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**The Rights of Children Refugee in Transit Country under the CRC, A Case of Indonesia:
An Intended Negligence on the Implementation of Non-Discrimination Principle?**

Debby Kristin,* Chloryne Trie Isana Dewi**

ABSTRACT

Civil wars in Middle Eastern countries and several countries in Africa have resulted in an increased influx of refugees seeking refuge in Indonesia every year. Although Indonesia is not their final destination, they prefer to wait in a transit country rather than experience terror and persecution in their home country., As a non-signatory country to the 1951 Geneva Convention, for humanitarian reasons, Indonesia allows those people who already in the territory of Indonesia to temporary stay until they status are clear. 28% of the refugees registered with the United Nations High Commissioner for Refugees (UNHCR) in Indonesia are under 18 years of age. Being a refugee child in a transit country keeps them away from the threat of war crimes in their country, nonetheless it turns out that there are basic rights that cannot be fully fulfilled. The 1989 Convention on the Rights of the Child (CRC) regulates state obligation to fulfil the rights of the child in any situation without discrimination. Indonesia as a transit country and state party to the CRC facing a dilemma in assisting the child refugees. This article will analyze whether Indonesia has responsibility for child refugees in its jurisdiction as regulated in the CRC. By research, Indonesia can be considered to fail to conduct its obligation under CRC. Hence Indonesia can be held responsible for its negligence in complying its obligation under the CRC. Nonetheless, there are measures that can be taken by the Indonesian Government through cooperation with international communities as well as corporations to tackle the challenges in implementing the CRC particularly in regard to refugee children.

Keywords: Basic Rights, Refugee Children, State Responsibility

**Hak Pengungsi Anak di Negara Transit Berdasarkan Konvensi Hak Anak,
Kasus di Indonesia: Pengabaian yang Disengaja?**

ABSTRAK

Perang sipil di negara Timur Tengah dan beberapa negara di Afrika menghasilkan gelombang pengungsi yang mencari perlindungan ke Indonesia meningkat setiap tahunnya. Mereka lebih memilih untuk menunggu di negara transit daripada harus merasakan teror dan persekusi di negara asalnya. Indonesia bukan negara peserta Konvensi Jenewa 1951, namun dengan alasan kemanusiaan menampung untuk sementara para pencari suaka sampai status mereka jelas berdasarkan penilaian UNHCR. Sebesar 28% dari pengungsi yang terdaftar di United Nations High Commissioner for Refugees (UNHCR) Indonesia

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* LL.M. Candidate in Human Rights at Central European University Austria, Quellenstraße 51, 1100 Vienna, Austria, kristin_debby@student.ceu.edu.

** Researcher at Indonesian Society for Human Rights (PAHAM), Jl. Imam Bonjol No. 21 Bandung, Indonesia, c.risanadewi@gmail.com.

berumur di bawah 18 tahun. Menjadi anak yang berada di negara transit memang menjauhkan mereka dari ancaman kejahatan perang di negaranya, namun ternyata tidak seluruh hak asasi mereka dapat dipenuhi di negara transit. Konvensi Hak Anak 1989 mengatur kewajiban negara untuk memenuhi hak asasi anak dalam situasi apapun tanpa diskriminasi. Indonesia sebagai negara transit dan juga a peratifikasi Konvensi Hak-hak Anak 1989 (KHA) menghadapi dilema dalam menghadapi anak-anak pencari suaka. Artikel ini akan menganalisa apakah Indonesia melakukan pelanggaran terhadap pemenuhan hak bagi para pengungsi anak sehingga dapat dikenai tanggung jawab negara. Indonesia dapat dikatakan gagal dalam memenuhi kewajibannya berdasarkan KHA sehingga dapat diminta pertanggungjawaban atas kelalaiannya. Namun terdapat berbagai upaya yang dapat dilakukan oleh pemerintah Indonesia dengan bekerjasama dengan berbagai Lembaga internasional maupun nasional serta perusahaan untuk mengatasi permasalahan dalam penerapan KHA terutama terkait hak pengungsi anak.

Kata Kunci: Hak-Hak Dasar, Pengungsi Anak, Tanggung Jawab Negara

A. INTRODUCTION

There are three types of State responsibilities in order to secure human rights: to respect, to protect, and to fulfill.¹ They are inherently conducted by the State either in "positive" or "negative" acts. There is a time when the Government must be active to ensure that all people can enjoy their rights. On the other hand, to ensure that everyone can enjoy their rights, the Government must not interfere or become idle. Once a State is unable or unwilling to assure its people's rights, it could be categorized as human rights violation. It could be formed as a civil war, crimes against humanity, or persecution that force people to move simply to live and seek asylum. This can make them categorized as refugees.

According to the data provided by the United Nations High Commissioner for Refugees (UNHCR) in Indonesia, by the end of December 2019, the total number of refugees and asylum seekers living within

Indonesia's borders were 13.657.² Three nationals with the most illegal immigrants in Indonesia are from Afghanistan, Iran, and Pakistan.³

Indonesia's Government does not have an official definition of refugees, moreover regulations on their rights and responsibilities. This is due to the condition that Indonesia is not one of the State Parties in the Convention of the Status of Refugees 1951. Thus, Indonesia does not have an obligation to provide a specific law for these refugees. Nevertheless, President Decree No. 125 the Year 2016 regarding the Handling of Refugees from Other Countries shows that the Indonesian Government has concern on the refugees who transit in Indonesia. In this decree, Indonesian Government allows refugees to stay temporarily in Indonesia⁴, even though by law, they do not have any legal basis to be treated as refugees.

¹ Office of the United Nations High Commissioner for Human Rights (OCHR), "International Law", <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>. Accessed on 4th of December 2020.

² Indonesia UNHCR, "2019 Year-End Report. Operation: Indonesia", at 2, <https://reporting.unhcr.org/sites/default/files/pdfsummaries/GR2019-Indonesia-eng.pdf>. Accessed on 4th of December 2020.

³ Kurnia, Asep. *Imigran Ilegal Potret Penanganan dan Pencegahan dalam Perspektif Sistem Manajemen Nasional*. Jakarta: International Organization for Migration, 2011, at 4.

⁴ Indonesian President Decree Number 125 Year 2016 on Handling Refugee.

