

# THE FULFILLING RIGHT TO EDUCATION FOR ROHINGYA REFUGEE CHILDREN IN INDONESIA

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**Abstract:** The results of data collection conducted by the United Nations for Refugee Affairs (UNHCR) revealed that out of a total of 1,001 Rohingya ethnic refugees from Myanmar scattered in several refugee camps in Aceh, Indonesia, there were 374 child refugees, of whom were children without pa the principle of universality of human rights states that all humans have the same rights without discrimination, including the granting of the right to education to children of asylum seekers in transit countries. Furthermore, for Rohingya refugees who are already in Indonesia, they are given humanitarian protection, including fulfilling the right to education for Rohingya refugee children, even though Indonesia is not yet a state party to the 1951 convention on refugee status and the 1967 protocol, and does not yet have a system for determining refugee status. The research results show, the Fulfilling Right to Education for Rohingya Refugee Children in Indonesia, based on Law no. 39 of 1999 concerning Human Rights which has standards from the Universal Declaration of Human Rights, while for the protection of refugee children it is confirmed by Law No. 35 of 2014 concerning Child Protection which is the signing and ratification of Covention on the Right of the Child and Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad which specifically regulates refugees, ratifying the Convention on the Rights of the Child into Decisions President Number 26 of 1990, then Indonesia has directly agreed to the entire contents of the convention in all actions against children in Indonesia such as the state's obligation to protect children who are within its jurisdiction. The provisions of Government Regulation no. 78 of 2021 concerning Special Protection for Children, in Article 6. Indonesia Ministry of Education and Culture Circular Letter No. 752553/A.A4/HK/2019 concerning Fulfillment of the Right to Education for Children of Foreign Refugees, has opened the way for school-age children of foreign refugees to pursue formal education in educational institutions. The policy of the Indonesian government to fulfill the right to education for the children of overseas refugees should be appreciated. This is because Indonesia has not ratified the 1951 Convention on the Status of Refugees.

**Keywords:** Right, Education, Refugee.

## 1. INTRODUCTION

This research specifically focuses on Rohingya refugees in fulfilling their children's right to education because Myanmar Rohingya refugees who come from the Southeast Asian region are the most refugees who fled to Indonesia with their children. In addition, this research is different from other research that examines Rohingya refugees, this research specifically and more specifically examines the fulfillment of the educational rights of Rohingya refugee children. However, Indonesia only provided temporary housing and education for the refugees. This is because Indonesia has not signed or ratified the 1951 Convention on the Status of Refugees or the 1967 Protocol.

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The problem of refugees and the displacement of people within the country is one of the most complex problems currently being faced by the world community.<sup>3</sup> Indonesia's role in dealing with refugees can be traced back to the situation of refugees in Vietnam from the 1970s to 1990s. The cases of refugee handlers that have occurred in recent years have increasingly emphasized that Indonesia plays a role as a transit country for asylum seekers and refugees in the world. In terms of Vietnam and Rohingya, Indonesia has shown good faith in dealing with asylum seekers and refugees.<sup>4</sup> In this research article, we will discuss more Rohingya refugees who come to Indonesia, and then how the Indonesian state provides fulfillment of the right to education for Rohingya refugee children in Indonesia.

That the increasingly stringent requirements and quotas for accepting foreign refugees by receiving countries or third countries also have implications for the increasing number of foreign refugees in Indonesia.<sup>5</sup> It is undeniable that the strategic location of Indonesia which is right on the path usually taken by refugees and asylum seekers to their final destination countries, has made Indonesia one of the most important transit countries for refugees and asylum seekers, one of which is the Rohingya refugees who make Indonesia as a destination country for refugees.

The issue of the Rohingya crisis has again become the focus of the world since the cleansing operation against the Rohingya ethnic group in the Rakhine region, northern Myanmar in August 2017. The Rohingya are an ethnic Muslim minority living in Myanmar who have received discrimination, violence and are not recognized as part of the ethnic group in Myanmar. Myanmar. The purge operation was officially carried out by the Myanmar government in response to the actions of the radical Rohingya defender group, namely ARSA (Arakan Rohingya Salvation Army) who tried to take revenge for all forms of discrimination and violence that the Rohingya had received by attacking as many as 30 police stations and killing more of 20 police officers as well as members of the security forces.<sup>6</sup>

In this cleansing operation, the Rohingya were forced out of Myanmar by destroying around 214 hundreds of Rohingya ethnic villages, burning around 7,000 houses, killing around 9,000 Rohingya men and committing sexual violence against Rohingya women and girls and around 176 villages were emptied. As a result of the cleaning operations that took place, more than 720,000 ethnic Rohingya fled on a large scale by crossing the Jordan River to the Kutupalong camp, Cox's Bazar in Bangladesh which is the largest refugee camp in the world for Rohingya refugees.<sup>7</sup>

<sup>3</sup> Primadasa, C. P., Kurnia, M. P., & Erawaty, R., 2021, Problems in Handling Refugees in Indonesia From the Perspective of International Refugee Law, *Journal Risalah Hukum*, Vol. 17 No. 1, p. 45. <https://doi.org/10.30872/risalah.v17i1.380>

<sup>4</sup> Afriansyah, A., & Achjani Zulfa, E., 2018, Refugee Resettlement: A Review of Indonesian Laws and Practices, *Indonesia Law Review*, Vol. 8 No. 2, p.04. <https://doi.org/10.15742/ilrev.v8n2.489>

<sup>5</sup> Sekretariat Kabinet Republik Indonesia, *Upaya Penanganan Pengungsi Luar Negeri di Indonesia*, <https://setkab.go.id/upaya-penanganan-pengungsi-luar-negeri-di-indonesia/>, diakses pada 17 Februari 2021.

