

The Adoption of Children with a Refugee Status: An Analysis of International Laws and Jurisprudence

Muhammad Nur

Universitas Ahmad Dahlan
muhammad.nur@law.uad.ac.id

Galih Bagas Soesilo

Universitas Muhammadiyah Purworejo
galihbagas@umpwr.ac.id

Muhammad Rizal Sirojudin

Universitas Ahmad Dahlan
dsnimrs@gmail.com

DOI: 10.23917/jurisprudence.v12i1.701

Submission

Track:

ABSTRACT

Received:

15 September 2022

Final Revision:

15 October 2022

Available online:

31 October 2022

Corresponding

Author:

Muhammad Nur
muhammad.nur@law.uad.ac.id

Objective: This research aims to undergo a juridical analysis of the stipulations for the adoption of refugee children from the perspective of international law.

Methodology: This was juridical normative research that collected data using the literary study method. This research used primary legal materials, secondary legal materials, and non-legal materials research instruments.

Findings: A core principle in making policies concerning refugee children is the 'best interest rule', which has two main implementations: the making of governmental policies and decisions made on the children as individuals. Adoption may only be considered after all efforts on tracing and reunifying child refugees with their families have failed, or if the child's parents have agreed on that adoption according to the standard stipulated in the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. A jurisprudence concerning this was the case of Mariya Abdi Ibrahim vs Norway in the European Court of Human Rights for Application No. 15379/16. Indonesian stipulations are not in line with the international law that allows the adoption of refugee children.

Application: This research may provide insight for the Indonesian government in considering an alternative care model for the many child refugees in Indonesia.

Originality: This research described alternative model patterns that may be applied in Indonesia, as the government only regulated the prohibition of adopting international child refugees in Indonesia. But when referring to some international conventions, some types of alternative care are permitted, including adoption, even though it is only applied as a last resort.

Keywords: *adoption, children, refugee, international law, Indonesia.*

INTRODUCTION

Indonesia is located between two continents, i.e., Asia and Australia, as well as between two Oceans, i.e., the Indian Ocean and the Pacific Ocean. Due to this geographic condition, Indonesia becomes a strategic country in terms of economy, trade, and international transportation routes. Apart from its strategic position, Indonesia's natural condition which is made up of 17.508 islands makes this country the largest archipelago in the world (Hasan, 2016). Unfortunately, this has impacted the difficulty to apply a supervision system in all of this country's state borders.

Indonesia's strategic position becomes one of the reasons that this country is often visited by refugees from different countries (Suryokumoro et al., 2013). Even so, lately, there have been more cases where people are accidentally stranded on Indonesian islands. The history of the arrival and existence of refugees in Indonesia can be traced to before the Indonesian independence in 1945 when people from Vietnam arrived using boats in 1975 (Sihombing & Farabi, 2019). The early historical traces of these Vietnamese refugees can still be seen on Galang Island, an island with an area of 80 km² (8.000 Ha), located 350 meters southeast of Rempang islands. It is one of the islands under the authority of Batam City, the Province of Riau Islands.

Galang Island was formerly determined by the United Nations as a place of 'boat people', i.e., Vietnamese people who fled their country during the war (Shalihah & Nur, 2021b). These Vietnamese refugees left their country using random boats and they were then stranded on several islands and waters in Riau Islands. They were then arrested by the Indonesian government (Shalihah & Nur, 2021a). On May 25th, 1975, the first boat people

arrived in Indonesia, specifically on Laut Island, Bunguaran, and Natuna Islands (Bunari, 2017). They were then followed by around 4.000 boat people that arrived on Anambas island as refugees (Fandik, 2013). Others spread to various islands such as Bintan Island, Pengibu Island, and other surrounding islands (Lee, 2017).

Frank Frost explained in his writing entitled “Vietnam, ASEAN and the Indochina Refugee Crisis” that the event of a wave of refugees coming from Vietnam was divided into five stages (Frost, 1980). The first stage happened when 130.000 Vietnamese people were evacuated by the U.S. Army due to the panic that arose several weeks before the fall of Saigon City to the communists. The second stage occurred from early 1975 to 1978, when there was a wave of the exodus of around 30.000 refugees leaving the Vietnamese territory, and heading to countries around Indochina. At that time, there was a transition period in Vietnam, causing economic and political shifts through governmental reorganization, the formation of re-education camps, and the application of new economic zones.