Refugee is one of the most vulnerable groups in the world.⁵ There are two categories of vulnerable situations found in refugees. First is situational, it refers to the situations on the road or in destination countries that place migrants at risk. The second one is a unique feature; this relates to unique features or circumstances that put an individual at particular risk faced by a person. Children are in both categories that make them the most vulnerable refugees.⁶

Although Indonesia has no obligation under the Refugee Convention 1951 since it is a non-signatory party to it, Indonesia is a party to the 1989 Convention on the Rights of the Child (CRC). The CRC obligates every State Party to ensure the fulfillment of children's rights. This also apply to refugee children anywhere, as Article 2 applies the non-discrimination principle as basic principle in protecting children's right.

The refugee children in Indonesia unquestionably face many problems particularly in regard to their basic rights. At least there are three socio-economics rights that are vulnerable and not fulfilled by Indonesia. These children are unable to access formal education due to the Indonesian national regulation. In addition, they found difficulties in approaching hospitals due to many

limitations. Lastly, they live with inadequate standard of living.

The UNHCR report has shown that from 3.3794 refugee children in Indonesia, only 579 children had a chance to study in national schools.⁷ This was caused by the unavailability of relevant documents such as certificates or evaluation reports of last education from their home country. Indonesian schools cannot accept those children since it is difficult to determine which level of education they are supposed to be. Other than that, for those who were born in Indonesia, they have no birth certificate to indicate their identity and nationality.⁸ The Indonesian education system in primary level requires several legal documents including birth certificate to enroll in public schools.⁹

Another issue is regarding adequate standard of living and right to health which are interrelated. In Indonesia, a person who is recognized as a refugee is prohibited from working because of their inherent legal status. This challenging circumstance becomes more problematic when a family with children or Unaccompanied Refugee Children (UAC) cannot access public health simply because they have no income to pay the bills. Their life usually depends on the assistance from UNHCR or service providers that provide them annually.

⁵ Icelandic Human Rights Centre, "The Human Rights Protection of Vulnerable Groups", <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups>. Accessed on 6th of October 2020

⁶ United Nations, "Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum", 1997, <https://www.unhcr.org/afr/3d4f91cf4.pdf>. Accessed on 16th of December 2020; United Nations High Commissioner for Refugees (UNHCR), "Persons at Heightened Risk - Emergency Handbook",

<https://emergency.unhcr.org/entry/43322/persons-at-heightened-risk>. Accessed on 16th of October 2020.

⁷ Indonesia UNHCR, "Indonesia Monthly Statistical Report - January 2020", 2020, <https://reporting.unhcr.org/sites/default/files/UNHCR%20Indonesia%20Monthly%20Statistical%20Report%20-%20January%202020.pdf>. Accessed on 16th of October 2020.

⁸ Live interview with Mr. Firmansyah, one of Organization for Migration (IOM) Indonesian Staff.

⁹ Article 7 of Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 14 Year 2018

More than 30 refugee children under the Church World Service (CWS), a non-government organization as the implementing partner of UNHCR, can get a privilege of health facilities after MoU signing by the organization with the local public health facility (Puskesmas) and some hospitals around Greater Jakarta.¹⁰ They can freely access Puskesmas, but not all can visit a big hospital or grant for the free charge of medication; it must be sorted case by case. However, there are still hundreds of refugee children who are unable to get those access. For some, even though they thoroughly agree to cover all the bills for their sickened children (from scabies to cancer); still, it is a lengthy procedure to conduct, and unfortunately, the disease is getting worse.¹¹

To date, the death rate caused by this COVID-19 has reached 22,911 people in Indonesia.¹² The refugees are living in a modest apartment or *rumah susun*, which forces them to share the room with more than three people.¹³ The Covid-19 direct exposure may affect them easily. They can access the swab test, but with a price of approximately USD 65-120 refugees are unlikely to afford it.

Unable to work to thrive, the refugees find it hard to feed themselves with nutriment food or even a place to live. CWS Indonesia, with their limited funding,

is only able to support with cash assistance for 30 Refugee children under their mandate around USD 15per week per person. According to Indonesian meals standard, this amount is sufficient to obtain healthy nutrient food with purchase in traditional markets. However, due to different dietary cultures, the refugees cannot accept local meals and instead shall manage the money to be sufficient enough that makes them not starving. If it follows their dietary style, it can spend 4-5 times the allowance given. As a result, these refugee minors are unable to manage themselves with balanced healthy nutrient food that makes them meet health problems.¹⁴

Furthermore, It is not surprising meeting refugee children sleeping on the sidewalks of the UNHCR building without roofs and plinths. More than a hundred people, including children, live in front of Kalideres Detention Center not long ago, patiently waiting for the International Organization on Migration (IOM) to rescue them from their sorrow.¹⁵ Alternatively, they simply just depended on themselves with the charitable action from the philanthropist while visiting them. Some of these refugee families must stay in a small room with a minimal amount of food and cannot go outside the house or be isolated.¹⁶

¹⁰ Live interview with Child Protection Officer in Church World Service (CWS) Indonesia.

¹¹ Tauson, Michaelle. "Forgotten Futures: The Lives of Refugee Children in Urban Areas of Indonesia and Thailand", 2018. https://resourcecentre.savethechildren.net/node/13474/pdf/forgotten_futures_online_version.pdf. Accessed on 4th of November 2020.

¹² Satgas Penanganan COVID-19, "Peta Sebaran COVID-19", <https://covid19.go.id/peta-sebaran>. Accessed on 4th of January 2021.

¹³ Joniad, J.N. "Across Indonesia, Latest Covid-19 Surge Adds to Woes of Refugees in Limbo", 2020,

<https://southeastasiaglobe.com/refugees-covid-19-indonesia/>. Accessed on 4th of January 2021.

¹⁴ Live interview with Child Protection Officer in Church World Service (CWS) Indonesia.

¹⁵ Baskoro, Yudha. "Refugees Demand Immediate Resettlement by UNHCR", <https://jakartaglobe.id/vision/refugees-demand-immEDIATE-resettlement-by-unhcr/>. Accessed on 16th of December 2020.

¹⁶ Hoffman, Sue, "Living in Limbo: Iraqi Refugees in Indonesia". *Refugee: Canada's Journal on Refugees*, vol. 28, no. 1, 2011, pp. 15-24, at 21.

From these phenomena, the authors will raise the indication whether Indonesia can be considered to fail in upholding its responsibility on human rights due to their incompetence in ensuring the enjoyment of socio-economic rights of refugee children staying in Indonesia under the CRC. In addition, this article will discuss how Indonesia shall act as a duty holder in fulfilling human rights for refugee children by learning from good practice from neighboring countries with similar situations, such as Malaysia and Thailand.

