

## **Legal Protection Of Children In Human Rights Perspectives**

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**Abstract:** This study aims to analyze the legal protection of children in the perspective of human rights. The type of this research is socio-juridical or including descriptive research with a non-doctrinal approach, which views law as a socio-empirical symptom observed in experience. For that reason, it not only examines its normative aspects, but also the law as in its reality. The results of the study are legal protection of children in the perspective of human rights being poorly implemented because the government has not carried out its obligations in fulfilling children's rights so that legal violations of children still occur.

**Keywords:** Legal Protection, Children, Human Rights

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Date of Submission: 31-08-2018

Date of acceptance: 15-09-2018

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### **I. INTRODUCTION**

Children are the mandate of the Almighty God that we must protect in order to achieve growth and development into an adult human being as a nation's future sustainability.<sup>1</sup>

Every country, children's rights have been regulated in the Act in this case is no exception in Indonesia.<sup>2</sup> The state has the responsibility to provide guarantees for the welfare of children constitutionally in the 1945 Constitution. Hierarchically, various legal products are issued and legalized which form the basis of policies and guidelines in treating Indonesian children, ranging from national law products and legal products. internationally which Indonesia has ratified.<sup>3</sup>

Indonesia has ratified the Convention on the Rights of the Child and its protocol, through Presidential Decree No. 36 of 1990 and Law No.5 of 1998 as ratification of the Convention Against Torture and other cruel treatment or punishment. inhumane degrading human dignity. Therefore, it is legally bound to implement the convention and make it part of the applicable laws and regulations.<sup>4</sup>

In Indonesia, regulations concerning child protection have been issued in accordance with the needs of the people in Indonesia, the role of the international community in overseeing the fulfillment of children's rights under the Convention of the Right of a Child has a positive effect on the development of child protection in Indonesia.

Law No. 35 of 2014 concerning child protection emphasized that child protection providers are parents, family, government and the state, the first burden in the implementation of child protection falls on the elderly, but is modernized as today most parents are busy with their work and start ignore his child.

Various regulations both in law, religious and cultural teachings have discussed a lot about child protection, but still from year to year child protection violations continue to increase with the times.

*The Universal Declaration of Human Rights in 1948 became the basis of the Convention of the Right of a Child, but the convention needs to be analyzed better, this is intended because this convention accommodates more of the values and culture of European nuances so that some circles judge Asian culture not accommodated inside it.*

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<sup>1</sup> Fajaruddin, *Perlindungan Hukum Terhadap Anak Korban Pornografi*, JurnalVariaJusticia, Vol. 10, No. 2, 2014, hlm.23

<sup>2</sup> Darmini Roza, Laurensius Arliman S, *Peran Pemerintah Daerah Di Dalam Melindungi Hak Anak Di Indonesia*, JurnalMasalah-MasalahHukum, Vol. 47, No. 1, 2018, hlm.10.

<sup>3</sup> Sri Ismawati, *Mekanisme Penyelesaian Perkara Anak Yang Berhadapan Dengan Hukum Pada Masyarakat Dayak Kanayatn (Kajian Perbandingan Terhadap Sistem Peradilan Pidana Anak)*, JurnalDinamikaHukum, Vol. 13, No. 2, 2013, hlm.197

<sup>4</sup> Yul Ernis, *Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia*, JurnalIlmiahKebijakanHukum, Vol. 10, No. 2, 2016, hlm.164.

So that the government at that time was considered to be in a hurry in ratifying the Convention of the Right of a Child, this can be seen from the availability of facilities, supporting devices and a sanction system of child protection, for example in the field of supervision and sanctions in addition to the threat of imprisonment.

Crimes against children each year increase very rapidly, based on the monitoring of KPAI (Indonesian Child Protection Commission) from 2011 to 2014 before the enactment of Law No. 35 of 2014 concerning Child Protection occurred 2178 cases of violence in 2011, while in 2012 a number of 3512 case, 2013 there were 4311 cases and in 2014 there were 5066 cases<sup>5</sup>. This number is a child who is a victim, while children who are dealing with the law from 2011 to 2015 amounted to 6006 cases, then cases of care of 3160 cases, education of 1764 cases, health and drug 1366 cases as well as pornography and cybercrime 1032 cases<sup>6</sup>.

