

The Roles And Limitations Of Nonstate Actors For Refugee Protection Governance In Malaysia
(*Peranan dan Keterbatasan Pelaku Bukan Negara dalam Tadbir Urus Perlindungan Pelarian di Malaysia*)

HOZUMI NORIHITO & AKASHI JUNICHI

ABSTRACT

This study examines how Malaysia's exclusionary policy environment shapes both the roles and structural limitations of nonstate actors in refugee protection governance, with particular attention to the empowerment of refugee and migrant children. Operating in an institutional vacuum created by Malaysia's non-accession to the 1951 Refugee Convention and the absence of domestic refugee legislation, nonstate actors provide essential services to more than 211,000 refugees who lack legal recognition and access to state systems. Methodologically, the study employs qualitative process-tracing and document analysis, drawing on public reports, policy documents, and existing scholarship to identify the causal mechanisms through which exclusionary state policies generate institutional ambiguity and structure the opportunities, constraints, and negotiation strategies of nonstate actors. The analysis conceptualises refugee governance in Malaysia as fragmented and discretionary, shaped by ad hoc coordination and asymmetric power relations between state and nonstate actors. A brief comparison with Japan highlights two contrasting forms of institutional ambiguity, Malaysia's legal absence and Japan's implementation deficits, clarifying why nonstate actors in Malaysia become functionally indispensable yet structurally constrained. The study underscores that without addressing underlying institutional ambiguity, incremental improvements in service provision cannot translate into sustainable, rights-based governance.

Keywords: Refugee Governance, Nonstate Actor, Institutional Ambiguity, Malaysia, Japan

ABSTRAK

Kajian ini meneliti bagaimana persekitaran dasar pengecualian di Malaysia membentuk peranan serta keterbatasan struktur pelaku bukan negara dalam tadbir urus perlindungan pelarian, dengan memberikan tumpuan khusus kepada pemberdayaan kanak-kanak pelarian dan migran. Dalam kekosongan institusi yang wujud akibat ketidakpenyertaan Malaysia terhadap Konvensyen Pelarian 1951 serta ketiadaan undang-undang domestik mengenai status pelarian, pelaku bukan negara menyediakan perkhidmatan penting kepada lebih 211,000 pelarian yang tidak mempunyai pengiktirafan undang-undang atau akses kepada sistem negara. Dari segi metodologi, kajian ini menggunakan kaedah penelusuran proses (*process-tracing*) dan analisis dokumen, berasaskan laporan awam, dokumen dasar dan kajian sedia ada untuk mengenal pasti mekanisme kausal yang menghubungkan dasar pengecualian dengan kewujudan keaburan institusi serta bagaimana ia membentuk peluang, kekangan dan strategi rundingan pelaku bukan negara. Analisis mengkonseptualisasikan tadbir urus pelarian di Malaysia sebagai terpecah-pecah dan bersifat diskrisi, dipacu oleh penyelarasan ad hoc serta hubungan kuasa tidak seimbang antara pelaku negara dan bukan negara. Perbandingan ringkas dengan Jepun menyerlahkan dua bentuk keaburan institusi, ketiadaan undang-undang di Malaysia dan defisit pelaksanaan di Jepun, yang menjelaskan mengapa aktor bukan negara di Malaysia berperanan penting tetapi tetap terhad secara struktur. Kajian ini menegaskan bahawa tanpa pembaharuan institusi, penambahbaikan operasi tidak akan menghasilkan tadbir urus yang mapan dan berasaskan hak.

Kata Kunci: Tadbir Urus Pelarian, Pelaku Bukan Negara, Kekaburan Institusi, Malaysia, Jepun

INTRODUCTION

This study examines how Malaysia's exclusionary policy environment shapes both the roles and the structural limitations of nonstate actors involved in refugee protection, with particular attention to the empowerment of refugee and migrant children. The analysis focuses on three key groups: the United Nations High Commissioner for Refugees (UNHCR), nongovernmental organizations (NGOs), and community-based organizations (CBOs). Malaysia is not a party to the 1951 Refugee Convention or its 1967 Protocol and has no domestic legislation governing the recognition or legal status of refugees. Despite this absence of formal legal frameworks, the country hosts a large refugee population. According to UNHCR Malaysia (2025), there are 211,360 registered refugees and asylum seekers in the country, the majority from Myanmar, although this figure is constrained by limited registration capacity. As a result, refugees in Malaysia live largely outside the formal state system and rely heavily on UNHCR, NGOs, and CBOs for essential services, including education, protection, welfare, and community support.