B. LEGAL GUARANTEE ON THE RIGHT TO EDUCATION, THE RIGHT TO HEALTH AND THE RIGHT TO ADEQUATE STANDARD OF LIVING

The never-ending civil war in the Middle East¹⁷ and Africa¹⁸ causing many people who are victims of the incident forced to move their home area to another area, either for a temporary period or for a long time.¹⁹ Individuals or groups of people who make this migration or are born outside of their home area can be called

immigrants.²⁰

Those immigrants are trying to find refuge for safety and places that can fulfill their fundamental rights. Those who are proven or deemed to have received persecution in their country or region of origin for specific reasons as stipulated in the Refugee Convention 1951 can then be declared as Refugees.²¹ Someone seeking protection but their claim for refugee status has not been determined is called Asylum Seeker.²² People who are forced to flee their homes to prevent themselves from impacts, armed conflict, or any inhumane treatment, but not across the border of its country called Internally Displaced Person (IDP).²³ However, in this paper, the Authors only discuss Refugee and Asylum Seekers.

There are two classifications of immigrants, they are documented and undocumented migrant. The documented migrant is entering one country subject to the immigration law requirements, such as having a visa or passport and other related travel documents.²⁴ The undocumented or

¹⁷ Palik, Julia (*et.al.*). "Conflict Trends in the Middle East, 1989–2019 - Syrian Arab Republic," *ReliefWeb*, <https://reliefweb.int/report/syrian-arab-republic/conflict-trends-middle-east-1989-2019>. Accessed on 6th of November 2020.

¹⁸ Kusow, Abdi Mohamed. "The Genesis of the Somali Civil War: A New Perspective," *Northeast African Studies*, Vol.1, No. 1, 1994, pp. 31-46, at 31. Available at: <http://www.jstor.org/stable/41932034>.

¹⁹ Kok, Pieter. "The Definition Of Migration And Its Application: Making Sense Of Recent South African Census And Survey Data". *Southern African Journal of Demography*, vol. 7, no. 1, 1997, pp. 19-30, at 20. Available at: <http://www.jstor.org/stable/20853242>.

²⁰ Coleman, David. "Immigration, Population and Ethnicity", <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-population-and-ethnicity-the-uk-in-international-perspective/>. Accessed on 6th of November 2020.

²¹ Article 1 of Convention Relating to the Status of Refugees 1951 define Refugee as any person "owing to

well-founded fear of being persecuted for reasons of race, nationality, member of particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

²² United Nations High Commissioner for Refugees (UNHCR), "Asylum-Seekers", <https://www.unhcr.org/asylum-seekers.html>. Accessed on 9th of November 2020.

²³ OCHA. "Guiding Principles on Internal Displacement", <https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>. Accessed on 4th of November 2020.

²⁴ Article 8 Paragraph (2) of Law No. 6 Year 2011 on Immigration: "every foreigner who enters the territory of Indonesia must have a valid visa and is still valid unless otherwise stipulated under this Law and international agreements". This paragraph mandates

irregular migrant is the opposite, in which they enter the territory of another country unlawfully or violate the country's immigration rules.²⁵ In Indonesia, most refugees enter through legal means; they have a passport and a visa on arrival. Nevertheless, what then became the problem is that they never extend their residence permit, also known as "overstay."²⁶ This includes children who came with documents with citizenship of their home country or even children who were then born in Indonesia, making them have no legal document.

This situation is a dilemma for a country such as Indonesia. On one hand they violate Indonesian law and Indonesia has authority to expel and return them home. Nonetheless, it is found that they are asylum seekers who face fear of persecution and other horrifying terror in their home country. These people have the rights to be protected as guaranteed by international law. .

As a subject of international law and as an international community in conducting relations, the State requires international agreements to regulate the actions to be taken by each country. Consent to be bound towards an international convention is a form of follow up action of

a State after completing negotiating a new treaty.²⁷ The definition of binding here is an agreement between countries that results in rights and obligations by the parties who make and agree to it.²⁸ Hence, by a treaty, each country can be bound through this juridical instrument.²⁹ This is related to the principles of "*pacta sunt servanda*". This principle requires that in an agreement, the most important thing is consent, namely the parties' engagement in the Convention.³⁰ To make a treaty legally binding to a state, the State shall ratify the treaty and adopt it to its national law.³¹ Below are relevant instruments ratified by Indonesia including national legislation particularly regulating the three rights mentioned above.

1. Universal Declaration of Human Rights

In 1948, the United Nations adopted this Declaration as a universal standard for protecting human rights.³² This Declaration contains more than 20 rights covering both Civil and Political Rights also Socio-Economic Rights.³³ Article 25 of the Declaration stated that all people have the right to a standard living for the health and well-being of themselves, including their family.³⁴ Expressly,

that every official foreigner (immigrant) is a migrant who enters Indonesia following the Indonesian immigration regulations in this Law.

²⁵ Article 1 Paragraph (1) Regulation of the Director General of Immigration concerning the Handling of Illegal Immigrants Number IMI-1489.UM.08.05 of 2010.

²⁶ UN Migration IOM. "World Migration Report 2020", *International Organization for Migration*, 2020, https://publications.iom.int/system/files/pdf/wmr_2020.pdf. Accessed on 4th January 2021.

²⁷ Kusumohamidjojo, Budiono *Suatu studi terhadap aspek operasional Konvensi Wina tahun 1969 tentang hukum perjanjian internasional*. Bandung: Binacipta, 1986, at 4.

²⁸ Kansil, C.S.T. and Christine S.T. Kansil, *Modul Hukum Internasional*, Jakarta: Djambatan, 2002, at 1.

²⁹ Mauna, Boer. *Hukum Internasional: Pengertian, Peranan dan Fungsi dalam Era Dinamika Global*, Bandung: PT Alumni, 2003, at 82.

³⁰ Article 26 of Vienna Convention on the Law of Treaties 1969

³¹ Article 11 of Vienna Convention on the Law of Treaties 1969

³² Clapham, Andrew. *Human Rights: A Very Short Introduction*, New York: Oxford University Press, 2015, at 50.

³³ Universal Declaration of Human Rights (UDHR) 1948.

³⁴ Article 25 of Universal Declaration of Human Rights

Article 26 granted access to education must be secured by the Government to provide it for everyone.³⁵

2. International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 25 UDHR 1948 stating the right to a minimum standard of living adequate for their health and welfare³⁶ This is more elaborated in Article 11 of the International Covenant on Economic, Social, and Cultural Rights regarding the right to an acceptable standard of living, including their primary needs.

