

The Rights of Children on the Move in Indonesia: Implementation and Challenges

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ABSTRACT

For decades ago, children have migrated for various reasons, such as avoiding conflict and persecution in their home countries, leaving poverty, seeking a better life in another country, uniting families who had already been in another country, and other reasons. Currently, children are a huge part of population movements. Soon, children will be positively affected due to globalization, socio-economic life changes, and natural changes. Although there is increasing attention to these migrated children's fate, there has not yet been a complete legal instrument or other policies to protect these children's fundamental rights while in Indonesia. This research aims to map the framework of fulfilling the rights of children on the move in the Indonesian constitution and its implementation and challenges. This research is essential considering that Indonesia is one of the parties to the 1989 Convention on the Rights of the Child (CRC), which requires each state-party to fulfil children's rights regardless of national status, immigration status, and completeness of documents. This is a normative legal research with conceptual and statute approaches. The realization of these children's rights is a benchmark for Indonesia's commitment to obedience to international law obligations. The results show that Indonesia has been doing extra miles to fulfil the rights of children on the move, especially their educational and health rights.

Keywords: Fulfilment of rights; children on the move; challenges; implementation; Indonesia

INTRODUCTION

The United Nations High Commissioner for Refugees (UNHCR) informed that the number of displaced people worldwide increase to 80 million in 2020. The majority of these refugees (85%) live in developing countries,¹ such as Pakistan, Bangladesh and Indonesia. As a transit country, Indonesia hosted over thirteen-thousand registered refugees from all over the world.² The presence of refugees and asylum seekers is a social phenomenon in international relations that significantly impacts host countries' policies, both for the host country and transit country. The approaches vary from handling these people when they arrive in the country to set up various legal rules on how to deal with these international refugees and asylum seekers. The handling of asylum seekers and refugees in Indonesia has been carried out by the Directorate General of Immigration, working together with UNHCR and the International Organization for Migration (IOM). Indonesia provides short-term housing for asylum seekers and refugees, while UNHCR looks for solutions and resettlement in third countries. Indonesia obliges to defend human rights aims at its citizens and other citizens in Indonesia's territory, whether they arrive legally or illegally³ since human rights protection applies to all individuals living everywhere.⁴

This paper focuses on children on the move, including child of refugees, asylum seekers, and stateless people currently living in Indonesia. Children are a vital part of the population, as they will be leaders of the future, so it is crucial to ensure that children's best interests should always prevail. However, for decades now, children (with their families or alone) have fled from their homes to other countries. Among the reasons are to escape from oppression and persecution, family reunification, and get a better life. As a result, children will be likely to get affected in the future due to climate change, globalization, and socio-economic transformation. The UNHCR prioritizes these children's needs as they are the most vulnerable group.⁵ These children are often not getting their rights as stipulated in child protection laws, such as educational rights, health insurance, vulnerability to criminal acts of violence, and sexual abuse, including parents' power and difficulties in registering children from mixed marriages. According to UNHCR in Indonesia currently, there are around 3.000 migrant children out of 13.657 registered migrants in Indonesia. Approximately 131 children came without adult families on the way to the destination country.⁶ In an emergency, these children are easily separated from their parents and relatives. Thus, registration and tracing efforts must be institutionalized at once. Children who are separated face a greater risk, as

they may be recruited into the army or sexually exploited.⁷ Refugee children are also vulnerable to becoming victims of international crimes, such as human trafficking. Even these children who remain with their families suffer significantly from trauma and disturbance due to their flight.