Existing scholarship has identified institutional ambiguity (Lego, 2012), selective humanitarianism (Munir-Asen, 2018), and the precarity of urban refugee life (Hoffstaedter, 2015) as defining features of refugee governance in Malaysia. However, the causal processes through which exclusionary state policies produce institutional ambiguity, and the ways in which this ambiguity shapes both opportunities and constraints for nonstate actors, remain insufficiently explored, both theoretically and empirically. A brief comparison with Japan helps clarify Malaysia's institutional distinctiveness. Japan has formal legal frameworks governing foreign residents, yet often fails to deliver substantive inclusion due to linguistic, administrative, and procedural barriers, a condition described as "hollow institutionalism." Malaysia, by contrast, exhibits an institutional vacuum created by the complete absence of refugee-specific laws. In this context, nonstate actors are compelled to step in and perform functions that would otherwise fall under state responsibility. Comparing these two cases highlights distinct forms of institutional ambiguity: one arising from the absence of legal frameworks, and the other from failures in policy implementation. Although recent studies have called for stronger coordination among government agencies, UNHCR, and NGOs, as well as for policies more closely aligned with international norms (Mohd Ramlan Mohd Arshad et al., 2025), the political dynamics of negotiation, coordination, and

power relations between state and nonstate actors remain fragmented and underanalyzed. These dynamics are central to understanding refugee governance in practice and form the core focus of this study.

METHODOLOGY

This study uses qualitative process tracing to examine the causal relationship between Malaysia's exclusionary policy environment and the roles and structural limitations of nonstate actors. The analysis is based primarily on publicly available qualitative sources, including reports, policy documents, statistical data, newspaper articles produced by both state and nonstate actors, and existing academic literature. Process tracing is well suited to identifying causal mechanisms and sequences within complex, multi-actor interactions. Although this study does not include original interviews, it draws on detailed evidence of negotiation and coordination between state and nonstate actors found in public documents and annual reports published by relevant organizations. These materials allow for careful, indirect analysis of the interactions, constraints, and decision-making processes that shape refugee governance in practice. The chosen methodological approach therefore closely aligns with the study's objective of clarifying how exclusionary state policies influence both the functions and the structural limitations of nonstate actors in Malaysia.

While the empirical focus remains on Malaysia, Japan is included as a limited theoretical reference point to illustrate how different institutional arrangements affect the roles of nonstate actors. This is not a full comparative analysis. Instead, Japan serves as a secondary case that highlights institutional malfunction, in contrast to Malaysia's institutional absence. A selective review of Japanese policy documents and NGO reports supports the process-tracing analysis and helps confirm that the structural constraints faced by nonstate actors in Malaysia stem from conditions specific to countries that are not signatories to the Refugee Convention.

DISCUSSION

Institutional Ambiguity Generated by Exclusionary State Policies

Malaysia is not a party to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol. Its primary immigration law, the Immigration Act 1959/63, contains no provisions that define refugee status or

establish a legal framework for refugee protection. Despite this formal exclusion, UNHCR data show that a significant share of individuals officially categorized as “illegal immigrants” are, in practice, refugees. For clarity, this article refers to these individuals as “refugees.” As Lego (2012) explains, Malaysia does not govern refugees through dedicated legal instruments. Instead, it relies on a combination of strict immigration enforcement and pragmatic cooperation with UNHCR.

This arrangement creates a policy environment in which humanitarian action fills the gap left by absent legislation. Assistance to refugees is therefore delivered through informal and ad hoc arrangements led by UNHCR and NGOs and is justified not as a legal right but as an act undertaken for discretionary “humanitarian reasons.” As a result, refugees remain positioned as “others outside the system” and are systematically excluded from full social and institutional integration.

