

**ACCESS TO THE RIGHT OF EDUCATION FOR REFUGEE CHILDREN IN INDONESIA:  
A GOVERNMENT DENIAL, OR DISOBEDIENCE?**

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LLM Final Thesis

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***“Every right, for every child!”***

## Executive Summary

For humanitarian purposes, Indonesia, as a non-signatory party to the Convention Relating to Refugee Status, has welcomed refugees and asylum seekers to stay temporarily in its land. However, due to the large number of arriving refugees, Indonesia does not fulfil its responsibility under international human rights instruments for the most vulnerable group among them, refugee children. As the state party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1966 and Convention on the Rights of the Child (CRC) 1989, Indonesia shall ensure the enjoyment of refugee children's rights, specifically the right to free compulsory education. Nevertheless, Indonesia is neglecting to respect, protect and fulfil this right by the discriminatory policy towards refugee children. The purpose of this research is to analyze the unintended negligence of Indonesia towards its responsibility to fulfil the right to free primary education for refugee children in Indonesia and whether the current nature of the education scheme for the refugee is discriminatory or not.

To further examine this thesis's problems, the author uses a juridical normative and social approach by researching primary data, such as international treaties and national laws and the secondary data related to refugee children's right to access compulsory education in Indonesia.

This research concludes that Indonesia, as one of the State Parties to the ICESCR and the CRC, has not effectively fulfilled its obligations. Several measures need to be taken by the Indonesian Government to protect the right to education for refugee children. For example, the Indonesian Government needs to enhance cooperation and coordination with intergovernmental agencies such as the United Nations on High Commissioner of Refugees (UNHCR), the International Organization for Migration (IOM), United Nations Children's Fund (UNICEF), and its implementing partners.

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## Introduction

Since 1979, the United Nations High Commissioner of Refugee (UNHCR) has collaborated with the Indonesian government in building a holding campsite for 170,000 refugees from Vietnam fleeing from the South East Asia conflict at the time.<sup>1</sup> By December 2020, Indonesia has become a transit country for 13,743 persons of concern, including asylum seekers and refugees.<sup>2</sup> 27% of them are children, including 114 of whom are unaccompanied by a parent or other person who responsible for them, and 44 of whom are separated from their family or legal guardians.<sup>3</sup> Indonesia allows refugees to stay temporarily in its territory mainly for humanitarian reasons and had very little to do with its membership to the 1951 Convention relating to the Status of Refugee and its 1967 Protocol (henceforth: the 1951 Convention). There are no public policies or other regulations related to refugees' handling in Indonesia until 2016, when the president signed the Presidential Regulation No. 125 regarding Refugee Care and Management. Starting from that year, a refugee staying and/or arriving in Indonesia was no longer labelled as an illegal immigrant but a refugee or asylum seeker under the definition of Presidential Regulation No. 125/2016. However, this regulation does not make refugees a rights holder—they are merely a subject of an Indonesian immigration regulation.

Meanwhile, 3,716 refugee children in Indonesia are the most vulnerable groups who need to receive their fundamental rights as children, including the right to accessible education. Free education is the mandate of the Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These two international treaties are legally binding in Indonesia as a ratifying country that made no

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<sup>1</sup> “History of UNHCR,” UNHCR Indonesia, accessed April 8, 2021, <https://www.unhcr.org/id/en/history>.

<sup>2</sup> “Figures at a Glance,” UNHCR Indonesia, accessed April 14, 2021, <https://www.unhcr.org/id/en/figures-at-a-glance>.

<sup>3</sup> United Nations High Commissioner for Refugees, “Fact Sheet: Indonesia December 2020” (UNHCR Indonesia, December 2020), <https://reporting.unhcr.org/sites/default/files/UNHCR%20Indonesia%20fact%20sheet%20-%20December%202020.pdf>. Pg. 1

reservation to them in this respect. This thesis will discuss whether Indonesian policy towards refugee children is following the aforementioned international treaties or Indonesian Government “intendedly” neglect their responsibility by selectively excluding the refugee children through existing legal loopholes.

Moreover, Indonesia is not the only non-signatory state to the 1951 Convention in ASEAN that allows refugees to live on their territory. Malaysia and Thailand are also non-parties<sup>4</sup> to the Refugee Convention; these two countries eventually built a particular system for handling refugees and asylum seekers. Hence, the author will do a comparative regional law and policies towards those countries.

To examine further the problems in this thesis, a normative juridical approach will be used by the author on researching primary data, such as international treaties and national laws, and combine it with empirical method by compelling the secondary data related to the victim of human rights abuse of education from live interviews.

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<sup>4</sup> “United Nations Treaty Collection,” accessed November 29, 2020, [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en). Available at: [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en) accessed on 29 November 2020

### Acronym

APBN	<i>Anggaran Pendapatan dan Belanja Negara</i>
APBD	<i>Anggaran Pendapatan dan Belanja Daerah</i>
ASEAN	Association of Southeast Asian Nations
BIA	Basic Initial Assessment
CESCR	Committee on Economic, Social, and Cultural Rights
CRC	Convention on the Rights of the Child
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IOM	International Organization for Migration
OHCHR	Office of the United Nations High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations on High Commissioner of Refugee
UNICEF	United Nations Children's Fund
UPR	Universal Periodic Review



## Chapter One

### 1 General Overview on Refugee Law and Right to Education

This chapter shall describe and analyse the legal basis of refugees rights in relation to education, deriving from sources such as international treaties and agreements, as well as customary international law. This chapter aims to understand the scope and extend of educational rights that should be provided to the refugees by their hosting states.

#### 1.1 International Refugee Law

*"Everyone has the right to seek and enjoy in other countries asylum from persecution."*<sup>5</sup>

Article 14 of the Universal Declaration of Human Rights is the cornerstone of universal protection for those who seek asylum in fear of persecution in their home countries. This Declaration cements that the principle of *non-refoulement* is inherent in this Article, establishing that no one should be transferred back to his/her country of origin or outside of a country's territory where the fear of persecution has existed for them.<sup>6</sup> This Declaration is also inherently non-discriminatory, banning the practice of biased implementations based on is the person's identity including, but not limited to their colour, religion, race, nationality, or status (asylum seeker or refugee).

The 1951 Convention Relating to the Status of Refugee (Refugee Convention) and the 1967 Protocol developed to accompany the implementation of the agreement further expands and deepen the understanding and scope of the rights inscribed for the refugees. ratified by 146 countries,<sup>7</sup> this treaty is the primary source of international refugee law. Unfortunately,

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<sup>5</sup> Article 14(1) Universal Declaration of Human Rights 1948

<sup>6</sup> Sir Elihu Lauterpacht and Daniel Bethlehem, "The Scope and Content of the Principle of Non-Refoulement: Opinion," in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, ed. Erika Feller, Frances Nicholson, and Volker Türk (Cambridge: Cambridge University Press, 2003), 87–177, <https://doi.org/10.1017/CBO9780511493973.008>, Pg. 90.

<sup>7</sup> "United Nations Treaty Collection," accessed February 26, 2021, [https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en)

Indonesia is not party to this Convention. However, there are some conventions and national regulations related to the refugee legally bind Indonesia.

This section reviews Indonesia's policies of opening its borders to asylum seekers and refugees as a non-party to the Geneva Convention. To begin with, the following paragraphs explain the characteristics that identify a refugee and its difference from a regular migrant.

### **1.1.1 The definition of a refugee**

*"Any person owing to well-founded fear of being persecuted for reasons of race, nationality, member of particular social group or political opinion, is 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 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."*<sup>8</sup>

The above Article defines the term 'refugee' in the 1951 Geneva Convention. Those who have a well-founded fear of being subjected to persecution in their home country for reasons listed under the 1951 Refugee Convention are classifiable as a refugee. This definition contributes to Indonesian policy towards refugees under Indonesia Presidential Regulation 125/2016 regarding Handling Refugees from Abroad. Also for an addition, under Indonesian national law, someone could classified as a refugee if she/he has granted a refugee or asylum status by the UNHCR Indonesia.<sup>9</sup> Indonesian Government recognizes the term of refugee rather than labelling them as illegal migrants even though some of them enter the Indonesian border in an irregular manner.

However, this is not to say that all people who flee their hometown / home country to seek refuge elsewhere may be labelled as refugees. There are asylum seekers, which refers to

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<sup>8</sup> Article 1 Convention Relating to the Status of Refugees 1951

<sup>9</sup> Article 1 Presidential Regulation 125/2016 regarding Handling Refugees from Abroad

those who seek protection but whose request for refugee status have not been granted;<sup>10</sup> and Internally Displaced Persons (IDP), who are individuals forced to flee their homes to prevent themselves from impacts, armed conflict, or any inhumane treatment without crossing the borders of their home country.<sup>11</sup> This thesis will specifically focus on discussing individuals labelled as refugees in Indonesia.

### 1.1.2 Differentiation between refugees and migrants

Migration is defined as a form of movement of a person or group of people from one geographical area unit across the borders of their territory (country) with the desire to stay indefinitely or temporarily in a place that is not their original territory.<sup>12</sup> To date, there is no widely recognized definition of "migrant" at the international level. However, it could be understood that a migrant is a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.<sup>13</sup>

There are several expressions related to migrant, such as:

- An **international migrant** is any person outside the territory of the State of which he or she is a citizen or national.<sup>14</sup>
- **The forced migrant** is those who are crossing the border because of the well-founded fear under five grounds on the 1951 Geneva Conventions also those who internally displaced by conflicts, famine, development projects, chemical

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<sup>10</sup> United Nations High Commissioner for Refugees, "Asylum-Seekers," UNHCR, accessed January 9, 2021, <https://www.unhcr.org/asylum-seekers.html>.

<sup>11</sup> OCHA, "Guiding Principles on Internal Displacement" (United Nations, September 2004), <https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>.

<sup>12</sup> International Organisation for Migration, "Migrasi Tenaga Kerja dari Indonesia" (Jakarta: Organisasi Internasional untuk Migrasi (IOM), 2010), [https://www.iom.int/jahia/webdav/shared/shared/mainsite/published\\_docs/Final-LM-Report-Bahasa-Indonesia.pdf](https://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-Bahasa-Indonesia.pdf).

<sup>13</sup> International Organisation for Migration, "Glossary on Migration" (International Organization for Migration, 2019), [https://publications.iom.int/system/files/pdf/iml\\_34\\_glossary.pdf](https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf). Pg. 132.

<sup>14</sup> Office of the High Commissioner for Human Rights, "Recommend Principles and Guidelines on Human Rights at International Borders" (Office of the High Commissioner for Human Rights, 2015), [https://www.ohchr.org/Documents/Issues/Migration/OHCHR\\_Recommended\\_Principles\\_Guidelines.pdf](https://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf). Pg. 4.

or nuclear wars, or environmental disasters.<sup>15</sup> Refugee includes in this general term.

A refugee's situation is not the same as international migrant who travel across the border for their good fortune. This distinction also makes a State differentiate the treatment towards them. For example, in Indonesia, an international migrant can be categorized as a foreigner. They can also have the right to work in Indonesia based on Minister of Manpower Regulation No. 10/2018 Procedures for Foreign Workers. On the other hand, refugees do not have such a right while transiting in Indonesia. With their inability to access the right to work, many refugee families are unable to pay for primary education for their children. Further, unaccompanied refugee minors could not access the right to education because they do not have any income.

### 1.1.3 The demographic of refugees in Indonesia

There are more than 26 million refugees worldwide right now, of which 50% of them are children.<sup>16</sup> The refugee is one of the most vulnerable groups internationally.<sup>17</sup> However, UNHCR classified that refugee children are among the most vulnerable groups in the demographic.<sup>18</sup> Refugee children face risks and threats, be it those who come unaccompanied<sup>19</sup> or separated<sup>20</sup>, or together with their parent/s or legal guardian. These

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<sup>15</sup> Alice Bloch, *Forced Migration : Current Issues and Debates* (London, 2019). Pg. 3.

<sup>16</sup> "Global Facts and Figures about Refugees," accessed January 24, 2021, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/global-refugee-crisis-statistics-and-facts/>.

<sup>17</sup> "The Human Rights Protection of Vulnerable Groups," Icelandic Human Rights Centre, accessed January 6, 2021, <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups>.

