers association, and legislators were not reflected in the final legislative act adopted in 2012 (promulgation number 11298). The sudden input of MOJ in the security-based approach was strong due to an absent commitment or support of neither party to the act or 'political ambiguity' that appeared at the National Assembly in the final enactment stage (Soh and Lund, 2014, p.24). The civil society actors and human rights lawyers' efforts to strengthen the human rights of refugees nor the process precision for RSD was inclusive in the final legislative act (Soh and Lund, 2013); therefore, amendment discussion of the Act was already being held even before the legislative act entered into force (Kim Chulhyo, 2012, p.4; Oh Byoung-Hoon, 2015).

In addition to the flawed democratic legislative process, it appears that the government's effort in cooperation with the UNHCR was meager as none of the UNHCR's recommendations to the draft was reflected in the final refugee act. After the initial announcement of the draft of the refugee act of South Korea, the UNHCR advised a clear and comprehensive regulation of all areas of protection and recommended avoiding gaps with the 1951 Convention to lower the ambiguity in the law for clarity and efficiency of the national legal system (UNHCR, 2009, p.2). Unfortunately, the UNHCR's recommendation was not also accepted by the Korean government and lacked efforts to apply the global refugee agency's feedback in the final legislative act.

Therefore, thirteen draft bills were prepared by legislators on the amendment of the Refugee Act since the enactment of the refugee act, but none received enough support for the actual legislative amendment.<sup>16</sup> The main

---

<sup>16</sup> There are 13 legislative drafts were prepared to strengthen clarity, transparency, and humanitarian protection before the Yemeni crisis in South Korea in 2018: nine legislative drafts were prepared in 19 National Assembly terms (bill draft number 1917759(2015.11.16), 1916483(2015-08-19), 1915663(2015-06-19), 1915649(2015-06-18), 1915648(2015-06-18), 1915234(2015-06-18),

objective of these bills was to develop an objective and systematic refugee status determination process and to improve human rights conditions for recognized refugees and applicants in policy implementation (Kwon Han-yong, 2016, p.242-43) just like the original draft.

What strengthened this inaction or political ambiguity was the public indifference to the refugee agenda in the internalization process. The refugee issue was not a focal point of discussion to the ordinary Korean citizen until the Yemeni refugee crisis occurred in 2018. The refugee agenda and refugee phenomenon are viewed as a remote incident that would not have a direct impact on Korean society prevailed nationwide. During the government's enactment of the Refugee Act in the domestic legal system in 2013, the discussion on the Refugee Act was led by key specialists (Seol Dong-Hoon, 2018, p.41) as the drafters, composed of human rights lawyers groups with the assistance of UNHCR, who brought the discussion of refugee rights to the National Assembly (Soh and Lund, 2014, p.18). There was "little to no society-wide discussion" on the agenda even in 2015 when the 600 Syrian asylum seekers were granted a humanitarian stay permit (Choi & Park, 2020, p.7).

In addition to the problematic legislative process as the cause of the failure, the South Korean government's willingness to accept refugees from the beginning has always been skeptical. After the amendment of the immigration act in 1993 after signing the Convention in 1992, the government rejected all 50 applicants from 14 countries of asylum seekers for the first six years (Lee Shin-wha, 2019b, p.4). It was not until 2001 that the government granted a first refugee status even when it was a decision pressured by the international community to take more active actions in addressing global refugee issues by the time it joined the UNHCR board member (UNHCR, 2003). The continued reluctance to accept refugees may have previously signaled an alarming call for policy failure.

Hence, six years after the failure of reaching legislative act amendment due to public and legislators' apathy of the agenda, and the limited political will to address the policy failure in accepting refugees, the Yemeni refugee incident occurred in May 2018.

The South Korean citizens perceived fear and constructed threat over around "a handful" 552 Yemeni's asylum requests in Korea (Foreign Policy, 2018)

---

1915234(2015-05-22), 1912039(2014-10-14), 1910934(2016-05-29); four drafts were prepared in the 20th National Assembly term (bill draft number 2000303(2016-06-17), 200385(2016-06-21), 2001982(2016-08-31), 200225(2016-12-01).

and protesters showed hostility towards the refugees calling them “fake refugees.” The Yemeni refugees seeking asylum in Jeju brought the public hostility and outrageous voice towards the refugee-led to anti-refugee protests and resulted in securing more than 710,000 signatures in the national petition movement calling for the abolishment of the domestic Refugee Act.

The main problem noticeable was the poor management of the government and relevant authority in the refugee application process in its peak of applications in 2018. Before the Yemeni refugee incident, the application process already entailed problems such as delays and pending procedures in the system due to understaffed and under-resourced MOJ. Therefore, the refugee recognition process previously exhibited problems that indicated the necessity for systematic changes in the legislative act for a functioning policy mechanism with clear policy goals and policy instruments.

With an inept preparation of the government for this sudden influx of asylum applications, this Yemeni refugee incident has quickly “politicized” the refugee agenda (Lee Byoung-ha, 2018). The problems of illegal economic migrants issue affected the “discriminatory perception” of the government policy and this unsolved issue affected people’s view to associate ideas of refugees with illegal migrants who are likely to commit crimes (Oh Byoung-Hoon, 2015, p.90). Others cited that this rather sudden anti-refugee sentiment of Korean citizens in the Yemeni refugee crisis in 2018 was erupted by the fear of destruction of national identity and securitization discourse (Lee Shin-wha, 2019b) mixed with an economic situation where disgruntled youth suffering from economic hardship and unemployment developed their outrageous attitude as they perceived refugees are free-riders and would add their tax burdens (Choi & Park, 2020, p.17) rather than an entity deserves international protection.

This politicization of the refugee agenda has not only affected the legislators to immediately prepare ten draft bills only in the year 2018 to amend the refugee act but also polarized views amongst people and policy-makers. Their diverging approach was uncompromisable to address the problem and resulted in legislative gridlock for failure to reach a consensus for amendment bill at the National Assembly. For the inability in the legislative process, minor changes were made in the presidential decree and the ordinance of the ministry of justice.

### **3.4.1 Rule of Law and Democracy**

The German government’s strong willingness to acceptance of refugees and its

long history of refugee acceptance puts the German asylum act ahead of the South Korean refugee act; among other factors aside from its political will, rule of law may explain the German refugee policy success and South Korean policy failure.

South Korea's legislative institution featuring a centralized presidential system of government has a relatively short history of democracy and rule of law due to military dictatorship which lasted until 1987. Rather than "rule of law", the modern Korean society was accustomed to the "rule of man" during the military regime and despite the steady progress in rule of law improvement, it still entails problems of the weak legal system and flawed democracy. The weak legal system and challenges in fully implementing rule of law in its democracy and its market economy exist in South Korea and one of the problems is the "deep-rooted cultural indifference to the rights of the individuals" (Mo & Brady, 2010).

This is also reflected in the rule of law indicator<sup>17</sup> in 2012, the time for the enactment of the refugee act, showed 0.98 (ranked 36) compared to Germany 1.66 (ranked 16) in the same year (World Bank, 2012); the democracy indicator in the same year, one of which indicator confirming legislative dominance and measures in overall democracy of the country, as Germany received overall 8.34 (rank 14) while South Korea gained 8.13 (rank 20) but with high fluctuations in the index by year (Economist, 2012).

The relatively low rule of law is reflected in the legislative process prepared for the refugee legislative act in South Korea in contrast to high rule of law in Germany. Germany has quickly adopted the definition of the refugee act immediately after signing the 1951 Convention and internalized the norms and principles into domestic asylum act immediately; however, South Korea's refugee act still is not fully aligned with the 1951 Convention even after almost three decades since signing the Convention in the year 1992. Additionally, Germany has adopted legislative changes via a legitimate and democratic legislative process and enabled the changes to be quickly adopted by all relevant authorities in charge by adopting changes in forms of 'omnibus legislation' in Asylpaket I, II, and IntegrationsG during the Syrian refugee acceptance in 2015. This is an effective legislative amendment method made to amend relevant laws within the federal government and with local state altogether in one bill. In contrast, South Korea failed to take a legislative response during the Yemeni refugee incident and only

---

<sup>17</sup> World Bank uses the perceptions of the extent to which agents have confidence in and abide by the rules of society, and particularly examines the quality of contract enforcement, property rights, police and courts, and finally the likelihood of crime and violence for the index of the rule of law.

minor changes were adopted in the refugee law not via delegated legislation in the presidential decree and MOJ ordinance, not in the democratic legislative process.

Germany's rule of law is well reflected in its legal system and decision-making process in the political institution. Germany is a federal democracy, and the German constitutional body of the most presence is *Bundestag*, the federal diet, which oversees the legislation and government's work while high autonomy is granted to each region. The federal legislative power is divided between the *Bundestag* and *Bundesrat*. *Bundestag* is elected directly by the people and has the power of exclusive jurisdiction, but some areas are held concurrent jurisdiction with the states, and *Bundesrat* represents the governments at the state level.

Basic Law also recognizes the autonomy of municipalities of the land constitutions in 16 states for their organizational and legislative sphere in Article 28 and guarantees the two basic rights by the federation. The refugees and expellee subject, in particular, are governed as an area of the concurrent legislative (Art 74-(1)-6), and the distribution is decided with the consent from the *Bundesrat* (Art 119 Basic Law). This quota arrangement system in Germany started in 1992 after the enactment of the Asylum Procedure Act in acceptance of refugees prompted by Yugoslav Wars and this arrangement is operated still today.

Unlike Germany, South Korea's success for cooperation between central and provincial government is limited as it still has not realized full-fledged local autonomy. The provincial assembly was re-institutionalized again in 1991 after June Democratic Movement, and with the restoration of the full-fledged local autonomy in 1995, it held the first nationwide local election for provincial and metropolitan government leaders but strengthening the cooperation between local and central government while granting autonomy has become a grand mission since then but the Korean institutional system is still characterized by the strong centralized government system. And there is no refugee-related article in areas of cooperation for central-provincial government unlike the German system, which divided this via quota system from the early history of refugee acceptance. Additionally, the refugees' status and related articles were not adopted in a legislative package for supposedly less important value despite it is a legislative amendment method used in the South Korean legislative system for an amendment requiring two or more laws at the same level including social security act and other relevant individual laws with the refugee act.

Germany made changes as a result of the legislators' democratic



legislative process while South Korea’s legislative was via delegated legislation from the beginning and many contents were left to specify with the large absence of specificity and skeleton legislation. In short, the rule of law and institutional mechanism concerning refugee policy is summarized as below.

**TABLE 4. RULE OF LAW IN COMPARISON**

	<b>Germany</b>	<b>South Korea</b>
<b>Rule of law indicator (2012)<sup>18</sup></b>	1.66 (rank 16)	0.98 (rank 36)
<b>Government system</b>	Federal Parliamentarism / High Autonomy to local state	Presidentialism / Low Autonomy to the local provincial government
<b>Refugee related articles in central-regional government</b>	Basic Law 119; Asylum Act 74(1) subs 6	X
<b>Refugee law enactment and amendment method</b>	Legislative Process for Enactment and Amendment and Omnibus bill was used for cross-ministry legal changes	Delegated legislation in adopting refugee act which lacked clarity of policy instruments and delegated legislation in adopting an amendment

Created by the author.

### **3.4.2 Comparison of the Refugee Legislative Act Structure**

This part briefly touches upon the refugee-related legal framework of Germany and South Korea. The German legal framework is composed of five main legislative acts concerning the procedure, reception conditions, detention, legal entitlements, and benefits protection by each refugee’s status: Asylum Act, Residence Act, Asylum Seekers’ Benefits Act; Basic Law; Act on Procedures in Family Matters and Matters of Voluntary Jurisdiction. In addition to these legislative acts, it has adopted two implementing decrees and administrative guidelines and regulations for the specific contents in residence and employment (AIDA, 2016, p.10). Germany’s legal framework for migration is a result of the government’s efforts in specifying the EU law and international refugee law in large in multiple structures into the domestic legal sphere in the internalization process (Karpen, 2018, p.84).

First, Basic Law enshrined the rights of the politically persecuted to seek asylum in Article 16a. The right to asylum is based on the country of origin of the asylum seekers and the federal German government with the consent of the Bundesrat, specifies another third state that cannot invoke this right basis of “their

<sup>18</sup> The World Bank. Worldwide Governance Indicators. 2012. Used this year for comparison as this was the year for South Korea’s enactment of the Refugee Act.

laws, enforcement practices and general political conditions” in which presumed not to be persecuted on political grounds (Art 16a Cause 2 and 3). An applicant from the safe country of origin can provide evidence to justify the presumption to invoke asylum on grounds of political persecution (Art 16a Clause 3).

In addition to the constitutional clause in the right of asylum, Asylum Act provides specified procedures and protection for the refugees. It was renamed from the Asylum Procedure Act adopted in 1992, but in 2015 with the adoption of Asylpaket, it changed the name of this act, as the purpose of the act shifted its aim to provide asylum protection. The AA is composed of 11 chapters with 90 articles and two Annexes concerning safe origin (Art 29a) which aimed to distinguish asylum seekers from these countries of origin in a fast-track procedure. Their applications, however, are rejected as manifestly unfounded unless facts or evidence is given concerning their persecution grounds while safe third state countries<sup>19</sup> (Art 26a) cannot invoke the right to asylum.

Another important article is Residence Act which specifies residence regulations for the refugees with other foreigners and subsidiary protection, the tolerated, and asylum seekers rights are protected in the law. In particular, *Duldung*, or the tolerated refugees, is regulated under this law in cases when the refugee status recognition is rejected on protection grounds.

And finally, the ASBA act is a comprehensive act concerning the benefits of the asylum seekers and their status during the stay, and the tolerated and national ban on deportation can also request benefits as asylum seekers.

---

<sup>19</sup> Safe third country concept is applied to asylum seekers who entered from a third country in which 1951 Refugee Convention and the European Convention of Human Rights has been ensured, and all EU member states with Norway and Switzerland are the safe third countries. This concept was originally applied to constitutional asylum only, but it extended to other protection forms of refugees since 1996 and therefore, when an asylum seekers travelling from a safe third country is not considered for protection from asylum application, international or national protection and refused to enter the country (Art 18 (2) subs 1)), unless the government is responsible for processing an asylum application for example, issuing a visa (Art 18 (4) subs 1).

**TABLE 5. GERMAN LEGAL FRAMEWORK FOR REFUGEES**

<b>Title of the act</b>	<b>Legislative Objective</b>
Basic Law 1949 (German constitution)	To accept Eastern German refugees after World War II
UN 1951 Convention	West Germany signed it as an original signatory
Federal Expellee Law (Bundesvertriebenengesetz) 1953	West Germany to regulate ethnic German refugees and expellees in neighboring countries and East Germany after WWII
Asylum Procedure Act Asylverfahrensgesetz 1992	Enacted after Yugoslavia War to control the large influx of refugees after German unification by developing asylum procedures to safe countries of origin
= Asylum act (asylgesetz) 2015 <sup>20</sup> , 2016 amendment	Renamed Asylum Procedure Act in Asylpaket II in 2016 March and adopted laws to deport criminals; 2016 July amendment include labor and social integration
Residence Act 2015 (aufenthaltsgesetz)	Renamed 2004 Foreigners Act(AuslG); Amendment after Asylpaket II
Asylum Seekers' Benefits Act	Amendment after Asylpaket II in July 2016
Two regulations	
-Regulation on residence	Amendment after Asylpaket II in 2016
-Regulation on employment	Adopted after Asylpaket II in 2016

Created by the author. Source: Informationsverbund Asyl und Migration; Kim, 2018.

**TABLE 6. SOUTH KOREAN LEGAL FRAMEWORK FOR REFUGEES**

<b>Title of the act</b>	<b>Legislative Objective</b>
1951 Refugee Convention and 1967 Protocol	Adopted by South Korea in 1992
1993 Immigration Control Act and 1994 Enforcement Decree (2008, 2010 amendment)	Internalized the key principles of the Convention in the domestic legal system after becoming a signatory state -2008 amendment: humanitarian status holders definition, work permit, refugee support facility installment -2010 amendment: Reservation clause for reserve execution of forced eviction
2012 Refugee Act (2014, 2016 changes but contents the same)	Stand-alone legislative act concerning definition, entitlements, determination procedure
2013 Presidential decree (changes in 2018 and 2019)	Regulate the laws which are delegated to the administration
2013 the MOJ ordinance (changes in 2018 and 2019)	Procedure and forms in areas delegated to MOJ

Created by the author. Source: Korea Ministry of Government Legislation

<sup>20</sup> Strengthened recognition process and adopted speedy expulsion of applicants from safe countries of origin in Asylpaket I

South Korea's current legal framework is rather simple as the refugee act is composed of the stand-alone refugee act with two lower-level laws in the presidential decree and MOJ ordinance, which specify the refugee act in the areas of delegated authority. The South Korean refugee act is composed of six chapters with 47 articles, less than half the volume of the German asylum act. Since it was promulgated in July 2013, it was amended in March 2014 due to changes in immigration law, and slight changes in December 2016 while the contents remained the same. The ordinance and presidential decree, which were promulgated on the same day as the refugee law, were amended two and three times separately, but the contents remained the same overall not affecting conspicuous changes.

### **3.4.3 Point of Departure: Ambiguity in Refugee Policy**

While many paid attention to the politicization and legislative process, Song Young Hoon pointed out problems within the current refugee policy mechanism in the refugee acceptance process, namely the unorganized coordination between the relevant actors, including the central government, relevant ministry in charge, the local government of Jeju, and civil society (2019, p.27) and argued that this poor management also attributed to social uneasiness. The thirteen legislative amendment attempts at National Assembly before the refugee incident in 2018 did not address the problem in advance. When it was least prepared in terms of both policy implementation and passive attitude of the government, the country underwent a citizens' perceived crisis of refugee. This unorganized coordination is believed to be caused by the ambiguity in the legislative act and ambiguity prevented the government to respond to the crisis promptly as prevailing ambiguity in overall areas of the act, as well as the large absence of policy instruments and program to implement inevitably challenged to tackle the problem. Therefore, this research focuses on the high ambiguity of the legislative act and its impact on policy failure of the Korean refugee policy.

Ambiguity is an important factor to analyze in states' refugee policies for the policy structure of a state's refugee policy development in which they continued to wrestle with global refugee regime's principles and norms area and national sovereignty principles, combined with the recent mixed migration flows inevitably generates ambiguity in policy. However, clear policy instruments and objectives are integral for successful policy implementation (Matland, 1995).

Considering the problems of Korea's refugee act discussed in this chapter, highlighting the delegated legislation and largely absent legal clauses during the internalization of the global refugee regime into the domestic legal sphere, these problems identified here all come down to the importance of realization of rule of law and democratic legislation process in lowering ambiguity. And in comparing the high ambiguity of the South Korean refugee act with the German case, a successful parliamentary democratic system, which adopted changes via systematic omnibus bills to avoid legal contradiction to introduce the changes, meaningful policy implication, are drawn in the following three analysis chapters.

# **Chapter IV.**

## **Comparative Analysis I: Refugee Definition and Categorization**

### **4.1 Introduction of the Chapter**

Why is a refugee perceived differently by people in South Korea and Germany while they are both the signatory party of the 1951 Convention, which entails a common definition of refugees? Why does Germany have a rather limited problem in identifying “who refugees are” by its people, policy executors, and the government while South Korea’s disagreements over the definition of refugees quickly politicized the agenda of refugees? The discussion on “fake refugees out” and “fake versus genuine refugees” further resulted in Korean citizens signing 710,000 petitions for the abolishment of the refugee act. The main department in charge, the MoJ, used the term “fake refugee” while announcing its ambition to sort out the fake refugees from the genuine refugees. This chapter aims to examine the degree of ambiguity demonstrated in the definition of refugees and its categorization to answer these questions in two countries’ refugee legislative acts.

The South Korean refugee act does not retain the original wording of the refugee definition as it is enshrined in the 1951 Convention by adding “recognizable” before well-founded fear of persecution generates patent ambiguity. Not recognizing all stages of refugee applications by excluding asylum seekers and nor clarifying standards and procedure in granting humanitarian status further generates latent ambiguity in categorization. This localization of the international refugee norms and principles causes ambiguity driven policy failure. In contrast, Germany fully endorsed the international refugee regime’s definition of refugees and even elaborated the concept of persecution in its law in diverse aspects. It includes non-state actors as agents of persecution and adding today’s persecution environment such as gender-based violence as a ground of persecution.

As an old dictum writes, “when putting the first button in a shirt wrong, then every button will be wrong,” localization in the Korean refugee act, which contradicts the 1951 Convention’s refugee definition and categorization not only affected conceptualization of refugees stressing objective aspect in recognition process by policy executors but also affected the public view that refugee is something to be “recognized” through refugee status determination process. Scholars also cited the problematic aspect of its translation of the well-founded fear

of persecution and the principle of the benefit of the doubt not being fully applied in the assessment process (Kim Jong Chul, 2014).

This also prevailed in the discussion simply that Yemeni refugee using a smartphone does not look refugee and accused they are “fake refugees” or economic migrants for their simple appearance and was apathetic on their plight for persecution (Christian Daily, 2018). The localization of the international refugee law’s definition and categorization is believed to be the main cause of the lack of common understanding of who refugees are in the Korean society by the people and policy executors. Thus, the South Korean refugee act first needs to address this problem and amend relevant legal clauses in the legislative act to meet the international refugee regime’s norms to resolve South Korea’s long-standing ambiguity in refugee policy.

#### **4.2 Definition and Types of Refugees in the 1951 Convention**

The Convention defines refugees and their reasons for seeking asylum in cases their country of origin fails to provide proper protection. The Convention’s definition of refugees is below:

*“owing to 1) well-founded fear of being persecuted 2) for reasons of race, religion, nationality, membership of a particular social group or political opinion, is 3-1) outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or 3-2) who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”* (Art 1A (2) The 1951 Convention).

This definition is composed of three main elements in recognizing a refugee but problems may arise with the wording of “well-founded fear of being persecuted” due to the lack of a universally accepted definition of persecution. Therefore, this subjective evaluation of the degree of fear of persecution to be considered as a refugee is a challenging task for contracting state’s policy executors to maintain a balanced stance in clearly identifying a refugee to grant one need international protection via proper status and entitlement.

First, the element “well-founded fear of being persecuted” entails both subjective and objective aspect as the “fear of a relevant motive is subjective” for its involvement of a subjective element of the applicant, while the interviewer of the refugee status determination process on behalf of the host country, in the judgment of the applicant’s situation based on objective country of origin report.

Therefore, an “objective situation” should be taken into consideration together with the subjective aspect in determining his status (UNHCR, 2019, p.19). The definition of persecution is not specified on purpose. The UNHCR spelled out that it was not to confine persecution on certain grounds and advised contracting states to interpret persecution bound to vary (UNHCR, 2019, p.21). This is because the refugees face difficulties in access to evidence thus, requiring standard proof and evidence to be recognized as a refugee in a fully evidence-based process just like another immigration process was not the objective of the 1951 Convention in protecting them. Hence, the UNHCR urges interpretation of persecution that asylum seekers claim in varying degrees in the assessment of the validity of evidence and credibility of their statement (UNHCR, 2019, p.21).

While it is easy to command its street-level bureaucrats to maintain a balanced stance of the two aspects in the refugee status determination process, it should be noted that realizing a complete harmony in recognizing a refugee in such a manner can be a challenging task in practice. This evident knowledge is often overlooked because many forget that refugee policy is not only a political choice and ethical judgment of a state, but is also a subject of policy implementation (Zolberg, 1989, p.4). For this reason, the UNHCR strongly encourages the signatory states to the 1951 Convention to fully accept the refugee definition in the legislative act to avoid ‘conflicting interpretation and undermining legal certainty’ (UNHCR, 2009, p.3).

The localization of the global refugee regime’s definition of refugees in the process of internalization into the domestic legal sphere, or the unilateral refugee definition, can lead to unfair treatment of refugees in the process and can further undermine the common efforts at the international refugee framework. The host countries with the more generous interpretation would receive more applications, while the countries with the more strict interpretation would receive less application (Carens, 1997, p.26-27), which does not lead to fairly shared responsibility among states. And one of the ways to clear the confusion is to make efforts in defining the key terms, such as persecution in many aspects for constructing a better understanding of the refugee in policy practice.

In addition to a general definition of refugee, the 1951 Convention also specified categories of refugees in “assimilative path,” in which a contracting state define the nature of rights and the benefit of the refugees’ core rights in its incremental attachment system (Hathaway, 2005, p.156). A contracting state tends



to provide more rights and benefits following this assimilative path for those who become more like the state's citizens. Depending on their stage in the assimilative path, the scholars interpret that Convention identifies three main types of categories of refugees: simple presence, lawful presence, and lawful residence (Lassen et al., 2004, p.34-35, p.187-188).

Following Lassen et al's categorization of the 1951 Convention's refugee (2004) "Simple presence" applies to asylum seekers who have not yet admitted to the host country following immigration rules, but by virtue of their status as refugees, benefits are extended to them regardless of their lawful or unlawful presence in the territory. "Lawful presence" and "lawful residence" are applied after their admission in immigration rules, but while lawful presence is with temporary purposes, the lawful residence is a stay in which more than purely temporary purpose, but no permanent settlement. The Convention refers to them using "residence", "residing", "lawfully staying" and "habitual residence". The definition and categories of refugees recognized in the 1951 Convention establish the principles for this analysis. The next section will discuss the internalization process of the international refugee norms in its domestic legal system in South Korea and Germany and confirms the degree of ambiguity demonstrated in each act.

### **4.3 South Korea: Localization and Its Spill-Over**

This section examines the problems of definition and categorization ambiguity in the Korean refugee act and discusses the process of internalization of the international refugee norms and principles. The Korean refugee act shows patent ambiguity in definition as it did not accept the original definition of the 1951 Convention by adding "recognizable<sup>21</sup>" before well-founded fear of persecution while there is no detailed illustration on how to perceive persecution in the act. This localization of the international norm, or "patent ambiguity," caused by discord with the international refugee regime, is analyzed in how the path dependence of the policy practice has influenced its definition in the enactment of stand-alone refugee act in weighing the traditional security-based approach. It also

---

<sup>21</sup> Definition of refugees in original wording in Korean: "난민"이란 인종, 종교, 국적, 특정 사회 집단의 구성원인 신분 또는 정치적 견해를 이유로 박해를 받을 수 있다고 **인정할** 충분한 근거가 있는 공포로 인하여 국적국의 보호를 받을 수 없거나 보호받기를 원하지 아니하는 외국인 또는 그러한 공포로 인하여 대한민국에 입국하기 전에 거주한 국가(이하 "상주국"이라 한다)로 돌아갈 수 없거나 돌아가기를 원하지 아니하는 무국적자인 외국인을 말한다. (Refugee Act, Art 2(1))

shows latent ambiguity in categorization for not recognizing asylum seekers and nor clarifying standards and procedure clause in granting humanitarian status.