Article 12 protects the right to the highest attainable standard of health. Moreover, In Paragraph 12 (b) of General Comment No. 14 regarding Article 12 of the ICESCR explains that the State is obliged to make efforts to improve all aspects of environmental health to prevent as well as to treat and control all infectious diseases related to work and to provide conditions that guarantee all medical care and attention.

Article 13 of the Covenant mentioned that primary education must be accessible for everyone to enjoy it. Moreover, the Government must ensure that its citizens can enjoy all the rights in this Covenant.

3. Convention on the Rights of the Child (CRC)

Any person who is below 18 years old is considered as a child under The CRC.³⁷

As mentioned previously, children are the most vulnerable group because they cannot stand alone to live a life without help from others.³⁸ A simple example of a five-year-old child who cannot cook and provide nutritious food by himself; he/she needs someone else who is older than him to get it. Therefore, children are protected by a particular legal umbrella, such as the Convention on the Rights of the Child 1989.

Article 24 of the CRC, saying that the State must ensure the children in its land can enjoy the highest standard of health care.³⁹ Under Article 27 of the CRC, Indonesia must be obliged to this provision regarding fulfilling a living standard that is sufficient for the physical, emotional, spiritual, moral, and social growth of the child in their territory.⁴⁰

The Government acknowledges that all children have access to have a primary education that has been granted under Article 28 of this Covenant.⁴¹

4. Constitution of the Republic of Indonesia 1945

In Indonesian constitution, several specific articles discuss each citizen's rights and freedoms—the right to earn a humane livelihood granted in Article 27 (2). The right to enjoy a good and healthy environment and obtain medical care is specifically ruled in

1948.

³⁵ Article 26 of Universal Declaration of Human Rights 1948.

³⁶ Article 25 of Universal Declaration of Human Rights 1948.

³⁷ Article 1 of Convention on the Rights of the Child 1989.

³⁸ PUSHAM UII. *Hukum Hak Asasi Manusia*. Yogyakarta:

Pusat Studi Hak Asasi Manusia UII, 2008, at 139.

³⁹ Article 24 of Convention on the Rights of the Child 1989.

⁴⁰ Article 27 of Convention on the Rights of the Child 1989.

⁴¹ Article 28 of Convention on the Rights of the Child 1989.

Article 28H (1). Every citizen should get primary education, and the Government must fund that activity is implied in Article 31 (2) of the Constitution. Accordingly, it can be seen that the legal basis of the Indonesian State guarantees the full fulfillment of the socio-economic rights of its citizens and becomes a touchstone for each regulation under it.

5. Law No. 39 of 1999 on Human Rights

This is a specific statutory related to human rights in Indonesia. Concerning the right to self-development that is stipulated in the second part of this regulation, in article 11, the State guarantees that everyone has the right to fulfill their basic needs for a decent life.⁴² Article 60 explicitly guarantees the right to education and teaching for children.⁴³ More specific In article 62, it is stated that every child has the right to get proper health services and social security according to their needs.⁴⁴ These articles are in accordance with the Indonesian Constitution as the touchstone.

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

The 1945 Constitution and Law 39/99 are some of the reasons for forming this special law on Child Protection

including the ratification of Indonesia to the CRC. This regulation discusses the rights of children and the obligations of parents or guardians under the basic principles of the CRC, namely:⁴⁵

1. Non-discrimination
2. The best interest of the child
3. Right to life/survival
4. Participation

These four principles then underlie the contents of the laws and regulations. Accordingly, the right to live, grow, develop, and participate by the dignity of humanity must be enjoyed by all children and this is regulated in Article 4.⁴⁶ Every child has the right to obtain health services and social security following their needs as regulated in Article 8.⁴⁷ This is then strengthened by Article 44, where the Government is obliged to provide comprehensive health facilities for children even when the child is still in the womb.⁴⁸ The next Article, explicitly regulates the right to education that all children must enjoy.⁴⁹ The State is obliged to provide nine years of primary education by providing the broadest possible opportunity for children to obtain an education, per Article 53 of this Law.⁵⁰

7. Presidential Decree Number 36 of 1990 on the Ratification of the Convention on the Rights of the Child
As a form of Indonesia's commitment to upholding human rights, especially

⁴² Article 11 of Law No. 39 of 1999 on Human Rights.

⁴³ Article 60 of Law No. 39 of 1999 on Human Rights.

⁴⁴ Article 62 of Law No. 39 of 1999 on Human Rights.

⁴⁵ Article 2 of Law No. 23 Year 2002 on Protection of the Child; Articles 2 and 3 of Convention on the Rights of the Child 1989.

⁴⁶ Article 4 of Law No. 23 Year 2002 on Protection of the Child.

⁴⁷ Article 8 of Law No. 23 Year 2002 on Protection of the Child.

⁴⁸ Article 44 of Law No. 23 Year 2002 on Protection of the Child.

⁴⁹ Article 9 of Law No. 23 Year 2002 on Protection of the Child.

⁵⁰ Article 53 of Law No. 23 Year 2002 on Protection of the Child.

children's rights, Indonesia participated in signing an international legal instrument, the 1989 Convention on the Rights of the Child. For Indonesia itself, if an international agreement is to be enforced in Indonesia, it must be ratified by making the Indonesian national legal instrument itself.⁵¹ In some circumstances, a treaty enters into force if, after the approval process, it enters the legalization stage in the form of national legislation.

As a State Party to this Convention, Indonesia made reservations for the fulfillment of Articles 1, 14, 16, 17, 21, 22, and 29. This requirement is taken with the stance that Indonesia cannot accept the obligations in this Covenant if it goes beyond limits nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution.⁵² Reservation in a treaty is a unilateral statement by a state who wishes not to accept the validity of specific provisions within the treaty.⁵³ When a state makes a reservation for particular articles in a treaty, this is a legal reason for the State not to fulfil its obligations under the reserved articles.

However, the Government informed the Secretary-General that it had agreed to revoke its ratification reservation in 2005. This means, all regulations in the CRC are bound to

Indonesia with no exception.

C. INDONESIAN POLICY TOWARDS THE CHILDREN REFUGEE AND THE VIOLATION OF INTERNATIONAL LAW

As described in the previous paragraphs, when Indonesia ratified an international treaty as it constitutes to be national laws, the logical and legal consequence of a country becoming one of the Contracting States on an international treaty is the emergence of the state party's rights and obligations that entered it.⁵⁴ The binding capacity of the Convention is based on the principle of *pacta sunt servanda*. The 1969 Vienna Convention concerning the Law of Treaties states that each Agreement in force binds the parties and they must carry out their good faith obligations.⁵⁵ This is also in line with provision as stipulated in Article 2 of the UN Charter, which states that every country must carry out its obligations in good faith following the Charter.⁵⁶

The embodiment of the "*pacta sunt servanda*" principle in the Indonesian national legal system can also be seen in the national legislation, particularly in Law no. 24 of 2000 on International Treaties. Regulated in Article 4, paragraph (1):

"The Government of the Republic of Indonesia enters into international agreements with one or more countries, international organizations, or other international legal subjects based on agreements; and the parties

⁵¹ Article 9 of Law No. 24 Year 2000 on International Agreement.

