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Policy on the Right to Education of Refugees in Indonesia and Australia

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Abstract Upholding human rights in the context of education is manifested in the form of the right to education. Realizing this right requires equal distribution of education which means the widest possible educational opportunity for everyone, including fulfilling children's rights to education for refugees or asylum seekers. Based on data from the United Nations High Commissioner for Refugees (UNHCR) in 2021, there are 13,459 refugees in Indonesia, of whom it is estimated that around 27% are child refugees and 114 children of whom come alone or are separated from their families. This research article will discuss the role of the Indonesian state in providing educational rights to children of refugees from other countries or children of asylum seekers as well as international arrangements related to the education rights of children of asylum seekers in transit countries. This study uses

normative juridical research methods, through international regulatory approaches and conceptual approaches, in this case studying and analyzing material and legal issues based on international regulations and concepts related to the study of human rights from the perspective of the educational rights of asylum seeker for refugee especially child refugee.

Keywords Human Rights, Children's Educational Rights, Asylum Seekers, Policy

1. Introduction

Along with the development of the protracted refugee situation in transit countries, the vulnerability of child refugees from abroad due to non-fulfillment of their basic rights is a problem that cannot be ignored. The latest data shows that there are 13,459 refugees in Indonesia, of whom it is estimated that around 27% are child refugees and 114 of them come alone or are separated from their families.¹ 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.

Public policy refers to the stages of implementation based on laws and regulations, including aspects of the budget and implementing structure. The public policy cycle itself can be associated with policy making, policy implementation, and policy evaluation.² The policy described above may be related to the policy established by the Indonesian government in granting the right to education to refugees and asylum seekers from abroad who are in

¹ UNHCR, "Refugee Statistics", available online at <<https://www.unhcr.org/refugee-statistics/>>

² I Nyoman Prabu Buana Rumiarta, *Hukum dan Kebijakan Publik* (Bekasi: Dewangga Publishing, 2022), pp. 9-10

Indonesia, whether the policy is consistent with aspects of regulation, budgetary aspects, and implementation structural aspects, although Indonesia has not ratified the International Refugee Convention, has not ratified the 1951 Geneva Convention and the 1967 Protocol on the Status of Refugees. This implies that Indonesia is not obliged to accept refugees in its country, but the Indonesian government's attitude in this regard remains to accept the arrival of refugees as a policy in efforts to uphold human rights values.

Furthermore, for Australia, related to policies towards refugees and asylum seekers in this case, Australia settles around 13,000–14,000 refugees annually with children comprising around 30-40%.³ Since the start of Australia's humanitarian program in 1945, Australia has resettled over 800,000 refugees.⁴ Most refugees arrive in Australia as families (McMichael et al., 2011).⁵ The Australian Government considers immediate family members to be spouses or de facto partners and children under age 18, although households will likely incorporate those outside of a nuclear family. In fact, the United Nations High Commissioner for Refugees (UNHCR) posits that refugee integration is more successful among family units than individual refugees (McMichael et al., 2011).⁶ However, the integration of each family member will differ and for refugee children in particular, their integration may well differ from that of their parents, who arrive in the host country as adults.

³ Joh Henley and Julie Robinson. "Mental Health Issues among Refugee Children and Adolescents", *Journal Clinical Psychologist* 15, No. 2 (2011): 51-62. <https://doi.org/10.1111/j.1742-9552.2011.00024.x>

⁴ Janet Phillips, *Asylum Seekers and Refugees: What are the Facts?*. (Canberra: Department of Parliamentary Services, Parliament of Australia, 2013).

⁵ Celia McMichael, Sandra M. Gifford, and Ignacio Correa-Velez. "Negotiating Family, Navigating Resettlement: Family Connectedness amongst Resettled Youth with Refugee Cackgrounds Living in Melbourne, Australia." *Journal of Youth Studies* 14, No. 2 (2011): 179-195. <https://doi.org/10.1080/13676261.2010.506529>

⁶ McMichael, et.al.

Australia has ratified the 1951 Geneva Convention and the 1967 Protocol on the Status of Refugees. As a country that has ratified the Refugee Convention, Australia has a legal obligation to protect refugees and asylum seekers entering its territory. One of Australia's obligations under the 1951 Geneva Convention and the 1967 Protocol on the Status of Refugees is to prohibit the return of refugees and asylum seekers to a country. This is the importance of the policy issued by the Australian government in providing protection to refugees and asylum seekers from abroad who are in the country.

