



## The Covid-19 Pandemic in Indonesia: Children as Children First, Child Refugees Second?

Natalia Yeti Puspita

Faculty of Law, Atma Jaya Catholic University, Indonesia  
email: [natalia.yip@atmajaya.ac.id](mailto:natalia.yip@atmajaya.ac.id)

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### Abstract

Indonesia is often a transit country for refugees, even though Indonesia is not ratified the 1951 Refugee Convention and the 1967 Refugee Protocol. The Covid-19 pandemic has made it even more challenging to fulfil human rights guarantees for child refugees in Indonesia. Child refugees and refugees who were not accompanied by adults are the group most vulnerable to human rights violations. Based on this, this paper will analyze the legal protection for child refugees in Indonesia during the Covid-19 pandemic. This article is the result of normative legal research which emphasizes secondary data. The data was obtained through library research. The legal protection for handling refugees, especially child refugees in Indonesia and during the Covid-19 pandemic, is based on the principle of non-refoulment, the principle of non-discrimination and the principle of the best interests of child.

**Keywords:** Legal Protection, Child Refugees, Indonesia, Covid-19 Pandemic

### Introduction

The refugee issue is a problem that has existed for a long time and has not ended until now. Various humanitarian crises such as the armed conflict in a country are increasingly making refugees more and more. Currently, the world is experiencing the worst refugee crisis since World War II. Millions of people are forced to leave their countries to seek safety due to civil wars and ethnic and religious conflicts (Amnesty International, 2021). Fear of serious threats or persecution to their security, life, or freedom is why someone leaves their country and is referred to as a refugee (UNHCR, 2017: 17). The fear and no choice but to leave the country of origin to maintain a safe life is the critical difference between refugees and other forms of migration (Elsam, 2014). The country of origin of the refugees is unable and unwilling to protect the refugees.

Due to the absence of protection from their country of origin, the international community became involved in protecting refugees by creating the 1951 Convention Relating to the Status of Refugee and its Protocol in 1967. The 1951 Refugee Convention entered into force in 1954 which was ratified by 145 countries (UNHCR,

2017). The United Nations High Commissioner for Refugees (UNHCR) is the organ in United Nations which has duty to manage the refugees.

Based on the UNHCR report in 2020, 82,4 million people from all parts of the world are forced to leave their countries of residence due to persecution, armed conflict, or natural disasters, of which 26,4 million have been granted refugee status (UNHCR, 2020). Indonesia is not a destination country for refugees but a transit country. The immigrants entered Indonesian territory to get assistance from the Government of Indonesia while waiting for the refugee status granted by UNHCR to be subsequently accepted in third countries such as the United States, European countries, and Australia. According to UNHCR data, there will be at least 13.356 international refugees in Indonesia in July 2021 (UNHCR, 2021). The majority of refugees or international asylum seekers in Indonesia come from Asia and Africa. The largest group registered were Rohingya originating from Myanmar (56%), followed by Afghanistan (12%), Somalia (6%), and Sri Lanka (5%) (UNHCR, 2021). Based on UNHCR data, 27 % of 13.356 refugees in Indonesia are child refugees who come alone or separated from the family (UNHCR, 2021).

Indonesia has no obligation to provide protection and needs for refugees because it has not ratified the 1951 Convention on Refugees and the 1967 protocol. However, the number of refugees transiting in Indonesia is increasing, especially with around 300 Rohingya refugees, including 14 of them are children from Myanmar in September 2020 (BBC, 2020). The arrival in Indonesia was the biggest seen since 2015 (BBC, 2021).

With the increasing number of refugees in Indonesia, the Indonesian Government is confronted with a number of issues related to the demand for protection and assistance for these refugees. At the same time, they remain in Indonesia, despite the fact that Indonesia is under no obligation to do so. In Indonesia, refugees are usually held for a long time before being relocated to a third country. The resettlement process takes years, and not all refugees can be resettled to third countries because these countries have minimal quotas. During this uncertain waiting period, refugees frequently do not receive legal protection or are involved in criminal activity.