The Korean definition of refugee in the legislative act, which is recognized as the official legal base, localized the definition but this localization of definition does not appear in English definition. Adding the word “recognizable” before well-founded fear of persecution, unlike the original definition inevitably stresses more responsibility of an asylum applicant to prove and demonstrate evidence in the objective ground that is enough to be recognized by the authority. By taking a more traditional security approach in definition, recognizing a refugee is more strictly interpreted and applied in overall areas of refugee policy by requiring an applicant to prove their persecution with evidence so that policy executors can “recognize” in its legislative act. Stressing objective and security-centered aspect in the recognition process serves as the main reason for the lack of common understanding of refugees in South Korean society. Korean refugee legislative act seemingly puts the refugees need to be recognized to be a refugee, unlike the original Convention’s definition. And this host country based traditional security approach further constructed the public’s threat perception to the refugees and people’s movement to the petition to abolish the refugee act and to pull out of the 1951 Convention quickly spread.

The problem was the South Korean government and the legislators further politicizing the refugee agenda instead of trying to address the problem by showing a clear will to address the problem, which is the main reason for staying in this chaotic response. Surprisingly, upon the people’s petitions, some legislators even prepared a draft bill to abolish the refugee act (Legislative draft Number 2014365, 2018-07-12). This legislative draft was in place immediately after the petition movement and it further grows securitization of the refugee agenda. A total of 11 proposals were prepared after the Yemeni refugee incident, and they all commonly stressed distinguishing “fake refugees” from the real refugees. None has reached a consensus at National Assembly, and the problematic definition of refugee in South Korea’s legislative act remained unchanged. This quick shift of nature of the refugee agenda from overall public indifference to politicization is argued in this research to be caused by the ‘lost in diffusion’ (Willems & Van Dooren, 2001), occurring via localization of the norm instead of taking full endorsement of the international refugee regime’s definition.

This tendency in taking a traditional security-based approach was present

ever since the South Korean government became a signatory party of the 1951 Convention in 1992 prior to the enactment of the stand-alone legislative act in 2012. The Korean contextualization of the refugees in the recognition process is reflected in the government legal documents back then as well, and it clearly put more weight on an applicant's responsibility in proving their objective evidence to be recognized (Hwang Pill Kyu, 2010). This was also influenced by the discussion of refugees, which has been inseparable from debates on "illegal migrants" as the people's perception of refugees often associates with an illegal migrant who is highly likely to commit crimes (Oh Byoung-Hoon, 2015, p.90). Following this pattern of path dependence, this approach remained in the system and affected the definition of the refugee in the process of developing separate refugee law in 2012.

This path dependence of traditional security approach in putting objective aspect in the recognition process of the Ministry of Justice shaped the ideas of refugees in the same approach in the final stage of developing legislative act in 2012 due to lack of neither party's full support for the draft bill (Soh and Lund, 2014, p.24). Their input resulted in adding "recognizable" before well-founded fear of persecution (Art 2(1) Refugee Act) despite the UNHCR's recommendation to take full acceptance of the refugee definition and to retain original wording on Korea's legislative draft and not to reformulate in different wording to avoid conflicting interpretation to the global refugee norm (UNHCR, 2009, p.3); therefore, the localized definition of the refugee began from its past experiences prior to the enactment of the Refugee Act.

The localization of refugee definition in South Korea has other spill-over effects in causing confusion in refugee policy in both refugee status determination process and protection of their legal entitlements for its difficulties in clearly locating a refugee status applicant. It also generates problems in exclusion of refugee (Art 19 of the Refugee Act) and cessation (Art 23 of the Refugee Act), which the UNHCR also advised the ROK government to amend on their legislative draft in 2009 (UNHCR, 2009, p.4), which will be discussed in the next chapter.

Moreover, categorization of refugees also took localization as it does not recognize the pre-asylum application stage of asylum seekers or simple presence in the Convention in South Korean refugee system, and two out of three categories<sup>22</sup> in South Korean refugee policy exhibits ambiguity on what decides certain

---

<sup>22</sup> Three categories are: humanitarian status holder; refugee status applicant; recognized refugees. The only category without ambiguity is the recognized refugees are the applicants received a refugee status as they meet the requirement of refugee definition in the Korea's refugee act (Art 2(2)).

category. Humanitarian status holders<sup>23</sup> are people who did not meet the criteria of a refugee at first instance but are granted a temporary permit to stay as they face “inhumane treatment of punishment or other situations that seriously harm public safety such as violence, aggression, domestic disputes, mass human rights violation and torture (Art 2(3)).

Defining humanitarian status in the current system generates latent ambiguity in granting the status for an absent necessary clause and this ambiguity also contributes further procedural burdens to the Ministry of Justice by adding an unnecessary process for refugee protection. The MOJ has delegated authority in specifying the factors for humanitarian status (Art 2(3)) to be evaluated in the appeal process, but this inclusive neither in presidential decree nor MOJ ordinance. As there is no standard regulation, a humanitarian status is inevitably granted unilaterally in the current system.

Besides, unlike the German system, which grants a protection status among the four positive decisions based on the degree of persecution at first instance, South Korea grants this status at appeal process held by the Refugee Committee after its initial rejection on their application at first instance. Going through the second round of evaluation for a temporary permit hinders the refugee protection process and serious burden considering the shortage of staff and resources.

The refugee status applicants<sup>24</sup> (Art 2(4)) definition also exhibits latent ambiguity caused by an absent necessary clause on the action in determining an applicant from the asylum seekers. First, the definition of refugee status applicants combines all of the applicants a) whose application is being reviewed in the RSD; b) whose application was rejected or appeal against the rejection of refugee status was dismissed; c) person’s administrative appeal is ongoing in the same category (Art 2(4)). By containing the diverging stages in the application process into one

---

<sup>23</sup> A person who is given permission to stay on humanitarian grounds refer to an aliens to whom subparagraph 1 does not apply for whom there are reasonable grounds to believe his or her life or personal freedom may be egregiously violated by torture or other inhumane treatment or punishment of other circumstances, and who is given permission to stay by the MoJ in accordance with the presidential decree. (Article 2(3) of the Refugee Act)

<sup>24</sup> A person who has applied for refugee status refers to an alien who has filed a refugee status application and to whom any of the following applies: (a) The person’s refugee status application is being examined under the refugee status determination procedure; (b) The person’s refugee status application was rejected or the person’s appeal against the denial of refugee status was dismissed, and the filing period for an appeal, administrative appeal or administrative litigation concerning the decision has not expired; or (c) The person’s administrative appeal or administrative litigation concerning the denial of refugee status is ongoing. (Art 2(4) of the Refugee Act)

category of “refugee status applicant”, this inevitably generates burdens in both judicial and administrative process in recognition and appeal procedure. For example, an applicant with first application submission are in the same category of the applicant as an applicant going through an appeal procedure whose application expiration is dismissed, but litigation has not yet expired or an applicant with an on-going administrative appeal (Art 2(4) of the Refugee Act). Identifying an application faces difficulties for this lack of clause concerning different categories for an applicant with multiple refugee applications and an applicant with an ongoing appeal or dismissed application to be in the same category burdens the institutional structure and required a systematic reform.

Therefore, the UNHCR also raised concerns on this ambiguity as not clearly indicating what action is deemed as refugee status application may cause inapplicability of the applicants’ non-refoulement principle (UNHCR, 2009, p.5). It further advised that “a person express an intention, either orally or in writing to [organization in charge] to seek protection against return to a territory (UNHCR, 2009, p.5)” should be considered as a factor that distinguishes the two categorizations, and a standard example can be Germany’s case which mentioned in its legislative act as an act of “[initial] asylum application.” The German system is action based recognition of refugee status applicant as it recognizes an applicant “whose proceedings are pending after filing an application” (Art 63a subs (1) of German asylum Act). This comparison shows the clear confusion in determining whether the person can be categorized as an applicant or asylum seeker who has not yet filed an application in the system.

Another problem is the South Korean refugee act not including simple presence as a type of refugees in the system. The Convention recognizes the simple presence to provide due protection of asylum seekers who did not go through an immigration rule, but only for the virtue of their status as a refugee (Lassen et al., 2004, p.34-35, p.187-188). However, the South Korean refugee act deliberately did not include the process to avoid responsibility in protection for simple presence. In contrast, Germany progressively takes responsibility for the protection of asylum seekers by recognizing them in the system and provides their legal protection and benefits equivalent to asylum status applicants. As previously discussed the refugee applicants’ benefits act is named as “asylum seekers benefits act” for this comprehensive protection, not asylum applicant. This will be further discussed in the next analysis chapter in the procedure and legal entitlement.

To summarize, the South Korean refugee act in definition entails both patent and latent ambiguity problem. First, the refugee act is an apparent localization of the refugee norm in defining a refugee based on traditional security perspective in examining the applicant's well-founded fear of persecution with additional weight putting more responsibility on an applicant in proving their objective evidence that is enough to be recognized as a refugee. This is patent ambiguity which shows a clear discord with the international refugee norm, and it is a result of path dependence of its policy practice began since the government signing the 1951 Convention in 1992, before the enactment of a stand-alone refugee act in the domestic legal sphere in 2012. The localization of the norm continues to influence the government taking a strict interpretation as well as limitations in developing a common understanding of refugees. Due to this patent ambiguity, policy executors inevitably face challenges by putting more emphasis on objective evidence, unlike the 1951 Convention's original intent.

The second problem concerns the latent ambiguity caused by an absent necessary legal clause in defining diverging types of refugees which affects the unilateral interpretation of refugees by policy executors and consequently generates other problems such as the ability to clearly distinguishing an applicant who needs international protection from a well-founded fear of persecution with multiple applications, and on-going appeal, or dismissed but their temporary permit has not yet expired. This ambiguity entails spill-over effects and negatively affects the recognition process and inconsistent implementation in granting a refugee status, and finally leads to problems in providing protection and entitlement to the right identification of their categorization amongst different categories.

By bearing these main problems discussed in the South Korean refugee legislative acts, the next section illustrates an ideal case of the low ambiguity in defining refugees in the German legislative act which can serve as a model to consult for Korea's legislative amendment.

#### **4.4 Germany: Full Acceptance and Systematic Categorization**

In this part, it aims to examine how the German asylum Act demonstrates low ambiguity in conceptualizing "who refugees are" in its policy mechanism. It first discusses the historical development of the refugee act, and its political motivation is drawn in 2015, and the people's response concerning their understanding of refugees. In particular, the German refugee policy's definition and conceptualization of the key term, persecution, which serves as a crucial term

without the proper definition of the term as the absence of clause for these can lead to unilateral policy implementation for its abstract nature of the concept, as it did in South Korea's case. And finally, its specific categories of refugees will be examined, which fully endorsed the 1951 Convention and are drawn clearly thanks to the elaborated conceptualization of persecution

What is the dynamic behind Germany's taking a generous stance towards refugees and how could it experience little to no problems in the peak of applications? The comprehensive categorization of the refugees and the elaborated definition of refugee and persecution provide a clear explanation for policy executors to implement uniformly without confusion in identifying a certain type of refugees in their application process. Such definition and categorization are developed from its historical experiences and its full endorsement of the international refugee regime from the beginning.

This also affected the citizen's well-received perception of the right to asylum as a constitutional right in Germany. West Germany included the right to asylum in Article 16 in the Basic Law in 1949, which became a federal constitution, and this is followed by internalization of the definition of refugee following the 1951 Convention in the domestic legislative act which the government retained its original wording immediately after signing it. It further specified acts, grounds, agents of persecution in its Asylum Act (Art 3a,b, and c) which allows the policy executors to clearly examine their types of persecution in the domestic act to grant the type of protection needed using the specified conceptualization of persecution in its act. The German government's defining efforts concerning the rather can be an abstract concept of persecution served as an apparent advantage in categories of refugees and the categorization follows the Convention's assimilative path while the protection is granted based on the degree of persecution as elaborated in the legislative act.

The historical development of the ideas concerning the refugees in the German legislative act is provided for the contextual background of its generous interpretation of refugee definition. The generous interpretation in an understanding of refugee has been argued that it was the historical burden of the Nazi regime that affected the German legal system in developing this distinctive asylum practice in the aftermath of World War II (Lucassen, 2005). While Article 116 of the Basic Law includes the right to citizenship for persons with German heritage indicated signs of adherence to the ethnic behavior remained at the

beginning of its history in defining asylum and grounds of persecution. Since then, the German asylum Act also fluctuated over time from generosity to strict measures.

In the 1980s, for example, it devised ad hoc administrative measures in preventing and prohibiting asylum applicants from working immediately upon arrival in 1980s (Martin, 1998). Then, in 1992, Germany had to distinguish asylum and refugee in its large influx of refugees fleeing the Balkan wars in 1992 right after the unification. Due to anti-foreigner rhetoric and social ambiance back then in the governing party and ethno-cultural understanding of German citizenship intensified in their claims, political rights such as voting was denied to immigrants but only to ethnic Germans from Eastern Europe (Faist, 1994).

Since then, Germany removed the right to asylum to an applicant who came from a safe third country or non-persecuting states and rejected their applications automatically as “manifestly unfounded” when there are no grounds of persecution and regularly updated a list of safe countries of origin via the legislative process. Overtime they distinguished the asylum from refugees and granted asylum status in political persecution by state actors (Basic Law Art 16a subs. 1) while developing diverse aspects and grounds of persecution. In 1999, the nationality law was amended and Germany’s self-denial of immigrant country shifted to the de facto immigrant country as it added persons of immigrant background in the categorization of residence (BMI, 2008).

In the 2005 immigration law, the government provided a green card program to guest workers, and new policies were introduced to enhance the integration of immigrants including refugees (Ilgit and Klotz, 2018, p.616; Martin, 2004). The motivation may be looked at differently depending on the time period of the action of the government, but it is clear that the German government had devised and elaborated the refugee policy and its mechanism in its four large historical refugee influxes.

Throughout this history, while specified entitlements of refugees changed over time, the definition of refugees in the German asylum act remained intact. Even more, the government specified clauses concerning persecution and used this to prioritize the refugees with a more well-founded fear of persecution to receive procedure faster since 1992 (Art 27 subs. 1, Asylum Procedure Act). Germany has already developed a system of distinguishing people from a “safe third country” or “non-persecuting state” to whom the right to asylum is not applicable (Lucassen, 2005, p.153-154; Martin, 1998). It then, continuously elaborated the refugees in the



principle of assimilative path, while adding legal bases for fast expulsion in cases for criminals and applicants that are likely to be rejected asylum and refugee status in the legislative act.

And recently, Germany's massive influx of Syrian refugees in 2015 began with Chancellor Angela Merkel's speech of "yes, we can," in which she motivated the Germans by announcing that the German constitution's humanitarian principles are something to be proud of (The Federal Government, 2015c). At the peak of the Syrian refugee crisis, Chancellor Merkel sent trains to accept thousands of people in inhospitable Hungary (DW, 2015a), and suspended enforcement of the EU Dublin regulations temporarily, as it requires asylum claims to be originally made in the first safe transit country including Hungary itself, an EU member state.

Germany has also experienced several challenges in the discussion of refugees in distinguishing the good and bad refugees and faced political shift after the Syrian refugee crisis. Germans perceive the good refugees are from the war-torn areas such as Syria, but bad and economic migrants to refugees from the Balkans (DW, 2015b), however, as the wording reflects, it did not reach an extreme end like other neighboring countries or South Korea. Also, the process of acceptance of a large number of refugees since 2015 affected the AfD to win third-largest seats in the federal parliament election in 2017; however, the discourse does not show any signs of securitization or calling to radical actions of the government and remain in the normal politics as previously mentioned (Ilgit & Klotz, 2018) and no petition movement calling for the abolishment of the refugee act or citizens requesting constitutional amendment appeared as it did in South Korea. Despite the growing securitization in overall Europe, the discourse on refugees remained in normal politics implicitly in the sphere of courts, legislatures, political parties, and other institutions (IBID, p.617).

This rather generous definition and understanding of refugee; however, is viewed as a decision drawn from Germany's economic superiority or clichés of Germany for acting in a calculating and arrogant manner by its neighbors. France claimed that Germany's motivation is from the country wanting to capitalize demographically and economically from immigrants (Heinrich Boll Stiftung, 2016). Germany provides rights to stay remain in the territory even to an applicant, *Duldung*, whose application is rejected when they show high success in integration. This suggests rather a negative perception of its neighbors concerning the motivation in accepting refugees, but the government's management in accepting

refugees and the citizens' perception and the management in the normal political sphere rather than rapidly jumping into securitization of the refugee discourse serves a valuable lesson to South Korean refugee policy.

Germany's strength is particularly strong in narrowing down persecution on various grounds by defining acts, grounds, agents of persecution, and protection in the legislative system (Asylum Act Art 3 a, b, and c). While the acts of persecution were included as an attempt to internalize the European Convention for Protection of Human Rights and Fundamental Freedoms Article 15(2), it further elaborated by adding other forms of persecution by taking the recent global refugee phenomenon into account by and added (Art 3a subs (2)): 1) acts of physical or mental violence including sexual violence; 2) legal, administrative, police or judicial measures in discriminatory manners; 3) disproportionate or discriminatory prosecution or punishment; 4) denial of judicial redress; 5) prosecution or punishment for refusal to perform military services; 6) acts gender-specific nature or directed against children. In addition to defining the persecution on this ground, it also added agents of persecution beyond state level including parties, organizations, and other non-state agents as an agent of persecution (Art 3 c). With this comprehensive definition of who refugees are, who, why, and how they are persecuted, Germany is taking a generous interpretation in granting refugee status in its legislative system and this is also reflected in the overall policy mechanism for protection and entitlements.

Germany categorizes diverse types of refugees following the 1951 Convention's three typologies of the assimilative path: simple presence, lawful presence, and lawful residence in its domestic system. German Asylum Act recognizes simple presence as "asylum seekers" before their application through the immigration system in the law (Art 63a AA) and also recognizes lawful residence of those who passed through immigration rules in the system in "asylum applicants" after filing their application (Art 63a subs(1) AA). Germany grants positive decision or the "lawful residence" provides protection applying the well-illustrated definition of persecution in its act and apply it to an applicant's persecution grounds: "asylum protection" are granted to people with political persecution by state actors (Art 16a subs. 1 Basic Law); "refugee protection" to applicants with a well-founded fear of persecution to those who meet the Convention's definition (Art 3 subs.1 Asylum Act); "subsidiary protection" to someone with serious harms from both governments, non-government actors (Art 4

Asylum Act); lastly national “ban on deportation” to who is in considerable danger to life, limb, or liberty when returned (Art 60 subs.5 and 7 Residence Act). And finally, when none of these protections is seen as admissible for their application, a negative decision is granted to them and they receive a temporary suspension of deportation (Art 60a Residence Act). And in cases of the secondary application without fundamental changes, they recognize their application in a separate category under the law (Art 71 AA).

As this specified and easily comprehensible categorization of refugee indicates, Germany’s crystal clear definition of refugee, persecution, and narrow types of refugee which aligns with the assimilative path of the 1951 Convention was an apparent strength in understanding who are refugees face little to no problem in policy implementation as well as developing a comprehensive system in recognition procedure and entitlement of refugees to be discussed in the following analysis chapter.

#### **4.5 Sub-Conclusion**

This part discussed the degree of ambiguity exhibited in the definition of refugees and persecution, as well as categories in South Korea and Germany’s legislative act. It analyzed South Korea’s high ambiguity problems, which followed path-dependent ‘lost in diffusion’ behavior (Willems & Van Dooren, 2001) since becoming a signatory state of the 1951 Convention in 1992, prior to the enactment of the stand-alone refugee act in 2012. The localization of the refugee act in South Korea is argued here to be the main cause of the lack of common understanding of who are refugees in the society and policy executors weighting traditional security-based approach in conceptualizing refugees.

First, localization of the definition of refugee caused patent ambiguity for discord with the international refugee regime weighting the traditional security approach. It seemingly looks refugees’ needs to be recognized by society to be one and enough evidence should be provided to be recognized as one according to the act. Thus, refugees without objective evidence are likely to be rejected in the refugee status determination process while the 1951 Convention stresses a balanced stance by taking both subjective and objective elements into account. The next analysis chapter will discuss this problematic pattern at first-instance authority.

Second, the lack of necessary legal clause generates latent ambiguity concerning the action that determines a refugee status applicant from asylum seekers while the latter is not recognized in the system. This ambiguity problem in

categorization also jeopardizes an applicant's non-refoulement principle and can potentially violate asylum seekers' rights at port of entry, or airport and port.

The last problem is the lack of legal clause concerning standards of evaluation for humanitarian status, which happens at appeal after the initial rejection of their application at first instance. The humanitarian status holder procedure was supposed to be developed in the presidential decree of MOJ ordinance as an authority was delegated in the refugee legislative act in specifying the act to the MOJ ((Art 2(3) of Refugee Act), but it has been negligent in specifying the clause since its enactment of the Refugee Act in 2012. Thus, its large discretionary range in the decision is likely to lead to inconsistent policy implementation to grant humanitarian status applicants at appeal while burdening judicial and administrative institutions.

Germany fully accepted the Convention's definition immediately after becoming the signatory state of the Convention in 1951 and the German constitution's recognition of the right to asylum also affects the people's perception to believe the right to asylum as an integral universal right as a human being that is enshrined in its constitution. German Asylum Act showed efforts in defining the rather ambiguous concept of persecution by defining act, agents, and grounds in legal clauses. This definition of persecution can help the street-level bureaucrats to identify refugees of varying degrees of persecution and their situations. It also elaborated categorization following the Convention's assimilative path based on types of refugees and recognizes asylum seekers, asylum status applicants, four positive decisions, and negative decisions. The positive decision clearly follows the varying degrees of persecution defined in its act. It further includes multiple applications in a separate category to identify a secondary application without changes. While their motivation in generous interpretation of refugee is driven by its historical burden of Nazi regime or calculated action to receive benefits via accepting immigrants as part of their scheme, Germany's little to no problem in identifying refugees is clearly an advantage in overall policy implementation in recognition procedure and entitlement as well. And this resulted in uniform policy implementation and clearly identifying diverse types of refugees in practice.

As a result of this analysis, the comparison of the German Asylum Act and South Korean refugee act in its refugees and persecution definition, and categorization are drawn in the table below by putting the 1951 Convention as an international standard of the norm for comparison.

**TABLE 7. CONTRAST OF AMBIGUITY  
IN DEFINITION AND CATEGORIZATION**

<b>Ambiguity Evaluation in Definition of Refugees and Persecution, and its Categorization</b>			
	<b>1951 Convention</b>	<b>Germany Asylum Act</b>	<b>Korea Refugee Act</b>
<b>(Y)</b> <b>Policy success / failure</b>	N/A	<b>Policy Success</b> - Removed confusion between asylum and refugees in 1992 and currently no problems caused by the ambiguity of the definition	<b>Policy Failure</b> - Limited common understanding of refugee - Traditional security centered approach - Confusion in applicants and humanitarian status
<b>(X-1)</b> <b>Ambiguity in refugees definition</b>	Art 1-(a)	Art 3(1) and (4) Full acceptance of 1951 Convention and specified categories of refugees	Art 2(1) [patent ambiguity] localization of the international norm (Discord) (“recognizable” well-founded fear of persecution)
<b>(X-2)</b> <b>Ambiguity in persecution definition</b>	X (intended ambiguity not to limit the scope of persecution)	Art 3a,3b,3c Comprehensive types of persecution(3a) and grounds (3b) and agent(3c)	X [latent ambiguity] the traditional approach of an objective element of the persecution underlined
<b>(X-3)</b> <b>Ambiguity in categorization</b>	<b>Simple presence</b> (subject to the jurisdiction and physical presence)  <b>Lawful presence</b> (after admission to the territory following immigration rules)  <b>lawful residence</b> ( refugee’s stay is more than temporary but not permanent including “residence, residing, lawfully staying, the habitual residence”)	<u>&lt;Asylum-Seekers&gt;</u> Who have not registered by the Fed Office as asylum applicants(Art 63a) <u>&lt;Asylum applicants&gt;</u> Whose proceedings are pending after filing an application(Art 63a subs(1)) <u>&lt; Positive Decision&gt;</u> <b>Asylum Protection</b> (Basic Law Art 16a subs.1) political persecution by the state <b>Refugee Protection (Fluchtling)</b> (Art 3 subs.1) for well-founded fear of persecution meeting the Convention refugee <b>Subsidiary protection</b> (Art 4) for <i>serious harms</i> from both state and non-state <b>Ban on deportation</b> (Residence Act Art 60 subs. 5 and 7) in considerable danger to life, limb, or liberty when returned <u>&lt; Negative Decision&gt;</u> <b>Temporary suspension of deportation(Duldung)</b> (Residence Act Art 60a) <b>Secondary application</b> (Art 71a)	<b>Simple Presence</b> (asylum seekers) [latent ambiguity] (absence)  <b>Refugee status applicant</b> (Art 2(4)) initial refugee applicant; rejected or dismissed applications and appealed but appeal or litigation decisions not expired; ongoing administrative appeal [latent ambiguity] in lacking explanation on what action determines a refugee status applicant <b>Humanitarian status</b> (Art 2(3)) [latent ambiguity] in large discretionary as standards of evaluation in granting this status at appeal is not included in the act after authority is delegated to MOJ. <b>Recognized refugees</b> (Art 2(2)) Recognized as a refugee by meeting criterion of the Refugee Act

# Chapter V.

## Comparative Analysis II: Refugee Recognition Procedure

### 5.1 Introduction of the Chapter

How did Germany and South Korea respond to the crisis in refugee status determination procedure in receiving the largest applications in its history? Why Germany and South Korea demonstrate a different pattern in the process in terms of average time and practices? This chapter compares procedural ambiguity of the two countries and contrasts the government's response to the refugee crisis in improving the efficiency of the procedure in Germany while politicization of the refugee agenda and the prevailing procedural ambiguity even prior to a large number of asylum applications in 2018 resulted in the state's inaction in South Korea.

The average time in first instance decision making in the South Korean refugee policy system took an average of seven months, but the time for applicants in receiving protection and refugee status took three to five years, or 20 years in varying degrees in 2017 prior to Yemeni refugee incident, (Hankyoreh, 2018b). This is because of high rejection in the first instance which means time for protection takes longer as an application oftentimes goes through administrative and judicial court.<sup>25</sup> In 2018, the number of positive decisions at the first instance recorded less than 1% while the number of cases received per staff at the first instance is four times more than Germany during its highest peak in 2016. In addition to this time-consuming pattern, the MOJ's unethical practices are reported concerning falsifying records to reject<sup>26</sup> 55 Arabic speaking applicants against their words (Hankyoreh, 2019).