The refugees' protection in the Resolution of United Nations General Assembly No. 428(V) December 14, 1950 states that all UN member states must provide international protection to refugees and resolve its problems-related. This resolution encourages UN member countries, including Indonesia, to implement the solution. Indonesia has no legal obligation to protect refugees, as the country is a non-state-party to the refugee convention. The protection and fulfilment of refugees' and asylum seekers' human rights is a challenge for the Indonesian government. Given refugees' existence in the region and amid Indonesian society for quite a long time, making refugees has immense potential in dealing with legal problems. Domestically, Indonesia has issued a presidential regulation concerning the handling of the refugee from overseas. This Presidential Regulation is Indonesia's current political choice not to ratify the refugee convention and its protocol. This presidential regulation normatively fills the legal void in regulating refugees and asylum seekers, emphasizing Article 28G and 28H of the 1945 Constitution of the Republic of Indonesia and Articles 25-27 of the Foreign Relations Law. As a state party to the CRC, Indonesia is responsible for protecting child refugees. Article 22 of the CRC explicitly states about protection for children who become refugees, and it applies to all state-parties, including Indonesia. Still, even temporary security can be given to these children's rights while in Indonesia territory. Therefore, this study examines the policies of Indonesia towards these children on the move under the regime of international law and Indonesia's domestic law and how it is enforced and its challenges, mainly in implementing their right to primary education and good health.

RESEARCH OBJECTIVE

This research aims to undetermined Indonesia fulfils its obligation to protect children on the move rights while they are transiting in the country. This research also explores Indonesia's commitment to implementing the CRC and focusing on implementing these children's right to education and health only.

LITERATURE REVIEW

DEFINITION OF CHILDREN ON THE MOVE

None of the provisions in the UNHCR explicitly mention child refugees, although "any person"⁸ in the definition of refugees can implicitly mean including children. The existence of different treatment between children and adults should separate refugee children from refugees in general.⁹ Although there is no universal provision regarding child refugees, Jill Rutter describes child refugees as follows: "it is important to realize that refugee children are not a demarcated group and that there are no clear distinctions between refugees and non-refugees, between voluntary and forced migrants, or the proactive and reactive migrants of Richmond's system. Demarcation is often imposed by the state, as a legal status such as Convention refugee status, or a bureaucratic status, for example, a group in receipt of the European Refugee Fund but, when it still under 18 ages and labelling "refugee", it is a children refugee."¹⁰ Additionally, The Inter-Agency Working Group on Children on the Move defined that children on the move as:

"Children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers, and whose movement, while it may open up opportunities, might also place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect, and violence."¹¹

This concept points to all children who have been trafficked, seeking refuge, and who have moved to pursue better life opportunities. This definition also illustrates how these children need security and support systems that are cohesive and organized within and across countries. The causes, trends, and effects of the movement of children are varied and complex. Leaving their home communities promises many children the opportunity for a better life, an escape from poverty, neglect, violence, conflict, and better access to employment, education and essential services. However, children on the move, particularly if unaccompanied, may lack the security links usually available in families and communities unless they avoid violence and abuse. Once children move, especially in the void of security services and care, they become highly vulnerable to harassment and exploitation throughout their journey. They may often face discrimination and face additional obstacles because of their migration status when attempting to obtain help, security, and other regular

services. Due to the lack of concrete interventions, such as child-friendly asylum procedures and usable information to help them, children who may have international security needs may face difficulties obtaining asylum procedures.

LEGAL PROTECTION FOR CHILDREN ON THE MOVE IN INTERNATIONAL LAW

Child protection means to avoid and respond to crime, neglect and abuse against children.¹² According to Maidin Gultom, child protection means every effort made to establish conditions so that each child can exercise his or her rights and obligations for the sake of their development.¹³ The primary legal basis for regulating refugees is the United Nations Convention and Protocol on Refugees' Status.¹⁴ Refugees are:

“Any Person who is outside the country of his nationality or, if he has no nationality, the country of his former habitual residence, because he has or had a well-founded fear of persecution by reason of his race, religion, nationality, or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, to return to the country of his former habitual residence.”¹⁵

These criteria for refugees exempted if there are serious considerations that the person has committed/involved in serious crimes before being in the country of asylum.¹⁶ These crimes are crimes against peace and humanity, war crimes, serious crimes of a non-political nature, all activities contrary to the United Nations' principles. Refugees are different from other immigrants because immigrants are outside their home country for various reasons unrelated to persecution. Immigrants also still receive legal protection from their home country, even while overseas.