<sup>18</sup> United Nations High Commissioner for Refugees, "Identifying and Addressing Vulnerability: A Tool for Asylum and Migration Systems" (UNHCR, 2016), <https://www.unhcr.org/protection/detention/57fe30b14/unhcr-idc-vulnerability-screening-tool-identifying-addressing-vulnerability.html>. Pg. 3.

<sup>19</sup> Unaccompanied child is "who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so." in Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum 1997.

<sup>20</sup> Separated child is "who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members." in Inter-agency Guiding Principle on Unaccompanied and Separated Children 2004, Pg. 13.

children have a higher likelihood of being subjected to abuse and trauma in various situations. In the case of unaccompanied refugee children, for example, the absence of parental figures deprives them of a role model and sense of stability in life.<sup>21</sup> In another case, refugee children often carry the responsibility of caring for other children, such as their siblings or acquaintances.<sup>22</sup> These problems threaten to hinder these children's developmental needs, as they are overworked and/or lacking the access and opportunity to play or attend school.

The data from the United Nations High Commissioner for Refugees (UNHCR) Indonesia shows that, by November 2020, there are 13,745 persons of concern (refugees and asylum seekers) living in Indonesia.<sup>23</sup> In Indonesia, most refugees enter through legal ways; they have a passport and a visa on arrival.<sup>24</sup> Presently, the refugee and asylum seeker demographic in Indonesia consists of mostly those with Afghanistan, Iran, and Somalia nationality.<sup>25</sup>

3,716 refugee children in Indonesia<sup>26</sup> can enjoy their freedom of movement as long as they have a UNHCR ID Card. However, due to lack of clarity and inclusion in Indonesian domestic educational policies, these children could not access their right to access free compulsory education as enshrined in the international human rights instruments.<sup>27</sup>

## 1.2 Legal framework for the protection of right to Education

It is apparent that while the government allow these irregular migrants to enter and stay in their territory under the *non-refoulement* principle, they are unprepared for the

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<sup>21</sup> Live interview with Child Protection Officer of Service Provider in Indonesia, 20 February 2021.

<sup>22</sup> Live interview with Child Protection Officer of Service Provider in Indonesia, 20 February 2021.

<sup>23</sup> United Nations High Commissioner for Refugees, "Fact Sheet: Indonesia" (UNHCR, November 2020), <https://reporting.unhcr.org/sites/default/files/UNHCR%20Indonesia%20-%20Country%20Fact%20Sheet%20-%20November%202020.pdf>.

<sup>24</sup> Live interview with Special Task Force Investigator on Human Smuggling and Trafficking in Person Indonesia, 20 January 2021.

<sup>25</sup> Asep Kurnia, *Imigran Ilegal Potret Penanganan dan Pencegahan dalam Perspektif Sistem Manajemen Nasional* (Jakarta: International Organization for Migration, 2011). Pg. 4

<sup>26</sup> "Fact Sheet: Indonesia December 2020." Pg. 1.

<sup>27</sup> Live interview with Senior Program Officer of Service Provider in Indonesia, 20 March 2021

responsibilities to provide the rights of these refugees. The Presidential Decree that becomes the basis for refugee acceptance does not detail nor oblige the government to be the duty holder in fulfilling refugee rights, including the rights of these refugee children.

However, Indonesia is one of the parties in the 1989 Convention on the Rights of the Child (CRC) also the International Covenant on Economic, Social and Cultural Rights (ICESCR). These conventions regulate the fulfillment of children's rights, including the right to access education, which also includes the refugee children. As a part of the non-discrimination principle,<sup>28</sup> the right for to education ascribes state parties—including Indonesia—the responsibility to provide such rights to *all* children under its care, including the refugee children.

### 1.2.1 The right to education under International Law

#### *Universal Declaration of Human Rights*

*"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available, and higher education shall be equally accessible to all based on merit."*<sup>29</sup>

In 1948, the United Nations adopted the Universal Declaration of Human Rights (UDHR) as a universal standard for protecting human rights.<sup>30</sup> This Declaration contains more than 20 rights covering both Civil and Political Rights also Socio-Economic Rights.<sup>31</sup> Under this Declaration, it is established that education possesses an essential role in human development and dignity.<sup>32</sup> Expressly, Article 26 of the Declaration stated that access to

<sup>28</sup> Article 2 Convention on the Rights of the Child 1989; Article 2 (2) International Covenant on Economic, Social and Cultural Rights 1966.

<sup>29</sup> Article 26 (1) Universal Declaration of Human Rights 1948

<sup>30</sup> Andrew Clapham, *Human Rights: A Very Short Introduction*, Second (New York, USA: Oxford University Press, 2015). Pg. 50.

<sup>31</sup> Universal Declaration of Human Rights 1948

<sup>32</sup> Article 26 (2) Universal Declaration of Human Rights 1948

education for everyone must be secured by the Government.

### *International Covenant on Economic, Social and Cultural Rights (ICESCR)*

The right to education is further regulated in Articles 13 and 14 of the International Covenant on Economic, Social, and Cultural Rights.<sup>33</sup> Article 13 (1) mentioned that primary education must be accessible for everyone. More comprehensively, in General Comment No. 13 the right to education must be owned by all people with the principles listed in the UDHR, without any discrimination by the State in its implementation.

In verse (1), there are several aspects of how the right to education is very much in touch with someone's dignity and that everyone, regardless of skin colour, nationality and background, can get the fulfilment of this right, free of discrimination.<sup>34</sup> The principle of non-discrimination is one of the fundamental basis in fulfilling a person's human rights; hence it can be found in almost all international human rights covenants.

In addition, Article 13 (2) stated that secondary education should be made feasible after primary education and open to everyone in various forms, including technical and vocational secondary education.<sup>35</sup> This Article mandates the State to gradually make this form of education also accessible as the primary one.

Therefore, the non-discrimination principle applies to the fulfilment of the rights to access education from primary to secondary and tertiary education. In this research the author will be focusing only on primary and the secondary education, as tertiary education is designed for individuals above 18, which would have been legally classified as adults.

### *Convention on the Rights of the Child (CRC)*

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<sup>33</sup> “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.” Article 13 (1) International Covenant on Economic, Social and Cultural Rights 1966

<sup>34</sup> General Comment No. 13: The right to education (article 13) 1999

<sup>35</sup> Article 13 (2) International Covenant on Economic, Social and Cultural Rights 1966

Any person who is below 18 years old can be considered a child under the CRC.<sup>36</sup> Children are considered the most vulnerable group because they do not have the capacity and capability to live independently.<sup>37</sup> <sup>38</sup> A simple example is a five-year-old child who cannot cook and provide nutritious food by himself, thus needing the aid of an adult to provide it for him. Due to this reason, children are protected by a specific legal umbrella, which includes the Convention on the Rights of the Child 1989.

As a signatory state of this Convention, Indonesia acknowledges that all children should have the rights to access education that has been granted under Article 28 of this Covenant.<sup>39</sup>

### **1.2.2 The Right to Education under Indonesian National Law**

#### *Constitution of the Republic of Indonesia 1945*

As the foundational regime in Indonesian legal hierarchy, every domestic legal construct released by the ruling government must adhere to the Constitution of the Republic Indonesia 1945 (henceforth ‘the Constitution’). Regarding human rights, the Constitution has established under Article 31 (1) that every citizen has the right to get primary education.<sup>40</sup> Further, under Article 31(2), the Government is obliged to fully fund primary education as guarantee of access.<sup>41</sup> The Constitution also stipulated that national education must be the highest priority of the Government when setting the annual State Budgetary and Regional Budgetary allocation to fulfill the enforcement of this right.<sup>42</sup> Thus, it can be concluded that the Constitution bestows the government the responsibility of protecting, promoting, and fulfilling an accessible and free primary education for the people as part of the fulfillment of the right to education for its citizens.

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<sup>36</sup> Article 1 Convention on the Rights of the Child 1989

<sup>37</sup> PUSHAM UII, *Hukum Hak Asasi Manusia*, I (Yogyakarta: Pusat Studi Hak Asasi Manusia UII, 2008). Pg. 139.

<sup>38</sup> PUSHAM UII. Pg. 139.

<sup>39</sup> Article 28 Convention on the Rights of the Child 1989 n

<sup>40</sup> Article 31 (1) Constitution of the Republic of Indonesia 1945

<sup>41</sup> Article 13 (2) Constitution of the Republic of Indonesia 1945

<sup>42</sup> Article 13 (4) Constitution of the Republic of Indonesia 1945



*Law No. 39 of 1999 on Human Rights*

The regulation governs the acknowledgement and execution of human rights fulfillment in Indonesia. Article 60 of the law explicitly guarantees the right to education and teaching for children.<sup>43</sup> These laws and regulations follow the Indonesian Constitution as the cornerstone.

*Law No. 23 of 2002 on Protection of the Child (Law No. 35 of 2014 Amending Law on Child Protection (No. 23/2002))*

The 1945 Constitution and Law 39/99 on Human Rights are some of the reasons for forming this special Law No. 23 the Year 2002 on Child Protection. This regulation discusses the rights of children and the obligations of parents or guardians that are still following the basic principles of the CRC, namely:<sup>44</sup> (1)Non-discrimination, (2)The best interest of the child, (3)Right to life/survival, and (4) Participation.

Since Indonesia is one of the State Parties of the CRC, the four principles are reflected in the contents of Law 23/2002 on Child Protection. Article 9 of Law 23/2002 explicitly regulates that education is a fundamental right that all children must enjoy.<sup>45</sup> In support of this, Article 53 obliges The State to provide nine years of primary education by providing the broadest possible opportunity for children to obtain an education.<sup>46</sup>

*Presidential Regulation Number 36 of 1990 on the Ratification of the Convention on the Rights of the Child*

As a form of Indonesia's commitment to upholding human rights, especially children's rights, Indonesia participated in signing an international legal instrument, namely the 1989 Convention on the Rights of the Child. The decision to consent to an international agreement

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<sup>43</sup> Article 60 Law No. 39 of 1999 on Human Rights

<sup>44</sup> Article 2 Law No. 23 Year 2002 on Protection of the Child; Article 2, 3 Convention on the Rights of the Child 1989;

<sup>45</sup> Article 9 Law No. 23 Year 2002 on Protection of the Child

<sup>46</sup> Article 53 Law No. 23 Year 2002 on Protection of the Child

is a follow-up action carried out by the State after completing a negotiation to form the Agreement.<sup>47</sup> This Agreement legally binds the State when it completes the formal process of signing and ratification.<sup>48</sup> Indonesia issued the Presidential Regulation Number 36 of 1990 on the Ratification of the Convention on the Rights of the Child as a further manifestation of the Government's commitment to this Convention.

Reservation in an international agreement is a unilateral statement by a country not to accept the validity of specific provisions in an international agreement, in a formula made when signing, accepting, approving, or ratifying an international treaty of an international nature.<sup>49</sup> As a State Party to this Convention, Indonesia makes reservations for the fulfillment of Articles 1, 14, 16, 17, 21, 22, and 29.

Indonesia cannot accept the obligations in these Articles because it goes beyond the Constitutional limits nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution.<sup>50</sup> The relevant Article with this research is Article 22 because it mandated the State Parties to ensure special protection towards refugee children in their territory.<sup>51</sup> Subsequently, in 2015 the Indonesian Government notified the Secretary General that they agreed to nullify this reservation. It means, all the obligations under this Convention are legally bound to Indonesia with no exclusion.

### 1.3 Right to Education under Customary International Law

To consider a legal regime internationally customary, two factors must be fulfilled, (1) there are State practices that repeatedly occur and (2) that practice is then considered as an obligation or *opinio juris*.<sup>52</sup> The State practice shall be a general practice that have two characteristics;

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<sup>47</sup> Budiono Kusumohamidjojo, *Suatu studi terhadap aspek operasional Konvensi Wina tahun 1969 tentang hukum perjanjian internasional* (Bandung: Binacipta, 1986). Pg. 4.

<sup>48</sup> Article 11 Vienna Convention on the Law of Treaties 1969

<sup>49</sup> Article 2 Vienna Convention on the Law of Treaties 1969

<sup>50</sup> "United Nations Treaty Collection," accessed January 8, 2021,

[https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en#11](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#11).