The third stage happened in 1978 when around 200.000 people of Chinese ethnicity fled Vietnam to depart to the People's Republic of China due to negative sentiments towards people of Chinese ethnicity. This event was also accompanied by the fleeing of around 60.000 Vietnamese people using small boats towards Southeast Asian countries and Hong Kong. The fourth stage happened from February to March 1979, when the People's Republic of China attacked Vietnam. This led 175.000 Vietnamese people to undergo an exodus to various countries in Southeast Asia. Then, the fifth stage happened when information on the plan to build a place for refugees in several Southeast Asian countries spread in 1979.

Since 1975, Indonesia has participated in handling cases of refugees. This shows that Indonesia gives contribution towards the handling of international humanitarian crises (Anjasmara et al., 2021). According to the data from the UNHCR, up to 2022, there was an accumulation of 13,098 refugees in Indonesia, consisting of 7251 people from Afghanistan, 1354 people from Somalia, 902 people from Myanmar, 624 people from Iraq, 511 people from Sudan, and 2456 people from other countries. Of this number, 27% are children, while the rest (73%) are adults. Regarding the percentage of each gender, 73% of them are men while 27% of them are women (UNHCR Indonesia, 2022). Many of the child refugees came without parents or guardians.

The condition of these child refugees gained the empathy of various countries. Some parties were even interested in adopting some of these children. But the Indonesian

government prohibited the adoption of international child refugees in the country. This regulation led to debates in society. Therefore, this paper will analyze the juridical stipulations on the adoption of refugee children according to international law. Is the policy of the Indonesian government according to international law? What are the examples of decisions concerning the adoption of child refugees in other countries?

RESEARCH METHOD

This was juridical normative research that used the statute approach. It aimed to undergo a juridical analysis of the stipulations of the adoption of children with the status of refugees from the perspective of international law. The data were collected using the literature review method. This research used documents in the form of primary legal materials, secondary legal materials, and non-legal materials as research instruments. The collected data were then qualitatively analyzed and descriptively presented. In its first stage, this research focused on the collection of data and information from different referential sources that summarizes various phenomena and facts concerning the issue of the adoption of child refugees in Indonesia that were available in the field. The information was then analyzed using the perspective of international law.

RESULTS AND DISCUSSION

A. The Juridical Analysis of the Adoption of Child Refugees from the Perspective of the International Law

One of the international legal instruments that specially regulate the protection of child rights is the Convention on the Rights of the Child in 1989 (CRC). This convention is crucial for child refugees as it provides a comprehensive standard. Almost all aspects of children's lives are stipulated in this convention, starting from the sectors of health and education up to their social and political rights (Fairhall & Woods, 2021; Uchitel et al., 2019). Some standards in this convention are specific, such as articles on juvenile courts (Articles 37 and 40), adoption (Article 21), and family rights (articles 5, 9, and 14.2). Some rights concerning the social welfare of children are strictly regulated based on the financial capacities of each country. In this convention, the rights for health (Article 24), education (Article 28), and proper life standard (Article 27) are called "progressive rights", as these rights can be increased along with the economic development of the concerned countries. But these social

welfare rights are not merely abstract principles or goals. Due to their characteristics as "rights", the prohibition of discrimination that is stipulated in Article 2 of the convention *a quo* means that any benefit given by the state to children that are its citizens must be given to all children, including those who became refugees in their territory (Kristin & Dewi, 2021).

The extensive ratification of the CRC is also crucial for other reasons. If a country is a party to the CRC but is not a party to any refugee agreements, this convention may be used as the main basis for protecting child refugees. Even though a country has not ratified the CRC, the UNHCR still encourages its compliance. This is because the standard of this convention is universal.

There are different possible statuses of underage children among refugees or people with the status of refugees, namely:

1. Accompanied children

According to the CRC Article 1 on November 20th, 1989, accompanied children are children who are accompanied by or are unseparated from their parents or other relatives or are taken care of by adults who, according to the law or norms, are obliged to do so.