The main principle of the refugee convention is Non-Refoulement (Article 33). Refugees and asylum seekers may not forcibly return to an area where their life and freedom will be in danger. Whereas, Article 31 highlights the Principle of Non-Penalization that they should not be subject to sanctions/penalties for entering the asylum country's territory to seek protection without complete documents. Principle of Non-Discrimination (Article 3) teaches that refugees and asylum seekers' treatment should be equal regardless of their background. The 1951 Refugee Convention also governs in the form of children's rights: The concept of family unity: for non-family refugee children, special protection

concerning guardianship & adoption, the right of refugees to freedom of religious education for their children, the right of the child to obtain travel documents (with adults).

Besides, several other international instruments regulating refugees, namely the well-known International Human Rights Instruments, include The 1948 Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination Against Women, and Convention Against Torture. In non-ratified countries to the Refugee Convention, The UNHCR serves and determines refugee status. Whereas in states that have ratified, UNHCR is usually only supervision to apply and give refugee status.

Generally, attention to children began with the “Declaration on the Rights of the Child” on November 20, 1959. In the preamble to the Declaration, ten principles concerning children's rights are as follows: all children shall enjoy their rights as stipulated in the Declaration regardless of their background, all children shall enjoy superior protection and opportunities, all children entitled to name and citizenship, all children shall enjoy social security benefits, all children who are disabled shall get special treatment, all children entitled to love and understanding, free education for all children, all children shall be the priority to accept protection and relieve in every circumstance, all children shall get protection against all types of neglect, cruelty, and discrimination.¹⁷ Since 1989, legal instruments setting the children's rights protection are the CRC, which around 195 countries have ratified. Indonesia as a UN member, has ratified it through Presidential Decree Number 36/1990. Thus, the CRC has become Indonesian law and binds all Indonesian citizens. However, the ratification was carried out in an ad hoc and pragmatic fashion to avoid challenging political obstacles in *Dewan Perwakilan Rakyat* (the House of Parliament). While unprecedented, the UN adopted the decision to ratify the agreement by a Presidential Regulation No. 36/1990. The CRC is an international instrument regarding universal principles and provisions of legal norms about children. The CRC is a global agreement that includes economic, social, and cultural rights and civil and political rights. The CRC can be categorized: first, affirming children's rights, secondly, the state's protection for the child, and thirdly, the role of various parties (government, public and private) in guaranteeing respect for children's rights.

LEGAL PROTECTION FOR CHILDREN ON THE MOVE IN INDONESIA

Children of refugees and asylum seekers are victims of human-made disasters not because of their own will but only because of their home country environment's persecution. If they seek international protection and stranded in Indonesia, Indonesia's duty and responsibility are to protect and pay close attention to these children's needs. Indonesia is not a state-party to the refugee convention. However, domestically, Indonesia rules Article 28G (1) of the 1945 Constitution that recognizes everyone's protection, including children of refugees and asylum seekers.¹⁸ Article 28H (1) states that everyone is entitled to live appropriately and receive health services. The term of 'everyone' in this Article applies to anyone, living in the territory of Indonesia, not limited to only Indonesia citizen.¹⁹