<sup>6</sup> Yessi Adeyna Saputri, 2021, Unicef's efforts in treating Rohingya child refugees in Bangladesh in 2017-2018, *eJournal Ilmu Hubungan Internasional*, Vol. 9 No. 4, p. 660. <http://ejournal.hi.fisip-unmul.ac.id>

<sup>7</sup> Lee, Ronan., 2021, *Myanmar's Rohingya Genocide*, London: Bloomsbury Publishing.

In 2012 there was civil conflict in Myanmar between ethnic Rakhine and ethnic Rohingya which resulted in more than 250,000 Rohingya refugees returning to flee to Bangladesh for protection. The peak of the Rohingya tragedy occurred in 2017 where there were more than 720,000 Rohingya who fled to Bangladesh due to ethnic cleansing operations carried out by the Myanmar government.<sup>8</sup>

The United Nations Children's Emergency Fund (UNICEF) as a special international organization that deals with the problems of all children in the world, finds that there are many problems that occur with Rohingya refugee children. Rohingya refugee children are vulnerable to various diseases and crimes. Many of the child refugees experience severe psychological disorders and trauma. Inadequate facilities lead to a sanitation crisis in the refugee camps. The spread of disease is not matched by the provision of medicines and vaccines for child refugees, so that the situation is getting worse.<sup>9</sup> Apart from that, the fulfillment of the right to education for Rohingya refugee children is also still experiencing difficulties.

The results of data collection conducted by the United Nations for Refugee Affairs (UNHCR) revealed that out of a total of 1,001 Rohingya ethnic refugees from Myanmar scattered in several refugee camps in Aceh, Indonesia, there were 374 child refugees, of whom were children without parents.<sup>10</sup> Children are an integral part of human survival and the survival of a nation and state. So that in the future they are able to be responsible for the sustainability of the nation and state, every child needs to get the widest possible opportunity to grow and develop optimally, both physically, mentally and socially. For this reason, it is necessary to carry out protection efforts to realize children's welfare by providing guarantees for the fulfillment of their rights without discriminatory treatment.

With the increase in the number of refugees, it is important to remember that refugees often bring their families including children on their journeys.<sup>11</sup> Refugees who come to a certain territory of the country are generally groups of families who are in the adult category and the children category. In such conditions, child refugees need special attention and protection because they are in a very vulnerable condition.<sup>12</sup> According to the United Nations High Commissioner for Refugees (UNHCR) records in a November 2021 fact sheet, 13,175 people are registered with UNHCR including 73% adults and 27% children. Of the 3,543 children registered with UNHCR, 65 were unaccompanied by their parents or other adults and 33 were separated from their parents.<sup>13</sup>

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<sup>8</sup> Kolovos, Pavlo., 2018, One year rohingya refugees live dire cramps facing uncertain future and legal limbo, msf.org, Rohingya Refugee Crisis, <http://www.msf.org/>

<sup>9</sup> Yessi Adeyna Saputri, 2021, Unicef's efforts in treating Rohinggya child refugees in Bangladesh in 2017-2018, eJournal *Ilmu Hubungan Internasional*, Vol. 9 No. 4, p. 661. <http://ejournal.hi.fisip-unmul.ac.id>

<sup>10</sup> Yeni Handayani, 2015, Fulfilling the Rights of Rohingya Refugees, *Journal RechtsVinding*, p. 1-2.

<sup>11</sup> Adhi, P. N., Agung, I. G. P., & Gitareja, B.. 2021, Challenge and Opportunity to Implement the Right to Education for Child Refugees in Indonesia, In 1st International Conference on Law and Human Rights 2020 (ICLHR 2020), Atlantis Press, vol. 549, p. 55.

<sup>12</sup> The Protection of Rights to Education for the Refugee Children during the Covid-19 Pandemic. In The 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020). Atlantis Press. vol. 499, p.428.

<sup>13</sup> UNHCR, 2021, Indonesia Country Fact Sheet, p.1-2.

The perception of the universality of human rights, viewed from a historical perspective on the development of human rights thinking, was born from and influenced by the theory of natural rights (natural rights theory) which holds that human rights are rights that everyone has at all times and places on the basis of In its existence as a human being<sup>14</sup>, the principle of universality of human rights states that all humans have the same rights without discrimination, including the granting of the right to education to children of asylum seekers in transit countries.