The latest data released by the Indonesian Child Protection Commission in 2016 has received 3,851 public complaints regarding violations of children's rights. It shows that children who are in difficult conditions whether they are victims of violence or children who are dealing with the law have not shown good development.

Seeing the number of complaints mentioned above is certainly not of no concern at all from the Government of Indonesia. Many things that have been done by the government, both policies regarding improving sanctions for child protection violators or concrete efforts that have been implemented, various regulations and legislation, planning and budgeting and the establishment of institutions that can deal with child problems more systematically have been carried out by the Government of Indonesia.

Apart from the facts above, another thing that is concerning is the exploitation of children in the sexual sector. The government acknowledges the absence of accurate data, but it is estimated that from all cases of sexual exploitation around 60% of the victims are children. While the majority of 60% of victims are women and some boys.

Commercial sexual exploitation of children is reported that all forms of commercial exploitation of children are found in Indonesia such as prostituted children, child prostitution, child trafficking for sexual purposes, and child pornography. It is estimated that around 30% of sex workers in Indonesia, amounting to 30,000-70,000 are children<sup>7</sup>.

Until now, child protection violation methods are mostly still at the level of mentoring both children who are dealing with the law or children who are victims.

## **II. METHOD**

This type of research is socio-juridical research or includes descriptive research with a non-doctrinal approach, which views law as a socio-empirical phenomenon observed in experience. For this reason, the law is not only examined from its normative aspect, but also from the law as in its reality.

## **III. ANALYSIS AND DISCUSSION**

Children are part of the community where their rights must be protected.<sup>8</sup> Basically children have the same basic characteristics possessed by adults.<sup>9</sup> Child protection is the business and activities of all levels of society in various positions and roles, who are well aware of the importance of children to the nation and nation in the future. If they have matured their physical and mental and social growth, then the time has come for them to replace the previous generation.

The Indonesian nation as part of the world community has a commitment to guarantee the fulfillment of children's rights and child protection which are part of human rights, including the right to life, survival, growth and development, to participate optimally in accordance with human dignity and protection and violence and discrimination for the realization of a prosperous, quality and protected Indonesian child.<sup>10</sup>

In order to realize quality Indonesian human resources, have competitiveness and are able to lead and maintain the unity and integrity of the nation in the container of the Unitary Republic of Indonesia based on

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<sup>5</sup> [www.kpai.go.id/berita/kpai-pelaku-kekerasan-terhadap-anak-tiap-tahun-meningkat](http://www.kpai.go.id/berita/kpai-pelaku-kekerasan-terhadap-anak-tiap-tahun-meningkat) diakses senin tanggal 5 juni 2017

<sup>6</sup> *Ibid*

<sup>7</sup> <http://www.republika.co.id/berita/koran/halaman-1/16/11/21/ogzcs315-laporan-kekerasan-anak-di-daerah-meningkat>

<sup>8</sup> Prima Astari, Landasan Filosofis Tindakan Diskresi Kepolisian Terhadap Anak Yang Berhadapan Dengan Hukum, *Jurnal Arena Hukum*, Vol. 8, No. 1, 2015, hlm.2

<sup>9</sup> Sumiadi, Laila M. Rasyid&Romi Asmara, Restorative Justice Hakim Terhadap Anak Yang Berkonflik Dengan Hukum Di Pengadilan Negeri Lhokseumawe, *JurnalMimbarHukum*, Vol. 29, No. 1, 2017, h.44

<sup>10</sup> Tedy Sudrajat, Perlindungan Hukum Terhadap Hak Anak Sebagai Hak Asasi Manusia Dalam Perspektif Sistem Hukum Keluarga Di Indonesia, *KanunJurnalIlmuHukum*, Vo. 13, No. 2, 2011, Hlm.112-113.

Pancasila, continuous guidance is needed for the survival of children based on human rights. Growth and development of mental, physical and social, protect from all possibilities that will endanger every child.