Human Rights are natures that already exist and are carried by humans from birth which are given directly by God Almighty. Currently, human rights are being discussed in the world apart from environmental or democracy issues. Human rights have now become a demand for a country to be able to protect, defend, and guarantee the protection of every human right without oversight. That human rights are a set of rights that are inherent in the nature and existence of human beings as God's creatures and are His gifts that must be respected, upheld and protected by the state, law, government and every people for the honor and protection of human dignity.⁷

Awareness to uphold the values contained in Human Rights without any form of action that violates Human Rights.⁸ This includes providing protection to refugees or asylum seekers by providing humanitarian protection without violating their rights, i.e. upholding the values contained in human rights without taking any action that violates human rights.

⁷ Yuda Prasetya, "Legal Analysis of Human Trafficking Case as a Transnational Organized Crime That is Threatening State Security." *Lex Scientia Law Review* 4, No. 1 (2020): 134-141. <https://doi.org/10.15294/lesrev.v4i1.38635>

⁸ Yuwanda Tri Maryoga, "Human Rights at the Court: Criticism of the Human Rights Courts in Indonesia [Hak Asasi Manusia di Meja Hijau: Kritis atas Pengadilan Hak Asasi Manusia di Indonesia]". *Lex Scientia Law Review* 2, No. 2 (2018): 241-248. <https://doi.org/10.15294/lesrev.v2i2.27588>.

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 society⁹. 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 development¹⁰. In 1948, the Universal Declaration of Human Rights recognized compulsory primary 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.¹¹ 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.¹²

⁹ Nataliya Hren, Mykhailo Kelman, Maiia Pyvovar, Anna Koval, Yaroslav Melnyk, "Human Rights and Current Discriminatory Manifestations (on the Example of Age Discrimination in the Social and Communicative Sphere)." *The Age of Human Rights Journal* 19 (2022): 71-91. <https://doi.org/10.17561/tahrj.v19.7124>

¹⁰ Agaptus Nwozor, and Blessing Okhillu. "Child's Rights and the Challenges of Educating the Girl-Child: Assessing the Contributions of UNICEF in Nigeria." *The Age of Human Rights Journal* 18 (2022): 285-309. <https://doi.org/10.17561/tahrj.v18.6520>

¹¹ United Nations, 1989, Article 28

¹² United Nations, 2010b

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.¹³ 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,¹⁴ therefore the United Nations as an international organization also has the rights and obligations as intended.

The 1951 Convention is a fundamental framework for the protection and settlement of refugees. In its adoption, the 1951 Convention underwent one amendment. The amendment resulted in an addition to the Convention, the 1967 Protocol, which aims to improve the 1951 Convention. While the 1951 Convention originally only applied to persons leaving the European territory, the 1967 Protocol removed these restrictions and made the 1951 convention universal. The 1951 Convention is the only legal instrument that covers important aspects in the discussion of the refugee issue.

A refugee according to the 1951 convention is a person who is unable or unwilling to return to his country of origin due to fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.¹⁵ The implementation of the 1951 Convention applies without discrimination based on gender, age, disability, sexuality, or any other basis of discrimination. Furthermore, under certain exceptions, refugees should not be punished for illegally entering or staying, nor should they be allowed to expel or return, since protecting them is their responsibility as a party to the 1951 Convention. However, refugees can only be returned

¹³ Boer Mauna, *Hukum Internasional: Pengertian Peranana dan Fungsi dalam Era Dinamika Global* (Bandung: Alumni, 2008).

¹⁴ Mochtar Kusumaatmadja and Eddy R. Agoes, *Pengantar Hukum Internasional* (Bandung: Alumni, 2003), p. 101.

¹⁵ The 1951 Geneva Convention and 1967 Protocol Concerning the Status of Refugees

if there are elements of threat to national security and disruption of public order in the country.

Indonesia and Australia are two countries that equally respect the values of the rights of refugees and asylum seekers, but the two countries have different policies in terms of ratification of the 1951 Geneva Convention and the 1967 Protocol on the Status of Refugees, Indonesia has not ratified the 1951 Convention, the 1967 Convention on the Rule of the Refugee, while Australia has ratified the 1951 Genève Convention, In this study article, we will discuss and analyze the education rights policy of refugees in Indonesia and Australia.

2. Method

This study employed library research (normative or doctrinal), specifically legal research that employed secondary data sources (from library materials). The normative approach is a norm-building system. The norm system is about the principles, norms, laws and regulations, agreements and doctrines (teachings).¹⁶ 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,¹⁷ 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,¹⁸ Using legal materials, tertiary legal materials provide instructions or explanations for primary and secondary legal materials, including the Indonesian Dictionary, English

¹⁶ Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif* (Yogyakarta: Pustaka Pelajar, 2010).

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2010).