⁵² United Nations. "United Nations Treaty Collection", https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#11. Accessed on 8th of November 2020.

⁵³ Article 1 Paragraph 5 of Law No. 24 Year 2000 on International Agreement.

⁵⁴ Fitzmaurice, M. "Law Of Treaties, Section A: Introduction to The Law of Treaties", 2007, <https://london.ac.uk/sites/default/files/uploads/student-guide-postgraduate-laws-law-treaties.pdf>. Accessed on 4th of November 2020.

⁵⁵ Article 26 of Vienna Convention on the Law of Treaties 1969.

⁵⁶ Article 2 Paragraph 2 of United Nations Charter 1945.

are obliged to carry out the agreement in good faith."⁵⁷

It can be concluded that Indonesia acknowledges that it also accepts the "*pacta sunt servanda*" principle as a legal principle in making treaties with other states or international organizations. In this regard, Indonesia that also ratified the ICESCR and CRC are legally bound with its legal consequences.

After a treaty entry into force, it must be respected and implemented by the parties concerned in order to achieve the aims and objectives of the treaty.⁵⁸ Each Contracting State must respect both parties' rights and obligations and third parties to which rights and/or obligations may be imposed.⁵⁹ Accordingly, as one of the countries that have ratified the CRC, Indonesia must harmonize the convention within Indonesia's national law. The essence of this harmonization is avoiding legal conflict between legal systems that do not collide and how the State adjusts according to its national interests. State party must ensure that the convention is in line with its national laws. Hence, there is no reason to run from the obligation as mentioned in the treaty.

In this part, the authors will examine whether Indonesia can be considered violating international law, particularly in the implementation on the rights of the child convention. With respect to the main topic on the rights of refugee children, the authors emphasize several articles under the Convention on the Rights of the Child, namely article 22 on the rights of refugee children; article 2 on the non-discrimination principle, article 24 on the right to health,

article 27 on the right to adequate standard of life and article 28 on the right to education.

1. The rights of refugee children

Article 22 of the CRC gives particular attention to refugee children stipulates:

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

This Article stipulates explicitly that each State Party is obliged to ensure that all human rights of children regulated in this Convention are fulfilled, including for refugee children who seek refugee status. As aforementioned in the introduction, the authors reported the situation of the refugee children particularly in regard to the right to health, the right to adequate living and the right to education. Under article 24, 27 and 28 all states have an obligation to fulfil those needs as part of the fundamental rights of the children.

⁵⁷ Article 4 of Law Number 24 Year 2000 on International Agreement

⁵⁸ Parthiana, I Wayan. *Hukum Perjanjian Internasional:*

Bagian 2, Bandung: Mandar Madju, 2005, at 261.

⁵⁹ *Ibid.*, at 263.

There is no statement regarding whether the state is a party to the refugee convention or not. This means that the article applies to any state party to the CRC regardless of their status towards the refugee convention.

2. Non-discrimination principle

If we look at Article 2 of the CRC, which is the basic principle of the CRC as well as the Indonesian Child Protection Law⁶⁰ that states:

*"States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."*⁶¹

It is clearly stated that the participating States must respect and ensure the fulfilment of children's rights in this Convention to all children under their jurisdiction without any discrimination. This can be interpreted that it applies to all children regardless their nationality nor legal status including refugee children.

There are three aspects contained in article 2 concerning non-discrimination principle such as material scope, personal scope, and territorial scope.

a. Material scope

This can be seen from the content of Article 2 related to what rights must be protected as outlined in the Convention from the right to life to the right of children who face the law. This Article also mentions the "negative obligation" of the State to respect all these rights, which means the State must not interfere with the enjoyment of the rights. On the other hand, the positive obligation of the State also can be seen from the phrase "ensure," meaning that the State must take all the necessary measures to assure the full realization of all the rights inside this Convention.

b. Personal scope

This section deals with whom the subjects are discussed in article 2 of this CRC. The Author divides it into two categories, namely right and duty holders. This Article implies that the rights holders are all the children. Children can be interpreted as humans under 18 years of age according to Article 1 of the CRC. This Article states explicitly that State Parties are negative and positive duty holders in terms of legal duties. When the state intervenes on these rights, it can be said that the state has committed a violation. If the State does nothing to prevent non-state actors or others from interfering with rights enjoyment, it means the State has violated the children's rights.

⁶⁰ Article 2 of Law No. 23 Year 2002 on Protection of the Child.

⁶¹ Article 2 of Convention on the Rights of the Child 1989.

c. Territorial scope

This Article clearly states that the principle of non-discrimination towards children applies to all children under that state's jurisdiction. In this regard, State "jurisdiction" can have two meanings: first is the region of a state with its land, government, and people⁶² secondly the extraterritorial⁶³ domain. This extraterritorial has several elements, as an agent outside the country, such as a diplomat or consular. Alternatively, armed operations, when the Forces are carrying out military operations or occupying a land. When these elements are fulfilled, the territory can be said to be the country's "jurisdiction" concerned so that the state is obliged to secure all the human rights in its area.

In this case, the child's socio-economic rights are under Indonesia jurisdiction because those children stay in Indonesia land. Specifically, the Convention addresses the rights of disadvantaged groups of children, such as irregular migrant children, children in dispute with the law, children in armed conflict situations, and children in minority groups.⁶⁴ This means that even though the child's home country has not ratified the CRC, but when the child is in the territory of the CRC Contracting State, the child has the right to receive

protection from the country where he is located.

3. Indonesian policy towards refugee children: an act or negligence ?

Indonesian Ministry of Education gives a policy concerning education for Refugee Children. This statement stated that children could access the school in Indonesia, but:

1. *"The participation of refugee school-age children in education in the regions do not burden the State Budget (APBN) or the Regional Revenue and Expenditure Budget (APBD)."*⁶⁵
2. *"The education unit in your area is obliged to prioritize school-age children who are Indonesian citizens."*⁶⁶

This means that the refugee children must use their own money to access the primary school, and they do not get the same chance as the local people to access it. As the Authors mentioned earlier, the refugees in Indonesia do not have any money to make by their hand because they cannot access the right to work. Hence, that is why they cannot access education because it will cost a lot of money.