<sup>51</sup> Article 22 Convention on the Rights of the Child 1989

<sup>52</sup> Vincent Chetail, "Sources of International Migration Law," in *Foundations of International Migration Law*,

*widespread* and *representative*.<sup>53</sup> The widespread element can be the refugee influx and the latter character is implied as countries around the world. Both of these characters shall be conducted by States including the most affected Nation.<sup>54</sup>

Moreover, the realization of refugee children's access to education worldwide is also secured by some principles bounding the State to obey. Some non-signatory States to the 1951 Convention in the same continent as Indonesia, for example, also practice proper actions to handle the refugee children in their country. This sub-chapter will discuss how an international customary law, which is a general practice of the State, is accepted by the State as a source of law.

### **1.3.1 The fulfillment of the Right to Education for refugee children**

There are several important aspects related to the ratification of the ICESCR. Indonesia has consented to be bound to the Convention once they ratify it and make it one of their national laws, and therefore must take measurable steps to realize such commitment in their domestic level, namely:

- States parties to the Covenant should progressively realize the Covenant's various rights.<sup>55</sup>
- There is a clear scope of what must be fulfilled and how to measure it<sup>56</sup>

It can be seen that the principle of non-retrogression binds the country, a principle that commands the State not to step back in fulfilling the socio-economic and cultural rights in this Convention, and obliges the State to use the maximum available resources.<sup>57</sup> This principle is

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ed. Brian Opeskin, Jillyanne Redpath-Cross, and Richard Perruchoud (Cambridge: Cambridge University Press, 2012), 56–92, <https://doi.org/10.1017/CBO9781139084598.004>. Pg. 74.

<sup>53</sup> *Idem*.

<sup>54</sup> *Idem*.

<sup>55</sup> Article 2 (1) Covenant on Economic, Social and Cultural Rights 1966; Para. 23 Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights

<sup>56</sup> Article 3 Covenant on Economic, Social and Cultural Rights 1966

<sup>57</sup> Para. 9 CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)

also mentioned in the Limburg Principles, where the existence and extent of state parties' responsibilities under the ICESCR are clarified in these Principles.<sup>58</sup> The principle of non-retrogression is the fulfilment of economic, social, and cultural rights, including the right to education, which must be implemented progressively by States parties even with limited resources.

Inherent with this principle, the State must also progressively conduct positive action towards the refugee children by:<sup>59</sup>

1. Ensuring accessibility to refugees to enjoy the right to public educational institutions and ensuring the non-discrimination applied to them;
2. Providing a free compulsory education;
3. Arranging free education in secondary and higher education progressively

All the points mentioned above are the living law inside the ICESCR and can be found in every international human rights convention related to education. With the non-retrogression principle binding the State, there is no way to decline the realization of protecting, promoting, and fulfilling the right to education for refugee children. As one of the signatory parties of ICESCR, Indonesia binds with the obligation under this basic principle to fulfill the right to education for the refugee children in its land.

### **1.3.2 Good practices in Malaysia and Thailand**

Within Southeast Asia (ASEAN), Indonesia, Malaysia and Thailand are the non-signatory States to the 1951 Convention—a convention which obliges State parties to fulfill refugees rights on their territory.<sup>60</sup> However, Indonesia and the two countries are also legally

<sup>58</sup> Para. 21-24 Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights

<sup>59</sup> Article 13 Covenant on Economic, Social and Cultural Rights 1966; Article 14 Charter of Fundamental Rights of The European Union.

<sup>60</sup>“United Nations Treaty Collection,” accessed November 29, 2020,

bound on the fulfillment of children's rights in the CRC.<sup>61</sup> The relatively identical culture considering the geographical identity as an ASEAN region states, can also be a reference for Indonesia to follow both country's policies regarding the children refugees—of course, by still paying attention to the values that are believed in Indonesia and creating adjustments to the implementation of the Right to Education policy for existing refugee children.

At the end of 2019, Malaysia hosted more than 178,000<sup>62</sup> refugees and asylum seekers within their territory, of which 26% were children under 18 years of age.<sup>63</sup> About 46,000 children<sup>64</sup> belong to the school-age group. Thailand hosted 577,108 refugees<sup>65</sup>, and 2,678 refugee children were registered.<sup>66</sup> Both of which are more compared to the number of refugees staying in Indonesia.

To fulfill the children's rights as stated in Article 28 of the CRC, namely the "right to access education"<sup>67</sup>, the Government of Malaysia, together with UNHCR and other implementing partners, built 133 learning centers<sup>68</sup> for child refugees. Around 30% of the child refugees attend these centers, and the majority, 70%,<sup>69</sup> are enrolled in public schools. Despite the fact that Malaysia had similar domestic laws regarding children's education to the Indonesian regime which only allows documented children to access formal education, the government still provides means for these children to access basic knowledge necessary during their formative years.<sup>70</sup> With the help of existing learning centers, children without legal

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[https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en).

<sup>61</sup> "United Nations Treaty Collection." Available at:

<file:///Users/debbykristin/Zotero/storage/PFYDL5SJ/ViewDetails.html> accessed on 29 November 2020

<sup>62</sup> Malaysia UNHCR, "2019 Year-End Report" (Malaysia: UNHCR, July 8, 2020),

<https://reporting.unhcr.org/sites/default/files/pdfsummaries/GR2019-Malaysia-eng.pdf>.

<sup>63</sup> *Ibid*, UNHCR.

<sup>64</sup> *Ibid*, UNHCR.

<sup>65</sup> United Nations High Commissioner for Refugees Thailand Fact Sheet September 2020, pg. 1

<sup>66</sup> Thailand UNHCR, "2019 Thailand and Global Report" (United Nations High Commissioner for Refugees, 2019), <https://www.unhcr.org/th/wp-content/uploads/sites/91/2020/10/Annual-Report-2019.pdf>.

<sup>67</sup> Article 28 on Convention on the Rights of the Child 1989

<sup>68</sup> United Nations High Commissioner for Refugees, "Education in Malaysia," UNHCR, accessed November 29, 2020, <https://www.unhcr.org/education-in-malaysia.html>.

<sup>69</sup> *Ibid*, Refugees.

<sup>70</sup> Malaysia Education Act 550 Year 1996

documents can still access the education they deserve even not in formal education format in public school. In Thailand, 514 refugee children are enrolling in primary school and 88 refugee children are now in secondary education.<sup>71</sup> From the “Education for All” policy under the 2005 Cabinet Resolution mandates the State must fulfill all children's rights<sup>72</sup>, as long as the child is still in its territory. Thailand legally stated that refugee children may be enrolled in government schools<sup>73</sup>, thus implementing the Guideline for Education Management for People without National Registration Document or Thai Nationality 2017. There is no requirement for the child refugee to submit their birth certificate; they also will get a number from the Ministry of the Interior, which will be added to the administrative database that local education offices can access.<sup>74</sup> This is indeed inversely proportional to what is happening in Indonesia today<sup>75</sup>.

### 1.3.3 Bangladesh and the Rohingya refugees influx

A simple example also can be seen in the actions taken by the Bangladesh government towards Rohingya refugees. Bangladesh is one of Myanmar's neighboring countries, which has always opened its borders since August 25, 2017,<sup>76</sup> for Rohingya refugees to flee. UNHCR's latest report stated that as of May 2021, Bangladesh hosted 888,381 individuals in their territory, with 51% of them being children.<sup>77</sup> Considering that it is not a party to the 1951 refugee convention and its protocol, Bangladesh has no obligation to fulfill refugee rights of this convention, besides Article 33 as one of the customary international law.<sup>78</sup> However, these

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<sup>71</sup> United Nations High Commissioner for Refugees Thailand Fact Sheet September 2020, pg. 3

<sup>72</sup> Rule of the Ministry of Education on Evidentiary Document for Pupils and Students Admission into Establishment of Education B.E. 2548 (2005)

<sup>73</sup> Save the Children, “Forgotten Futures”, Save the Children Asia Regional Office 2018, pg. 26

<sup>74</sup> Michaelle Tauson, “Forgotten Futures: The Lives of Refugee Children in Urban Areas of Indonesia and Thailand” (Singapore, June 2018),

[https://resourcecentre.savethechildren.net/node/13474/pdf/forgotten\\_futures\\_online\\_version.pdf](https://resourcecentre.savethechildren.net/node/13474/pdf/forgotten_futures_online_version.pdf). Pg. 26.

<sup>75</sup> Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 14 Year 2018, Article 7

<sup>76</sup> Kamrul Hasan Arif, “The Rohingya Refugees in Bangladesh: Non-Refoulement and Legal Obligation under National and International Law,” *International Journal on Minority and Group Rights* 27, no. 4 (2020): 855–75, <https://doi.org/10.1163/15718115-02702014>. Pg. 856.

<sup>77</sup> United Nations High Commissioner for Refugees, “Operational Update: Bangladesh,” May 2021, <https://data2.unhcr.org/en/documents/details/87175>.

<sup>78</sup> “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of

responsibilities are enshrined and can be found in several international human rights instruments, which are basic customary laws and are applicable to Rohingya refugees.

As a ratifying country to all core international human rights conventions, such as International Covenant on Civil and Political Rights (ICCPR)<sup>79</sup>, International Covenant on Economic, Social, and Cultural Rights (ICESCR)<sup>80</sup>, and Convention on the Rights of the Child (CRC),<sup>81</sup> Bangladesh has obligations to protect refugee rights. For example, although refugees are foreigners in the country of transit — as stipulated in Article 2 of ICCPR, ICESCR and the CRC — they have equal fundamental rights and freedoms as nationals without discrimination. Moreover, for the children, Rohingya refugee children should be treated with non-discriminatory acts to fulfill their rights, especially their rights to education.<sup>82</sup>

Presently, the Bangladesh government prohibits refugee children from receiving formal education, and as a result, Rohingya children are not permitted to enroll in public schools.<sup>83</sup> Even if they can obtain informal education, they are not permitted to obtain certification or formal qualifications.<sup>84</sup> In a positive step, Bangladeshi authorities approved the deployment of the Myanmar curriculum in camp learning centers in January 2020, following concerted

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territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Non-refoulement Principle; Article 33 1951

<sup>79</sup> “United Nations Treaty Collection,” accessed June 23, 2021, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4). Bangladesh ratified it on 6 September 2000

<sup>80</sup> “United Nations Treaty Collection,” accessed June 23, 2021, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4). Bangladesh ratified it on 5 October 1998

<sup>81</sup> “United Nations Treaty Collection,” accessed June 23, 2021, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en). Bangladesh ratified it on 3 August 1990

<sup>82</sup> Article 28 Convention on the Rights of the Child 1989

<sup>83</sup> Laura Haigh, “No Safe Haven: The Plight of Rohingya Children across Asia” (Asia: The Save the Children Fund 2021, June 17, 2021), <https://resourcecentre.savethechildren.net/library/no-safe-haven-plight-rohingya-children-across-asia>. Pg 15.

<sup>84</sup> *Idem*.

pressure from NGOs and the UN. A pilot project comprising 10,000 children in grades 6–9 (11–13 years old) began in April 2020, with grades 10 and 11 being added later.<sup>85</sup>

Even though this is a remarkable state practice from Bangladesh government, but this also indicates that some parts of the world lack a consistent and long-standing state practice that includes the most affected countries.

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<sup>85</sup> “Expanding Education for Rohingya Refugee Children in Bangladesh | UNICEF South Asia,” accessed June 23, 2021, <https://www.unicef.org/rosa/stories/expanding-education-rohingya-refugee-children-bangladesh>.



## Chapter Two

### 2 Refugee children's right to education in Indonesia as a country of asylum

The increase in the number of refugees flows to Indonesia every year since 2009<sup>86</sup> is one of the phenomena which indicates that the distance between the country of origin and the host country is not an obstacle if a person is in dire need of protection due to persecution that she/he has received in their own country. As a non-party of the 1951 Convention relating to the Status of Refugee and its 1967 Protocol, Indonesia is not bound by the responsibility to fulfil refugee rights. However, Indonesia still retains some semblance of obligation to the refugee children by their participation to the Convention on the Rights of the Child (CRC) and International Covenant on Economic, Social, and Cultural Rights (ICESCR). As such, Indonesia shall provide access to free primary education and access to secondary education for all the children in its land, including the refugee children.

