

## FORM OF LEGAL PROTECTION TO THE ROHINGYA CHILD REFUGEES IN INDONESIA AS THE FORM OF INDONESIA'S COMMITMENT TO HUMANITY

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### ABSTRACT

*The humanitarian crisis that occurred in Rakhine, a state of Myanmar, caused many of the Rohingyas who were forced to leave Myanmar to save themselves. State that border with Myanmar, become their destination state. Indonesia, as a state that does not directly border with Myanmar, is also being a destination state for Rohingya refugees. That is because the majority of Indonesia's population is Moslem. Rohingya refugees in Indonesia not only consist of adults but also many Rohingya children who also fled to Indonesia. How does international law provide legal protection for Rohingya child refugees in Indonesia, whereas on the other hand, Indonesia as the first assylum country has not ratified the Convention Relating to the Status of Refugees 1951. This research is a legal research using normative research methods and statute approach. Based on the findings, an analysis will be carried out taking into account both international and national legal rules regarding refugees. The reasearch objective of this paper is to find what form of legal protection should be provided by the Government of Indonesia to Rohingya child refugees in Indonesia as the form of Indonesia's commitment to humanity*

*Keywords:* legal protection, refugee, child refugee.

### INTRODUCTION

The United Nations states that the Rohingya are the most persecuted and most ill-treated ethnic minorities in the world.<sup>1</sup> Rohingya are an ethnic Muslim minority and are not recognized as legitimate ethnic by the Myanmar government.<sup>2</sup> The Myanmar government insists that the Rohingya are newcomers from the Indian subcontinent so that the Myanmar constitution does not include them in the indigenous groups that are entitled to citizenship.<sup>3</sup>

The Rohingya are not included in the 135 ethnics recognized as citizens by the Myanmar Government through Law 1982. This results in the limitation of access to health, education and employment services for the Rohingya ethnicity.<sup>4</sup> In 2012, there were large-scale sectarian riots between the majority ethnic Rakhine and Rohingya ethnic. As a result of the riots, the Rohingya and Rakhine ethnic could no longer coexist, leading many Rohingyas to save themselves by leaving Myanmar.<sup>5</sup> Not stopping there, riots continued until not only involved the two ethnicities but also the Myanmar military.

Riots broke out again in August 2017 and increased the number of Rohingya who fled Myanmar to 670,000 people. The United Nations High Commissioner for Refugees (hereinafter referred to UNHCR) notes that the growing number of Rohingya who fled due to the riots in August became the fastest growing refugee crisis in the world.<sup>6</sup> Seeing the facts above of course what happened in Myanmar is not trivial because it caused a huge influx of refugees. Some states that are being the destination of Rohingya refugees to ask for protection, such as Bangladesh and Indonesia.

The Rohingya refugee crisis is an old issue that has strained relations between Myanmar and Bangladesh. This is motivated by the many ethnic Rohingya who feel that the Myanmar government has violated their rights which they then left Myanmar and fled to Bangladesh. This has been going on for a long time since the 1970s<sup>7</sup>. Bangladesh became the main destination for Rohingya refugees because of the location of the state which borders directly with Myanmar. The wave of Rohingya refugees that occurred in Bangladesh certainly made it difficult for the Bangladesh government itself to deal with it.

Great effort is required in dealing with the massive Rohingya refugee population in Bangladesh. More attention is required in handling security issues such as preventing trafficking, the spread of drugs, sexual violence for Rohingya women, and others.<sup>8</sup> The International Community considers Myanmar is failed to solve problems involving ethnic Rohingya. There is a discourse to establish billateral cooperation between Myanmar and Bangladesh as the state that gather the most Rohingya refugees. The collaboration contains the handling of Rohingya refugees in Bangladesh. But the expected agreement failed to reach, so the role of the global community or international organizations is required in handling the wave of Rohingya refugees.<sup>9</sup>

<sup>1</sup> BBC, *Siapa Sebenarnya Etnis Rohingya dan Enam Hal Lain yang Harus Anda Ketahui*, 5 September 2017, website : <http://www.bbc.com/indonesia/dunia-41149698>, accessed on August 5<sup>th</sup>, 2018

<sup>2</sup> UNHCR, *Rohingya Emergency*, website : <http://www.unhcr.org/rohingya-emergency.html>, accessed on May 5<sup>th</sup>, 2018

<sup>3</sup> Tribun Medan, *Ini Asal-usul Etnis Rohingya dan 6 Fakta Yang Harus Anda Ketahui*, 5 September 2017, website : <http://medan.tribunnews.com/2017/09/05/ini-asal-usul-etnis-rohingya-dan-6-fakta-yang-harus-anda-ketahui?page=2>, accessed on May 10<sup>th</sup>, 2018