¹⁸ I. Nyoman Prabu Buana Rumiarta, Ni Luh Gede Astariyani, and Anak Agung Sagung Ngurah Indradewi. "Human Rights of Indigenous People in Indonesia: A Constitutional Approach." *Journal of East Asia & International Law* 15, No. 2 (2022). <http://dx.doi.org/10.14330/jeail.2022.15.2.10>

dictionary, and Legal Dictionary.¹⁹ All of these research methods are used to discuss and analyze the education rights policies of refugees in Indonesia and Australia.

3. Results & Discussion

A. The 1951 Geneva Convention and 1967 Protocol concerning the Status of Refugees

Declaration of Human Rights, which contains 30 articles, all of which describe the rights and obligations of mankind. There are 5 types of human rights according to the Universal Declaration of Human Rights, namely personal rights (right to guarantee personal needs), legal rights (right to guaranteed legal protection), civil and political rights, subsistence rights (right to guarantee the existence of resources to support life), and economic rights.²⁰ A number of universal or common rights are owned by every human being, namely the right to life, freedom and security. These rights are owned by every human being regardless of race, ethnicity, culture, religion, skin color, gender, political opinion, national origin, social status, or other background. Implementation is one of the stages in the public policy process. Usually, implementation is carried out after a policy has been formulated with clear objectives. Implementation is a series of activities in order to deliver policies to the public, so that these policies can bring the expected results. The series of activities includes

¹⁹ Anis Widyawati, Pujiyono Pujiyono, Nur Rochaeti, Genjie Ompoy, Nurul Natasha Binti Muhammad Zaki, "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions." *Lex Scientia Law Review* 6, No. 2 (2022): 327-358. <https://doi.org/10.15294/lesrev.v6i2.58131>

²⁰ Ni Putu Selyawati, and Maharani Chandra Dewi. "Implementation of Universal Human Rights Values Based on the Universal Declaration of Human Rights in Indonesia [Implementasi Nilai-Nilai HAM Universal Berdasarkan Universal Declaration of Human Rights di Indonesia]". *Lex Scientia Law Review* 1, No. 1 (2017): 41-56. <https://doi.org/10.15294/lesrev.v1i01.19481>.

the preparation of a set of follow-up regulations which are the interpretation of the said policy.

Based on Article 14 of the Universal Declaration of Human Rights 1948 which recognizes the right for people to seek asylum from indeed persecution in other countries, the United Nations Convention on the Status of Refugees adopted in 1951 constitute main foundation of international protection of refugees in at the moment.²¹ The convention entered into force on April 22, 1954, and only experienced one amendment that materialized with the 1967 Protocol, in which the Protocol removed geographical and time restrictions in the 1951 Convention.

The 1951 Convention, as a legal instrument after the second world war, at first it was limited only to people who left their country due to events that occurred before January 1, 1951 and in European territory. The 1967 Protocol removed these limitations and made the 1951 Convention universal in scope. The convention is also supported by the refugee protection movement in several regions, and also through the development of advanced international human rights law.²²

The 1951 Convention consolidates existing international instruments relating to refugees and provides the most comprehensive codification of the rights of refugee at the international level. Unlike the previous refugee instruments, which applied to certain groups of refugees, the 1951 Convention provides a single definition of the term “refugees” in Article 1. The emphasis of the definition is on protecting people from politics and other forms of persecution. A refugee is a person who is unable or unwilling to

²¹ United Nations General Assembly Resolution 429(V) of 14 December 1950, Nations General Assembly resolution 429(V) of 14 December 1950, available at <http://www.unhcr.org/refworld/docid/3b00f08a27.html>

²² The 1951 Geneva Convention and 1967 Protocol Concerning the Status of Refugees, www.unhcr.org

return to his or her country of origin because of a fundamental fear of being persecuted on grounds of race, religion, nationality, membership of a particular social group or political opinions.

The 1951 Geneva Convention and the 1967 Protocol on the Status of Refugees are status instruments and are based on rights and supported by a number of fundamental principles, notably non-discrimination, non-punishment and non-refoulement. The provisions of the Convention, for example, should be applied without discrimination against race, religion, or national origin. Developments in international human rights law have also strengthened the principle that the Convention should be applied without discrimination based on gender, age, disability, sexuality, or other grounds of discrimination. The Convention further states that, subject to certain exceptions, refugees shall not be punished for illegal entry or residence. Recognized that seeking asylum can allow refugees to violate immigration rules.²³

Such prohibition punishments may include charges of immigration or criminal acts related to seeking asylum, or detention without a process which should be based on seeking the asylum. Most importantly, the Convention contains various protections against the expulsion or return of refugees. The principle of prohibition of deportation or non-refoulement is so fundamental that no exceptions (reservations) or reductions to this principle are permitted. No one shall expel or return a refugee who is contrary to his will, by any means, to an area where he or she fears that his or her life or freedom will be threatened.