#### 2.1 The Ministry of Education Circular Letter 2019; a Breath of Fresh Air or a False Promise?

In 2019, through the Ministry of Education and Culture, Letter Concerning: Education for Refugee Children, No. 75253 / A.A4 / HK / 2019 (Ministry of Education Circular Letter 2019)<sup>87</sup>, the Government of Indonesia regulates education for refugee children. Before this Circular Letter was issued, the Government did not acknowledge that refugee children were allowed to access the right to education. This is because the government regulated that in order to enroll in an elementary school, a student must be able to show their birth certificate, whereas to enroll in junior high school, students must prove a graduation certificate from their elementary schools or an equal degree. Refugee children often do not possess these legal

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<sup>86</sup> “UNHCR in Indonesia,” UNHCR Indonesia, accessed April 5, 2021, <https://www.unhcr.org/id/en/unhcr-in-indonesia>.

<sup>87</sup> See the attachment section

documents due to the circumstances they faced upon fled from their country of origin. On the contrary, the other child migrant may access their right to education in Indonesia under the national law. They might be a subject of free compulsory education if they could evince the legal document and fluent in Indonesian language.<sup>88</sup>

This chapter will discuss refugee children's condition in accessing the rights of primary and secondary education in Indonesia after the issuance of the 2019 Ministry of Education Circular Letter. In terms of urgency, one could say that the policy was a tad too late, for its formulation was only proposed and finalized after roughly 3000 refugee children had been staying in Indonesia, some of them for years. Further, in the perspective of efficacy and outreach, the Circular Letter's seven-number policy does not consider refugee children who do not have the privilege of assistance from United Nations on High Commissioner of Refugee (UNHCR), International Organization for Migration (IOM), and other implementing partners, thus further hindering them from accessing the right to free education. Some of these problematic policies are reflected below;

1. The participation of school-age refugee children in education in the regions must not burden the State Budget (APBN) or the Regional Revenue and Expenditure Budget (APBD);<sup>89</sup>
2. The education unit in the area is still obliged to prioritize school-age children who are Indonesian citizens;<sup>90</sup>
3. The Education District Office coordinates available slots for refugee school-age children in the education unit in its area and reports to the Ministry of Education

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<sup>88</sup> Article 12 Law Number 20 of 2003 on National Education System

<sup>89</sup> “*Partisipasi pengungsi anak usia sekolah dalam pendidikan di daerah tidak membebani Anggaran Pendapatan dan Belanja Negara (APBN) maupun Anggaran Pendapatan dan Belanja Daerah (APBD).*” Number 1 Ministry of Education Circular Letter No. 75253 / A.A4 / HK / 2019.

<sup>90</sup> “*Satuan pendidikan di wilayah Saudara wajib mendahulukan anak usia sekolah warga negara Indonesia.*” Number 2 Ministry of Education Circular Letter No. 75253 / A.A4 / HK / 2019.

and Culture (Bureau of Planning and International Cooperation, Secretariat General of the Ministry of Education and Culture);<sup>91</sup>

4. In order to be admitted, refugee school-age children must possess:
  - a. a refugee card issued by the UNHCR;
  - b. a recommendation letter from the local immigration detention center in coordination with the Ministry of Justice and Human Rights;
  - c. a letter of guarantee and commitment to support the cost of education from the institution that sponsors the presence of refugees;<sup>92</sup> and
  - d. a letter of recommendation from the Service Provider (UNHCR's implementing partners) for each refugee child who will go to school,
5. For educational participants who are school-age refugee children who have completed education at a certain level, the Provincial Education Office or the Education Service (district/city) under their authority can provide a certificate stating that the student has taken the education unit concerned;<sup>93</sup>
6. The certificate referred to in number 5 cannot be used to grant status, carry out affairs, and / or be used for any kinds of transactions.<sup>94</sup>

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<sup>91</sup> “Dinas Pendidikan mengoordinasikan penempatan pengungsi anak usia sekolah pada satuan pendidikan di wilayahnya dan melaporkan ke Kementerian Pendidikan dan Kebudayaan up. Biro Perencanaan dan Kerja Sama Luar Negeri, Sekretariat Jenderal Kementerian Pendidikan dan Kebudayaan.” Number 3 Ministry of Education Circular Letter No. 75253 / A.A4 / HK / 2019.

<sup>92</sup> “Penerimaan peserta didik yang berasal dari pengungsi anak usia sekolah harus memenuhi persyaratan: a. memiliki kartu pengungsi yang dikeluarkan oleh United Nations High Commissioner for Refugees (UNHCR); b. mendapatkan rekomendasi dari rumah detensi imigrasi setempat berkoordinasi dengan Kementerian Hukum dan Hak Asasi Manusia; c. mendapatkan surat jaminan dan komitmen dukungan biaya pendidikan dari lembaga yang mensponsori keberadaan pengungsi; dan d. surat rekomendasi dari lembaga yang mensponsori bagi setiap anak pengungsi yang akan bersekolah,” Number 4 Number 3 Ministry of Education Circular Letter No. 75253 / A.A4 / HK / 2019.

<sup>93</sup> “Bagi peserta didik yang berasal dari pengungsi anak usia sekolah yang telah menyelesaikan pendidikan pada jenjang tertentu, Dinas Pendidikan Provinsi atau Dinas Pendidikan I (kabupaten/ Kota sesuai dengan kewenangannya dapat memberikan surat keterangan yang menyatakan bahwa peserta didik tersebut telah menempuh pendidikan pada satuan pendidikan yang bersangkutan.” Number 5 Ministry of Education Circular Letter No. 75253 / A.A4 / HK / 2019.

<sup>94</sup> “Surat keterangan sebagaimana dimaksud pada angka 5 tidak dapat digunakan untuk pemberian status, melaksanakan urusan, dan/atau transaksi apapun.” Number 6 Ministry of Education Circular Letter No. 75253 / A.A4 / HK / 2019.

Number 1 indicates that the fulfillment of the right to education for refugee children differs from that of nationals. Indonesian children can access free primary education in Indonesia, borne by the APBN or APBD, but refugee children have to pay for themselves. Apart from this distinction, refugees in Indonesia do not get access to work at all, so their sole income comes from the assistance provided by UNHCR or other service providers. By obligating refugee parents and/or guardians to independently fund their children's schoolings, the regulation puts a significant strain on their finances. The interdependency between the two rights shows that the non-fulfillment of one right (access to work) affects access to other rights (education).

Furthermore, number 2 implicitly discriminates against refugee children by prioritizing Indonesian children in the education admission system. In parallel with the number 5, which states that refugee children will only get a certificate stating that they have taken education at the education unit concerned, and not the diploma and/or graduation documents. A child without a proper diploma or certificate for graduation will find difficulties in enlisting to higher levels, for they do not possess the requirement necessary to apply to the institutions.

Number 4a states that refugee children may only access education if they possess an ID Card from the UNHCR. However, in Indonesia, it takes between about 2-5 years for asylum seekers to finally be declared as a refugee by the UNHCR, and only some exceptional cases—such as the case of unaccompanied children—can the process be sped up to half a year.<sup>95</sup> During the initial registration stage, also known as the Basic Initial Assessment (BIA) carried out by UNHCR registration officer, asylum seekers do not immediately receive an ID card from UNHCR.<sup>96</sup> Thus, it is difficult to provide refugee children direct access to education immediately after their arrival. The time it takes to acquire of status and identification card bars children from being able to access educational institutions. In contrary, under Article 14

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<sup>95</sup> Live interview with Officer of International Organization for Migration in Indonesia, 2 April 2021.

<sup>96</sup> Live interview with Officer of International Organization for Migration in Indonesia, 2 April 2021.

of Directive 2013/33/EU of The European Parliament and of The Council, the refugee children must attend the education of Member States after three months of stay and application submission.<sup>97</sup>

Also, number 4b states that a recommendation letter from the detention center in coordination with the Ministry of Justice and Human Rights is required. However, many of these institutions are inaccessible to refugees for a variety of reasons. First, most refugees are hosted and/or chose to live near the border where they arrived, or on a vacant area of the region, which are usually rural area in nature.<sup>98</sup> Reasonings for the choice of area ranges from the similarity of territory, weather, lower living costs, and specific refugee communities in the region. Due to Indonesia's geography, many of these rural areas are not equipped by the necessary government offices. As such, if a refugee child were to enlist in the local schools, they are required to make a costly, difficult trip to the government offices in the urban area in order to get a recommendation. Additionally, due to the bureaucracy, there is a large possibility that they have to make more than one trip, which in turn would heavily burden their finances and resources.

After the issuance of this Circular Letter, there were no significant changes for refugee children to access the right to education in Indonesia. The requirements given would still not be possible if the refugee children did not get assistance from UNHCR and IOM, and related local NGOs. The reason is of 13,743 persons registered with UNHCR, only 5,823 (adult and children) of them received assistance until the end of December 2020.<sup>99</sup> Thus, only 747 out of 3,716 refugee children in Indonesia can access formal and informal education due to financial limitations to pay for registration fees and other school fees.<sup>100</sup> Apart from the requirements

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<sup>97</sup> Article 14 Directive 2013/33/EU of The European Parliament and of The Council

<sup>98</sup> Live interview with Child Protection Officer of Service Provider in Indonesia, 5 April 2021.

<sup>99</sup> *Ibid*, "Fact Sheet: Indonesia December 2020."Pg. 1.

<sup>100</sup> *Idem*.

listed in the Circular Letter above, there are several other things that refugee children must first fulfill if they want to participate in school activities. The next chapter will discuss the requirements that have been met by refugee children who get the privilege to access education at the primary and secondary levels.

## **2.2 Limits and boundaries faced by refugee children in accessing primary education**

In Indonesia, children can access primary education since they are six years old.<sup>101</sup> Primary education start from grade one to six, namely *Sekolah Dasar* (SD). Accessible free primary education means to provide children's futures by giving them opportunities to reach their full potential.<sup>102</sup> It is need to expand their human capital to reduce inequalities and promote peaceful, prosperous societies.<sup>103</sup> Especially for refugee children, this is the only option for her or him to regain a sense of purpose and dignity following the trauma of displacement, which has harmed her or his character.<sup>104</sup>

However, refugee children's access to primary school is not the same as other Indonesian children. As the primary language used in these institutions are Indonesian, pupils are required to be proficient in the local language. Due to that requirement, refugee children will be introduced to the language in advance at several learning centres in Indonesia. Unfortunately, as of October 2020, only five learning centers exist throughout Indonesia for 3,716 refugee children,<sup>105</sup> a number clearly disproportional with the demands. Until now, only 500 children have received education through these learning centres.<sup>106</sup>

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<sup>101</sup> Article 34 (1) Law Number 20 Year 2003 on National Education System

<sup>102</sup> Live interview with Education Officer of United Nations Children's Fund (UNICEF) Indonesia, 06 June 2021.

<sup>103</sup> "Early Childhood Education," accessed June 27, 2021, <https://www.unicef.org/education/early-childhood-education>.

<sup>104</sup> "Stepping up: Refugee Education in Crisis - 2019 Report - UNHCR," Stepping Up: Refugee education in crisis - UNHCR, accessed June 27, 2021, <https://www.unhcr.org/steppingup/>; Hárdi, Lilla. "The scars: psychological aspects of being a forced migrant". 22 March 2021, Central European University, Budapest. Class Lecture

<sup>105</sup> *Op. cit.*, "Fact Sheet: Indonesia December 2020.", Pg. 1.

<sup>106</sup> *Op. cit.*, "Fact Sheet: Indonesia December 2020.", Pg. 3.

Before they are assigned seats in public school, they are first prepped through the "School for Refugee" program, overseen by the UNHCR implementing partner.<sup>107</sup> Children below five years of age will be included in this program to receive intensive Indonesian lessons before entering the first grade of primary school. The teachers are Indonesians who have an Early Childhood Education background. In the program's final term, refugee children will get a basic Indonesian language test to determine whether they pass to enrol in primary school or not.

