

CHAPTER ONE

INTRODUCTION

A. Background

In 2021, based on data from United Nations High Commissioner for Refugees (UNHCR), the number of registered child refugees in Indonesia was 3,655 or around 27% of the total refugees in Indonesia (13,497).¹ This total includes 3,545 children with their families, 73 children who are not accompanied by their parents or other adult families and 37 children who are separated from their parents but live with adult foster parents. Children make up a large and significant part of the refugee population worldwide and there is no doubt that the situation of refugee children is very precarious and they face significant dangers on their way to safety.² Worldwide, nearly 50 million children have migrated across borders or are forcibly displaced.³

In an emergency situation, child refugees are easily separated from their families. Separated children are at greater risk, as they may be recruited into the army or sexually exploited. Child refugees are also vulnerable to becoming victims of international crimes, such as human trafficking. Due to the normal

¹ UN High Commissioner for Refugees (UNHCR), 2021, *Laporan Statistik Bulanan Maret 2021*, retrieved from: [unhcr.org/id/wp-content/uploads/sites/42/2021/04/Laporan-Statistik-Bulanan-Indonesia-March-2021.pdf](https://www.unhcr.org/id/wp-content/uploads/sites/42/2021/04/Laporan-Statistik-Bulanan-Indonesia-March-2021.pdf), accessed on 16 May 2021 at 10:47 a.m.

² Gottfried Schweiger, "Should States Prioritize Child Refugees?", *Ethics & Global Politics*, Vol. 12, No. 2 (2019).

³ United Nations Children's Fund (UNICEF), 2016, *Uprooted: The Growing Crisis for Refugee and Migrant Children*, retrieved from: <https://www.unicef.org/indonesia/reports/uprooted-growing-crisis-refugee-and-migrant-children>, accessed on 11 September 2020 at 7:37 a.m.

development needs of a growing child, even child refugees who remain with their families suffer greatly from trauma and disturbance as a result of their runaway journey.⁴

Indonesia has been a transit country for asylum seekers and refugees since the arrival of refugees from Vietnam in 1975.⁵ The refugees in Indonesia came from 45 countries with 72% coming from 3 countries namely Iraq (6%), Somalia (10%) and more than half came from Afghanistan (56%).⁶ Indonesia continues to be affected by mixed population movements due to its proximity to Malaysia, Thailand and Australia which receive large numbers of asylum seekers and refugees.

The trend of arrivals by refugees in Indonesia changes every year. In the 1990s, there was a decline in the number of refugee arrivals in Indonesia. Although in 2000-2002 there was another increase in the number of refugee arrivals. The second wave occurred again around 2009 where the number of refugee arrivals in Indonesia had decreased in 2003-2008.⁷ The annual arrivals declined again since 2015. Thus, in 2021, based on data from UNHCR, the total

⁴ M. Riadhussyah, "Tanggung Jawab Indonesia sebagai Negara Transit bagi Pengungsi Anak Berdasarkan Hukum Internasional", *Jurnal Hukum IUS QUIA IUSTUM*, Vol. 23, No. 2 (2016).

⁵ Nikolas Feith Tan, "The Status of Asylum Seekers and Refugees in Indonesia", *International Journal of Refugee Law*, Vol. 28, Issue 3 (2016).

⁶ UN High Commissioner for Refugees (UNHCR), 2020, *Sekilas Data UNHCR Indonesia*, retrieved from: <https://www.unhcr.org/id/figures-at-a-glance>, accessed on 15 August 2020 at 1:54 p.m.

⁷ UN High Commissioner for Refugees (UNHCR), 2020, *UNHCR di Indonesia*, retrieved from: <https://www.unhcr.org/id/unhcr-di-indonesia>, accessed on 11 September 2020 at 8:18 a.m.

of refugee population in Indonesia is 13,497 individuals with 7,956 cases, including 71% adults, 27% children, and 2% elderly.⁸

Most refugees come from ethnic minorities in their country who do not always get good treatment in the territory of the country they occupy. Refugees arriving to a country are usually not alone, but they bring their relatives, including children, due to conflicts in their home countries. Child refugees also need the same attention and protection as adult refugees.