This problematic procedure is caused by ambiguity in the legislative act. The largely absent contents of policy instruments for procedural implementation, and the limited resources such as competent officers and interpreters attributed to

---

<sup>25</sup> In 2018, first instance recognition was made to 99 applications out of 16,173 cases; in 2019, 79 cases out 15,452 applications. Majority cases go through appeal, administrative procedure in order to be recognized. (Nancen Refugee Rights Center, 2020a)

<sup>26</sup> In 2017, it has been revealed by NGOs that the MOJ fabrication was extensive and applicants from Sudan, Libya, Morocco, Egypt in 2015-2016 was assigned by the same interpreter without access to audio record or video record and same answer and questions were written in the transcript: "Did you actually experience what you wrote in your refugee application?" "No, I did not, I got the information from the internet." "Is what you wrote in your refugee application true?" "No, it is not." "Why did you apply for asylum?" "I want to stay and work in Korea." "Will you face any persecution or danger if you return to your home country?" "No, I will not." (Nancen Refugee Rights Center, 2020a)

the policy problem. In addition, scholars have pointed out problems with at the Port of Entry, which the Ministry of Justice has ambitiously initiated in 2012 the process of developing the refugee act, is argued to be beyond its authority as the delegated area of authority concerns developing an airport procedure, not referral and non-referral decisions (Jeong Kum Sim. 2018; Kim Dae-keun, 2015; Lee Il, 2016, p.74; Shin Okju, 2018, p.239). Moreover, the absence of accelerated procedure to sort applications systematically while not limiting multiple applications that can be considered as abusive contribute to the slowdowns and tedious procedure process (Kim Hwan Hak et al., 2016).

Despite these problems, however, the polarization of view in addressing the refugee problem among legislators and the government's inaction resulted in no fruitful solution. The MOJ sent few more examiners to the regional immigration office in Jeju, after realizing the seriousness of the Yemeni refugee incident, as it was only two staffs prior to the incident to handle at least 550 cases, and announced its plans for the RSD process (MOJ, 2018b). But this plan is currently made in *ad hoc* nature with no systematic amendment in the legal system and only minor changes were made in the presidential act and ordinance of the MoJ via delegated legislation (MOLEG 2019 a, b).

Unlike Korea's stagnant recognition process pattern and unethical practices, Germany reduced the average evaluation period of seven months in the period 2012 to 2015 to five-month in 2015 during the Syrian refugee crisis (Asylum in Europe) via systematic reforms made in two consecutive legislative packages named as "Asylpaket I"<sup>27</sup> in 2015 and "Asylpaket II"<sup>28</sup> in March and July 2016 (Ahn Sung Kyoung, 2017). Germany tripled the number of staff in 2016 for first instance authority (AIDA, 2016, p.14) for speedy RSD procedure. Two legislative packages cover regulations for an accelerated procedure; fast-track expulsion in cases for inadmissible, exclusion applications and criminals; arrival registration and certificate for undocumented asylum seekers at the border (Ahn Sung Kyoung, 2017). The German federal government's strong willingness to acceptance of Syrian refugees allowed quick legislative changes and its cooperation with private entities and economic actors resulted in the refugee agenda remaining in normal politics' institutional mechanism in decision-making (Klotz & Ilgit, 2018).

---

<sup>27</sup> Asylpaket I is in English translation "Asylum Procedure Acceleration Act"

<sup>28</sup> Asylpaket II is "Law to Introduce Accelerated Asylum Procedure"

Germany also entailed some minor procedural problems such as a decision held not by the person who interviewed, but at a remote location (AIDA, 2016, p.11) which the government estimated approximately 25% of the asylum cases were conducted in such manners in 2015 (The Federal Government, 2015b). This suggests the challenges surrounding the right balance between the speedy recognition of refugee status while maintaining the due process for refugees' procedural rights. Nonetheless, this practice is not generated by ambiguity problem and this information is not available in South Korea's case as a civil society focus on tackling more imminent problems to address for basic policy operation.

The difference in terms of time, personnel resources for first instance authority and reported unethical practices can be summarized as below:

**TABLE 8. COMPARISON OF PROCEDURAL PATTERNS**

	<b>South Korea (2018)</b>	<b>Germany (2016)</b>
<b>Unethical practice</b>	MoJ examiner fabricated 55 interview cases of applicants <sup>29</sup>	25% decisions by a decision-maker in a remote center (BAMF authority) <sup>30</sup>
<b>Average time for first instance decision and court decisions</b>	Average 7 months for first instance decision in 2017 while receiving protection three to twenty years for three rounds of court procedure <sup>31</sup>	Average 7 months was reduced to 5 months including appeals <sup>32</sup> *cases that passed merit test can appeal
<b>Case assigned per staff</b>	415 cases (2018) 239 cases (2019) <sup>33</sup>	108 cases <sup>34</sup>
<b>Positive decisions</b>	0.6% (at first instance) 3.6% (at appeal) <sup>35</sup>	62.4% (at first instance) 12.1% (at appeal) <sup>36</sup>
<b>Negative decision</b>	22.8% (at first instance) 15.66% (at appeal) 14.25% (termination of appeal including withdrawal) <sup>37</sup>	37.6% (at first instance) 31.7% (at appeal) 56.2% (termination of appeal including withdrawal) <sup>38</sup>

<sup>29</sup> See: Hankyoreh, 2019.

<sup>30</sup> See: The Federal Government, 2015b

<sup>31</sup> See: Hankyoreh, 2018b.

<sup>32</sup> See: Asylum in Europe

<sup>33</sup> In 2017 the number of first instance at MOJ was reported 37 officers to examine 9,942 applications while at its peak of application had 39 officers for 16,173 applications. This increased to 65 officers in 2019 in examining 15,542 new applications. See: Nancen Refugee Rights Center, 2019a

<sup>34</sup> In 2015, the number of first instance officers at Main Department in Charge, BAMF, was reported more than 2,000 staffs while this tripled in 2016, with 6,891 officers in refugee recognition determination process for 745,545 applicants; then, they increased the number to 7,800 in 2017 see: AIDA. 2015. P.13; AIDA. 2016. P.14; AIDA. 2017. P.14

<sup>35</sup> Among 16,173 applicants, it recognized 99 cases in first instance; 13 refugee status, 508 humanitarian status, and 6 family unity and 6 administrative appeal are granted at appeal. See: Nancen Refugee Rights Center, 2020b, P.7.

<sup>36</sup> 2016 Data for positive/negative decisions: BAMF, Asylum Statistics December 2016, 2; Federal Government, Reply to parliamentary question by The Left, 21 February 2017, 63. Quoted in p.9 AIDA, 2016.

<sup>37</sup> Among 16,173 applicants, 3,688 received rejection at first instance; 2,532 at appeal; 2,305 for



## 5.2 Procedural Principles and Negative Decisions in the International Refugee Regime

The international refugee regime developed procedural principles and negative decisions. The 1951 Convention did not specify the recognition process (Art 9) but included negative decisions for cases of Cessation, Exclusion, and Cancellation and in a later attempt in 1977 at the 27<sup>th</sup> Session of the Executive Committee of the High Commissioner's Programme. Seven main requirements in procedures were developed (UN General Assembly, 1977) that a state should comply with in the refugee status determination procedure (IBID). In addition to the seven procedural principles highlighted in the international refugee regime, the Convention's three clauses concerning negative decisions have an impact on the estimated time for determination procedure as they can lead to an accelerated procedure which can save time, resources, and administrative burdens in the process.

First, the Cessation clause discusses the situations when refugee status is ceased and no longer necessary for the protection or justified (Art 1C of the Convention; UNHCR, 2019, p.29 para 111). Exclusion discusses the conditions of application to be excluded and the person is not eligible to seek asylum, although positive criteria are met (Art 1D, E, F; UNHCR, 2019, p.17, para 31). Lastly, the Cancellation clause was not included in the original Convention, but the UNHCR recognizes this practice in cases when an applicant should have not been recognized as a refugee in the first place due to misinterpretation of material facts that are essentials to the outcome of the determination process and one of the exclusion clauses would have been applied, if it had all the relevant facts known (UNHCR, 2019, p.100, para 4). All the three negative decisions should be narrowly interpreted<sup>39</sup> in the specific conditions.

By taking the three negative decision clauses of the 1951 Convention and

---

termination including withdrawal. See: Nancen Refugee Rights Center, 2020b, P.7.

<sup>38</sup> See: 2016 Data for positive/negative decisions: BAMF, Asylum Statistics December 2016, 2; Federal Government, Reply to parliamentary question by The Left, 21 February 2017, 63. Quoted in p.9 AIDA, 2016.

<sup>39</sup> For example, Cessation (Art 1C) is applied when an application falls under any of the following conditions: a) voluntary re-availment of national protection; b) voluntary re-acquisition of nationality; c) acquisition of a new nationality and protection; d) voluntary re-establishment in the country where persecution was feared; e) nationals whose reasons for becoming a refugee have ceased to exist; f) stateless persons whose reasons for becoming a refugee have ceased to exist. Exclusion clauses (Art 1 D,E,F) is applied when an application falls in any of the three groups below (UNHCR, 2019, p.34, para 140): a) group one: already receiving UN protection or assistance (Art 1D); b) group two: not considered to be in need of international protection (Art 1E) due to their attachment to the possession of the nationality of that country but not formal citizenship; or c) group 3: considered not be deserving of international protection because of their war crimes, common crimes, acts contrary to the principles and purposes of the UN (Art 1F).

the seven principles made in 1977 into account, this research now examines the degree of ambiguity in the legislative acts of South Korea and Germany by putting the international refugee regime's development as a minimum standard for this comparison.

**TABLE 9. PROCEDURAL PRINCIPLES  
OF THE INTERNATIONAL REFUGEE REGIME**

<b>Summary of the Seven Procedural Principles in 1977</b>
1) <b>The competent officials</b> (immigration or border control police) at the border or in the territory and their possession of clear instruction in dealing with refugee cases and are required to act following the principle of nonrefoulement and to refer cases to a higher authority
2) <b>Necessary guidance</b> concerning the following procedure should be explained to an applicant
3) Clearly identified <b>single central authority</b> with responsibility in an examination of the applicant's request and decision in the first instance
4) <b>Necessary facilities:</b> competent interpretation; right to contact UNHCR to be informed
5) When recognizing an applicant as a refugee, they should be properly informed and issued with <b>documents certifying their status</b>
6) When rejected, the authority should give <b>a reasonable time to initiate an appeal</b>
7) <b>Permission to remain in the country</b> to an applicant for his initial request by the competent authority or during his appeal to a higher administrative authority or the court; unless authority established an application as clearly abusive.

### **5.3 South Korea: Constant High Procedural Ambiguity and State Inaction**

South Korea's stand-alone refugee act was progress compared to the immigration control act in 2003, which did not separate a category of asylum applicants, as this ambiguity had excluded applicants with an ongoing administrative appeal from the non-refoulement principle (Kim Hwan Hak, et al., 2016, p.5-9). By categorizing asylum applicants and developing a prohibition of the refoulment clause in the Refugee Act, the legislative act strengthened the protection of refugees' rights. Additionally, the MOJ's efforts in collecting and using evidence favorable to an applicant in the decision process are inclusive in the act (Art 9 Refugee Act).

However, the current refugee act still entails ambiguity problems as follows. First, the recognition process in the South Korean refugee Act derived from the perfunctory structure of the act caused by "latent ambiguity" as an absence of necessary clauses for the Port of Entry procedure. Second, the lack of clauses concerning asylum seekers leaves legal limbo for not being able to locate and identify asylum seekers before the actual application procedure on the territory. Moreover, clauses concerning dividing roles between central and provincial

government are lacking while applications are received at provincial offices as well. And finally, it lacks specified information about what part can be omitted when an applicant falls into certain criteria while the authority to omit is delegated to the relevant authority.

It also demonstrates “patent ambiguity” for the use of non-binding legal language use of “may” which provides large discretion to the relevant authority concerning the negative decision on the contrary to the binding language use of “shall” in the 1951 Convention. Besides, the limited resources serve as the main challenge for accessibility of applicants to interpretation service, which jeopardizes their procedural rights.

Previous research also sheds light on the current refugee act’s procedural problems in the following areas in procedure (Kim Hwan Hak and et al., 2016): first, the long procedure without specified time frame; second, an absence of necessary clause concerning appeal procedure and rather problematic nature of the interview process at Port of Entry applicants as this is beyond the delegated authority granted to the Ministry of Justice to handle, as it decides referral or non-referral decisions not developing procedure for airport applicant; third, the lack of accelerated procedure for promptly granting and rejecting refugee status without limiting applications with multiple attempt without new changes in the application content while this can be considered as abusive despite the international refugee regime allows this practice; lastly, the appeal procedure does not have specified clauses concerning conditions for appeal while first instance application is largely rejected, which therefore, is no surprise in burden to administrative and judicial system.

Before delving into the legislative act, it should be noted that there have been no systematic legislative changes in the Refugee Act and the procedural ambiguity problem remained unaddressed since its first adoption in 2012 until the Yemeni refugee incident in 2018. This is because none of the legislative drafts were passed to make a systematic amendment of the procedural ambiguity, but only minor changes were made in the delegated acts in the presidential decree and ordinance of the Ministry of Justice after 2018. First, the presidential decree was amended in December 2019 to create a legal basis in issuing notice document for non-referral decisions at Port of Entry (Art 5(7)); required to issue a receipt upon a request for an appeal immediately at provincial immigration offices (Art 9(2)); delegation of authority to directors and heads of immigration and foreigner support

centers (Art 24) for better accessibility of refugee support (MOLEG, 2019b). The enforcement of the Ministry of Justice was amended at the same time and this was to introduce uniform notification forms in cases of rejection to referral decisions at Port of Entry (Art 3(2) of Ordinance); developed a reading copy registration form and reading material archive in digital means (Art 7) for applicants' convenient accessibility to their data (MOLEG, 2019a). These changes were made via the delegated legislation in the presidential decree and the ordinance of the Ministry of Justice suggests the procedural rights be informed were not protected properly at the port of entry and in rejection of decisions prior to this change.

A competent officer and interpreter are required in the process but due to the limited number of competent interpreters and constrained budget for the service, the basic communication between the refugees and the Ministry of Justice's first instance authority faces a huge problem. The MoJ assigned only 65 staff at first instance for interview and decision making. While this is still progress and increase compared to the 38 temporary task force team examiner in 2018, it falls short as a staff would receive 208 cases a year, twice as many as the German first instance staff (See TABLE 8). Besides, the presence of an interpreter is guaranteed in Article 14 of the Refugee Act, but the falsified interview transcript record explained earlier shows serious issues; thus, it raised further concerns of violation of procedural rights of applicants.

A refugee in South Korea can file an application at the Port of Entry and on the territory. "Port of Entry" determines whether an application has merit to be referred to; "regular RSD procedure", a procedure for an applicant after entering the country or foreigners already residing in South Korea. While the German system recognizes asylum seekers' stage prior to the application submission and the BAMF authority registers them and provides arrival certificate upon pre-register at each regional immigration centers, South Korea does not recognize the pre-application stage in the system and this can lead to other problems in jeopardizing applicants' procedural rights at port of entry and the government's inaccessibility of information to this legal limbo, as applicants who arrived on territory but whose application have not yet been filed, are not identifiable. This can be detrimentally mixed with the unresolved illegal migrant problems as there is no time restriction in their filing an application.

## 5.4 Germany: Lowering Ambiguity via Legislative Reforms

Germany's clear definition and categorization of refugees and specified grounds of persecution served as an advantage in a systematic refugee status determination procedure and entitlements. Germany further reduced room for procedural ambiguity in the process of acceptance of Syrian refugees in 2015. Germany also experienced a rather lengthy asylum procedure in average seven months in 2012-2015 (The Federal Government, 2013; 2014; 2015a) but creating an accelerated system to sort out refugees who needed protection and promptly granting them a recognized status. Also, it separates applicants from safe countries of origin or inadmissible applications to increase the efficiency of the system. This reduced waiting time for the Syrian refugee application procedure while applicants from safe countries of origin received the process less urgently<sup>40</sup>.

The clear policy objective derived from strong political willingness in acceptance of refugees reduced ambiguity further via policy programs. Germany had a clear goal in protecting refugees with a well-founded fear of persecution promptly, while removing applicants whose conditions fall into exclusion application criterion. The legislative package AsylPaket II introduced accelerated procedures to certain groups of asylum seekers since March 2016 (AIDA, 2016, p.11). A new clause was added in imposing sanctions for asylum seekers, who do not file their applications intentionally within the given date, are abandoned to begin application procedure (AIDA, 2016, p.11). At the same time, exclusion criteria were amended in March 2016 to exclude asylum seekers when sentenced to a prison term of at least one year for offenses of bodily harm, sexual assault, or robbery (AIDA, 2016, p.12). To quickly respond to large volume of applications, 20 new arrival centers were established in 2016 and they handled arrival registration, identity checks, interviews, and decision-making (AIDA, 2016, p.11).

And, three major policy instruments are developed to pursue this policy goal: special procedure at the airport; registration procedure for arrival and registration; EASY Quota system for initial distribution and accommodation of asylum seekers.

---

<sup>40</sup> The Average duration of the procedure including legal procedure in main two country of origin

	2013	2014	2015	2016
All	7.2	7.1	5.2	7.1
Syria (fastest)	4.6	4.2	3.2	3.8
Pakistan (slowest)	15	15.7	15.3	15.5

Source: The Federal Government. 2014, 2015a; 2016a

## **5.5 Comparison of Procedural Ambiguity**

### **5.5.1 Pre-Asylum Application Stage and Port of Entry Procedure**

Airport procedure was ambitiously added as a special procedure with the adoption of the stand-alone domestic refugee act in South Korea in 2012 (Art 6 RA), but lacking policy instruments concerning the specified procedure and conditions in the legislative act, or the skeleton legislation which did not make efforts in policy contents more details, resulted in policy ambiguity. Unlike Germany's case which is an accelerated procedure of an actual refugee status determination procedure that completes it within 19 days including an administrative appeal by a competent single authority, South Korea operates it as an additional step for application, while the pre-asylum application stage is not recognized in the system. This only decides whether the prospective applicant has merit to be referred to as a refugee (Art 6(3)). This part focuses on two procedural problems: the procedural ambiguity issue caused for latent ambiguity in not recognizing pre-asylum application in South Korea by contrasting with the German system, which registers asylum seekers in the centralized system before their actual refugee status application; second procedural ambiguity deals with ambiguity in airport procedure.

South Korea does not recognize the pre-application stage or "simple presence" in part of the recognition system. This ambiguity also restricts refugee status applicants from receiving protection as the boundaries between refugee status applicants and asylum seekers are not clearly drawn. Thus, the categorization ambiguity affects the procedural ambiguity, which jeopardizes asylum seekers at the airport and on the territory from receiving their procedural rights in the refugee status determination process as well as their entitlement to be applied non-refoulement principle. This can also affect the government's inability to control migrant flows accurately as the prospective refugee status applicants who entered the territory but plans to file an application after entering, are not included in the current system. Thus, the asylum seekers in the legal limbo are not identifiable in the current system and this can be detrimental considering the unresolved illegal migrant problems as there is no time restriction in filing an application for them, unlike the German system.

On the contrary, the first stage is the pre-asylum procedure in Germany and recognizes 'simple presence' in the system, unlike South Korea. This is the procedure from arrival to application and it deals with their arrival, initial accommodation distribution, and interviews. All individuals are registered as

asylum seekers upon arrival at the reception center and their personal information, photographs, and fingerprints are collected and recorded in the AZR system (Central register of foreigners). This information is accessible by the relevant person in charge (BAMF, 2016, p.8.). The asylum seekers can use their arrival certificate to request benefits including accommodation, medical treatment, and food (IBID). After registration, the asylum seekers are initially distributed to a state among the 16 states. This redistribution is held based on the information of asylum seekers mainly their country of origin and persecution grounds provided to the facility, which decides their temporary or long-term purposes of stay (BAMF, 2016, p.9). This initial allocation is carried out by using EASY system for accommodation facility quota based on each state's population and tax revenues (Art 45 AA), which is a sophisticated system in dividing roles between federal and state governments in refugee matters. Then, an application can be filed at the arrival center or branch of BAMF with an interpreter present, and required information for the procedure is received in their native language (BAMF, 2016, p.11).

The second problem is the airport procedure in South Korea which is claimed to be a violation of the clarity principle of a policy and not the area that delegate authority in presidential decree procedure (Art 6(3) Refugee Act), as this does not include conditions for the non-referral decision but only procedures. Scholars have pointed out that the Port of Entry procedure requires systematic changes for these reasons (Jeong Kum Sim. 2018; Kim Dae-keun, 2015; Lee Il, 2016, p.74; Shin Okju, 2018, p.239). And some of them argued that non-referral decisions shall be regulated by legislative act, and not presidential decree or lower-level laws (Shin Okju, 2018, p.239; Lee Il, 2016). The procedure after the non-referral decision is not regulated as well and the process to expulsion (Kim Hwan Hak, et al., 2016, P.23) and clarity whether a non-referral decision can also file an appeal with an administrative court is not inclusive (Im Hyun, 2014, p.41) in appeal clause in the legislative act (Art 21).

In contrast, Germany's port of entry procedure is deemed as an actual refugee status determination process and takes 19 days including an appeal procedure at the airport with a required facility (AIDA, 2016, p.35).<sup>41</sup> Asylum

---

<sup>41</sup> Necessary facilities are established in Berlin, Dusseldorf, Frankfurt, Hamburg and Munich in the end of 2016.

seekers from a safe country of origin<sup>42</sup> or a foreigner without proof of means of identification should file an asylum application at the border on territory and are sent to the branch office of BAMF for interview immediately (Art 18a subs 1) and this process is identical to regular procedure with interpreters present (AIDA, 2016, p.37). When rejected as “manifestly unfounded” (Art 30) they are warned for deportation and are not allowed to enter the territory but receive a temporary relief to file an appeal at Administrative Court within three days (subs Art 18 subs 2, 3, 4) with free legal assistance (Art 18a subs 1; Federal Constitutional Court, 1996) arranged by the federal authority. Then the decision at administrative court takes within 2 weeks. When the BAMF and court fail to provide the decision within the given dates, the foreigner is allowed to enter (Art 18a subs 6).

### **5.5.2 Regular Procedure**

The current refugee act in South Korea concerning “regular procedure” entails procedural ambiguity problem in large areas and slows down the overall refugee status determination process due to lack of systematic organization of applications. Germany, in contrast, meets the overall procedural principles and guarantees the applicants’ procedural rights in every step. This part focuses on two problems of South Korea’s in regular process and contrasts it with the German case to suggest solutions to lower ambiguity. First, South Korea’s stressing factual and objective aspect in application proving their well-founded fear of persecution without an actual system to filter applications is problematic. Due to large absent legal clause in specifying the part that may be omitted by the MOJ in recognition procedure which leaves a large discretionary range for decisions while Germany’s accelerated process sort cases depending on the country of origin and complexity level of application to promptly protect asylum seekers with well-founded fear. Second, uncertainties in the protection of procedural rights because of budget constraint and lack of competent interpreters and regional experts entails ambiguity

---

<sup>42</sup> Safe countries of origin, according to the German Basic Law, is “the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhumane or degrading punishment of treatment exists (Art 1a(2)~(3) Basic Law) and this was further developed into the Asylum Act by adding safe countries of origin in the law and this includes the EU member states and other countries (Article 29a(2) AA) which the Federal government evaluated that the country is deemed to be considered as a safe countries of origin following the definition. Unless they present a fact or evidence which justifies their persecution in the country of origin, their application is considered as “manifestly unfounded” (Art 30a(1) AA). The list of countries are adopted as an addendum to the law and both chambers and parliament adopts it and the Federal government can issue a decree to remove certain country from the list for a period of six months (AIDA, 2015, p.49) and the countries are consists of Albania, Serbia, FYROM, Kosovo, Bosnia and Herzegovina, Ghana, Senegal, Montenegro in 2016.



problem, while Germany promptly reacted to this issue by announcing a plan to nurture in-house translators.

The South Korean refugee act definition which stresses objective evidence to prove their situation of persecution is reflected in the procedural ambiguity problems, as the policy system stresses “factual investigation” in the overall refugee status determination process. This problem is generated by the spill-over effect of localization of definition. While a factual investigation is an integral element in the procedure to avoid confusion in granting refugee status to a wrong person, but the main authority in charge stressing the importance of transparency and fact-based information is rather ironic as many parts of the legislative act lead to inconsistent policy implementation from the authority.

For example, the legislative act repeats “factual investigation” in multiple areas of the act: MoJ to recognize, cancel, and withdraw a refugee status (Art 10(1)); cooperation with administrative organizations (Art 11(1)); prior to denial notice for an applicant’s factual and legal claims (Art 18(3)); refugee committee’s appeal examination (Art 21(4)); regular procedure’s refugee status determination stage (Art 8(4)). The guidebook also stresses an applicant’s responsibility to prove their asylum purposes via supplementary evidence and statements (MOJ, 2015, p.23).

South Korea’s procedural ambiguity stressing factual investigation in overall procedural combined with the uncertainties in a part that the authority may omit in the determination process (Art 8(5) Refugee Act) is a serious matter. The use of the ambiguous word “may<sup>43</sup>” is one problem as this gives the MOJ a large range of discretionary power. The authority is delegated to the MOJ in clarifying the part that it may omit from the determination procedure when the applicant falls into specific criteria.<sup>44</sup> But neither the MOJ ordinance nor the presidential decree includes any such information. The skeleton legislation of South Korea’s legislative process which leaves major contents to delegated act is also reflected here.

---

<sup>43</sup> It writes “the MoJ may omit part of the determination procedure ... to whom any of the following applies:” And while the part to be omitted is delegated to MoJ, it is not specified in the MOJ ordinance nor the Presidential decree.

<sup>44</sup> The conditions are (Art 8(5) of Refugee Act): a) concealed facts in the application through means that include, but not limited to, the submission of false documents or false statements; b) refugee status applicant re-applied for refugee status without material change in circumstances after a previous application was denied or cancelled; c) an alien who has stayed in Korea for one year or longer and applied for refugee status when the expiration of the sojourn period was imminent, or is an alien subject to forcible removal who applied for refugee status for the purpose of delaying the enforcement of the removal order.

The omission of procedure may reduce time, but it is claimed that this practice is a violation of the international refugee regime standards (Im Hyun, 2014, p.40; Chang Bok-Hee, 2009, p.118). The UNHCR also noted that untrue statements by themselves should not be a reason for refusal of the application, but it reminds the examiner's responsibility to evaluate even such statements by considering all circumstances of applicants (UNNHCR, 2019, p.44).

In contrast, Germany operates the asylum status determination process in a systematic mechanism. First, during the application procedure, applicants must submit their identity documents including national passports and other personal documents. The BAMF uses physical and technical documents examination to identify whether this document is false (BAMF, 2016, p.12). Based on the information collected including fingerprints, BAMF compares the data with the Central Register of Foreigners, Federal Criminal Police Office to confirm, whether the applicant is an initial application or multiple applications. After this document and personal information verification, a personal interview is held. In principle, the attorney and UNHCR representative, and other authorities that are authorized by the head of BAMF or his deputy (Art 25 subs 6) can present. Based on the information taken from the interview, application, and documents submitted by an applicant, the second stage of application begins with the examination by BAMF.

Starting November 2014, it introduced a new procedure to grant refugee status speedily for an applicant who is likely to be granted refugee status at the administrative level by omitting the interview and examined cases based on their questionnaire submitted to the BAMF. This procedure is completed within 11 days for successful cases (AIDA, 2015 January, p.38-39) and was admissible only to Syrian nationals and members of ethnic minorities including Christian and Yazidi from Iraq.

