

RIGHT TO EDUCATION FOR CHILDREN OF INDONESIAN MIGRANT WORKERS

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ABSTRACT

Education is part of the economic, social, cultural rights, and it is the asset of the nation to have qualified individuals. Right to education shall be fulfilled progressively to obtain maximum results. Indonesia has ratified several legal instruments relating to human rights especially right to education, therefore it is the obligation for Indonesia government to comply right to education in all its forms and at all levels. The indicators are; availability, accessibility, acceptability, and adaptability of the right to education. Indonesia which is one of the sending countries of migrant workers to Malaysia has some problems to comply the right to education for children of Indonesian migrant workers in northern Malaysia. The children could not or difficult to get their right to education. According to data from the Indonesian Consulate General in Sabah, Malaysia in 2013, the number of Indonesian children in Sabah around 53.234 children, and most of them were children of migrant workers. This paper describe three issues; first) the rights to education under international human rights law, second) Indonesian legal perspective in the right to education and, third) how Indonesian government comply the right to education for children of Indonesian migrant workers. Universal Declaration of Human Rights is the main declaration of human rights and International Covenant on Economic, Social, and Cultural Rights (ICESCR) is the covenant which all state parties shall respect and ensure to respect it. Indonesian government which already ratify ICESCR shall to have the willingness and capacity to comply the right to education without discrimination. Meanwhile, for the fulfillment of the right to education, Indonesian government put children of Indonesian migrant workers in its policy as part of the special education services. To implement the policy, Indonesian government has work cooperatively with some educational institutions and comply the four indicators mentioned in ICESCR General Comment number 13 through establishment the formal and non formal schools. In this paper, it be concluded that Indonesian government policy in complying of the right to education for children of migrant workers can be appreciated as the advancement of human rights.

Keywords: International Human Rights, Right to Education, Children of Indonesian Migrant Workers

1. INTRODUCTION

1.1. Education as a right

Education is an essential of nation development and as an indispensable vehicle of nation to comply human rights. Education is practically inseparable from cultural values because education is the most effective way to maintain and preserve the culture itself. Nevertheless, education is also the primary vehicle by which economically and socially marginalized adults and children can issue themselves out of poverty and obtain the means to participate fully in their communities (International Covenant on Economic, Social, and Cultural Rights - ICESCR General Comment number 13). Education has a vital role in empowering women, protect the children from exploitative and hazardous labour and sexual exploitation, improve human rights and democracy, protecting the environment, and controlling population growth (ICESCR General Comment number 13). Therefore, education is a part of economic, social, and cultural rights.

However, education provides a direct influence on the enjoyment and fulfillment of other rights. In other words, education is not only to comply the economic, social, and cultural rights, but also to comply the civil and political rights. It is as stated by Sibonile Khoza in his book, Socio Economic Rights in South Africa (South Africa: The Socio-Economic Rights Project University of Western Cape, second edition, 2006) (Madja, 2008, pp 167):

“An education is necessary to enjoy civil and political rights. For example, the extent of your participation in

political life depends on your level of education, or using your right to vote. Without a basic level of literacy, you cannot read a ballot paper, newspapers and other materials that will assist you in making an informed choice. Education is also necessary for the enjoyment of economic, social and cultural rights. For example, your freedom to choose a trade, occupation or profession is largely dependent on the level of education that you receive.”

International community put education as a right that must be met by all individuals without exception. The international community recognize the importance of education as one of the successful achievement of development objectives. It was reflected in United Nations efforts to realize the Millennium Development Goals of the United Nations (United Nations Millennium Development Goals which be followed by the Sustainable Development Goals). Not only that, the international community has called for International Education for All (EFA) which stated by the United Nations Educational, Scientific and Cultural Organization (UNESCO) through a global agreement World Education Forum in Dakar, Senegal in 2000 that the completion of the EFA is expected to be achieved by 2015.