It also regulates the immigration law and the country's ratification of various international human rights covenants. However, this is still inadequate in providing refugees legal protection because it does not explicitly regulate it. The only law that addresses foreign refugees' handling in Indonesian national law is Law 37/1999, concerning Foreign Relations. Only in 2016 was it followed up with Presidential Regulation regulating refugees from abroad. This Presidential Decree essentially emphasizes the recognition of international law in handling refugees. The decree also highlights a few critical points, such as the UNHCR as the primary agency to treat and manage refugees, no different treatment to refugees and asylum seekers. Other vital remarks are refugees must stay in shelters with mandatory monthly reports. Children and vulnerable families can survive outside the shelter, and prioritize attention given to child refugees and asylum seekers. This presidential regulation also provides space for handling refugees and their children to the Regional Government and the Police department. So, the problem of refugees is no longer controlled only by the immigration authorities. It focuses on handling refugees and their families by many parties comprehensively to reduce the potential for abuse of power or inhuman treatment, such as refugees' detention. Detention against child refugees is not appropriate because they are not people who violate immigration law. Child refugees should stay in temporary shelters or accommodation. If refugees violate the rules imposed at accommodation houses, then the suitable alternative is to report to the related officials. Meanwhile, if child refugee is suspected

or involved in a criminal act, then criminal law applies to be processed, not detained by the Immigration.

The CRC, as the rule of law, serves as a tool for monitoring and reporting international human rights law. While the CRC is not a refugee treaty, it still covers the refugee children's rights under 18 years of age.²⁰ To ensure that children are the government's immediate attention and priority, both the government and international organizations must increase their knowledge of the state's legal obligations relating to children's rights.²¹ At the time of ratification, Indonesia initially delivered a few reservations to the CRC related to Article 1, 14, 16, 19, 21, and 22.²² Furthermore, the ratification was carried out because the CRC and its values be consistent with the 1945 Constitution of the Republic of Indonesia. Subsequently, these reservations were revoked in 2005. Therefore, the only article that is reserved is the one that governs the question of the rights of children to access information (Article 17), the adoption of children (Article 21), and the protection of children with refugee status (Article 22).

States that have ratified The CRC shall apply several things in their legal system²³: 1) examining laws and regulations that have been approved and are still in the design process, which in this case, related to children; 2) evaluating state institutions related to the implementation of CRC; 3) To compile steps to harmonize the provisions of The CRC with the existing laws and regulations in Indonesia; 4) Review parts of the statutory rules that are still in force but require improvement so that the targets and objectives in line with the convention; 5) Prioritize law-making procedures needed to streamline the implementation of CRC so that there will be a balance between the treaty and the laws and regulations in Indonesia; 6) Look for and analyze international treaties related to children's rights to facilitate children's rights following newer international norms that Indonesia can ratify. To implement the CRC, domestic legislation steps are pretty advanced to fulfil children's rights and child protection because there are changes in laws to conform to the convention on children's rights, including Law No 3/1997 due to criticism of the age limit of children in being accountable. Thus, efforts to protect children's rights in Indonesian regulation are still very limited in the children's realm that require superior protection. As written in Article 59 (2)²⁴ and Article 60 of Law 35/2014, the state is

obliged to provide excellent protection to children with various categories, including children in an emergency. And those include refugees and asylum seekers' child.²⁵

THE CORE PRINCIPLES AND RIGHTS OF CHILD UNDER THE 1989 UNITED NATION CONVENTION ON THE RIGHT OF CHILD

The CRC is a generally negotiated set of principles and responsibilities that are non-negotiable. These universal principles, or human rights, set standard rights and freedoms that governments should uphold. It focuses on respect for the integrity and worth of an individual, regardless of their background, and therefore, applicable to every human being all over the world. The CRC contains four principles: non-discrimination, the best interests of the child, and respect for their views. Through setting standards in health care, education, and legal, civil, and social services, the Convention safeguards children's rights. The main objective of child protection is to ensure children's rights to live, grow and participate optimally following human dignity and receive protection from violence and discrimination to realize children who have a noble and prosperous character.²⁶ According to this convention, all children deserve:

