



PROTECTION OF THE RIGHTS OF ROHINGYA CHILDREN AS REFUGEES IN INDONESIA FROM THE PERSPECTIVE OF INTERNATIONAL LAW AND INDONESIAN NATIONAL LAW

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Abstract

This research aims to analyze the forms of human rights (HR) protection for Rohingya ethnic refugee children. Additionally, it examines the implementation of human rights protections. This study employs normative legal research using a statutory approach, utilizing secondary data sourced from literature studies, documents, and expert views. The protection of human rights for Rohingya refugee children is regulated in various international conventions, covering the most fundamental (non-derogable) rights, including the right to education, health, freedom of religion, and others. Measures to protect the human rights of the refugee children involve legal steps that adopt several legislative policies related to child protection, including refugee children, as well as steps to engage in international cooperation with organizations like the UNHCR (United Nations High Commissioner for Refugees) and IOM (International Organization for Migration).

Keywords: *Children Right Protection; Children Rights Convention; International Law; Refugees; Rohingya Ethnicity*

A. INTRODUCTION

Human Rights (HR) are fundamental rights granted by God to every human being without exception, encompassing rights in the political, economic, social, legal, and cultural spheres. The principle of non-discrimination in HR ensures that every individual receives equal rights without discriminatory treatment. This is reflected in international HR instruments such as the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which affirm the prohibition of discrimination against any group.¹

However, in practice, minority groups often face discrimination, both horizontally from society and vertically by the state. An example is the Rohingya ethnic group in Myanmar, which has long experienced discriminatory treatment. The Rohingya, who

¹ Arianta, K., Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Perlindungan Hukum Bagi Kaum Etnis Rohingya Dalam Perspektif Hak Asasi Manusia Internasional. *Journal Komunitas Yustitia Universitas Pendidikan Ganesha Jurusan Ilmu Hukum*, 3(2), 166–176.

reside in Rakhine, are not recognized as citizens by Myanmar and are considered illegal immigrants. This situation has led to their lack of access to education, healthcare services, and decent employment.

The 1982 Myanmar Citizenship Law recognizes 135 ethnic groups as citizens but excludes the Rohingya. As a result, the Rohingya experience systemic discrimination, leading to social tensions and conflict. This inequality has triggered resistance, such as that by the Arakan Rohingya Salvation Army (ARSA), which resulted in large-scale military attacks by the Myanmar government in 2017.²

This conflict situation has forced hundreds of thousands of Rohingya to flee to neighboring countries, including Bangladesh and Indonesia, in search of protection. In refugee camps, they live in extremely dire conditions, especially children who suffer from malnutrition, disease, and lack of access to education. A health survey conducted in the Cox's Bazar refugee camp revealed that up to 25 % of children under the age of five suffer from acute malnutrition, with many affected by anemia and respiratory infections.³

Indonesia, as a transit country for refugees, faces its own set of challenges. Although it accepts refugees as a commitment to humanitarian principles, many members of the public respond negatively to refugees due to certain perceptions. Nevertheless, Indonesia upholds the principle of Human Rights (HR) and recognizes the right to seek asylum, albeit only as a temporary shelter. Legally, Indonesia has regulations governing the handling of refugees, such as Presidential Decree No. 38/1979 and Presidential Regulation No. 125/2016. The Indonesian government does not provide permanent asylum but allows refugees to stay temporarily until they can be relocated to a third country. This process is coordinated with international organizations like the United Nations High Commissioner for Refugees (UNHCR), which is also responsible for the costs during the period of shelter.

Rohingya children who flee and become refugees are in the most vulnerable situation. They not only lose their citizenship but also their future. Therefore, efforts to protect and fulfill basic rights, especially for children, need to be strengthened through international cooperation and humanitarian assistance.

B. METHODS

This research employs normative legal research, also known as doctrinal research. This type of research focuses on legal materials as the primary source, where law is viewed as what is written in legislation or as norms that serve as standards for human behavior.⁴ This normative legal research does not involve fieldwork but relies on library data as the main source for analyzing legal issues. The categorization in this research includes the study of legal principles, legal systematics, legal synchronization, legal history, and comparative law. The approach used is a legislative approach, emphasizing the study of relevant literature and documents, including expert opinions and related legal doctrines. The legal materials used include primary legal materials, such as international and

² Adi Ahdiat. (2023). Kekerasan terhadap Etnis Rohingya, dari Pembunuhan sampai Mutilasi. <https://databoks.katadata.co.id/datapublish/2023/12/06/kekerasan-terhadap-etnis-rohingya-daripembunuhan-sampai-mutilasi>. Diakses pada tanggal 13 Januari 2024

³ Unicef USA. (2023). *Malnutrisi, Anemia Dan Penyakit Menjangkiti Anak-Anak Pengungsi Rohingya*. <https://www.unicefusa.org/press/malnutrition-anemia-and-disease-plague-rohingya-refugee-childrenunicef>. Diakses pada tanggal 14 Januari 2024

⁴ Edirmawan. (2011). *Monograf: Metode Penelitian Hukum (Panduan Penulisan Tesis dan Disertasi)*. Sinar Mentari Press.

national legislation related to child protection, and secondary legal materials, such as books, research findings, papers, and articles that explain or interpret primary legal materials. The technique for collecting legal materials is conducted through document studies, by comparing, reviewing, and analyzing relevant legal sources. The analysis of legal materials in this study is carried out using an interpretative method, which aims to understand international legal norms and rules and interpret research findings from general to specific (deductive). This interpretation is used to draw conclusions relevant to human rights protection issues, taking into account references and related legal theories to produce a comprehensive analysis.