The 1951 Geneva Convention and the 1967 Protocol on the Status of Refugees set minimum basic standards for treatment of refugees, without excluding countries that provide more favourable treatment.

²³ The 1951 Geneva Convention and 1967 Protocol Concerning the Status of Refugees

These rights include access to court, basic education, employment, and provisions on documentation, including refugee travel documents in the form of passports.²⁴ This Convention shall not apply to all persons who can be identified as meeting the definition of a refugee in Article 1. In particular, this Convention shall not apply to persons who have serious grounds to suspect that they have committed war crimes or crimes against humanity, serious non-political crimes, or guilty of acts contrary to the purposes and principles of the United Nations.

B. International Law Regarding the Right to Education for Refugees and Asylum Seekers

The United Nations in the field of Education, which manages the fields of Education, Science, and Culture, namely the United Nations Educational, Scientific and Cultural Organization, abbreviated as UNESCO. The United Nations Educational, Scientific and Cultural Organization (UNESCO) is a United Nations Educational, Scientific and Cultural Organization which is a specialized agency of the United Nations in the field of Scientific and Cultural Education which was established in 1945. The purpose of the organization is to support peace and security by promoting cooperation between countries through education, science, and culture in order to increase mutual respect based on justice, the rule of law, human rights.²⁵

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

²⁴ The 1951 Geneva Convention and 1967 Protocol Concerning the Status of Refugees

²⁵ Worldmark Encyclopedia of Nations, *Encyclopedia United Nations Educational, Scientific and Cultural Organization*, available online at <<https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/united-nations-educational-scientific-and-cultural-organization-unesco>>

education.²⁶ 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.²⁷

The United Nations Convention, adopted in 1989, declared the rights of the child and affirmed that all children have the right to education without discrimination in any form. The Salamanca Statement and Framework for Action on Special Needs Education. The Declaration states the obligation of schools to accommodate all children, including children with physical, intellectual, social, emotional, linguistic or other disabilities. Schools should also provide educational services for disabled and talented children, street children, child workers, children from remote or migratory communities, children of ethnic or cultural minorities, and other vulnerable children.

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 society²⁸. 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

²⁶ Ellissa Priyanka, and Dudy Heryadi. "UNICEF Collaboration with Indonesia in Achieving Basic Education for All as Goal Two of the MDGs." *Padjadjaran Journal of International Relations* 2, No.1 (2020).

²⁷ Priyanka and Heryadi

²⁸ Nataliya, et.al., "Human Rights and Current Discriminatory Manifestations (on the Example of Age Discrimination in the Social and Communicative Sphere)."

every kid obtains a quality education that upholds and supports their right to dignity and healthy development²⁹. In 1948, the Universal Declaration of Human Rights recognized compulsory primary 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.³⁰ 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.³¹

In the 1951 UN Convention on Refugees it was found that refugees are: "any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a 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." That basically it is obligatory to have Well-

²⁹ Nwozor and Okhillu, "Child's Rights and the Challenges of Educating the Girl-Child: Assessing the Contributions of UNICEF in Nigeria."

³⁰ United Nations, 1989, Article 28

³¹ United Nations, 2010b

founded fear, this fear must have an objective basis and be truly based on realistic facts.³²

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.³³ 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,³⁴ therefore the United Nations as an international organization also has the rights and obligations as intended.

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.³⁵ 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

³² Walter Kälin, "Flight in Times of War." *International Review of the Red Cross* 83, No. 843 (2001): 629-650.

³³ Mauna, *Hukum Internasional: Pengertian Peranana dan Fungsi dalam Era Dinamika Global*

³⁴ Kusumaatmadja and Agoes, *Pengantar Hukum Internasional*

³⁵ Martha Finnemore, "Norms, Culture, and World Politics: Insights from Sociology's Institutionalism." *International Organization* 50, No. 2 (1996): 325-347. <https://doi.org/10.1017/S0020818300028587>

protection of children around the world.³⁶ UNICEF advocates that every child has the right to education. The role and legal policy of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in the Declaration of Human Rights for Peace in January 1997 stated that investing in education is not only to respect fundamental rights but also to build peace and progress for the nation. Education is a fundamental human right and is included in the 1989 Convention on the Rights of the Child.

In essence, the legal policy and the role of the United Nations organizations in granting the right to education to refugee children is based on the provisions of Article 22 paragraph 1 of the Convention on the Rights of the Child 1989, namely: States Parties shall take appropriate measures to ensure that a child who seeks refugee status or is considered as a refugee in accordance with applicable international or domestic law and procedures receives adequate protection and humanitarian assistance under this Convention and international human rights. Article 28: 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 opportunities.

