ABSTRACT

International law has a vital role in securing more excellent protection for refugee children. There are 82.4 million people fleeing war, violence, persecution, and human rights violations in 2020 globally. 42% of refugees are children under the age of 18. Therefore this study raised the question of what international conventions govern child refugees. This research uses normative research. The results found that the 1951 refugee convention and the 1967 protocol are international arrangements regulating refugee children. Simultaneously, the Convention on the right of Children (CRC) also offers more detailed and comprehensive legal guidelines on child care, including refugee children. Those two conventions have contributed to firm legal protection for child refugees, but there is also a weakness when a country only ratifies one of them. Thus, for legal certainty, a new legal instrument in the form of a convention on the rights of child refugees is needed to fulfill the rights of child refugees properly.

Keywords: International protection, International refugee law, Child refugee.

INTRODUCTION

Refugees are a classic issue arising in human civilization due to fear threatening their safety. Natural disasters or human-made disasters can threaten human safety. Population displacement on a large scale is initially only a country's domestic issue, so it does not attract much attention of a nation. Also, the refugee problem extends to countries in certain regions only and is lastly considered a problem with humanity (Rosman, 2003, p. 3). Thus this problem with humankind is bound by international law.

In this discussion, international law is public international law, which we must distinguish from international civil law. International civil law is the absolute rule and law governing civil relations that cross country borders. In other words, the law governing the private legal relationship between the parties is each subject to different civil (national) laws. Public international law is the fundamental rule and principle of law governing relationships or issues that cross the borders of countries (international relations) that are not civil (Kusumaatmadja & Agoes, 2003, p. 1-2).

According to Article 1 of The 1951 Convention on the Status of Refugees, a refugee is a person who has a genuine and reasonable fear from persecution caused by race, religion, nationality, membership in a particular social group, or his political views, and is outside their home
country; and cannot or take advantage of the protection of his home country or return to that country.

For refugee children, international treaties are relevant because they provide international standards. When a country ratifies a treaty, the government of that country assures the international community that it will follow the treaty's standards. The 1951 Refugee Convention and the 1967 Protocol (Relating to the Status of Refugees) provide guidelines for children and adults.

The Convention on the Rights of the Child is essential to refugee children because it sets comprehensive standards. Every aspect of a child's life is covered, from health and education to social and political rights (UNHCR, 1997, p. 5). The Convention on the Rights of the Child has gained importance to refugee children because of the near-universal ratification of the treaty (155 State parties by March 1994). Its near-universal ratification underpins its authority to collect international standards specifying the minimum rights owed to minors by States Parties (McAdam, 2007, p. 173). The Convention on the Rights of the Child standards has been agreed to by countries and governments globally despite the differences in population, geographical size, stage of economic development, political system, and religious tradition. The rights of refugee children are an issue that must be resolved. Based on Article 2 Convention on the Rights of the Child 1989, a state must guarantee every child's rights (in) his jurisdiction without discriminating. Discriminatory prohibition means that any facilities provided by the State to citizens must be given to all children, including child refugees in the region (Komisariat Tinggi PBB Urusan Pengungsi, 1994, p. 19).

Despite the pandemic, the number of people fleeing war, violence, persecution, and human rights violations in 2020 rose to nearly 82.4 million people. This data is a further four percent increase above the record high of 79.5 million at the end of 2019 (UNHCR, 2021, p. 2). By the end of 2020, 20.7 million refugees under the UNHCR mandate, 5.7 million Palestinian refugees, and 3.9 million Venezuelans have fled abroad. Another 48 million people are internally displaced persons (IDPs) in their own countries. Another 4.1 million are asylum seekers. These figures show that despite the pandemic and calls for a global ceasefire, conflict continues to drive people from their homes (UNHCR, 2021, p. 2). Girls and boys under 18 make up to 42 percent of all forcibly displaced people. They are very vulnerable, especially when the crisis continues for years. A new UNHCR report suggests that nearly one million children were born refugees between 2018 and 2020. Many of them may remain refugees for years (UNHCR, 2021). Therefore, the research question that needs to be raised in this research is what are international conventions concerning child refugees?
RESEARCH METHODS

The research method used in this study is normative research, i.e., research conducted on legal principles, legal procedures in the sense of value (norm), concrete legal regulations, and legal systems related to the material studied. This research uses the secondary data source obtained through library research, covering primary and secondary legal resources. After all required data were collected, those data were analyzed using qualitative analysis.