<sup>4</sup> BBC, *Menengok Fakta-fakta di Wilayah Konflik Rakhine*, Myanmar, 24 Juli 2017, website : <http://www.bbc.com/indonesia/dunia-40676548>, accessed on May 10<sup>th</sup>, 2018

<sup>5</sup> Detik News, *Konflik Sektarian di Rakhine, Tanda Permusuhan "Masih Ada"*, 20 Juli 2017, website : <https://news.detik.com/bbc/3566843/konflik-sektarian-di-rakhine-tanda-permusuhan-masih-ada>, accessed on May 5<sup>th</sup>, 2018

<sup>6</sup> UNHCR, *100 Days of Horror and Hopes : A Timeline of the Rohingya Crisis*, website : <http://www.unhcr.org/news/stories/2017/12/5a1c313a4/100-days-horror-hope-timeline-rohingya-crisis.html>, Accessed on July 10<sup>th</sup> 2018

<sup>7</sup> Syeda Naushin Parmini (et.al). (2013) *The Rohingya Refugee Crisis and Bangladesh-Myanmar Relations, Asian and Pacific Migration Journal*, Vol.22, March 1, 2013, 133-146. Website : <https://journals.sagepub.com/doi/abs/10.1177/011719681302200107>

<sup>8</sup> Md Ziaur Rahman (et.al), (2018), *Rohingya Crisis : Identity of Rohingya Muslim in Myanmar*, International Research Journal of Social Sciences, Vol. 7 (12) December 2018, 15. Website : [https://www.researchgate.net/publication/329987655\\_Rohingya\\_crisis\\_Identity\\_of\\_Rohingya\\_Muslim\\_in\\_Myanmar](https://www.researchgate.net/publication/329987655_Rohingya_crisis_Identity_of_Rohingya_Muslim_in_Myanmar)

<sup>9</sup> Abul Hasnat Milton (et.al), (2017), *Trapped in Statelessness : Rohingya Refugees in Bangladesh*, International Journal of Environmental Research and Public Health, August 21, 2017, 14(8): 942, website : <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5580644/?report=classic>

The Association of Southeast Asian Nations (ASEAN) is a regional organization whose members are state in Southeast Asia, including Myanmar. Conflicts involving ethnic Rohingya in Myanmar existed long before Myanmar joined ASEAN in 1997<sup>10</sup>, so this organization should be ready to face the problems experienced by Myanmar. ASEAN has its own way of dealing with the humanitarian crisis that occurred in Myanmar in a way they call "constructive engagement". This method has been carried out by ASEAN for the purpose of ending the conflict in Myanmar, but this method is not enough to respond to a humanitarian crisis, especially when the ASEAN's state party being a party to the conflict.<sup>11</sup>

Indonesia is also one of the few state where Rohingya refugees have been forced to leave their home territory in Myanmar to save themselves. Not only adults are forced to flee outside Myanmar, not a few Rohingya children also fled outside Myanmar, including Indonesia. International law has provided protection for refugees through the Relating to the Status of Refugees 1951 Convention (hereinafter referred to Refuggess Convention 1951) and the Protocol Relating to the Status of Refugees 1967 (hereinafter referred to Protocol 1967). Both the Refugees Convention 1951 and the Protocol 1967 only recognize the term "refugee" and do not divide adult refugees from refugee children. On the other hand the need for legal protection between adult refugees and children is certainly different. This is compounded by the fact that Indonesia has not ratified the Refugees Convention 1951 and the Protocol 1967.

By looking at the background above, it is necessary to study the protection of international law for Rohingya child refugees in Indonesia and the legal protection that can be carried out by the Government of Indonesia against Rohingya child refugees.

## RESEARCH METHOD

This research is a legal research. Legal research is a scientific activity, which is based on a certain method, systematic, and thinking, which aims to study one or several specific legal phenomena, by analyzing it.<sup>12</sup> This legal research is a study to analyze both the rules of international law and national rules, including the principles contained therein, which can be applied in terms of legal protection for Rohingya Child Refugees in Indonesia. This research in writing using the type of normative research.

## DISCUSSION

### International Legal Protection for Child Refugees

Humanitarian crises that have occurred in several countries recently such as those in Burundi, Democratic Republic of Congo, Iraq, Syria and Myanmar, have made their citizens flee out of their home state to seek protection in other state. Some state that are usually being destination by refugees are the United States, countries in Europe, Malaysia, Thailand, Indonesia and others.