C. The Education Rights Policies of Refugees in Indonesia and Australia

In the era of globalization where law enforcement is desired based on a good or standard legal framework (good legal system), a country if it enforces laws that violate human rights will definitely be criticized and even isolated by other countries as members of society. a world that is not committed to human rights.³⁷

³⁶ United Nations International Children's Emergency Fund (UNICEF), 2014.

³⁷ D. M. Sunarto, *Alternatif Meminimalisasi Pelanggaran Hak Asasi Manusia* (Bandung: Refika Aditama, 2007), pp. 139-140

In Indonesia, the term, meaning and meaning regarding Human Rights is not something new among the people. Since Indonesia's independence, there has been documentation of the Indonesian nation's struggle for independence which has contained the values and principles of human rights in fighting for Indonesian independence. Apart from being listed in the 1945 Constitution of the Unitary State of the Republic of Indonesia, Indonesia has also expressed a high commitment to various human rights instruments. In fact, Indonesia also has its own provisions regarding human rights, namely Law no. 39 of 1999 concerning Human Rights. In the provisions of Article 1 of Law no. 39 of 1999 concerning Human Rights stated that Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state law, government and everyone for the sake of honor and protection of human dignity.³⁸

Protection of human rights in the context of the realization of the right to education for refugees and asylum seekers who are in Indonesia, in this case the Indonesian government provides a policy-making of the fulfilment of the rights to education to the refugee and solicitor, even though Indonesia has not ratified the 1951 Geneva Convention and 1967 Protocol concerning the Status of Refugees. The status of Indonesia, which until now has not been a party to the 1951 Refugee Convention and the 1967 Protocol, made Indonesia in addressing the problem of refugees present in the territory of Indonesia limited, unlike when the Indonesian government chose to ratify the 1951 Convention on Refugees and Protocol 1967.

³⁸ Rintan Purnama Ayu Apriliani, "Law and Human Rights: Building Collective Awareness [Hukum dan HAM: Membangun Kesadaran Kolektif]". *Lex Scientia Law Review* 1, No. 1 (2017): 99-104. <https://doi.org/10.15294/lesrev.v1i01.19486>.

There are two reasons why Indonesia has not ratified the 1951 Refugee Convention and the 1967 Protocol, among others:

1) Aspect of security

That security aspects as a reason or obstacle will be faced by the Indonesian government when choosing to ratify the 1951 Refugee Convention and the 1967 Protocol. As a state guarantees security in its own country is a responsibility to be fulfilled by the state to its people, because by guaranteeing its security a country will create a comfortable and peaceful conditions, with conditions of peace and can optimally. That by creating a safe condition in a country, it can create maximum attractiveness for foreign investors who want to invest their capital in the country.

2) The economic aspect

That the economic aspect is one of the most important aspects for the sustainability and progress of a country, Indonesia as a country that still has a status as a developing country, of course the economy that is in Indonesia is not as large and as well as the developed countries that are in Europe. The question – domestic issues that exist within Indonesia itself are still very many and complex, the numbers of poverty and unemployment that still many color the list of domestic problems that to date still cannot be tackled, making it a consideration for the Indonesian government prefer not to ratify the 1951 Refugee Convention and the 1967 Protocol.

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.³⁹ 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.⁴⁰

Although the government of Indonesia has not ratified the 1951 Geneva Convention and 1967 Protocol concerning the Status of Refugees, the government still provides protection to refugees and asylum seekers, specifically on the realization of the right to education for refugees and asylum seekers:

- 1) Law No. 39 of 1999 on Human Rights, which has the standards of the Universal Declaration of Human Rights.
- 2) Act No. 35 of 2014 on Amendments to Law No. 23 of 2002 on the Protection of Children, which relates to the policy of protection of refugee children with the fulfillment of the right to education of elderly children. Law No. 35 of 2014 on the Protection of Children signed and ratified the Convention on the Rights of the Child.
- 3) Presidential Regulation No. 125 of 2016 on the Treatment of Refugees from Abroad specifically regulating refugees. Treatment of refugees from abroad that are specifically given protection and respect for the human rights of Refugees and Asylum Seekers.

³⁹ Laurensius Arliman, "Perlindungan Anak oleh Masyarakat Ditinjau dari Mazhab Sejarah di dalam Penerapan Prinsip the Best Interest of The Child Pada Kehidupan Anak di Indonesia." *Era Hukum: Jurnal Ilmiah Ilmu Hukum* 15, No. 1 (2017): 123-149. <https://doi.org/10.24912/era%20hukum.v15i1.668>

⁴⁰ 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

- 4) Letter of the Ministry of Education and Culture of the Republic of Indonesia No. 752553/A.A4/HK/2019 on the implementation of the right to education for foreign refugee children.