Children as a person who is very unique and has distinctive characteristics. Even though he can act based on his own feelings, thoughts and will, it turns out that the surrounding environment has a considerable influence in shaping a child's behavior. For that guidance, coaching and protection from parents, teachers, and other adults are needed by children in their development.

Child protection is a manifestation of justice in a society, so child protection is sought to exist and be felt in various fields of state life and society. ArifGosita said that legal certainty needed to be endeavored for the continuity of child protection activities and prevent fraud which brought undesirable negative consequences in the implementation of child protection<sup>11</sup>.

Protection is the guarantee of security, peace, prosperity and peace in the present, and will come later, the essence of legal protection for children lies not only in its legal instruments, but other instruments such as society, environment, culture and a bright future guarantee.

The term "child protection" is used differently by different organizations in different situations, but in this paper the author chooses that term to mean protection from violence both physically and mentally, abuse of responsibility in any form (abuse), and exploitation.

In its simplest form, child protection strives for every child's rights not to be harmed. Child protection is complementary to other rights which simply guarantees that children will receive what they need so that they survive, develop and grow.

Child protection covers important and urgent problems, varies and varies the level of tradition and values that apply in society. Many problems, such as prostitution, are closely related to economic factors. While other problems, such as violence at home or at school, may be closely related to poverty, social values, norms and traditions. Often crime is involved in it, for example child trafficking. Even technological progress has aspects of protection in it, as seen in the growth of child pornography<sup>12</sup>.

Child protection must also not be done excessively and does not pay attention to the impact on the environment and the child itself, so that the protection efforts carried out do not negatively affect the child. Child protection is carried out in a rational, responsible and beneficial manner that reflects an effective and efficient business. In essence, child protection efforts should not result in the death of initiative, creativity, and other things that will cause dependence on others and behave uncontrollably and do not recognize our national culture, this can result in children who do not have the ability and willingness to use rights his rights and carry out his obligations as a child.

The nature of child protection itself can be divided into two parts according to the author, in which the two parts are the core elements in child protection. As for the two parts that the author intends is:

- 1) Child protection that is juridical, includes:
  - a Protection in the field of public law and
  - b Protection in the field of civil law.
- 2) Protection of non-juridic children, including:
  - a. Social protection,
  - b. Protection in the health sector,
  - c. Protection in education.

Child protection can also be interpreted as all efforts made and aimed at preventing, rehabilitating, and empowering children who experience child abused, exploitation and neglect, so as to ensure the survival and growth of children in a fair, physical, mental and social<sup>13</sup>. ArifGosita believes that child protection is an attempt to protect children so that they can exercise their rights and obligations<sup>14</sup>.

Protection of children's rights essentially involves direct regulation in the legislation. Policies, businesses and activities that guarantee the realization of the protection of children's rights are first of all based on the consideration that children are vulnerable and dependent, in addition to the fact that there are groups of children who experience obstacles in their growth and development, both spiritually physical and social.

Child protection is beneficial for children and their parents and government, so coordination of child protection cooperation needs to be held in order to prevent the imbalance of child protection activities as a whole. Child protection relates to several things that need attention, namely:

- 1) Extensive scope of protection:
  - a Principal protection includes, among others: clothing, food, housing, education, health, law.

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<sup>11</sup> ArifGosita, *MasalahPerlindunganAnak*, Jakarta, AkademiPressindo, hlm 19

<sup>12</sup> Mr. Dan O'Donnell, 2006, *ChildProtection*, a handbookforParliamentarians, Swiss, SRO-Kundig, hlm. 1

<sup>13</sup> *Media Advokasi dan Penegakan Hak-hak Anak*. Volume II No. 2, 1998, Medan: Lembaga Advokasi Anak Indonesia (LLAI). hlm.3.

<sup>14</sup> ArifGosita, *Op.cit*, hlm. 52.