Indonesia is often being the first assylum country for assylum seeker to get protection and more importantly is to get refugee status. Most of the Rohingya refugees enter Indonesian territory by sea. Before entering the territory of Indonesia, Rohingya refugees had entered Thailand and Malaysia but were refused by security officials of the both states.<sup>13</sup> The state's refusal to accept illegal immigrants is usually based on economic reasons. The state has objected in terms of financing the necessities of life from the large number of illegal immigrants entering its territory. Another reason is usually motivated by the fear of the spread of disease brought by illegal immigrants. Research conducted by the European Center for Disease Prevention and Control (ECDC) shows that the risk of spreading disease due to the entry of illegal immigrants and refugees into the territory of his country is low. The spread of the disease precisely the most from international travel mobility both with the aim of tourism or business travel.<sup>14</sup>

Data shows that as of the end of March 2017, as many as 6,191 asylum seekers and 8,279 refugees were cumulatively registered at UNHCR Jakarta.<sup>15</sup> At present, the number of refugees in Indonesia is sure to increase from the data obtained in March 2017 because in August 2017 there was a peak of riots in the state of Rakhine, Myanmar which made as many as 670,000 Rohingyas out of Myanmar to escape to other state, including Indonesia.<sup>16</sup> The high number of asylum seekers and refugees in Indonesia shows that Indonesia is a state that is "loved" to be used as the first assylum country. Not only adult refugees, but there are also many Rohingya child refugees in Indonesia, there are even some refugees in pregnancy who then deliver in Indonesia.

The phenomenon of child refugees is actually not only in Rohingya refugees. Key factors influencing the large number of child refugees are human trafficking, people smuggling, war, and difficulties in accessing economic and social rights in their home countries.<sup>17</sup>

International law has rules that provide protection for refugees. There are several international conventions which have been ratified by many countries which concentrate on refugees. Among them are the Refugees Convention 1951, the Protocol

<sup>10</sup> Nuclear Treat Initiative, Association of Southeast Asian Nation, website : <https://www.nti.org/learn/treaties-and-regimes/association-southeast-asian-nations-asean/>, accessed on February 18<sup>th</sup>, 2019

<sup>11</sup> Dio Herdiawan Tobing, (2018), *The Limits and Possibilities of the ASEAN Way : The Case of Rohingya as Humanitarian Issue in Southeast Asia*, The 1st Internasional Conference on South East Asia Studies, May 23, 2018, 148-174, website : <https://knepublishing.com/index.php/Kne-Social/article/view/2331/5155>

<sup>12</sup> Soerjono Soekanto, (1986), *Pengantar Penelitian Hukum*, Jakarta : UI Press, 43

<sup>13</sup> Detik News, *Sebelum ke Aceh, Pengungsi Rohingya Thailand dan Malaysia*, 21 April 2018, website : <https://news.detik.com/berita/d-3982789/sebelum-ke-aceh-pengungsi-rohingya-ditolak-thailand-dan-malaysia>, Accessed on February 5<sup>th</sup> 2019

<sup>14</sup> Nikolaos Spermovasilis (et.al), (2017), *Child Refugees in Europe and Infectious Disease : Treat or Threatened*, International Journal of School Health, 4 (4), October 2017, website : <http://intjsh.com/en/articles/57923.html>, Accessed on November 20<sup>th</sup> 2018

<sup>15</sup> UNHCR, *Penentuan Status Pengungsi*, website : <http://www.unhcr.org/id/penentuan-status-pengungsi>, Accessed on November 2<sup>nd</sup> 2018

<sup>16</sup> UNHCR, *100 Days of Horror and Hopes : A Timeline of the Rohingya Crisis*, website :

<http://www.unhcr.org/news/stories/2017/12/5a1c313a4/100-days-horror-hope-timeline-rohingya-crisis.html>, Accessed on November 2<sup>nd</sup> 2018

<sup>17</sup> Bhabha J. (2004), *Demography and Rights : Women, Children, and Access to asylum*, International Journal of Refugee Law, Vol. 16, 227-243

1967, and because there are many Rohingya child refugees in Indonesia it is necessary to look at the rules in the United Nations Convention on the Rights of Child 1989 (hereinafter referred to ROC Convention 1989).