This study draws on Agamben’s concept of the “state of exception,” not to suggest a complete suspension of law, but to explain how Malaysia exercises broad discretionary authority through nonstatutory means. Abdullahi Ayoade, Ahmad, and Abdul Majid Tahir Mohamed (2016) argue that the absence of a legal framework harms both refugees and Malaysia as the host state. They recommend using the Association of Southeast Asian Nations (ASEAN) framework to promote responsibility sharing and to establish a domestic legal basis for refugee protection.

In practice, however, ASEAN’s model of “soft regionalism” (Kuroyanagi, 2007, p. 42), which prioritizes political stability and noninterference, limits the development of regional mechanisms for refugee governance, as Ishikawa (2021, p. 24) notes. This constraint was evident at the 2018 ASEAN Summit in Singapore, where the Myanmar refugee crisis was acknowledged but not followed by concrete policy action. Shoji (2019) similarly observes that although the issue was raised at the 33rd ASEAN Summit, no effective measures were adopted.

Classified as “irregular migrants,” refugees in Malaysia face severe restrictions on access to community services and administrative support. Moreover, state protection and assistance are often shaped by religious or ethnic affinity and political considerations, reflecting a pattern of selective humanitarianism. One illustrative example is Malaysia’s limited acceptance of Bosnian refugees in 1991, contrasted with the continued institutional exclusion of Rohingya refugees, who still arrive in the country today. While case-by-case decision-making may appear flexible, it also makes refugee policy vulnerable to political pressure and conflict, reinforcing institutional ambiguity rather than

resolving it.

Nah (2012) argues that Malaysia’s noninstitutionalized approach to refugee governance is deliberately kept ambiguous, allowing the state to expand its discretionary authority in the short term. Over time, however, this ambiguity increases governance costs and reduces fiscal efficiency. The growth of an untaxed shadow labor market and the state’s inability to collect revenue from irregular residents ultimately raise the cost of maintaining public order by sustaining exploitative labor structures.

Refugee Life Within Institutional Ambiguity and the Functions of Nonstate Actors

Urban settings offer refugees opportunities for social integration, access to services, and greater self-reliance, making cities a crucial space for long-term support. At the same time, Munir-Asen (2018) highlights major challenges, including integration into local communities, access to sustainable livelihoods, and the achievement of economic stability in urban environments. Unlike refugees in camps, urban refugees typically lack formal protection mechanisms and structured support systems. This institutional gap exposes them to alienation, exploitation, restrictions on legal employment, and limited access to social services, increasing the risk of long-term social marginalization.

Documents issued by UNHCR, such as UNHCR identification cards, have no formal legal authority in Malaysia and are recognized only on humanitarian grounds rather than as enforceable rights. Horii (2025) notes that this form of humanitarianism can create unequal relationships that limit the agency of those receiving assistance. To illustrate the roles played by nonstate actors under these conditions, this study examines the Dignity for Children Foundation (DCF), a UNHCR implementing partner. Drawing on DCF’s 2023 and 2024 annual reports and relevant media sources, the analysis identifies the organization’s substitutive and complementary functions in the absence of state-provided services. In 2024, DCF enrolled 2,043 students and operated a comprehensive education system spanning Early Years, Primary, Secondary, Dignity College, and I-PET programs. Its Montessori-based, holistic approach integrates academic learning with emotional and social development, effectively replacing access to formal schooling. DCF also offers vocational training through initiatives such as Transformational Enterprises, including Shop x Dignity, Sew x Dignity, Bake x Dignity, and related programs, which connect education to labor market opportunities. Although legal pathways to employment

remain unavailable, these programs support the socio-economic empowerment of refugee youth. Beyond education and training, DCF provides medical care, welfare assistance, psychological support, food aid, rent subsidies, counseling, child protection services, and community-based classrooms.

Activities such as the Faisal Cup and the Farm Academy encourage interaction between Malaysian communities and refugees. Even so, these UNHCR-supported initiatives operate only with state tolerance and selective permission, remaining confined to the space allowed by governmental discretion rather than protected by law.