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 being⁴¹, 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.

Letter of the Ministry of Education and Culture of the Republic of Indonesia No. 752553/A.A4/HK/2019 on the Enforcement of the Right to Education for Foreign Refugee Children, is a policy of the Indonesian government that directly prioritizes the fulfilment of the right to education for refugees and asylum seekers or the fulfillment of education rights for refugee children. Letter of the Ministry of Education and Culture of the Republic of Indonesia No. 752553/A.A4/HK/2019 on the Implementation of the Right to Education for Foreign Refugee Children, has paved the way for school-age children of foreign refugees to receive formal education in the field of institutional education. The Indonesian government's policy to fulfill the right to education for children of refugees and asylum seekers should be respected, although Indonesia has not ratified the 1951 Geneva Convention and the 1967 Protocol on the Status of Refugees.

Australia has ratified the 1951 Geneva Convention and the 1967 Protocol on the Status of Refugees. As a country that has ratified the

⁴¹ Samantha Besson, "The Principle of Non-Discrimination in the Convention on the Rights of the Child." *International Journal of Childrens Rights* 13, No. 4 (2005): 433=461.

Refugee Convention, Australia has a legal obligation to protect refugees and asylum seekers entering its territory. One of Australia's obligations under the 1951 Geneva Convention and the 1967 Protocol on the Status of Refugees is to prohibit the return of refugees and asylum seekers to a country. This is the importance of the policy issued by the Australian government in providing protection to refugees and asylum seekers from abroad who are in the country.

The policy of the Australian state in fulfilling the right to education for refugees/children of refugee and asylum seekers under the 1951 Geneva Convention and the 1967 Protocol on the Status of Refugees, this is due to the country of Australia ratifying the convention.

Forms of policy given schools are a stabilizing feature in the lives of refugee students. They provide safe spaces for new encounters, interactions and learning opportunities. They also deliver literacy, the key to educational success, post-school options, life choices, social participation and settlement. Currently Australian schools are poorly funded and ill-equipped to provide effective English as a Second Language teaching and support.⁴²

In Australia, refugee education is piecemeal and dominated by psychological approaches that overemphasize pre-displacement conditions of trauma. Preoccupations with therapeutic interventions locate issues at an individual level and overlook broader dimensions of inequality and disadvantage,⁴³ that refugee education requires a sociopolitical approach that pays attention to post-displacement conditions and issues of racialization, acculturation and resilience. Such an approach makes evident the importance of good practice

⁴² Julie Matthews, "Schooling and Settlement: Refugee Education in Australia", *International Studies in Sociology of Education* 18, No. 1 (2008): 31-45. <https://doi.org/10.1080/09620210802195947>

⁴³ Matthews

interventions that address whole-school organizational processes and structures, policy, procedure, pedagogy and curricula.

Policy is Ministerial Council on Education Employment Training and Youth Affairs, the right to education of refugees In Australia, 89% of refugee students were enrolled in government schools. Migrants and refugees between the ages of 16 and 24 years receive 510 hours tuition and an additional 400 hours if they are survivors of trauma and torture or have low levels of schooling.⁴⁴ The establishment of English as a second language in the implementation of the education rights of refugees is a policy of the government.

In the fulfillment of the right to education for refugees in Australia there is a policy of providing psychological rehabilitation assistance to refugee children who are traumatized by events experienced while traveling from their country to the country of Australia, psychological recovery assistance is important to facilitate refugee children to follow the educational process in Australia.

Article 22 Paragraph 1 of the Convention on the Rights of the Child 1989 states that States Parties shall take appropriate measures to ensure that a child who applies for refugee status or is considered as a refugee in accordance with applicable international or domestic law and procedures receives adequate protection and humanitarian assistance under this Convention and international human rights. Article 28: States Parties recognize the right of the child to education, and shall seek to this right gradually and on the basis of equal opportunities.

However, the Operation Sovereign Borders policy in Australia has impacted the reduction in the fulfillment of the right to education for refugees entering the country. Operation Sovereign Borders is a border protection operation led by the Australian Defence Forces,

⁴⁴ Ministerial Council on Education Employment Training and Youth Affairs, Australia

aimed at stopping the maritime arrival of refugees and asylum seekers to Australia.⁴⁵

The Australian act of expelling refugees and refusing to allow them to enter the territory of Australia has violated Article 1 of the 1951 Convention on Refugees, while Australia has ratified the 1951 convention, but the expulsion of refugee entering the Australian sea border or waters is carried out by Australia in order to protect its country from criminal threats, so Australia does not immediately expel but is more in agreement with Papua New Guinea with agreed agreements.