1.2. Indonesian Migrant Workers

Indonesia had long been sending its citizens to work abroad. Placement of Indonesian Migrant Workers abroad has actually been carried out, which since the days of the Dutch East Indies around 1887. Many Indonesian migrant workers are sent by the Dutch government to work as contract laborers in Suriname, New Caledonia, Siam and Sarawak. In addition, many workers who traditionally go abroad mainly go to Malaysia to work. Indonesian government has provision to provide an opportunity for citizens to work abroad is in line with Article 27 D paragraph (2) of the 1945 Constitution (UUD 1945). The constitution stated that; " Every citizen has the right to employment and decent living for humanity ". Fulfillment of the rights of individuals to obtain decent work can also be seen in Article 38 paragraph (2) of Act of the Republic of Indonesia Number 39 Year 1999 on Human Rights, which asserts that every citizen has the right to freely choose a job he likes. Thus, every citizen cannot be forbidden to work wherever, both domestically and abroad.

According to the data from the Center for Research and Development and Information of National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI), there are approximately 512.168 citizens who work abroad in 2013, and it includes 150.236 citizens work in Malaysia. (BNP2TKI.go.id). In informal workers, the domestic and farm workers sector are the top two workers. Of these, Indonesian migrant workers in Malaysia is the largest compared to the number of Indonesian migrant workers in some other countries such as Saudi Arabia, Hong Kong, and Taiwan.

In 2002, the Malaysian Government has a policy of immigration enforcement, Malaysian Immigration Act Number 1154A/2002 (previously Immigration Act of 1959 and 1963). Immigration Act Number 1154A/2002 officially entry into force since 1st March, 2005. Under these law, Malaysia prohibits migrant workers in Malaysia without a formal, legal documents, and migrant workers are not allowed to bring their family and not be married during the period of the contract. However, in reality most of Indonesian migrant workers have been working in Malaysia since long time ago and for long term, thus they are married and have children in Malaysia. Hence, the Malaysian Government policy has given a problems for children of Indonesian migrant workers who were born in Malaysia. The children would be difficult to get a birth certificate that listed in State Registration in Malaysia, because their existence is considered illegal, and their status as an undocumented children.

Related to education, Malaysian Government may accept foreign students who will be studying in schools both schools Kingdom Malaysia (Public School) as well as private schools, but they have to comply with the requirements stipulated by the legislation in the field of education. Unfortunately, the provisions of these requirements sometimes difficult to be met by the children of Indonesian migrant workers because of the child's personal documents, immigration status of parents, place of residence and availability of places (Basori: <http://www.kemlu.go.id/kotakinabalu>). With the status of undocumented children, it will be difficult for them to be able to school. Similarly, children of Indonesian migrant workers who come with their parents to Malaysia and worked on the same field with his parents, even though they have a birth certificate that they brought from Indonesia, but because of the Act number 1554A/2002 of Malaysian Imigration, their presence in Malaysia are not allowed, thus it made problems for them to be educated formally. Those problems tend to occur in Sabah, North Malaysia, which the number of children of Indonesian migrant workers have reached the third generation. As comparison, children of Indonesian migrant workers in Sarawak reached second

generation. Therefore, the problem is rare in Sarawak (only in Miri and Bintulu area near the border of Sabah).

2. RIGHT TO EDUCATION IN INTERNATIONAL HUMAN RIGHTS

2.1. Concept of Human Right

Human rights are, literary, the rights that one has simply because one is a human being. It means that human has the rights because of his dignity. There are three elements in human rights: 1) human rights are equal rights: one either is or is not a human being, and therefore has the same human rights as everyone else (or none at all), 2) human rights are inalienable rights: one can not stop being human, no matter how badly one behaves nor how barbarously one is treated, 3) human rights are universal rights. (Donnelly, 2010: 11). Thus, under international human rights law, there are human rights principles contained in the Universal Declaration of Human Rights 1948, there are: universality and inalienability, interdependent and indivisible, equal and non discriminatory, both right and obligation. (www.ohchr.org):

a. **Universality:** The principle of universality of human rights is the cornerstone of international human rights law. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems. All States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to universality. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations. Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

b. **Interdependent and indivisible:** All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

c. **Equal and non discriminatory:** Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights"

d. **Both right and obligation:** Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others. In international law, states are expected to respect and ensure the rights of the individual. United Nations agencies that make up the United Nations human rights treaties have adopted a tripartite typology of the human rights obligations of the state, the state must honor (respect), protect (protect), and meet (fulfill) HAM. (Megret, 2010: 130).