At this time, the world is facing a global health problem in the coronavirus pandemic. The virus has infected a total of 220 countries worldwide (Worldometers, 2021). The Coronavirus, officially named Covid-19 by the WHO, began to spread in Wuhan-China in December 2019. Based on Worldometers data, as of October 1, 2021, the total number of positive cases of Covid-19 worldwide has touched the figure of 234.727.548 patients (Worldometers, 2021). Of that number, 4.800.660 people died (Worldometers, 2021). The number of positive corona patients in Indonesia is increasing by the day, from two positive patients announced on March 2, 2020, to 538.883 positive patients on October 1, 2021 with 142.026 people dying and 4.039.835 recovering (Satuan Tugas Penanganan Covid-19, 2021).

The Covid-19 pandemic has disrupted global health stability and political, economic, and social problems. The Covid-19 pandemic that occurred globally was also faced by refugees in Indonesia, which added to the burden of their lives, especially for child refugees. Child refugees in Indonesia also experience this condition. Their lack of understanding of the right to protection, especially if they arrive alone without being accompanied by an adult, makes them the most vulnerable group to experience human rights violations (Tobing, 2018). Child refugees who are detained experience much worse conditions than children convicted of criminal activity. The unclear immigration status of child refugees makes them commonly treated as other adult refugees. Furthermore, because the Refugee Convention obligations do not bind Indonesia, child refugees do not have guaranteed rights to education and health while in Indonesia. The threat of transmission of Covid-19 is vulnerable to children, especially for child refugees, because they live in refugee camps with limited health facilities. Based on this, this paper will analyze the legal protection for child refugees in Indonesia during the Covid-19 pandemic.

### **Methods**

This article is the result of normative legal research. It is "a process to find the rule of law, legal principles, and legal doctrines to answer the legal problems faced" (Marzuki, 2008:35). Normative legal research is conducted by reviewing secondary data, and the analysis is descriptive. Descriptive research aims to describe the characteristics of a situation, personal and group behaviour, and determine the frequency of a symptom (Sumardjono, 1997: 26). In this study, data were obtained that described legal protection efforts against child refugees in Indonesia in the Covid-19 pandemic based on international law. This research emphasizes secondary data. The data was obtained through library research. It should contain enough information to enable the reader to understand what was done and important questions to which the Methods section should provide brief answers.

### **Discussion and Result**

#### **The Definition of Refugees in the International Law**

Historically, refugees come directly from the French language, "*refugie*" refers to particular religious groups who moved in 1685 upon the issuance of the Edict of Nantes, which is terminology defined as people in the English dictionary who move to a different place. Safer because of the danger (Merriam-Webster, 2020). In political history, it was attached to a group of guerrillas out of New York City since the American Revolutionary war against the British (Merriam-Webster, 2020). According to the Black's Law Dictionary, a refugee is defined as a person who flees or leaves his country due to persecution, etc (Garner, 2009: 1394). The 1951 Convention on the Status of Refugees defines a refugee as someone who,

As a result of events occurring before January 1, 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (the 1951 Convention).

Based on the convention, refugees are forced to leave the country where they live because of fear of threats to their life safety due to gross human rights violations, armed conflict, and persecution based on race, ethnicity, religion, or affiliation to certain political groups (Betts, 2011: 1). A refugee is entitled to international protection in another country because the country of origin is deemed unwilling or unable to provide such protection. The essential thing that distinguishes refugees from other types of human migration is the fear of life safety and its involuntary nature.