In the context of children's rights, this means that all children's rights must apply equally to all children, including the granting of the right to education to children of asylum seekers in transit countries. Before moving on to anti-discrimination norms specifically for children, it should be emphasized that general international human rights instruments also need to provide special measures for child protection that help fight against discrimination specifically for children, one of which is the protection of the right to education for asylum-seeking children in transit countries.

The upholding of human rights in the educational environment is manifested in forms right to education. Because everyone has this right, the fulfillment of these rights has broad implications. Realizing these rights requires equity in education meaning the widest possible educational opportunity for everyone, including the fulfillment of children's right to education for asylum seekers. Because of asylum seekers has entered into the territory of a country, then that country has no choice other than housing asylum seekers first, until the asylum seekers are accepted in the country third, even if only as a transit country, the obligations of the transit country not just to accommodate the country must also guarantee the basic needs or rights of the asylum seeker are fulfilled during their stay in the territory of the transit country, one of which is the right to education for asylum seekers.

In overcoming the Rohingya humanitarian crisis in Myanmar, Indonesia applies two approaches, namely politics and humanity. While the political approach focuses on dialogue both bilaterally and multilaterally, the humanitarian approach is carried out through a humanitarian aid platform. The Indonesian government considers that the combination of these two approaches can be an effective tool to persuade the Myanmar government to stop human rights violations and pay attention to the victims by providing humanitarian assistance,<sup>15</sup> Furthermore, for Rohingya refugees who are already in Indonesia, they are given humanitarian protection, including fulfilling the right to education for Rohingya refugee children, even though Indonesia is not yet a state party to the 1951 convention on refugee status and the 1967 protocol, and does not yet have a system for determining refugee status.

In the issue of refugees, international law has a Refugee Convention, Indonesia is not a party that participates in and ratifies the Convention and the Protocol. It can be said that Indonesia does not yet have a legal umbrella that regulates comprehensively

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<sup>14</sup> Besson, S., 2005, The Principle of Non-Discrimination in the Convention on the Rights of the Children. *International Journal Of Children's Rights*, Vol. 13 No. 4, p. 440. <https://core.ac.uk/download/pdf/20656988.pdf>

<sup>15</sup> Rosyidin, M., & Dir, 2020, Why states do not impose sanctions: regional norms and Indonesia's diplomatic approach towards Myanmar on the Rohingya issue, *International Politics*, p.7.

the handling of refugees entering Indonesia. The absence of this legal instrument has created confusion among institutions that have an interest in dealing with issues related to refugees and asylum seekers in Indonesia.

In Indonesia the issue of refugees is still positioned from an immigration perspective so that it is solely seen from an immigration perspective, while based on the Refugee Convention it substantially protects the Human Rights of refugees. The Convention is categorized as types of human rights that need to be protected such as education. In Article 22 paragraph (1) of the Refugee Convention concerning education which reads "*Except where this Convention contains more favorable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.*" So it can be concluded that child refugees in a country must receive the same treatment as citizens of the country where the child is being evacuated, especially in the field of education. This becomes a problem of how to regulate the handling of child refugees in terms of education rights if Indonesia has not ratified the Refugee Convention.

That there are several studies that discuss human rights related to the protection rights of refugees, namely the research article Yessi Adeyna Saputri, which discusses Unicef's efforts in treating rohingya child refugees in Bangladesh in 2017-2018, in this research the focus is on discussing UNICEF's efforts in dealing with child refugees in Bangladesh in 2017-2018 as an international organization that became a humanitarian actor/actor with emergency financial assistance that succeeded in meeting some of the emergency needs for Rohingya refugee children who had just arrived as refugees, creating a protection program for Rohingya refugee children in refugee camps, namely: Child Friendly Space by building 97 rooms for Rohingya refugee children and Adolescent Space by building 309 youth group rooms located in several refugee camps.<sup>16</sup> Furthermore, there is research from Esraa Adnan Fangary, which discusses the protection of asylum seekers, the IACtHR has promoted a sustained approach of protection of asylum seekers' and refugees' rights in Latin America. the IACtHR has considered seeking-asylum persons in situations of vulnerability, therefore it has granted them an extraordinary context of protection through adopting pro homine principle against member states, applying its regional basic documents and International refugee law.<sup>17</sup> Furthermore, there is research from Valerie Liany GK, which discusses Indonesia's role in dealing with refugees related to the 1951 convention (convention relating to the status of refugees 1951), determining refugee status and rights obtained by refugees - basic human rights guaranteed by the 1951 Refugee Convention. as well as the basic human rights, which include the right to protection, the right to live, the right to obtain basic needs and others.<sup>18</sup> From the brief explanation of some of these studies, what distinguishes this research article is the focus of this research article

<sup>16</sup> Yessi Adeyna Saputri, 2021, Unicef's efforts in treating Rohingya child refugees in Bangladesh in 2017-2018, *eJournal Ilmu Hubungan Internasional*, Vol. 9 No. 4, p. 660-673 <http://ejournal.hi.fisip-unmul.ac.id>