In other cases, the refugee children must still pay for hospital care costs without getting deduction, as stated in the previous paragraph. Meanwhile, they do not have any money to afford it. The process to get health services must go through the service provider's approval (related NGO).

⁶² Article 1 of Montevideo Convention on the Rights and Duties of States 1993.

⁶³ Milanovic, Marko. "Al-Skeini and Al-Jedda in Strasbourg". *European Journal of International Law*, Vol.23, No. 1, 2012. at 123.

⁶⁴ Besson, Samantha. "The Principle of Non-

Discrimination in the Convention on the Rights of the Child," *The International Journal of Children's Rights*, Vol. 13, No. 4, 2005, pp. 433-461, at 449.

⁶⁵ Ministry of Education and Culture Circular No. 75253 / A.A4 / HK / 2019.

⁶⁶ *Ibid.*

The Indonesian government does not provide any assistance at all to refugee children in Jabodetabek, especially unaccompanied minors, apart from temporary stay. Article 27 of the CRC states that the State must take appropriate measures to ensure the family or legal guardian implements the right to have an adequate standard of living for the children. Even now, they cannot access clean water without contamination. All the rights are interdependent and indivisible, which means that once people cannot access one right, most probably they are unable to enjoy the other rights.

4. Obligation and Responsibility under the CRC

Indonesia must carry out its responsibility as a State Party to the Convention on the Rights of the Children for its actions that do not fulfil its obligations as stipulated in the Convention. Furthermore, Indonesia must fully carry out its obligations under the Convention to protect, promote, and fulfill every child's rights in their jurisdiction. The CRC does not explicitly mention the sanction towards any Contracting Party who is unable or unwilling to bear their responsibility. However, the country's annual report on the fulfilment of children's rights must be submitted to the Committee.⁶⁷ Not only by the country itself, but also from the non-government organization and the committee who has authority to supervise the implementation of the

convention. The report will show whether the State is complying with fulfilling the obligations under the Convention or not; such suggestion or general recommendation shall be transmitted to the State and reported to the General Assembly.⁶⁸

The Committee on the Rights of the Child is an independent body of 18 experts charged with overseeing the UN Convention's enforcement on the Rights of the Child by its State Parties.⁶⁹ It is also a monitoring body for the implementation of two Optional Protocols to the Convention. Specific grievances alleging breaches of the Convention on the Rights of the Child and its first two optional protocols (OPAC and OPSC) by States parties to the OPIC, as well as investigations into claims of grave or systemic violations of rights under the Convention and its two optional protocols, are also considered by the Committee. As a result of the monitoring dialogue, the Committee often makes technical collaboration recommendations in its concluding findings presented to States Parties.⁷⁰ By only providing recommendations for a country will not obey that country. In conclusion, the State's annual report to the Committee and subsequent examinations are ineffective.

As explained previously, it can be concluded that Indonesian Government is violating the peremptory norms, namely non-discrimination, in Article 2 of the CRC. When this wrongful act has occurred, the state is obliged to:⁷¹

⁶⁷ Article 44 of Convention on the Rights of the Child 1989.

⁶⁸ Article 45 of Convention on the Rights of the Child 1989.

⁶⁹ United Nations Office of the High Commissioner for

Human Rights (OHCHR), "Monitoring children's rights". <https://www.ohchr.org/en/hrbodies/crc/pages/crcintro.aspx>

⁷⁰ Fact Sheet No.10 (Rev.1), The Rights of the Child.

⁷¹ Article 30 Responsibility of States for Internationally

- a) *to cease that act, if it is continuing;*
- b) *to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.*

In the case of Yean and Bosico Children vs. The Dominican Republic, a coalition of academics and non-government organization file this case based on the non-discrimination principle to the commission of Inter-American Commission which then proceed to the Inter-American Court of Human Rights.⁷² Yean and Bosico are two Haitians immigrants who were born in Dominican Republic. They requested copies of birth certificates to allow them having access to their basic rights including education and other rights that need civil registration. The request was rejected by the authority, causing they cannot have access to their rights. Dominican Republic which was found guilty by the Inter-American Human Rights Court and must be held responsible because authorities had refused to issue birth certificates for the Yean and Bosico children, even though they were born within the Dominican' land.⁷³ To add, this condition as undocumented migrants puts them into deportation proceedings.⁷⁴ The Court also mentioned that the principle of non-discrimination and the child's best interest is the fundamental standard for protecting every child, including

migrants.⁷⁵ By denying the child's citizenship just because of their Haitian background, the Dominican Republic intendedly neglected the child's best interest and conducted discriminate treatment for them.⁷⁶ The Court ruled that the Dominican Republic must apologize and also compensate the victims.⁷⁷

Meanwhile, in Indonesia, there are still more than a thousand Refugee Children who cannot enjoy their socio-economic rights, which means Indonesia can be considered to fail to perform these three obligations which constitutes a violation of such rights.⁷⁸ For this reason, Indonesia as a State Party must immediately stop its wrongdoing. The State should make concrete measures to ensure the implementation of international Convention's obligations. As a comparison, the experience of Malaysia and Thailand who have similar situations can be taken into consideration as will be elaborated below.

D. LESSON LEARNED FROM MALAYSIA AND THAILAND

Indonesia may argue for factual circumstances such as no state party to the Refugee Convention, reservation to several articles of the CRC or even limited state

Wrongful Acts 2001

⁷² Open Society Justice Initiative, "Yean and Bossico v. Dominican Republic, Racial Discrimination in Access to Nationality". <https://www.justiceinitiative.org/litigation/yeand-bosico-v-dominican-republic>.

⁷³ IACtHR, Case of the Girls Yean and Bosico v. Dominican Republic, at 2.

⁷⁴ IACtHR, Case of the Girls Yean and Bosico v. Dominican Republic, at 109.

⁷⁵ IACtHR, Case of the Girls Yean and Bosico v. Dominican

Republic, at 155.

⁷⁶ IACtHR, Case of the Girls Yean and Bosico v. Dominican Republic, at 166.

⁷⁷ IACtHR, Case of the Girls Yean and Bosico v. Dominican Republic, at 260.