C. ANALYSIS AND DISCUSSION

Forms of Protection of the Rights of Rohingya Children from the Perspective of International Law:

1. The Universal Declaration of Human Rights (UDHR) 1948

The Universal Declaration of Human Rights (UDHR) 1948, although not a legally binding instrument, sets forth universal human rights standards that apply to all individuals, including refugee children:⁵

- Article 1 and 2: Freedom and Equality in Dignity and Rights

Article 1: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Article 2: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Furthermore, there shall be no distinction made on the basis of the political, legal, or international status of the country or territory to which a person belongs, whether it be a sovereign state, a trust territory, a colony, or any other limitation of sovereignty."

- Article 25: The Right to an Adequate Standard of Living, Including Special Care for Children "(1) Everyone has the right to an adequate standard of living for the health and well-being of themselves and their family, including the right to food, clothing, housing, medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other circumstances beyond their control that result in a lack of livelihood. (2) Mothers and children are entitled to special care and assistance. All children, whether born in or out of wedlock, are entitled to the same social protection."
- Article 26: The Right to Education.⁶

"(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and vocational education shall be made generally available and higher education shall be accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and

⁵ United Nations General Assembly. (1948). Universal Declaration of Human Rights. 217 A (III).

⁶ Glendon, M. A. (2002). A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights. Random House.

fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations in the maintenance of peace. (3) Parents have a primary right to choose the kind of education that shall be given to their children.”

2. 1951 Refugee Convention and 1967 Protocol

Although not specifically addressing all aspects of refugee protection, this convention sets minimum standards for the treatment of refugees,⁷ including:

- Article 3: Non-Discrimination in the Application of the Convention

“The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion, or country of origin.” This article establishes the principle of non-discrimination in the application of the Convention. Essentially, countries participating in the Convention are required to provide its provisions to refugees without discrimination based on race, religion, or country of origin. This means all refugees, including children, must be treated fairly without prejudice or distinction.

- Article 22: The Right to Education

“The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. The Contracting States shall accord to refugees the most favorable treatment possible, and in no case less favorable than that accorded to aliens generally in the same circumstances with respect to education other than elementary education, and in particular as regards access to studies, recognition of foreign diplomas, degrees and certificates, exemption from fees and charges, and the award of scholarships.”

- Article 24: Social Security and Welfare:⁸

1. *Contracting States shall accord refugees who are lawfully staying in their territory treatment as favorable as possible, and in no case less favorable than that accorded to foreigners generally in the same circumstances, with respect to the following:*

- (a) As far as such matters are governed by laws or regulations or are under the control of administrative authorities: wages, including family allowances where they form part of wages, working hours, overtime arrangements, paid holidays, restriction on domestic work, minimum working age, apprenticeship and training, women’s work, young persons’ work, and enjoyment of benefits from collective bargaining. (b) Social security (legal provisions relating to work accidents, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities, and other contingencies which under national law or regulation are covered by social security schemes), subject to the following limitations: (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in the process of acquisition. (ii) The national laws or regulations of the country of residence may provide for special arrangements regarding benefits or parts of benefits that may be paid entirely from public funds, and for allowances paid to persons who do

⁷ United Nations High Commissioner for Refugees. (1951). *Convention Relating to the Status of Refugees*. United Nations, Treaty Series, 189, 137.

⁸ Goodwin-Gill, G. S., & McAdam, J. (2017). *The Refugee in International Law*. Oxford University Press.

not fulfill the contribution requirements necessary for the provision of normal pensions. (c) The right to compensation for the death of a refugee due to a work accident or an occupational disease shall not be affected by the fact that the beneficiary's place of residence is outside the territory of the Contracting State.

2. *Negara-negara Contracting States shall extend to refugees the benefits of agreements that have been made between them, or that may be made between them in the future, regarding the maintenance of acquired rights and rights in the process of acquisition in the field of social security, subject only to the conditions applicable to nationals of the countries that are parties to the relevant agreements.*
3. *Contracting States shall give sympathetic consideration to extending to refugees, as far as possible, the benefits of similar agreements that may be in force at any time between the Contracting States and non-signatory countries.*

Based on the results of the research, the analysis of the 1951 Refugee Convention and its 1967 Protocol in the context of the protection of Rohingya children in Indonesia reveals several important findings:

First, although Indonesia has not ratified the 1951 Refugee Convention and the 1967 Protocol, the country has adopted several principles and standards from these instruments into its national policies.⁹ However, this lack of ratification creates a significant legal gap in the protection of refugees, including the Rohingya children. Secondly, the principle of non-discrimination outlined in Article 3 of the 1951 Convention has influenced Indonesia's policy on the treatment of refugees. However, the research indicates that in practice, Rohingya children still face various forms of discrimination, particularly regarding access to public services.¹⁰

Thirdly, regarding Article 22 on the right to education, Indonesia has made efforts to provide access to education for refugee children. However, the implementation remains limited, with around 40% of refugee children still not enrolled in formal schooling.¹¹ This shows the gap between the international standards outlined in the Convention and the realities on the ground.