2. Unaccompanied children/UAC

Unaccompanied children or underage children without company are defined in the CRC Article 1 on November 20th, 1989, as children who are separated from both of their parents or other relatives. Also, they are not taken care of by adults who, according to the law or norms, are obliged to do so.

3. Separated Children/SC

Separated Children/SC are defined in the CRC Article 1 on November 20th, 1989, as children who are separated from both of their parents or their main guardians according to their laws or norms, but they are not always separated from other family members. Thus, they are categorized as children who are accompanied by other adult family members. Some Unaccompanied children or separated children may be orphans, where both of their parents are known to have died.

There are three Articles of the Convention on the Rights of the Child in 1989 that are highly relevant in the context of the adoption of child refugees. The first is Article 20 which regulates:

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, *kafalah* (literally meaning sponsors, but it originated from the word that meant “giving food” or the easiest translation is “taking care of”) of Islamic law, adoption or if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Then, Article 21 of the Convention on the Rights of the Child in 1989 regulates that States Parties that acknowledge and/or allow the application of the adoption system will guarantee that the best interest of the child becomes the main consideration. Apart from that, these countries will:

1. Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
2. Recognize that inter-country adoption may be considered as an alternative means of child's care if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
3. Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
4. Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
5. Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this

framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22 of the UN Convention on Children's Rights stipulates that:

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

The Article above stipulated that State Parties must carry out the right measures in an effort to make sure that the children seeking the status of refugees or who are acknowledged as refugees may obtain humanitarian aid and adequate protection. State Parties are also encouraged to create various types of teamwork in efforts to help and protect child refugees. They should, with all of their efforts, track the child refugees' parents or other family members no matter where they came from. This surely aims to reunite the children with their families. In the case where the parents or other family members of the child are nowhere to be found, State Parties must provide them with protection that is equal to that of other children who have lost their family environment in that country.

The main principle in making decisions concerning child refugees is prioritizing the child's best interests or the 'best interest rule' (Kalverboer et al., 2017). The rule of the best

interest has two main implementations: the formulation of governmental policies and decisions that are individually made for the children. Concerning the formulation of governmental policies, Article 3 of the CRC in 1989 stipulates that, "In all actions that concern the child" the state must make "the best interests of the child as the main consideration" (Skivenes & Sørdsdal, 2018). This article obliges the state to analyze how each action may influence children. As child interests are not always identical to those of adults and they may even conflict with one another, the state must be careful in separating the various interests at stake. The government does not have to undergo the best actions for a child, but in the case of an identified conflict, "the best interests" of the child must become "the main consideration" of the state. This regulation applies in allocating budget, making laws, and establishing the government.

Concerning decisions made for children as individuals, when decisions are being made about a child, the best interest of that individual child must become "the main consideration" (Eekelaar, 2015; Kilkelly, 2016). There are some situations where child welfare obtains a higher consideration. For instance, in the cases of child harassment or abandonment, a child may be separated from the parents, if based on good consideration, that separation is "for the best interests of the child" (Article 7 of the Convention on the Rights of the Child). In the case of adoption, "the best interests of the child must be the main consideration" (Article 21 of the Convention on the Rights of the Child). In this case, how an action may influence a child must be considered in detail. This requirement must absolutely be fulfilled before a decision is made. The consideration behind each case will be different. But the CRC stipulated that child welfare must be prioritized above adult welfare.

For instance, concerning decisions that are made for children as individuals, in making long-term planning for unaccompanied children in refugee camps, that plan must have the children's best interests at heart. For instance, a child is an orphan but has grandparents in the country of origin, an uncle in the asylum country, and perhaps, there is a family in the country of domicile that wants to adopt that child. In determining what is best for the child, many factors must be considered, including the "desire for continuity" of the child's culture and language (Article 20 of the Convention on the Rights of the Child), the preservation of family and nationality (Article 8 of Convention on the Rights of the Child), and the desires of that child, that must be considered according to the "age and maturity" of that child (Article 12 of Convention on the Rights of the Child). The aim is to allow that child to grow up in a happy

familial environment, where that child obtains love and affection (Preamble of Convention on the Rights of the Child).

It is often difficult to make decisions in the best interests of a child. There is no one answer that is clearest and most correct. For instance, in that case, available "facts" are inadequate to make decisions on the future of that child. Profound information is required, such as: will that child have legal status as a "refugee"? What is the age of that child? What are the conditions in the child's country of origin? Are the grandparents able to raise a child? Can the uncle raise a child? etc.