When a refugee child has successfully passed the final exam at the learning center, UNHCR and the implementing partner (local NGO) will register the child at the nearest public school.<sup>108</sup> The public school will determine whether all Indonesian children in the area have a seat; if not, then refugee children have to wait until a slot is available. If the slot is available, refugee children must pay registration fees, building fees, monthly tuition fees, book fees, uniform fees, and extracurricular fees.<sup>109</sup> In contrast, Indonesian children are not required to fund the expenses mentioned above for the Government has already borne these costs through the *Bantuan Operasional Sekolah* (BOS), the domestic educational funding policy.<sup>110</sup> BOS operates under the mandate of the constitution, which, according to the Ministry of Education officer, does not include covering the educational expenses of refugee children.<sup>111</sup>

Currently, refugee children in Indonesia can sit in on formal and non-formal education. Formal education is an educational path structured and tiered, consisting of primary education, secondary education, and higher education.<sup>112</sup> Meanwhile, non-formal education is a path of education program outside of formal education that can be implemented in a structured and

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<sup>107</sup> Live interview with Education Officer of Service Provider in Indonesia, 8 April 2021.

<sup>108</sup> Live interview with Education Officer of Service Provider in Indonesia, 8 April 2021.

<sup>109</sup> Live interview with Education Officer of Service Provider in Indonesia, 8 April 2021.

<sup>110</sup> BOS Regular is "the funding that allocates to help the operational expenditure needs of all students in primary and secondary education units." Article 1(2) Regulation of the Minister of Education and Cultural Indonesia Number 6 Year 2021

<sup>111</sup> Live interview with Education Officer from Directorate General of Early Childhood Education, Primary and Secondary Education – Ministry of Education and Cultural Indonesia, 28 March 2021.

<sup>112</sup> Article 1 Law Number 20 Year 2003 on National Education System

tiered manner, but is not necessarily obliged to do so.<sup>113</sup> Formal education is an education program registered under several institutions in Indonesia, such as public and private schools or universities.<sup>114</sup> Meanwhile, non-formal education is an education service that functions as a substitute or complement to formal education.

An example of non-formal education is the Community Learning Activity Center (PKBM).<sup>115</sup> This institution is formed to help people who previously are unable to access formal education due to limited funds or resources. The target group of this institution is people whose age no longer meets the requirements of elementary school (SD), junior high school (SMP), and/or senior high school (SMA).<sup>116</sup> The operation and curriculum of this institution remains under the supervision and guidance of the Indonesian National Education Service, and teaching and learning activities under the PKBM are to achieve the degree from each level of the education. For example, a student over 17 years old can take the final exam to get a junior high school diploma.<sup>117</sup> Before the Circular Letter, the only option for refugee children's education is to enroll in PKBM school, for there is only a 1% chance to get a seat in public school.<sup>118</sup> However, refugee children still have to pay a certain amount of money to access PKBM, unlike the other local people.

In formal education, especially in the Greater Jakarta area (capital city of Indonesia), as many as 64 refugee children are in primary school.<sup>119</sup> Since 2017 more than 279 refugee children have enrolled in 11 elementary public schools in Medan, North Sumatera (Indonesia).<sup>120</sup> The concern that then arises is, in general, students will get a report card at each

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<sup>113</sup> Article 26 (1) Law Number 20 Year 2003 on National Education System

<sup>114</sup> Article 14 Law Number 20 Year 2003 on National Education System

<sup>115</sup> Article 26 (4) Law Number 20 Year 2003 on National Education System

<sup>116</sup> Live interview with Education Officer from Directorate General of Early Childhood Education, Primary and Secondary Education – Ministry of Education and Cultural Indonesia, 28 March 2021.

<sup>117</sup> Article 26 (6) Law Number 20 Year 2003 on National Education System

<sup>118</sup> Live interview with Education Officer of Service Provider in Indonesia, 8 April 2021.

<sup>119</sup> Live interview with Education Officer of Service Provider in Indonesia, 2 April 2021.

<sup>120</sup> Live interview with Officer of International Organization for Migration in Indonesia, 2 April 2021.



class increase.<sup>121</sup> However, concerns arise regarding the documentation and reporting of these children's educational progress; unlike locals and documented foreigners who will receive report cards at end-year terms and diplomas at the end of their studies, refugee children are not afforded such luxuries due to the regulations barring school institutions from doing so.<sup>122</sup>

### **2.3 Limits and boundaries faced by refugee children in accessing secondary education**

In Indonesia, the Government enforces nine years of compulsory education from 6 to 15 years.<sup>123</sup> Elementary school takes six years to grade 6, then junior high school from grades 7 to 9 from 13–15-year-old child. For the past nine years, Indonesia's Government has provided tuition-free assistance to Indonesian children up to grade 9.<sup>124</sup> This is related to the provision of the 1945 Constitution, which emphasizes that the State is responsible for the nation's knowledge and capacity building.<sup>125</sup> One of the reasons this funding is only up to the age of 15 is budget constraints from the Government and the people's readiness.<sup>126</sup> Therefore, it can be concluded that Indonesia provides free education for primary education to partial-secondary education only.

Like the Government's policy at the primary education stage, public junior high schools will prioritize Indonesian children to access education. The refugee children will be the last ones to get access to partial-secondary education since the government does not consider their rights as a priority. The government reasons that since the constitution only guarantees protection to Indonesian citizens (as per point number 2 of the Constitution Pillar *Pancasila*), the refugee children's rights should only be paid attention *after* the insurance that *all* Indonesian citizens received such rights.<sup>127</sup> For the Government, fulfilling refugee children's rights is not

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<sup>121</sup> Number 5 of Ministry of Education Circular Letter No. 75253/A.A4/HK/2019

<sup>122</sup> Live interview with Education Officer of Service Provider in Indonesia, 8 April 2021.

<sup>123</sup> Article 7 (6) Government Regulation Number 47 Year 2008 on Compulsory Education

<sup>124</sup> Article 9 Government Regulation Number 47 Year 2008 on Compulsory Education

<sup>125</sup> Preamble of Constitution of the Republic of Indonesia 1945

<sup>126</sup> Live interview with Education Officer from Directorate General of Early Childhood Education, Primary and Secondary Education – Ministry of Education and Cultural Indonesia, 28 March 2021.

<sup>127</sup> Preamble of Constitution of the Republic of Indonesia 1945

their priority because the refugee children are the last thing in the constitution to protect.<sup>128</sup> Indonesian children will always be the first to enjoy their rights and the refugee children's afterward. As such, by January 2021, there were only six refugee children who got the privilege to enroll in public junior high school.<sup>129</sup>

#### **2.4 Different treatment of citizens, foreigners, and refugee children**

In article 12 of Law Number 20 the Year 2003, the Government regulates that a foreigner or expat can access education in Indonesia. If a foreigner wants to access free education in public school, they must be fluent in Indonesian and provide additional documents, in addition to participating in the selection process, of which they will compete with Indonesian children in the region. The new policy in 2019 for primary and secondary education in Indonesia is zoning system.<sup>130</sup> If a child lives in district A, then the school within the scope of District A will prioritize children at that district only.

When children of foreign nationals can compete and pass the public-school selection, their access will be the same as other Indonesian children. They will receive a valid diploma, not a certificate as will be obtained by refugee children. Children of foreign nationals also do not need to pay fees because, like Indonesian children, they get access to the BOS (tuition funding policy). While it is true that in practice, 99% of foreign nationals in Indonesia choose to get education in private schools (due to the similarity of the curriculum in the country of origin and language),<sup>131</sup> the access provided for them is still far better than those provided for refugees. The table below will show how access to the right to education for refugee children in Indonesia is unequal with foreigners and locals.

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<sup>128</sup> Live interview with Education Officer from Directorate General of Early Childhood Education, Primary and Secondary Education – Ministry of Education and Cultural Indonesia, 28 March 2021.

<sup>129</sup> Live interview with Education Officer of Service Provider in Indonesia, 8 April 2021.

<sup>130</sup> Regulation of Minister of Education and Culture Republic of Indonesia No. 248/P/2019 on School Zoning System, <https://jdih.kemdikbud.go.id/arsip/Kepmendikbud%20Nomor%20248-P-2019.pdf>

<sup>131</sup> Live interview with Education Officer from Directorate General of Early Childhood Education, Primary and Secondary Education – Ministry of Education and Cultural Indonesia, 28 March 2021.

**Table 2. 1**

<b>No.</b>	<b>Privilege</b>	<b>Indonesian Child</b>	<b>Foreigner/Expat</b>	<b>Refugee Children</b>
1.	Free compulsory education (no tuition fee)	x	x	
2.	Selection process		x	x
3.	Diploma/Degree	x	x	
4.	Waiting list			x

## Chapter Three

### 3 Indonesia's responsibility for the fulfillment of Refugee Children's Rights under international human rights law

International human rights convention entails legal consequences that parties must abide by.<sup>132</sup> The general state responsibility towards human rights is to respect, protect and fulfill all the rights stipulated in the related Convention.<sup>133</sup> The State's responsibility on respecting human rights means that the State should not interfere to the enjoyment of the human rights; in this case, the State shall progressively eradicating existing discrimination in accessing free education services and underlying education determinants.<sup>134</sup> This would be related to the law or policies concerning the right to education for refugee children in Indonesia, specifically the Ministry of Education Circular Letter No. 75253 / A.A4 / HK / 2019 (Ministry of Education Circular Letter 2019). The obligation to protect means the State should take steps to ensure that all children in their jurisdiction are protected from the third party from discrimination or abuses.<sup>135</sup> Further, by fulfilling human rights, the State shall develop and implement national policies to ensure that all people have equal access to their rights<sup>136</sup>—specifically, in this case, it would be the right to free education for refugee children. Arranging the availability and accessibility for education facilities and services designed for refugee children in Indonesia, for example, is the bare minimum in ensuring that they are given the highest chance possible to pursue such rights.

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<sup>132</sup> Article 26 Vienna Convention on the Law of Treaties 1969

<sup>133</sup> “OHCHR | International Law,” accessed June 2, 2021, <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>.

<sup>134</sup> *Idem*.

<sup>135</sup> Para. 47 General Comment No. 13 E/C.12/1999/10

<sup>136</sup> Para. 4 General Comment No. 12 E/C.12/1999/5

In this Chapter, I will discuss how the principle of non-discrimination is closely related to the fulfillment of the human rights of a child refugee, especially the rights to access free education under international human rights instruments that the Indonesian Government has ratified.

### **3.1 The obligation under the non-discrimination principle**

The principle of non-discrimination is the basis of Article 7 of the Universal Declaration of Human Rights, which stated that;

*"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."*<sup>137</sup>

This Article proclaimed that since all humankind is considered equal regardless of their physical appearance, beliefs, places of origin, and socio-economic background, none should be subjected to discriminatory treatment. The non-discrimination principle extends as well to refugee children, who should be treated equally as humans in the context of their fundamental human rights. In this matter, a State must not deliberately ignore rights and freedoms that each human rights in their region are entitled to and must enforce such rights to ensure that it is not delivered in a discriminatory manner.

*"The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to*

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<sup>137</sup> Article 7 Universal Declaration of Human Rights 1948

*race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*"<sup>138</sup>

Under Article 2, paragraph 2 of the ICESCR, the State Parties of this Convention must conduct an equitable treatment to fulfill human rights towards its people. Also, the Government must ensure no law or policy is made to cater to and contain an element of discrimination; if a law is indicated to contain one or both, the State is obliged to conduct a judicial review on it.<sup>139</sup> Moreover, as a positive obligation of the State, this principle is also mandated for the Government to prohibit third parties (private sector) from conducting acts of discrimination towards each individual with their public life.<sup>140</sup>

The principle of non-discrimination is the primary and general character of international human rights law. It means this principle is one of the customary international laws.<sup>141</sup> This principle could be seen in Article 2 of the Convention on the Rights of the Child (CRC),

*"States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."*<sup>142</sup>

The material scope of this Article mandates the Government to respect the rights, which means the State must not interfere with the enjoyment of this right and, should the right be interfered by parties not belonging from the Government, then the Government are obliged to stop such interference and ensure that the fulfillment of such right is not jeopardized. Should

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<sup>138</sup> Article 2 (2) International Covenant on Economic, Social and Cultural Rights 1966

<sup>139</sup> Para. 6 General Comment No. 13 E/C.12/1999/10

<sup>140</sup> Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights

<sup>141</sup> Samantha Besson, "The Principle of Non-Discrimination in the Convention on the Rights of the Child," *Koninklijke Brill NV, The International Journal of Children's Rights*, 13 (2005): 433–61. Pg. 440.