Fourth, recognizing Article 24 regarding social and health services, the research reveals that Indonesia, in collaboration with UNHCR (United Nations High Commissioner for Refugees) and IOM (International Organization for Migration), has provided several health services for refugees.¹² However, the accessibility and quality of these services still need to be improved, particularly in the areas of mental health care and psychosocial support for Rohingya refugees.¹³

Fifth, the provisions outlined in the 1967 Protocol theoretically provide stronger protections for Rohingya refugees. However, since Indonesia has yet to ratify both instruments, its direct application remains limited. Despite this, the principles within the 1967 Protocol have influenced Indonesia's refugee policies in an indirect manner.¹⁴

9 Missbach, A. (2017). *Troubled Transit: Asylum Seekers Stuck in Indonesia*. ISEAS-Yusof Ishak Institute.

10 Human Rights Watch. (2020). "Years in Limbo: Unprotected Rohingya Children in Malaysia and Indonesia".

11 UNHCR. (2021). *Indonesia Fact Sheet*. Retrieved from <https://www.unhcr.org/id/en/unhcr-inindonesia>

12 WHO. (2019). *Promoting the Health of Refugees and Migrants: Draft Global Action Plan, 2019–2023*. World Health Organization.

13 Meyer, S. (2013). *UNHCR's Mental Health and Psychosocial Support for Persons of Concern*. UNHCR.

14 Kneebone, S. (2017). *Australia as a Powerbroker on Refugee Protection in Southeast Asia: The Relationship with Indonesia*. *Refuge: Canada's Journal on Refugees*, 33(1), 29-41.

This study also highlights that although Indonesia is not legally bound by the 1951 Convention and the 1967 Protocol, the country has demonstrated a commitment to respecting the principles of refugee protection through national policies such as Presidential Regulation Number 125 of 2016.¹⁵ However, the absence of a comprehensive legal framework remains a significant obstacle in providing consistent and comprehensive protection for Rohingya refugees.

3. ICCPR (*International Covenant on Civil and Political Rights*)

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty established by the United Nations General Assembly under Resolution 2200A (XXI) on December 16, 1966. The ICCPR was adopted by the UN General Assembly on December 16, 1966, and came into force on March 23, 1976. As one of the core instruments in international human rights law, the ICCPR, together with the UDHR (Universal Declaration of Human Rights) and the ICESCR (International Covenant on Economic, Social, and Cultural Rights), forms the International Bill of Human Rights.

Unlike the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) is legally binding for countries that ratify it, including Indonesia, which ratified it in 2006. The ICCPR covers various fundamental civil and political rights, such as the right to life, freedom from torture and slavery, the right to personal liberty, the right to a fair trial, and freedom of thought, religion, and expression. The Covenant also protects the right to peaceful assembly and association, as well as the right to participate in public affairs.

To facilitate its implementation, the ICCPR establishes the Human Rights Committee, which is responsible for monitoring states' compliance with their commitments. In the context of protecting Rohingya children in Indonesia, the ICCPR provides a strong legal framework, even though it does not specifically address refugees. The principle of non-discrimination stated in Article 2 and the protection of rights under Article 7 are highly relevant to the refugee situation. However, the full implementation of the ICCPR in this context still faces challenges, particularly given the uncertain legal status of many refugees in Indonesia.

4. ICERD (*International Convention of the Elimination of All Forms of Racial Discrimination*)

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is an international legal instrument that plays a crucial role in global efforts to eradicate racial discrimination. This convention underscores the importance of protecting individuals from racial and ethnic discrimination comprehensively worldwide. ICERD not only prohibits discrimination in its most blatant forms but also encompasses all manifestations of racial discrimination that may occur within society.

The central principle of ICERD is that racial discrimination, in all its forms and manifestations, must be eliminated without delay. This reflects the urgency and pressing nature of the issue of racial discrimination worldwide. The convention recognizes that racial discrimination not only violates fundamental human rights but can also hinder international peace and security. In the context of protecting Rohingya children in Indonesia, ICERD provides a strong legal framework to ensure that they do not face discrimination based on their race or ethnicity. The convention obligates state

¹⁵ Republik Indonesia. (2016). Peraturan Presiden Nomor 125 Tahun 2016 tentang Penanganan Pengungsi dari Luar Negeri.

parties, including Indonesia, to take active steps to eliminate racial discrimination both in law and practice. ICERD also emphasizes the importance of special measures that may be required to ensure adequate protection for groups vulnerable to racial discrimination. In the case of Rohingya children, this could mean the implementation of specific programs to ensure their access to education, healthcare, and other services without discrimination. Furthermore, ICERD requires states to report regularly on the steps they have taken to fulfill the obligations of the convention. This provides a mechanism for continuous monitoring and evaluation of antidiscrimination efforts, including those related to the protection of refugees and children from minority groups like the Rohingya.

While the full implementation of ICERD still faces challenges, especially in complex contexts like refugee situations, the convention remains an essential tool in the global fight to eliminate racial discrimination. For Rohingya children in Indonesia, ICERD offers significant legal protection and encourages the country to continue improving its efforts to ensure equality and non-discrimination.

5. CEDAW (*The Convention on the Elimination of All Forms of Discrimination against Women*)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an international agreement aimed at eliminating all forms of discrimination against women. Adopted by the United Nations General Assembly in 1979, CEDAW is a comprehensive international legal instrument designed to promote and protect women's rights worldwide. As one of the key international treaties, CEDAW establishes global standards for gender equality and provides a framework for state parties to take action in eliminating discrimination against women. The convention covers various aspects of life, including women's political, economic, social, cultural, and civil rights.

In the context of protecting Rohingya children in Indonesia, CEDAW holds particular relevance, especially for female children and mothers among refugees. The convention emphasizes the importance of protecting women and girls from all forms of discrimination, including in situations of conflict and displacement. CEDAW encourages state parties to take concrete steps to ensure that female refugees and their children have equal access to education, healthcare, and protection from gender-based violence.

CEDAW also urges states to adopt gender-sensitive policies and programs in addressing refugee issues. These could include providing adequate reproductive health services, economic empowerment programs for female refugees, and special protection mechanisms for girls against exploitation and abuse.

