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The Human Rights perspective of the Educational Rights of Asylum Seeking Refugee Children

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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. Because asylum seekers have entered the territory of a country, that country has no other choice but to accommodate asylum seekers first, until the asylum seekers are received in a third country, the obligation of the transit country is not only to accommodate the state to guarantee the fulfillment of the basic needs or rights of asylum seekers while they are in transit countries, one of which is the right to education for 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 Seeking Refugee Children.

Keywords : Human Rights, Children's Education Rights, Asylum Seekers.

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INTRODUCTION

Background

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. Protection of child refugees from abroad is one of the main issues in handling refugees in Indonesia. The basic needs of child refugees, especially education, must be implemented. Upholding human rights in the context of education is manifested in the form of the right to education. Because everyone has these rights, the fulfillment of these rights has far-reaching implications. Realizing this right requires equal distribution of education which means the widest educational opportunity for everyone, including the fulfillment of children's rights to education for refugees or asylum seekers.

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 being⁴, the principle of universality of human rights states that all humans have the same rights without discrimination, including the granting of ³ 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 ³ 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

⁴ 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

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 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 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-founded fear, this fear must have an objective basis and be truly based on realistic facts.⁵

⁵ Walter Kälin, 2001, Flight in Time of War, dalam International Review of the Red Cross, Vol. 83, No. 843, September, p. 634-635.

In the context of the United Nations in the field of Education, which manages the Educational, Scientific and Cultural sector, namely the United Nations Educational, Scientific and Cultural Organization, abbreviated as UNESCO.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) is the United Nations Educational, Scientific and Cultural Organization which is a special agency of the United Nations in the field of Scientific and Cultural Education which was established in 1945. The organization's goal 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 and essential freedoms (The United Nations, Unesco History: 2022).⁶ Furthermore, this article will discuss the role of the United Nations in the field of education, namely the role of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

Education is one of the refugee community's highest priorities. The importance of real organizational commitment from the United Nations, namely the United Nations High Commissioner for Refugees (UNHCR), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations International Children's Emergency Fund (UNICEF), to guarantee the right to education for refugee children and teenagers. The lack of high-quality and protection education for refugees hinders the achievement of Education for refugee children goals.

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

⁶The United Nations, 2022, Unesco History, <https://www.unesco.org/en/brief>

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.

Research Methods

This study uses normative juridical research methods, through an international regulatory approach and a conceptual approach, in this case studying and analyzing legal materials and issues based 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. Understanding of international arrangements is important because the right to education of children of asylum seekers in transit countries is part of human rights in terms of fulfilling the right to education.

DISCUSSION

The role of the Indonesian state in providing educational rights to children of refugees from other countries or children of asylum seekers.

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 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.

That 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 (Smith, 2005).⁷ 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. against asylum seeker children.



Picture⁸ Overseas child refugees

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. Protection of child refugees from abroad is one of the main issues in handling refugees in Indonesia. The basic needs of child refugees, especially education, must be implemented.

⁷ Smith, Rhona K. M., 2005, Textbook on International Human Rights, edisi kedua, Oxford University Press, New York, p. 4.

⁸ Kaiciid Dialogue Centre , 2021, www.kaiciid.org

Upholding human rights in the context of education is manifested in the form of the right to education. Because everyone has these rights, the fulfillment of these rights has far-reaching implications. Realizing this right requires equal distribution of education which means the widest educational opportunity for everyone, including the fulfillment of children's rights to education for refugees or asylum seekers.

Rights in human rights have the main and first position or degree in social life because the existence of human rights has essentially been owned, carried and inherent in the human person since the moment of his birth.⁹ Based on this explanation, it can be analyzed that a human right that is owned and carried and attached to an individual human being since birth, then even in a difficult situation experienced by asylum seekers, they still have the right to be protected, and one of them is the right to education for children of asylum seekers.

The handling of Domestic Child Refugees is carried out in four stages, namely the first stage, namely the arrival stage of refugees, the second stage, namely the refugee data collection stage, the third stage, namely the refugee shelter stage, and the fourth stage, pre-departure of refugees. In the second stage, namely the refugee data collection stage, here lies the verification of data collection on the age of refugees who are adults, teenagers and children. So specifically at this stage of refugee data collection, it is important to collect data on the fulfillment of the education of asylum-seeking refugee children.