<sup>142</sup> Article 2 (1) Convention on the Rights of the Child 1989

the State fail to carry any of these responsibilities, it can be said that it had breached a human rights principle. Suppose we delve further into the scope of the CRC; in that case, it can be seen that the Convention also covers the equal right for education—including access to educational facilities, availability of infrastructure, and suppression of discriminative practices in educational institutions. As the Convention does not distinguish and even emphasizes that all children should be treated equally, it can be inferred that such policies also extend to refugee children.

This Article is fully ratified by Indonesia, which indicates that Indonesia is obliged to fulfill every right in this Convention, including children who are currently in Indonesia's territory, whether they are children of foreign nationality or refugee children. Under the territorial scope, refugee children are entitled to access free education without any discriminatory act, as stated in the Ministry of Education Circular Letter 2019.

This Article divides its subject into two categories; right holders and duty bearers. The rights holder under this Article is all the children, which has been explained under Article 1 of the CRC that every child is those who are not yet 18 years old.<sup>143</sup> Meanwhile, the duty bearer refers explicitly to the State Parties of the Convention—which in this case is the Government of Indonesia, which is bound into a positive and negative obligation that may arise in fulfilling the demands under this Convention.

Under these aforementioned instruments, Indonesia naturally fulfills the right to access free education without any discrimination towards refugee children in their jurisdiction. Although Indonesia is not a State Party to the 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol).

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<sup>143</sup> Article 1 Convention on the Rights of the Child 1989

### 3.1.1 Responsibility based on the International Covenant on Economic, Social and Cultural Rights 1966

As one of the Covenant who formed the International Bill of Human Rights, International Covenant on Economic, Social and Cultural Rights (ICESCR) specifically regulates and obliges the State Parties to ensure the enjoyment of economic, social, and cultural rights. As mentioned earlier, Article 2 of this Convention is related to the non-discrimination principle, and it regulates the extent of the State's responsibility under this Convention, which in turn obliges it to prevent the allowance of discrimination practices on everyone protected under the Convention.<sup>144</sup> This includes the refugee children who are currently stay in Indonesian territory, many of whom have been staying for two to ten years. Therefore, positive<sup>145</sup> and negative<sup>146</sup> action from the Government is needed in order to reach the fulfillment of economic, social, and cultural rights of this Convention.

Further, the rights under this Convention must be conducted by the Government in a way that can indicate "progressive realization".<sup>147</sup> This means that no matter the State of one's country—whether they have developed or are still developing—the Government must take swift action to realize the fulfillment of the rights under this Convention progressively.<sup>148</sup> Therefore, this Article requires the State to not postpone the fulfillment of rights for more than

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<sup>144</sup> “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 2 (2) International Covenant on Economic, Social and Cultural Rights 1966

<sup>145</sup> Positive action means the State must take all necessary measures to ensure the enjoyment of the rights accessible for all right holders, see: Para. 6-8 General Comment No. 31, CCPR/C/21/Rev.1/Add. 13

<sup>146</sup> Negative action means the State must refrain its act not to interfere with the enjoyment of human rights, see: Dinah Shelton and Gould Ariel, “Positive and Negative Obligations,” in *Oxford University Press*, Oxford Handbooks in Law (Oxford University Press, 2013), 1–26, <https://www.oxfordhandbooks.com/view/10.1093/law/9780199640133.001.0001/law-9780199640133-e-25>.

<sup>147</sup> Article 2 (1) International Covenant on Economic, Social and Cultural Rights 1966

<sup>148</sup> “The duty in question obliges all States parties, notwithstanding their level of national wealth, to move immediately and as quickly as possible towards the realization of economic, social and cultural rights.” See: Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights



an extended period and to strive for progressive changes and gradual increase in the fulfillment of the rights governed. This is in line with the quoted phrase of "*to the maximum of its available resources*" that was available in the Article. That means, even though the resources is unavailable, it's the State obligation to ensure the enjoyment of the right to education accessible to everyone under these circumstances.<sup>149</sup>

As discussed in the earlier, economic, social, and cultural rights are characterized by the principle of "*non-retrogression*"; that is, the State not to take any steps back in implementing the rights and shall use the maximum available resources.<sup>150</sup> Moreover, the "*available resources*" means not only resources owned by the Government or existing within the national scope, but also resources coming from any assistance provided by international parties to the Government.<sup>151</sup> This assistance can be used in the realization of the ECOSOC rights for everyone presently residing in the Indonesian territory.

The right to education as mandated in Article 13 has been designed to acknowledge that education is an integral factor in human growth and development.<sup>152</sup> With the increased availability of education for the public, the drafters believed that human beings are better equipped to fight the socio-economic crisis that may arise, such as poverty and crime.<sup>153</sup> In this Article, it is explained that the Government is progressively in charge of the realization of:<sup>154</sup>

- a. Compulsory free primary education for all;

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<sup>149</sup> Committee on Economic, Social and Cultural Rights, Statement on an evaluation of the obligation to take steps to the "maximum of available resources under an optional protocol to the covenant" (2007), para. 4

<sup>150</sup> Para. 23 Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights

<sup>151</sup> Para. 9-10 Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights

<sup>152</sup> Para. 1, General Comment No. 13, Committee on Economic, Social and Cultural Rights(E/C.12/1999/10)

<sup>153</sup> *Idem*.

<sup>154</sup> Article 13 (2) International Covenant on Economic, Social and Cultural Rights 1966

- b. Accessible secondary education (in the form of technical or vocational school) must be made available for everyone and should be considered a "*progressive introduction to free education*."<sup>155</sup>

From this Article, it is clear that the realization of free education for refugee children is the obligation of Indonesian Government. The accessibility and the availability of education must be enjoyed by everyone, regardless of their status as an Indonesian, foreigner, or refugee. Especially for the refugee children, access towards the right to education is essential beyond creating a routine of teaching and learning; being involved in an educational institution designed to impose more knowledge may aid them to understand better how the world works and be better aided in both processing their trauma throughout their experience and moving forward.

### 3.1.2 Responsibility based on the Convention on the Rights of the Child 1989

The obligations of states parties to this Convention are regulated in Article 4, which states that,

*"States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention."*<sup>156</sup>

This provision implies that in order to realize the fulfillment of children's human rights, Indonesia is obliged to conduct a review or create regulations and administrative procedures in line with this Convention. In addition to systemic changes, the Government must also take action or build facilities and infrastructure that aid the implementation of the rights contained in this Convention. For example, a sufficient amount of proper school building and the deployment of teachers in every region enables people to access education, even if they reside

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<sup>155</sup> "States must prioritize the provision of free primary education, they also have an obligation to take concrete steps towards achieving free secondary and higher education." See: Para. 14 General Comment No. 13, Committee on Economic, Social and Cultural Rights (E/C.12/1999/10); Para. 7 General Comment No. 14, Committee on Economic, Social and Cultural Rights (E/C.12/1999/4.)

<sup>156</sup> Article 4 Convention on the Rights of the Child 1989

in rural areas. This effort should also be extended for refugee children needing to access such rights. The Ministry of Education Circular Letter 2019 allows access not only for the privileged refugee children (with assistance from the Service Provider) but also those who do not have any support while waiting for resettlement. This phenomenon can cause the loss of a generation because their childhood development by accessing education while transiting in Indonesia is not fulfilled.

In Article 22 of the CRC, which binds Indonesia since 2005, it is stated that:

*"States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties."*<sup>157</sup>

Indonesia is obliged to treat refugee children as children, not migrants.<sup>158</sup> Therefore, all existing policies, including immigration policies or the pretext that Indonesia is not party to the Refugee Convention, cannot become reasons for the Government to avoid their responsibility in fulfilling the right to education under the CRC. Moreover, following Article 2 of the CRC, Article 22 of the same Convention stipulates that all rights regulated in this Convention are also entitled for refugee children. Therefore, the fulfillment and allowance of those as mentioned earlier 'humanitarian assistance' must be impartial or non-discriminatory.

The Indonesian Government is the primary duty bearer in the fulfillment of rights for refugee children residing in its territory; in the formulation of this Article, the international community has agreed that the ratifying countries must cooperate with the UN Agencies or

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<sup>157</sup> Article 22 (1) Convention on the Rights of the Child 1989

<sup>158</sup> Besson, "The Principle of Non-Discrimination in the Convention on the Rights of the Child." Pg. 452.

other related Service Providers to protect and fulfill the children's needs and fundamental rights.<sup>159</sup> In Indonesia, UNHCR is the institution that has the primary mandate to provide protection and assistance for refugee children<sup>160</sup> with the help of IOM and other implementing partners such as Church World Service Indonesia (CWS)<sup>161</sup> and Catholic Relief Service Indonesia (CRS).<sup>162</sup>

As explained in the previous Chapter, refugee children in Indonesia must be fluent in Indonesian first, a language skill whose learning is accommodated by Service Providers in learning centers. Therefore, when Service Providers have conducted a basic skills test and provided a list of refugee children eligible to carry out education in public schools, the cooperation must be addressed by the Government of Indonesia by accepting these refugee children and putting them into a relevant educational institution.<sup>163</sup> What is presently applied, however, is not necessarily 'acceptance' and 'inclusion', as even if refugee children managed to submit relevant documents and account for necessary skills, they are often still put on the waiting list because the system prioritizes Indonesian children or children with foreign nationalities in the school concerned.

### **3.1.3 The United Nations human rights mechanism on violation of the right to education**

The United Nations (UN) human rights mechanisms are tools to seek remedy for human rights victims at the international level. There are two UN human rights mechanisms; treaty-

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<sup>159</sup> “For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non- governmental organizations co-operating with the United Nations to protect and assist such a child...” Article 22 (2) Convention on the Rights of the Child 1989

<sup>160</sup> “UNHCR in Indonesia.”

<sup>161</sup> “Providing Homes for Young Refugees in Jakarta | CWS,” accessed April 8, 2021, <https://cwsglobal.org/blog/jakarta/>.

<sup>162</sup> *Ibid*, “Fact Sheet: Indonesia December 2020.”

<sup>163</sup> Live interview with Education Officer of Service Provider in Indonesia, 8 April 2021

based bodies, and charter-based bodies.<sup>164</sup> This system is the primary medium for the application of international human rights instruments. Treaty bodies acquire their mandate from several Treaties or Conventions, and their works promote the core of each Convention, monitor the human rights compliance of the signatory parties of the Convention, and most importantly, receive and determine the complaints that were raised to their notice.<sup>165</sup> For instance, the Committee on Economic, Social and Cultural Rights (CESCR) monitors the State obligation under the ICESCR<sup>166</sup> and the Committee on the Rights of the Child (CRC) oversees the State compliance towards the CRC.<sup>167</sup> There are more treaty bodies, but this Chapter will mainly discuss the CESCR and CRC.

Under Articles 16 and 17 of ICESCR, State parties have to submit their initial or annual report to the Committee regarding their compliance for the provisions governed under the Covenant. This periodic report should consist of detailed data on the implementation of economic, social, and cultural rights<sup>168</sup> and the difficulties and obstacles in fulfilling them.<sup>169</sup> Nevertheless, other State actors such as NGOs and other civil society actors can submit their written information relating to the violations of the human rights enshrined in this Covenant to the Committee.<sup>170</sup> Such written information is usually referred to as 'Shadow Report', and acts

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<sup>164</sup> “OHCHR | Human Rights Bodies,” accessed June 3, 2021, <https://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>.

<sup>165</sup> Ilias Bantekas and Lutz Oette, “The UN Human Rights Treaty System,” in *International Human Rights Law and Practice*, 3rd Edition (Cambridge University Press, 2020), 194–234. Pg. 195

<sup>166</sup> “OHCHR | Committee on Economic, Social and Cultural Rights,” accessed June 3, 2021, <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>.