Despite the challenges in fully implementing CEDAW in refugee contexts, the convention remains a crucial instrument in the global effort to achieve gender equality and protect the rights of women and girls in vulnerable situations. For Rohingya girls in Indonesia, CEDAW provides a significant framework for protection and encourages the government to continue enhancing efforts to ensure their rights and well-being.

6. Convention on the Rights of the Child (CRC) 1989

The Convention on the Rights of the Child (CRC) is a comprehensive international legal instrument aimed at protecting children's rights. In the context of Rohingya children as refugees, several key articles are particularly relevant:

- Article 2: Non-discrimination This ensures that all children have the right to be treated equally without discrimination.

- Article 3: The best interests of the child The best interests of the child must be a primary consideration in all actions concerning children.
- Article 22: Special protection for refugee children This includes the right to family reunification for refugee children.
- Articles 28 and 29: The right to education This includes the right to free education.
- Article 24: The right to health This ensures the right to the highest attainable standard of health and access to health services.¹⁶

The Convention on the Rights of the Child 1989 (CRC) obliges state parties to take steps to ensure the protection and fulfillment of the rights of refugee children. Based on the research findings, the Convention on the Rights of the Child 1989 (CRC) plays a crucial role in setting standards for the protection of refugee children's rights, including those of Rohingya children in Indonesia. An analysis of the implementation of the Convention on the Rights of the Child 1989 (CRC) in Indonesia reveals several important findings:

*First, the principle of non-discrimination set out in Article 2 of the Convention on the Rights of the Child 1989 (CRC) has encouraged Indonesia to adopt more inclusive policies toward refugee children. However, in practice, there are still gaps in access to basic services for Rohingya refugee children and local children, especially in the fields of education and healthcare.*¹⁷

Second, the application of the principle of the best interests of the child (Article 3) has influenced decision-making related to the protection of refugee children in Indonesia. However, research indicates that economic and political considerations often still dominate policies, which are in conflict with the best interests of the child.¹⁸

Third, the special protection for refugee children (Article 22) has encouraged IndonesiatocollaboratewithUNHCR(UnitedNationsHighCommissionerforRefugees) and IOM (International Organization for Migration) in providing humanitarian assistance. However, efforts for family reunification still face significant challenges due to the complexities of the geopolitical situation.¹⁹

Fourth, the right to education (Articles 28 and 29) has not been fully realized for Rohingya children in Indonesia. Despite efforts to provide access to education, research shows that only about 40 % of refugee children are enrolled in formal schools.²⁰

Fifth, in terms of the right to health (Article 24), Indonesia has made efforts to provide access to basic health services for refugee children. However, there are still gaps in providing mental health services and special protection.²¹

This research also reveals that, although Indonesia has ratified the Convention on the Rights of the Child 1989 (CRC), full implementation of this convention is still hindered by various factors, including resource limitations, challenges in interagency coordination, and the uncertainty of the legal status of refugee children.²²

16 UNICEF. (2014). The Convention on the Rights of the Child: The children's version. UNICEF.

17 Tan, N. F. (2016). The status of asylum seekers and refugees in Indonesia. *International Journal of Refugee Law*, 28(3), 365-383.

18 Missbach, A. (2017). *Troubled Transit: Asylum Seekers Stuck in Indonesia*. ISEAS-Yusof Ishak Institute.

19 UNHCR. (2021). Indonesia Fact Sheet. Retrieved from <https://www.unhcr.org/id/en/unhcr-in-indonesia>

20 Human Rights Watch. (2020). "Years in Limbo: Unprotected Rohingya Children in Malaysia and Indonesia".

21 WHO. (2019). Promoting the health of refugees and migrants: Draft global action plan, 2019–2023. World Health Organization.

22 Carruthers, A. (2019). Living in Limbo: The Rohingya in Indonesia. *ISEAS Perspective*, (75), 1-9.

7. Analysis of the Protection of Rohingya Children's Rights in International Law

a) Special protection for refugee children under international legal instruments:

Research findings show that international legal instruments provide comprehensive protection for refugee children, including Rohingya children. The Convention on the Rights of the Child 1989 (CRC) serves as the main framework, with Article 22 specifically stating that refugee children must receive protection and humanitarian assistance in accordance with their needs.²³ The Convention on the Rights of the Child 1989 (CRC) also emphasizes the principle of non-discrimination (Article 2), which means that all children are entitled to equal treatment, including refugee children, such as the Rohingya children.²⁴

The 1951 Refugee Convention and the 1967 Protocol, although not specifically addressing children, provide protection applicable to all refugees. Article 22 of this Convention guarantees the right to education for all refugee children, as long as the host country adheres to its obligations.²⁵ This is particularly important for Rohingya children who often face obstacles in accessing education. The Universal Declaration of Human Rights (UDHR) 1948, although not legally binding, sets universal standards that apply to all people, including refugee children. Article 25 of the UDHR specifically addresses the right to social security and special protection, which is relevant to the situation of Rohingya children.²⁶

b) Analysis of the effectiveness and challenges of these instruments in the context of Rohingya children:

Effectiveness:

1. Comprehensive coverage: The Convention on the Rights of the Child (CRC) 1989 provides comprehensive protection for various aspects of children's lives, including education, health, and protection from exploitation.²⁷

2. Universality: Nearly all countries have ratified the CRC 1989, providing a solid foundation for advocating for the protection of refugee children at the global level.²⁸

3. Focus on the best interests of the child: This principle, emphasized in the CRC 1989, ensures that the special needs of children are considered in all decisions that affect them.²⁹ Challenges:

1. Inconsistent implementation: Although many countries have ratified these instruments, their implementation is often inconsistent, especially in crisis situations such as those faced by Rohingya children.³⁰

2. Limited enforcement mechanisms: These instruments often rely on the political will of states to implement them, which can create challenges, particularly in the case of Rohingya children, who frequently face discrimination.³¹

23 United Nations. (1989). Convention on the Rights of the Child. Treaty Series, 1577, 3.

24 UNICEF. (2014). The Convention on the Rights of the Child: The children's version. UNICEF.

25 United Nations High Commissioner for Refugees. (1951). Convention Relating to the Status of Refugees. United Nations, Treaty Series, 189, 137.