Tripartite typology is a responsibility of the state in human rights enforcement. The third is the responsibility of the state are: (Megret, 2010: 130, 131).

a. **The obligation to respect:** states have a negative obligation not to take any measures that result in a violation of given rights. They should not consciously violate rights, either through their organs (for example, parliament or the executive) or through their agent (such as civil servants, the police, or the army).

b. **The obligation to protect :** the state needs to proactively ensure that persons within its jurisdiction do not

suffer from human rights violations at the hands of third parties. This is much more akin to creating an environment in which rights are enjoyed.

c. The obligation to fulfill: the states should proactively engage in activities that have as a consequence the greater enjoyment of rights. the obligation on states to adopt appropriate laws that implement their international undertaking. this may involve incorporating the very rights protected by the international instrument into domestic law. the states should proactively engage in activities that have as a consequence the greater enjoyment of rights. must carry out appropriate measures, including specific measures such as the establishment of regulations or legislation, certain administrative policies, and budgeting.

According to the human rights law, state must not consciously ignore the rights and freedoms. Instead states are assumed to have a positive obligation to actively protect and ensure the rights and freedoms (Ull PUSHAM: 40). Therefore, the United Nations International Law Commission explained, there are two principal forms of state obligations under the International Covenant on Economic, Social, Cultural Rights (ICESCR): the obligation to make (obligations of conduct) and obligations of result. Obligations means the state must take concrete steps such as taking action in fulfillment of human rights and prevention of human rights violations. The result means state obligation to achieve the fulfillment of certain human rights through the implementation of policies and programs.

2.2. RIGHT TO EDUCATION

Universal Declaration of Human Rights (UDHR) as the main motor explains that some rights can be categorized into two groups, each of which has covenants, namely International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, Cultural Rights (ICESCR). Article 2 paragraph (1) of the ICESCR explains that " Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical field available resources, to achieve progressively the full realization of the rights recognized by the present Covenant by all appropriate means, including by taking legislative measures". From these article it can be put forward that the economic, social, and cultural rights can be classified as programmatic rights which should be realized progressively. (Eide, Krause, 2001: 10). Embodiments of the economic, social, and cultural rights should be achieved progressively meant the state must program and plan the budget to meet the people's welfare. Embodiment or realization of economic, social, cultural rights require foreign involvement, thus state is demanded an active role in it. Therefore, the economic, social, and cultural rights regarded as positive rights that require the intervention of state (Joseph, 2012: 4). It is certainly different from civil and political rights that state does not intervene against the rights and freedoms of the citizens because they have right to decide themselves. In other words, the fulfillment of civil and political rights highly dependent on the absence of state action against these rights. If state plays an active role, it could be result in a violation of the rights and freedoms. At least the efforts made by state to respect the rights of individuals. Hence, civil and politics rights is also called negative rights.

Realization of respect, protection and fulfillment of the right to education as part of the economic, social, and cultural right, can be seen from state is legally willing to adopt and promulgate laws relevant to the fulfillment of rights to education, and state is capable to do progressive implementation of each right according to financial resources owned. (Supriyanto: 41). The international community has made the normative provision in right to education through several international legal instruments, including the ICESCR, the United Nations Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Persons With Disabilities, the United Nations Declaration on the Rights of Indigenous Peoples, and also Discrimination relating to education such as UNESCO Convention against Discrimination in Education. In Article 1 states that the discrimination in question include any distinction, exclusion, limitation or preference which, being based on race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

- 1) Of depriving any person or group of persons of access to education of any type or at any level;
- 2) Of limiting any person or group of persons to education of an inferior standard;
- 3) Subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or
- 4) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

For the purposes of this Convention, the term 'education' refers to all types and levels of education, and

includes access to education, the standard and quality of education, and the conditions under which it is given. The capacity of the implementation of the right to education can be seen progressively from four indicators in the ICESCR General Comment Number 13 on the right to education. There are: availability, accessibility, acceptability, and adaptability.

AVAILABILITY	Functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;
ACCESSIBILITY	Educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions: Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds; Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme); Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education;
ACCEPTABILITY	The form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));
ADAPTABILITY	Education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

2.3. INDONESIAN LEGAL PERSPECTIVE IN RIGHT TO EDUCATION

Indonesia is a state based on the rule of law and has several provisions relating to human rights. The Indonesian government shall respect, protect, fulfill, uphold and promote human rights. Indonesian Constitution 1945 (UUD 1945) has clearly put forward the human right in Article 28, Act of the Republic of Indonesia Number 39 Year 1999 on Human Rights, and Act of the Republic of Indonesia Number 11 Year 2005 on ratification of the ICESCR. Article 2 Act of the Republic of Indonesia Number 39 Year 1999 on Human Rights stated that Indonesia acknowledges and holds in high esteem the rights and freedoms of humans as rights which are bestowed by God and which are an integral part of humans, which must be protected, respected, and up held in the interests of promoting human dignity, prosperity, contentment, intellectual capacity and justice.