⁷⁸ Paragraph 6 of Maastricht Guidelines on Violations of Economic, Social and Cultural Rights", <https://www.refworld.org/docid/48abd5730.html>. Accessed on 19th of November 2020.

budget which constitute a lack of legal ground to provide assistance in fulfilling the rights of the refugee children. Similar factual situation is faced by neighboring countries such as Malaysia and Thailand which are also often used as transit countries by those refugees. Nonetheless, these countries respond differently. Malaysia and Thailand are also non-parties to the Refugee Convention; these two countries eventually built a particular system for handling refugees and asylum seekers. Below is the description of the policy of Malaysia and Thailand in fulfilling the rights of the refugee children that may be taken as good practice which can then be considered as recommendations for Indonesia.

1. Malaysia responds in handling Refugee Children's access to education and health.

At the end of 2019, Malaysia hosted more than 178,000⁷⁹ refugees and asylum seekers within their territory. 26% of these were children under 18 years of age.⁸⁰ About 46.000 children⁸¹ belong to the school-age group. What is done by Malaysia as a country with a positive obligation to fulfill children's rights under the CRC?

Currently, particularly in fulfilling children's right under Article 28 off the CRC, namely the "right to access education"⁸², the Government of Malaysia together with UNHCR and other implementing partners built 133 learning centers⁸³ for refugee children. 70% of children⁸⁴ enrolled in public school, and the rest attend learning through the centers mentioned above. Malaysia has a similar national law to Indonesia regarding school enrollment as Indonesia where only children who have legal documents can access official schools.⁸⁵ Nevertheless, by the help of existing learning centers, they can make a small contribution.

Furthermore, since the early stages of the country's outbreak of Covid-19, the Malaysian Government has taken a significant decision to provide all foreigners with Covid-19 symptoms with free swab tests and other care.⁸⁶ It is fascinating to learn from Malaysia because in 2005, through the Ministry of Health (MoH) and UNHCR Malaysia, the Malaysian Government reached an agreement outlined in the MoU.⁸⁷ All refugees and asylum seekers under UNHCR were given a half-price discount from the foreigner's rate at all public hospitals and health-care facilities.

⁷⁹ Malaysia UNHCR, "2019 Year-End Report", 2020, <https://reporting.unhcr.org/sites/default/files/pdfs/summary/GR2019-Malaysia-eng.pdf>. Accessed on 4th of November 2020.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Article 28 of Convention on the Rights of the Child 1989.

⁸³ United Nations High Commissioner for Refugees (UNHCR), "Education in Malaysia", <https://www.unhcr.org/education-in-malaysia.html>. Accessed on 29th of November 2020.

⁸⁴ *Ibid.*

⁸⁵ Malaysia Education Act 550 Year 1996.

⁸⁶ United Nations High Commissioner for Refugees (UNHCR), "UNHCR-GoM Joint Action to Prevent, Manage Covid-19 Infections among Refugees", <https://www.unhcr.org/en-my/news/stories/2020/4/5e94189d4/unhcr-gom-joint-action-to-prevent-manage-covid-19-infections-among-refugees.html>. Accessed on 4th of December 2020.

⁸⁷ Chuah, Fiona Leh Hoon (*et al.*). "Health System Responses to the Health Needs of Refugees and Asylum-Seekers in Malaysia: A Qualitative Study," *International Journal of Environmental Research and Public Health*, vol. 16, no. 9, 2019, pp. 1-21, at 2.

Besides, since 2014, UNHCR Malaysia has collaborated with the Malaysian national insurance agency named RHB Insurance. Refugees and asylum seekers in Malaysia can access this scheme, and this insurance covers not only individuals but also families that can be used in all existing hospitals.⁸⁸ Accessible health service provided by this insurance are: (a) in-patient treatment; (b) room and board for up to 25 days; (c) intensive care for up to 12 days; (d) hospital supplies and services; (e) operating theatre; (f) surgical fees; (g) anesthetists' fees; (h) in-hospital physician visits; (i) in-hospital specialist consultations; (j) ambulance fees; and (k) medical reports.⁸⁹

2. Thailand responds on the Refugee Children's access to education

In Thailand, the 2005 Cabinet Resolution states that the State must fulfill all children's rights⁹⁰, as long as the child is still in its territory. This indicates that even though a child does not have a legal document such as a birth certificate, the child can register for school⁹¹. This is indeed inversely proportional to what is happening in Indonesia today⁹². It will be a good lesson if we compare Thailand as one of the refugee hosts in ASEAN. Thailand legally said that refugee children could be enrolled in government schools. This

is implementing the Guideline for Education Management for People without National Registration Document or Thai Nationality 2017. Besides, there is no requirement for the child refugee to submit their birth certificate; they also will get a number from the Ministry of the Interior to be added to the administrative database so the local education office can access it.⁹³

Not only do these two States have similarities with non-state parties relating to the status of refugees, but Indonesia and the two countries are also legally binding on the fulfillment of children's rights in the CRC. The culture that is relatively the same because it is in the same region, ASEAN, can also be a reference for Indonesia to follow the country's policies above—of course, still paying attention to the values that have grown in Indonesia and making adjustments to the implementation of the Right to Education policy for existing refugee children.

E. PROPOSAL FOR INDONESIA IN FULFILLING THE RIGHTS OF CHILDREN'S REFUGEE

Allowing refugees and asylum seekers to enter the borders of the Indonesian state is an important step that can be taken by the Government in the context of fulfilling human rights. It does not stop there;

⁸⁸ United Nations High Commissioner for Refugees (UNHCR), "Public Health in Malaysia", <https://www.unhcr.org/en-my/public-health-in-malaysia.html>. Accessed on 6th of December 2020.

⁸⁹ International Federation of Red Cross and Red Crescent Societies, "REMEDI – Refugee Medical Insurance, Malaysia", <https://media.ifrc.org/global-review-on-migration/smart-practice/remedi-refugee-medical-insurance-malaysia/>. Accessed on 6th of December 2020.

⁹⁰ Rule of the Ministry of Education on Evidentiary Document for Pupils and Students Admission into Establishment of Education B.E. 2548 (2005).

⁹¹ Save the Children, "Forgotten Futures", *Save the Children Asia Regional Office*, 2018, at 26.

⁹² Article 7 of Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 14 Year 2018.

⁹³ *Ibid.*

Indonesia has also proven itself to comply with international legal norms, namely implementing the principle of *non-refoulement*.⁹⁴ However, by allowing the most vulnerable groups to enter their territory, human rights fulfillment will stick to Indonesia as duty holders.

Several efforts can be taken in fulfilling the three socio-economic rights of the refugee children in Indonesia, such as access to education, health and standard of living.