Before talking about international legal protection for Rohingya child refugees in Indonesia, it is necessary to reassert whether Rohingya immigrants currently in Indonesia can be qualified as refugees as regulated in the 1951 Refugees Convention. Article 1 of the Refugees Convention 1951 and Article 1 of the Protocol 1967 provide conditions when a person entering another country can be categorized as a refugee and receive legal protection. A person can be categorized as a refugee if that person has sufficiently reasonable fear of persecution received for reasons of race, religion, citizenship, members of certain social or political groups. A person who does not have citizenship who is not in his state, cannot or does not want to return home because of this fear can also be categorized as a refugee and get legal protection from the two instruments above. The 1951 Refugees Convention does not distinguish between adult refugees and child refugees so that the legal protection contained in the regulation can be applied to both adult refugees and children.

Refugees will get legal protection provided by the state party to the convention based on the provisions in the Refugees Convention 1951 and the Protocol 1967 without discrimination. Refugees will get the same treatment as citizens of the country where they live in terms of freedom to practice their religion and freedom to get religious education for their children. Refugees are entitled to the same treatment as foreigners where the refugees are.<sup>18</sup> The refugees also have the right to form non-political and non-profit associations, and trade unions. Every refugee has access to a court of law in the country where he lives. Regarding the right to do work for wages, refugees are entitled to get the same treatment as a foreign citizen, under the same conditions, in the country where he lives.<sup>19</sup>

In terms of basic education, refugees will get the same treatment by the country where they live. Refugees will get the same treatment as citizens of the country where they live in terms of social security and payment of salaries, including issues of family benefits. Refugees have the right to choose their place of residence and to move freely in the territory of the state where he lives, in accordance with the regulations that apply to foreigners in general and in the same circumstances.<sup>20</sup> In April 2018, almost 80 people from the Rohingya ethnic group landed in Kuala Raja, Bireuen, Aceh. Before reaching the territory of Indonesia, before they had entered the waters of Thailand and Malaysia, but security forces from the two countries expelled and forced them out of their territorial sea. Actions taken by Thailand and Malaysia do not necessarily violate the provisions of international law. It requires to be seen whether both are member states of the Refugees Convention 1951 and Protocol 1967. It is known that both Thailand and Malaysia are not members of both regulation.<sup>21</sup> Another thing to note is whether the Rohingya who will enter Thailand and Malaysia already have status as refugees who would later enjoy the rights set out in the Refugees Convention 1951.

Another protection given by the Refugees Convention 1951 to refugees is the guarantee that the refugee will not be expelled from the state where he lives except for reasons of national security. The most important form of legal protection for refugees granted by the Refugees Convention 1951 is that refugees cannot be expelled and returned in any way to areas where their lives and freedoms are threatened due to race, religion, nationality, and membership of certain social and political groups unless dangerous to security the state where it is located.<sup>22</sup> This form of legal protection is an embodiment of the Non Refoulement principle.

A refugee will get legal protection guaranteed by the Refugees Convention 1951 if the state where he lives is a party to the convention. This is in line with the general law principles of Pacta Sunt Servanda in which a state that binds itself to an international agreement, then it is bound by the provisions contained therein as a law for him. Until now, Indonesia has not ratified the Refugees Convention 1951 or the Protocol 1967, so it is still a question of whether Rohingya refugees who are in Indonesia receive international legal protection or not. Because the obligation to provide legal protection in accordance with the provisions of the Refugees Convention 1951 and the Protocol 1967 cannot be imposed on Indonesia. If Indonesia is not bound by the provisions of the Refugees Convention 1951 that provides protection for refugees, another case with the ROC Convention 1989 because Indonesia has ratified this convention through Presidential Decree No. 36 of 1990 concerning Ratification of the Convention on the Rights of Child.

Under Article 1, Children whose rights are guaranteed by the ROC Convention 1989 are children under the age of 18, except if according to the law in force for such children it is determined that the adult age is reached earlier. Based on the provisions in the ROC Convention 1989, Indonesia as a party to the convention has an obligation to provide protection for children, such as respecting and guaranteeing the rights set out in the 1989 ROC Convention for every child who is in his jurisdiction without discrimination in any form; recognize that all children have the right to life; guarantee as much as possible the continuity and development of children; guaranteeing children obtain citizenship, especially if the child becomes citizenship; guarantee that a child will not be separated from his parents; eradicate the occurrence of child surrender abroad in the dark; guarantee the child's right to express an opinion; respect for the child's right to freedom of thought, belief, and religion; recognize the child's right to freedom of association and peaceful assembly.<sup>23</sup>

Other obligations that must be undertaken by Indonesia are to ensure that children who are seeking refugee status will receive adequate protection or humanitarian assistance to enjoy the rights in this convention, in other human rights or humanitarian instruments; collaborate with the United Nations and other organizations to protect child refugees and help track down parents or other family members; recognizing children's rights to the highest health standards and facilities for the treatment of diseases and health rehabilitation; recognize children's rights to education; recognize the right of children to be protected from economic exploitation; protect children from all forms of sexual exploitation and sexual abuse; take national,