Education can be defined as a prerequisite for the implementation of human rights and education aimed at strengthening human rights. Therefore, the Indonesian government has explicitly set the issue of human rights and the right to education in its constitution. Indonesian Constitution 1945 (UUD 1945) has clearly put

forward the right to education as part of human rights through Article 28C (1) UUD 1945; "Every person shall have the right to develop him / herself through the fulfillment of his / her basic needs, the right to get education and to benefit from science and technology, arts and culture, for the purpose of improving the quality of his / her life and for the welfare of the human race." Furthermore, in Article 31 UUD 1945, explained:

- 1) Every citizen has the right to receive education.
- 2) Every citizen has the obligation to undertake basic education, and the government has the obligation to fund this.
- 3) The government shall manage and organize one system of national education, which shall increase the level of spiritual belief, devoutness and moral character in the context of developing the life of the nation and shall be regulated by law.
- 4) The state shall prioritize the budget for education to a minimum of 20% of the State Budget and of the Regional Budgets to fulfil the needs of implementation of national education.
- 5) The government shall advance science and technology with the highest respect for religious values and national unity for the advancement of civilization and prosperity of humankind.

Indonesia is willing to uphold the right to education by adopt and ratify the relevant legislation of the right to education. Article 12 Act of the Republic of Indonesia Number 39 Year 1999 on Human Rights stated that everyone has the right to protection of his self-development, to obtain an education, to educate himself, and to improve the quality of his life to become responsible, content, and prosperous people, in accordance with his human rights. Furthermore, Article 60 (1) clearly stated that every child has the right to access to education and schooling as befits his interests, talents, and intellectual capacity. The other provisions which uphold the right to education are: Act of the Republic of Indonesia Number 20 Year 2003 on National Education System in 2003, Act of the Republic of Indonesia Number 23 Year 2002 on Protection of Children, and Act of the Republic of Indonesia Number 19 Year 2011 on ratification of the Convention on the Rights of Persons with Disabilities.

There are six principles of education provision: (Article 4, Act of the Republic of Indonesia Number 20 Year 2003 on National Education System in 2003)

1. Education is conducted democratically, equally and non discriminatorily based on human rights, religious values, cultural values, and national pluralism.
2. Education is conducted as a systemic unit with an open system and multi meanings.
3. Education is conducted as a life long process of inculcating cultural values andfor the empowerment of learners.
4. Education is conducted based on the principles of modeling, motivation andcreativity in the process of learning.
5. Education is conducted by developing culture for reading and writing and, arithmetic, for all members of the community.
6. Education is conducted by empowering all components of the community through their participation in the implementation and quality control of the education services.

According to those principles, the Indonesian government uphold equal rights to education for all citizens without exception. Education does not only serve to those who can easily access education in general but also to those who are physically, mentally, as well as economic, social, cultural and geographic marginalization so difficult to get access to a good education. In the protection and fulfillment of the right to education of children of Indonesia, the Indonesian government by Act of the Republic of Indonesia Number 20 Year 2003 on National Education System, provides two categories of education in emphasizing the concentration of its rights in order to avoid discrimination:

- a. Special Education: education for students who have difficulty in following the learning process because of physical, emotional, mental, social and/or have the potential for intelligence and special talents.
- b. Education Special Services: education for learners in remote or underdeveloped, remote indigenous communities, and/or natural disasters, social disaster and cannot afford economically.

Children of Indonesian migrant workers who are in Sabah, Malaysia are in the category of children who received special education services, because they are in the border area, remote, which requires attention

from the Indonesian government in the fulfillment of the right to learn. Indonesia has the Regulation of the Minister of Education and Culture, Number 72 Year 2013 on the Implementation of Special Education Services.