The need of every child to grow in a familial relationship can usually be fulfilled by their own families and communities, so long as the family and community obtained adequate protection and aid needed to become responsible. Thus, by taking care of and recovering children's familial environment, the state can help children obtain what they need. The best treatment for accompanied children is not separating that child from their guardian, especially from their parents. Therefore, separating children from their guardians can only become the last resort after undergoing various assessments which show that this action is in the best interest of the child (Article 7 of the Convention on the Rights of the Child). If that decision is taken, the children that are separated from the guardian cannot necessarily be adopted.

Then, for separated children and unaccompanied children, family tracing to achieve family reunion/reunification is the prioritized step that is crucial to immediately be implemented. For children that are separated from their families, and that reunification is proven impossible to be carried out, the host country must make efforts to cooperate with international organizations and other stakeholders to provide them with alternative care (Article 20 of the Convention on the Rights of the Child). Alternative care can usually be found and prioritized in the child community, either in the asylum country or in other places.

Any decision made concerning alternative child care can only be made after considering the best interests of each individual. Every case is essentially different. Thus, no uniform solution can automatically be applied. Solutions to the forms of alternative care that emerge will also highly depend on the roles and capacities of the state, society, and various stakeholders. But in most situations, both in emergencies or prolonged crises, separated children or unaccompanied children are spontaneously taken care of by other members of their community. This is deemed good and important to be applied and promoted. It is mutually important to support this practice, as it is deemed to make the children keep in touch

with the customs, cultures, and habits that they often experienced. But at the same time, there must be monitoring of the development of the care they applied.

The right to take part in cultural life and cultural preservation is acknowledged as a human right. Culture provides children with identity and sustainability. By learning their values and cultural traditions, children learn how to adapt themselves to their families, communities, and the wider society. Every society has a unique system that is an accumulation of knowledge. It is reflected in their social and religious beliefs. This system provides a method for how to interpret and explain the world around them. Culture determines the values upheld by social groups as well as regulations and control that make sure that those values are upheld. It includes the community approach to raising children.

Every social group has its own special regulations on who takes care of children, what is taught to them at a certain age, what is expected of children, how they must be disciplined, as well as what to do in the event of a crime, such as when children are harassed, abandoned, or if their parents cannot provide adequate treatment for them. But it must also be understood that culture is dynamic. Culture keeps on developing and it adapts to change (Fajth et al., 2019). But to keep a culture 'healthy', society must insert gradual change to make sure that the aspects of their culture can coherently and consistently develop. The decision to become a refugee can disturb almost all cultural aspects. Social chaos may accidentally be caused by individual, familial, or communal movements that can dramatically influence the coherence of their culture. Normal regulations, values, and social control start to become disrupted when social groups that provide the application of this system suddenly disappeared (Bhugra & Becker, 2005).

B. Alternative Treatment/Care for Child Refugees Commonly Applied in Various Countries

Concerning the practice that has so far been applied in various countries, there are some alternative types of treatment/care that are commonly prescribed to child refugees with the status as separated or unaccompanied children, namely:

1. Foster care, which is a situation where a child is taken care of in a household outside of his/her family. Foster care is often understood as a temporary regulation or solution and in many cases, the child's biological parents still have their rights and responsibilities as parents. Foster care includes:

- a. informal care (or spontaneous care), where a child is taken care of by families or other households that either have a familial relationship or not with the child;
- b. formal care (or regulated care), where a child is taken care of by a family that is part of the regulation created by an external agent (the government, other authorized institutions, etc.)

2. Kinship care is the care for children that spend their full time with kin or a friend who is not their parents. This is usually because their parents cannot take care of them. The kin or friend is called a 'kinship carer'. It is estimated that around half of the kinship carers are grandparents of that child (MacDonald et al., 2018). But apart from that, many of them are taken care of by other close kin such as siblings, aunts, uncles, or family friends and neighbors that the child already knew (MacDonald et al., 2018; Messing, 2006; Woodruff et al., 2014). Different countries have different definitions and practices of kinship care. In the U.S. for instance, a kinship carer obtains several resources such as information on changes in family dynamics, financial support, legal support and information on permanent care for a child (Child Welfare Information Gateway, 2022). In Scotland, kinship carers obtain financial aid to cover the needs of the child from the government, with a limitation of 200 euros per week for every child (Hartley et al., 2019).