- b Covers things that are physical and spiritual.
- c Regarding the classification of primary and secondary needs which result in fulfillment priorities.
- 2) Guaranteed implementation of protection:
  - a It is natural to achieve maximum results, there is a need to guarantee that the implementation of this protection activity, which can be known, is felt by parties involved in protection activities.
  - b We recommend that this guarantee be set forth in a written regulation either in the form of laws or regional regulations, the formulation of which is simple but can be accounted for and distributed evenly throughout the community.
  - c Arrangements must be adjusted to the conditions and situation in Indonesia without neglecting the means of protection carried out in other countries, which should be considered and replicated (critical imitation)<sup>15</sup>.

The general definition of child protection can also be formulated simply, namely:

- a. an embodiment of justice in a society. This justice is social justice, which is the main basis for child protection;
- b. a joint effort to protect children to carry out their rights and obligations humanely and positively;
- c. a human problem which is a social reality. According to the actual proportions, the dimensional protection of children with mental, physical and social aspects, this means that the understanding, approach and handling of children are carried out in an integrative, interdisciplinary, intersectoral, and interdepartmental manner;
- d. a result of interaction between certain parties, due to an interrelation between existing phenomena and their mutual influence. So it needs to be researched, understood, and lived by anyone (object and legal subject) involved as a component in the existence of the Child's Protection. In addition, it is also necessary to examine, understand and understand which symptoms affect the protection of children. Child protection is a complicated and difficult problem so that countermeasures must be carried out simultaneously and together;
- e. an individual's actions that are influenced by certain social elements or certain communities, such as interests that can be motivated, social institutions (family, school, pesantren, government and so on), social values, norms (law), status, roles and so on. In order to understand and appreciate precisely the causes of people protecting children as an individual action (individually or together), the elements of the social structure are understood;
- f. can constitute a legal action that can have legal consequences that must be resolved with guidance and based on the law. There needs to be a law-based arrangement to prevent and take action on the implementation of Child Protection which causes mental, physical and social suffering to the child concerned;
- g. must be endeavored in various fields of livelihood and family life, community, state and nation. The level of child protection in a society or nation is a benchmark for the level of civilization of the people and nation;
- h. is a field of national law development. Ignoring the issue of Child Protection will disrupt national development and the welfare of the people and children. Participating in national development is the rights and obligations of every citizen;
- i. is a field of voluntary service (voluntarism) that is broad in scope with new styles (innovative, unconventional)<sup>16</sup>.

The basis for implementing child protection is:

- 1) Philosophical basis, Pancasila is the basis of activities in various fields of family life, community, state and nation, as well as the philosophical basis for the implementation of child protection;
- 2) Ethical basis, the implementation of child protection must be in accordance with relevant professional ethics, to prevent deviant behavior in the exercise of authority, power and strength in the implementation of child protection;
- 3) Juridical basis, the implementation of child protection must be based on the 1945 Constitution and various other applicable laws and regulations. The application of this juridical basis must be integrative, namely the integrated application of the laws and regulations of various related legal fields<sup>17</sup>.

Meanwhile the implementation of child protection, must meet the requirements, among others:

- 1) It is the development of truth, justice and child welfare;
- 2) Must have a philosophical, ethical and legal basis;

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<sup>15</sup> ArifGosita, Op.cit, hlm. 4-6

<sup>16</sup> ArifGosita, *Aspek Hukum Perlindungan Anak dan Konvensi Hak-hak Anak*, Jakarta, Era Hukum, Jurnal Ilmiah Ilmu Hukum. No. 4/Th.V/April 1999. Fakultas Hukum Tarumanagara. 1999 :hlm. 264-265.

<sup>17</sup> Ibid., hlm. 266-267

- 3) Rationally positive; can be accounted for; useful for those concerned; prioritizing the perspective of interest that is regulated, not the perspective of the interests that govern;
- 4) Not accidental and complementary, but must be carried out consistently, have an operational plan, pay attention to elements of management;
- 5) Carry out a restorative (recovery) justice response;
- 6) Not a place and opportunity for people to seek personal or group benefits;
- 7) Children are given the opportunity to participate according to their situation and condition;
- 8) Based on the right image of a child is human;
- 9) Insights into problems (problem oriented) and not target oriented;
- 10) Not a criminogen factor;
- 11) is not a vicimogen factor<sup>18</sup>.