2.4. INDONESIAN GOVERNMENT COMPLY THE RIGHT TO EDUCATION FOR CHILDREN OF INDONESIAN MIGRANT WORKERS

Indonesian government shall respect, protect, and fulfill right to education including children of Indonesian migrant workers in Sabah, Malaysia. Hence, Indonesian government responsible to provide progressive fulfillment of right to education for them. One of the Indonesian policy in education special services is cooperate with external partners. The government (in this case: Attache of the Education and Cultural of Indonesian Consulat General Kinabalu, Indonesian Consulate General Kinabalu itself, and the Executive Duties Office and Functions of Indonesian Consulate General Kinabalu in Tawau) had cooperated with the Malaysian Ministry of Education, the Malaysian Ministry Plantation Industries and Commodities, Sabah Immigration Office, State Education Department Sabah, Association of Plantation in Sabah, companies, and NGO Humana Child Aid Society. They have resulted in an agreement set forth in the form of Minit in 2006. The Minit agreed (Basori: <http://www.kemlu.go.id/kotakinabalu/Pages/InformationSheet.aspx?IDP=1&l=id>):

- a. NGO Humana Child Aid Society implement education for Indonesian children who works in the fields,
- b. Indonesian government sends teachers to teach in schools Humana,
- c. Indonesian government give the salary of Indonesian teacher and the cost of delivery to the school / tutoring,
- d. For starting, Indonesian government will send 51 teachers,
- e. Companies will provide shelter for teachers,
- f. The Malaysian government provide facilities for education,
- g. Curriculum used national curriculum (Malaysia).

NGO Humana Child Aid Society is a Malaysian non profit social institutions with the founder of Swedish. Humana Institute was the first institution to provide non formal education services for children of migrant workers who works in Sabah oil palm plantations. Humana teach them how to read, write, and count. This institution is not only a particular institution concerned with education for children of Indonesian migrant workers, but also education for children of migrant workers as a whole (there are also some children of Philippine migrant workers, and there is a teacher of the Philippines). This institution has received operation permission from the Malaysian government.

Humana has given a solution of right to education for children of Indonesian migrant workers, but Indonesian government was still facing some problems due to the growing number of children of Indonesian migrant workers, and was facing problems related to unrecognized of the certificate (diploma) graduation students of Humana by Malaysian government due to the Malaysian Ministry of Education is not familiar with the non formal education. Regarding to those problems, Indonesian government by decree of the Minister of National Education Republic of Indonesia Number 094/0/2008 dated 14th August, 2008, established Schools Indonesia Kota Kinabalu or SIKK. This school was a form of availability and adaptability formal education by the government for children of Indonesian migrant workers.

As time passes, Indonesia Kota Kinabalu Schools (SIKK) could not be fully enjoyed by the children of Indonesian migrant workers in Sabah, because they are spread into several areas of oil palm plantations in Sabah. To provide equal education to them who are in the oil palm plantations which far away from SIKK, the Indonesian government form a non formal education for children of Indonesian migrant workers in Sabah, Malaysia through Community Learning Centre (CLC). Almost throughout Sabah has lasted CLC learning. As of December 2013 there were approximately 185 CLC. Some CLC is located on the West Coast, Keningau, Sandakan, Kinabatangan, Lahadatu, and Tawau. (Directorate General of Primary Education, Ministry of Education and Culture: 2014). To facilitate coordination and strengthen the sustainability of the CLC, the Ministry of Education and Culture set SIKK as parent CLC. (Directorate General of Primary Education, Ministry of Education and Culture: 2014). CLC was established in oil palm plantations sector, hence the involvement of company/employer where Indonesian migrant workers are working at was very important. It can be said that the establishment of the CLC is a concern of the Corporate Social Responsibility (CSR) oil palm plantation companies. CLC has received permission from the Government of Malaysia since 2011. The system of teaching CLC is fully funded by the Indonesian

government through the Ministry of Education and Culture of the Republic of Indonesia and in its implementation in Sabah are under Consulate General of Republic of Indonesia in Sabah and the Indonesian School of Kota Kinabalu (SIKK). Eventhough CLC is a non formal education, the curriculum are using Indonesian curriculum, and students can take the exam Package A and B (which is equivalent to elementary and junior high school exams in Indonesia) at the end of the level of education and can get a certificate/diploma of graduation for students who pass the national exam, which will be recognized in throughout Indonesia. (<https://clckritawau.wordpress.com/konsep-clc/>). Therefore, SIKK, as parent CLC, responsible for CLC curriculum throughout Sabah including the procurement of school examinations, the national exam, exam packet, scholarship disbursement, procurement modules and provision of CLC, the maintenance of the legality of the CLC. (Directorate General of Primary Education, Ministry of Education and Culture: 2014).