<sup>17</sup> Fangary, E. A., 2021, A Peculiar Leap in the Protection of Asylum Seekers: The Inter-American Court of Human Rights' Jurisprudence on the Protection of Asylum Seekers, *The Age of Human Rights Journal*, (16), p.31-53. <https://doi.org/10.17561/tahrj.v16.6134>

<sup>18</sup> Valerie Liany Gabriela Kondoy, 2020, Indonesia's role in dealing with refugees related to the 1951 convention (the 1951 convention regarding the status of refugees), *Journal Lex et Societatis*, vol. 8 no. 2, p.107-118. <https://doi.org/10.35796/les.v8i2.28496>

on fulfilling the educational rights of Rohingya refugee children who fled to Indonesia and this research examines how the Indonesian government provides protection for Rohingya refugees including fulfilling the right to education of Rohingya refugee children, although Indonesia is not yet a state party to the 1951 convention on refugee status and the 1967 protocol, and does not yet have a system for determining refugee status.

## **2. RESEARCH METHODS**

In legal research, to discuss and respond to a legal issue, approaches are needed as a basis for compiling appropriate, logical and accurate legal arguments. This study uses a normative legal approach as a process to find legal rules, legal principles, and legal doctrines to address legal issues based on studies of legal books, legal research and applicable legal regulations,<sup>19</sup> the other is the conceptual approach to identify the ideas that give rise to legal notions, the legal principles or legal arguments for solving the problem faced,<sup>20</sup> to answer and analyze how to fulfill the right to education for Rohingya refugee children in Indonesia, even though Indonesia has not yet become a state party to the 1951 convention on refugee status.

## **3. DISCUSSION**

### **3.1. The role of the Indonesian government in providing education services for refugee children**

The principle of the best interest of the child is a principle that prioritizes the interests of the child. Indonesia as a country that ratifies the Convention on the Rights of the Child must, of course, comply with the principles and provisions in establishing policies in the context of protecting children's rights.<sup>21</sup> The best interests of the child must be applied to all matters relating to children or children, and considered to resolve any possible conflict between the rights enshrined in the Convention or other human rights treaties. Attention must be paid to identify possible solutions that are in the best interest of the child. This implies that the State is obliged to clarify the best interests of all children, including those in vulnerable situations, when adopting measures implementation.<sup>22</sup>

Indonesia is a country participating in the Convention on the Rights of the Child or children's rights. Indonesia as a country that ratified the Convention on the Rights of the Child on January 26, 1990 through a Decree of the President of the Republic of Indonesia Number 36 of 1990, of course, everyone is required to comply the rules contained in the Convention on the Rights of the Child.

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<sup>19</sup> Peter Mahmud Marzuki, 2010, *Legal Research*, Jakarta: Kencana.

<sup>20</sup> I Nyoman Prabu Buana Rumiarta, Ni Luh Gede Astariyani & Anak Agung Sagung Ngurah Indradewi, *Human Rights of Indigenous People in Indonesia: A Constitutional Approach*, *Journal East Asia & International Law*, Vol. 15/No.2 (2022); 395-402. <https://doi.org/10.14330/jeail.2022.15.2.10>

<sup>21</sup> Laurensius Arliman, S., 2017, *Protection of children by society in terms of historical schools in the application of the principle of the best interest of the child in the life of children in Indonesia*, *Journal Era Hukum*, Vol. 15 No. 1. p. 141. <https://doi.org/10.24912/era%20hukum.v15i1.668>

<sup>22</sup> United Nations, General comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), p.9.

Even though Indonesia has ratified the Convention on the Rights of the Child, it has also made reservations on several provisions of the Convention on the Rights of the Child, which means that Indonesia has not fully agreed to all the contents of the Convention. However, the Indonesian government consistently believes that certain articles in the convention need to be considered and implemented in accordance with the Indonesian Constitution, including Article 22 of the convention on the rights of the child.

Whereas child refugees are the responsibility of the Indonesian government in terms of providing education for child refugees, this is in line with the ratification of the Convention on the Rights of the Child described in Article 3 paragraph (2) of the Convention on the Rights of the Child, namely the state's obligation to protect children who are in its jurisdiction. The role of the Indonesian government in providing education services for refugee children, In collaboration with the International Migration Organization/ IOM, the Indonesian government, through the Ministry of Education, Culture, Research, and Technology, is working hard to fulfill the right of children of overseas refugees to get an education. The Indonesian government has prepared a good education system for children of foreign refugees who are considered important for the future of children of foreign refugees. Circular Letter from the Secretary-General of Ministry No. 752553/A. A4/HK/2019 concerning Fulfillment of the Right to Education for Children of Foreign Refugees, has opened the way for school-age children of foreign refugees to pursue formal education in educational institutions. The policy of the Indonesian government to fulfill the right to education for the children of overseas refugees should be appreciated. This is because Indonesia has not ratified the 1951 Convention on the Status of Refugees.