26 United Nations General Assembly. (1948). Universal Declaration of Human Rights. 217 A (III).

27 Doek, J. E. (2009). The CRC 20 years: An overview of some of the major achievements and remaining challenges. *Child Abuse & Neglect*, 33(11), 771-782.

28 UNICEF. (2019). For Every Child, Every Right: The Convention on the Rights of the Child at a crossroads. UNICEF.

29 Pobjoy, J. M. (2017). *The Child in International Refugee Law*. Cambridge University Press.

30 Bhabha, J. (2014). *Child Migration and Human Rights in a Global Age*. Princeton University Press.

31 Goodwin-Gill, G. S., & McAdam, J. (2017). *The Refugee in International Law*. Oxford University Press.

3. Disparities in protection: Although there is general protection, there are still gaps in addressing the specific needs of refugee children, such as the Rohingya, due to varying national capacities and priorities.³²
4. Challenges in emergency situations: These instruments may be difficult to apply in emergency situations, such as conflicts, which are often experienced by Rohingya children.³³

Legal Measures by the Indonesian Government in Protecting the Rights of Rohingya Children as Refugees

1. Legal Measures:

a. Indonesia has adopted several legislative policies related to child protection, including the protection of refugee children. Although Indonesia has not ratified the 1951 Refugee Convention, the country has several laws that can be used to protect the rights of refugee children:

1) Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection. This law provides a legal framework for the protection of children in Indonesia, including children in emergency situations.³⁴

Article 59, paragraph (2) states: “Special protection for children as referred to in paragraph (1) is provided to: a. Children in emergency situations; b. Children who are in conflict with the law; c. Children from minority and isolated groups; d. Children who are economically and/or sexually exploited; e. Children who are victims of narcotics, alcohol, psychotropic substances, and other addictive substances abuse; f. Children who are victims of pornography; g. Children with HIV/AIDS; h. Children who are victims of kidnapping, sale, and/or trafficking; i. Children who are victims of physical and/or psychological violence; j. Children who are victims of sexual crimes; k. Children who are victims of terrorism networks; l. Children with disabilities; m. Children who are victims of abuse and neglect; n. Children with deviant social behavior; and o. Children who are victims of stigmatization due to labeling related to their parents’ conditions.”

2) Law Number 39 of 1999 on Human Rights. This law emphasizes Indonesia’s commitment to the protection of human rights, including the rights of children.³⁵

Article 5, paragraph (3) states: “Every person, including vulnerable groups, is entitled to receive treatment and protection that is more appropriate to their specific needs.”

3) Presidential Regulation No. 125 of 2016 on the Handling of Refugees from Abroad. This regulation provides guidelines for the handling of refugees in Indonesia, including children.³⁶

³² Institute on Statelessness and Inclusion. (2020). *The World’s Stateless: Deprivation of Nationality*. Wolf Legal Publishers.

³³ UNHCR. (2018). *Global Trends: Forced Displacement in 2017*. UNHCR.

³⁴ Republik Indonesia. (2014). *Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak*. Lembaran Negara Republik Indonesia Tahun 2014 Nomor 297. Sekretariat Negara. Jakarta.

³⁵ Republik Indonesia. (1999). *Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia*. Lembaran Negara Republik Indonesia Tahun 1999 Nomor 165. Sekretariat Negara. Jakarta.

³⁶ Republik Indonesia. (2016). *Peraturan Presiden Nomor 125 Tahun 2016 tentang Penanganan Pengungsi dari Luar Negeri*. Lembaran Negara Republik Indonesia Tahun 2016 Nomor 368. Sekretariat

Article 3 states: "The handling of refugees shall be carried out based on cooperation between the central government and the United Nations through the United Nations High Commissioner for Refugees in Indonesia and/or international organizations."³⁷

2. Cooperation with International Organizations

The research findings regarding Indonesia's cooperation with UNHCR (United Nations High Commissioner for Refugees) and IOM (International Organization for Migration) in the context of protecting the rights of Rohingya children as refugees reveal several important findings:

- (1) Cooperation between the Indonesian government and UNHCR has played a crucial role in addressing the needs of refugees, including Rohingya children. UNHCR, as the body responsible for registering and determining refugee status, has assisted Indonesia in identifying and providing protection for refugee children. The research shows that UNHCR's registration process has been instrumental in identifying unaccompanied or separated children, who are a particularly vulnerable group.³⁸
- (2) UNHCR's role in seeking long-term solutions for refugees in Indonesia, including Rohingya children, has provided hope for their future. However, the research also revealed that this process often takes a long time, which can negatively affect the psychosocial well-being of the children.³⁹
- (3) Cooperation with IOM has significantly contributed to the provision of direct assistance to refugees. IOM, working with the Indonesian government, has provided shelter, healthcare, and essential psychosocial support to Rohingya refugee children. The research indicates that this assistance has helped meet the basic needs of refugee children, although challenges still exist in terms of the quality and accessibility of services.⁴⁰
- (4) Although cooperation with UNHCR and IOM has provided significant support, the research also uncovered challenges related to coordination among stakeholders. There have been instances of overlapping efforts or gaps in the provision of services, which have affected the overall effectiveness of the assistance provided to Rohingya refugee children.⁴¹
- (5) The role of UNHCR and IOM in providing psychosocial support to Rohingya refugee children has been recognized as a crucial component of their protection. However, the research highlights that there is still a need to improve the quality and comprehensiveness of these services, particularly given the trauma experienced by many Rohingya children.⁴²
- (6) This cooperation has also contributed to improving the Indonesian government's capacity in handling refugees. Through various training programs and knowledge transfer, UNHCR (United Nations High Commissioner for Refugees) and IOM (International Organization for Migration) have played a significant role in enhancing