In order to speed up the procedure since 2015 summer, the federal office adopted a systematic cluster system<sup>45</sup> for application in sorting them based on nationality, level of complexity, and routes of movement to Germany. And applicants of Cluster A and B are interviewed within a few days after registration (AIDA, 2016, p.53). During the examination procedure, all the information is taken to confirm positive on the four grounds (asylum, refugee, subsidiary protection, a

---

<sup>45</sup> Clusters in the German reception centers effective since 2015 Summer(BAMF, 2016, p.29) are held in four types: Cluster A: Countries of origin with a high protection rate (50% and above); Cluster B: Countries of origin with a low protection rate (up to 20%); Cluster C: Complex cases; Cluster D: Dublin Cases

national ban on deportation) or negative decisions. When a negative decision on the inadmissibility of the application is established, then they receive a notice of rejection with information on the appeal procedure, but only certain cases are accepted for appeal.

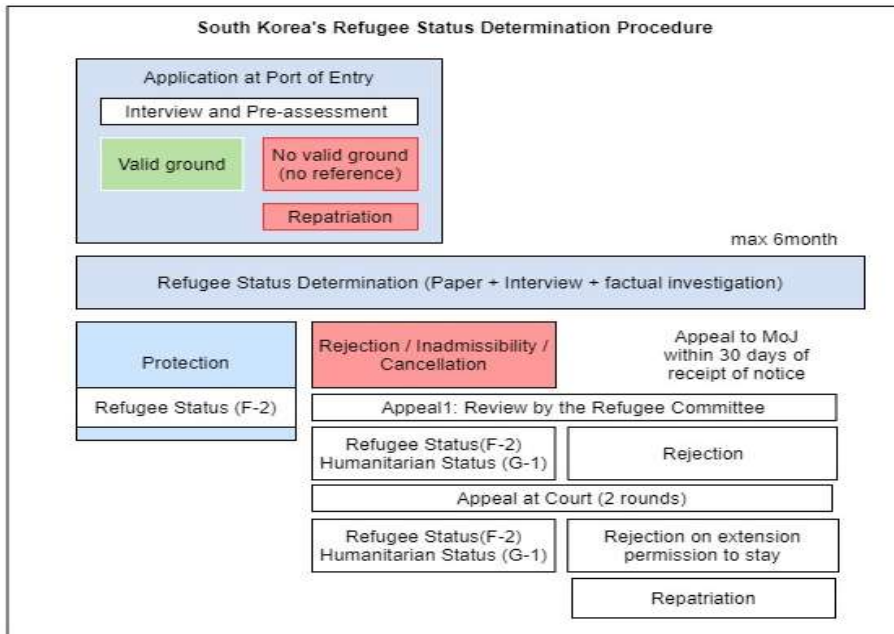
The second problem of South Korea concerns the procedural rights that are enshrined in the act, but skeptical whether they are fully protected as it appeared in translation problem, a fundamental communication problem, which is very critical between asylum status applicants and the MOJ interviewers. The procedural rights of refugees are included as a legal clause in the refugee act including interpretation (Art 14), recording of interviews (Art 8(3)), the applicant's confirmation requirement on the interview contents and verification (Art 15), access to copy records (Art 16), the principle of the closed interview (Art 23), and finally a competent staff to conduct an interview and factual investigation (Art 8(4)).

But uncertainties exist due to budget constraints and limited competent interpreters and the budget shall be prepared for developing a program for interpreters specialized in refugees (NANCEN Refugee Center, 2016). Also, the government requiring a document to be submitted in only Korean or English (MOJ, 2015, p.22) which is not refugee-friendly but administrative friendly policy considering their challenges in message delivery and communication problem which is also reflected in unethical practice by the MOJ staff illustrated earlier.

At a regional office or reception center in Germany, a competent BAMF officer who understands the circumstances of the applicant's country of origin is assigned for the interview (Art 25 AA; BAMF, 2016, p.14). Then they hear their reasons for an asylum request. The interview process is transcribed and interpreted and applicants have the rights to correct mistakes and misunderstandings, and an applicant can sign them to approve on the presented minutes (BAMF, 2016, p.21) and the transcript can be read back in the applicant's native language (IBID, p.21).

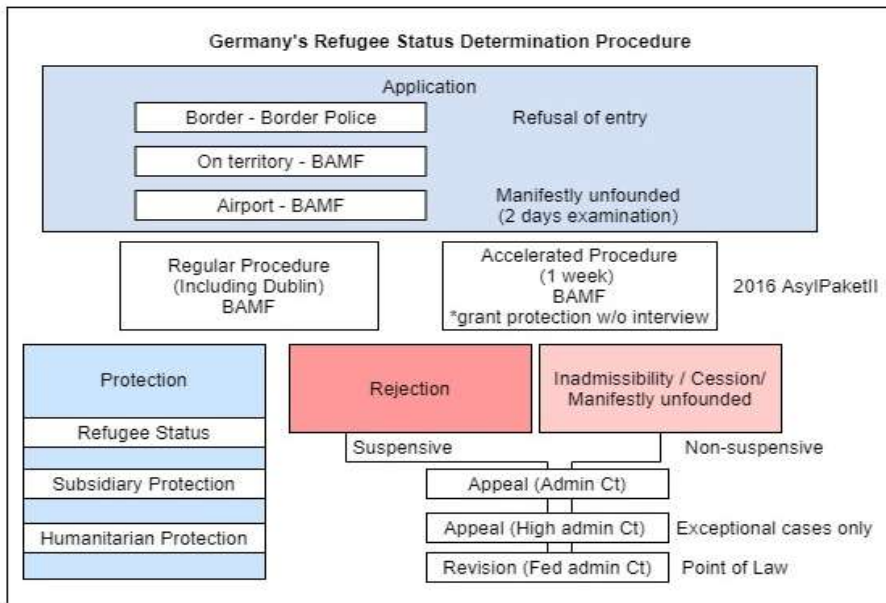
Moreover, in 2016, BAMF announced a plan to introduce in-house training for interpreters for neutrality and professionalism (Zeitung, 2016) after an incident appeared in Eritrean interpreter mistakenly wrote an applicant's statement wrong which resulted in registering him holding an unknown nationality. This contrast between South Korea and Germany concerning translation suggests the government's decree of responsiveness and readiness for fixing the most critical problem in basic communication.

**FIGURE 7. SOUTH KOREA'S REFUGEE STATUS DETERMINATION PROCEDURE DIAGRAM**



Recreated by author. Source: MOJ, 2015.

**FIGURE 8. GERMANY'S REFUGEE STATUS DETERMINATION PROCEDURE DIAGRAM**



Recreated by author. Source: AIDA report. Germany (2015, 2016)

### 5.5.3 Negative Decision

While both South Korea and Germany recognizes negative decisions following the three types of the 1951 Convention on Cessation, Exclusion, and Cancellation clause in the legal system South Korea's negative decision clause slows the decision and generates ambiguity in granting negative decision for two reasons: its use of non-binding legal language, the use of "may", and confusing structure. However, Germany fully follows the original wording of the 1951 Convention's negative clauses and grants negative decision when none of the four positive grounds of protection is deemed applicable. The localization of South Korea's negative decision and full endorsement of the Germany is examined here.

Unlike the 1951 Convention's binding legal language use of "must" or "shall"<sup>46</sup>, the three negative decisions in South Korea's act legal language is not binding as uses "may." Also, the structure of negative decision entails ambiguity as putting Cessation (Art 1C of the Convention) clause (Art 22(2)) under Cancellation chapter, while the reasons clearly indicate the MOJ's possibility in withdrawing the decisions to cease status.

The exclusion clause under "Limitation of recognition (Art 19)" did not internalize the Convention (Art 1 D, E, F of the Convention) fully as well because a refugee's nationality or possession of another nationality residence right is not mentioned in the clause. Lastly, cancellation should meet two conditions of both false information and it should fall exclusion conditions when the relevant facts known, but the Korean act writes it may cancel recognition of refugee status when false information is submitted but does not spell out whether it has to be found an exclusion case when relevant facts known (Art 22(1) of Refugee Act).

In contrast, Germany establishes negative decisions when the RSD process confirms that the four grounds of positive decisions or asylum protection is deemed not applicable. It fully endorses the international refugee convention's negative decision principles with the same situation and binding legal language use of "shall." Germany added diverse reasons for inadmissibility for rejection cases (Art 29(3) subs 2)) including Dublin convention refugees recognition and a country

---

<sup>46</sup> Except save other parts including right to access and copy relevant documents (Art 16(2)) which writes "right may be limited if there is clear cause to believe that access to copying of material would materially hinder the fairness of the determination procedure" or closed hearing (Art 23) which writes "the refugee committee or a country may, at the request of the refugee status applicant... make the decision to close review or hearing session to public..." and related to recording of the determination procedure (Art 8(3)) which writes "the Chief may, if deemed necessary, record or videotape the interview process." In the next chapter, it will discuss further how this discretionary wording is more prevailing in the entitlement related articles of refugees in South Korea.

from non-EU member state willing to readmit the applicant (Art 29(1) no 4); safe country of origin with “manifestly unfounded” application (Art 29a or 30); or follow-up application with certain conditions which applies safe third country (Art 71(4)). This system not only prevents abusive applications hindering the process and burdening institutional mechanism, but strengthens uniform negative policy implementation for its binding legal language use.

#### **5.5.4 Appeal Procedure**

Appeal procedure in the South Korean refugee act exhibits three main ambiguity problems: first, absent legal clause concerning the process of non-referral decisions for the port of entry procedure, which has been covered in airport procedure already; second, large discretion without standards of evaluation to grant humanitarian status which is held after an appeal not at first instance (Art 2 Presidential Decree); lastly, the absent clause of the procedure after administrative appeal such as judicial proceedings.

Germany, in contrast, proceeds appeal in an efficient process and accepts only when they pass merit test from document examination. Although it has been argued that one week is too short and non-constitutional (The Federal Government, 2016), the German process serves a meaningful case for its systematic mechanism in appeal, unlike South Korea’s ambiguous appeal process.

In the South Korean refugee act, anyone who received a negative decision for the exclusion (Art 19 Refugee Act); cancellation and withdrawal (Art 22); whose application is rejected for other reasons (Art 18(2)) can initiate an appeal within 30 days to by submitting a written document explaining reasons for appeal (Art 21(1)). Refugee Committee then conducts a factual investigation, which is often held by refuge research officers (Art 21(4)) within six months. This again follows the same procedure held for refugee status determination (Art 21 (6)) in evaluation. The factual investigation held with the Committee (Art 2 Presidential Decree) then can grant Humanitarian status or recognized refugee status. However, clear criterion or elements reviewed for humanitarian status is not specified and scholars also called for improvement for this (Shin Okju, p.243; Park Young-Ah, 2015, p.16) and large discretion of power is delegated to MOJ in granting humanitarian status without standards evaluation.

Lastly, the procedure after an administrative appeal at court including judicial proceedings or expulsion or expiry of residence permit is not regulated while the examination is held from the immigration office, MoJ committee, and

three judiciary appeals (Kim Hwan Hak, et al., 2016, p.246). The perfunctory legislation left large room for uncertainties in the appeal procedure and this suggests an alarming call requires further attention from the government as this problem combined with unidentifiable pre-asylum stage results can be seriously considering in illegal migrants and undocumented people as well as applying principles of non-refoulement during their appeal process.

In contrast, the appeal process in Germany is held very efficiently and reduces the administrative and judicial court burdens as only cases that passed merit test<sup>47</sup> from document assessments (AIDA, 2016, p.31) can be filed for an appeal to prevent administrative and judicial burdens. It is aimed to prevent abusive appeals of negative decisions by limiting the cases without fundamental reasons to consider the case for an appeal. And rejections that are granted on the ground for regular cases are suspensive, while inadmissible, cessation, manifestly unfounded persecution cases are non-suspensive (Art 75). But an applicant can ask the court to restore suspensive effect via requesting to BAMF authority. The procedure; however, has been argued that non-constitutional as only one week is provided to them (The Federal Government, 2016a, b).

An applicant can file an appeal when the person claims that they have fear of persecution upon return despite the negative decision is established on their application. Then the applicant can appeal at administrative court or higher courts. As for the Port of Entry or border procedure, applicants should file an appeal within three calendar days, but they are entitled to receive free legal assistance (Federal Constitutional Court Decision, 1996) and the association of lawyers near the airport coordinates a consultation service with qualified lawyers (AIDA, 2016, P.38).

However, it has been claimed that it is with rather difficulties for regular procedure appeal as the fees based on the legal aid system does not cover enough expenses for lawyers thus, it is difficult for an asylum applicant to seek a legal representative for them in regular (AIDA, 2016, p.25).

---

<sup>47</sup> Only exceptional circumstances are accepted in which fundamental importance or administrative court's decision violated basic principles of jurisprudence (AIDA, 2016, p.16) but when case is proceeded an applicant is not charged in disputes (Art 83b) and free legal assistance is provided. See more: AIDA, 2016, p.25.

## 5.6 Sub-Conclusion

This chapter examined procedural ambiguity that appeared in South Korea and Germany's legislative act and government documents. It compared the high ambiguity of the South Korean refugee status determination procedure to the low ambiguity of Germany's system. South Korea's main problem caused by procedural ambiguity is the time-consuming refugee status determination process and inconsistent policy implementation for large discretion. It also identified potential means to lower ambiguity for the South Korean refugee policy by comparing policy instruments of Germany. There were diverse matters concerning procedural ambiguity and the German case served as a useful case to lower procedural ambiguity.

This part summarizes four highlighted problems discussed in the analysis: unorganized refugee status determination process without the system in South Korea while cluster and accelerated procedure quickly sorts applicants with a well-founded fear of persecution in Germany; problematic nature of the port of entry which jeopardizes asylum seekers rights in South Korea while accelerated procedure with translation, legal assistance, and basic necessity provided in the German system; localization of negative decision of the global refugee regime's principles in South Korea in contrary to a full endorsement of negative decision clause in Germany; finally, the ambiguous appeal process and humanitarian status holders problem and a solution found in Germany.

First, South Korea's regular procedure lacks with systematic application sorting mechanism, or cluster system, like the German accelerated system. The MOJ may omit a part of the refugee status determination process in certain situations, but as examined in this analysis, this entails large ambiguity as what part can be omitted is not spelled out in the act while large discretion power is delegated to the MOJ for skipping procedure. The German system, however, aimed to provide asylum applicants fleeing from war or failure state to speedily protect by recognizing them within 11 days. This was applied to Syrian applicants and ethnic or religious minorities groups of Christian and Yazidi from Iraq by omitting the interview process, South Korea's purpose of this system is to decline their applications quickly considering the conditions of application to be eligible for the omission of the procedure.

Second, South Korea's port of entry procedure demonstrated a problem surrounding the purpose and nature of the procedure. Korea's refugee act does not



recognize the pre-asylum application stage, or asylum seeker as part of refugee categorization, while the port of entry procedure only decides reference non-reference. As examined in the analysis, this was also caused by delegated legislation, which delegated authority to the MOJ to elaborate procedure concerning the port of entry, not a referral or non-referral decision. The legal clause, it is challenging to identify the grave situations of applicants at the airport as basic means and needs to survive during their airport procedure are not available. And the uncertainties after non-referral decision notice to asylum seekers are another problem. Unlike South Korea's additional step kind of procedure, Germany operates it as a refugee status determination procedure which completes the entire process including appeal within 19 days. The Federal government also coordinates free legal assistant for applicants whose application is denied.

Third, legal clauses concerning a negative decision of South Korea did not fully accept the international refugee regime and structural ambiguity which puts cessation under cancellation clause and the large discretion with the non-binding legal wording use of "may", and two conditions of cancellation are internalized in the law. This generates ambiguity, unlike the German system which fully endorses the international refugee regime's principles and norms and specifies further conditions for exclusion of applications to avoid institutional burdens.

Lastly, the appeal procedure of South Korea entailed procedural ambiguity as it is largely absent with appeal procedure at the airport; not inclusive of specified criteria to file an appeal against administrative and judicial court; uncertain in standards in refugee committee's evaluation to decide humanitarian status. These problems generate burdens to both the administrative and judicial process in the process of acceptance of refugees. In contrast, the German system operates an efficient appeal process as humanitarian status is granted as one of the positive decisions at first instance authority unlike South Korea and decided clearly by the grounds and degree of persecution in well-defined categorization. It only accepts appeal requests when it passes the merit test specified in the act, while free legal assistants are arranged by the Federal government.

For a uniform and well-operated refugee status determination procedure, basic communication between the interviewer and refugee applicant is crucial. But South Korea's long-standing problem exists in the quality translation service due to the limited number of competent linguistic experts, who are fluent in the applicant's language, usually the Third World and developing countries. Germany

also exhibited a similar but minor problem in 2016 concerning an Eritrean interpreter, who mistakenly put an applicant's statement to register him holds an unknown nationality. BAMF quickly announced its plan to introduce an in-house translator training program to strengthen neutrality and professionalism. However, South Korea's response after the MOJ's falsified interview transcripts incident was passive attitude without clear efforts to address the problem, which resulted in 55 Arabic applicants' rejection of applications and garnered criticism.

And last but not least, procedural ambiguity is an integral part of refugee policy as it can jeopardize an asylum seeker and an applicant's rights to receive international protection. Therefore, recognizing the pre-asylum procedure or asylum seeker stage is crucial to protect prospective asylum seekers' rights in South Korea. The non-refoulement principle should be applied after an asylum seeker requests for application, but not able to identify the exact stage of asylum applicant can potentially violate their rights.

This second chapter's findings all comes down to stress the importance of full endorsement of the international refugee regime not limited to key terms' definition and categorization as discussed in the previous chapter, but also for a procedure which is constantly evolving by taking the recent refugee phenomenon into account since its establishment of the 1951 Convention.

The table below is a summary of analysis about the procedural ambiguity in two countries mainly covering procedural rights and negative decisions and indicates each country's degree of compliance to the international refugee norms.

**TABLE 10. CONTRAST OF PROCEDURAL AMBIGUITY**

<b>Procedural rights (1977 IRR)</b>	<b>Germany</b>	<b>South Korea</b>
1) Competent authority	O	X <sup>48</sup>
2) Procedural guidance	O	X <sup>49</sup>
3) Single central authority in the first instance	X <sup>50</sup>	O
4) Facility: interpretation	O	X <sup>51</sup>
5) Recognized refugee certificate	O	O
6) Reasonable time to submit appeal	X <sup>52</sup>	O
7) Right to stay in the pending case for the first instance and at administrative or judicial court	O	X <sup>53</sup>
<b>Negative decisions</b>	<b>Germany</b>	<b>South Korea</b>
1) Cessation (1C): reasons for protection ceased to exist for changes in country of origin and other reasons	Art 72(1) full acceptance	Art 22(2) full acceptance = patent ambiguity: -cessation Art under cancellation chapter
2) Exclusion (1D,E,F): although meeting the criteria, not eligible to seek asylum a) international protection already provided by other authorities; b) not considered to be needing protection due to possession of another nationality (not formal citizenship but residence); c) not deserving due to his war crimes, common crimes, actions against UN principles	a) Art 3(3) full acceptance b) Art 3e full acceptance c) Art 3(2) full acceptance	a) Art 19(1) b) X = latent ambiguity c) Art 19(2)~(4)  = patent ambiguity:
3) Cancellation: false information has been used and originally found an exclusion case	Art 73(2) full acceptance	Art 22(1) cancellation =patent ambiguity:
<b>Non-refoulement and Expulsion</b> Art 33, Art 32 (2)(under strict conditions and due legal process)	Art 34-43 (deportation procedure, warning, and suspension)	Art 3 = latent ambiguity absence but happens at PoE and prior to appeal procedure but no legal clause expulsion

<sup>48</sup> Limited number of competent workers at MOJ working as an examiner and interviewer of first instance authority and limited competent interpreters

<sup>49</sup> Caused by procedural ambiguity in appeal and Port of Entry

<sup>50</sup> Around 25% decision of applications are held remotely not by an interviewer but by BAMF authority

<sup>51</sup> Limited competent interpreter and the documents can only be submitted in English or Korean which requires an applicant to translate the document by himself

<sup>52</sup> Rather too short (3 days to appeal for airport procedure) but free legal consultation is arranged by the Federal government

<sup>53</sup> Not clearly practiced nor mentioned in the refugee act and does not indicate process for a clearly abusive application or multiple applications without fundamental changes in application.

# **Chapter VI.**

## **Comparative Analysis III: Refugees' Legal Entitlements**

### **6.1 Introduction of the Chapter**

How did ambiguity concerning refugees' entitlements in the legislative act affect the policy implementation? And how did Germany and South Korea respond to address such ambiguity in the short-term after the refugee crisis with limited resources prepared? This final chapter of analysis contrasts South Korea and Germany's legal entitlements in the act for asylum seekers, refugee status applicants, and positive decision recipients and provides a policy mechanism to adopt for South Korea by comparing with Germany's advanced refugee policy mechanism.

South Korea's poor policy coordination with relevant authorities largely leaves refugees' entitlements even concerning the ones that are enshrined in the refugee act (Kim Dae-keun, et al., 2018, p.60). Also, the limited resources, confusing categorization, and large discretion to the MOJ further generate ambiguity driven policy implementation failure. Shortly after the Yemeni refugee incident, rumors widely spread that refugee applicants receive higher medical coverage and more monetary assistance than the Korean War veterans (NEWS1, 2018). This escalated the public's outrageous voices showing disgruntled feelings that refugees do not serve to receive the same or higher benefits as the citizens. But the truth is that the budget shortage only covers less than 4% of refugee applicants' assistance in 2017 and 2018 and they receive less assistance than Koreans (MOJ, 2018c, p.10; Segye, 2019). While it is true that accepting refugees costs the government's fiscal expenditure, but not investing in their social integration like South Korea's current system can result in a lot more serious burdens in the long-term. Failure of their social integration can inevitably lead to social uneasiness as it may raise crimes as well as high unemployment, which will be a serious cost in the long-term. Thus, South Korea remained in the preliminary stage featuring high ambiguity in regulating a refugee's legal entitlement by types of refugees and their application stage, but it is required to adopt changes before it is too late to integrate them.

In contrast, Germany has already experienced four previous large influxes of refugees and learned the lesson that early social and economic integration is

crucial for the successful settlement of refugees. This lesson was learned from its previous mistake is caused by its passive effort in integrating refugees in 1990 not opening the labor market widely (OECD, 2017). The high unemployment rate of migrants who settled in Germany as a refugee in 1990 recorded around 16% is conspicuously higher than other migrants recorded less than 10% (Die Zeit, 2016). It is cited that refugees' immediate access to the job market in an early stage of the asylum procedure is crucial as it can reduce refugees' times for economic integration in the host country up to ten years as their motivation to integrate early after their arrival reduce and can influence their integration behavior (Marbach, Hainmueller, Hangartner, 2018).

Therefore, it operates comprehensive protection to asylum seekers, applicants, and refugees with positive decisions and even to negative decision recipients (the tolerated to stay, or Duldung). The explicit political will of the German government realized legislative reforms; however, the already clear categorization of the refugee system enabled them to make prompt changes. By opening the labor market to all asylum seekers and obligating social integration, it aimed for quick social integration of refugees. This was done via three consecutive legislative reforms in omnibus bills to avoid legal fragmentation. This even opened opportunities for negative decision recipients' right to stay and access to permanent residence in cases of successful integration (Shin Okju, 20218, p.237). This, however, serves as a new minor challenge to overcome as granting a work permit to Duldung holders whose application is denied, but reserve their rights to stay, may confuse the policy objective, therefore, a further crystallized cooperation amongst actors is necessary (Schultz, 2020).

## **6.2 The Legal Entitlements in the 1951 Convention**

The Convention establishes principles for refugees' entitlement in the host country by types: the simple presence, lawful presence, and lawful residence following the assimilative path" of refugees in its wording of recognition in varying degrees dependent on the strength of the bond between refugee and host state's nationals (Hathaway, 2005, p.156). The 1951 Convention does not specifically regulate the procedure or standards of legal entitlements may receive from the host country, but the High Commissioner pleaded a "generous" asylum policy in the spirit of the 1948 Universal Declaration of Human Rights and the 1967 Declaration on Territorial Asylum (UNHCR Handbook, 2019, p.16, para 26-27). For example, the Recommendation in the Final Act of the Conference of

Plenipotentiaries of the 1951 Convention stressed the hope that the Convention to promote “value as an example exceeding the contractual scope” and to provide protection even to the persons who may not be qualified for fully satisfying the conditions under the definition of Convention refugees (IBID).

The table below indicates the legal entitlement in the 1951 Convention by three types of category, but this part focuses on the most problematic clauses that need to be addressed for its ambiguity in South Korea’s refugee policy and uses the German case for its value to policy clarity in these areas.

**TABLE 11. LEGAL ENTITLEMENTS IN THE 1951 CONVENTION**

	<b>Simple Presence</b>	<b>Lawful presence</b>	<b>Lawful residence</b>
Definition	Benefits extended to the refugees by virtue of their status alone as refugees and whether or not they are lawfully or unlawfully in the territory of a CS	Admission following immigration rules of that country for a temporary purpose. Relevant clause: lawfully in the territory	Term covering: “residence”, “residing”, “lawfully staying” and “habitual residence.” A stay in which more than purely temporary but need not be permanent
Legal entitlements (Relevant Articles)	20 rationing 22 education (elementary and public secondary education) 27 identity papers 29 fiscal charges 31 exemption from penalties in illegal entry of presence 33 prohibition against refoulment 34 naturalization	18 Self-employment 26 Freedom of movement 32 Limitation in liability of expulsion	17 Wage earning employment 19 Liberal professionals 21 Housing 23 Public relief 24 Social security act Labor legislation 25 Administrative assets 28 Travel docs 30 Transfer of assets

Recreated by the author by combining two tables from Lassen et al., 2004, p.34-35, p.187-188<sup>54</sup>  
 \*the part highlighted is commonly not inclusive in South Korea and Germany’s legislative act, thus, it did not include in the analysis but added family unity for its important significance for refugees’ integration which is recognized in the UDHR and other international human rights laws.

<sup>54</sup> This table is drawn from appendix three (minimum standards of treatment as refugees under the 1951 Convention) and appendix four (criteria of entitlements to treatment in accordance with the 1951 Convention). Their work combined Guy Goodwin-Gill (1996, p.307)’s distinction between different forms of stay and presence and Paul Wei (1995, p.152)’s analysis of the preparatory works of the Convention. While the authors distinguished legal entitlements in five varying degrees from general aliens treatment to nationals, and a special treatment as refugees, this research simplifies this and confirms legal entitlements on simple existence of the entitlements.

### **6.3 South Korea: Constant Ambiguity Restricts Access to Entitlements**

This part first identifies the constant ambiguity concerning the legal entitlements before and after the Yemeni refugee incident and the passive attitude of the Korean government in lowering ambiguity.