In general, provide protection and respect for children, so that children can feel all their rights, so that they are far from acts of violence and neglect. The child's right to education and activities related to education can use existing legal instruments both internationally and nationally.

⁹ A. Masyhur Effendi, 2005, *Perkembangan dimensi hak asasi manusia (HAM) & proses dinamika penyusunan hukum hak asasi manusia (HAKHAM)*, Ghalia utama, Bogor, p.8.

Whereas in the context of Child Refugee Handling can implement a four-stage protection scheme. That there are four stages, namely the first stage, namely the arrival stage of refugees, the second stage, namely the refugee data collection stage, the third stage, namely the refugee shelter stage, and the fourth



Picture¹⁰ Overseas refugees in Indonesia

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:

- a. prevention so that children do not become victims in emergency situations;
- b. record the number of Children who need Special Protection in emergency situations;
- c. mapping the basic and specific needs of children who need special protection in emergency situations;
- d. guarantee the security and safety of the Child in an Emergency Situation;
- e. data collection of children and their families for family tracing and reunification; priority of emergency rescue, evacuation and security measures;

¹⁰ Photograph : Indra Yoga, 2021, VOA Indonesia

- f. restoration of physical and psychological health;
- g. provision of legal assistance, assistance, physical, psychological and social rehabilitation of Children in Emergency Situations;
- h. parenting;
- i. improvement of facilities needed by Children in Emergency Situations;
- j. 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;
- k. fulfillment of special needs for Children with Disabilities and Children experiencing psychosocial problems;
- l. waiver of education costs, both in formal and non-formal educational institutions during the emergency period;
- m. provision of services to fulfill the child's identity rights and important documents lost due to emergency situations; and/or
- n. provision of Social Reintegration services.

Children in Government Regulation No. 78 of 2021 concerning Special Protection for Children is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Special protection is a form of protection received by children in certain situations and conditions to get a guarantee of a sense of security against threats that endanger themselves and their lives in their development. In this particular case the provisions of Article 6 letters j and i relating to the fulfillment of children's education.

The Convention on the Rights of the Child guarantees the principle of non-discrimination in many places. The Convention on the Rights of the Child is the most important and common non-discrimination clause. For all children under the jurisdiction of a country even if they are foreigners and in irregular situations, refugee children (asylum seekers) are more specifically protected from discrimination under Article 22 of the Convention on the Rights of the Child. Article 22 of the Convention on the Rights of the Child states “*States Parties shall take all 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, whether unaccompanied or*

accompanied by another their parents or by others, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and in other international human rights or humanitarian instruments to which these States are parties."

Article 22 of the Convention on the Rights of the Child develops the obligation of States Parties (or transit countries) to ensure material equality for children, one of which is educational material and to take positive steps to promote equality without discrimination.

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 Fulfillment³ of the Right to Education for Children³ 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.

The International arrangements related to the education rights of asylum seeker/refugee children in transit countries.

¹ The provision of educational opportunities is one of the highest priorities of refugee communities. Refugee mothers, fathers, and children the world over emphasise that education is "the key to the future," that it will help bring peace to their countries, that despite not knowing "what will happen tomorrow," education brings stability and hope. Access to education is a basic human right and is linked to poverty reduction, holding promises of stability,

economic growth, and better lives for children, families, and communities. In 1948, the Universal Declaration of Human Rights recognised compulsory primary education as a universal entitlement.

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (United Nations, 1979) called for no discrimination in educational provision for men and women, and the 1989 Convention on the Rights of the Child (CRC) 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 (United Nations, 1989, Article 28). The right to education for refugees is articulated in Article 22 of the 1951 Convention relating to the Status of Refugees, resolution 64/290 (July 2010) of the Human Rights Council of the United Nations General Assembly on the right to education in emergencies (United Nations, 2010a), and in the draft resolution to the Human Rights Council on the right to education for refugees, migrants and asylum seekers (June 2011) (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.¹¹ 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,¹² therefore the United Nations as an international organization also has the rights and obligations as intended.