37 Kementerian Pendidikan dan Kebudayaan RI. (2013). Permendikbud No. 72 Tahun 2013 tentang Penyelenggaraan Pendidikan Layanan Khusus.

38 Missbach, A. L. (2017). *Troubled Transit: Asylum Seekers Stuck in Indonesia*. ISEAS-Yusof Ishak Institute.

39 Human Rights Watch. (2020). "Years in Limbo: Unprotected Rohingya Children in Malaysia and Indonesia."

40 Save the Children. (2018). *Protecting Children on the Move in Asia through Child Protection Systems*. Save the Children.

41 Kneebone, S. (2017). *Australia as a Powerbroker on Refugee Protection in Southeast Asia: The Relationship with Indonesia*. *Refuge: Canada's Journal on Refugees*, 33(1), 29-41.

42 Meyer, S. (2013). *UNHCR's Mental Health and Psychosocial Support for Persons of Concern*. UNHCR.

Indonesia's ability to address refugee-related issues, including the protection of children.⁴³

3. Protection and Assistance Programs for Refugee Children

The Indonesian government, in collaboration with international organizations and local NGOs, has developed several programs to protect and assist refugee children:

- a) Education Programs: Refugee children are provided access to local schools or alternative learning centers managed by UNHCR (United Nations High Commissioner for Refugees) and its partners.⁴⁴
- b) Health Services: Public health centers and government hospitals offer health services for refugees, including children.⁴⁵
- c) Child Protection Programs: Special programs are designed for children who are unaccompanied or separated from their families, including placement in alternative shelters.⁴⁶
- d) Psychosocial Support: Programs aimed at addressing trauma and supporting the mental health of refugee children.⁴⁷
- e) Skills Training: For older children, skill training programs are provided to help prepare them for employment and future opportunities.⁴⁸

Based on the research findings, the analysis of protection and assistance programs for Rohingya refugee children in Indonesia reveals several key findings:

1. Educational Programs: The research indicates that although there have been efforts to provide access to education, implementation is still limited. Approximately 40 % of refugee children are enrolled in formal schools or alternative learning centers. The main challenges include language barriers, differences in curriculum, and limited resources. However, several innovative initiatives, such as the non-formal education program managed by UNHCR (United Nations High Commissioner for Refugees), have shown positive results in improving literacy and numeracy among Rohingya children.⁴⁹
2. Health Services: Government-run health centers and hospitals have provided basic health services for Rohingya refugee children. However, the research reveals that access to specialized health services and long-term care remains limited. Collaboration with organizations like IOM (International Organization for Migration) has helped improve health service coverage, but there are still challenges in addressing mental health and nutritional issues among refugee children.⁵⁰
3. Child Protection: Specialized programs for unaccompanied or separated children have been developed, including alternative care systems. However, the research shows that the quality of these systems is still limited and often unable to meet the

43 Tan, N. F. (2016). The Status of Asylum Seekers and Refugees in Indonesia. *International Journal of Refugee Law*, 28(3), 365-383.

44 Dryden-Peterson, S. (2016). Refugee Education in Countries of First Asylum: Breaking Open the Black Box of Pre-Resettlement Experiences. *Theory and Research in Education*, 14(2), 131-148.

45 WHO. (2019). Promoting the Health of Refugees and Migrants: Draft Global Action Plan, 2019–2023. World Health Organization.

46 Save the Children. (2018). Protecting Children on the Move in Asia through Child Protection Systems. Save the Children.

47 Meyer, S. (2013). UNHCR's Mental Health and Psychosocial Support for Persons of Concern. UNHCR.

48 UNHCR. (2019). Refugee Education 2030: A Strategy for Refugee Inclusion. UNHCR.

49 Save the Children. (2018). Protecting Children on the Move in Asia through Child Protection Systems. Save the Children.

50 IOM Indonesia. (2021). Migrant Care and Assistance. Retrieved from <https://indonesia.iom.int/migrant-care-and-assistance>

specific needs of Rohingya children.⁵¹ Cases of exploitation and abuse of children are still reported, indicating the need for stronger child protection mechanisms.⁵²

4. **Psychosocial Support:** Psychosocial support programs have been developed to address trauma and support the mental health of Rohingya refugee children. However, the research shows that the coverage of these programs is still limited and often insufficient to address the complexity of trauma experienced by these children.⁵³ The shortage of trained professionals in handling trauma cases for refugee children also presents a significant challenge
5. **Skills Training:** For older children, skills training programs have been developed to help them prepare for the future. However, the effectiveness of these programs is still limited due to the uncertain legal status of refugees in Indonesia, which hinders their access to formal employment opportunities.⁵⁴ Some small-scale entrepreneurial initiatives have shown positive results, but their reach remains limited.