In terms of requirements for obtaining refugee status, Article 1 of the 1951 Convention requires persecution, well-founded fear, and the reasons for this fear (for reasons of). The term "persecution" is not defined specifically in the 1951 Convention. However, it can be concluded that persecution, in this case, means the existence of acts that violate a person's human rights, or acts that cumulatively can cause persecution such as discrimination, which is highly dependent on gender, age, opinion, and psychological condition of a person, carried out by government officials, as well as non-state actors, where the state is unwilling or unable to provide protection (UNHCR, 2019: 21). Hathaway defines persecution as "*the sustained or systemic violation of basic human rights demonstrative of a failure of state protection*" (Hathaway, 1991: 104-105).

Fundamental fear or well-founded fear means that the fear felt by a refugee, apart from being subjective, must have tangible objective evidence (UNHCR: 2019: 19). These two elements must be considered cumulatively (Elsam, 2014: 132). The subjective aspect is investigated by examining the refugees' background, profile, and what led them to leave their place of residence (Elsam, 2014: 132). Meanwhile, to determine the objective element, an assessment is carried out on the refugee's testimony and the actual situation on the ground, taking into account the condition of his country of origin and similar experiences of residents of his country of origin (UNHCR, 2019). Paul Weis argues that well-founded fear as one element of the definition of a refugee must be interpreted as the existence of certain conditions or indicators so that a conclusion can be found whether a person can accept the status of a refugee. The indicator could be referring to the person's country of origin; if they return, they will face persecution (UNHCR, 2019). In some instances, the definition of well-founded fear can be narrowed by convention members through domestic court

decisions to determine an enforceable measure, for example, in the case of *I.N.S. v. Cardoza Fonseca*. In this case, the United States Supreme Court examined the possibility of persecution that a person would receive from his home country. Judge Steven stated that the persecution was not immediately proven that it would happen. However, the possibility of reasonable persecution is considered sufficient (*N.S. v. Cardoza-Fonseca*, 480 U.S. 421 (1987)).

According to the Refugee Convention, the basis for this fear is the fear of persecution based on "race, religion, nationality, membership in a particular social group or political ideology." It should be noted that in order to be categorized as a refugee, it must meet at least one of the basic fears (causal link) (Foster, 2002: 266).

### **The Regulation on Legal Protection of Refugees based on the International Law**

International Refugee Law is specifically regulated in the 1951 Convention on the Status of Refugees (the Refugee Convention) and the 1967 Protocol Relating to the Status of Refugees (the Refugee Protocol). The Refugee Convention defines who is considered a refugee, the rights and obligations of refugees, as well as the rights and obligations of the host country. Historically, the Refugee Convention was formulated shortly after the Second World War. Article 1(B)(1) of the Convention states limitations in terms of geography and time. According to the Refugee Convention, a refugee is a person who saves himself because of events that occurred in Europe before January 1, 1951, making the definition not universal so that it is not relevant if it is used to determine long-term refugee status. Thus, the Refugee Protocol expanded the refugees' definition by eliminating the phrases "as a result of events occurring before January 1, 1951..." and "...as a result of those events...".

The Refugee Convention consisted of 46 articles signed by approximately 27 countries and their delegates from 2 July 1951 to 25 July 1951 (UNHCR, 2019). The Refugee Convention contains several rights attached to refugees and emphasizes the obligations of the ratifying members. The rights of refugees are as follows: 1) The Right not to be discriminated against (Articles 3 and 4); 2) Right to personal status (Article 12); 3) Ownership rights to movable and immovable objects (Articles 13, 14, and 30); 4) Right to associate (Article 15); 5) The Right to litigate in court (Article 16); 6) Right to work (Articles 17, 18, and 19); 7) The Right to a prosperous life (Articles 20, 21, and 23); 8) Right to education (Article 22); 9) Freedom of movement (Article 26); 10) Right to identification and travel documents (Articles 27 and 28); 11) Right not to be punished for unlawful entry (non-penalization) (Article 31); 12) The Right not to be repatriated by force (non-refoulement) (Article 33); and 13) Right to naturalization (Article 34).