¹¹ Boer Mauna, 2008, *International Law-Understanding, Role, and Function in the Era of Global Dynamics*, Alumni, Bandung, p. 458.

¹² Kusumaatmadja, Mochtar & Etty R. Agoes, 2003, *Introduction to International Law*, Alumni, Bandung, p. 101.

Every international community and government in countries in the world and all components are obliged to educate the life of their nation which is one of the goals of a country. Education in principle demands the application of the principles of democracy, decentralization, justice, and upholding human rights in the life of the nation and state. In relation to education, these principles will have a fundamental impact on the content, processes and management of the education system. In addition, science and technology are developing rapidly and giving rise to new demands in all aspects of life, including in the education system.

Whereas in the perspective of an international scope, namely 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.¹³

Education functions to develop capabilities and shape the character and civilization of a dignified nation in the context of educating the nation's life, aiming at developing the potential of students to become human beings who believe and fear God Almighty, have noble character, are healthy, knowledgeable, capable, creative, independent, and become democratic and responsible citizens. This is related to the UNESCO Constitution, namely :

¹³ Wikipedia, 2022, Encyclopedia United Nations Educational, Scientific and Cultural Organization.

“...Since wars begin in the mind of men, it is in the minds of men that the defenses of peace must be constructed...” (Constitution UNESCO).

UNESCO's goal is to support peace and security by promoting cooperation between nations through education, science and culture in order to promote mutual respect based on justice, the rule of law, human rights and fundamental freedoms (Article 1 of the UNESCO Constitution).

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. 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.¹⁴

The foundations of education endeavour, amongst other things, to provide teachers with an understanding of the social, cultural and political nature of education.¹⁵ The importance of the role of a teacher or someone who works as a teacher, in this case for the progress of a country to achieve prosperity.

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

¹⁴ 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

¹⁵ Mikko Puustinen, Janne S'antti, Hannu Simola, 2022, Five decades of persistent decontextualisation of academic teacher education in Finland, International Journal of Educational Research, Vo. 116 No. 1 , p. 2.

followed by The Salamanca 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.

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. Improving the quality of human life so that they can contribute as a whole in the series of national development can be done one way through the fulfillment of basic needs in the field of education.

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.¹⁶ 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

¹⁶ Finnemore, M., 1996, Norms, culture, and world politics: insights from sociology's institutionalism. *International Organization*, 50(2), p. 325–347.

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.¹⁷ UNICEF campaigns that every child has the right to obtain 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 said that Investing in education is not only to respect fundamental rights but also to build peace and progress for the world community, every child or generation Youth is heritage and very important to be preserved. As education is a fundamental human right and listed in the 1989 Convention on the Rights of the Child.

Basically, 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 1² 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.

As education is a lifelong process that can save, change and even sustain life. However, it is different from education for children in conflict areas or children who have become refugees as a result of conflict, they are very vulnerable and suffer during the conflict and forced displacement. There are many challenges in providing education in emergencies for children. Education is one of the refugee community's highest priorities. The importance of real

¹⁷ United Nations International Children's Emergency Fund (UNICEF), 2014.

organizational commitment from the United Nations, namely ² the United Nations High Commissioner for Refugees (UNHCR), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations International Children's Emergency Fund (UNICEF), to guarantee the right to education for refugee children and teenagers. The lack of high-quality and protection education for refugees hinders the achievement of Education for refugee children goals.

CLOSING

Conclusion

Whereas in the context of Child Refugee Handling can implement a four-stage protection scheme. That there are four stages, namely the first stage, namely the arrival stage of refugees, the second stage, namely the refugee data collection stage, the third stage, namely the refugee shelter stage, and the fourth stage, pre-departure of refugees.

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. Children in Government Regulation No. 78 of 2021 concerning Special Protection for Children ⁴ is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Special protection is a form of protection received by children in certain situations and conditions to get a guarantee of a sense of security against threats that endanger themselves and their lives in their development. In this particular case the provisions of Article 6 letters j and i relating to the fulfillment of children's education.

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