In addition, the role of the Indonesian state in providing protection to refugees is implemented in the form regulation of director general of immigration Number IMI-0352. GR.02.07 Concerning Illegal Immigration Handlers Declaring themselves As asylum seekers or refugees, temporary shelters (community houses) are other places where people are held. Foreigners whose status has been determined by UNHCR as refugees and with special needs. The transfer of detainees to the Community House will be carried out if there is a recommendation letter from the Directorate General of Immigration for the Director of Immigration Investigation and Enforcement regarding approval for the transfer of detainees and then the letter is delivered to the IOM (International Organization for Migration) to facilitate the transfer of the said detainee.

Fulfillment of human rights of refugees by the Government of Indonesia during the Covid-19 Pandemic, Indonesia had not ratified the 1951 Refugee Convention and the 1967 Protocol, and did not yet have specific rules regarding refugees during the Covid-19 Pandemic, so the Indonesian Government was based on the same rules as the rules for dealing with refugees before The Covid-19 pandemic, based on ratified provisions of international human rights law, and general principles of international law regarding refugees. Fulfillment of refugee human rights by UNHCR and the Government of Indonesia during the Covid-19 Pandemic, has not been fully fulfilled, one of which is the education rights of refugee children, this is because during the Covid-19 pandemic the movement of educational institutions in Indonesia was mostly closed. However, when the Covid-19 pandemic diminished and was declared endemic by the Indonesian government, the

fulfillment of the educational rights of refugee children was again given to the maximum based on the provisions Indonesia Ministry of Education and Culture Circular Letter No. 752553/A.A4/HK/2019 concerning Fulfillment of the Right to Education for Children of Foreign Refugees.

Although Circular of the Secretary General of the Republic of Indonesia Ministry of Education and Culture No. 752553/A.A4/HK/2019 is not included in the hierarchy of laws and regulations in Indonesia so it is considered that the Indonesian government is not serious in providing Fulfillment of the Right to Education for Overseas Refugee Children, this cannot be justified, this is because the circular letter is the basis that is used directly in each region to practice directly in Fulfilling the Right to Education for Foreign Refugee Children.

In addition, the level of seriousness of the Indonesian state in providing Fulfillment of the Right to Education for Refugee Children Abroad can be seen from the ratification of The United Nations Convention on The Rights of Child 1989 (UNCRC) in the Decree of the President of the Republic of Indonesia No. 36 of 1990, which contains education is the right of every child in the world, so it is important to protect child refugees and have an obligation to fulfill children's rights listed in the points of the articles written in the UNCRC.

### **3.2. The Fulfilling Right to Education for Rohingya Refugee Children in Indonesia**

Based on the hierarchy of laws and regulations related to fulfilling the educational rights of refugee children can be seen in the provisions, based on Law no. 39 of 1999 concerning Human Rights which has standards from the Universal Declaration of Human Rights, while for the protection of refugee children it is confirmed by Law No. 35 of 2014 concerning Child Protection which is the signing and ratification of Covention on the Right of the Child and Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad which specifically regulates refugees.

Furthermore upholding human rights in the educational context of refugee children in Indonesia can be realized in the form of the right to education which refers to the provisions of Government Regulation no. 78 of 2021 concerning Special Protection for Children, in Article 6 letter k : “fulfilling the basic and special needs of children consisting of food, clothing, housing, education, provision of health services, learning and recreation, security guarantees, and equality of treatment.” As well as existence, Indonesia Ministry of Education and Culture Circular Letter No. 752553/A.A4/HK/2019 concerning Fulfillment of the Right to Education for Children of Foreign Refugees, has opened the way for school-age children of foreign refugees to pursue formal education in educational institutions.

In addition, the role of the Indonesian state in providing protection to refugees is implemented in the form regulation of director general of immigration Number IMI-0352. GR.02.07 Concerning Illegal Immigration Handlers Declaring themselves As asylum



seekers or refugees, temporary shelters (community houses) are other places where people are held. Foreigners whose status has been determined by UNHCR as refugees and with special needs. The transfer of detainees to the Community House will be carried out if there is a recommendation letter from the Directorate General of Immigration for the Director of Immigration Investigation and Enforcement regarding approval for the transfer of detainees and then the letter is delivered to the IOM (International Organization for Migration) to facilitate the transfer of the said detainee.

Indonesia is not a party to the Convention Refugees and the 1967 Protocol. Therefore, Indonesia does not have the authority to determine whether a person or group of people, requesting refugee status to be recognized as refugees. Authority This was carried out by UNHCR considering that Indonesia is not a party to the Refugee Convention and the 1967 protocol.<sup>23</sup>

As a country that has not ratified the Refugee Convention and the 1967 Protocol to become national law, Indonesia is obliged to maintain its international obligations related to the protection of human rights because Indonesia is a party to various international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>24</sup> Non-refoulement is a principle that is central to international refugee law. It prohibits the forcible return or expulsion of refugees to a country where they may face persecution, torture, or other serious harm. This principle is enshrined in international treaties, such as the 1951 Refugee Convention and its 1967 Protocol. It is a fundamental element of protecting the rights and safety of refugees.