Provisions regarding the rights and obligations of transit countries are not specifically contained in the Refugee Convention. As a transit country that has not ratified the Refugee Convention, Indonesia must still accept the flow of refugees

entering its territory based on the principle of non-refoulement which the international community has considered customary international law. As a country that has not ratified the Refugee Convention and its Protocol, Indonesia is not bound by the obligations contained in the Refugee Convention.

There are some human rights principles in the frame of the legal protection of refugees:

- a. Principle of Freedom, life, and safety: The Right of everyone to leave the country and seek asylum (Articles 3, 13-14 Universal Declaration of Human Right/UDHR).
- b. The Principle of non-refoulment (a person may not be forcibly returned to a country/territory where his life is threatened / Article 33 of the Refugee Convention).
- c. The Principle of non-penalization (asylum seekers and refugees should not be punished when entering the territory of an asylum country to seek protection without complete documents / Article 31 of the Refugee convention).
- d. The Principle of non-discrimination (treatment must not differentiate between asylum and asylum seekers based on ethnicity, religion, nation, race, specific social membership, and political views / Article 3 of the Refugee Convention).

Concerning these human rights principles, Article 3 of the Refugees Convention contains provisions regarding the obligations of the Convention members to protect refugees who enter their jurisdiction without committing any form of discrimination based on race, religion, or country of origin. It differs from some operational terms or definitions in the Convention, such as refugee, well-founded fear, and others. The Convention does not provide a complete and precise definition of non-discrimination. At first, Article 3 generated some debate because of its very concise content. However, Article 7 provides an alternative way for each member of the Convention to adopt more favorable provisions to their domestic legal needs as long as refugees are still treated proportionally. Article 3 also has a different element limitation from the International Labor Organization (ILO) Convention, where the element of sex is not considered as a form of discrimination.

Therefore, the notion of non-discrimination can be associated with several international conventions or treaties that contain the exact operational definition. As in the International Labor Organization (ILO) Convention on Worker Discrimination. In Article 1(1), the convention is explained, "Any distinction, exclusion or preference made based on race, color, sex, religion, political opinion, national extraction, or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in the employment or occupation." The content of the ILO Convention provides an extension of the elements inherent in every person so as not to be discriminated against based on what is inherent in each person's identity. Furthermore, the Convention members in implementing Article 3 are also associated

with several principles inherent in the Convention produced by the United Nations. Several Conventions or agreements that contain the Principle of non-discrimination are also widely agreed upon at the regional level, such as in the European Union and Latin America.

### **Legal Personality of UNHCR in the Refugees Management**

The United Nations is an international organization that is universal and has six (6) main bodies, one of which is the United Nations Economic and Social Council. Within this agency, there is a subsidiary body or high commission that deals with refugee issues. This agency is called the United Nations High Commissioner for Refugees (UNHCR). It was established by UN General Assembly Resolution No. 319 A (IV) of December 3, 1949, and UN General Assembly Resolution No. 428 (V) on December 14, 1950.

The role of UNCHR, according to the Refugee Convention, is to supervise to ensure that each member of the Convention fulfills their obligations in providing international protection to refugees and displaced people (Simeon, 2013: 1). The long history of UNHCR's role can be seen from 1954, when it won the Nobel Peace Prize in dealing with emergencies in the European region. Then, in 1956, UNHCR played a role in the movement of two hundred thousand people to Austria during the Hungarian Revolution. In 1960, during the decolonization of Africa, which was the first time the refugee crisis escalated. UNHCR plays a role in the process of moving refugees to Asia and Latin America. The process of continuing the role of UNHCR is still ongoing into the 21st century today (UNHCR, 2020).

Based on the mandate given to UNHCR, it is known that the task carried out by this organization is a noble humanitarian task, namely providing international protection and finding solutions to the problems faced by refugees. In carrying out this second function, UNHCR seeks to carry out voluntary repatriation of refugees to their countries of origin, or if this is not possible, UNHCR will help facilitate their integration in the country of asylum or resettlement. While looking for solutions, UNHCR will provide short-term material assistance if necessary. In special situations, providing material assistance from UNHCR is carried out through the local or national authorities of the country concerned, other United Nations agencies, non-governmental organizations (NGOs), or other private technical agencies.