<sup>18</sup> Art. 3, 4, and 7 Refugees Convention 1951

<sup>19</sup> Art. 15, 16, and 17 Refugee Convention 1951

<sup>20</sup> Art. 22, 24, and 26 Refugees Convention 1951

<sup>21</sup> UNHCR, *State Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*, website : <https://www.unhcr.org/3b73b0d63.pdf>, Accessed on October 5<sup>th</sup> 2018

<sup>22</sup> Art. 32 and 33 Refugees Convention 1951

<sup>23</sup> Art 6, 7, 9, 11, 12, and 15 (1) ROC Convention 1989

bilateral and multilateral steps in preventing the abduction and trafficking of children in any form and any purpose; guarantee that no child can be subjected to mistreatment or other cruel treatment; and take appropriate steps to enhance the physical and psychological healing of children who are victims of neglect, exploitation, abuse or armed conflict.<sup>24</sup>

The ROC Convention 1989 uses the word "child" and does not mention that the rights of children who are respected and guaranteed by state parties are the rights of children who are citizens only. It is emphasized again in Article 2 of the ROC Convention 1989 that the party to the convention must respect and guarantee the rights contained in this convention for every child in its jurisdiction. State that have ratified the ROC Convention 1989 must commit to protecting the rights of every child in their jurisdiction. It doesn't matter if the child is a citizen or not.

Indonesia is not the party of the Refugees Convention 1951 but still has the obligation to provide legal protection for Rohingya child refugees because Indonesia ratified the ROC Convention 1989. The ROC Convention 1989 obliges state parties to guarantee the rights in the convention to every child in the convention its jurisdiction. In other words, Rohingya children, both those who have refugee status, or who have not received refugee status must still be guaranteed their rights by the Indonesian government.

Regarding the protection of child refugees, the ROC Convention 1989 is strengthened in Article 22. Article 22 of the ROC Convention 1989 requires States parties to provide child refugees (both refugee status and those seeking refugee status) adequate humanitarian assistance to enjoy the rights in the ROC Convention 1989, in other human rights or humanitarian instruments. The next question is what about illegal immigrants children who do not have refugee status or are currently seeking refugee status. Of course children in this sense be included in the scope of the ROC Convention 1989 because the convention only uses the word "child" and defines children as humans who are not yet 18 years old, without requiring or excluding children who are illegal immigrants or are not citizens. (stateless).<sup>25</sup>

### Legal Protection to the Rohingya Child Refugees by Indonesia Government

The decision of a state to accept refugees entering its territory has a large impact, especially in terms of financial needs. Refugees have the same needs as other citizens such as clothing, food, and also where they live.<sup>26</sup> For refugee children, of course more will be needed, such as education, playgrounds, and others. Indonesia already has a national law on refugee protection, namely Presidential Regulation of the Republic of Indonesia No. 125 of 2016 concerning Handling of Refugees from Overseas (Presidential Regulation No. 125 of 2016). Indonesia also has Act. No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection (Act No. 35 of 2014) which can also be applied to Rohingya child refugees in Indonesia. In addition to going through the laws and regulations, Indonesia cooperates with UNHCR in providing legal protection for Rohingya refugee children in Indonesia.

Based on Articles 5, 9, 10 and 11 of Presidential Regulation No. 125 of 2016, if a refugee is found in an emergency in the territorial waters of Indonesia, several actions will be taken including moving the refugee to a rescue vessel if the ship will sink; bring to the nearest port or land if the lives of refugees are threatened; identify refugees who need emergency medical assistance; surrender foreigners suspected of being refugees to immigration detention centers at the nearest port or land or if there are none then hand them over to the immigration office in the area or to the local Indonesian National Police.

Rohingya refugees enter the area by sea because they are prohibited from traveling by land by the Myanmar government.<sup>27</sup> Indonesia is not a destination country for Rohingya refugees. Indonesian waters are the route they have to travel to Malaysia and Australia where they are the destination country to get a decent living. In May 2015, Acehese fishermen rescued two ships that housed Rohingya refugees. A total of 800 refugees were rescued and accommodated in the Aceh region. Refugees who need immediate medical attention have received medical help from the relevant agencies.<sup>28</sup> In April 2018, 79 Rohingya refugees, including 8 children, were stranded on the beach of Kuala Raja, Aceh.<sup>29</sup> The majority of Rohingya refugees entered Indonesian waters after receiving resistance from Malaysia and Thailand when they were about to enter their waters.<sup>30</sup>

Indonesia's action to save Rohingya refugees found in Indonesian waters, with safety conditions threatened in accordance with Presidential Regulation No. 125 of 2016. The form of legal protection provided by those regulation is not only limited to the discovery of refugees, but also related to the shelter and security of refugees which can still be applied to Rohingya refugees who enter Indonesian territory before 2016.