1. Access to education

Why is the right to education so important for child refugees in Indonesia to enjoy? This is because no one knows when the refugee resettlement in Indonesia will take place. A child sometimes needs to stay at least 3.5 years in Indonesia until finally he is sent to a third country. Some of them desperately require access to education because the resettlement process could take more than ten years. Education is an essential thing in their life because it allows them to think about their future rather than their worst nightmare in their country of origin. *"Leaving these kids unskilled and uneducated will delay by years the return to peace and prosperity in their countries."*

Accordingly, It is very wise to open informal education accessible for refugee children as the first level before entering formal education. This is to prepare them in Indonesian education system because teaching and learning activities in formal public schools use

Indonesian language (Bahasa Indonesia) as instruction. As a preparatory stage for these children, informal education can be implemented with community learning centers spread across Indonesia. This learning center is one of the projects of each implementing partner of UNHCR Indonesia. Informal education is also held in all unaccompanied minor refugee shelters under the care of CWS Indonesia where all children can access "homeschooling" inside the house. The lessons provided cover basic and advanced levels in several subjects, namely, Indonesian, English, mathematics, and computers. This informal learning is one activity where children can enjoy their fundamental rights to access education even though it is not primary education as regulated in the CRC.

Currently, a successful pilot project is being run in one of Indonesia's cities, Medan. This achievement was because of good relations and awareness between local authority and relevant organizations promoting the issue (such as IOM, UNHCR, CWS). However, the policy that allows refugee children in Medan to attend formal school does not apply in Jakarta or another city besides Medan. Different responses by the local authority influencing the success of the programme. Hence, the role of the Ministry of Education Regulation is very crucial where Indonesia can equalize the chance between refugee children and residents, which will tie up all

⁹⁴ The principle of non-refoulement guarantees, under international human rights law, that no one should be turned back to a country where they face abuse, cruel,

inhuman or degrading treatment or punishment and other irreparable damage.

educational facilities and infrastructure in Indonesia.

2. Access to Health

In the previous sections, the Authors have described Indonesia's problems related to the fulfilment of health care for refugee children. Giving access to health consultations and medications in all local health centers in the DKI Jakarta greater area is a good step in fulfilling health rights for refugee children. However, the problem that arises is what if the child's disease cannot be cured due to the limited facilities provided at the Puskesmas? UNHCR Indonesia, through the implementing partner in the health sector, namely CWS Indonesia, only has several MoUs for several hospitals in the surrounding area. The bureaucratic issue is one of the challenges resulting in few cooperation with government /public hospitals. The rest are private hospitals, which require much cost if there is a referral from Puskesmas. Because these refugee children are not Indonesian citizens, they will be discharged according to the foreigner's price every time they do a consultation and/or medication, which often gets doubled.

Limited funding for the refugee is also another main obstacle as the reason why not all refugee children can access big hospitals. However, language barrier is also a problem. The language of health workers such as doctors and

nurses are not easily understood by patients (refugee children) or the interpreters who usually come from their community. Hence, training for translators is urgently needed to be held regularly, once a month if possible, given reasons for many health cases that need assistance. The action was carried out by an NGO called CWS Indonesia for all interpreters' community in the Jakarta and surrounding area. Wisely, this training is carried out in all other cities in Indonesia.

3. Adequate standard of living

More than 50% of 80 million children in Indonesia (including refugee children) experienced malnutrition.⁹⁵ The contributing factor is poverty; this considers poverty in terms of income and includes the overall situation surrounding a child's life. Children can also be lacking if they cannot access food and nutrition, health services, education services, housing, water, and sanitation.⁹⁶ This is an example of socio-economic injustice. To overcome state should provide:

- a. Social assistance program; The assistance can be in the form of cash and non-cash, such as a rice subsidy or nutrient-dense foods (protein, fruits, or vegetables)
- b. Special allocation fund for sanitation, 89% of drinking water consumed by people in Indonesia is contaminated with human waste.⁹⁷ These funds can be used

⁹⁵ United Nations Children's Fund, "*Situasi Anak di Indonesia –Trend, Peluang, dan Tantangan Dalam Memenuhi Hak-Hak Anak*", Jakarta: UNICEF Indonesia, at 26.

⁹⁶ United Nations Children's Fund, "*Children in Indonesia: An analysis of poverty, mobility and multidimensional deprivation*", Jakarta: UNICEF, at 49.

⁹⁷ Cronin, Aidan A. (et al.). "Piloting Water Quality Testing Coupled with a National Socioeconomic Survey in Yogyakarta Province, Indonesia, towards Tracking of Sustainable Development Goal 6". *International Journal of Hygiene and Environmental Health*, Vol. 220, No. 7, 2017, pp. 1-11, at 1.

to build a septic tank in each household.

These actions cannot be fulfilled by the State alone. The Government, together with the leading partners in refugee issues, UNHCR and IOM, and all existing implementing partners including corporations under business and human rights framework must work together to tackle these refugee challenges. Partnerships and collaboration between ministries, organizations and corporations will undoubtedly fulfill refugee children's rights in Indonesia. To uphold its obligation of securing human rights, Indonesia must be resolved through "positive measures" of the highest government hierarchy from the legislative, executive, budgetary commission until the tiny part of district policies⁹⁸.

F. CONCLUSION

Based on the explanation of the theory, facts, and analysis above regarding Indonesia's obligations as a CRC Participating State, it can be concluded that Indonesia has not entirely fulfilled all the Convention as one of the Contracting States to CRC's obligations. The obligation that has not been implemented is the fulfilment of the three socio-economic rights of refugee children in Indonesia, namely the right to education, the right to health, and the right to an adequate living standard. The fact of policies and national regulations made by the authority of Indonesia in particular regarding access to education, health and adequate standard of living can be considered as negligence. Hence Indonesia

can be held responsible for its negligence in complying its obligation under the CRC. Nonetheless, there are measures that can be taken to overcome and stop the negligence. The Government of Indonesia can take several recommendations to fulfil its obligations as duty holders of the three socio-economic refugee children rights. Such as opening access to education by providing public school facilities and pre-facilities that can be accessed by refugee children and other Indonesian children by first completing informal education (language preparation), giving discounted prices for refugee children (not foreigner prices). This can be started by revising a ministerial circular policy regarding access to education for refugee children. In giving access for health facilities, a policy or regulation from the authority for public health centres such as local and national hospitals to accept refugee children patients are the most obvious changes that can be made. Also, a series of social assistance programs related to nutrient-dense foods for children and sanitation allocation funds. All these efforts cannot be carried out by one entity alone. The Indonesian Government needs cooperation with international communities such as UNHCR, IOM, and their partners as well as corporations to tackle these challenges.

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- Convention on the Rights of the Child (CRC)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)

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