3. Guardianship placements. Different countries have different definitions, functions, and methods of appointing guardians. But basically, the term *guardianship* refers to the appointing of responsibility to certain adults or organizations to make sure that the best interests of the child are fully represented. A specific example of this function in many countries is the appointment of some people as guardians for administrative or courtly processes. These guardians function to make sure that the children are well-represented. This is so that their perspectives on certain things are well-expressed and all decisions made are in their best interests. This is according to Articles 3 and 12 of the Convention on the Rights of the Child. In large-scale crises, where it is difficult to determine regulations on guardianship, the rights and the best interests of separated children and unaccompanied children must still be protected and promoted by organizations that work for the sake of these children (Kellenberger et al., 2004).

4. Residential care (also called institutional care) is a type of care that is given in an arrangement of non-family groups. This type of care includes orphanages, small group homes, center for temporary/transit care, child homes, village complexes or child cottages, and school

dormitories that are mainly functioned to provide care as an alternative for child residence. Residential or institutional care must always become the last resort and is only chosen if regulations on family-based care are impossible or if it is determined that family-based care cannot fulfill the best interests of the child (Interagency Working Group on Unaccompanied and Separated Children, 2013).

5. Independent living is a living arrangement where a teenager or a group of teenagers aged 16-18 years live independently. There is also a consensus that develops in its application in the field that children and families must be given a choice of care that is relevant to their continuously-developing capacities and situations. Older teenagers may want to live alone or with other people of their age. But they cannot necessarily be let go, as there needs to be routine supervision. The role of society is also required to support these children.

6. Group Care is a form of residential care where children are placed in a house with other children that are regulated and run like a family home. They usually consist of six to eight children or teenagers that are taken care of by a permanent carer who is experienced with child communities. If the solution of family-based care or an alternative of independent living cannot be applied or is not recommended, this group care is more often chosen than other institutional care methods. Even, in many cases, teenagers prefer this group care compared to family-based care as the former allows more freedom and teaches independence. But for younger children, family-based care is much more prioritized.

7. Adoption is the permanent placement of a child in a family (adoptive parents) where the rights and responsibilities of the biological parents (or legitimate guardians) are legally shifted to the adoptive parents. Adoption may only be considered after all efforts concerning the tracing and reunification of child refugees with the family are deemed to have failed or if the child's parents agree with this adoption according to the standard determined in the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. The agreement of parents, other parties, institutions, and authorities that are required for adoption is free and open. This is to make sure that this agreement was not made based on any form of payment and compensation. Separated children and unaccompanied children cannot hastily be adopted in cases of emergency situations. Adoption by kin in their countries of origin must be prioritized. If that choice is not available, the best preference is the child's adoption by the community where that child originated from or at least in his/her own culture.

In the regulations of the Indonesian positive law, the adoption of foreign children is permitted. The requirement for child adoption is that this adoption must obtain written approval from the government of the Republic of Indonesia as well as written approval from the government from where that child was from. After fulfilling this qualification, the adoptive parents can already obtain validation from the state court (Bustomi, 2021). But the adoption of children with the status of refugees is prohibited in the positive law. Usually, the authorized parties only say that this situation will cause trauma towards the adoptive children (Madinah & Ismail, 2017). According to the writer, this is a form of injustice because when perceived from the sociological point of view, refugee children have a higher need to be adopted than other children from abroad in general.

Concerning the idea of adopting international children, the writer sees that there is a contradiction between the adoption of refugee and non-refugee children. Refugee children are generally not allowed to be adopted. But in the context of intercountry child adoption, it is actually allowed. The international legal instrument that regulates intercountry child adoption is the Convention on the Rights of the Child (CRC) dan the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention) (Wardah, 2011). Article 21 (b) of the CRC states that, "Inter-country adoption may be considered as an alternative means of child's care if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin." From this article, it can be seen that the reason for intercountry child adoption is so far the same as the reason for refugee child adoption. But non-refugee child adoption is allowed even with the same reasons as those of refugee children. Thus, the writer sees that the Indonesian regulation is not in line with stipulations of international law and the practices in various countries that allow the adoption of refugee children.