The Fulfilling Right to Education for Rohingya Refugee Children in Indonesia, based on Law no. 39 of 1999 concerning Human Rights which has standards from the Universal Declaration of Human Rights, while for the protection of refugee children it is confirmed by Law No. 35 of 2014 concerning Child Protection which is the signing and ratification of Covention on the Right of the Child and Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad which specifically regulates refugees. Indonesia recognizes the rights of children as a whole in accordance with the agreements that have been stipulated in the Declaration of the Rights of the Child and the Convention on the Rights of the Child, because Indonesia itself is an integral part in terms of international instruments on Human Rights, thus ratifying the Convention on the Rights of the Child into Decisions President Number 26 of 1990, then Indonesia has directly agreed to the entire contents of the convention in all actions against children in Indonesia such as the state's obligation to protect children who are within its jurisdiction.

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<sup>23</sup> Wagiman, 2012, *International Refugee Law*, Jakarta: Sinar graphic, p.128.

<sup>24</sup> Op.Cit., Afriansyah, A., & Achjani Zulfa, E., p.20.



Figure 1. Data collection of refugees & Rohingya child refugees in Pekanbaru, Indonesia.

Based on the latest data from the Indonesian Ministry of Law & Human Rights, on April 7, 2023, the total number of Rohingya refugees in Pekanbaru, Indonesia was 982 people. The refugees and asylum seekers are temporarily stationed in Pekanbaru, Indonesia.<sup>25</sup> The Indonesian government has prepared a good education system for children of foreign refugees who are considered important for the future of children of foreign refugees. Indonesia Ministry of Education and Culture Circular Letter No. 752553/A.A4/HK/2019 concerning Fulfillment of the Right to Education for Children of Foreign Refugees, has opened the way for school-age children of foreign refugees to pursue formal education in educational institutions.

There are two (2) aspects or reasons why Indonesia has not ratified the 1951 refugee convention and 1967 protocol, namely the first, the security aspect. Whereas the security aspect is a reason or obstacle that will be faced by the Indonesian government if it chooses to ratify the 1951 refugee convention and the 1967 protocol. As a country, guaranteeing security in its own country is a responsibility that must be fulfilled by the state to its residents.

Then the Second, Economic Aspects. Whereas the economic aspect is an aspect that is most important for the sustainability and progress of a country, Indonesia as a country that still has the status of a developing country, of course the economy in Indonesia is also not as big and as good as developed countries in Europe. Domestic problems in Indonesia are still numerous and complex, poverty and unemployment rates still characterize the list of Indonesia's domestic problems which until now have not been completely resolved, making this a consideration for the Indonesian government to prefer not yet ratify the 1951 refugee convention and 1967 protocol.

<sup>25</sup> Statement from the Head of the Regional Office of the Ministry of Law & Human Rights in Pekanbaru, Indonesia. <https://riau.kemerkumham.go.id/berita-utama/191-pengungsi-rohingya-dari-aceh-tiba-di-pekanbaru-kemerkumham-riau-lakukan-pendataan>

Even though Indonesia has not ratified the 1951 refugee convention and the 1967 protocol, Indonesia has ratified the convention on the rights of the child as a form of Indonesia's commitment to fulfilling the educational rights of refugee children, as stated in the provisions of Article 22 of the 1989 Convention on the Rights of Childs that every child has the right to education. and teaching, Every refugee has the right to receive the same treatment as other citizens to obtain education in elementary schools, including the right to exemption from certain educational fees including the right to obtain scholarships.

Children who are refugees are particularly vulnerable group that require protection and special care. According to Peter Newel there are several lesson why children need protection there are recovery fee, the long-term impact of government's or particular groups's action, or otherwise of the government's group, the gap in public service provision, the existence of voting rights not accompanied by lobbying ability to influence government policy, difficulty in accessing the protection and arrangement of children's rights, and the last is often exploited and misused against the existing regulations.<sup>26</sup>

Human rights are a social and universal category that comes from human nature, its dignity, and uniqueness. They are subordinated through the opportunities provided to enjoy the fundamental, most significant advantages and circumstances of an individual's secure, unrestricted life in society<sup>27</sup>. Human rights emerged around the beginning of the 13th century when Western philosophers introduced two basic concepts in human rights namely, freedom and fundamental human rights<sup>28</sup>. Related to 'freedom and human rights' studied in the perspective of protecting human rights to the educational rights of asylum seekers, in this case it can be seen that there are basic principles of protection of freedom and protection of the basic rights of asylum seekers' right to life and one of them is obtaining the right to education.

Upholding human rights in the educational context of refugee children in Indonesia can be realized in the form of the right to education which refers to the provisions of Government Regulation no. 78 of 2021 concerning Special Protection for Children, in article 6 letter f mentions "the priority of emergency rescue actions, recovery, and security", then if analyzed in the context of refugee protection this is a matter of priority, so that further fulfillment of the educational rights of refugee children can be achieved, as stated in article 6 letter k. Article 6 letter k: "fulfilling the basic and special needs of children consisting of food, clothing, housing, education, provision of health services, learning and recreation, security guarantees, and equality of treatment".