In handling the Australian refugees made agreements with other countries such as Papua New Guinea, but the agreement slowly ceased to be implemented by Australia. As the latest agreement relates to the handling of asylum seekers when there is a boat of refugees to Australia, before they come to Australia they will first be taken to the island of Manus located in Papua New Guinea. There they will be processed to see if they are a refugee or not. Once they have been identified as a refugee, they will be immediately sent to Papua New Guinea and settled, and if they are not refugees they will then be returned to their respective countries.⁴⁶

The policy of a country in this case Indonesia or Australia in providing protection to refugees and asylum seekers in particular in the fulfillment of the right to compulsory education to be respected, even though such policies are not perfect because the country Indonesia or the country of Australia primarily prioritize the national interests from the aspect of humanity and economic aspects, which of

⁴⁵ Faridh Al Wajidi, and M. Alvi Syahrin. "The Handling Impact of Foreigners Seeking Protection According to Australian Policies and its Impact on Indonesia." *Journal of Law and Border Protection* 1, No. 2 (2019): 49-58. <https://doi.org/10.52617/jlbp.v1i2.172>

⁴⁶ Al Wajidi and Syahrin

course still respect the values of human rights of the refugee and Asylum Seeker.

4. Conclusion

Indonesia and Australia, despite having different policies regarding the ratification of the 1951 Geneva Convention and the 1967 Protocol on the Status of Refugees, both countries equally value the rights of refugees and asylum seekers. Indonesia has not ratified these conventions, citing security and economic reasons. However, it still provides protection to refugees and asylum seekers, including the right to education, through domestic legislation such as the Law on Human Rights and the Protection of Children. Australia, on the other hand, has ratified the conventions and implements policies to fulfill the right to education for refugees, with schools playing a crucial role in providing a safe environment for refugee students. However, the education system in Australia is underfunded and ill-equipped to effectively teach English as a Second Language. The Australian government provides specific funding for refugee education, including additional hours for survivors of trauma and torture. Despite imperfections in their respective policies, both countries prioritize national interests while respecting the human rights values of refugees and asylum seekers.

5. Declaration of Conflicting Interests

The authors state that there is no conflict of interest in the publication of this article.

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7. References

- Al Wajidi, Faridh and M. Alvi Syahrin. "The Handling Impact of Foreigners Seeking Protection According to Australian Policies and its Impact on Indonesia." *Journal of Law and Border Protection* 1, No. 2 (2019): 49-58. <https://doi.org/10.52617/jlbp.v1i2.172>
- Apriliani, Rintan Purnama Ayu. "Law and Human Rights: Building Collective Awareness [Hukum dan HAM: Membangun Kesadaran Kolektif]". *Lex Scientia Law Review* 1, No. 1 (2017): 99-104. <https://doi.org/10.15294/lesrev.v1i01.19486>
- Arliman, Laurensius. "Perlindungan Anak oleh Masyarakat Ditinjau dari Mazhab Sejarah di dalam Penerapan Prinsip the Best Interest of The Child Pada Kehidupan Anak di Indonesia." *Era Hukum: Jurnal Ilmiah Ilmu Hukum* 15, No. 1 (2017): 123-149. <https://doi.org/10.24912/era%20hukum.v15i1.668>
- Besson, Samantha. "The Principle of Non-Discrimination in the Convention on the Rights of the Child." *International Journal of Childrens Rights* 13, No. 4 (2005): 433-461.
- Fajar, Mukti and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif* (Yogyakarta: Pustaka Pelajar, 2010).
- Finnemore, Martha. "Norms, Culture, and World Politics: Insights from Sociology's Institutionalism." *International Organization* 50, No. 2 (1996): 325-347. <https://doi.org/10.1017/S0020818300028587>
- Henley, Joh and Julie Robinson. "Mental Health Issues among Refugee Children and Adolescents", *Journal Clinical Psychologist* 15, No. 2 (2011): 51-62. <https://doi.org/10.1111/j.1742-9552.2011.00024.x>
- Hren, Nataliya, Mykhailo Kelman, Maiia Pyvovar, Anna Koval, Yaroslav Melnyk, "Human Rights and Current Discriminatory Manifestations (on the Example of Age Discrimination in the Social and Communicative Sphere)." *The Age of Human Rights Journal* 19 (2022): 71-91. <https://doi.org/10.17561/tahrj.v19.7124>
- Kälin, Walter. "Flight in Times of War." *International Review of the Red Cross* 83, No. 843 (2001): 629-650.