Efforts to get a permanent solution to the problem to become the main goal of international protection; in a permanent solution, there are three solutions to the problem given, namely:

- a. Returned to the country of origin (voluntary repatriation), UNHCR must ensure that repatriation is voluntary in providing repatriation.
- b. Settled in the country of first asylum (local integration), the purpose of local integration in the country of asylum is to help refugees to become

independent in the country of first asylum. It is done in various ways by providing them with skills through skills schools or trade jobs. In most African countries, the land is provided to refugees so that they can grow crops and for the purpose of making them self-sufficient.

- c. Settled in a third country (resettlement); usually, people who come from countries in Southeast Asia are resettled in other countries, especially in Australia, Europe, and North America (ILO, 2021).

UNHCR's assistance in the field is to seek resettlement to third countries through a collaboration with governments of resettlement countries with the International Organization for Migration (IOM) and voluntary agencies concerned with the resettlement of refugees to third countries.

The main task of UNHCR is to enter into agreements with host country governments to provide suitable and adequate housing for refugees. UNHCR also encourages the governments of these countries to relax the criteria for accepting refugees and establish special immigration procedures for refugees. Member states recognize that UNHCR's work is non-political. The task in the form of social responsibility and humanitarian nature is assigned to UNHCR so that it can be carried out within the legal framework approved by other countries, namely international law on refugees, and as a guide for national laws and regulations made by other countries to help UNHCR protect and assist refugees.

### **The Legal Protection Arrangements for Child Refugees**

The Refugee Convention and its Refugee Protocol does not explicitly regulate child refugees, but some provisions can be implicitly applied as the basis for providing legal protection for child refugees.

- a. Article 4 states that countries participating in the convention must provide freedom of worship and the Right to religious education for child refugees in that country.
- b. Article 16 paragraph (2) provides that a refugee shall enjoy in the State Party where he usually resides the same treatment as nationals in matters relating to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*. This also applies to children.
- c. Article 22 states that States parties will provide refugees with the same treatment as those given to citizens regarding primary education.
- d. Article 23 obligations state that States Parties shall provide refugees lawfully residing in their territories with the same treatment of public assistance and assistance accorded to their nationals.
- e. Article 26: Right and unrestricted movement to choose a place to live within the territory of the receiving country.



- f. Article 27: Obtaining an identity book is a document that is required as proof of the child's identity.
- g. Article 28: Obtaining travel documents so that refugees can travel to other countries to continue their studies, find work, medical and or settle in a country;
- h. Article 34: Ease of obtaining citizenship. This is especially needed for child refugees who came alone and lost their families.

Child protection is a method that aims to provide services to children so that they can meet their life needs through education, health and economic welfare. There is a convention that specifically regulates the protection of children, namely the Convention on the Child's Rights in 1989. The Convention came into force on September 2, 1990. This Convention regulates what the state must do to ensure that every child grows up as healthy as possible, attends school, is protected, has their opinions heard and treated fairly.

Article 1 of this Convention defines a child as an individual under 18, unless otherwise provided by a country's laws. All children have all the rights mentioned in this Convention. Furthermore, Article 2 states that children's rights apply to all children without exception. Children must be protected from all kinds of discrimination against themselves, or discrimination caused by the beliefs or actions of their parents or other family members. Article 3 of this Convention contains the fundamental principle of child protection, namely the principle of "the best interests of child". This article states that all actions and decisions concerning a child must be made based on the best interest of child.