Negotiation Processes Between State and Nonstate Actors

This section examines how state and nonstate actors negotiate the design and implementation of refugee governance in Malaysia. Government bodies such as the Ministry of Home Affairs, the Immigration Department of Malaysia (JIM), and the Ministry of Health engage in limited and often temporary consultations with UNHCR, NGOs, CBOs, and academic institutions. Unlike formal policy networks, these interactions are ad hoc. They form in response to specific issues and dissolve once those issues fade, and the state is not obliged to adopt any recommendations that emerge. To clarify how these negotiations work in practice, this section analyzes four representative cases. These cases were selected because they span key areas of interaction, including detention, health, and child protection, and because each reveals a different pattern of fragmented coordination.

The SUHAKAM Roundtable on Alternatives to Immigration Detention (2013)

The Human Rights Commission of Malaysia (SUHAKAM) convened a series of discussions on alternatives to immigration detention for children. Participants included representatives from several ministries and government departments, along with UNHCR and selected NGOs. The discussions produced broad agreement that immigration detention is inappropriate for unaccompanied minors and led to the creation of a working group on ADT. However, the process resulted in no legally binding commitments, and the wider detention-centered policy framework remained intact. This case shows that consultation is possible, but meaningful policy change remains discretionary and firmly under state control.

The UNHCR Refugee Health Stakeholder Coordination

Meeting (2025)

UNHCR regularly convenes coordination meetings with medical NGOs, universities, and representatives from the Ministry of Health. These meetings address ongoing problems in healthcare access, including the financial burden of the Refugee Medical Insurance (REMEDI) scheme, and explore ways to improve existing arrangements. Participation by the Ministry of Health signals some openness to addressing practical concerns. Nevertheless, because refugees lack legal recognition, outcomes are limited to minor administrative adjustments rather than broader structural reforms.

The Multi-Stakeholder Consultation on Refugee Mental Health (2023)

In 2023, UNHCR, working with academic institutions and community organizations, organized a consultation focused on refugee mental health. The discussions examined service gaps and coordination challenges that arise in the absence of state guidelines. Government participation was minimal. While the process strengthened cooperation among nonstate actors, it produced no corresponding advances in public policy. This case illustrates how, in the absence of institutional leadership, policy discussions tend to shift toward nonstate spaces rather than state-led decision-making.

The Alternatives to Detention (ATD) Pilot Approval (2024)

A more ambitious coordination effort sought to develop a community-based ATD pilot program through joint work by NGOs, UNHCR, and relevant government departments. Although the Cabinet approved the concept in principle, implementation was made conditional on requirements that were extremely difficult to meet. As a result, the pilot was never launched. This case demonstrates that even when multi-stakeholder initiatives receive Cabinet-level endorsement, the state retains full discretion over whether and how they are carried out.

Taken together, these four cases reveal a consistent pattern. In the absence of institutionalized legal frameworks, refugee policy in Malaysia relies on fragmented consultations and ad hoc coordination. While such engagements can lead to small, practical improvements in refugee support, they do not produce systemic reform, because final decision-making authority remains exclusively with the state. As a result, nonstate actors are confined to operational and advisory

roles and function only as complements to state authority. This dynamic sustains the noninstitutionalized nature of refugee governance and sharply limits the prospects for substantive change. UNHCR's 2024 Annual Report (UNHCR, 2025) similarly documents extensive collaboration with federal ministries, legislators, state authorities, law enforcement agencies, SUHAKAM and other human rights bodies, the Inter-agency Preparedness Coordination Group, the Malaysian Bar Council, diplomatic missions, and civil society organizations, underscoring both the breadth of engagement and its structural constraints.

Perspective from the Comparison with Japan

Japan maintains formal legal and administrative frameworks for foreign residents, including systems for residency status, access to public education, and partial eligibility for social security. These arrangements clearly distinguish Japan from Malaysia, where the absence of refugee-specific legislation and protection mechanisms creates deep structural ambiguity. However, the existence of formal rules does not automatically lead to meaningful inclusion. As Fujii (2021) and Komai (2010) argue, even in the absence of explicit discrimination, foreign residents in Japan face significant burdens due to complex administrative procedures, limited support systems, and insufficient institutional preparedness. Limited proficiency in the Japanese language, for example, affects everyday communication, weakens social networks, restricts access to information, and limits civic participation, often resulting in social isolation. As a result, "invited spaces," such as schools or consultation centers, may exist on paper but fail to function as genuine sites of participation. Drawing on Cornwall's (2004) framework, these spaces can become "emptied" when power relations and access conditions prevent meaningful engagement. In Japan, linguistic, cultural, and institutional barriers effectively hollow out formally available spaces.