<sup>167</sup> “OHCHR | Committee on the Rights of the Child,” accessed June 3, 2021, <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx>.

<sup>168</sup> Article 16 (1-2) International Covenant on Economic, Social and Cultural Rights 1966

<sup>169</sup> Article 17 (2) International Covenant on Economic, Social and Cultural Rights 1966

<sup>170</sup> Article 2 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2009

as an additional insight for the Government's report. However, the Committee can only consider the submission from the non-State Actor if:<sup>171</sup>

1. Exhausted all local remedies;
2. The communication submitted before a year the exhaustion of domestic remedies;
3. Compatible with Convention's provisions;
4. The substantive material is sufficient;

With 18 independent experts elected once in every four-year term, the Committee on the Rights of the Child acts as the guardian of the CRC.<sup>172</sup> The Committee goes through the annual report submitted by the State parties once every two years after the Convention enters into force, and once in every five years afterward.<sup>173</sup> The periodic report must contain the fulfillment of the child's rights and detailed data of the challenges and obstacles that prevent certain rights from being implemented thoroughly. The non-State Actor could propose their submission to the Committee by sending it to the secretariat; the submission will also play as a shadow report against that reported by the Government.

However, these two mechanisms can only be accessed by non-state actors if the country is a signatory party to the Optional Protocol of each Treaty. For example, to access the CESCR, Indonesia must ratify the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights so the individual complaints, NGOs, or the other civil society actors could send their petitions to the Committee.<sup>174</sup> Similar methods are applied in the CRC; the Government must be a State Party to the Optional Protocol to the Convention on the Rights of

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<sup>171</sup> Article 3 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2009

<sup>172</sup> Office of the United Nations High Commissioner for Human Rights, "Working with the United Nations Human Rights Programme" (United Nations, 2008). Pg. 68

<sup>173</sup> *Idem.*

<sup>174</sup> Article 1 (2) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

the Child on A Communications Procedure.<sup>175</sup> In this case, Indonesia is not the State Party of the instruments as mentioned above.

Despite the fact that the charter-based mechanism's primary purpose focuses more on international peace and security rather than human rights, there is still a chance to raise refugee children's rights violations in Indonesia. The complaints could be taken to Human Rights Council (HRC) by providing the shadow report of the Universal Periodic Review (UPR). The Council will review the implementation of human rights obligations and commitments from all the United Nations members, including Indonesia.<sup>176</sup> This mechanism hinges on an interactive dialogue between the State and the Council based on the State's annual report, as well as from the summary of stakeholders' submission that has been prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR).<sup>177</sup>

The issue of Refugee children was once mentioned in stakeholder's submission in 2017 related to the detention and freedom of movement.<sup>178</sup> To raise the violation of the right to education on refugee children in Indonesia, there must be a further discussion to form a statement and submit it to the secretariat before the next UPR.

### **3.2 Recommendation to State and Non-State actor in fulfilling the rights of education of refugee children in Indonesia**

No one knows when and how long should the refugee children stay in Indonesia; as one of their protecting pillars, UNHCR could not estimate their resettlement process. Therefore, to avert the lost generation of this vulnerable group, there are some recommendations that the

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<sup>175</sup> Article 5 (1) Optional Protocol to the Convention on the Rights of the Child on a communications procedure

<sup>176</sup> Ilias Bantekas and Lutz Oette, "The United Nations Charter System," in *International Human Rights Law and Practice*, 3rd Edition (Cambridge University Press, 2020), 156–93. Pg. 157

<sup>177</sup> *Ibid.* Bantekas and Oette. Pg. 168

<sup>178</sup> Para. 88, Human Rights Council, Summary of stakeholders' submissions on Indonesia (A/HRC/WG.6/27/IDN/3)

Government can carry out with the help of intergovernmental agencies (UNHCR, IOM, and UNICEF) and its implementing partners.

**a. Action plan under State Actor**

Firstly, the Indonesian Government must conduct a policy review towards the Ministry of Education Circular Letter 2019. The instrument's *status quo* is insufficient to be used as the basis for refugee children on accessing their right to education. Some clauses must be revised, such as the priority of Indonesian nationals and the tuition fee. Under the elaborations in the previous sections, Indonesia is responsible for ensuring that refugee children could access education equal to Indonesian nationals or foreign children. Furthermore, the Government under the Ministry of Education can form a new division or directorate specifically for refugee children. So, the education arrangement and all the administration will be managed under this division, and the Government could monitor the significance of free compulsory education accessibility and availability for refugee children in Indonesia.

Alternatively, should the Government find it impossible to give equal treatment for the refugee children with free compulsory primary education and partial secondary ones, the least they could do is to authorize and uniformize the curriculum for study groups or non-formal schools funded by the intergovernmental agencies or non-state Actors that are designated for refugee children. These institutions can be a sustainable formal education system for refugee children. The Government of Indonesia has done this for the children of irregular migrant workers in Malaysian oil palm plantations. Although the Malaysian Government licensed this school with the same education level as Indonesia, all school facilities and infrastructure costs are still provided and managed by the Indonesian Government.<sup>179</sup> This good practice can also be

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<sup>179</sup> Live interview with Education Officer from Directorate General of Early Childhood Education, Primary and Secondary Education – Ministry of Education and Cultural Indonesia, 28 March 2021.



implemented in Indonesia with assistance from intergovernmental agencies such as UNHCR, IOM, UNICEF, and its implementation partners. Non-State actors can carry out the provision of school facilities and infrastructure and fees, but Indonesia provides authorization and certification for each unit level of education to ensure that these institutions can provide diploma outputs just like that of conventional schools. However, the most significant disadvantage of this program is that there will not be any integration between the locals and refugee children. Therefore, this may be a safer, more comfortable alternative as there are no exact timetables in mapping the duration of the refugee children's stay in Indonesia.

**b. Action plan under the non-State Actor**

UNHCR Indonesia, under their mandate, is obliged to protect refugee children in Indonesia. IOM Indonesia also has the same obligations for several refugee children under their care-assistance arrangement.<sup>180</sup> Meanwhile, UNICEF Indonesia is mandated to help all children within Indonesia's territory reach their full potential.<sup>181</sup> These three UN Agencies play their roles in Indonesia, but UNICEF, under their child protection program and expertise, should be able to work together with UN Migration Agencies in fulfilling refugee children's rights in Indonesia. UNICEF under CRC are responsible for monitoring and measuring the progress of State Parties in fulfilling children's rights as stated in the Convention.<sup>182</sup> These three UN Agencies can "join-forces" and create one specific division focusing on the fulfillment of the rights of refugee children, specifically the education program. This division will be responsible for advocating towards the Government and public schools in Indonesia. IOM will

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<sup>180</sup> "International Organization for Migration Mission in Indonesia | International Organization for Migration," accessed June 3, 2021, <https://indonesia.iom.int/international-organization-migration-mission-indonesia>.

<sup>181</sup> "What We Do," accessed June 3, 2021, <https://www.unicef.org/indonesia/what-we-do>.

<sup>182</sup> Article 45 Convention on the Rights of the Child 1989

work only for their beneficiaries (mostly in Sumatera Island), and so do other UNHCR's implementing partners (mainly in Greater Jakarta Area). Thus, data integration is complex, whether from the district Government to the Indonesian central Government. To avoid mismanagement and coordination issues, all administrative duties and documents will be handled under the division mentioned above.

As mentioned above, if there was no possibility of integrating refugee children to local Indonesian schools, the non-state actors can take the initiative to build an alternative sustainable education program.<sup>183</sup> This includes the development of schools, teacher recruitment, curriculum drafting, and other necessities. This can be created through slot funding which is always returned to donors. For example, each year, a certain amount of money is returned to donors because the relevant NGOs cannot afford to spend it.<sup>184</sup> This amount of money is added to the proposal for a sustainable education program that can be used to develop educational facilities and infrastructures for refugee children. Together with the help and authorization of the Indonesia Ministry of Education, this alternative education system could be made equal to public school, and refugee children could have a diploma as an output.

Even though there are no guarantees that all parties will accept the recommendations above, it should be highlighted that all these are the minimum resorts that should be pursued by primary and secondary duty bearers of refugee children's rights.

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<sup>183</sup> Live interview with Education Officer of United Nations Children's Fund (UNICEF) Indonesia, 03 June 2021.

<sup>184</sup> Live interview with Senior Program Officer of Service Provider in Indonesia, 29 May 2021.

## Conclusion

As a non-signatory party to the 1951 Convention Relating to the Status of Refugee (Refugee Convention) and the 1967 Protocol, the Indonesian Government deserves an appreciation for their humanitarian action by allowing refugees to stay temporarily in their land. However, there is still a lack of human rights fulfillment for the most vulnerable group, refugee children. One of them is their right to access free compulsory education while transiting in Indonesia.

As the primary duty holder under International Covenant on Economic, Social, and Cultural Rights (ICESCR) and Convention on the Rights of the Child (CRC), the Indonesian Government shall be bound to the responsibility enshrined in those conventions, including the non-discriminatory act towards refugee children and assurance of their enjoyment of the right to education. The Government shall provide free compulsory education to all refugee children due to their inherent responsibility derived from the conventions mentioned above. This will align with the obligation enshrined under Article 13 of ICESCR and Article 28 of the CRC.

No one knows when and how long the refugee children would stay in Indonesia; as one of their protecting pillars, even United Nations on High Commissioner of Refugee (UNHCR) could not estimate their resettlement process. Compare to EU Member States, the refugee children shall attend and can access the education system under the first three months after the application submission. Therefore, to avert the possibility of a lost generation coming from this vulnerable group, there are some recommendations that the Government can carry out with the help of intergovernmental agencies (UNHCR, IOM, and UNICEF) and its implementing partners.

Firstly, the Indonesian Government must conduct a policy review towards the Ministry of Education Circular Letter 2019. Alternatively, although this would disadvantage the integration process between refugees and locals, the Government must authorize and certify the

same level curriculum in a non-formal education under the sustainable education program made by UN agencies'" joint forces" and its implementation partners. By forming cooperation between the Government and intergovernmental agencies, it is hoped that such efforts will fulfill the right to access free compulsory education for refugee children in Indonesia.

## Bibliography

### Books

Bloch, Alice. *Forced Migration : Current Issues and Debates*. London, 2019.

Clapham, Andrew. *Human Rights: A Very Short Introduction*. Second. New York, USA: Oxford University Press, 2015.

Kurnia, Asep. *Imigran Ilegal Potret Penanganan dan Pencegahan dalam Perspektif Sistem Manajemen Nasional*. Jakarta: International Organization for Migration, 2011.

Kusumohamidjojo, Budiono. *Suatu studi terhadap aspek operasional Konvensi Wina tahun 1969 tentang hukum perjanjian internasional*. Bandung: Binacipta, 1986.

PUSHAM UII. *Hukum Hak Asasi Manusia*. I. Yogyakarta: Pusat Studi Hak Asasi Manusia UII, 2008.

### Journal articles

Arif, Kamrul Hasan. “The Rohingya Refugees in Bangladesh: Non-Refoulement and Legal Obligation under National and International Law.” *International Journal on Minority and Group Rights* 27, no. 4 (2020): 855–75. <https://doi.org/10.1163/15718115-02702014>.

Bantekas, Ilias, and Lutz Oette. “The UN Human Rights Treaty System.” In *International Human Rights Law and Practice*, 3rd Edition., 194–234. Cambridge University Press, 2020.

———. “The United Nations Charter System.” In *International Human Rights Law and Practice*, 3rd Edition., 156–93. Cambridge University Press, 2020.

Besson, Samantha. “The Principle of Non-Discrimination in the Convention on the Rights of the Child.” *Koninklijke Brill NV, The International Journal of Children’s Rights*, 13 (2005): 433–61.

Chetail, Vincent. “Sources of International Migration Law.” In *Foundations of International Migration Law*, edited by Brian Opeskin, Jillyanne Redpath-Cross, and Richard

Perruchoud, 56–92. Cambridge: Cambridge University Press, 2012.

<https://doi.org/10.1017/CBO9781139084598.004>.