FINDING AND ANALYSIS

Some regulations can deal with the refugee problem internationally, namely,(Syahrin, 2019):

For refugee children, international treaties are relevant because they provide many standards. When a country ratifies a treaty, the government of that country assures the international community that it will follow the treaty's standards. The 1951 Refugee Convention and the 1967 Protocol (Relating to the Status of Refugees) provide guidelines that relate to both children and adults:

1. A child who has a "well-founded fear of being persecuted" for one of the specified reasons is a "refugee,"
2. a child with refugee status cannot be compelled to return to their country of origin (the concept of non-refoulement), and
3. There is no difference between children and adults regarding social welfare and legal rights.

The 1969 Organization of African Unity Convention (Governing the Specific Aspects of Refugee Problems in Africa) expanded the concept of "refugee" to include people fleeing war and other significant disruptions of public order. There is no difference between children and adults in the OAU Convention. The 1984 Cartagena Declaration broadened the definition of refugee, and although the standard is not legally binding, it is widely applied in Latin America.

Among the approximately 82.4 million forcibly displaced worldwide in the world, 20.7 million refugees under UNHCR mandate, 48 million internally displaced persons, 4.1 million asylum seekers, 3.9 million Venezuelan displaced abroad; and 42% are children under
Although all provisions of the 1951 Convention law and the principle of non-refoulement apply to refugees who are still children, no child-specific clauses are included in this instrument. Only paragraph 1 of Article 22 of the 1951 Convention on public education is relevant for refugee children. It requires the Contracting States to provide the same treatment to refugees accorded to citizens concerning primary education (Bierwirth, 2005). Further, paragraph 2 of the Schedule of the 1951 Convention predicts that "subject to the host country's regulations, children may be included on the travel documents of the parents or, in exceptional circumstances, other adult refugees." "In general, the Preamble to the Convention illustrates the close relationship between human rights law and refugee law." (Feller, 2004).

Looking back, one of the values that should be of greater importance to the child is the best interest of the child, which is first stated in the Declaration of Children's Rights, which, according to Lord Mc Dermont, "paramountcy means nothing than that the welfare of the child is to be regarded as the top item in a list of terms applicable to the matter in question..." (Goonesekere, 1998, p. 114). Thus, the interests of the child's welfare are the purpose and ultimate connoisseur in any action, policy, or law the authorized institution makes.

The arrival of refugees in a particular territory of a country creates problems for these refugees personally, but refugees sometimes come with relatives. The relatives brought were not only adults but also those still in the category of children (UNHCR, 1994, p. 12). Sometimes, refugee children are easily separated from their families in an emergency. Therefore, registration and tracing efforts must be instituted immediately. Separated children face a greater risk than adults because they have unique developmental needs in his life (UNHCR, 2001, p. 77). Children who become refugees receive special attention under article 22, The Convention on the Rights of the Child 1989, which requires the State to ensure that the child receives appropriate protection and humanitarian assistance. The State must also guarantee the institutions of services and facilities specifically responsible for child care or child protection following the standards established by competent children's institutions. This requirement is contained in article 3 paragraph (3) Convention on the Rights of the Child 1989.

However, Article 22 of the Convention on the Rights of the Child makes no reference to the rights of child refugees or the measures taken to protect them while in refugee camps. In addition, this article also does not clearly state the appropriate forms of protection for child refugees. The lack of this clarity creates differences in the treatment given by each country to child refugees residing in their country. Child refugees experienced various problems, from traveling to living in refugee camps. Rohingya child refugees, for example, during their trip to
save themselves to another country, often experience obstacles and various problems while traveling on the high seas, such as running out of food supplies and running out of boat fuel which causes them to float in the ocean. Due to these circumstances, the child refugees witnessed a sad and traumatic view of several adults dying and being thrown into the sea. This is a problem related to the protection of refugees, especially for child refugees (Hasanah, 2015).

The detailed provisions in the CRC offer much more complex and comprehensive legal guidance on the treatment of children, including refugee children. The complementary relationship between the two international instruments provides optimal protection for child refugees; The 1951 convention seeks to protect children's rights as refugees, while the CRC protects children's rights as a child. In addition, it must be borne in mind that the rights set out in the CRC apply to every child in the territory or under the jurisdiction of a State party and do not depend on ownership of citizenship, specific residence, or another status (Bierwirth, 2005).

The 1989 Convention on the Rights of the Child is the treaty that sets the most living standards for children (CRC). While the CRC is not a refugee convention, it does cover refugee children, and all CRC rights must be accorded without discrimination (art. 2) to all persons under the age of 18 (art. 1).