### **The Legal Protection Efforts for Child Refugees in Indonesia in the Covid-19 Pandemic Situation**

Starting from the city of Wuhan in China in December 2019, this virus finally spread to various countries in the world, including Indonesia (Genecraftlabs, 2021). The large number of victims who died and the extraordinary impact on the joints of human life made WHO designated Covid-19 as a pandemic on March 11, 2020 (Karlina, 2020). A pandemic is a disease that has spread across several countries or continents and generally affects many people. The spread of Covid 19 in Indonesia has had an impact on all sectors of people's lives in Indonesia. The health sector and the economy are both interrelated aspects and contradictory.

A pandemic can be categorized as a non-natural disaster. It is stated in Law Number 24 of 2007 on Disaster Management in Indonesia. The term pandemic is not used to indicate the severity of a disease but only the extent of its spread. In relation to the preceding explanation, the Indonesiaan Government issued Presidential Decree No. 12 of 2020, which stipulates the spread of Covid-19 as a non-natural disaster on a national scale. The Task Force will carry out this disaster management for the

Acceleration of Handling Covid-19 based on Presidential Decree 7/2020. The decree was eventually changed to Presidential Decree 9/2020. According to this Presidential Decree, regional heads will serve as task force leaders to speed up the handling of Covid-19 in their respective regions.

The Covid-19 pandemic has brought humanity into a new phase of protection and guarantees to fulfil health rights. The right to health is a human right that everyone should have. The presence of the state may be essential for its citizens to be able to exercise their health-care rights. It will be a problem when a country turns out to have failed (unwilling or unable) to provide the fulfilment of this right. It is a situation that refugees meet. They leave their country to go to the territory of another country, seeking help to save their lives. In this condition, humanitarian assistance from other countries or international organizations becomes increasingly needed. When the Covid-19 pandemic strikes, the situation becomes even more complicated. Many countries have closed their border gates for reasons of state sovereignty and also to protect their citizens from disease transmission. On the other hand, many refugees have come to the receiving country where the country is not a ratifying country which is certainly not bound by the obligations contained in the Refugee Convention.

In this regard, Indonesia requires legal protection for dealing with refugees in Indonesia, particularly during the Covid-19 pandemic. The legal considerations are based on the principles of non-refoulement and the principle of non-discrimination. The principle of non-refoulement states that refugees may not be returned to their country of origin, which means that a person with refugee status has the right to obtain protection for basic human rights. The act of a country rejecting refugees or even forcibly repatriating them is an act that is contrary to general principles of international law and is a form of denial of the commitment of the international community to participate in solving problems related to refugees.

The principle of non-discrimination is a principle contained in the Refugee Convention. This principle also applies to non-ratifying countries. Despite the fact that Article 3 of this convention does not fully explain the concept of non-discrimination, the concept of non-discrimination can be linked to a number of conventions or international treaties that contain the exact operational definition. The content of the ILO Conventions extends the elements inherent in each individual. This is due to the need to avoid discrimination based on what is inherent in each person's identity. Then, the definition also provides several principles that guarantee equality for everyone. Violations of the principle of non-discrimination are present when:

- a. The same event is treated differently;
- b. If indeed there is a different treatment, it is not for a sufficiently objective reason;

- c. There is no proportionality between the different goals and purposes of implementation (Nguindip, 2017: 89).

The spread of Covid 19 does not discriminate between countries, citizenship status, and others. In connection with the Covid-19 pandemic, everyone in the territory of Indonesia, including refugees, must receive the same treatment regarding the protection and fulfilment of their health rights.

In addition, these principle of non-discrimination are also contained in several legal instruments agreed upon at the regional level such as in the European Union, ASEAN, and Latin America, as well as at the global level. These principles are international agreements issued by the United Nations such as:

- a. Universal Declaration of Human Rights;
- b. United Nations Convention Against Torture;
- c. Geneva Convention IV (Fourth Geneva Convention) of 1949;
- d. International Covenant of Civil and Political Rights (ICCPR 1966);
- e. International Covenant on Economic, Social and Cultural Rights (ICESCR 1966);
- f. Convention on the Right to a Child 1989;
- g. Convention on Migrant Workers Rights and Their Families 1990 (Nguindip, 2017: 89).