C. An Example of a Jurisprudence Norway and the Legal Consideration of Judges in the European Court of Human Rights

There was the case of Mariya Abdi Ibrahim v. Norway in the European Court of Human Rights for Application No. 15379/16 (Case of Abdi Ibrahim v. Norway (European Court of Human Rights) Application No. 15379/16, 2021). Mariya is a lady from Somalia who came to Norway at the age of 16 with her 3-month-old son. She ran away after a terrorist

group, al-Shabaab, targeted her as she experienced extramarital pregnancy. Before arriving in Norway, Mariya went to her uncle's house in Kenya on November 2009, where she gave birth to her son under a traumatizing condition. She was still underage when she got pregnant and gave birth. On February 2010, Mariya left Kenya, bringing her son. They first left for Sweden before coming to Norway. They sought asylum in the same month there.

The applicant was given a temporary living permit with the status of a refugee in Norway through a decision dated June 4th, 2010. When her son was 10 months old, the Norwegian Child Welfare Services took him away from his mother's care under the reason that Mariya neglected and abused him. Then, her son was taken to an emergency foster care and the Norwegian authorities permitted that child to be adopted by a Norwegian couple that are members of the Evangelical Mission Covenant Church who are Christians and cut all ties with his mother. Meanwhile, Mariya suggests that her son should be taken care of by her cousin that is also in Norway or other Somalian or Muslim families. Mariya who is a Muslim wanted his son to have the same religious and cultural upbringing.

After losing several times in the Norwegian Court processes, Mariya then applied this case to the European Court of Human Rights in Strasbourg, France. On December 17th, 2019, this court decided that the Norwegian Court failed to consider the perspectives and interests of Mariya as the child's mother. In the end, the judge decided that there has been a violation of a child's human rights. The judge of the European Court of Human Rights suggests that the decision-making process towards the applicant's child has failed to consider the mother's perspectives and interests, leading to the violation of her human rights (Registrar of the Court of the European Court of Human Rights, 2020).

In this case, it can be seen that the practice of refugee child adoption is basically permitted especially in Norway. But as formerly described, in deciding upon the act of adoption according to the European Court of Human Rights in that decision, the authorities must consider the best interests of the child. They must also consider that children should still keep in touch with their nation, culture, and religion of origin (Registrar of the Court of the European Court of Human Rights, 2020).

CONCLUSION

Results of this research found that one of the main principles in making policies concerning refugee children is prioritizing the best interests of the child or the 'best interest

rule'. The best interest has two main implementations: the making of governmental policies and decisions made on the children as individuals. Adoption may only be considered after it has been determined that all efforts related to the tracing and reunification of the child refugees with the family members have failed, or if the child's parents have agreed on that adoption according to the standard stipulated in the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.

Separated children and unaccompanied children cannot hastily be adopted during emergency conditions. The adoption by that child's kin in their country of origin must be prioritized. If that choice is not possible, the best preference is the adoption in a community where that child originated from or at least within the child's own culture. Alternative care/treatment for child refugees that are commonly applied in various countries include foster care, kinship care, guardianship placements, residential care (or institutional care), independent living, group care, and adoption. This paper found that the stipulations in Indonesia is not in line with stipulations of the international law and practices in various countries that allow the adoption of refugee children. Because of that, Indonesia needs to arrange an alternative care model for child refugees, including adoption, which is commonly permitted and practiced in various countries.