Shortly after the Yemeni refugee crisis began, rumors spread that a refugee status applicant receives more cash assistance than Korean War veterans and receives full medical coverage. Unlike the German system that decides the exact amount for both cash and non-cash benefits under the legislative act every year, South Korea's refugee act does not include this information in the act. Hence, the MOJ had to correct the information that is untrue<sup>55</sup>, and that a refugee status applicant receives lower than the Korean War veterans following a separate scheme (NEWS1, 2018-07-05). This example illustrates the Korean's anger over the distribution of the national fiscal budget and their disgruntled feelings that they do not perceive refugee applicants deserve to receive the entitlement same as the Korean citizens. But as discussed earlier, their cash benefits are far from ideal as the budget can cover 3-4% of refugee status applicants (MOJ, 2018c, p.10; Segye, 2019).

The government clearly failed to make progressive legislative changes to lower ambiguity and to develop more feasible and systematic policy mechanisms but its inability to could not assuage public opposition. After the Yemeni refugee crisis, the legislators failed to reach a consensus and only minor changes were adopted in the presidential decree and the MOJ ordinance. Therefore, the policy failure was constant and the inaccessibility problem of refugees to their legal entitlement even the ones enshrined in the act are caused by the legal fragmentation and the lack of policy mechanism.

The minor changes in the presidential decree and the MOJ ordinance concerning refugees entitlements were made in December 2019, more than a year after the Yemeni refugee crisis began. This amendment made three minor changes: a) establishing a legal basis for delegation of authority for the refugee support facilities to director and heads of regional immigration and foreigner support centers (Art 24 of the PD); b) expansion of reception desk for living expenses

---

<sup>55</sup> The MOJ corrected these rumors are untrue, and refugee status applicants receive 432,900 won if residing outside government prepared accommodations and 216,450 won for residents at the facilities following the Emergency Welfare Assistance Act while Korean veterans receive benefits under the National Basic Living Security Act as a Korean citizen in different scheme and receives 501,632 won and receives additional 300,000 won per month for his honor of services (NEWS 1, 2018-07-05).

assistance of asylum applicants to immigration and foreign support centers (Art 15(1) and (2) of the Ordinance); c) introducing medical support procedure and application forms (Art 16(2) of the Ordinance). As these changes indicate, the refugee act and its delegated laws were preliminary and remain constant high ambiguity.

The minor changes failed to remove uncertainty and confusion in policy implementation as an imminent necessity to lower ambiguity were not addressed: first, the necessity to create a systematic social integration program; second, creating a control tower to establish communication channels for the refugees' entitlements to basic social services' and third, the necessity to address the fragmented laws which disagree with the Refugee Act that limits a refugee's access to their social security benefits (Kim Dae-keun, et al., 2018, 60).

#### **6.4 Germany: Lowering Ambiguity for Comprehensive Entitlements**

The Federal German government's reaction after the Syrian refugee crisis is a latent response rather than a preemptive action, but the systematic mechanism has realized series of changes promptly (Lee Bo-Yeon, 2019, p.43) via omnibus laws. This part first identifies the systematic changes for the legal entitlements of refugees since the Syrian refugee crisis and the German government's efforts in lowering ambiguity.

Germany made legislative changes concerning legal entitlements via the legislative process in omnibus laws and changes were adopted uniformly across all the departments in charge followed by the legislative packages made in October 2015 via Asylpaket I, March, and July 2016 via Asylpaket II, and August 2016 via IntegrationsG. This series of omnibus laws were effective in clearing ambiguity in the legislative act aiming for quick integration of refugees from an early stage of their asylum request. The omnibus bill was the method that the federal German government used to amend changes efficiently in all asylum related legal framework and the legal clauses in the act established a legal basis for other laws to implement changes promptly across all department. This prevented relevant authority's drift from policy implementation as each clause concerning education, labor, family, and other social security benefits are covered and implemented separately while the BAMF served as a control tower for their social integration program.

First, series of changes were adopted in 2015 mainly aimed to establish a systematic policy mechanism that can better protect asylum seekers' entitlements.



This is a reasonable decision as the large influx of applications inevitably hinders the refugee status determination process and protecting asylum applicants is not enough, as many should still wait for their turn to file an application after arrival at the initial facility center.

The policy instruments adopted in the first stage are as follows. First, arrival certificate to be used not only as proof of their arrival on German territory but also for their temporal residence permit as an asylum seeker before filing their application to receive benefits including food, accommodation, medical treatment, and more (Art 63a Asylum Act; BAMF, 2016, p.8)<sup>56</sup>. Second, the financial arrangement between the federal government and local governments was crystallized. The local government covered the refugee support including housing, food, medical support, while the federal government promised to cover a maximum of twice as this budget (Art 44 Asylum Act). And family unity to asylum applicants, whose unmarried minor children has yet filed, the applicant's filing process is deemed for his children's application as well, after reporting to BAMF of their children under 16 years old (Art 14a AA). Finally, authorization of medical practice is granted to asylum seekers with professional medical licenses or skills back to assist doctors at the facility for medical care of their fellow asylum seekers (Art 90(a) AA). These changes indicate the German government's smart policy implementation for the due protection of asylum seekers for its utilization of human resources by empowering the refugees' skills to support them.

The second set of changes are made in 2016 of Asylpaket II<sup>57</sup>. The government was aware that social integration and acceptance programs were flawed (Lee Bo-Yeon, 2019, p.38). So, it first focused on mandatory medical

---

<sup>56</sup> For example, pending of application process of asylum seekers were caused by immense asylum applications, but the arrival registration (Art 63a) introduced in October 2015 Asylpaket I assists the relevant authority to accelerate process and strengthened asylum seekers' rights. The arrival registration are controlled in the central system called AZR which allows the relevant officials to identify certain person who has not applied for asylum application yet and register the asylum seekers in stage in between the entry of the country and asylum application, and centralized the previous registration system of BuMA, which had inconsistent system by state. Using this arrival certificate, asylum seekers can request benefits as an asylum seeker immediately upon arrival on territory. See Shin Okju, 2018, p.222 and Asylum Act 63a.

<sup>57</sup> Other three changes are: temporary ban for the family unity to beneficiary of subsidiary protection for one year from 2017 March to 2018 (Art 104 (13) Residence Act) due to concerns over continued large influx of refugees applicants based on family unity (Lee Bo-Yeon, 2019, p.38) and was a measure to safeguard the integration of the recognized refugees moving to Germany under family reunification rules (The Federal Government, 2016b); more leniency in deciding temporary suspension of deportation in cases when asylum seekers with suffer from life-threatening or serious illness which would significantly get worse when deported (Art 60(7) Residence Act); and lastly, cash benefits were reduced from 143 Euros to 135 Euros per month to an adult the person residing in the reception facilities.

examination is introduced concerning communicable diseases including x-ray and respiratory organs (Art 62(1) Asylum Act) at the reception center and collective accommodation. And second, work permit has been expanded to most of all refugees from an early stage of the application, immediately after the initial reception residence period (Art 61(1) AA).

The third series of changes were made in July 2016, the second reform of the IntegrationsG<sup>58</sup> under the Asylpaket II. This deals with the benefits of refugees including an expansion of the labor market specifically for refugees and promoting their social integration via mandatory social and labor training (BGBl I, 2016). The changes had a clear purpose in strengthening integration and established a policy instrument of “Integration Measures for Refugees” (Flüchtlingsintegrationsmaßnahmen (FIM)). This aimed to provide low-threshold jobs to 100,000 asylum seekers (Art 5a(1) AsylbLG) by investing 300 million Euros annually from August 2016 to 2020 (OECD, 2017, p.13). The main purpose is to upskill asylum seekers to more social integration via job-related training to those who are likely to remain in the country for their cluster categorization. With the introduction of this new policy instrument, asylum applicants can work at public and regional welfare centers, cleaning facilities, and gardens during their application examination process and receive 80 cents per hour for their contribution to the community (Art 5(3) AsylbLG). Moreover, the federal government obligated this program, so when an asylum seeker does not participate without legitimate reasons, he may lose his rights to request asylum seekers’ benefits (Art 5a(3) AsylbLG).

Germany also faces a minor challenge in labor integration for its ambitious large coverage of social integration particularly for Duldung’s right to stay and work. Prior to the legislative package in 2016 IntegrationsG, asylum seekers and temporary residence permit holders had to take a labor-market test by the Federal Employment Agency in search of the job during the application stage. The main purpose is to ensure risks of the prospective work permit recipient’s employment would not jeopardize skilled workers from EU countries or Germany in the area of certain occupation (Art 42(2) Subs. Residence Act). But the federal government temporarily suspended this from August 2016 until 2019 for three years (Migration Research Training Centre, 2019, p.6). Removing the labor test

---

<sup>58</sup> The Omnibus Bill “IntegrationsG” is composed of eight provisions and took into effect since July 31, 2016. This omnibus bill concerns amendments for asylum law, residence act, asylum seekers benefits act, AZR, Social Code Book 2, 3, 12.

restrictions, of course, opened more job accessibility to asylum applicants, but the large discretion in granting a work permit as it is based on individual case assessment. It can lead to potential arbitrary implementation in local foreign offices (OECD, 2017, p.15).

Moreover, efforts are necessary for crystallizing the assessment of the application in granting work permits to Duldung, for high ambiguity in policy implementation. Opportunities to receive vocational training are offered even to them and this comes with the right to stay for two to three years to complete the program (Art 18a Residence Act) and additional two years when closing a contract with an employer (Art 18a; 60c Residence Act) unless a crime is committed intentionally (Lee Bo-Yeon, 2019, p.40). After the deportation order to Duldung is administered, some received another opportunity to reside in Germany via labor integration or vocal training program as it secures their residence (OECD, 2017; Schultz, 2020).

This section confirmed the German government's use of the omnibus bill in adopting prompt legislative change, which lowered ambiguity in policy mechanism in areas that cover other government agencies and with the clear policy objective of integration.

## **6.5 Comparison of Legal Entitlements by Category**

### **6.5.1 Refugee Status Applicants**

#### **A. South Korea: Large discretion, a contradiction within the refugee act and with domestic law, and limited resources limiting accessibility to entitlements**

A refugee status applicant in South Korea “may” receive four entitlements in the Refugee Act: living assistance (Art 40(1)); work permit (Art 40(2)); accommodation (Art 41); medical assistance (Art 42); and education (Art 43). But specific policy instrument concerning procedure and policy mechanism for an applicant to receive a benefit is not inclusive in the act, and they are rather priori nature without policy clarity. Thus, it generates confusion in policy implementation and largely jeopardizes applicants' accessibility to these five rights. Besides, these benefits are not provided to all asylum status applicants, as South Korea's refugee act does not recognize the pre-asylum stage nor categorize asylum seekers. Thus, asylum seekers who arrived on the territory, but have not yet filed an application are not entitled to these rights; so do applicants at the airport waiting for their reference decision.

Certain types of applicants are excluded from the applicants' legal

entitlements and contradiction appeared within South Korea's refugee act. Applicants whose appeal or litigation denial of refugee status is ongoing; or whose new application is made without material changes in circumstances after his previous application is established negative; and whose application was an attempt to delay expulsion order's enforcement (Art 21 Presidential Decree; Art 44 Refugee Act) are excluded. The ambiguous categorization not only jeopardizes refugee's procedural rights but also their legal entitlement, thus this problem is again stressed for changes to full acceptance of the international refugee norms.

There is a clear lack of policy instrument for an applicant to request these five legal entitlements procedure is not specified while large discretion granted to immigration authority (Kim Dae-keun, et al., 2018, p.39-41). The discretionary and non-binding legal word of "may" appears in all areas of entitlements and delegated authority to the Ministry of Justice in policy procedure and operation. This also indicates a passive attitude in providing their legal entitlements. In addition to the lack of specific procedures and guidelines for an applicant to receive each benefit, the insufficient resources also serve as a major challenge. In this part, the challenges of a refugee status applicant to invoke these five entitlements despite their enshrinement in the refugee act are examined mainly due to ambiguity and discord with other domestic law.

### **1) Accommodation**

The presidential decree ensures an applicant's right to stay at a residential facility for a maximum of six months, but it is at MOJ's discretionary decision (Art 41 of Refugee Act; Art 19(2) Presidential Decree). There is only one such facility available in Incheon and no clause specified rules between central and local government concerning establishing and supporting these benefits while provincial immigration offices receive applications.

The legal contradiction further generates ambiguity even within the refugee act. The presidential decree prioritizes recognized refugees' use of the accommodation facility over the applicants (Art 23(2) PD), but this contradicts with the Refugee Act, which originally delegated authority to provide a residential facility for an applicant, not recognized refugee (Art 41 RA). But the MOJ accommodates mainly the resettlement refugees in these facilities (Kim Dae-keun, et al., 2018, p.31-32) and many applicants are not well informed of their accessibility to use accommodation facilities. Hence less than 2% out of entire refugee status applicant and recognized refugees was accommodated in the facility

(NANCEN Refugee Rights Center, 2018a, p.61; Choi & Kwon, 2017, p.159). Thus, many applicants depend on civil society’s support and are sometimes reportedly found to live on the street during their application examination process (Kim Dae-keun, et al., et al., 2018).

## 2) Rationing

Refugee status applicants are eligible to receive living expense assistance within six months after their application is filed at discretionary decision MOJ of their eligibility (Art 40(1) Refugee Act; Art 17 Presidential Decree). The MOJ has delegated authority in this regard, but has not specified criteria, budget, or other policy means, thus it is at large discretionary (Art 15(2) MOJ Ordinance) <sup>59</sup>;in deciding who deserves more inevitably leads to inconsistency policy implementation. Moreover, given the lengthy appeal and court procedure, exceeding at least several years, this regulation is viewed as problematic in putting limits within six months (Choi & Kwon, 2017, p.158). Because they cannot prepare all required documents such as bank account or alien registration certificate which usually takes two to three months (Nancen Refugee Rights Center, 2018a). Thus, they are not seen as an appropriate document to request to applicants (Nancen Refugee Rights Center, 2017).

The extremely small budget assigned for living expense assistance is another problem. In 2017, only 436 applicants received this cash assistance for three-month and the recipients are less than 4% out of 9,942 refugee status applicants that year (MOJ, 2018c, p.10). The recipient percentage further declined in 2018 during the Yemeni refugee crisis with 624 out of 16,173 applicants (3.86%) (Segye, 2019). This clearly indicates the government’s reluctance to grant the assistance and inept budget preparation.

In addition, unlike Germany’s rationing and public relief system, which provides asylum applicants varying degrees of basic benefits both cash and non-cash benefits depending on their period of stay and special benefits for illness, pregnancy, and childbirth, South Korean living expense assistance is the only program available for an applicant to receive any such benefits. Hence, it would

<sup>59</sup> Living Expense Assistance to Refugee Status Applicants (Source: Nancen 2018; MOJ 2019)

(Unit: won)		Single household	2 ppl	3 ppl	4 ppl	5 ppl
2018	Non-resident	442,900	737,200	953,900	1,170,400	1,386,900
	Residents at center	221,450	368,600	476,950	585,200	693,450
2019	Resident at center	216,450	368,600	476,950	585,200	693,450
	Non-resident	432,900	737,200	953,900	1,170,400	1,386,900

inevitably lead to high competition to receive support.

### **3) Work Permit**

A refugee applicant receives a six-month resident permit in G-1-6 visa which can be extended until the examination procedure completes (MOJ, 2015, p.11) and “may” be entitled to a work permit six months after their application is filed. The MOJ is delegated authority to specify the procedure for a work permit, but it is largely at discretion (Art 40(2) Refugee Act). The presidential decree (Art 18) indicates that the procedure is not specialized for a refugee applicant as it requires the same procedure as other foreigners in obtaining the permit (Art 20 of Immigration Act). An applicant is required to reserve a workplace before requesting the permit and should submit his employment contract and certificate of business registration (MOJ, 2015, p.12) to request a work permit. This is a clear discord as a “work permit” is a precondition to secure a job, but requiring a contract and secure an employer prior to receiving a work permit inevitably restricts their opportunities (Kim Sejin, 2015). Moreover, as both living expense assistance and work permits are granted at the MOJ’s discretion, and this can inevitably lead applicants to seek illegal economic activities as they financially struggle when neither is granted in order to survive during their refugee status determination process (Choi & Kwon, 2017, p.161).

### **4) Medical Service Support**

A refugee applicant “may” receive medical support from MOJ at its discretion (Art 42 Refugee Act) within the strictly restricted budget and it should be recognized by the MOJ that it was necessary treatment for the applicant’s health (Art 20(1) PD). A uniform procedure did not exist prior to 2019 December, and the MOJ ordinance finally created form. However, an applicant should pay the cost first for medical treatment to request it as it is reimbursement (Art 16(2) Ordinance). In other words, a refugee applicant without any capital or cash faces difficulties to receive basic medical treatment. Thus, refugees receive support from civil society help from medical care as well.

### **5) Education**

Refugee status applicant and his family “may” receive primary and secondary education same as Korean nationals (Art 43 Refugee Act), but there is no specific instrument or clause for their rights to education in presidential decree or ordinance nor a centralized channel available for them to discuss their or their family’s education matters. Unlike the German system which provides access to

social integration and job training and further education at university education, refugee applicants in South Korea do not have access to these.

#### **6) Summary**

Refugee status applicants face serious survival problems during the application stage caused by a perfunctory legislative act where many of the contents are left for the MOJ to specify by delegating authority to them while negligence appeared and nothing has been specified for budget, procedure, or general plan for their entitlement. Therefore, a systematic change is crucial to clear up ambiguity and at least the means to fulfill basic needs by granting either monetary or non-cash benefits or by granting a work permit from an early stage of the application so that they can survive during their determination process. MOJ is argued to be not an ideal department in charge of considering arbitrary decisions in overall entitlements policies for the applicants without fully taking the refugee status applicant's situation into account. Therefore, another Minister experienced in migrants' settlement experience should take the role for smooth policy implementation (NANCEN Refugee Rights Center, 2017) to fully protecting legal entitlements to applicants for their successful social integration and survival during the application stage.

In addition, in the process of accepting Yemeni refugees in Jeju, the MOJ showed a clear ad hoc decision concerning applicants' legal entitlements and it was a chance to identify problems of the current refugee act (Choi & Park, 2020). As discussed previously, the division of role between the central government and provincial government is not clearly drawn while there is a rise in tourists and irregular flows of migrants in provinces via international airports and ports. In the Jeju Yemeni refugee incident, the MOJ and provincial government coordinated Korean training, arranged a job fair, and granted a work permit prior to the six months rule in law. Yemeni refugees whose application was being processed received work permits because the provincial government could not support the cost while there is no clause in the act concerning central and provincial government's division of roles in accepting refugees while provincial immigration offices receive applications. Thus, it opened the labor market temporarily for their cases due to no funding source available for them to support during their refugee status determination process.

## **B. Germany: Specified Procedure and Comprehensive Legal Entitlements for Integration**

Germany developed a separate legislative act for the benefits of asylum seekers and asylum applicants. This is managed in the Asylum Seekers Benefits Act (ASBA, AsylbLG) which is a legal document covering benefits for asylum seeker after completing his initial registration at arrival center, or Central Register of Foreigners (AZR) of the Federal Office and the system considers them as asylum applicant (AA 55(1) subs 1) with the same benefits. The beneficiaries of the ASBA act include asylum seekers waiting for their decision, during their entire appeal procedure, and the negative decision recipients (Duldung), and even the asylum seekers who have not been permitted to enter the country at the border (ASBA Art 1). The act excludes applicants whose application has been rejected for “manifestly unfounded” grounds or “inadmissible” (ASBA Art 1a). The benefits are provided in cash or non-cash benefits from the town or district level from which they are assigned to using the EASY quota system, or the initial distribution of asylum seekers system. Asylum applicants are obliged to spend all resources of income or other forms of capital before soliciting the benefits (ASBA Art 7) and are not entitled to receive duplicative benefits simultaneously from other regions (AIDA, 2016, p.54).

### **1) Accommodation**

Due to the largest influx of asylum applicants, emergency measures were taken to provide temporary shelter for applicants and this state government’s turning local gyms, office buildings, and containers into an emergency shelter in big cities to accommodate them and the RSD procedure is conducted there (AIDA, 2016, p.59-61). Establishing and maintaining operations of these reception centers are obligated by law, and each state has the facilities supported by the federal government. In 2017 January, it developed 73 facilities in 67 areas (2016, p.59).

### **2) Rationing**

The rationing of asylum seekers are composed of two benefits varying by the period of stays: “basic benefits” are granted in the first 15 months (ASBA Art 3,4,6,7) and this automatically change after their temporary residence exceeds 15 months(SCB Art 44) to “social services” (ASBA Art 2). The latter is more comprehensive social benefits and includes access to unlimited healthcare (AIDA, 2016, p.55).



Asylum seekers before filing an application, but after registering on AZR, are eligible to request cash and non-cash benefits from the local government using their arrival certificate since 2015 (Art 63a Asylum Act; BAMF, 2016, p.8). This assistance in ASBA is composed of three (AIDA, 2016, p.55): basic benefits (Art 3); special benefits in cases of illness, pregnancy, and childbirth (Art 4); and other individual benefits for specific health problems (Art 4). The basic benefits provide vouchers to purchase the following items or non-cash products of food, accommodation, heating, consumer goods for household, clothing, and hygiene (Art 3(1) and (2)). But it is up to the regional level government in deciding whether to provide cash or non-cash benefits, while the latter should be the rule. The local state holds the discretion power and they may choose the form when considered impossible due to administrative burdens (Art 3(1); AIDA, 2016, p.55). The applicants staying at centers receive the lower amount as they receive the necessary means of heating, food, clothing, and other sanitary products necessary<sup>60</sup>.

As this financial support is granted from each state via EASY quota system, a systematic arrangement of refugees' settlement between federal and state government each year, each state covers the costs of asylum applicants with federal government's support and they are obligated to operate accommodation facility and other services for applicants. Due to this financial arrangement, asylum applicants are obligated to remain in the designated area, and permission is required to travel outside the region (AIDA, 2016, p.57) and do not have the right to choose their place of residence (AIDA, 2016, p.56).

### 3) Access To The Labor Market

The Federal government opened access to the labor market in 2016 to asylum applicants but ambiguity exists in a decision to grant a work permit as these are at the discretion of policy executors in local alien offices on their individual situations; hence, assessment and restrictions exist unlike the refugees with positive decision recipients. The federal government temporarily suspended labor-test<sup>61</sup> in August 2016 until 2019. The suspension was introduced to 133 out of 156 regional labor agencies at the local level (AIDA, 2016, p.12; Han Myeong-jin, 2020, p.307-

<sup>60</sup> In 2016, financial allowances amounts (AIDA, 2016, p.56)

(unit: Euros)	Single dult	Adult with partners	Children under 18	14-17	6-14	Under 6
At facility	135	122	108	76	83	79
Outside facility <sup>60</sup>	351	316	282	274	240	212

<sup>61</sup> Labor-market test or priority review is conducted to ensure whether there is a German national or other foreigners with better residence status suited for the job (AIDA, 2016, p.12).

8). This aimed to expand access to the labor market to applicants immediately after leaving the initial reception center, which means their obligatory stay at the center ranging from three to six months dependent on their country of origin. But as applicants from safe countries of origin are obligated to stay at the initial reception center during the entire process (AA 29a and 61(4); AIDA, 2016, p.65) they're not entitled to access to the labor market.

Even during the initial obligatory stay at the reception center, an applicant can receive assistance from the center officers and immediately secure employment after leaving the center. Under the FIM scheme, the government has further developed this new program to provide low-threshold jobs for 100,000 asylum applicants (Art 5a ASBA). Both asylum applicants and asylum seekers can apply for employment permit by simply having an employer declare his will to hire them when an employment permit is granted; then, an applicant submits the declaration of the job offer and description to the local aliens' office to receive work permit (AIDA, 2016, p.66). However, when an adult person with eligibility to work failed to find a prospective employer, they are obliged to serve in public sectors and duties such as cleaning facilities and public garden and receive 80 cents an hour (ASBA Art 5a) during their RSD process.

And after Applicants 15 months of initial registration, they can receive assistance from a local agency. The applicants' prospective workplace including their adherence to labor principles and wage st officers at these agencies conduct a review of labor conditions of standards (AIDA, 2016, p.66). Rejecting to commit to work without any legitimate reasons will lose their asylum seekers' benefits (ASBA Art 5a(3)).

However, while labor integration of refugees and social integration from the early-stage is seen as a success Germany also faces a minor challenge in negative decision recipients, who will soon be deported after their temporary permit to stay over. Their chances to seek residence is argued to cause a dilemma between integration and deportation with large discretion given to the local government on decisions for these entitlements (Schultz, 2020, p.16). Both Duldung and National Ban on Deportation also can request a work permit but based on individual assessment and must receive permission from BMAS (Art 32(1) Employment Regulation). Moreover, as Federal Employment Agency is in charge of labor market integration during the asylum application process, while the local job agency is in charge of protection status, and it is not clear how the cooperation

is realized between three actors. Consequently, the present problem is limited transparency in work permit decisions by local aliens' officers has been called for improvement (OECD, 2017, P.15).

#### **4) Medical Service Support**

All asylum seekers upon arrival at the reception center receive a mandatory medical check-up to prevent communicable diseases (AA Art 62(1)) and cash and non-cash benefits are provided to people with illness and pregnancy for medical care (ASBA Art 4). Due to the large scale of applicants and limited professional medical staffs available, the federal government allowed asylum applicants with professional medical license acquired back home to help with medical staffs at accommodations for temporary treatment only to refugees (AA 90(1); Ahn Sung Kyoung, 2016, p.17)

#### **5) Education**

Since August 2016, Duldung and a national ban on deportation are accessible to receive job training and their temporary residence are reserved to complete training for two to three years of the program and additional 6 months are granted in cases completing the training and to find jobs (Social Code Book III 132(1); AR18a and 60a; Lee Bo-Yeon, 2019, P.40). Also, applicants are eligible to receive additional compensation for job training after 15 months of residence (Social Code Book III 132(1) subs 1). The government further removed the age limit of 21 years old in starting job training to make it more accessible to young asylum applicants.

Concerning compulsory education, the right and obligation to schools are reserved to all children in Germany, and compulsory education is provided until a certain age, usually 16, dependent on the state (AIDA, 2016, p.66). However, some challenges remained in practice as asylum applicants from safe countries of origin are obligated to stay in the reception center, and has been criticized their children's limitation of compulsory education access by an NGO Association (School for all).

#### **6) Other Benefits: Access To Social Integration Courses and Permanent Residence**

The federal government opened access to social integration courses since August 2016 (AR 44(4) subs 2-1) for integration during their asylum applications except for applicants from safe countries of origin (AR Art 44(4) subs 3). The asylum applicants with a national ban on deportation status or temporary suspension on deportation are eligible to access social integration courses after

October 2016 (AR Art 44(4); Lee Bo-Yeon, 2019, p.41). Since 2017 January, it has transformed to an obligatory nature and provided to all. Integration courses also reduce the naturalization period to six years (Art 10 German Nationality Act; AIDA, 2016, p.84). Rejecting to take these courses without legitimate reasons, however, will result in a reduction of benefits (ASBA 5b(2)).

These legal clauses concerning social integration indicate the German government's motivation to integrate refugees from an early stage so that they can understand the society, culture, and language while upskilling via job training. This finally results in their empowerment and economic independence which reduces societal and economic costs in the long-run.