1. The inherent right to life and all countries must ensure the maximum possible development of themselves from the child's survival (Article 6);
2. The right to a decent name and nationality (Article 7);
3. Not be separated from their parents, except by officials, for the children's good (Article 9);
4. The reunification of families by allowing persons in and out of or into their territory (Article 10);
5. The right to discover, obtain and impart all sorts of knowledge and ideas (Article 13);
6. Enjoy their freedom of thought and religion (Article 14);
7. The right to the protection of the law against his or her privacy, relatives, home or correspondence, or unreasonable assaults on his or her honor and reputation (Article 16);
8. To have access to information and materials from a variety of outlets;
9. Have their parents raise them, and State-party must provide appropriate assistance and promote child care (Article 18);
10. The right to protection from all forms of violence, abuse, and negligent treatment and exploitation (Article 19);

11. The right to get special protection and assistance from the state when a child deprived of his or her family environment (Article 20)
12. To get a proper and careful adoption process according to international standards (Article 21).
13. To get adequate protection and humanitarian assistance in seeking refugee status (Article 22).
14. Have the right to special care and education for disabled children (Article 23);
15. The highest attainable standard of health. States must ensure that health care is accessible to all children, emphasizing preventive measures, health education, and the reduction of child mortality (Article 24);
16. To get free primary education and compulsory. Discipline in school must respect the dignity of the child (Article 28);
17. Ample time to relax and play, have opportunities for cultural experiences and artistic activities (Article 31);
18. To get protection from work that can harm their education as well as their well-being (Article 32);
19. To get protection from involvement and abuse in the production or distribution of drugs (Article 33);
20. To get complete protection from all forms of sexual exploitation and sexual abuse (Art. 34) and from abduction and trafficking of children (Art. 35).
21. To not get the death penalty or life sentence for crimes committed by a person who is not yet 18 years of age (Article 37 Paragraph a). In particular, all children deprived of liberty shall be removed from adults unless it is deemed in the best interest of the child not to do so, and shall maintain communication with his or her family through correspondence and visits (Article 37 Paragraph c) ;
22. No involvements in any form of conflict. Children in situations of armed conflict must get superior protection (Article 38).
23. Receive special treatment or training to cure and rehabilitate those who suffer ill-treatment, neglect, or exploitation (Article 39).

RESEARCH METHODOLOGY

TYPE OF RESEARCH

This research is normative legal research²⁷ and uses existing regulations, court decisions, and doctrines

as a source of secondary data.²⁸ This mode of analysis is an appropriate tool to evaluate law theories and principles.²⁹ The research approach used includes a) statute approach that examines rules and regulations related to the study. In the statutory approach method, it is necessary to understand the hierarchy and principles in statutory regulations³⁰, particularly regarding the rights of children on the move; b) a conceptual approach that examines the views/concepts of experts regarding the issues discussed. This approach employs to find the idea of the rights of children on the move in Indonesia.

TYPES AND DATA SOURCES

The type and sources of data in this research are as follows:

1. Primary data obtained from the results of the literature;
2. Secondary data obtained from legal materials and regulations related to the main topic.

DATA COLLECTION TECHNIQUE

The data collection technique is mostly through library research in books, articles, and other sources related to the discussion of this study.

RESULTS AND DISCUSSION

As part of the international community, Indonesia must make the necessary efforts to ensure that the fundamental rights of children of refugees and asylum seekers are protected and respected. Children's rights are also human rights. Internationally, human rights protection is a fundamental right following Article 14 of the Universal Declaration of Human Rights.³¹ This obligation to protect is part of international communities' duty, which on the other hand, is also the national obligation of a country.³² Being the host countries receiving many asylum seekers and refugees, such as Malaysia, Indonesia is continuously affected by these irregular movements.³³ The number of refugees returning to Indonesia grew again after a decrease in numbers in the late 1990s. In 2014, the number of refugees and asylum seekers resettled in Australia, their leading destination country, decreased significantly when Australia sets out a policy not to accept refugee resettlement anymore. Consequently, these communities are increasingly piling up in Indonesia.³⁴