REFERENCES

- Anjasmara, A. A., Laksono, T. B., Feryasa, A., & Palandi, J. J. (2021). Kerjasama Internasional Indonesia dalam Hal Penanganan Pengungsi yang Berada di Wilayah Indonesia Menurut Perspektif Hukum yang Berlaku di Indonesia. *Jurnal Indonesia Sosial Sains*, 2(4), 509–523. <https://doi.org/10.36418/JISS.V2I4.250>
- Bhugra, D., & Becker, M. A. (2005). Migration, Cultural Bereavement and Cultural Identity. *World Psychiatry*, 4(1), 18. [/pmc/articles/PMC1414713/](https://pubmed.ncbi.nlm.nih.gov/1414713/)
- Bunari, B. (2017). Pulau Galang Sebagai Penampungan Pengungsi Vietnam. *SEUNEUBOK LADA: Jurnal Ilmu-Ilmu Sejarah, Sosial, Budaya Dan Kependidikan*, 4(1), 25–37. <https://ejournalunsam.id/index.php/jsnbl/article/view/1088>
- Bustomi, M. I. (2021, September 2). *Syarat dan Cara Adopsi Anak WNI dan WNA Halaman all* - *Kompas.com*. Kompas. <https://megapolitan.kompas.com/read/2021/09/02/09301071/syarat-dan-cara-adopsi-anak-wni-dan-wna?page=all>
- Child Welfare Information Gateway. (2022). *Kinship Care*. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. <https://www.childwelfare.gov/topics/outofhome/kinship/>

- Eekelaar, J. (2015). The Role of the Best Interests Principle in Decisions Affecting Children and Decisions about Children. *The International Journal of Children's Rights*, 23(1), 3–26. <https://doi.org/10.1163/15718182-02301003>
- Fairhall, N., & Woods, K. (2021). Children's Views on Children's Rights: A Systematic Literature Review. *The International Journal of Children's Rights*, 29(4), 835–871. <https://doi.org/10.1163/15718182-29040003>
- Fajth, V., Bilgili, Ö., Loschmann, C., & Siegel, M. (2019). How Do Refugees Affect Social Life in Host Communities? The Case of Congolese Refugees in Rwanda. *Comparative Migration Studies*, 7(1), 1–21. <https://doi.org/10.1186/S40878-019-0139-1>
- Fandik, Moh. (2013). Penampungan Orang Vietnam di Pulau Galang 1975-1979. *Avatara E-Journal Pendidikan Sejarah*, 1(1). <https://ejournal.unesa.ac.id/index.php/avatara/article/view/1133>
- Frost, F. (1980). Vietnam, Asean And The Indochina Refugee Crisis. *Southeast Asian Affairs*, 347–367. <https://www.jstor.org/stable/27908412>
- Hartley, J. E., McAteer, J., Doi, L., & Jepson, R. (2019). CARE: The development of an intervention for kinship carers with teenage children. *Qualitative Social Work*, 18(6), 926–943. <https://doi.org/10.1177/1473325018783823>
- Hasan, Y. (2016). Tinjauan Sejarah Terhadap Penetapan Pulau-Pulau di Indonesia. *Criksetra: Jurnal Pendidikan Sejarah*, 5(2). <https://doi.org/10.36706/JC.V5I2.4809>
- Interagency Working Group on Unaccompanied and, & Separated Children. (2013). *Alternative Care in Emergencies Toolkit*. https://resourcecentre.savethechildren.net/node/7672/pdf/ace_toolkit_0.pdf
- Kalverboer, M., Beltman, D., van Os, C., & Zijlstra, E. (2017). The Best Interests of the Child in Cases of Migration: Assessing and Determining the Best Interests of the Child in Migration Procedures. *The International Journal of Children's Rights*, 25(1), 114–139. <https://doi.org/10.1163/15718182-02501005>
- Kellenberger, J., Rupp, G., Aaronson, M., General, D., Bellamy, C., & Director, E. (2004). *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*. <http://www.theIRC.org>
- Kilkelly, U. (2016). The Best Interests of the Child: A Gateway to Children's Rights? *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-Being*, 51–66. <https://doi.org/10.1017/9781316662977.004>
- Kristin, D., & Dewi, C. T. I. (2021). The Rights Of Children Refugee In Transit Country Under The CRC, A Case Of Indonesia: An Intended Negligence? *Padjadjaran Journal of International Law*, 5(1), 114–136. <https://doi.org/10.23920/PJIL.V5I1.349>
- Case of Abdi Ibrahim v. Norway (European Court of Human Rights) Application No. 15379/16, (December 10, 2021). <https://laweuro.com/?p=17577>
- Lee, A. (2017). Forced Migrants, Media, and Securitization: Making Sense of the Changing Representations of Transit Asylum Seekers in Indonesian Print Media. *JAS (Journal of ASEAN Studies)*, 5(2), 75–101. <https://doi.org/10.21512/JAS.V5I2.3923>