The German asylum legislative act does not exclude asylum seekers, asylum applicants, and even Duldung's access to permanent residence and treats their access to it just like other foreigners in Germany. They may apply for permanent residence after five years of stay. The legal requirements for permanent residence include their sufficient living space and economic capability, knowledge of the legal and social system of Germany as well as German language capability, and pension scheme for 60 months (AR Art 9). It is worth noting that anyone who successfully integrated into the system receives the possibility of permanent residency and naturalization and this is not limited to the recognition of refugees (Shin Okju, 2018, p.287).

## **6.5.2 Protection Decision Beneficiaries**

### **A. South Korea (Recognized Refugees and Humanitarian Status Holders)**

Recognized Refugees are the only positive decision by the MOJ at first instance authority as humanitarian status holders are granted protection after an initial rejection on their application and decided by refugee committee at appeal (Art 2 PD). This part first focuses on the problems concerning humanitarian status holders then moves on to recognized refugees' entitlements and ambiguity problem.

A recognized refugee receives a three-year residence permit (F-2-4) and works permit without restrictions (MOJ, 2015, p.6) while a humanitarian status holder is entitled to a one-year residence permit (G-1-6), renewable at a range of 1 year at each time, (MOJ, 2015, p.8) and work permit may be granted at MOJ's discretionary decision (Art 39RA; MOJ, 2015, p.5). The right to work is the entitlement for humanitarian status holders in the act while MOJ seems to provide the same benefits as refugee status applicants to access to accommodation, medical support, and education unlike the refugee act says (MOJ, 2015, p.5). The

ambiguous procedure in granting humanitarian status is already problematic but their legal entitlement is also ambiguous.

This is ironic as MOJ uses a “protection rate” by including humanitarian status holders (MOJ, 2019b, p.204) but they do not protect the humanitarian status holders as they should do. MOJ calculates positive decision by including the number of humanitarian status holders, but they are not in the same category as recognized refugees, but with refugee status applicants under G-1 visa (MOJ, 2018c, p.1045). Humanitarian status holders face many challenges for their temporary nature status as they and their offspring can attend high school but not a further degree for their status.

An applicant who studied in a Korean high school could not enter a college because of her temporary residence permit as this visa type holder is not allowed to enter college (Yonhap, 2019). Thus, it is rather contradictory considering one wanting to demonstrate its protection rate by including humanitarian status holders to impress global refugee organizations their while the government’s duty to protect them as a host country is not well fulfilled considering only entitlement recognized in the legislative act is their eligibility to request a work permit. Thus, it has been argued that government should provide the same legal entitlement as a recognized refugee and secure financial stability for policy implementation for them (Choi & Kwon, 2017, p.148).

On the other hand, the recognized refugees are entitled to binding legal entitlement from social security benefits (Art 31), National basic living security benefits (Art 32), primary and secondary education for recognized refugee and their minor child (Art 33(1)), and family unification with the minor child and spouse (Art 37). In addition, the MOJ provides entitlements at its discretion concerning social integration courses (Art 34), education support dependent on the refugee’s capabilities (Art 33(2)), recognition of academic credentials (Art 35), and qualifications (Art 36).

However, even the former, concerning the binding legal clauses, problems exist due to discord with other domestic laws and no legal clause concerning cooperation between ministries for policy implementation. Consequently, these problems restrict even the recognized refugees, who are likely to stay in long-term and with chances of settle in South Korea, to invoke their legal entitlements.

## 1) Basic Needs

A recognized refugee is entitled to access to “Social Security Benefits”<sup>62</sup> same as Korean nationals (Art 31 RA) and “National Basic Living Security Benefits”<sup>63</sup> despite their alien status (Art 32 RA). While not recognized in the law, a recognized refugee “may” request National Health Insurance Benefits in cases they meet certain conditions in cases of ineligibility to receive the social security benefits from the Ministry of Health and Welfare in part of the program for migrant workers with economic hardship and “may” receive financial support for their medical treatment and surgery (MOJ, 2015, p.7).

In other words, no systematic policy mechanism is designed for recognized refugees for their overall life and survival covering rationing, public relief, medical support, and accommodation. Although the legal text of the refugee act seemingly protects these rights, it is absent with specified policy instrument assisting a recognized refugee to invoke these legal entitlements. Linguistic obstacles and limited awareness of the existence of legal clauses concerning these rights by level street-level bureaucrats at provincial levels serve as a major challenge to request their entitlements even when a refugee knows about the policy (Choi & Kwon, 2017, p.152).

Fragmentation of individual laws further excludes recognized refugees even if they are under SSB and NBLSB. Some of the rights in these schemes are not eligible for recognized refugees even if they are supposed to receive benefits. This legal fragmentation problem is why some called for a control tower operation that can function as one integrated social service channel (Kim Dae-keun, et al., 2018, p. 42).

For example, a recognized refugee’s handicapped child was reportedly not accessible to register as a handicapped person in the social security act to receive the benefits under the scheme that the refugee act recognizes (IBID, p.49) or another recognized refugee who stayed in South Korea over a decade could not apply for public rental housing operated by government as they are only for the

---

<sup>62</sup> Social security in South Korea are “social insurance, public aid, and public welfare service that guarantee income and services necessary to protect citizens” from social harms include child nurturing, childbirth, unemployment, ageing, disability, illness, poverty and death (Art 3(1) Social Security Act) and is aimed to strengthen national welfare by state and local government responsibilities concerning the related systems and policies (Art 1 of the SSA).

<sup>63</sup> National Basic Living Security is public relief nature and aimed to ensure minimum level of living of the deprived Korean citizens (Art 1 of the NBLSA) and a recognized refugee is entitled to receive the benefits same as Korean nationals in Article 7~15 which are: livelihood; housing; medical, educational, childbirth; funeral; and self-sufficient benefits (Art 7(1) of the NBLSA).

Korean national while her status as a beneficiary of Basic Living Security Benefits supposed to require their applications (IBID, p.48).

Therefore, despite their hard-earned position as a recognized refugee after years of waiting, many still face obstacles in survival for basic survival. Civil society organizations and private shelters are operated to support their survival (Choi & Kwon, 2017, p.156) for the state inaction and reluctance in the protection of recognized refugees' legal entitlements.

## **2) Social Integration**

This part discusses the legal entitlement clauses concerning the MOJ's discretion: social integration course (Art 34), educational support dependent on the refugee's credentials (Art 33(2), and recognition of academic credentials (Art 35) and qualifications (Art 36).

First, primary and secondary education of the recognized refugees and their children are protected in the act (Art 43 and Art 13(1) PD); however, this is not specified how they can receive these benefits from the MOJ or other relevant organizations of Ministry of Education. While all migrant children can enter and transfer to primary and secondary schools regardless of their residence status (Art 19(2) Enforcement Decree of the Elementary and Secondary Education (EDESE)), the current education law only identifies "Korean citizens" as the beneficiaries of the compulsory education (Framework act on Education Art 3) and requires the national resident ID of the children for informing a school entrance notice. Thus, the recognized refugee's child is often excluded from the list (Art 17 EDESE) (Kim Dae-keun, et al., 2018, p.58).

School entrance is also at the discretion of the school principal (Art 19, 66, 75 EDESE) and as their admission is often rejected by the school, so a recognized refugee's children are sent to charter schools instead (Kim Sejin, 2015; Hankook Ilbo, 2015). Moreover, a recognized refugee and his child "may" receive education expense support (Art 60(4) EDESE) and authority is delegated to MOJ in recommending persons to receive such benefits but as this is a discretionary decision without any policy instrument (Art 13 PD)). And the full records of how it has been operated and could not be found.

The MOJ is also passive in policy for recognized refugees' social integration and employment opportunities are at a discretionary decision without policy instrument for the procedure. MOJ "may" provide social integration courses and Korean language education (Art 34(1)) and "may" provide support for

vocational training (Art 34(2)), but at MOJ's discretionary decision in whether to implement a social integration program (Art 14 of the PD) or whether to recommend persons for vocational training to MOEL (Art 15 PD). No programs are designed for recognized refugees separately nor the regular operation of programs with other migrants found.

Programs for economic and social integration including Korean language and culture are crucial for successful integration and increase chances to gain economic and social independence, but having decisions for these essential nature programs at the discretionary decision by MOJ, jeopardizes their successful integration and can result in their economic hardship and isolation from society. Considering their restrictions to basic needs, linguistic obstacles and limited comprehension of the Korean society can be critical for their survival, thus, requiring systematic reforms.

Moreover, the MOJ did not consider a refugee's context in requiring certain documents may not be obtainable for refugees for liberal professions. A refugee "may" be eligible to recognize his academic credential (Art 35) and professional qualifications (Art 36), but no system and procedure available for such qualifications to be acknowledged by the authority and are restricted to receive further academic opportunities in South Korea (Kim Dae-keun, et al., 2018, p.53). This is because *Apostle* of such credentials is required even to refugees, but their situations were not taken into consideration such as inaccessibility to own credentials as they could not bring with themselves when they left the country, or their impossible situation to visit his country of origin's embassies. Therefore, this was argued to be caused by the lack of understanding of refugee's situation into consideration (IBID, p.53).

Germany provides all refugees to receive social integration, vocation training, and their acquired credentials from home countries can be proved via special courses to support proving the skills. Germany further assists them to upskill their expertise to seek better jobs or further degrees at university for successful social integration in society while South Korea does not report any social indicators or data to confirm the refugees' integration success and nor their enrollment of vocational training or further education.

### **3) Family Unification**

Family unification is eligible for recognized refugees (Art 37 Refugee Act) for his minor child or legal spouse by allowing their entrance to the country under



immigration decree (Art 11) which delegated authority to issue a visa. The recognized refugee who wishes to reunite with his family in his home country or a third country sends his family back home three documents.<sup>64</sup> Then the family visits the Korean embassy in their country with a passport, marriage certificate, family relations certificate, minor child's birth certificate, and school enrollment certificate, and the documents are sent from South Korea to request a temporary visit visa (Kim Young-ah, 2018, p.45-47), With a temporary visit permit F-1 visa, they receive three-year residence permit without accessibility to the labor market, unlike the recognized refugees with a non-restricted work permit (Kim Dae-keun, et al., 2018, p.56).

In addition, they need to go through individual refugee application and even after they enter South Korea (Kim Young-ah, 2018, p.48). This is in contrast to the German system which simply considers spouse and child's application is filed upon informing to the BAMF officers in the application stage.

The most problematic is the absent system or measure for a newborn child between refugee and a Korean national as traditional *Jus Sanguinis* principles in nationality law prevents their newborn baby's registration in the system, which puts their offspring in a "de facto stateliness" status (Kim Jin, 2018, p68-69).

## **B. Germany (Recognized Refugees, Subsidiary Protection, and Ban on Deportation)**

The positive decision recipients in the German system are recognized refugees<sup>65</sup>, subsidiary protection, and the prohibition of deportation. The positive decision recipients are granted with a legal residence permit, three years to recognized refugees (AR 25(2)), and one year with eligibility to renew two years in each extension as long as no reasons to withdraw protection to subsidiary protection decisions (AR 26(1)) and at least year with repeated extension possible to a national ban on deportation decisions (AR 26(2)). Thanks to specified policy instruments with clear policy objectives, Germany's efforts in prompt integration of refugees from an early stage of the asylum application is likely to lead to their successful integration. A refugee with positive decisions receives the same benefits

---

<sup>64</sup> The three documents are: 1) his identification documents including refugee recognition certificate and alien certificate; 2) financial certificate including housing lease contract, certificate of employment, and certificate of balance to prove economic stability; 3) and invitation letter and letter of guarantee which are usually prepared by refugee support organizations to his family back home.

<sup>65</sup> Same treatment as entitlement of asylum status in practice while recognizing refugee as convention refugees is more extensive covering non-state actors' persecution while asylum status which only finds state as a persecution agent (BAMF, 2016, p.17-18)

as Germans in access to the labor market concerning their job training and assistance from the relevant authority (Art 25(2) subs 2, 4 AA) and self-employment subsidies (Art 93 SCB III) on the top of full coverage of basic needs which is systematically granted based on the period of their stays not the types of protection (ASBA Art 2; SCB Art 44).

### **1) Basic Needs: Accommodation, Rationing, Health Care, Right to Work, Self-employment**

All beneficiaries of positive decision are obligated to stay three years in a certain state that they are granted a refugee status from (AR12a(7)) due to the EASY system unless they successfully secured a job paying more than 710 Euros a month and work more than 15 hours a week (AR12a (1) and subs2). But there are no restrictions to travel outside the region, but restrictions of residence for securing costs to support their legal entitlement.

In rationing and medical services, they receive the same treatment as Germans in the social insurance system including statutory health insurance membership when they have jobs other than a low-paid part-time job (Kim Dae-keun., et al. 2018, p.131). In cases of unemployment, job centers and social welfare offices provide a health insurance card for the same medical care as statutory health insurance (AIDA, 2016, p.93). Rationing of basic benefits is automatically granted after 15 months of temporary residence and it changes the scheme to social benefits (ASBA Art 4), thus, transitional confusion does not happen by category changes of refugees as this is based on their period of residence.

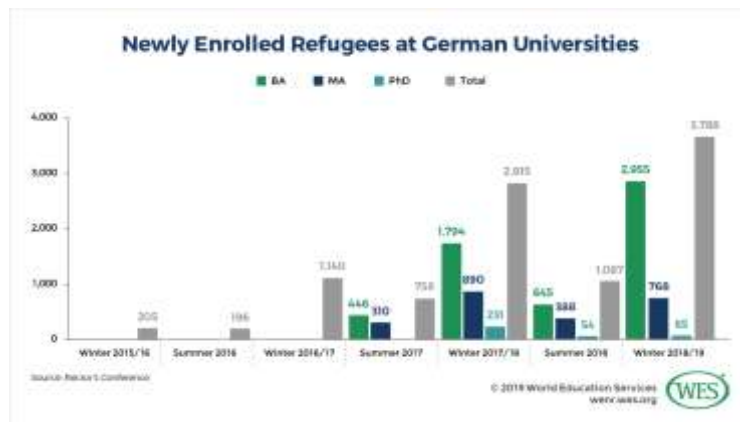
Once their positive decisions are established by BAMF, recognized refugees and subsidiary protection beneficiaries gain access to the labor market without labor-test and they receive the same benefits as the German nationals for their entitlement (AR25(2) subs 2 and 4). National prohibition on deportation category is required to receive a permit from local immigration authority unlike the two. All positive decision recipients are also eligible to receive 300 Euros subsidiary for self-employment every month for the first six months on top of unemployment payment and another nine months renewable with a request after six months periods (SCB III Art 93).

### **2) Social Integration**

The recognized refugees and beneficiaries of subsidiary protection receive vocational training and university education in the same conditions as Germans and the costs of living during studies are supported, as long as they demonstrate their

qualifications are met (AIDA, 2016, p.93). The number of enrolled refugees at university continued to grow and has recently reached a total of 3,788 refugees enrolled at universities (World Education Services, 2019, See Figure 9), this suggests that the Federal government improves their integration via diverse empowering programs by opening door to move up the social ladder via education.

**FIGURE 9. REFUGEES’ UNIVERSITY ENROLLMENT IN GERMANY**



They also receive an obligatory integration course same as other migrants which are composed of 600 hours of German courses and 100 hours of orientation courses (AR44(1)). While this was limited only to recognized and subsidiary protection, the federal government opened opportunities even to the National Prohibition of Deportation and asylum seekers and *Duldung*.

### 3) Family Unification

Family unification is granted to all refugees with positive decisions (AR29(2) and 26) to their unmarried minor children, spouse, and partners<sup>66</sup> by informing the Federal Foreign Office within three months after their status is granted (AR26). Upon their notifications, applications are handed over to the applicant’s country of origin’s embassies or a country where their family members are residing and these embassies shall inform the regional BAMF authorities concerning visa applications (AIDA, 2016, p.88). Compared to the problematic case of a newborn child in South Korea, Germany recognizes their new offspring in a separate asylum procedure and can be held to protect the child upon informing the BAMF officer. The child’s application is considered as a separate application on separate grounds for the newborn child’s interests (BAMF, 2016, p.21).

<sup>66</sup> Persons eligible for family unity are spouses or registered partners including a same-sex marriage partner; minor unmarried children; and unaccompanied children’s parents (RA Art 29(2)(1))

And the refugee status holders do not have to prove possession of sufficient living nor cover the costs of living for themselves and their families (AIDA, 2016, p.88), unlike the South Korean system. Family members residing in Germany with asylum applicants receive their protection status with the recognized refugee and beneficiaries of subsidiary protection together (The Federal Government, 2016b).

#### **4) Permanent Residence**

Recognized refugees with outstanding integration<sup>67</sup> are granted refugee status after three years while most cases will be able to gain it after five years with elementary German and economic stability (AR Art 26(3)). Subsidiary protection and prohibition of deportation beneficiaries can apply for permanent residence for the same conditions as other foreigners with sufficient living space and pension scheme for 60 months (AR Art 9).

#### **6.6 Sub-Conclusion**

This chapter discussed ambiguity in the policy mechanism of protection of legal entitlements of refugee status applicants and positive decision recipients. Two states' ambiguity in mechanism and their legislative action or inaction during the crisis to lower ambiguity are discussed. It now concludes the chapter's findings by contrasting the policy mechanism of South Korea and Germany and highlighting ways to lower ambiguity via a systematic policy mechanism.

South Korean refugee act for refugees' legal entitlement is problematic as many legal clauses seemingly protect the entitlements complying with the 1951 Convention but they are not fully entitled to these even if the refugee act enshrines them. This is because of the lack of a control tower fully in charge of cross-ministerial cooperation, an absence of procedure, instruments, and resources for policy operation, and legal fragmentation that discord with other domestic laws. Thus, ambiguity persisted during the Yemeni refugee incident as ambiguity served as a major obstacle for refugees to fully invoke their entitlements even if they are seemingly protected as the entitlements in the act. Ambiguity prevails in the overall refugee act's legal entitlements clauses and restricts their access to basic needs, social integration, and other entitlements and benefits. These ambiguity problems result in the deprivation of entitlements to refugees. Thus, they are largely dependent on civil society.

---

<sup>67</sup> This is required to have advanced German capability to C1 level with economic stability. See Government's explanatory memorandum to the Integration Act for more information.

Germany, on the other hand, provides a comprehensive and systematic policy mechanism to protect legal entitlements. The central agency of refugee matter, BAMF, fully ensured refugees' access to the entitlements as they are enshrined in the law concerning basic needs, social security, and social integration for their successful settlement in Germany. The clear policy objective of successful integration of refugees and distinct policy mechanism including economic integration aimed at FIM and compulsory 700 hours social integration programs to asylum seekers, asylum applicants, and positive recipients from an early stage of the asylum application. Germany further empowers them by providing job training, authorizing temporary medical license to help doctors at refugee facilities, and obligating to work to contribute to society while their application is being proceeded for their successful settlement.

Legal entitlement and the benefits in the 1951 Convention is critical for refugees' successful integration and investing in these in the early stage of the asylum process, especially their access to the labor market upon arrival reduces the long-term costs (Marbach, Hainmueller, Hangartner, 2018). Germany learned this lesson from its previous mistake of refugees in the 1990s which still shows a conspicuous unemployment gap compared to other migrants (Die Zeit, 2016); thus, fully opened labor market access immediately to all refugees even to negative decision recipients except safe countries of origin applicants during the Syrian refugee crisis. In South Korea's Yemeni refugee incident, refugees were largely deprived of basic access to survival including food, shelter, clothing, and civil society supported their survival was at stake. Thus, their rights to work were temporarily allowed in ad hoc decisions despite the six months after application filed rule (Hankyoreh, 2018a) as the provincial government could not support them financially nor special arrangement by the central government was made for their basic survival needs, but the right to work without their social integration and language education would not work ideally and cannot lead to successful integration.

The problem in the system is that lack of means for refugees to survive as these basic survival needs are not fully covered by the government as a host state, this reluctance in granting work permits to refugee status applicants and humanitarian status holders instead of granting work permit to survive economically puts the refugees' survival even more challenging situation. The limited budget only covers less than 4% of refugee status applicants for living

assistance inevitably push them to work illegally (Choi You & Cherry Kwon, 2017, p.161), thus, the government's deliberate reluctance in work permit derived from its unresolved illegal migrants' issues ironically is likely to prompt illegal migrant problems. The current system allowing applicants to work after six months of filing an application and requiring an employment contract to request a work permit also limits their opportunities to secure employment to survive.

In contrast, a refugee status applicant can secure employment by having a prospective employer declare his will to hire the applicant if he is allowed to work in Germany. Moreover, with the systematic mechanism of the FIM, it opened the labor market in low-threshold jobs for public sectors so that asylum seekers and refugee status applicants before and after the application process can experience the German labor market. South Korea could also adopt the approach and support access to the labor market from an early stage of application via lowering the barriers to work permit, unlike the current system which requires an employment contract as a precondition to a work permit.

Additionally, unlike the German system in which BAMF takes control over the procedure and legal entitlement and handles cross-ministry cooperation agendas, the absence of the main actor in charge of legal entitlements that fully understand the refugee's situation and contextual background is crucial for systematic policy operation in South Korea. Thus, MOJ was argued by civil society that is not an ideal department to handle this matter for its inexperience in the social integration of minority migrants, and this noticeable throughout the analysis. In particular, their approach is the traditional security-based approach in the recognition process and legal entitlement which focuses on the control aspect rather than integration brought skepticism about whether the MOJ would be the right authority in charge. Thus, either developing an integration program designed for refugees via cooperation with other departments specialized in effective integration of migrants, or any equivalent program should be developed.

The ambiguity problem was particularly severe in humanitarian status holders whose only entitlement is the right to request a work permit in the current system. This shows a discrepancy compared to Germany's subsidiary protection, which receives the same benefits as recognized refugees except for their residence permit period, which still has chances to be extended when they join job training. The South Korean government using the protection rate to indicate the Korean government's efforts in protecting refugees includes humanitarian status holders

while the duty to protect their entitlements is not fulfilled.

Germany's clear and specified policy instruments with clear policy objectives provided several models that South Korea could adopt in this chapter. Unlike South Korea's response during the Yemeni refugee incident, Germany had a clear policy objective that aimed to provide prompt protection and legal entitlements not only to refugees with positive decisions but to asylum seekers, asylum applicants, and even to negative decision recipients. During the Syrian refugee crisis, further cleared up the clouds for their legal entitlements' access by lowering ambiguity in the procedure for their accessibility in the unprecedented, rapid and large volume of asylum applications.

The German legislative opened the door to permanent residence, labor market, and social protection to asylum applicants and negative decision recipients and introduced obligatory social integration courses including language, society, and job-related training and even pre-labor market access employment opportunities in the FIM scheme for their successful settlement in German society quickly to avoid excessive spending for failure in integration in long-term by learning its past experience. In addition, the government clearly prioritized resources for the asylum applicants who are likely to reside in Germany longer from an early stage of the application by limiting the access comprehensive social security benefits to applicants from safe countries of origins and applicants who are likely to receive a negative decision for their manifestly unfounded persecution situation in applications. Moreover, guaranteeing temporary residence holders such as negative decision recipients and asylum applicants to complete their vocational training, secured a path for the outstandingly socially integrated refugees to seek a settlement in Germany regardless of their refugee status.

Unlike South Korea which undergoes fragmentation of individual laws in the domestic legal sphere as changes are sporadically adopted by the ministry in charge, legislative changes were made via omnibus laws; hence, there were no problems concerning discord involved between national laws. Also, the systematic arrangement of an EASY system which clearly divides the division of role between the federal government and state government for refugees' settlement has great implications for South Korea's centralized government system which lacks any equivalent program in the Refugee Act.

However, Germany also faces minor challenges concerning discretion granted to street-level bureaucrats in local authorities. For example, despite a rather

well-coordinated mechanism between governments and the newly developed program of FIM, it was notable that these challenges surrounding job-training and work permit exhibit ambiguity in local authorities as it lacks specific guidelines concerning the assessment of individual cases to grant a work permit to Duldung beneficiaries. In particular, Duldung who received a deportation order has reportedly received another chance for temporary residence to stay to complete his integration program and policy executors inevitably face the dilemma between residence termination and another chance of labor integration, and more problematic is these two decisions are held by different authorities. As the Federal government's legislative act was made in 2016 concerning more accessible labor market for their quick transition, more coordination between the key actors, the local job center, BMAS, immigration authority, and BAMF, between central and local level seems crucial to reduce confusion of their status and conditions.

Despite the challenge in labor integration in Germany, it is worth noting that the government developed concrete mechanism in the protection of refugees fundamental rights including basic survival needs and programs for social and language integration and job training, as well as higher education in university for the successful integration into society with specified program and division of roles between the relevant authorities.

The difference between the South Korean and German legislative acts and the demonstrated ambiguity in its policy is caused by an absence of the government's willingness in addressing the problem. Germany from the beginning showed a clear political will to accept Syrian refugees and went extra miles knowingly that it will be a fiscal burden in short-term, as passive policy programs would result in more expenses taking its previous lessons from failure in integrating the refugees after the Yugoslavian war in 1992 when the German government did not take any actions and resulted in challenges for them to integrate even after a long residence in Germany. Also, Germany's transition from *Jus Sanguinis* based nationality system to accepting their status as a *de facto* immigrant country contributed the German government to prepare and identify what are the procedural needed for refugees' integration by taking the refugee's situation and context into consideration, unlike South Korea's mechanism.

The degree of ambiguity that appeared in the act is summarized in the table below:



**TABLE 12. CONTRAST OF LEGAL ENTITLEMENT**

<b>1951 Convention</b>	<b>South Korea</b>	<b>Germany</b>
<b>Simple presence</b>	<b>Refugee status applicant<sup>68</sup></b>	<b>Asylum seekers (same as asylum applicants)</b>
Rationing (art 20)	Living assistance (art 40(1) RA) for the first 6 m only = latent ambiguity (budget covers less than only 4% )	Basic benefits first 15m (art 3,4,6,7 ASBA) in cash and non-cash; Social benefits after 15 m (art 2 ASBA)
Education (art 22)	Primary/secondary education (art 43 RA) but patent ambiguity (C)	Mandatory social integration (art 5b(2) ASBA) ; Job training (art 32-4-2-1 RE) with discretion
Identity papers (art 27)	X latent ambiguity (A)	Arrival Certificate (art 63a AA)
Naturalization (art 34)	X latent ambiguity (A)	5 years residence and conditions for permanent residence : same treatment as foreigner (art 9 AR)
<b>Lawful presence</b>	<b>Humanitarian status holder</b>	<b>Asylum applicants</b>
Free movement (art 26)	X latent ambiguity (A) X latent ambiguity (A)  Work permit (art 39 RA) *permission required = patent (D)	X latent ambiguity X patent ambiguity restrictions exist (the budget issue in EASY Quota)
Other benefits	+housing(art41RA) =patent ambiguity(C) +work permit after 6m (art 40(2)RA)) =patent (C) & latent ambiguity (D) +medical costs reimbursement Latent ambiguity (D)	+ housing (art 45, art 60(1) AA) + work permit after 3 m at discretion (art 5, 5a, 5b ASBA) + mandatory medical check (art 62(1) AA) + special benefits in cases of ill, pregnant and new-born child (art 4 ASBA)
<b>Lawful residence</b>	<b>Recognized refugees</b>	<b>Recognized refugees/subsidiary/NBD (same entitlements otherwise marked)</b>
Wage earning employment (art 17)	Work permit no restrictions	Work permit (art 25(2) subs 2, 4 AA): *permit required for NBD patent (D)
Self-employment (art 18)	X	Self-Employment (art 93 SCB III) -300 euros subsidies a month for 6 m
Housing (art 21)	Housing(art 23(2) PD) = latent (A) & patent (C) Public relief, social security	Housing (art 12a(7) AA); Rental subsidies by social welfare offices Public relief, social security, labor legislation
Public relief (art 23)	-SSB (art 31 RA) -NBL(art 32 RA) = latent (A) and patent (C) Primary/secondary education	:generous benefits the same granted to applicants Mandatory job training (art 12a(2) AR) 600 hrs German 100hrs Civic orientation

<sup>68</sup> South Korea does not recognized “Simple presence” which is asylum seekers or pre-asylum application stage, thus, it is contradictory to the 1951 Convention’s categorization of refugees. Refugee status applicant category should fall in “Lawful presence” but this table is drawn for simplified comparison with asylum seekers category of Germany as they generously provide equivalent protection to asylum applicants. Note that the entitlements in categorization in a higher cell (the least protection) is applied the lower cell (higher protection).