Japan's population of foreign residents now includes a growing number of migrant workers and their children. In response, the Ministry of Education, Culture, Sports, Science and Technology (MEXT, 2021) has identified Japanese language support for children of foreign origin as an urgent policy priority. The Act on the Promotion of Japanese Language Education (Act No. 48 of 2019), as amended in 2023, explicitly assigns the state responsibility for providing such education. As a state party to the Refugee Convention, its Protocol, and the International Covenant on Economic, Social and Cultural Rights, Japan is legally obliged to ensure "education enabling effective participation in

a free society" (ICESCR, Article 13). Despite these commitments, persistent gaps in implementation continue to limit substantive support, often creating tension between state and nonstate actors and forcing nonstate organizations to fill institutional gaps.

Japan's asylum system further illustrates these structural weaknesses. A partial revision of the Immigration Control and Refugee Recognition Act in 2023 introduced a "complementary protection" status for individuals who do not qualify as Convention refugees but nonetheless require protection on human rights grounds, a concept distinct from international "complementary pathways". At the same time, the revision restricted repeated asylum applications and expanded grounds for deportation.

Before the amendment was enacted, the Japan Association for Refugees and other organizations publicly opposed the changes, warning that they could undermine the principle of nonrefoulement. In this context, nonstate actors, including the Japan Federation of Bar Associations (JFBA), play a critical role in offsetting institutional shortcomings, coordinating support, and advocating for reform. Settlement assistance for recognized Convention refugees and beneficiaries of complementary protection is provided by the Refugee Assistance Headquarters (RHQ), a private foundation contracted by the government, further complicating the division of responsibility between state and nonstate actors.

Dean and Nagashima (2007) similarly note that the Japanese government often delegates refugee protection and support to local NGOs rather than assuming primary responsibility. This arrangement forces NGOs to both deliver essential services and monitor state practices. As they argue, this pattern reflects burden shifting rather than genuine burden sharing and exposes a persistent gap between Japan's international obligations and its domestic implementation.

In contrast, Malaysia's institutional vacuum requires NGOs to operate as substitute actors. Organizations such as the DCF provide comprehensive services, including education, vocational training, welfare assistance, medical care, and psychosocial support, effectively taking on roles normally associated with the state. These alternative support spaces are essential for urban refugees in Kuala Lumpur, who otherwise have no access to formal protection mechanisms.

The differences between Japan and Malaysia are therefore not simply a matter of degree but of kind, reflecting fundamentally different institutional arrangements. Japan exemplifies "hollow institutionalism," in which formal systems exist but

often fail to deliver meaningful inclusion in practice. Malaysia, by contrast, is characterized by institutional absence, which compels NGOs to construct alternative spaces for living, learning, and protection. In Japan, nonstate actors mainly complement state systems and, at times, challenge their limits. In Malaysia, they effectively replace missing state functions. Institutional ambiguity thus produces different patterns of state–nonstate negotiation: in Malaysia, fragmented negotiations arise from the absence of legal frameworks, whereas in Japan, tensions emerge from institutional malfunction. This comparison reinforces the study’s central argument that refugee governance is shaped by ongoing negotiation between state and nonstate actors and that the nature of these negotiations is determined by each country’s institutional design.

Scope, Limitations, and State–Nonstate Relations of Nonstate Actors

UNHCR and NGOs operating in contexts of institutional ambiguity play a critical role in sustaining the survival and quality of life of urban refugees, effectively functioning as forms of “alternative governance.” Their interventions help refugees secure basic living conditions, safe environments, and a degree of autonomy and future opportunity. In the short term, these efforts reduce vulnerability and support partial social inclusion (Krasniqi, 2024; Nazri, 2022). At the same time, these support spaces remain politically external to the state system and are located in marginalized domains, which impose fundamental structural limits on their impact. This study draws on Cornwall and Coelho’s (2007) distinction between “invited spaces” and “created spaces” to clarify these constraints. Invited spaces are formally established by the state to enable participation, while created spaces are developed independently by citizens and NGOs outside official structures. In Malaysia, where no formal refugee-protection framework exists, refugee support necessarily takes place within created spaces. NGO-run learning centers, for example, are not invited spaces authorized by the state but emerge autonomously within institutional gaps. As a result, the education and welfare services they provide remain outside the state’s legal and institutional framework, generating several key limitations.