Child protection can basically be done directly or indirectly, what is meant directly is that the activity is directed directly at the child who is the target of direct handling.

Activities such as this can take the form of protecting children from various external and internal threats, educating, fostering, assisting children in various ways, preventing children from starving and seeking health in various ways, providing means of self-development, and so on.

Indirect child protection namely activities not directly directed at children, but other people who do or are involved in child protection efforts. Such protection measures, for example, are carried out by parents or those involved in efforts to protect children against various external threats or from within the child, those who care, nurture, assist children in various ways, those involved prevent children from starving, seek health and so on in various ways, those who provide means to develop their children and so on.

Child protection is endeavored by everyone, parents, family, community, government and country. Article 20 of Law Number 35 of 2014 determines:

"The State, Government, Regional Government, Community, Family, and Parents or Guardians are obliged and responsible for the implementation of Child Protection."

So those who seek child protection are every member of the community according to their abilities with various types of businesses in certain situations and conditions. Every citizen is responsible for the implementation of child protection for the welfare of the child himself.

Children's happiness is shared happiness, happiness that is protected is happiness that protects. There is no anxiety for children, because child protection is carried out properly, children become prosperous. Child welfare has a positive influence on parents, family, community, government and the state. Child protection is beneficial for children and parents, family, community, government and the state.

Coordination of cooperation in child protection activities needs to be carried out in order to prevent the imbalance of child protection activities as a whole. The obligations and responsibilities of the State and Government in the child protection business are regulated in Law Number 35 of 2014, namely:

- a. The State, Government and Regional Government are obliged and responsible to respect the fulfillment of the Rights of the Child regardless of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status, birth order, and physical and / or mental condition. (Article 21);
- b. The State, Government and Regional Government are obliged and responsible to provide support for facilities, infrastructure, and availability of human resources in the implementation of Child Protection (Article 22);
- c. The State, Government and Regional Government guarantee protection, maintenance of welfare and oversee the implementation of child protection by taking into account the rights and obligations of Parents, Guardians, or other people who are legally responsible for the Child. (Article 23);
- d. The State, Government and Regional Government guarantee the Child to use his right to express opinions in accordance with the age and level of intelligence of the Child (Article 24).
- e. Obligations and responsibilities of the Community towards Child Protection involve community organizations, academics, and observers of the Child, carried out through the activities of the role of the Community in the implementation of Child Protection. (Article 25).

Obligations and responsibilities of family and parents in child protection business are regulated in Article 26 of Law Number 35 of 2014, namely:

- 1) Parents are obliged and responsible for:
  - a. Nurturing, maintaining, educating, and protecting children;
  - b. Develop children according to their abilities, talents, and interests;
  - c. Prevent the occurrence of marriage at the age of the Child; and

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<sup>18</sup> Ibid., hlm. 265-267.

- d. Provide character education and the cultivation of moral values in children.
- 2) In the event that a Parent does not exist, or whose whereabouts are unknown, or for some reason cannot carry out their obligations and responsibilities, the obligations and responsibilities referred to in paragraph (1) can be transferred to the Family, which is carried out in accordance with the provisions of the legislation invitation.

The efforts to protect children not only reflect concern and enthusiasm to provide maintenance and financial guarantees only for them but also because of a sense of "justice" in addressing the fate of children. Concern alone does not give any ties - but the sense of justice provides a bond in the form of moral obligation to fulfill various needs which if not obtained by the child will threaten the well-being of the mind and threaten their lives.

#### **IV. CONCLUSION**

Legal protection for children in the perspective of human rights is essentially an effort made by parents, government and society to fulfill and guarantee all children's rights that have been guaranteed in the Convention on the Rights of the Child and Law Number 35 of 2014 concerning Child Protection. Legal protection for children in the perspective of human rights is less implemented because the government has not implemented its obligations in fulfilling children's rights so that there are still violations of the law against children.

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Muhammad Fachri Said.” Legal Protection Of Children In Human Rights Perspectives “ IOSR Journal Of Humanities And Social Science (IOSR-JHSS). vol. 23 no. 09, 2018, pp. 29-34.