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<sup>26</sup> Shalihah, Fitrianus. 2020. The Protection of Rights to Education for the Refugee Children During The Covid-19 Pandemic. *Advances in Social Science, Education and Humanities Research*, Vol. 499. Atlantis Press. p.427.

<sup>27</sup> Hren, Nataliya. 2022. Human Rights and Current Dscriminatory Manifestations (On The Example Age Discrimintaion In The Socialand Communicative Sphere. *The Age of Human Rights Journal*, 19. p.72.

<sup>28</sup> Smith, Rhona K. M., 2005, *Textbook on International Human Rights*, Edisi Kedua, Oxford University Press, New York, p. 4.

Government Regulation No. 78 of 2021 does not specifically regulate the protection of child refugees, but regulates the provision of protection for children who are in the territory of the Indonesian state, one of which is access to fulfilling education for child refugees who are in the Indonesian territory, as stated in the provisions of article 6 letter k.

In collaboration with the International Migration Organization IOM, the Indonesian government, through the Ministry of Education and Culture, is working hard to fulfill the right of children of overseas refugees to get an education. The Indonesian government has prepared a good education system for children of foreign refugees who are considered important for the future of children of foreign refugees.

Indonesia Ministry of Education and Culture Circular Letter No. 752553/A. A4/HK/2019 concerning Fulfillment of the Right to Education for Children of Foreign Refugees, has opened the way for school-age children of foreign refugees to pursue formal education in educational institutions. The policy of the Indonesian government to fulfill the right to education for the children of overseas refugees should be appreciated. This is because Indonesia has not ratified the 1951 Convention on the Status of Refugees.

### **3.3. Refugee Children's Educational Rights from an International Legal Perspective**

Human rights are a social and universal category that comes from human nature, its dignity, and uniqueness. They are subordinated through the opportunities provided to enjoy the fundamental, most significant advantages and circumstances of an individual's secure, unrestricted life in society<sup>29</sup>. The educational empowerment of children is the main objective of the human rights-based approach to education. Its main objective is to make sure that every kid obtains a quality education that upholds and supports their right to dignity and healthy development<sup>30</sup>. In 1948, the Universal Declaration of Human Rights recognised education as a universal entitlement.

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women called for no discrimination in educational provision for men and women, and the 1989 Convention on the Rights of the Child affirmed the right of all children, regardless of status, to free and compulsory primary education, to available and accessible secondary education, and to higher education on the basis of capacity. The right to education for refugees is articulated in Article 22 of the 1951 Convention relating to the Status of Refugees, resolution 64/290 of the Human Rights Council of the United Nations General Assembly on the right to education in emergencies and in the draft resolution to the Human Rights Council on the right to education for refugees, migrants and asylum seekers.

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<sup>29</sup> Nataliya Hren, et. al., 2022, Human Rights and Current Discriminatory Manifestations (On The Example Age Discrimination In The Social and Communicative Sphere), *The Age of Human Rights Journal*, vol. 19. p.72. <https://doi.org/10.17561/tahrj.v19.7124>

<sup>30</sup> Agaptus Nwozor, Blessing Okhillu, 2022, Child's Rights And The Challenges Of Educating The Girl Child: Assesing The Contributions Of Unicef In Nigeria, *The Age of Human Rights Journal*, vol. 18, p.293. <https://doi.org/10.17561/tahrj.v18.6520>

The legal policy and the role of United Nations organizations in granting educational rights to refugee children are based on the provisions of Article 22 paragraph 1 of the 1989 Convention on the Rights of the Child, namely: States parties must take appropriate steps to ensure that a child seeking refugee status or who is deemed to be a refugee in accordance with applicable international or domestic laws and procedures, receiving appropriate protection and humanitarian assistance under this Convention and under international human rights. Article 28 paragraph 1 namely: The States Parties recognize the right of the child to education, and with the aim of achieving this right gradually and on the basis of equal opportunity.

Even though there are several international conventions mentioned above in fulfilling refugee rights, if analyzed with a comprehensive approach on several aspects there is an obstacle, namely the assimilation process that is not going well between local residents and international refugees which can also lead to social conflict. It is possible that there is a threat to security stability which is also one of the effects of the influx of refugees. However, in the case of handling refugee child education it is actually emphasized that morality in humanity must dominate policies in a country related to refugee protection and fulfilling the educational rights of refugee children.

That there is an international organization that brings together countries in the world in a system of cooperation equipped with organs that can prevent or resolve disputes that occur.<sup>31</sup> The position of International Organizations as a subject of international law is now not in doubt. International organizations have rights and obligations stipulated in international conventions which are a kind of statutes,<sup>32</sup> therefore the United Nations as an international organization also has the rights and obligations as intended.