Based on Article 24 of Presidential Regulation No. 125 In 2016, refugees will be placed in shelters. If a shelter is not yet available, it will be placed in a temporary accommodation location determined by the local regent / mayor. Rohingya refugees found in Aceh in 2015 were placed in temporary shelters at the Port of Kuala Langsa shortly after they were rescued by Acehese fishermen. Before the enactment of Perpres No. 125 In 2016, the Indonesian government, for humanitarian reasons, has provided temporary shelter facilities for Rohingya refugees including child refugees.

Child refugees have the privilege granted by Presidential Regulation No. 125 of 2016 because it is included in the category of refugees with special needs. Based on Article 27 paragraphs 1 and 3, child refugees can be placed outside shelters

<sup>24</sup> Art. 22, 24, 28, 32, 34, 35, 27, and 39 ROC Convention 1989

<sup>25</sup> Art 1 ROC Convention 1989

<sup>26</sup> Deasy Silvia Sari (et.al), (2018), Indonesian Government Policy on Rohingya Refugees, Andalas Journal of International Studies, Vol. VII, No. 1, May 2018, 1-13, Website : <http://ajis.fisip.unand.ac.id/index.php/ajis/article/view/76/70>, Accessed on August 2<sup>nd</sup> 2018

<sup>27</sup> CNN, *Dilarang Lewat Jalur Darat Warga Rohingya Tenggelam di laut*, website : <https://www.cnnindonesia.com/internasional/20160421135518-106-125543/dilarang-lewat-jalur-darat-warga-rohingya-tenggelam-di-laut>, Accessed on August 1<sup>st</sup> 2018

<sup>28</sup> Deutsche Welle, *Nelayan Aceh Selamatkan 800 Pengungsi Rohingya dan Bangladesh*, website : <http://www.dw.com/id/nelayan-aceh-selamatkan-800-pengungsi-rohingya-dan-bangladesh/a-18451487>, Accessed on May 24<sup>th</sup> 2018

<sup>29</sup> BBC, *Lagi, Nelayan Aceh Selamatkan 79 Pengungsi Rohingya*, website : <http://www.bbc.com/indonesia/indonesia-43837197>, Accessed on May 20<sup>th</sup> 2018

<sup>30</sup> Detik News, *Sebelum ke Aceh, Pengungsi Rohingya Ditolak Thailand dan Malaysia*, website : <https://news.detik.com/berita/d-3982789/sebelum-ke-aceh-pengungsi-rohingya-ditolak-thailand-dan-malaysia>, Accessed on August 1<sup>st</sup> 2018

facilitated by the International Organization in the field of migration after obtaining permission from the minister. This can be understood because the needs of facilities between adult refugees and child refugees are certainly different.

The next step taken after determining refugee shelters is to provide security for refugees. Based on Article 32 of Presidential Regulation No. 125 of 2016, safeguarding refugees at shelters is done by keeping refugees at shelters, creating a sense of security for the environment around shelters. Security for refugees in shelters has not been maximally implemented. This can be seen from the fact that there are still quite a lot of refugees who have fled from shelters to go to other areas. For example, the Blang Adoe shelter in North Aceh Regency, where previously it housed as many as 319 people, but as of May 2016 there were only 75 left. Some of those who came out of the shelter were known to be in Medan and some had entered Malaysia through illegal channels.<sup>31</sup>

A similar case occurred in May 2018 and was repeated in June 2018. A total of three Rohingya ethnic people who previously arrived on April 2018, arrived at the fishing port in East Aceh, disappeared. Allegedly, the three immigrants escaped from the shelter provided by the Langsa Immigration Office because they were picked up by an immigrant network agent in Langsa to be taken to Medan.<sup>32</sup>

In December 2018, the case of Rohingya ethnic flight which was accommodated by the Indonesian Government was repeated. As many as 7 out of 79 Rohingya who were accommodated in the Cot Gapu SKB Complex, Bireuen, fled on 21 December 2018.<sup>33</sup> This fact shows the lack of supervision from the Indonesian government. The weakness of the Indonesian Government's supervision is closely related to the lack of supervisory personnel or security officers. Another possibility is the condition of refugee camp camps that are not representative, making it difficult for officers to conduct surveillance and trigger refugees to flee.