4. Evaluation of Indonesia's Government Efforts

a. Effectiveness of Existing Policies and Programs:

The research findings indicate that the Indonesian government has made significant progress in addressing refugee issues, including those of Rohingya children, although there is still room for improvement. Presidential Regulation No. 125 of 2016 on the Handling of Refugees from Abroad has provided clearer legal frameworks for refugee management. The implementation of this regulation has improved coordination between government agencies involved in refugee assistance, including those for children.⁵⁵ However, there remain challenges in fully addressing the needs of these vulnerable groups.⁵⁶

Educational programs for refugee children, such as those outlined in the Ministerial Regulation of Education and Culture No. 72 of 2013, have facilitated improved access to education.⁵⁷ However, the participation rate of refugee children in formal education remains relatively low, with only around 40 % of refugee children enrolled in schools.⁵⁸ In the area of health, collaboration between the Indonesian government, UNHCR (United Nations High Commissioner for Refugees), and IOM (International Organization for Migration) has improved refugee access to healthcare services.⁵⁹ Nevertheless, there are still gaps in mental health care and psychosocial support, which are urgently needed for children who have experienced trauma.⁶⁰

b. Identification of Challenges and Obstacles in Implementation:

This study identifies several key challenges and obstacles in the implementation of policies and programs for Rohingya refugees in Indonesia:

51 Human Rights Watch. (2020). "Years in Limbo: Unprotected Rohingya Children in Malaysia and Indonesia."

52 UNICEF. (2018). *The Right to be Heard: Listening to Children and Young People on the Move*. UNICEF.

53 Meyer, S. (2013). *UNHCR's Mental Health and Psychosocial Support for Persons of Concern*. UNHCR.

54 Missbach, A. L. (2017). *Troubled Transit: Asylum Seekers Stuck in Indonesia*. ISEAS-Yusof Ishak Institute.

55 Republik Indonesia. (2016). *Peraturan Presiden Nomor 125 Tahun 2016 tentang Penanganan Pengungsi dari Luar Negeri*.

56 Missbach, A. L., et al. (2018). *Stalemate: Refugees in Indonesia — Presidential Regulation No. 125 of 2016*. Centre for Indonesian Law, Islam and Society Policy Papers.

57 Kementerian Pendidikan dan Kebudayaan RI. (2013). *Permendikbud No. 72 Tahun 2013 tentang Penyelenggaraan Pendidikan Layanan Khusus*.

58 UNHCR. (2021). *Indonesia Fact Sheet*. Retrieved from <https://www.unhcr.org/id/en/unhcr-inindonesia>

59 WHO. (2019). *Promoting the Health of Refugees and Migrants: Draft Global Action Plan, 2019–2023*. World Health Organization.

60 Meyer, S. (2013). *UNHCR's Mental Health and Psychosocial Support for Persons of Concern*. UNHCR.

- 1) Resource Availability: As a transit country, Indonesia faces challenges in mobilizing resources to provide adequate services for all refugees, including children.⁶¹ This often results in shortages in education services, healthcare, and quality psychosocial support.
- 2) Cultural Differences: The cultural differences between Rohingya refugees and the local population in Indonesia present challenges in social integration and access to services.⁶² The lack of translators and culturally sensitive staff often hinders the effectiveness of programs.
- 3) Unclear Legal Status: While Indonesia provides temporary protection, the unclear legal status of Rohingya refugees creates challenges in program planning and implementation, leading to gaps in the continuity of services.⁶³
- 4) Coordination Between Agencies: Despite improvements, coordination between government agencies and international organizations remains a challenge, often resulting in duplicated efforts or gaps in service delivery.⁶⁴
- 5) Stigma and Discrimination: Rohingya refugees often face stigma and discrimination from local communities, which limits their access to services and social integration.⁶⁵
- 6) Data Availability: The lack of comprehensive and reliable data on Rohingya refugees in Indonesia hinders effective program planning and evaluation.⁶⁶

5. Comparison Between International Standards and Practices in Indonesia a Analysis of Gaps Between International Legal Standards and Implementation in Indonesia:

Our research uncovers several significant gaps between international legal standards and their implementation in Indonesia regarding the protection of Rohingya refugees:

- 1) Legal Status: Despite the emphasis on non-discrimination in the Convention on the Rights of the Child (CRC), Indonesia has not ratified the 1951 Refugee Convention, leading to unclear legal status for Rohingya refugees.⁶⁷ This contrasts with Article 22 of the 1989 CRC, which advocates for the protection and provision of rights to refugees, highlighting a gap in Indonesia's legal framework regarding refugees' rights and security.⁶⁸
- 2) Education: Article 28 of the Convention on the Rights of the Child (CRC) 1989 ensures the right to education; however, in Indonesia, access to formal education for Rohingya refugees remains limited. Around 40 % of refugee children are enrolled in school, which falls short of international standards.⁶⁹

61 Tan, N. F. (2016). The Status of Asylum Seekers and Refugees in Indonesia. *International Journal of Refugee Law*, 28(3), 365-383.

62 Calderuthers, A. L. (2019). Living in Limbo: The Rohingya in Indonesia. *ISEAS Perspective*, 2019(75), 1-9.

63 Missbach, A. L. (2017). *Troubled Transit: Asylum Seekers Stuck in Indonesia*. ISEAS-Yusof Ishak Institute.

64 IOM Indonesia. (2021). *Migrant Care and Assistance*. Retrieved from <https://indonesia.iom.int/migrant-care-and-assistance>

65 Human Rights Watch. (2020). "Years in Limbo: Unprotected Rohingya Children in Malaysia and Indonesia." Retrieved from <https://www.hrw.org/report/2020/06/30/years-limbo/unprotected-rohingyachildren-malaysia-and-indonesia>

66 Save the Children. (2018). *Protecting Children on the Move in Asia through Child Protection Systems*. Save the Children.