- MacDonald, M., Hayes, D., & Houston, S. (2018). Understanding Informal Kinship Care: A Critical Narrative Review of Theory and Research. *Families, Relationships and Societies*, 7(1), 71–87. <https://doi.org/10.1332/204674316X14534751747496>
- Madinah, & Ismail. (2017, December 24). *Melly Goeslaw Nyaris Adopsi 2 Anak Palestina, Tapi...* <https://www.suara.com/entertainment/2017/12/24/193446/melly-goeslaw-nyaris-adopsi-2-anak-palestina-tapi>
- Messing, J. T. (2006). From the Child’s Perspective: A Qualitative Analysis of Kinship Care Placements. *Children and Youth Services Review*, 28(12), 1415–1434. <https://doi.org/10.1016/J.CHILDYOUTH.2006.03.001>
- Registrar of the Court of the European Court of Human Rights. (2020). *Grand Chamber Panel’s Decisions*. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjX0cjflPT8AhWSmFwKHa_ADY0QFnoECC8QAQ&url=https%3A%2F%2Fhudoc.echr.coe.int%2Fapp%2Fconversion%2Fpdf%2F%3Flibrary%3DECHR%26id%3D003-6694003-8907250%26filename%3DGrand%2520Chamber%2520Panel%25u2019s%2520decision%2520-%2520May%25202020.pdf&usg=AOvVaw0RRZbyFR3UpBLOI9b5qeUf
- Shalihah, F., & Nur, M. (2021a). *Penanganan Pengungsi di Indonesia*. UAD Press.
- Shalihah, F., & Nur, M. (2021b). Observations on the Protection of Refugees in Indonesia. *Fiat Justisia: Jurnal Ilmu Hukum*, 15(4), 361–384. <https://doi.org/10.25041/FIATJUSTISIA.V15NO4.2143>
- Sihombing, H., & Farabi, N. (2019). Kebijakan Indonesia dalam Perlindungan Pencari Suaka dan Pengungsi Pasca Kebijakan Turn Back the Boat Pemerintahan Tony Abbott. *Journal of International Relations*, 5(4), 599–608. <https://doi.org/10.2/JQUERY.MIN.JS>
- Skivenes, M., & Sørstal, L. M. (2018). The Child’s Best Interest Principle across Child Protection Jurisdictions. *Human Rights in Child Protection: Implications for Professional Practice and Policy*, 59–88. https://doi.org/10.1007/978-3-319-94800-3_4
- Suryokumoro, H., Nurdin, N., & Ikaningtyas, I. (2013). Urgensi Penanganan Pengungsi/Migran Ilegal Di Indonesia Sebagai Negara Transit Berdasarkan Konvensi Tentang Status Pengungsi 1951 (Studi Di Kantor Imigrasi Kota Malang). *Arena Hukum*, 6(3), 408–432. <https://doi.org/10.21776/UB.ARENAHUKUM.2013.00603.7>
- Uchitel, J., Alden, E., Bhutta, Z. A., Goldhagen, J., Narayan, A. P., Raman, S., Spencer, N., Wertlieb, D., Wettach, J., Woolfenden, S., & Mikati, M. A. (2019). The rights of children for optimal development and nurturing care. *Pediatrics*, 144(6). <https://doi.org/10.1542/PEDS.2019-0487/76999>
- UNHCR Indonesia. (2022). *Fact Sheet-Indonesia*. <https://www.unhcr.org/id/wp-content/uploads/sites/42/2022/08/Indonesia-Fact-Sheet-June-2022-FINAL.pdf>
- Wardah. (2011). Perlindungan Hukum Internasional terhadap Pelaksanaan Adopsi Anak Antar Negara. *Kanun Jurnal Ilmu Hukum*, 13(2), 133–142. <https://jurnal.unsyiah.ac.id/kanun/article/view/6246>

Woodruff, K., Murray, K., & Rushovich, B. (2014). Kinship Caregiver Perception of a State-Supervised Kinship Navigator Program. *https://Doi.Org/10.1080/10522158.2014.880984*, 17(2), 136–153.
<https://doi.org/10.1080/10522158.2014.880984>