First, created spaces are structurally vulnerable because they lack formal recognition. NGO learning centers are not accredited and can be closed or disrupted at any time. Their continuity also depends heavily on external funding, making service provision unstable and sensitive to shifts in state policy or enforcement

practices.

Second, NGOs have little meaningful access to policy-making processes. Their work takes place outside invited spaces of formal consultation, and state–nonstate dialogue remains extremely limited. This situation prevents NGOs from exerting sustained influence over policy reform.

Third, effective nonstate provision can create a humanitarian moral hazard. The more successfully NGOs compensate for state absence, the weaker the political pressure on the government to establish or reform refugee governance frameworks.

Fourth, created spaces offer limited long-term opportunity structures. While NGO-provided education and vocational training can promote short-term empowerment, they do not translate into stable employment, mobility, or access to higher education unless refugees obtain legal status. These spaces therefore function primarily as “spaces of daily living” and, without pathways into invited spaces of institutional inclusion, cannot dismantle structural exclusion.

For these reasons, created spaces are indispensable for improving the daily lives of urban refugees in the short term, yet they also risk reinforcing the state’s exclusionary framework over time and have limited capacity to drive institutional reform. This study argues that this dual character of created spaces, as both essential and structurally constrained, lies at the core of refugee governance in Malaysia.

CONCLUSIONS

This study has shown how institutional ambiguity in Malaysia’s refugee policy shapes both the roles and the structural limits of nonstate actors. Malaysia denies legal recognition to refugees while hosting hundreds of thousands of them, forcing nonstate actors to assume primary responsibility for basic services, protection, and community support. The activities of NGOs and UNHCR take the form of created spaces, autonomously developed domains that deliver essential services in the absence of state guarantees. These spaces expand refugees’ access to education, welfare, and participation, yet remain disconnected from formal policy structures and lack legal recognition. As a result, they cannot address core barriers such as accreditation, legal protection, or restrictions on employment and mobility. This study contributes to existing scholarship by conceptualizing Malaysia’s refugee governance as a series of fragmented negotiation processes shaped by institutional ambiguity and by highlighting the dual role of nonstate actors as both indispensable providers

and structurally constrained participants. Governance in this context operates not through coherent legal frameworks but through ad hoc and discretionary coordination that enables limited operational gains while preserving underlying systems of exclusion.

The findings suggest that, without addressing institutional ambiguity at its root, incremental improvements in refugee services cannot develop into lasting structural reform. Even when collaboration between state and nonstate actors produces practical advances, the absence of legal recognition and institutionalized mechanisms prevents these gains from evolving into sustainable governance arrangements. The comparison with Japan further demonstrates that institutional context fundamentally shapes the roles and limits of nonstate actors. In Japan, such actors operate within invited spaces, complementing state systems while sometimes entering into tension or opposition with authorities. In Malaysia, by contrast, nonstate actors substitute for absent state protection, but their effectiveness may also reinforce governmental inaction.

For future policy development, incorporating the practical expertise of nonstate actors into formal mechanisms, such as regular consultation platforms, accredited education and welfare frameworks, or permanent multi-stakeholder coordination bodies, could reduce reliance on discretionary humanitarian practice. Future research should examine whether similar patterns of state–nonstate interaction appear in other nonsignatory countries and develop broader comparative frameworks beyond Malaysia and Japan. Such work would deepen understanding of how institutional ambiguity operates within the global refugee regime and clarify the conditions under which fragmented governance arrangements may evolve into more durable and inclusive systems.

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Hozumi Norihito*
 College of Social Sciences,
 School of Social and International Studies, University of Tsukuba,
 1-1-1 Tennodai, Tsukuba, Ibaraki 305-8577, Japan.

Akashi Junichi
 Institute of Humanities and Social Sciences,
 University of Tsukuba, Tsukuba,
 1-1-1 Tennodai, Tsukuba, Ibaraki 305-8577, Japan

*Corresponding author: s2311948@u.tsukuba.ac.jp