In 1951, 149 states participated in the 1951 Convention Relating to the Status of Refugees (Refugee Convention) to respect and protect the right of refugees. The Refugee Convention defines a refugee as a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him or herself the protection of that country, or to return there, for fear of persecution.⁹

Although Indonesia has hosted refugees for 45 years, Indonesia has not ratified the 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees (1967 Protocol).¹⁰ Due to Indonesia is not a member of Refugee Convention, Indonesia does not have legal

⁸ UN High Commissioner for Refugees (UNHCR), 2021, *Laporan Statistik Bulanan Maret 2021*, retrieved from: <https://www.unhcr.org/id/wp-content/uploads/sites/42/2021/04/Laporan-Statistik-Bulanan-Indonesia-March-2021.pdf>, accessed on 16 May 2021 at 10:53 a.m.

⁹ Article 1A (2), The 1951 Convention Relating to the Status of Refugees, as modified by Article I (2), 1967 Protocol Relating to the Status of Refugees.

¹⁰ Dita Liliansa and Anbar Jayadi, "Should Indonesia Accede to the 1951 Refugee Convention and Its 1967 Protocol?", *Indonesia Law Review*, Vol. 5, No. 3 (2015).

obligations to provide permanent resettlement for asylum seekers and/or refugees. However, besides the Refugee Convention, there is another international instrument concerning children's rights, namely in September 1990 the Convention on the Rights of the Child (CRC) was entered into force.¹¹ The Convention on the Rights of the Child specifically mentions protection for children who become refugees in Article 22. Furthermore, Indonesia signed and ratified the Convention on the Rights of the Child in 1990 through Presidential Decree number 36 of 1990 concerning the Ratification on the Convention on the Right of the Child.

Therefore, based on the 1951 Convention Relating to the Status of Refugees, there is no legal obligation that must be carried out by Indonesia in providing protection for refugees including child refugees. However, by ratifying the CRC, Indonesia has an obligation to protect and fulfill the rights of every child in Indonesia including child refugees. Last but not least, as explained before, the author considers to analyze the implementation of the protection for child refugee in Indonesia under International Law.

In addition, the research is a new research and has never been done before. The research was conducted with the intention of knowing and analyzing the implementation of protection for child refugees in Indonesia according to

¹¹ European Union, *The United Nations Convention on the Rights of the Child (CRC)*, retrieved from: https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-united-nations/united-nations-convention-rights_en#:~:text=Adopted%20and%20opened%20for%20signature,widely%20ratified%20human%20rights%20convention, accessed on 31 October 2020 at 7:02 p.m.

International Law. The previous research that already exists and discusses child refugees in Indonesia was carried out in 2016 and focuses on Indonesia's responsibility in providing protection for child refugees in Indonesia with data from 2016 which is done by M. Riadhussyah.¹² Another research conducted by Debby Kristin and Chloryne Trie Isana Dewi in 2021 explains about child refugee rights in Indonesia which focuses on whether Indonesia's actions were negligent or intentional.¹³ What distinguishes it from previous researches is that the research focuses on the implementation of protection for child refugees in Indonesia according to international law by using data on 2020 to 2021.

B. Research Problems

Considering the research background above, the author formulated a question to be answered, namely: How is the implementation of the protection for child refugees in Indonesia under International Law?

C. Objectives of Research

The objectives of the research are to understand and to analyze the implementation of the protection for child refugees in Indonesia under International Law.

D. Benefits of Research

There are some benefits of this research, namely:

1. Theoretical Aspect

¹² M. Riadhussyah, "Tanggung Jawab Indonesia sebagai Negara Transit bagi Pengungsi Anak Berdasarkan Hukum Internasional", *Jurnal Hukum IUS QUIA IUSTUM*, Vol. 23, No. 2 (2016).

¹³ Debby Kristin, Chloryne Trie Isana Dewi, "The Rights of Children Refugee in Transit Country under the CRC, A Case of Indonesia: An Intended Negligence?", *Padjadjaran Journal of International Law*, Vol. 5, No. 1 (2021).

The research would provide benefits in further understanding regarding the protection for child refugees in Indonesia under International Law.

2. Practical Aspect

The research would describe a deeper understanding of how the implementation of the protection for child refugees in Indonesia under International Law