For refugees who enter Indonesia immigration surveillance will be carried out. Immigration control for refugees by the Indonesian government is carried out not only for Indonesia's own interests but also for the interests of refugees. With immigration monitoring, the data collection process will be faster so that the approval of the United Nations (UN) through UNHCR in Indonesia for refugees to be placed in destination countries can be faster given.

Presidential Regulation No. 125 of 2016 does not provide much legal protection specifically given to child refugees. Indonesia has Act No. 23 of 2002 concerning Child Protection which was later amended by Act No. 35 of 2014 which can also be applied to Rohingya child refugees in Indonesia. Rohingya child refugees will receive legal protection under the law.

Based on Article 4 of Law No. 23 of 2002, Rohingya refugee children are entitled to protection from Indonesia so that they can live and grow and develop and be protected from violence and discrimination. The Indonesian government is also obliged to make sure that Rohingya refugee children immediately get citizenship because based on Article 4 of Act No. 23 of 2002 every child has the right to a name as self-identity and citizenship status.

Based on Article 9 of Act No. 35 of 2014, Rohingya refugee children are entitled to education and teaching and to be protected in education units from sexual crimes and violence. In Presidential Regulation No. 125 of 2016 there is no guarantee of education for refugee children. But with the existence of Article 9 and 48 of Act No. 35 of 2014, then Rohingya refugee children in Indonesia are entitled to education.

Based on Article 15 of Act No. 35 of 2014, Rohingya child refugees are entitled to protection from armed disputes that are taking place in their home country, Myanmar. The Indonesian government can strive for Rohingya child refugees in Indonesia to immediately get approval from the UN through UNHCR in Indonesia to be placed in safer destination state because every child is also entitled to protection from the targets of torture, torture, and inhuman punishment.<sup>34</sup>

Based on Article 59 and Article 60 of Act No. 35 of 2014, children who become refugees are classified as children who are in an emergency situation which will be given special protection by the Government, Local Government, and other institutions. Special protection provided to children who become refugees is done through rapid response efforts, including treatment, physical or psychological rehabilitation and / or rehabilitation, as well as prevention of diseases and other health problems. Specifically for children who become refugees, special protection provided is carried out in accordance with humanitarian law.

Legal protection for good children in Law No. 23 of 2002 and in Act No. 35 of 2014 is in line with those in the 1989 ROC Convention. That is because Indonesia has ratified the convention in 1990 so that laws issued by Indonesia must not conflict with the ROC Convention 1989.

### Cooperation Between Indonesia and United Nations High Commissioner for Refugees (UNHCR)

The United Nations High Commissioner for Refugees (UNHCR) is a body under the United Nations. UNHCR was founded in 1950. As the name implies, UNHCR exists to protect all parties affected by forced displacement such as internally displaced persons, stateless persons, refugees and asylum seekers.<sup>35</sup> Child refugees also become one of the main concerns for UNHCR because according to data reported by UNHCR that until the end of 2017 the number of refugees in the world is 25.4 million refugees. As many as 52% of this number are children under the age of 18 years of which 173,800 of them are not together or separated from their parents.<sup>36</sup> A very large number of children must leave their home countries to seek protection from violence.

<sup>31</sup>BBC, Pengungsi Rohingya di Aceh 'Mungkin Akan Habis' Sebelum Setahun, website :

[http://www.bbc.com/indonesia/berita\\_indonesia/2016/02/160227\\_indonesia\\_pengungsi\\_rohingya\\_tenggat](http://www.bbc.com/indonesia/berita_indonesia/2016/02/160227_indonesia_pengungsi_rohingya_tenggat), Accessed on September 10<sup>th</sup> 2018

<sup>32</sup> Tribun Aceh, Empat Warga Rohingya di Langsa Menghilang, website : <http://aceh.tribunnews.com/2018/06/29/empat-warga-rohingya-di-langsa-menghilang>, Accessed on September 20<sup>th</sup> 2018

<sup>33</sup> Tribun Aceh, Tujuh Pengungsi Rohingya Kabur, website : <http://aceh.tribunnews.com/2018/12/22/tujuh-pengungsi-rohingya-kabur>, Accessed on September 20<sup>th</sup> 2018

<sup>34</sup> Artikel 16 Act No. 23 of 2002

<sup>35</sup> UN High Commissioner for Refugees (UNHCR), *Internally Displaced Person*, website : <http://www.unhcr.org/internally-displaced-people.html>. Accessed on September 12<sup>nd</sup> 2018

<sup>36</sup> UN High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2017*, 19 June 2017, h. 2, <http://www.refworld.org/docid/5b2d1a867.html>, Accessed on September 18<sup>th</sup> 2018

UNHCR was established in Indonesia since 1979. At its inception, UNHCR's activities focused on handling the arrival of large numbers of Vietnamese refugee ships.<sup>37</sup> Indonesia is not a state party to the Refugees Convention 1951 and the Protocol 1967. With the existence of the UNHCR in Indonesia, cooperation between the Government and UNHCR in handling refugee problems in Indonesia.