Lauterpacht, Sir Elihu, and Daniel Bethlehem. “The Scope and Content of the Principle of Non-Refoulement: Opinion.” In *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection*, edited by Erika Feller, Frances Nicholson, and Volker Türk, 87–177. Cambridge: Cambridge University Press, 2003.

<https://doi.org/10.1017/CBO9780511493973.008>

Shelton, Dinah, and Gould Ariel. “Positive and Negative Obligations.” In *Oxford University Press*, 1–26. Oxford Handbooks in Law. Oxford University Press, 2013.  
<https://www.oxfordhandbooks.com/view/10.1093/law/9780199640133.001.0001/law-9780199640133-e-25>.

### **International treaties**

Convention on the Rights of the Child 1989

Convention Relating to the Status of Refugees 1951

International Covenant on Civil and Political Rights 1966

International Covenant on Economic, Social, and Cultural Rights 1966

Universal Declaration of Human Rights

### **National law**

Constitution of the Republic of Indonesia 1945

Law No. 39 of 1999 on Human Rights

Law No. 23 of 2002 on Protection of the Child (Law No. 35 of 2014 Amending Law on Child Protection (No. 23/2002)

Law Number 20 of 2003 on National Education System

Ministry of Education Circular Letter No. 75253 / A.A4 / HK / 2019

Presidential Regulation Number 36 of 1990 on the Ratification of the Convention on the

Rights of the Child

Presidential Regulation 125/2016 regarding Handling Refugees from Abroad

### **Soft law materials**

CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)

CESCR General Comment No. 13: The right to education (Art. 13 of the Covenant)  
1999 E/C.12/1999/10

CESCR General Comment No. 12 The right to adequate food (Art. 11 of the Covenant) E/C.12/1999/5

CESCR General Comment No. 14 Rights Plans of action for primary education  
(article 14 of the International Covenant on Economic, Social and Cultural Rights)  
E/C.12/1999/4.

Directive 2013/33/EU of The European Parliament and of The Council

General Comment No. 31, CCPR/C/21/Rev.1/Add. 13

Limburg Principles on the Implementation of the International Covenant on  
Economic, Social and Cultural Rights 1987

OCHA. "Guiding Principles on Internal Displacement." United Nations, September 2004. <https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>.

Office of the High Commissioner for Human Rights. "Recommend Principles and Guidelines on Human Rights at International Borders." Office of the High Commissioner for Human Rights, 2015. [https://www.ohchr.org/Documents/Issues/Migration/OHCHR\\_Recommended\\_Principles\\_Guidelines.pdf](https://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf).

### **Websites**

“Early Childhood Education.” Accessed June 27, 2021.

<https://www.unicef.org/education/early-childhood-education>.

“Expanding Education for Rohingya Refugee Children in Bangladesh |

UNICEF South Asia.” Accessed June 23, 2021.

<https://www.unicef.org/rosa/stories/expanding-education-rohingya-refugee-children-bangladesh>.

UNHCR Indonesia. “Figures at a Glance.” Accessed April 14, 2021.

<https://www.unhcr.org/id/en/figures-at-a-glance>.

“Global Facts and Figures about Refugees.” Accessed January 24, 2021.

<https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/global-refugee-crisis-statistics-and-facts/>.

Haigh, Laura. “No Safe Haven: The Plight of Rohingya Children across Asia.”

Asia: The Save the Children Fund 2021, June 17, 2021.

<https://resourcecentre.savethechildren.net/library/no-safe-haven-plight-rohingya-children-across-asia>.

UNHCR Indonesia. “History of UNHCR.” Accessed April 8, 2021.

<https://www.unhcr.org/id/en/history>.

International Organisation for Migration. “Glossary on Migration.”

International Organization for Migration, 2019.

[https://publications.iom.int/system/files/pdf/iml\\_34\\_glossary.pdf](https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf).

———. “Migrasi Tenaga Kerja dari Indonesia.” Jakarta: Organisasi

Internasional untuk Migrasi (IOM), 2010.

[https://www.iom.int/jahia/webdav/shared/shared/mainsite/published\\_docs/Final-LM-Report-Bahasa-Indonesia.pdf](https://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-Bahasa-Indonesia.pdf).



“International Organization for Migration Mission in Indonesia | International Organization for Migration.” Accessed June 3, 2021.

<https://indonesia.iom.int/international-organization-migration-mission-indonesia>.

Office of the United Nations High Commissioner for Human Rights. “Working with the United Nations Human Rights Programme.” United Nations, 2008.

“OHCHR | Committee on Economic, Social and Cultural Rights.” Accessed June 3, 2021. <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>.

“OHCHR | Committee on the Rights of the Child.” Accessed June 3, 2021. <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx>.

“OHCHR | Human Rights Bodies.” Accessed June 3, 2021. <https://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>.

“OHCHR | International Law.” Accessed June 2, 2021. <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>.

“Providing Homes for Young Refugees in Jakarta | CWS.” Accessed April 8, 2021. <https://cwsglobal.org/blog/jakarta/>.

Refugees, United Nations High Commissioner for. “Asylum-Seekers.” UNHCR. Accessed January 9, 2021. <https://www.unhcr.org/asylum-seekers.html>.

———. “Education in Malaysia.” UNHCR. Accessed November 29, 2020. <https://www.unhcr.org/education-in-malaysia.html>.

Stepping Up: Refugee education in crisis - UNHCR. “Stepping up: Refugee Education in Crisis - 2019 Report - UNHCR.” Accessed June 27, 2021. <https://www.unhcr.org/steppingup/>.

Tauson, Michaelle. “Forgotten Futures: The Lives of Refugee Children in Urban Areas of Indonesia and Thailand.” Singapore, June 2018.

[https://resourcecentre.savethechildren.net/node/13474/pdf/forgotten\\_futures\\_online\\_version.pdf](https://resourcecentre.savethechildren.net/node/13474/pdf/forgotten_futures_online_version.pdf).

Icelandic Human Rights Centre. “The Human Rights Protection of Vulnerable Groups.” Accessed January 6, 2021. <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups>.

UNHCR Indonesia. “UNHCR in Indonesia.” Accessed April 5, 2021. <https://www.unhcr.org/id/en/unhcr-in-indonesia>.

UNHCR, Malaysia. “2019 Year-End Report.” Malaysia: UNHCR, July 8, 2020. <https://reporting.unhcr.org/sites/default/files/pdfsummaries/GR2019-Malaysia-eng.pdf>.

UNHCR, Thailand. “2019 Thailand and Global Report.” United Nations High Commissioner for Refugees, 2019. <https://www.unhcr.org/th/wp-content/uploads/sites/91/2020/10/Annual-Report-2019.pdf>.

United Nations High Commissioner for Refugees. “Fact Sheet: Indonesia.” UNHCR, November 2020. <https://reporting.unhcr.org/sites/default/files/UNHCR%20Indonesia%20-%20Country%20Fact%20Sheet%20-%20November%202020.pdf>.

———. “Fact Sheet: Indonesia December 2020.” UNHCR Indonesia, December 2020. <https://reporting.unhcr.org/sites/default/files/UNHCR%20Indonesia%20fact%20sheet%20-%20December%202020.pdf>.

———. “Identifying and Addressing Vulnerability: A Tool for Asylum and Migration Systems.” UNHCR, 2016.

<https://www.unhcr.org/protection/detention/57fe30b14/unhcr-idc-vulnerability-screening-tool-identifying-addressing-vulnerability.html>.

———. “Operational Update: Bangladesh,” May 2021.

<https://data2.unhcr.org/en/documents/details/87175>.

“United Nations Treaty Collection.” Accessed November 29, 2020.

[https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en).

“United Nations Treaty Collection.” Accessed February 26, 2021.

[https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en).

“United Nations Treaty Collection.” Accessed January 8, 2021.

[https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en#11](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#11).

“United Nations Treaty Collection.” Accessed June 23, 2021.

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4).

“United Nations Treaty Collection.” Accessed June 23, 2021.

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4).

“United Nations Treaty Collection.” Accessed June 23, 2021.

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en).

“United Nations Treaty Collection.” Accessed November 29, 2020.

[https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en).

“What We Do.” Accessed June 3, 2021.

<https://www.unicef.org/indonesia/what-we-do>.

### **Interviews**

Live interview with Education Officer of United Nations Children’s Fund (UNICEF)  
Indonesia

Live interview with Director General of Early Childhood Education, Primary and  
Secondary Education, Ministry of Education and Cultural Indonesia

Live interview with Senior Program Officer of Refugee Service Provider

Live interview with Voluntary Return and Reintegration Officer – International  
Organization on Migration (IOM) Indonesia

## Attachment



### KEMENTERIAN PENDIDIKAN DAN KEBUDAYAAN

Jl. Jenderal Sudirman, Senayan, Jakarta 10270

Telepon 5711144

Laman : [www.kemdikbud.go.id](http://www.kemdikbud.go.id)

Nomor : 75253/A.A4/HK/2019  
Lampiran : 1 (satu) berkas  
Hal : Pendidikan bagi Anak Pengungsi

10 Juli 2019

Yth. (daftar terlampir)

Dalam rangka pemenuhan akses pendidikan bagi para pengungsi anak usia sekolah dari luar negeri, dengan hormat kami himbau kepada Saudara untuk memperhatikan hal-hal sebagai berikut.

1. Partisipasi pengungsi anak usia sekolah dalam pendidikan di daerah tidak membebani Anggaran Pendapatan dan Belanja Negara (APBN) maupun Anggaran Pendapatan dan Belanja Daerah (APBD).
2. **Satuan pendidikan di wilayah Saudara wajib mendahulukan anak usia sekolah warga negara Indonesia.**
3. Dinas Pendidikan mengoordinasikan penempatan pengungsi anak usia sekolah pada satuan pendidikan di wilayahnya dan melaporkan ke Kementerian Pendidikan dan Kebudayaan up. Biro Perencanaan dan Kerja Sama Luar Negeri, Sekretariat Jenderal Kementerian Pendidikan dan Kebudayaan.
4. Penerimaan peserta didik yang berasal dari pengungsi anak usia sekolah harus memenuhi persyaratan:
  - a. memiliki kartu pengungsi yang dikeluarkan oleh *United Nations High Commissioner for Refugees* (UNHCR);
  - b. mendapatkan rekomendasi dari rumah detensi imigrasi setempat berkoordinasi dengan Kementerian Hukum dan Hak Asasi Manusia;
  - c. mendapatkan surat jaminan dan komitmen dukungan biaya pendidikan dari lembaga yang mensponsori keberadaan pengungsi; dan
  - d. surat rekomendasi dari lembaga yang mensponsori bagi setiap anak pengungsi yang akan bersekolah.
5. Bagi peserta didik yang berasal dari pengungsi anak usia sekolah yang telah menyelesaikan pendidikan pada jenjang tertentu, Dinas Pendidikan Provinsi atau Dinas Pendidikan Kabupaten/Kota sesuai dengan kewenangannya dapat memberikan surat keterangan yang menyatakan bahwa peserta didik tersebut telah menempuh pendidikan pada satuan pendidikan yang bersangkutan.
6. Surat keterangan sebagaimana dimaksud pada angka 5 tidak dapat digunakan untuk pemberian status, melaksanakan urusan, dan/atau transaksi apapun.

Demikian yang dapat kami sampaikan untuk menjadi perhatian dan dilaksanakan sebagaimana mestinya.

Atas perhatian dan kerja sama Saudara, kami sampaikan terima kasih.

 Sekretaris Jenderal,  
Didik Suhardi

Tembusan Yth:

1. Deputi V, Kementerian Koordinator Bidang Politik, Hukum, dan Keamanan;
2. Deputi Bidang Koordinasi Pendidikan dan Agama, Kementerian Koordinator Bidang Pembangunan Manusia dan Kebudayaan;
3. Sekretaris Kementerian Sekretariat Negara;
4. Sekretaris Jenderal Kementerian Keuangan;
5. Sekretaris Jenderal Kementerian Dalam Negeri;
6. Direktur Jenderal Kerja Sama Multilateral, Kementerian Luar Negeri;
7. Direktur Jenderal Hak Asasi Manusia, Kementerian Hukum dan Hak Asasi Manusia; dan
8. Direktur Jenderal Imigrasi, Kementerian Hukum dan Hak Asasi Manusia.