In 2021, around 13.743 registered refugees and asylum seekers, 10.121 and 3.622, respectively, live

in the country.³⁵ Half of them come from Afghanistan (55%), Somalia (10%), and Myanmar (7%). Around 900 people are stateless. Twenty-seven percent of them are children. Around 3.740 children registered in The United Nations High Commissioner for Refugees Indonesia, 82 are unaccompanied by adult family, and 44 are separated from their parents. These refugees stay in various cities in Indonesia, such as, Jakarta and its Surrounding Areas (JABODETABEK), Medan of North Sumatera, Pekanbaru of Riau and Makassar of South Sulawesi. The majority of them are living in Jakarta.³⁶

Only Australia and the United States accept unaccompanied children. Most of them have to wait until they reach 18 to be transferred to a third country. This situation makes them the most vulnerable group among refugees and asylum seekers. The Indonesian government should be more cautious about providing protection for these children. For the government, the existence of asylum seekers, refugees, and stateless people create a dilemma. On the one hand, the government must facilitate their presence and not even allow foreign refugees to be displaced. This is because, from a humanitarian perspective, Indonesian governments will be blamed internationally for neglecting them.³⁷

Indonesia is a sovereign country, meaning that it has full authority to govern its territory without interference from other countries. The State maintains sovereignty overall actions in its government so that it is free to act according to international law that has become a collective agreement. The Indonesian government currently has a more proactive stance participating in international instruments on human rights since it commits so in its 1945 Constitution's preamble.³⁸ Hence, Indonesia has taken a step forward after ratifying the Convention on children's rights by confirming Law No. 3/1997 on Juvenile Justice, Law No. 39/1999 concerning Human Rights, and Law No. 35/2014 concerning Amendment to Law No. 23/2002 concerning Child Protection. Besides, the government has ratified Law No. 20/1999 Concerning Ratification of ILO Convention No.138 on Age for Administration to Employment and Law No 1/2000 Concerning Ratification of ILO Convention No. 182 on the Prohibition of the Worst Form of Child Labour, and Presidential Decree No. 36/1990 Concerning Ratification of the CRC.

As a dignified country, Indonesia is trying to fulfil these children's rights as mandated in its national law and international law. While Indonesia has not yet been a state party to the refugee

convention and its Protocol, Indonesia still needs to protect children, refugees and asylum seekers, as emphasized by the existence of Law No.39/1999 on Human Rights, which has the requirements of the Universal Declaration of Human Rights. Since 2016, Indonesia has also enacted a presidential decree to establish a mechanism in helping refugees from abroad. The Presidential Refugees Regulation explicitly mentions the State's duty to rescue and cater to refugees' needs. For example, the government must save them if asylum seekers reach Indonesian waters. However, there is not a single clause in the regulation that states the right of post-evacuation refugees.³⁹ Also, the existence of Law No. 35/2014 on Child Protection for the protection of refugee children has emphasized Indonesia's commitments as a state party to the CRC.

Indonesia has been doing the extra mile to tackle this issue, despite its limitation in Fund since Australia has been tightening the financial assistance to the government through The International Organization of Migration (IOM).⁴⁰ The characteristics of these refugees' problems include, first, the availability of shelter. In Indonesia, the conception of an immigration detention centre was initially intended only for people who violated immigration regulations, were awaiting deportation, or was denied entry permits to Indonesia, following Article 83 of the Migration Law. However, currently, there are also refugees, asylum seekers so that their capacity exceeds their capacity. This, of course, has an impact on their well-being. Second, the fulfilment of essential services, Presidential Decree 125/2016, divides the central government's problems to local governments.⁴¹ On the one hand, it creates coordination problems, especially related to meeting basic needs for refugees in the shelter. However, Indonesia, through its Coordinating Ministry for Political, Legal and Security Affairs and its department for Refugees and People Smuggling, the Ministry of Law and Human Rights, including its Directorate-General of Immigration, The Ministry of Foreign Affairs, The Ministry of Social Affairs, and the Ministry of Home Affairs works together to provide protection and support and to identify solutions for persons under UNHCR Mandates. Indonesia is also working closely with other international and national organizations, such as The United Nations High Commissioner for Refugees, The International Organization for Migration, *Dompot Dhuafa*, The Indonesian Red Cross, The National Human Rights Commission,

Church World Service, and Catholic Relief Service.⁴² These organizations ensure that these refugees, asylum seekers, and stateless persons, especially children, are protected and provided assistance.