With reference to the General Comment Number 13 of the ICESCR, the responsibility of the Indonesian government in the fulfillment of children's right to education for Indonesian migrant workers, especially in Sabah is done throughly. Availability refers to the three kinds of government obligations:

- Education as civil and political rights requires the government to allow the establishment of schools who appreciate the freedom to education and in education.
- Education as a social and economic rights requires the government to ensure compulsory education and no charge for children of school age.
- Education as cultural rights requires respect for diversity, in particular the rights of minorities and indigenous people.

Accessibility of the right to education meant the government should eliminate discriminatory practices and ensure the implementation of human rights evenly. Accessibility has three dimensions:

- the right to education can be reached without discrimination.
- the right to education can be reached physically.
- the right to education economically accessible.

Education as civil and political rights have been met by establishing SIKK and CLC. SIKK as a formal school has qualified resources with 24 teachers and 4 staff (<http://www.sikk.edu.my/about/profil-guru-dan-staf>) and has availability of physical buildings which can be seen as follows:

No.	Detail of Building	Information
1	Building area	4.783,68 m2
2	Elementary classroom	12 rooms
3	Junior High School classroom	6 rooms
4	Laboratorium	4 rooms
5	Library	1 room
6	Public health room	1 room
7	Multipurpose room	1 room
8	Music room	1 room
9	Office	1 room
10	Home of principal	1 house
11	Home of teachers	5 houses
12	Canteen	1 room

(Directorate General of Primary Education, Ministry of Education and Culture: 2014)

Establishment of CLC for children who lives far from SIKK was the implementation of the availability and accessibility of the right to education. Through the CLC and SIKK, children of Indonesian migrant workers wherever located in Sabah with easy access to education without discrimination, both physically and financially. Availability of education as an economic, social and cultural rights have been met through the

government guarantee compulsory education free for school-age children in both the CLC and SIKK (Article 31 (1) Indonesian Constitution 1945). Education as cultural rights have been met by the government through ensure respect without discrimination, especially for children of Indonesian migrant workers.

Acceptability of the right to education is an obligation to set a minimum standard of education. The minimum standards of education in Indonesia are the use of Indonesian as a language of instruction, curriculum and teaching methods in accordance with the curriculum and teaching methods Indonesia. It has been in accordance with the mandate in the Regulation of the Minister of Education and Culture, Number 72 Year 2013 on the Implementation of Special Education Services in Article 7 which stated curriculum special education services based on national standards of education, and curriculum implemented with due regard to their suitability to the needs of the educational unit and program services education.

The obligation of government to plan and implement the right to education of children of Indonesian migrant workers Sabah who cannot access formal education can adjust through non formal education in the CLC. This is in accordance with the educational unit of Education Special Services contained in the Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 72 of 2013. The educational unit held on Education Special Services is a group of educational services provide education in formal, non formal, and informal at all levels and types of education (Article 2). The third unit of education are:

- a. Formal education is a structured educational paths and tiered consisting of primary education, secondary education, and higher education.
- b. Non formal education is the path of education outside formal education can be structured and tiered.
- c. Informal education is education from the family and the environment.

Formal education is divided into levels, the existence of curriculum and materials have been prepared systematically, students and teachers requirements more stringent, there are material evaluation. Formal education is a response to long-term needs, and diploma plays an important role in formal education, thus it can be organized by the government and private. Whereas, non formal education is not divided into levels, more flexible curriculum and materials, shorter delivery time, student teaching requirements more flexible, can be held either by the government or private and non formal education can be held outside the classroom. Informal education is not the same. Informal education never held specifically, not held for the purpose of education and does not require special programming. The method is not formally taught that there is no systematic evaluation, and generally not held by the Government. (<http://st306509.sitekno.com/article/63509/pendidikan-formal-nonformal-dan-informal.html>)

Education system through non formal education which is organized by the CLC is part of the education system in Indonesia flexible to adjust (adaptability) with existing conditions. Students who are studying in non formal education CLC can follow package A and B to obtain a diploma equivalence and will provide opportunities for them to be able to continue their education to a higher level in order to survival in the future.