Improving the quality of human life so that they can contribute as a whole to the series of national development can be done, one of which is through the fulfillment of basic needs in the field of education.<sup>33</sup> As an important indicator in improving the quality of human resources, education needs to be promoted by providing broad opportunities for the public to experience education and increasing the number and quality of supporting infrastructure that can support educational activities. Seeing its quite important role in development in order to achieve prosperity, it encourages countries in the world to include education in the initial framework of the global development agenda.<sup>34</sup>

The United Nations Convention held in the year of the Nation (UN) in 1989, has declared children's rights and emphasized that all children have the right to education without discrimination in any form. The declaration was followed by The Salamanca

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<sup>31</sup> Boer Mauna, 2008, *International Law-Understanding, Role, and Function in the Era of Global Dynamics*, Alumni, Bandung, p. 458.

<sup>32</sup> Kusumaatmadja, Mochtar & Etty R. Agoes, 2003, *Introduction to International Law*, Alumni, Bandung, p. 101.

<sup>33</sup> Ellissa Priyanka, Dudy Heryadi, 2020, *UNICEF Collaboration with Indonesia in Achieving Basic Education for All as Goal Two of the MDGs*, *Padjadjaran Journal of International Relations*, vol. 2 no.1, p. 69.

<sup>34</sup> *Ibid.*

Statement and Framework for Action on Special Needs Education. The declaration states the obligation for schools to accommodate all children, including children who have physical, intellectual, social, emotional, linguistic or other abnormalities. Schools must also provide educational services for children with disabilities and those who are gifted, street children, child labourers, children from remote or migrating communities, children from ethnic or cultural minorities, and other vulnerable children.

In his analysis, Finnemore states that international organizations are propagators of norms in the international system. One of the functions of international organizations is acting as actors, forums and instruments that contribute to the normative activities of the international political system.<sup>35</sup> The role and legal policy of the United Nations High Commissioner for Refugees (UNHCR) is an international organization whose main mandate is to provide protection and provide assistance in the form of meeting the basic needs of asylum seekers and refugees, one of which is the fulfillment of education for refugees. Furthermore, the role and legal policies of the United Nations International Children's Emergency Fund (UNICEF) focus on the rights and welfare of children in the world, including refugee children. UNICEF for every child is a concrete form of the movement and efforts of UNICEF as an international organization that has a vision and mission to guarantee the rights and protection of children around the world.<sup>36</sup> UNICEF campaigns that every child has the right to obtain the right to education.

Further analysis of the role of international organizations dealing with refugees aims to reduce the impact of a refugee crisis that has the potential to cause stability in a country that accepts refugees, ethnic balance within the country, humanitarian issues related to health and education, work, exploitation of refugees, and stability of a country.

#### 4. CONCLUSION

The role of the Indonesian state in providing protection to refugees is implemented in the form regulation of director general of immigration Number IMI-0352.GR.02.07 Concerning Illegal Immigration Handlers Declaring themselves As asylum seekers or refugees, temporary shelters (community houses) are other places where people are held. Foreigners whose status has been determined by UNHCR as refugees and with special needs. The transfer of detainees to the Community House will be carried out if there is a recommendation letter from the Directorate General of Immigration for the Director of Immigration Investigation and Enforcement regarding approval for the transfer of detainees and then the letter is delivered to the IOM (International Organization for Migration) to facilitate the transfer of the said detainee.

The Fulfilling Right to Education for Rohingya Refugee Children in Indonesia, based on Law no. 39 of 1999 concerning Human Rights which has standards from the

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<sup>35</sup> Finnemore, M., 1996, Norms, culture, and world politics: insights from sociology's institutionalism. *International Organization*, 50(2), p. 325–347.

<sup>36</sup> United Nations International Children's Emergency Fund (UNICEF), 2014.

Universal Declaration of Human Rights, while for the protection of refugee children it is confirmed by Law No. 35 of 2014 concerning Child Protection which is the signing and ratification of Convention on the Right of the Child and Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad which specifically regulates refugees. Indonesia recognizes the rights of children as a whole in accordance with the agreements that have been stipulated in the Declaration of the Rights of the Child and the Convention on the Rights of the Child, because Indonesia itself is an integral part in terms of international instruments on Human Rights, thus ratifying the Convention on the Rights of the Child into Decisions President Number 26 of 1990, then Indonesia has directly agreed to the entire contents of the convention in all actions against children in Indonesia such as the state's obligation to protect children who are within its jurisdiction.

Upholding human rights in the educational context of refugee children in Indonesia can be realized in the form of the right to education which refers to the provisions of Government Regulation no. 78 of 2021 concerning Special Protection for Children, in Article 6. Indonesia Ministry of Education and Culture Circular Letter No. 752553/A.A4/HK/2019 concerning Fulfillment of the Right to Education for Children of Foreign Refugees, has opened the way for school-age children of foreign refugees to pursue formal education in educational institutions. The policy of the Indonesian government to fulfill the right to education for the children of overseas refugees should be appreciated. This is because Indonesia has not ratified the 1951 Convention on the Status of Refugees.

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