Generally, in terms of the right to education, as stipulated in Article 28 of the CRC, primary education should be given freely. This is in line with the core principle in the CRC, that is, the principle of the best interests of children. Indonesia provides these children access to national schools through the Ministry of Education Circular Letter Number 75253/A.A4/HK/2019.⁴³ Up until 2021, around 679 of these children got accepted into public schools in Indonesia.⁴⁴ During the COVID-19 pandemic, the Ministry of Education and Culture circular on Education for child refugees July 10, 2019, opens access to Education for child refugees, but (1) does not burden the government budget, (2) puts Indonesian citizens first, (3) obtains a certificate that has attended Education, not a diploma.⁴⁶ The UNHCR and IOM also encourage these children to enrol in the national school system, especially at the primary school level. Children's rights to education are also being fulfilled with university students or community organizations to teach English, Bahasa Indonesia, and handicrafts. UNHCR also cooperates with other partners in Indonesia teaches basic math and literacy and local customs and culture. Other educational opportunities for the older child include enrolment in online and accredited university courses. As of February 2021, 4126 refugees are enrolled in online university courses⁴⁷ and community-based learning programs.⁴⁸ The challenge to increase these children's enrolment rates includes limited knowledge of Bahasa Indonesia⁴⁹, inadequate funding sources⁵⁰, and reports of little places in public schools where refugees reside⁵¹. Apart from that, it depends on the detention policy in which they are registered.⁵² Additionally, these children who now stay in the community houses can get their educational rights fulfilled with IOM's assistance and cooperation with the public schools' education office. IOM also provides a home-schooling program for these children.

There are also Refugee Learning Centre in Bogor, Jawa Barat. This centre is set up by a group of refugees living in Indonesia for more than five years and is currently chaired by Abdullah Sarwari.⁵³ This centre aims to provide primary education and training for these children stuck in limbo.⁵⁴ The subjects taught include English, Maths, Science, and Geography/History based on the Singapore

curriculum. Overtime, Bahasa Indonesia is also conducted in this centre since these children might stay in Indonesia for a while so that they can solve their everyday problems. However, in this centre, these children cannot get a certificate. Meanwhile, the Local Head of Education Office in Pekanbaru, Riau, Indonesia, also facilitated around 286 children of asylum seekers to go to public schools in their districts starting in 2019.⁵⁵ So, these children's best interests can be fulfilled, and later when they arrive in a third country, they will not miss their lessons and can continue their life. Thus, the Indonesian government has tried to fulfil children's education rights following the CRC and has tried to carry out state obligations for these children.

Health is one aspect of protecting the rights of refugees that is of great concern. Health is no longer considered a personal matter related to God's fate which has nothing to do with state responsibility but a legal right. Article 4 of Laws No 23/92 concerning health summarizes that everyone is entitled to an optimal degree of health. These include health maintenance, health improvement, disease prevention, disease healing, and health recovery. Hence, the state is the bearer of the obligation to protect, respect, and fulfill human rights. The right to health is a human right. So, everyone, without exception (citizens and refugees), have the right to protection, respect, and fulfillment of their right to health. However, healthcare access for children refugees does not yet have clear legal rules. In practice, they can still access health facilities and are then treated in a general patient scheme. However, this is difficult due to their financial constraints and language barriers. Those staying around Jakarta can access general or specialist health facilities, usually at the Local Government Hospital or Clinics, such as Rumah Sakit Umum Tarakan, or Community health centres in Cisarua, Bogor. Because it usually needs to pay a low price around IDR 5000-10000 (Less than USD1), the same amount as Indonesians.⁵⁶ However, these children are not part of *Badan Penyelenggara Jaminan Sosial* (Social Security Administrator). For children refugees living independently with their families, outside shelters also get access to funding by UNHCR implementing Partners for emergency cases and life-saving treatments.⁵⁷ In terms of the right to health, these children have access to primary medical care through public health facilities that provide immunizations. For example, Dompét Dhuafa Aceh Humanitarian Response Team provides Health Service Unit for 99 refugees, including 33