3. CONCLUSION

Rights to education is the economic, social, and cultural rights which is related to civil and political rights. State shall comply progressively of the right to education. Indonesia is a state that has an obligation to uphold human rights, hence the Indonesian government is responsible to fulfill the right to education for all citizens wherever they are. Indonesia has commit into Education for All (EFA) through the policy and implementation of education for children of Indonesian migrant workers in Malaysia before 2015. Through the EFA, the government has demonstrated its willingness to comply right to education for children of Indonesian migrant workers in Sabah, Malaysia without discrimination. Capacity in the fulfillment of children's right to education for migrant workers in Malaysia is done with reference to the four indicators of the availability approach, accessibility, acceptability and adaptability. SIKK and CLC are the formal and non formal school which could be seen as a good result of the human rights enforcement. In practice, the obligation of the government should continue to provide the continuity of the right to education as part of the economic, social, cultural rights.

REFERENCE LIST

Abas Basori. (2010). *Pelayanan Pendidikan Untuk Anak-Anak WNI di Sabah, Malaysia*

- (Basori: <http://www.kemlu.go.id/kotakinabalu/pages/informationsheet.aspx?Idp=1&L=Id>).
- Act of the Republic of Indonesia Number 39 Year 1999 on Human Rights.
- Act of the Republic of Indonesia Number 23 Year 2002 on Protection of Children.
- Act of the Republic of Indonesia Number 20 Year 2003 on National Education System.
- Act of the Republic of Indonesia Number 11 Year 2005 on ratification of the International Covenant on Economic, Social, Cultural Rights.
- Act of the Republic of Indonesia Number 19 Year 2011 on ratification of the Convention on the Rights of Persons with Disabilities.
- Asplund, Knut D., Suparman Marzuki, Eko Riyadi (ed.). (2008). *Hukum Hak Asasi Manusia*, Yogyakarta: PUSHAM UII.
- BNP2TKI. (2013). *Placement of Indonesian Workers*. BNP2TKI.go.id
- Convention Against Discrimination in Education.
- Diana. (2011). *Pendidikan Formal, Non Formal, Informal*:
<http://st306509.sitekno.com/article/63509/pendidikan-formal-nonformal-dan-informal.html>.
- Directorate General of Primary Education, Ministry of Education and Culture. (2014). *Sekolah Indonesia Kota Kinabalu, Meningkatkan Layanan Pendidikan dan Citra Bangsa*.
- Donnelly, Jack (2005). *Universal Human Rights in Theory and Practice*. New Delhi: Manas Publications.
- Eide, Asbjorn, Catarina Krause (ed). (2001). *Hak Ekonomi, Sosial dan Budaya*, Martinus Nijhoff Publiher.
- General Comment ICESCR Number 13.
- Indonesian Constitution 1945.
- International Covenant on Economic, Social, Cultural Rights.
- Majda El Muhtaj, *Dimensi-Dimensi HAM, Mengurai Hak Ekonomi, Sosial, dan Budaya*. Jakarta: Rajawali Pers, 2009.
- Malaysian Immigration Act Number 1154A/2002.
- Megret, Frederic. (2010). *Nature of Obligations*. Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran (ed.) *International Human Rights Law*. Oxford.
- Ministry Of Education And Culture, Sekolah Indonesia Kota Kinabalu. <http://www.sikk.edu.my/About/Profil-Guru-Dan-Staf>.
- Supriyanto Abdi, Eko Riyadi, dkk, *Potret Pemenuhan Hak Atas Pendidikan dan Perumahan di Era Otonomi Daerah: Analisis Situasi di Tiga Daerah*. Yogyakarta: PUSHAM UII.
- Yosep Adi Prasetyo, *Hak Ekosob dan Kewajiban Negara, Strengthening Understanding of Human Rights for All Indonesian Judge, held by PUSHAM UII dan Norwegian Centre for Human Rights, Lombok, 28-31 May 2012*.
- , *Hak-Hak Sipil dan Politik, Human Rights Training for Lecturer, held by PUSHAM UII and Norwegian Centre for Human Rights, Makassar, 3 – 6 August 2010*.
- Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 72 of 2013
- Sepenggal Cerita Kri Tawau Tentang Clc Di Rantau Sabah. <https://clckritawau.wordpress.com/konsep-clc/>.
- Universal Declaration of Human Rights.
- UNOHCHR. *What Are Human Rights*. www.ohchr.org