The United Nations Convention on the Rights of the Child is essential for refugee children because it establishes broad guidelines. From health and education to social and political rights, almost every part of a child's life is protected. The process of criminal justice (arts. 37 and 40), adoption (art. 21), and family rights (art. 5, 9, and 14.2) are some examples of the essential procedure mentioned in the Convention. Furthermore, the rights to health (article 24), education (article 28), and an adequate standard of living (article 27) are referred to as "progressive rights" because they grow in tandem with the State's economic growth. These social welfare rights are not just ideals or abstract aims. Critically, the prohibition against discrimination (art. 2) is considered "right," thus ensuring that any benefits a State provides to its citizens must also be provided to all children, including those who are refugees on its territory.

Because of the treaty's near-universal ratification, the Convention on the Rights of the Child has taken on new significance for refugee children (155 State parties by March 1994) (McAdam, 2007, p. 173). Countries from every area of the world, with populations of all sizes and stages of economic growth, have agreed to the CRC principles, which represent every form of the political system and religious practice. The CRC can be used as a powerful weapon for
lobbying because the standards are universal: a country cannot use its uniqueness as an excuse for failing to meet universal standards (UNHCR, 1994, p. 19).

The CRC's widespread ratification is also relevant for other reasons; even if a country is a signatory to the CRC but not to any refugee treaties, it may still protect refugee children. UNHCR advocates for the CRC's observance even though a state has not ratified it because its standards are universal.

UNHCR also uses the CRC as a guiding principle in its activities. "As a United Nations convention, (the CRC) constitutes a normative frame of reference for UNHCR's action" (para. 17). One of the guiding principles in the Policy states, "In all acts taken with refugee children, the human rights of the child, in particular his or her best interests, are to be given primary regard," says one of the Policy's guiding principles (para. 26 (a)) (Annex A contains a reprint of the Policy). The rights in the CRC are stated as UNHCR's standards (UNHCR, 1994, p. 19).

UNHCR encourages that all States, international organizations, and non-governmental organizations follow the CRC requirements for the wellbeing of refugee children. The World Summit adopted a Declaration and Plan of Action for Children in 1990. The World Summit's objectives establish significant benchmarks for health and education for children to strive. States are encouraged to adopt national plans of action as a follow-up, with refugee children falling under "children in challenging circumstances" as a particular measure. Even though the Declaration and Plan are not treaty standards, their general acceptance is a significant step forward (UNHCR, 1994, p. 20).

The CRC articles go into great detail about all children's rights to "complete and harmonious growth" (Preamble). These details apply to refugee children in at least five places where their rights become relevant and meaningful as their refugee and developmental experiences become intertwined. Children who are refugees have the following rights (Lawrence, Dodds, Kaplan & Tucci, 2019):

1. Personal Life, Survival, and Development Rights

Every child has the right to be registered and has a name, an identification, and a nationality from the moment they are born (7). Articles 16, 37, 39, and 40 recognize each child as unique individuals who deserve to be treated with integrity, honor, affection, and self-respect. States must ensure refugee children's survival and development to the greatest extent possible (6); protect their identity, faith (8, 14), and dignity (39); and direct education to their growth and civic readiness (27, 29). Article 3 is essential for refugee children, as it establishes the concept of "child's best interests" as "a primary consideration" in all activities affecting them. These rights offer more than just a means of survival; they become recognizable,
individualized 'been' markers of consistency over time and circumstances, anchoring refugee children's being.

2. The Rights to a Standard Family Life

Children who are refugees have the right to be cared for by their parents in their own homes, free from unreasonable or illegal intervention (7, 16). The primary responsibility for ensuring the living conditions required for a child's development and best interests lies with the parents (27, 18). Refugee children have rights to information, access, and daily communication if their parents are separated and family reunification (9, 10). States should have culturally consistent foster care and adoption (20). While affirming the normalcy of child development in families, these articles propose normative principles of family solidarity and state non-interference. They forbid willful bureaucratic family separation or impediment to family reunification, citing the child's best interests at each stage of the refugee journey (21, 3).

3. Health and Well Being Rights

States are responsible for providing healthcare for children domestically and internationally and reducing infant and child mortality and suffering (24). The State offers primary healthcare, education, and social security (24, 26), all within living standards that are sufficient for children's holistic growth (27). Traditional activities that are harmful to children's wellbeing (24) and the rehabilitation of child victims (39) are two areas of health relevant to refugees. Article 28 requires states to provide free primary education and affordable secondary and higher education; to ensure school attendance and discipline that respects children's dignity and fosters international cooperation in combating ignorance and illiteracy (28). States should include age-appropriate play, educational, cultural, and artistic opportunities for refugee children (31) and regulate age-appropriate and non-exploitative work (32). The wide range of high to low wellbeing measures among children receiving trauma-related services highlights the need for various healthcare and intervention options that consider each child's unique needs and coping strategies (Lawrence, Kaplan & Collard, 2019).