Someone who considers himself a refugee and wants to get protection from UNHCR must first obtain refugee status from UNHCR. An asylum seeker is a person who calls himself a refugee, but the process of determining refugee status has not yet been completed. Asylum seekers who come to Indonesia to obtain refugee status must undergo Refugee Status Determination (RSD). UNHCR already has Procedural Standards for RSD under UNHCR's Mandate (hereinafter referred to Procedural Standards) which contains procedures for granting refugee status. The Assylum Seeker Certificate will be issued by UNHCR if illegal immigrants meet the qualifications as asylum seekers. The Assylum Seeker Certificate is valid for 1 year from issue.<sup>38</sup>

As a determination of whether asylum seekers qualify as refugees or not is the RSD process. Based on Procedural Standards, the RSD process begins with the registration of asylum seekers.<sup>39</sup> The registration carried out by UNHCR also functions in identifying asylum seekers who have special needs such as children, someone who has trauma, pregnant women, etc. The identification is done to be able to provide more treatment and protection for asylum seekers who have special needs such as assistance and counseling.<sup>40</sup>

UNHCR will conduct an individual interview with each asylum seeker, accompanied by a competent translator, after registration. For asylum seekers, an interview will be conducted by staff who have psychological, emotional, and child development abilities. The RSD process for asylum seekers without parents / companions can be accelerated based on the Procedural Standards for RSD under UNHCR's Mandate. The interview process gives rise to reasonable decisions that determine whether a person's status request is accepted or rejected and gives each individual an opportunity (one time) to request an appeal if the request is rejected. UNHCR staff must submit decisions to UNHCR headquarters for review and approval. With respect to final decisions, appeal, cancellation / revocation and termination can be made.

Those identified as refugees will receive protection as long as UNHCR seeks a long-term solution, which is usually in the form of placement in another country. As of the end of March 2017, as many as 6,191 asylum seekers and 8,279 refugees were registered at Jakarta's UNHCR cumulatively.<sup>41</sup>

## CONCLUSION

Child refugees are protected by international law through the Refugees Convention 1951 along with the Protocol 1967, and ROC Convention 1989. For Rohingya child refugees in Indonesia only get legal protection regulated in the ROC Convention 1989 because Indonesia has not ratified either the 1951 Refugees Convention 1951 or the Protocol 1967. No ratification of the two international agreements does not eliminate Indonesia's obligation to provide legal protection for Rohingya child refugees who are in Indonesia because of the ROC Convention 1989 obliges their member states to provide legal protection for all children in their territory and are not limited to children who are citizens of the country concerned.

Indonesia has an obligation to provide legal protection for Rohingya child refugees arising from Act No. 35 of 2014 concerning amendments to Act No. 23 of 2002 concerning Child Protection and Presidential Regulation of the Republic of Indonesia No. 125 of 2016 concerning Handling of Refugees from Overseas. Indonesia must guarantee the rights of Rohingya child refugees in these regulations.

## RECOMMENDATION

By not ratifying the Refugees Convention 1951 and the Protocol 1967, Indonesia requires to prove its commitment to provide protection for refugees, especially child refugees. First, Indonesia needs to provide better facilities for child refugees such as child-friendly shelters both in terms of facilities and safety.

Second, Indonesia needs to improve security in monitoring refugees in shelters to reduce the number of refugees fleeing from shelters. Third, Indonesia needs to establish cooperation with UNHCR in handling refugees, given the large number of refugees entering Indonesian territory.

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<sup>39</sup> Unit 3 3.2.11 Procedural Standards for RSD under UNHCR's Mandate

<sup>40</sup> Unit 3 3.4.1 Procedural Standards for RSD under UNHCR's Mandate

<sup>41</sup> UN High Commissioner for Refugees (UNHCR), *Penentuan Status Pengungsi*, website : <https://www.unhcr.org/id/penentuan-status-pengungsi>, Accessed on September 23<sup>rd</sup> 2018

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