67 Missbach, A. L. (2017). *Troubled Transit: Asylum Seekers Stuck in Indonesia*. ISEAS-Yusof Ishak Institute.

68 United Nations. (1989). *Convention on the Rights of the Child*. Treaty Series, 1577, 3.

69 UNHCR. (2021). *Indonesia Fact Sheet*. Retrieved from <https://www.unhcr.org/id/en/unhcr-inindonesia>

- 3) Health: Although Article 24 of the CRC 1989 guarantees access to healthcare, our research indicates that Rohingya refugees in Indonesia often face barriers in accessing comprehensive healthcare services, especially mental health care.⁷⁰
- 4) Protection from Exploitation: Articles 32 and 34 of the CRC 1989 mandate protection from economic and sexual exploitation. However, implementation in Indonesia is weak, with many Rohingya refugees still vulnerable to exploitation and human trafficking.⁷¹
- 5) Participation: Article 12 of the CRC 1989 stresses the right of children to participate in decisions affecting them. In Indonesia, mechanisms to facilitate the participation of Rohingya refugees in decisions impacting their lives and policies affecting them are still limited.⁷²

b Factors Influencing Gaps:
Based on the analysis, several key factors influencing the gaps between international standards and implementation in Indonesia are:

- 1) Resource Availability: Indonesia, as a developing country, faces challenges in mobilizing sufficient resources to provide services that meet international standards for refugees, including Rohingya refugees.⁷³ This impacts the country's ability to fully comply with international standards for refugee assistance.
- 2) Incomplete Legal Framework: Indonesia has not ratified the 1951 Refugee Convention, leading to a legal gap in refugee protection, particularly for Rohingya refugees.⁷⁴ This creates inconsistency in the application of international standards in refugee assistance.
- 3) Political and Social Barriers: Political sensitivity surrounding refugee issues and local societal resistance to the integration of refugees present significant obstacles. These social and political challenges hinder the full implementation of pro-refugee policies.⁷⁵
- 4) Lack of Technical Expertise: The shortage of trained professionals in refugee management, especially in mental health and psychosocial support, limits Indonesia's ability to meet international standards for refugee assistance. This expertise gap reduces the effectiveness of support programs for refugees.⁷⁶
- 5) Coordination Weaknesses: Despite efforts to improve coordination, there are still challenges in coordinating between government agencies and international organizations, leading to inefficiencies in providing refugee services and integrating them into local communities.⁷⁷
- 6) National Policy Priorities: As a transit country, Indonesia often prioritizes short-term solutions over long-term integration strategies, which sometimes conflicts

70 WHO. (2019). Promoting the Health of Refugees and Migrants: Draft Global Action Plan, 2019–2023. World Health Organization.

71 Human Rights Watch. (2020). "Years in Limbo: Unprotected Rohingya Children in Malaysia and Indonesia." Retrieved from <https://www.hrw.org/report/2020/06/30/years-limbo/unprotected-rohingyachildren-malaysia-and-indonesia>

72 Lundy, L. (2018). In Defense of Tokenism? Implementing Children's Right to Participate in Collective Decision-Making. *Childhood*, 25(3), 340-354.

73 Tan, N. F. (2016). The Status of Asylum Seekers and Refugees in Indonesia. *International Journal of Refugee Law*, 28(3), 365-383.

74 Kneebone, S. (2017). Australia as a Powerbroker on Refugee Protection in Southeast Asia: The Relationship with Indonesia. *Refuge: Canada's Journal on Refugees*, 33(1), 29-41.

75 Calderuthers, A. L. (2019). Living in Limbo: The Rohingya in Indonesia. *ISEAS Perspective*, 2019(75), 1-9.

76 Meyer, S. (2013). UNHCR's Mental Health and Psychosocial Support for Persons of Concern. UNHCR.

77 IOM Indonesia. (2021). Migrant Care and Assistance. Retrieved from <https://indonesia.iom.int/migrant-care-and-assistance>

with several aspects of international standards, including refugee protection and sustainable solutions for refugees.⁷⁸

D. CONCLUSION

Based on the research and discussion, it can be concluded that: Protection of Human Rights for the Rohingya Ethnic Group as Refugees in the Perspective of International Law:

1. The protection of human rights for the Rohingya refugees refers to the standards set out in various International Human Rights conventions, which include rights to education, health, and equality before the law. Conventions related to refugees, such as the Universal Declaration of Human Rights (UDHR), the 1951 Refugee Convention and the 1967 Protocol, ICCPR (International Covenant on Civil and Political Rights), ICERD (International Convention on the Elimination of All Forms of Racial Discrimination), CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), and the 1989 Convention on the Rights of the Child, all emphasize the protection of refugees' fundamental rights. The complexity of this issue is mainly caused by the involvement of various parties, including the central government, regional governments, international organizations such as UNHCR, and various local and international NGOs. Each of these institutions often has different priorities, approaches, and resources, which can lead to overlaps or even gaps in service provision.

2. Indonesia's Commitment to Protecting Rohingya Refugee Children:

The Indonesian government has shown its commitment to protecting Rohingya refugee children through legal steps that adopt several legislative policies concerning the protection of children, including refugee children. Furthermore, Indonesia has engaged in international cooperation with organizations such as UNHCR (United Nations High Commissioner for Refugees) and IOM (International Organization for Migration) to enhance the protection of Rohingya refugees, especially children.

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⁷⁸ Nethery, A. L., & Gordyn, C. (2014). Australia-Indonesia Cooperation on Asylum Seekers: A Case of 'Incentivised Policy Transfer'. *Australian Journal of International Affairs*, 68(2), 177-193.

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