4. Safety and Protection Rights

States are responsible for safeguarding refugee children from discrimination (2), crime, harm, abuse, negligence, and exploitation (19), sexual exploitation and abuse, prostitution, or pornography (34), illegal transfer overseas (11), and being sold or trafficked (35). Regulation of children's conscription into armed conflict, which affects many refugee children's lives,
distinguishes between children under the age of 15 and those over 15 and offers protection and care for civilian children impacted by armed conflict (38). States protect refugee children from being treated cruelly or inhumanely in legal situations and being denied liberty arbitrarily (37) or by proper legal processes (40). The manufacturing of informative materials for children is one of the State's provisions (17). In its legal framework and globally, a state cannot escape the scope of its responsibilities to handle refugee children's protection.

5. Community Participation Rights

Children in refugee camps have the freedom to express themselves and their religious views and peacefully gather (12–15). They also have the right to access information sources nationally and internationally, especially those promoting their wellbeing (17).

The main principles stipulated in the CRC are:

1. The best interests of the child

   Every Policy or program made by the State, authorities, government, and society, even family must prioritize the child's best interests. The possibility that what will happen will impact the child's survival and development (Nurusshobah, 2019).

   These principles apply to and should guide the treatment of refugees and children seeking asylum. Several examples may illustrate this idea. The best interests of the child should, for example, be the starting point for determining protection needs and should guide the chronology of actions to be taken concerning unaccompanied and separated children (Maxwell & El-Hilaly, 2004, p. 37). Since determining the child's best interests requires a clear and comprehensive assessment of the child's background, specific vulnerabilities, and protection needs, children need to be given access to the area to carry out this initial assessment process. Such a process, of course, requires (Bierwirth, 2005):

   a. Immediate registration through initial interviews conducted in an age-appropriate manner by professionally qualified persons to collect bio-data and social history to confirm the child's identity, including, where applicable, the identity of both parents and nationality of the child and parents.

   b. Continuation of the registration process and documentation of further information to meet the child's particular needs.

   c. Start tracing the child's family as soon as possible.

   d. Prioritize identifying separated or unaccompanied children as soon as they arrive.
at the port of entry or as soon as their presence in the country becomes known to the authorities.

Under the principle of 'best interest,' States should also refrain from automatically referring unaccompanied and separated children to asylum procedures if there is no indication that their presence in the area raises questions about the need to be granted international protection as refugees. Children should be protected under other relevant child protection mechanisms in such situations.

2. The principle of non-discrimination

Every child has the same rights and opportunities, cannot be differentiated and is no exception. CRC is a convention that applies to all children, regardless of their background, ethnicity, religion, race/ethnicity, language, culture, gender, persons with disabilities or not, rich or poor. All children are entitled to the fulfillment of special rights and protections under applicable laws (Nurussiahobah, 2019).

The principle of non-discrimination stated in Article 2 of the CRC guides the care of refugees or children seeking asylum in various ways. As a fundamental right guaranteed by the CRC, the principle of non-discrimination explicitly prohibits any discrimination based on a child as a refugee or asylum seeker. For example, the principle of non-discrimination prohibits different treatment of children of asylum seekers from different countries of origin. All such children must be subject to the same general rules of procedure and enjoy the same social rights.

3. The principle of participation.

The CRC is built on the concept of participation. According to article 12(1) Convention on the Rights of the Child 1989, States Parties shall assure to the child who is capable of forming their views the right to express those views freely in all matters concerning the child, with due weight given to the child's views following their age and maturity. Almost every article deals with some aspect of children's social engagement in one way or another.

The principle of participation is a determining factor in determining the scope of the child's role in asylum procedures or when considering family reunions. The significance of the involvement is further enhanced in emergencies where refugees or other neglected children become carers for other children (e.g., their siblings) (Tolffree, 2004).
CONCLUSION

The 1951 Refugee Convention and the 1967 Protocol (Concerning the Status of Refugees) provide guidelines for children and adult refugees. Although all provisions in the 1951 Refugee Convention and the principle of non-refoulement apply to refugees who are still children, no child-specific clauses are included in this instrument, unfortunately. Only paragraph 1 of Article 22 of the 1951 Convention on public education is relevant for child refugees. The detailed provisions in the CRC offer much more complex and comprehensive legal guidance on child protection, including refugee children. The general term of 'children' under the CRC can fill up the vacuum of the international umbrella for protecting child refugees when a country is not a party to the 1951 Convention and its protocol.

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