The international treaty mentioned above were ratified by Indonesia so that Indonesia also automatically recognizes the existence of the principle of non-refoulment and non-discrimination. Although not yet legally formal, the current system in Indonesia is categorized as Indonesia already being able to respect the main principles contained in the Refugee Convention. These principles stem from the main reason, that is "humanity".

Concerning legal protection for refugees in Indonesia, in 2016, the Government of Indonesia issued Presidential Regulation no. 125/2016 concerning Handling of Refugees from Overseas, which is used as a normative and coordinating basis for Ministries/Agencies and in handling refugees from abroad with the involvement of the role of the Regional Government. The Presidential Regulation regulates handling refugees in Indonesia at discovery, security, temporary placement, and immigration control. As a follow-up to the Presidential Decree, the Ministry of Foreign Affairs and the Ministry of Law and Human Rights are currently drafting a Memorandum of Understanding (MoU) between Indonesia and UNHCR regarding Refugee Data Sharing. It is hoped that the existence of the MoU will increase the Government's supervision of refugees in Indonesia and reduce the potential for refugees to enter through regular channels (pure immigration violators). Meanwhile, in response to the COVID-19 pandemic, the Indonesian government issued a Circular Letter on June 10, 2020, through the Ministry of Health, granting registered refugees access to COVID-19-related services.

Despite the fact that Indonesia did not ratify the Refugee Convention, it did become a state party to the Convention on the Rights of the Child. The convention regulates which member countries must guarantee rights. The Convention on the Rights of the Child contains the Principle of the child's best interests, which is the legal basis for protecting children under any circumstances, including child refugees.

As a member state of the convention, Indonesia is obliged to guarantee the rights contained in the convention, which apply to all children, including child refugees in Indonesia. Indonesia has ratified the Convention with Presidential Regulation no 26 the Year 1990 (Suharti, 2021: 945). Based on Article 4 of the Convention, Indonesia should be responsible for ensuring that all rights stated in the convention are protected and fulfilled for each child. If it is related to applying the principle of non-discrimination recognized by Indonesia, the fulfillment of this Right must also be applied to child refugees. Fulfillment of rights for refugees begins when they arrive in Indonesia, this refers to the contents of the provisions of article 6 of the convention which states that all children have the right to life. The Government needs to ensure that children can survive and grow up healthily.

Article 8 of the Convention on the child's rights states that every child has the right to have an identity, name, nationality, and family ties, and to receive assistance from the Government if any part of his identity is lost. Matters concerning identity dan citizenship are closely related to refugees. In this case, Indonesia can facilitate UNHCR in implementing procedures for handling immigrant children in Indonesia to obtain refugee status and become citizens of third countries immediately. Indonesia must ensure that those child refugees are not separated from their parents, especially during the shelter (Suharti, 2021: 945). It is very vulnerable to immigrants from Indonesia illegally to go to a third country in immigrant shelters. Under Article 11 of the Convention, Indonesia is obliged to eradicate the occurrence of child surrenders abroad. Every child has the right to express his opinion and hear his opinion (Suharti, 2021: 945).

The Article 22 of this Convention states that every child who comes as a refugee to a country has the Right to special protection and support and all the same rights as children born in that country. This provision is the basis that strengthens the obligation of the Indonesian government to provide legal protection for child refugees. As a transit country for refugees, Indonesia can work together with UNHCR as an international organization authorized to handle refugees to provide protection and humanitarian assistance for child refugees in their territory (Suharti, 2021: 945).

Regarding the Right to health, article 24 states that every child has the right to the best standard of health and medical care, clean water, nutritious food, and a clean and safe living environment. The Indonesian government must provide health assistance and proper care for refugees with sick or injured conditions.