children in temporary shelters.⁵⁸ These children also can access health services, especially now in the COVID-19 pandemic era. The benefits vary from examinations and treatment, which The Ministry of Health provides. These communities have also been informed of the government's health protocol through various channels and communication actors. UNHCR also works to ensure disseminating of correct information regarding prevention, symptoms, actions needed, and where to seek help-reaching these children on time. This effort is done in close collaboration with local authorities and other national and international organizations, such as *Pos Keadilan Peduli Umat*–Human Initiative (PKPU-HI), *Dompét Dhuafa*, IOM, CWS, CRS, and Jesuit Refugee Services (JRS).⁵⁹ Additionally, the long waiting period in the transit country increases the stress factor that affects the refugees' physical condition. The high level of stress also affects the mental health of refugees. It was recorded that there were around eight refugees who committed suicide in 2020.⁶⁰ This raises a concern because they are relatively young; hence, access to health facilities must also cover their mental health treatment.

CONCLUSION AND RECOMMENDATION

CONCLUSION

In general, Indonesia has fulfilled its obligations as a country that ratifies the CRC to fulfil the rights of children on the move. In obtaining their rights, refugee and asylum seekers' children are similar as long as they are registered at the UNHCR. The authorities have tried to fulfil their educational requests by allowing them to get an education in community houses and public schools around their area of living. The most common knowledge among these children is Math, Bahasa Indonesia, and English. However, they even cannot get a diploma when they finished their studies, only a certification letter. UNHCR and IOM also provide financial assistance for children who are getting home-schooling. All these efforts are made so that they are not too far behind in their lessons. In terms of right to education, these children are also getting access to health services and facilities in Indonesia.

RECOMMENDATION

The legal basis regarding foreign refugees in Indonesia is only based on the Immigration Law and Presidential Decree 125/2016. Immigration officers

are merely administrative immigration-related documents, while the Ministry of Social Affairs usually handles refugees' services. Cross-ministerial and cross-agency coordination is needed to resolve this refugee problem, especially for the right to education and the freedom to health for refugees. Collaborative coordination between various stakeholders is required in handling this matter. It is also essential to establish joint coordination between stakeholders in a government policy in the policies derived in various ministries' programs and activities to see the dimensions of respect, protection, and fulfillment of human rights. Suppose Indonesia is still reluctant to ratify the refugee convention. In that case, it can arrange a legal draft on the handling of refugees in Indonesia appropriate to the context and protect their rights such as education, health, employment, and livelihoods to respect their human rights. So, the government can have a legal basis, for example, by including refugees as BPJS recipients. The regional government is also not afraid to use the provincial budget for refugees' needs with the existence of this regulation. Since its establishment, Indonesia aims to alleviate poverty. There are still many people living below the poverty line; if the government waits for this to be over, it will be even more challenging to make room for refugees' protection while living in Indonesia. On many occasions related to refugees, the state does not spend a lot of *Anggaran dan Pendapatan Belanja Negara* (APBN/State Budget and Revenue) for helping these refugees. Still, the fund comes from local communities, local NGOs, and other international organizations. Indonesia shares its responsibility to protect these children by partnering with NGOs registered under the Ministry of Law and Human Rights. Through partnerships with the government, NGOs can seek legal assistance from experienced professionals, provide basic childcare training, and assign legal guardians. With this method, Indonesia can delegate its obligations. Simultaneously, promote the principle of "best interests of the child" at the management of children on the move in Indonesia by guaranteeing those children are treated accordingly.

NOTES

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