---

Social security and labor legislation (art 24)	(art 33(1 RA)) = patent (C) and latent (D) Language, job training (art 34(1) and 2 RA) = latent (A and D)	(art 45a AR)
Family Unity	Job Training (art 34(2) RA) = latent (D) Family unity (art 37 RA) = patent (D) stateless child in cases	Family unification (art 26 AR)
Other benefits	new-born child between foreigners issue	+ Permanent residence (art 26(3) AR) : 3 yrs for outstanding integration or 5 yrs for general applicants (language and economic stability required)

---

Created by the author. (Source: The 1951 Convention categorization following Lassen et al., 2004; South Korea's Refugee Act; Germany's Asylum Act)

**Abbreviations:** ASBA: Asylum seekers benefit act, RE: Regulation of Employment, AA: Asylum Act, AR: Act of Residence; NBD: National Ban on Deportation, SSB: Social Security Benefits, NBL: National Basic Livelihood, SCB: Social Code Book, AR: Act of Residence; PD: Presidential decree; A: Absence of the necessity of a necessary clause; C: conflict (or discord) with other domestic law; D: (large) discretionary power;

# Chapter VII.

## Conclusion

### 7.1 Conclusion

This comparative analysis was conducted to seek an answer to the puzzle: *Why did South Korea fail to operate refugee policy in due process and due protection of legal entitlement over a handful number of refugees in 2018-2020, while Germany demonstrated little to no problem in its massive influx of Syrian refugees in 2015-2016?* For the refugee policy's inevitable policy ambiguity drawn by the fact that a state's policy is a result of constant tension between international norms and principles and state sovereignty principles, this research used policy ambiguity to explain the South Korean failure versus the German success. As a result of the analysis, it confirmed German refugee policy success was attributed to its use of ambiguity "as a learning opportunity (Offerdal, 1984)" to identify policy problems and constantly lowered policy ambiguity with political will even during the Syrian refugee crisis. South Korea, in contrast, deliberately used ambiguity to avoid responsibility and conflict among relevant actors as ambiguity can make the state seemingly comply with the international norms at the international level while giving leeway to evade its responsibility as a host country at the state level. This conclusion is composed of four subsections. It first summarizes the main argument and findings, then briefly illustrates high ambiguity's impact on policy failure. It is followed by policy implication and discussion.

The patterns in internalization showed contrast as the German government specified the international refugee regime's concepts and norms including diverse aspects of persecution and refugee into account, which helps the street-level bureaucrats to implement the policy clearly while South Korea prevailed with skeleton delegation resulted in large delegation legislation and contents for specificity were very limited, which suggests that Korea's legislative democracy level is still conspicuously low compared to Germany in this aspect. Second, the patterns in legislative changes were taken in different methods as Germany took omnibus bills via legislative process to adopt a series of policy changes coherently and efficiently, while South Korea took limited changed in law via delegated legislation in lower-level law of presidential decree and MOJ ordinance.

These problems are confirmed in the high degree of ambiguity in South Korea's legislative act and due to ambiguous understanding between citizens,

street-level policy executors, and the legislators on existing clauses, it faced gridlock at the legislative level and could not adopt systematic changes and resulted in policy failure. On the contrary, Germany showed low ambiguity in legislation despite a new challenge in granting work permits to asylum applicants and a temporary ban on deportation, in other words, negative decision recipients, but due to a low degree of ambiguity in categorization and definition as well as procedure, it was possible to make rapid legislative responses after the crisis to shift from clouds to the clock rather promptly.

The three analysis chapters confirmed that South Korean refugee policy failure is attributed to both latent and patent ambiguity which confirms the preliminary, contradictory, and uncertain nature of the refugee act. This ambiguity is characterized by “latent ambiguity”, in the simple absence of necessary legal clauses for policy implementation as the nature of the clause remain in priori, and “patent ambiguity”, in legal fragmentation of domestic laws that contradicts with domestic laws restricting refugees to request legal entitlement or large discretion of the non-binding legal language’s use that leaves large discretion to policy executors in both legal entitlement and procedural rights.

This ambiguity in South Korean refugee policy was inevitable as it deliberately left the contents for policy objective and instrument ambiguous. The South Korean refugee act was first internalized in 1992 after the country signed the 1951 Convention and further internalized the domestic legal sphere by enacting a stand-alone refugee act in 2012. However, throughout this internalization process, the global refugee norms and principles are not fully accepted until now. In particular, the definition and categorization localization problem was putting the first button wrong and inevitably generated negative spill-over effects in creating ambiguity in both procedural and legal entitlements.

German refugee policy success is attributed to clear and systematic policy instruments and goals with the strong political will to address the refugee policy problem each time it exhibits ambiguity in policy implementation. The German refugee policy is characterized by low ambiguity or clarity, unlike the South Korean refugee act. It specified policy instruments and procedures in the asylum act and constantly made efforts to lower ambiguity. BAMF, the single competent authority specialized in refugee agenda from refugee status determination process to their legal entitlement, ensures refugees’ successful integration and manages programs for refugee status applicants and positive decision recipients’ social and

economic integration. As BAMF serves as the control tower for the refugee agenda, and omnibus laws were the way that the German government made legislative amendments, there was no legal fragmentation. The asylum act clauses are mainly written in legally binding language to avoid large discretionary decisions by the policy executors.

The German government announced its suspension of the Dublin Act temporarily to provide shelter to Syrian refugees in 2015. Although the legislative changes were a latent response rather than preventative measures, the German government's political willingness and already low ambiguity policy could successfully adopt a series of changes that affect diverse domestic laws at once. The German refugee act already fully accepted the global refugee norms and principles since it became a signatory party in 1951 and was constantly specified to avoid confusion by policy executors. It elaborated procedural mechanisms via developing a new system in its three large influxes of refugee history before the Syrian refugee crisis and previously developed a system that divides roles between central and state government concerning refugee acceptance in 1992. Thus, the government in 2015 established clear policy goals to accelerate refugees' status determination process and open economic and social integration from an early stage of asylum applications during the Syrian refugee crisis, which entailed little to no problem.

These findings highlight the importance of reducing ambiguity in the internalization process of the international refugee convention. Germany's full acceptance of the definition and categorization of refugees with its efforts in clarifying an abstract key term of persecution immediately after signing the 1951 Convention reduced ambiguity problems in not being able to identify an asylum seeker, refugee status applicants, three types of protection, and negative decisions. Based on this categorization, Germany could develop a cluster system and accelerate procedures to quickly grant refugee status to an applicant who needs international protection while returning recipient applications from safe countries of origin in a separate process. South Korea's localization of the definition and categorization with limited efforts in lowering ambiguity for the domestic legal sphere largely influenced its inability to quickly identify "who are refugees" for its localization of definition, which tilted more on a security-based approach. The categorization of not recognizing asylum seekers as part of the refugee status determination process also jeopardized procedural rights of the port of entry as it is

largely absent with process and principles for airport procedure, while the legislative act delegated authority to specify them.

### **7.3 Research Implication**

These contrasts in the internalization process suggest two important implications. First, the necessity to develop a more effective mechanism in monitoring and implementing at the international level. Second, the need to develop a more democratic legislative process, highlighting the roles of legislators in areas of global governance. The norm diffusion process of global refugee norms and principles results in two patterns of full acceptance like the German case and localization like the South Korean case. When norm diffusion is 'lost in diffusion' (Willems & Van Dooren, 2011), this inevitably leads to unilateral state decisions at the global governance level while also serving as a major contributor to policy failure at the domestic level.

The global governance's effective mechanism in monitoring and implementing policies at the international level is therefore crucial to avoid undermining the chaotic and unilateral response of individual states. At the state level, a more democratic legislative process is necessary to avoid policy failure in which domestic legislators actors specify the concepts and policy objective. The policy objective is specified via active legislative discussion in the internalization process to ratify the global refugee norms for policy implementation in practice instead of using delegated legislation by leaving large contents to be filled by the relevant ministry in charge.

Finally, the table below is a key summary of the ambiguity driven policy problems in the South Korean policy and the German solution in addressing the problems for recommendations to improve policy clarity.

**TABLE 13. SUMMARY OF AMBIGUITY DRIVEN PROBLEMS  
IN SOUTH KOREA AND GERMAN SOLUTION**

<b>Definition and Categorization</b>	
<b>South Korea (High ambiguity)</b>	<ul style="list-style-type: none"> <li>• Lack of common understanding of who refugees are due to the evidence-based conceptualization of refuge without a definition of persecution</li> <li>• An asylum seeker is not recognized in the system</li> <li>• Non-action based and problematic division btwn asylum seekers and refugee status applicants → potentially exclude ones from a non-refoulement principle</li> <li>• Confusing procedure and standard in granting rejected applicants at appeal to grant humanitarian status</li> </ul>
<b>Germany (low ambiguity)</b>	<ul style="list-style-type: none"> <li>• Full acceptance of refugee definition of 1951 Convention and conceptualization of persecution by act, agents, grounds</li> <li>• Asylum seekers are recognized upon registering at the initial reception center</li> <li>• Action-based definition of asylum applicant after “filing an application” and prior to this are asylum seekers</li> <li>• Subsidiary protection granted at first instance based on varying acts and grounds of persecution</li> </ul>
<b>Procedure</b>	
<b>South Korea</b>	<ul style="list-style-type: none"> <li>• Long and time-consuming recognition procedure with a large discretionary range in the decision due to the absence of a systematic mechanism in sorting applications</li> <li>• Large discretionary in airport procedure which is a pre-asylum process in deciding reference not an actual application process</li> <li>• Not recognizing asylum seekers → legal limbo not being able to locate and identify asylum seekers prior to the application process</li> <li>• A negative decision in non-binding legal language and structural ambiguity and does not separate secondary application in RSD</li> <li>• All documents need to be filed in Korean or English</li> <li>• No division of role between central and local government while provincial offices receive applications</li> <li>• Translation problems of falsifying interview scripts for limited resources</li> <li>• No restrictions to initiate an appeal which delays the time for protection</li> </ul>
<b>Germany</b>	<ul style="list-style-type: none"> <li>• Cluster system divides applications into four types depending on the country of origin and level of complexity of the case</li> <li>• Completing the airport procedure within 11 days including appeal and operates at the airport that has facility including translation only</li> <li>• Initial reception center registration and centralized AZR system for ID check, photographs, fingerprints → to avoid legal limbo of an applicant whose application has not yet filed after arrival on territory and giving them a time limit to file an application and arrival certificate are used to request asylum seekers benefits</li> <li>• The negative decision fully accepts the 1951 Convention and added exclusion criteria in cases an applicant is sentenced a prison term and separate certain types of application including manifestly unfounded application with the safe country of origin; abusive</li> </ul>

- 
- secondary applications without changes
  - All documents can be filed in their native language and it provides translation
  - The systematic operation that divides roles between 16 states and the federal government using an EASY quota system for the initial distribution of refugees
  - Plan to develop in-house translation pool for quality translation
  - Only receive appeal when passed merit test from document assessment but entitled with free legal assistance
- 

### **7.3 Discussion**

This thesis has been an attempt at the existing research gaps in the literature of refugee studies which have overlooked ambiguity as an important factor for a state's failure in refugee protection. By comparing the two countries' different degrees of ambiguity in refugee policies, with similar socioeconomic and cultural ethnic conditions, this research confirmed that policy ambiguity is a critical factor in policy success and failure. It confirmed South Korean refugee policy's failure driven by the deliberate use of ambiguity in the domestic legal sphere to avoid its international responsibility as a contracting state while German refugee policy's success was driven by its policy clarity with clear policy objectives and instruments.

Policy ambiguity appearing in government documents, legislative acts, and media reports are examined in this research thus, it has limitations in not being able to fully capture policy ambiguity from street-level bureaucrats' experience in their everyday policy implementation. Therefore, future research could conduct interviews with street-level bureaucrats concerning their perceived ambiguity in policy implementation. This can carefully capture the relations between the degree of ambiguity and policy implementation that this research missed in the everyday policy implementation aspect.

This research sheds light on policy ambiguity in the internalization process of the international refugee treaties. Policy ambiguity was drawn in this research for a state's refugee policy's inevitable ambiguity nature for its policy formation structure, which is constantly influenced by the global refugee regime's principles and norms. This nature of policy ambiguity was found to be a useful variable in understanding skeleton legislation with largely absent policy instruments and contents for policy implementation in subject areas that overlaps with global governance and international regime. Therefore, policy ambiguity can be applied to other research areas such as labor and environment agenda, which also deals with the ambiguous nature of policy for its policy formation structure.





Enforcement Decree of the Refugee Act. 2018-05-10 partial amendment. No.28870.

[https://elaw.klri.re.kr/eng\\_service/lawTwoView.do?hseq=43622](https://elaw.klri.re.kr/eng_service/lawTwoView.do?hseq=43622)

MOJ (Ministry of Justice) Refugee Department. 2018b(2018-06-29). Situation of measures and future plans related to Yemeni refugee applications on Jeju Island.[제주도 예멘인 난민신청 관련 조치 상황 및 향후 계획.]

<https://www.gov.kr/portal/ntnadmNews/1510628>

Legislative Bill Number 2014145 (2018-06-29); 2014365 (2018-07-12); 2014410(2018-07-13); 2014468(2018-07-17); 2014483(2018-07-18); 2014496(2018-07-19); 2014503(2018-07-20); 2014542(2018-07-25); 2018263(2019-01-21); 2019574(2019-04-04); 2022050(2019-08-21) ; 1917759(2015.11.16), 1916483(2015-08-19), 1915663(2015-06-19), 1915649(2015-06-18), 1915648(2015-06-18), 1915234(2015-06-18), 1915234(2015-05-22), 1912039(2014-10-14), 1910934(2016-05-29); 2000303(2016-06-17), 200385(2016-06-21), 2001982(2016-08-31), 200225(2016-12-01).

Framework Act on Social Security Act [사회보장기본법]. 2018-12-11 partial amendment. No.15885.

[https://www.law.go.kr/%EB%B2%95%EB%A0%B9/%EC%82%AC%ED%9A%8C%EB%B3%B4%EC%9E%A5%EA%B8%B0%EB%B3%B8%EB%B2%95/\(15885,20181211\)](https://www.law.go.kr/%EB%B2%95%EB%A0%B9/%EC%82%AC%ED%9A%8C%EB%B3%B4%EC%9E%A5%EA%B8%B0%EB%B3%B8%EB%B2%95/(15885,20181211))

MOLEG. 2019a(2019-07-22). Pre-announcement of legislation of partial amendment of the MOJ Ordinance amendment of refugee act [난민법 시행규칙 일부개정령(안) 입법예고]. MOJ 2019-241. Access available:

<https://www.moleg.go.kr/lawinfo/makingInfo.mo?mid=a10104010000&lawSeq=55027&lawCd=0&lawType=TYPE5&pageIndex=1&rowIdx=3>

MOLEG. 2019b(2019-07-22). Pre-announcement of legislation of partial amendment of the presidential decree of refugee act [난민법 시행령 일부개정령(안)

입법예고]. MOJ 2019-240. Access available:

<https://www.moleg.go.kr/lawinfo/makingInfo.mo?mid=a10104010000&lawSeq=55026&lawCd=0&lawType=TYPE5&currentPage=1&keyField=lmNm&keyWord=%EB%82%9C%EB%AF%BC&stYdFmt=&edYdFmt=&lsClsCd=&cptOfiOrgCd=>

National Basic Living Security Act [국민기초생활보장법] 2019-12-3 partial amendment No. 16734.

[https://www.law.go.kr/%EB%B2%95%EB%A0%B9/%EC%82%AC%ED%9A%8C%EB%B3%B4%EC%9E%A5%EA%B8%B0%EB%B3%B8%EB%B2%95/\(15885,20181211\)](https://www.law.go.kr/%EB%B2%95%EB%A0%B9/%EC%82%AC%ED%9A%8C%EB%B3%B4%EC%9E%A5%EA%B8%B0%EB%B3%B8%EB%B2%95/(15885,20181211))

Immigration Act[출입국관리법]. 2020-03-24 partial amendment. No.17089.

<https://www.law.go.kr/%EB%B2%95%EB%A0%B9/%EC%B6%9C%EC%9E%85%EA%B5%AD%EA%B4%80%EB%A6%AC%EB%B2%95>

## 2) Germany

- AIDA (Asylum Information Database). 2015 January. National Country Report : Germany, available at: [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_-\\_germany\\_thirdupdate\\_final.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_-_germany_thirdupdate_final.pdf)
- AIDA (Asylum Information Database). 2015 November. National Country Report : Germany, available at: [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_de\\_update.iv\\_0.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_de_update.iv_0.pdf)
- AIDA (Asylum Information Database). 2016. National Country Report : Germany, available at: [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_de\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_de_2016update.pdf)
- Asylum Act [Asylgesetz (AA)]. Access available: <http://bit.ly/1K3bGbv>
- Asylum Seekers' Benefits Act [Asylbewerberleistungs-gesetz (ASBA)] Access available: <http://bit.ly/1yuVyOx>
- BAMF. 2016. Stages on the German Asylum Procedure. Access available: [https://helferkreis-piening.de/lib/exe/fetch.php/caritas-hb-0/docs/asylv\\_bamf-broschuere-das-deutsche-asylverfahren-2016-engl.pdf](https://helferkreis-piening.de/lib/exe/fetch.php/caritas-hb-0/docs/asylv_bamf-broschuere-das-deutsche-asylverfahren-2016-engl.pdf)
- Basic Law (German Constitution) [Grundgesetz] Access available: <http://bit.ly/1Rteu8M>
- BMI (Federal Ministry of the Interior). 2008. *Migration and Integration: Residence Law and Policy on Migration and Integration in Germany*. October, Public Relations Division, Berlin.
- Federal Constitutional Court, Decision. 1996, 2 BvR 1516/93, cf. Reinhard Marx. *AsylVfG –Kommentar zum Asylverfahrensgesetz (Asylum Procedures Act – Commentary)*, 7th edition, 2009, 432. Quoted in page 38, AIDA 2016.
- Government's explanatory memorandum to the Integration Act. Cf. Melina Lehrian and Johanna Mantel, "Neuerungen durch das Integrationsgesetz" ("Amendments by the Integration Act", *Asylmagazin* 9/2016, 293. Quoted in p.84, AIDA, 2016.
- Residence Act [Aufenthaltsgesetz (AR)] Access available: <http://bit.ly/1M5sZvW>
- The Federal Government,. 2016b. Response to parliamentary question by The Left, No 18/9992, 17 October 2016, 5., quoted in p.8-9, AIDA, 2016.
- The Federal Government,. 2017. Reply to parliamentary question by The Left, 21 February 2017, 63. Quoted in p.9 AIDA, 2016.
- The Federal Government. 2013..*Response to information request by the parliamentary group of "The Left" party/"Die Linke"*, 31 January, No. 17/12234, 7-8 Quoted in page 18, AIDA, 2015 November.
- The Federal Government. 2014. *Response to information request by the parliamentary group of "The Left" party/Die Linke*, 5 March, No. 18/705, Quoted in page 18, AIDA, 2015 November.

The Federal Government. 2015a. *Response to information requested by the parliamentary group of "Die Linke" ("The Left")*, 28 January, No.18/3580, Quoted in page 18, AIDA, 2015 November.

The Federal Government. 2015b. Reply to parliamentary question by The Left, 18/5785, August 2015, 47. Quoted in p.22, AIDA, 2016.

The Federal Government. 2015c. Flexibility is called for now. *Press Conference*, 31 August. <https://www.bundesregierung.de/breg-en/news/-flexibility-is-called-for-now--435220>

The Federal Government. 2016a. Response to parliamentary questions by The Left: 18/7625, February 2016; 18/11262 quoted in p.23 AIDA, 2016.

Zeitung, Süddeutsche. 2016. 'Wenn das Schicksal von Flüchtlingen in der Hand des Dolmetschers liegt', 31 August, available in German at: <http://bit.ly/2lpvMp5>. quoted from p.21, AIDA, 2016.

### 3) UNHCR

UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html>

UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <https://www.refworld.org/docid/3ae6b3ae4.html>

UN General Assembly. 1977. Addendum to the Report of the United Nations High Commissioner for Refugees Addendum to the Report of the United Nations High Commissioner for Refugees, Supplement No. 12 (A/32/12/Add.1) Access available: <https://www.unhcr.org/afr/excom/unhcrannual/3ae68c304/addendum-report-united-nations-high-commissioner-refugees.html>

UNHCR Representation to the Republic of Korea. 2009-06-15. UNHCR's Comments on the 2009 Draft Bill on Refugee Status Determination and Treatment of Refugees and Others. Access available: <https://www.refworld.org/docid/4a8d58092.html>

UNHCR UN High Commissioner for Refugees. 2019. *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, April 2019, HCR/1P/4/ENG/REV. 4, Access available: <https://www.refworld.org/docid/5cb474b27.html>

UNHCR. 2001. The 1951 Convention Relating To The Status of Refugees And Its 1967 Protocol. Signing On Could Make All The Difference. Access available: <http://www.unhcr.org/3bbdb0954.pdf>

### 2. Book

Arakaki, Osamu. 2008. *Refugee law and practice in Japan*. Ashgate Publishing, Ltd.,

Boswell, Christina, Andrew Geddes, and Peter Scholten, eds. 2011. *States, Knowledge and Narratives of Migration: The Construction of Migration in European Policy-*

making. Blackwell.

- Carens, Joseph H. 1997. "The philosopher and the policymaker: Two perspectives on the ethics of immigration with special attention to the problem of restricting asylum," Hailbronner, K., Martin, DA and Motomura, H.(eds.). *Immigration admissions: the search for workable policies in Germany and the United States*. Providence: Berghahn Books, pp.3-50.
- Goodwin-Gil, Guy S. 1996. *Refugee in International Law*. Oxford: OUP.
- James Hathaway. 2005. *The Rights of Refugees under International Law*. Cambridge: Cambridge University Press.
- Kang, Dong-Ug, et al., 2015. *On Legal Policy: Theory and Practice*[법정책이론 무엇인가: 이론과 실제]. Korean Association of Laws and Politics.
- Kymlicka, Will. 1995. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Clarendon Press.
- Lazaridis, Gabriella & Wadia, Khursheed, eds. 2015. *The Securitisation of Migration in the EU: Debates Since 9/11*. Springer.
- Lee, Shin-wha. 2019b. "South Korea's Refugee Policies: National and Human Security Perspectives." In *Human Security and Cross-Border Cooperation in East Asia*. Palgrave Macmillan, Cham.
- Loescher, Gil & Scanlan, John. 1986. *Calculated Kindness: Refugees and America's Half-open Door, 1945-Present*. New York, NY: Free Press.
- Lucassen, Leo. 2005. *The Immigrant Threat: The Integration of Old and New Migrants in Western Europe since 1850*. Urbana, IL: University of Illinois Press.
- Martin, Philip. 2004. Germany: Managing migration in the twenty-first century. In: Cornelius WA, Tsuda T, Martin PL, et al. (eds) *Controlling Immigration: A Global Perspective*. Stanford, CA: Stanford University Press, pp. 220–253.
- Mo, Jongryn & Brady, David. 2010. *Rule of Law in South Korea*. Hoover Institution Press.
- Nathans, Eli. 2004. *The Politics of Citizenship in Germany: Ethnicity, Utility and Nationalism*. New York: Berg
- Ratha, Dilip; Yi, Soonhwa; Yousefi, Seyed Reza. 2015. "Migration and Development." *Routledge Handbook Of Immigration And Refugee Studies*, 1(3).
- Weis, Paul, eds., 1995. *The refugee convention, 1951*. Cambridge University Press, Research Centre for International Law.
- Zarjevski, Yefime. 1988. *A Future Preserved: international assistance to refugees*. Pergamon.
- Zolberg, Aristide R.; Suhrke, Astri; Aguayo, Sergio. 1989. *Escape from violence: Conflict and the refugee crisis in the developing world*. Oxford University Press.