In addition to the convention on the Rights of the Child that Indonesia has ratified, guarantees for the fulfillment of children's rights in Indonesia are regulated in Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. Article 1 of Law No. 35 of 2014 defines "child" as not different from the convention. The child is interpreted as not yet 18 years old, including still in the womb (Suharti, 2021: 945). All children have been included in the scope of law no 35 of 2014 and Law No. 23 of 2002, not only children in Indonesia or Indonesian citizens. It means that both laws also apply to refugee children in Indonesia. Based on Article 4 of Law No. 23 of 2002, every child has the right to live, grow, develop, participate appropriately by human dignity and dignity, and be protected from violence and discrimination. Child refugees are entitled to receive protection from the Government of Indonesia to stay alive and grow and be protected from violence and discrimination (Suharti, 2021: 945). Refugee children are out of their territory for various reasons that make them not want to return to their home country.

Furthermore, the government of Indonesia's policy in protecting refugees, especially child refugees in the Covid 19 pandemic situation, can be seen in the various public services that continue to be provided to refugees such as the community health center (*Puskesmas*), which provides medical assistance. This health service also includes an examination of pregnant women and children, such as immunization. In addition, setting up a post office facilitates the distribution of the monthly UNHCR allowance to refugees in these difficult times. Indonesian Government always coordinates with partners (UNHCR, *Church World Service (CWS)*, *Catholic Relief Services (CRS)*, *Dompot Dhuafa*, *the International Organization for Migration (IOM.)*, *Jesuit Refugee Services (JRS)*, *Pos Keadilan Peduli Umat - Human Initiative (PKPU-HI)* and *Selasih*) to assist the refugees to need. The Indonesian government also functions more than the immigration detention center (*rudenim*) to shelter refugees. This is because, Indonesia does not have a special place for them. Immigration detention centers are safe shelters for refugees. In this place the refugees get their physical and spiritual needs. During their stay in immigration detention centers, refugees are treated according to human rights standards. It is based on international human rights instruments that regulate how people are treated in prisons.

Meanwhile, UNHCR representatives in Indonesia continue to follow developments and directions related to Covid-19 in Indonesia. UNHCR is intensely coordinating with the government of Indonesia to ensure that refugees are included in the national Covid-19 response system, including the provision of vaccines. The rules and policies issued by the Indonesian government prove that although Indonesia is not bound by convention obligations, Indonesia for humanitarian reasons by acknowledging the principle of non-refoulment, non-discrimination, and best

interests of child, Indonesia continues to provide the fulfillment of human rights for child refugees in Indonesia during the time of Covid 19.

### Conclusion

Indonesia has not ratified the Refugee Convention. Nevertheless, Indonesia is also moved to assist the handling of refugees in Indonesia. The legal protection for handling refugees, especially child refugees in Indonesia and during the Covid-19 pandemic, is based on the principle of non-refoulment, the principle of non-discrimination and the principle of the best interests of child. This Principle of international law is contained in the Refugee Convention and several other human rights conventions ratified by Indonesia. These principles are rooted in the main reason, namely "humanity". In 2016, the Government of Indonesia had issued Presidential Regulation No. 125/2016 concerning Handling of Refugees from Overseas, which is used as a normative and coordinating basis for Ministries/Agencies and in handling refugees from abroad with the involvement of the role of the Regional Government. The Presidential Regulation regulates the stages of handling refugees in Indonesia at discovery, security, temporary placement, and immigration control. As a follow-up to the Presidential Decree, the Ministry of Foreign Affairs and the Ministry of Law and Human Rights are currently drafting a Memorandum of Understanding (MoU) between Indonesia and UNHCR regarding Refugee Data Sharing.

Meanwhile, in response to the Covid-19 pandemic, the Indonesian government through the Ministry of Health has also issued a Circular Letter of June 10, 2020 which contains the provision of access to services related to Covid-19 for registered refugees are advised not to replicate conclusion by abstract.

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