- Kusumaatmadja, Mochtar and ETTY R. AGOES, *Pengantar Hukum Internasional* (Bandung: Alumni, 2003).
- Maryoga, Yuwanda Tri. "Human Rights at the Court: Criticism of the Human Rights Courts in Indonesia [Hak Asasi Manusia di Meja Hijau: Kritis atas Pengadilan Hak Asasi Manusia di Indonesia]". *Lex Scientia Law Review* 2, No. 2 (2018): 241-248. <https://doi.org/10.15294/lesrev.v2i2.27588>
- Marzuki, Peter Mahmud. *Penelitian Hukum* (Jakarta: Kencana, 2010).
- Matthews, Julie. "Schooling and Settlement: Refugee Education in Australia", *International Studies in Sociology of Education* 18, No. 1 (2008): 31-45. <https://doi.org/10.1080/09620210802195947>
- Mauna, Boer. *Hukum Internasional: Pengertian Peranana dan Fungsi dalam Era Dinamika Global* (Bandung: Alumni, 2008).
- McMichael, Celia, Sandra M. Gifford, and Ignacio Correa-Velez. "Negotiating Family, Navigating Resettlement: Family Connectedness amongst Resettled Youth with Refugee Cackgrounds Living in Melbourne, Australia." *Journal of Youth Studies* 14, No. 2 (2011): 179-195. <https://doi.org/10.1080/13676261.2010.506529>
- Nwozor, Agaptus, and Blessing Okhillu. "Child's Rights and the Challenges of Educating the Girl-Child: Assessing the Contributions of UNICEF in Nigeria." *The Age of Human Rights Journal* 18 (2022): 285-309. <https://doi.org/10.17561/tahrj.v18.6520>
- Phillips, Janet. *Asylum Seekers and Refugees: What are the Facts?*. (Canberra: Department of Parliamentary Services, Parliament of Australia, 2013).
- Prasetya, Yuda. "Legal Analysis of Human Trafficking Case as a Transnational Organized Crime That is Threatening State Security." *Lex Scientia Law Review* 4, No. 1 (2020): 134-141. <https://doi.org/10.15294/lesrev.v4i1.38635>
- Priyanka, Ellissa, and Dudy Heryadi. "UNICEF Collaboration with Indonesia in Achieving Basic Education for All as Goal Two of the MDGs." *Padjadjaran Journal of International Relations* 2, No.1 (2020).

- Rumiarta, I Nyoman Prabu Buana. *Hukum dan Kebijakan Publik* (Bekasi: Dewangga Publishing, 2022).
- Rumiarta, I. Nyoman Prabu Buana, Ni Luh Gede Astariyani, and Anak Agung Sagung Ngurah Indradewi. "Human Rights of Indigenous People in Indonesia: A Constitutional Approach." *Journal of East Asia & International Law* 15, No. 2 (2022). <http://dx.doi.org/10.14330/jeail.2022.15.2.10>
- Selyawati, Ni Putu and Maharani Chandra Dewi. "Implementation of Universal Human Rights Values Based on the Universal Declaration of Human Rights in Indonesia [Implementasi Nilai-Nilai HAM Universal Berdasarkan Universal Declaration of Human Rights di Indonesia]". *Lex Scientia Law Review* 1, No. 1 (2017): 41-56. <https://doi.org/10.15294/lesrev.v1i01.19481>
- Sunarto, D. M. *Alternatif Meminimalisasi Pelanggaran Hak Asasi Manusia*. (Bandung: Refika Aditama, 2007).
- The 1951 Geneva Convention and 1967 Protocol Concerning the Status of Refugees, available online at <www.unhcr.org>
- UNHCR, "Refugee Statistics", available online at <<https://www.unhcr.org/refugee-statistics/>>
- United Nations General Assembly Resolution 429(V) of 14 December 1950, Nations General Assembly resolution 429(V) of 14 December 1950, available at <http://www.unhcr.org/refworld/docid/3b00f08a27.html>
- United Nations International Children's Emergency Fund (UNICEF), 2014.
- Widyawati, Anis, Pujiyono Pujiyono, Nur Rochaeti, Genjie Ompoy, Nurul Natasha Binti Muhammad Zaki, "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions." *Lex Scientia Law Review* 6, No. 2 (2022): 327-358. <https://doi.org/10.15294/lesrev.v6i2.58131>
- Worldmark Encyclopedia of Nations, *Encyclopedia United Nations Educational, Scientific and Cultural Organization*, available online at <<https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/united-nations-educational-scientific-and-cultural-organization-unesco>>

“Refugees are mothers, fathers, sisters, brothers, children, with the same hopes and ambitions as us—except that a twist of fate has bound their lives to a global refugee crisis on an unprecedented scale.”

Khaled Hosseini

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