### 3. Journal Articles and Papers

#### 1) Korean Sources

- Ahn, Sung Kyoung. 2016. German legislative act on refugees [독일의 난민관련 입법례]. *Legal Information on Legislative Issues 59*. National Assembly Library Legal Information Office. Access available: <http://law.nanet.go.kr/download/downloadDB.do?dataCode=lawIssue&dataSid=KLAW2016000011>
- Ahn, Sung Kyoung. 2017. Study on AsylG reforms and implications in Germany [독일의 난민법 개혁의 현황과 시사점]. *European Constitutional Law Journal*. *European Constitutional Law Association*. 23, p.389-425 Access available: <https://www.dbpia.co.kr/Journal/articleDetail?nodeId=NODE08988848>
- Arant, Regina. Dragolov, Georgi. Boehnke, Klaus. 2017. Sozialer Zusammenhalt in Deutschland 2017. *Bertelsmann Stiftung*, S. 82. Quoted in Kim, Young Sool, 2018. “A study on Germany’s Policy Changes of Accepting Refugees[독일의 난민 수용과정에서 나타난 정책변화의 연구]”. *Dispute Resolution Studies Review*. 16(2). pp.99-134
- Chang, Bok-Hee. 2009. “Significance of Enacting Independent National Refugee Law in the perspective of International Human Rights Law[국제인권법에서 바라보는 단일 난민법 제정의 의의].” *The Justice*. 110. pp.280-301, Access available: <https://scienceon.kisti.re.kr/srch/selectPORSrchArticle.do?cn=NART56251361>
- Choi Yu. 2014. “A study on the legislative analysis on the Japanese Resettlement Refugee System [일본 재정착난민제도에 관한 법제분석조사].” Korea Legislative Research Institute. *KLRI Issue Paper*, 14-21-2. Access available: <https://www.klri.re.kr/kor/issueData/P/88/view.do>
- Choi, You; Kwon, Cherry. 2017. “Ex Post Legislative Evaluation on Refugee Act[난민법에 대한 사후적 입법평가]”, *Korea Legislation Research Institute*, 17-15-4. Access available: <https://www.klri.re.kr/kor/publication/1753/view.do>
- Han, Myeong-jin. 2020. “Review on the Legal Entitlements of Refugees by Status under the German Law[독일법상 난민의 지위별 법적권리에 관한 검토]”. *Ewha Law Journal*, 24(3), p.287-322 Access available: <https://www.dbpia.co.kr/journal/articleDetail?nodeId=NODE09406004>
- Hwang, Pill Kyu. 2010. “Well-Founded Fear in the Convention Relating to the Status of Refugees[난민의 지위에 관한 협약상 충분한 근거가 있는 공포].” Doctoral Dissertation in Law. Seoul National University, Seoul. Access available: [http://m.riss.kr/search/detail/DetailView.do?p\\_mat\\_type=be54d9b8bc7cdb09&control\\_no=833ae0f5e6f8af0bffe0bdc3ef48d419](http://m.riss.kr/search/detail/DetailView.do?p_mat_type=be54d9b8bc7cdb09&control_no=833ae0f5e6f8af0bffe0bdc3ef48d419)

- Im, Hyun. 2014. "Evaluation and Tasks of the Refugee Act[난민법에 대한 평가와 과제]". *Korea Legislation Research Institute Journal of Law and Legislation*, Access available: [https://www.moleg.go.kr/boardDownload.es?bid=mpblegpst&list\\_no=0&list\\_key=133321&seq=1](https://www.moleg.go.kr/boardDownload.es?bid=mpblegpst&list_no=0&list_key=133321&seq=1)
- Jeong, Kum Sim. 2018. "The Study on Revision of the Refugee Act in Korea to protect Human right of Refugees - focusing on Refugee Status Determination & Treatment for Refugee [난민 인권 보호를 위한 난민법 개정 방향 연구-난민 심사 및 난민 처우를 중심으로]". *Korean Lawyers Association*, 67(3), pp.645-98. Access available: <https://www.kci.go.kr/kciportal/ci/sereArticleSearch/ciSereArtiView.kci?sereArticleSearchBean.artiId=ART002364468>
- Jeong, Kum Sim. 2020. "Comparative Study on the legislation of resettlement of refugees in Korea and Japan [한국과 일본의 난민 재정착 법제비교연구]." *Public Law Journal*, 21(2). pp. 365-393. Access available: <https://www.dbpia.co.kr/Journal/articleDetail?nodeId=NODE09355968>
- Kim, Dae-keun. 2015. A Study on Reforming Custody Regulations Regarding the Human Rights Protection for Refugee[난민의 인권보장을 위한 구금관련 규정 정비 방안]. *Korea Institute of Criminology General Report of Research*, p.1-87. Access available: <https://www.dbpia.co.kr/journal/articleDetail?nodeId=NODE07095399>
- Kim, Dae-keun., et al. 2018. "Criminal Policy Improvement Plan for Social Integration of Social Minorities: Establishment of Social Integration Support System for Refugees [사회적 소수자의 사회통합을 위한 형사정책적 개선방안 : 난민을 위한 사회통합지원체계 구축]", *National Research Council for Economics, Humanities and Social Science*, Access available: [https://www.nkis.re.kr:4445/subject\\_view1.do?otpId=OTP\\_0000000000002924&otpSeq=0&popup=P](https://www.nkis.re.kr:4445/subject_view1.do?otpId=OTP_0000000000002924&otpSeq=0&popup=P)
- Kim, Hwan Hak, et al., 2016. "Evaluation of the Refugee Act for the Three Years of Implementation and Direction of Future Law Reform: Focusing on the Establishment of Rational Refugee Recognition Procedures[난민법 시행 3년에 대한 평가 및 향후 법 개정 방향: 합리적 난민인정절차 구축방안을 중심으로]" *Korea Immigration Service, Ministry of Justice*. Access available: [http://www.prism.go.kr/homepage/researchCommon/downloadResearchAttachFile.do?jsessionid=F6FBF12F2200E79F9E6871623A6271CB.node02?work\\_key=001&file\\_type=CPR&seq\\_no=001&pdf\\_conv\\_yn=N&research\\_id=1270000-201600078](http://www.prism.go.kr/homepage/researchCommon/downloadResearchAttachFile.do?jsessionid=F6FBF12F2200E79F9E6871623A6271CB.node02?work_key=001&file_type=CPR&seq_no=001&pdf_conv_yn=N&research_id=1270000-201600078)
- Kim, Jong Chul. 2014. "A analysis on Korean court decisions of the definition of refugee-focusing on well founded fear [난민정의에 대한 한국 판례의 비판적 고찰. ]". *Seoul International Law Journal*. 21(2), p.53-84

- Kim, Young Sool. 2018. "A study on Germany's Policy Changes of Accepting Refugees[독일의 난민 수용과정에서 나타난 정책변화의 연구]". *Dispute Resolution Studies Review*. Vol. 16(2). pp.99-134
- Kwon, Han-yong. 2016. "International Discussion on the Refugee Problem and Implications of Korean Refugee Policy[난민문제에 대한 국제적 논의와 한국난민정책에 대한 시사점]." *Ajou Law Studies*. 10(1). P.213-249. Access available: <http://www.dbpia.co.kr/journal/articleDetail?nodeId=NODE09004926>
- Lassen N, Egesberg L, van Selm J, Tsolakis E, Doornik JM. 2004. "Study on the transfer of protection status in the EU, against the background of the common European asylum system and the goal of a uniform status, valid throughout the Union, for those granted asylum." Access available: <https://op.europa.eu/en/publication-detail/-/publication/e5a09de5-a915-4e6d-8055-919a9523c5cd/language-en>
- Lee, Bo-Yeon. 2019. "Current Amendment of Refugee Law in Germany[독일의 난민 관련법 개정 현황]." *Korean Law Association Law Review*, 27(2). pp.27-46. Access available: <https://www.kci.go.kr/kciportal/ci/sereArticleSearch/ciSereArtiView.kci?sereArticleSearchBean.artiId=ART002465550>
- Lee, Byounga. 2018. "The politicization of refugee issues in South Korea[한국 난민이슈의 정치화]." *Culture and Politics*. Hanyang Peace Institute. 5(4). pp.33-68. Access available: <http://www.dbpia.co.kr/Journal/articleDetail?nodeId=NODE07592047>
- Lee, Il, 2016. "Direction of development of refugee application system at the port of entry and exit[출입국향 난민신청제도 발전 방향]", Proceeding from academic forums marking the third anniversary of the enforcement of the Refugee Act, Seoul, June 23, 2016.
- Lee, Shin-wha. 2019a. "Refugee Problems and Political/Diplomatic Response Divide in Northeast Asia[동북아 난민문제의 정치외교적 대응격차]." *Discourse* 201. 22(1). pp.157-198. Access available: <https://www.dbpia.co.kr/Journal/articleDetail?nodeId=NODE09250171>
- Migration Research and Training Centre, 2019. The Implications of Germany's Consolidation Law and the Consolidation Policy of the Refugee Labor Market[독일의 통합법 제정과 난민노동시장 통합정책의 시사점]. Issue Brief. 2019-01. Access available: [http://www.iom-mrtc.org/business/business02\\_5.php?admin\\_mode=read&no=499](http://www.iom-mrtc.org/business/business02_5.php?admin_mode=read&no=499)
- Oh, Byoung-Hoon. 2015. "The Challenges and Solutions on Refugee Policy in Korea [한국 난민정책의 문제점과 개선방안]". *Journal of Policy Development*. 15(1), pp. 69-95. Access available: <https://www.dbpia.co.kr/journal/articleDetail?nodeId=NODE09010209>
- Park, Young-Ah. 2015. "Current Conditions and Issues of the Refugee Recognition System



in Korea, [우리나라 난민인정체계의 현황과 쟁점], *Wŏlgan pokchi tonghyang*, 204, p.11-18

- Seol, Dong-Hoon. 2013. International Migration and Immigrants Citizenship: A Comparison of Germany, Japan and South Korea [국제인구이동과 이민자의 시민권 독일일본한국 비교연구], *Korea Journal of Population Studies*, 36(1), p.21-50. Access available: <http://www.dbpia.co.kr/journal/articleDetail?nodeId=NODE0215415>
- Seol, Dong-hoon. 2018. "A Direction toward Social Consensus and Resolution on Refugees and Related Social Struggles." July 19, A Proceeding at the National Assembly Policy Discussion.
- Shin, Okju. 2018. "A Comparative Study on the German Asylum Act for the Revision of the Refugee Act [난민법 개정을 위한 독일의 망명법제에 대한비교법적 연구]". *Journal of Constitutional Justice*, 5(2),p.209-249.
- Song, Young Hoon. 2019. "Yemenis' Asylum Application in Jeju and Discourse of Refugees [제주예멘 난민신청과 갈등적 난민담론]". *Journal of Education for International Understanding*. 14(2), pp.9-38. doi: 10.35179/jeiu.2019.14.2.9

## 2) English Sources

- Baier, Vicki; March, J.G.; Saetren, H. 1986. "Implementation and Ambiguity." *Scandinavian Journal of Management Studies*, 2. pp.197-212
- Bauman, Emily and Deardorff Miller, Sarah. 2012. "Comprehensive literature review of Global Public Policy: Creating a framework for understanding Global Refugee Policy." *Refugee Studies Centre, Oxford Department of International Development*, December(87), pp. 1-41. Available at: [papers3://publication/uuid/F45DC0F1-10DB-495B-8E6B-F00D0DAFEF39](https://papers3://publication/uuid/F45DC0F1-10DB-495B-8E6B-F00D0DAFEF39).
- Berman, Paul. 1978 "The Study of Macro- and Micro- Implementation." *Public Policy*, 26(2), pp.157-84.
- Castles, Stephen & Miller, Mark J. 2009. "Migration in the Asia-Pacific Region, Migration Information Source." *Migration Information Source*, pp.1-11.
- Chock, Phyllis Pease. 1995. "Ambiguity in policy discourse: Congressional talk about immigration." *Policy Sciences* 28(2), pp.165-184.
- Choi, Eunyoung Christina and Park, Seo Yeon. 2020. "Threatened or threatening?: Securitization of the yemeni asylum seekers in South Korea", *Asian Journal of Peacebuilding*, 8(1), pp. 5-28. doi: 10.18588/202005.00a118.
- Choucri, Nazli. 1993. "Political Economy of the Global Environment." *International Political Science Review*, 14(1): 103-116
- Crisp, Jeff. 2003. "A New Asylum Paradigm? Globalization, Migration and the Uncertain Future of the International Refugee Regime," *New Issues in Refugee Research Working Paper No.100*. Geneva: UNHCR.

- Dekker, Rianne. 2017. "Frame Ambiguity in policy controversies: critical frame analysis of migrant integration policies in Antwerp and Rotterdam." *Critical Policy Studies*, 11:2, p.127-145.
- Dreher, Axel, Andreas Fuchs, Sarah Langlotz. 2018. "The Effects of Foreign Aid on Refugee Flows." *CESifo Working Paper*, No. 6885 Access available: [https://www.cesifo.org/DocDL/cesifo1\\_wp6885.pdf](https://www.cesifo.org/DocDL/cesifo1_wp6885.pdf)
- Engler, Marcus. 2016. "Germany in the refugee crisis—background, reactions and challenges." *Instytut Zachodni, Heinrich Böll Stiftung Warszawa*.
- Faist T. 1994. How to define a foreigner? The symbolic politics of immigration in German partisan discourse, 1978-1992. *West European Politics* 17(2), pp.50–72.
- Hathaway, James C. 1990. "A reconsideration of the underlying premise of refugee law." *Harv. Int'l. LJ*, 31(129).
- Heinrich Boll Stiftung. 2016-05-25. "Germany and France locked in a refugee crisis: alone together." *The Green Political Foundation*. <https://www.boell.de/en/2016/05/25/germany-and-france-locked-refugee-crisis-alone-together> (accessed on 11 October 2020)
- Ilgit, A., & Klotz, A. 2018. Refugee rights or refugees as threats? Germany's new Asylum policy. *The British Journal of Politics and International Relations*, 20(3), 613-631.
- Karpen, Ulrich. 2018. Asylum and Refugees Law in Germany and Europe Recent developments." *Journal of Migration and Social Integration (JMSI)*, 3(1) pp.77-90.
- Kim, Chulhyo. 2012. "A step forward to refugee Protection? South Korea's New Refugee Act." *Oxford Monitor of Forced Migration*. 2(1). pp.8-11.
- Klir, George J., and Bo Yuan. 1996. "Fuzzy sets and fuzzy logic: theory and applications." *Possibility Theory versus Probab. Theory* 32(2), pp. 207-208.
- Marbach, M., Hainmueller, J., & Hangartner, D. 2018. The long-term impact of employment bans on the economic integration of refugees. *Science Advances*, 4(9), eaap9519.
- Martin, Philip. 1998. Germany: Reluctant Land of Immigration: AICGS German Issues 21. Washington, *American Institute for Contemporary German Studies*.
- Matland, Richard. E. 1995. "Synthesizing the implementation literature: The ambiguity-conflict model of policy implementation." *Journal of public administration research and theory*, 5(2), 145-174.
- OECD. 2017. "Labor Market Integration of Refugees in Germany." OECD Publishing, Paris. March. <https://www.oecd.org/els/mig/Finding-their-Way-Germany.pdf>
- Offerdal, Audun. 1984. "Implementation and Politics, or: Whether It Is a Success or a Failure." *Statsviteren*.

- Regan, Priscilla. 1984. "Personal Information Policies in the United States and Britain: The Dilemma of Implementation Considerations." *Journal of Public Policy* 4(1), pp.19-38.
- Schultz, Caroline. 2020. "Ambiguous goals, uneven implementation-how immigration offices shape internal immigration control in Germany." *Comparative Migration Studies*. 8(10). pp.1-18.
- Siddikoğlu, Hidayet. 2017. "Refugee and Asylum Seeking in Modern Japan: Analysis of Japan's Humanitarian Commitments and Xenophobic Problems." *Göç Araştırmaları Dergisi*, 3(2), pp.40-64.
- Soh, Changrok, and Breda Lund. 2014. "The Refugee Act of Korea: The Limits of Civil Society Influence." *Korean Political Science Review*, 48(3), pp. 5–29., doi:10.18854/kpsr.2014.48.3.001.
- Thielemann, Eiko. "Why refugee burden-sharing initiatives fail: Public goods, free-riding and symbolic solidarity in the EU." *JCMS: Journal of Common Market Studies* 56.1 (2018): 63-82.
- Willems, Tom; Van Dooren, Wouter. 2011. Lost in diffusion? How collaborative arrangements lead to an accountability paradox. *International Review of Administrative Sciences*, 77(3), pp. 505-530.

#### 4. Other Sources

##### 1) Media

- Hankook Ilbo. 2015-04-28. Children from refugee families go to alternative schools in Yeongjongdo[영종도 난민가정 어린이, 대안학교 간다]  
<http://www.hankookilbo.com/v/8217f51c181e441c89c8e3daf10d2278>
- SPIEGEL, 2015-08-31, Which side will prevail under strain of refugees? Access available at: <https://www.spiegel.de/international/germany/spiegel-cover-story-the-new-germany-a-1050406.html>
- DW. 2015a (2015-08-31). Trains cross Hungary and Austria with Refugees Heading for Germany. Available at: <https://www.dw.com/en/trains-cross-hungary-and-austria-with-refugees-heading-for-germany/a-18684803>
- Guardian. 2015-09-06. Refugee crisis: we welcome the praise but German response is as pragmatic as idealistic. Access available:  
<https://www.theguardian.com/commentisfree/2015/sep/06/refugee-crisis-germany-response-heartwarming-will-pressures-show>
- DW .2015b (2015-10-31). Coalition row deepens overChancellor Angela Merkel's refugee policy. Available at: <http://www.dw.com/en/coalition-row-deepens-over-chancellor-angela-merkels-refugee-policy/a-18818863>
- Die Zeit. 2016-09-01. "Was wurde aus den Flüchtlingen der Neunziger?"  
<https://www.zeit.de/zustimmung?url=https%3A%2F%2Fwww.zeit.de%2F2016-09%2Fintegration-fluechtlinge-arbeitsmarkt-deutschland-diw-studie>

- Hankyoreh. 2018b (2018-06-24). “All they can is Korean, If these children are sent back home only death awaits for them [한국말 밖에 할줄 모르는 아이들... 돌아가면 죽음 뿐]” Access available: [http://www.hani.co.kr/arti/society/society\\_general/850362.html](http://www.hani.co.kr/arti/society/society_general/850362.html)
- Hankyoreh. 2018a(2018-07-02) “Yemen refugees are allowed to work, but there is not enough place to work.[예멘난민에 취업허용됐지만일할곳부족]” [http://www.hani.co.kr/arti/area/area\\_general/851457.html](http://www.hani.co.kr/arti/area/area_general/851457.html)
- News1. 2018-07-05. More money for Yemeni refugee aid for Q&A veterans? [예멘난민 Q&A 참전용사보사 난민지원금이 더 많다?] Access available: <https://www.news1.kr/articles/?3364453>
- MBC. 2018-08-01. Abolition of the Refugee Act is difficult but “strict screening”[난민법 폐지는 어렵지만 “심사는 엄격하게”] Access available: [https://imnews.imbc.com/replay/2018/nwdesk/article/4730789\\_30181.html](https://imnews.imbc.com/replay/2018/nwdesk/article/4730789_30181.html)
- NocutNews. 2018-09-10. The inexperienced government has raised the confusion of Yemeni refugees in Jeju [미숙했던 정부, 제주 예멘 난민 혼란 키웠다] available: <https://www.nocutnews.co.kr/news/5029020>
- Christian Daily. 2018-09-28. Smartphone and fashionable clothes, are Jeju Yemeni refugees fake refugees? No [스마트폰과 패셔너블한 옷 제주난민 가짜?]. <https://www.christiandaily.co.kr/news/81062>
- Segye. 2019-01-07. The Ministry of Justice has confirmed the amount of support for refugee applicants this year [법무부 올해 난민신청자 생계비 지원액 확정]. <http://m.segye.com/view/20190107000504>
- CNN. 2019-01-26. Germany rolls up refugee welcome mat to face off right-wing threat. Access available: <https://edition.cnn.com/2019/01/26/europe/germany-refugee-deportations-intl/index.html>
- Yonhap News Agency. 2019-01-30. Even though got accepted to college... Pakistan refugee applicant’s effort came to nothing [파키스탄 난민신청자 대학 합격했는데도 입학 물거품] <https://www.yna.co.kr/view/AKR20190130189000051>
- Hankyoreh, 2019-06-19. Justice Ministry routinely falsifies refugee applications to reject asylums eekers. [http://english.hani.co.kr/arti/english\\_edition/e\\_international/898544.html](http://english.hani.co.kr/arti/english_edition/e_international/898544.html)
- Foreign Policy. 2018-08.06. South Korea going crazy over a handful of refugees. Access available: <https://foreignpolicy.com/2018/08/06/south-korea-is-going-crazy-over-a-handful-of-refugees/>

## 2) Data

CIA World Factbook. 2014, 2017, 2019.

Economist. 2012. Democracy Index. Democracy at a standstill. A report from the Economist Intelligence Unit.  
<https://civitanaorg.files.wordpress.com/2014/05/democracy-index-2012.pdf>

Infomigrants. 2018-11-23. What's the right to asylum as stated in the German Constitution?  
<https://www.infomigrants.net/en/post/13525/what-s-the-right-to-asylum-as-stated-in-the-german-constitution>

MOJ (Ministry of Justice). 2018c. Statistics Related to Refugees[난민관련 통계]. Access available:  
[http://www.seoulmigrant.net/\\_data/board\\_list\\_file/20/2018/20180910150903.2010.3.0.pdf](http://www.seoulmigrant.net/_data/board_list_file/20/2018/20180910150903.2010.3.0.pdf)

MOJ (Ministry of Justice). 2019b. Annual Report Korea Immigration Service [2018년도 출입국 외국인정책연감.] Access available:  
<http://www.immigration.go.kr/bbs/immigration/226/515870/artclView.do>

MOJ (Ministry of Justice). 2020. Annual Report Korea Immigration Service [2019년도 출입국 외국인정책연감.] Access available:  
<http://www.immigration.go.kr/bbs/immigration/226/530409/artclView.do>

MOJ (Ministry of Justice). 2020. February 2020 Immigration Policy Statistics Monthly. Access available:  
<http://www.moj.go.kr/bbs/immigration/227/521714/artclView.do>

MOJ (Ministry of Justice). Korea Immigration Service, 2018a. Korea Immigration Service Statistics 2017[출입국-외국인정책 통계연보].

OECD. 2020. Unemployment rate (indicator). doi: 10.1787/52570002-en (Accessed on 21 October 2020)

World Bank. 2012. Worldwide Governance Indicators. Access available:  
<https://databank.worldbank.org/source/worldwide-governance-indicators>

World Bank. 2017. Staff Estimates Based on Age/Sex Distributions of United Nations Population Division's World Population Prospects: 2019 Revision. Access available: <https://data.worldbank.org/indicator/SP.POP.65UP.TO.ZS> Seol, Dong-hoon. 2018. "A Direction toward Social Consensus and Resolution on Refugees and Related Social Struggles." July 19, A Proceeding at the National Assembly Policy Discussion.

World Bank. 2019. Total Natural Resources Rent. Estimates based on sources and methods described in "The Changing Wealth of Nations: Measuring Sustainable Development in the New Millennium" Access available:  
<https://data.worldbank.org/indicator/NY.GDP.TOTL.RT.ZS?end=2018&start=1970&view=chart>

World Education Services. 2019. The State of Refugee Integration in Germany in 2019. Access available: <https://wenr.wes.org/2019/08/the-state-of-refugee-integration-in-germany-in-2019>

World Population Review, 2020. Most Racially Diverse Countries. Access available: <https://worldpopulationreview.com/country-rankings/most-racially-diverse-countries>

### 3) Others

Informationsverbund Asyl und Migration. Accessed November 17, 2020, <https://asylumineurope.org/reports/country/germany/>

Kim, Jin.. 2018. “From Birth Registration to education, excluded refugee children [출생신고부터 교육까지 배제되는 난민아동],” *Living as refugees in Korea( 한국에서 난민으로 살아가기)*, Refugees Studies Network in Korea. <https://nancen.org/attachment/cfile7.uf@991BCB395C0744412E2589.pdf>

Kim, Sejin. 2015. A misunderstanding of Korea's refugee support system [한국의 난민지원제도에 대한 오해. 참여연대, 사회복지위원회], People's Solidarity for Participatory Democracy, Social Welfare Committee, *Welfare Trends*, 200, June. Access available: <http://www.peoplepower21.org/Welfare/1371418>

Kim, Young-ah.. 2018. “Refugees in Korea to raise their families[한국에서 난민이 가족을 꾸리기까지],” *Living as refugees in Korea( 한국에서 난민으로 살아가기)*, Refugees Studies Network in Korea. <https://nancen.org/attachment/cfile7.uf@991BCB395C0744412E2589.pdf>

Korea Ministry of Government Legislation. Accessed November, 18, 2020, <https://www.law.go.kr/>

Merriam-Webster.com Legal Dictionary, s.v. “latent ambiguity,” accessed November 15, 2020, <https://www.merriam-webster.com/legal/latent%20ambiguity>.

Merriam-Webster.com Legal Dictionary, s.v. “patent ambiguity,” accessed November 15, 2020, <https://www.merriam-webster.com/legal/patent%20ambiguity>.

NANCEN Refugee Human Rights Center. 2017. “Refugee applicants treatment in South Korea: Living Expense Assistance[국내난민신청자 처우현황:생계비편]” access:<http://www.nancen.org/attachment/cfile4.uf@995ED73C5B28E68514A47E.docx>

Nancen Refugee Rights Center, 2019-02-12. Refugee screening, the key is not quick procedure[난민심사, 핵심은 빨리빨리가 아니다] Access available: <https://nancen.org/1862>

Nancen Refugee Rights Center. 2016-06-09. “Budget necessity for refugee specialized interpreters program [난민전문 통역인 교육 콘텐츠 예산 편성의 필요성]” <https://nancen.org/1539>

Nancen Refugee Rights Center. 2018a. “2018 NANCEN Statistical Data [2018

난민인권센터 통계자료집]” (July). Access available: <https://nancen.org/1762>

Nancen Refugee Rights Center. 2020a. “MOJ Refugee Interview Manipulation Incident Report [법무부 난민면접조서 조작사건 보고]. Access available: <https://nancen.org/2086>

Nancen Refugee Rights Center. 2020b. “2020 NANCEN Statistical Data [2020 난민인권센터 통계자료집]”. Access available: <https://nancen.org/2084>

School for all [SCHULE FÜR ALLE] <https://kampagne-schule-fuer-alle.de/>

## Abstract in Korean

난민정책은 국내정치적 결과로 주로 연구되어 왔다. 기존연구에서는 난민정책의 두 가지 패턴을 확인했다. 먼저 일부 국가들은 경제적 측면을 고려하여 국익을 위해 난민을 수용하며 다른 국가들은 민족동질성 파괴를 우려하며 수용을 거부한다. 그러나 한 국가의 난민 정책이 단순히 해당 국가의 국내정치적 결과인 것만은 아니다. 난민정책은 국제 난민레짐의 규범 및 원칙과의 끊임없는 긴장의 산물이기도 하다. 따라서 본 연구는 국제레짐과의 연관성 속에서 정책형성구조를 고려하여 매틀랜드의 수정된 모델을 난민정책에 적용함으로써 모호성이 난민정책에 야기하는 영향을 조명한다. 국제난민체제를 기준으로 사회경제지수와 문화민족동질성은 유사하지만 정책모호성에서 차이를 보이는 한국 (2018~2020)의 실패와 독일 (2015~2016년)의 성공 사례를 비교한다. 한국의 실패는 의도적 정책모호성이 야기한 모호성이 난민지위결정과정과 지위 문제에서 비롯된다. 이러한 정책모호성은 난민법의 정의와 분류에서 국제난민체제와의 불협화음을 보인다. 정책모호성을 야기한 세 가지 요소로는 광범위한 재량권, 다른 국내법과의 충돌, 가용 자원의 부족이 확인되었다. 이와 반대로 독일은 시계처럼 명확하고 체계적인 난민지위결정과정과 지위체계를 운영하며 국제난민체제의 규범과 원칙을 준수했다. 뿐만 아니라, 혼란의 여지가 있는 조항들은 국내법제화 및 개정 과정에서 잠재적 모호성을 없애고 명확히 했다. 이러한 본 연구의 결과는 현재 한국 난민정책의 의도적 모호성이 난민 정책실패에 끼친 영향을 해소하기 위한 학계 주목의 필요성을 시사하며, 입법과정을 거쳐 모호성을 낮춘 독일의 난민정책을 정책학습의 모델로 확인한다.

키워드 : 정책모호성, 정책집행, 난민정책, 난민법, 비교정책분석, 한국 난민정책, 독일난민정책

학번 : 2018-29724