

Legal Aspects of Child Protection in the Perspective of National Law

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Abstract

Law Number 39 of 1999 concerning Human Rights in Chapter III Human Rights and Basic Human Freedoms in Part Ten regulates children's rights. The section entitled Rights of the Child provides regulatory provisions which are poured into 15 (fifteen) articles, where in Article 52 Paragraph (2) it is stated that children's rights are human rights and for the benefit of the child's rights are recognized and protected by law even since in the womb. The Unitary State of the Republic of Indonesia in ensuring the welfare of every citizen, one of which is to provide protection for children's rights which is one of human rights. The Indonesian government in its efforts to guarantee and realize the protection and welfare of children is through the establishment of Law Number 23 of 2002 concerning Child Protection. Child Protection as referred to in Article 1 point 2 of the Law is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and status, and receive protection from violence and discrimination. Legal protection and the concept of protection for children consist of several aspects including; protection of children's human rights and freedoms, protection of children in the judicial process, protection of children's welfare (in the family, educational and social environment), protection of children in cases of detention and deprivation of liberty, protection of children from all forms of exploitation (enslavement, child trafficking), prostitution, pornography, trafficking/abuse of drugs, manipulating children in committing crimes and so on), protection of street children, protection of children from the effects of war/armed conflict, protection of children against acts of violence, special attention should be paid to children Problems with the Law (ABH) and the need for application and/or implementation of basic concepts for the protection of children's human rights.

Keywords: Law, Child Protection, National Law



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INTRODUCTION

Child protection is all activities to ensure and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and values, and receive protection from violence and discrimination. (UU. Number 23 of 2002: Article I number 1). Philosophically, children as part of the younger generation, as one of the human resources who are potential and successor to the ideals of the nation's struggle in the future, who have a strategic role and have special characteristics and characteristics, require special guidance and protection as well. (Nasriana: 2011: 76). Human Rights (HAM) are rights that are inherently owned by humans because of their dignity as humans that they have been born with. (Franz Magnis Suseno: 2010: 121). That way human rights also belong to children. Based on the Universal Declaration of Human Rights (UDHR), especially in Article 25 Paragraph 2, it is stated that mothers and children have the right to receive special care and assistance. In addition, it is also stated that all children, whether born in and/or out of wedlock, must receive the same social protection. This shows that the concept of child rights does not stand alone, but is linked to mother's rights. This concept also applies to the regulation of children's rights in the 1949 Geneva Convention which is often combined with protection for both women in general and pregnant and newly born women (Ioraa, 2023). The principles contained in the United Nations instruments on human rights, in particular the Universal Declaration of Human

Rights, the International Convention on Economic, Social and Cultural Rights, the International Convention on Civil and Political Rights, the International Covenant on the Elimination of All Forms of Discrimination Race, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child. According to The International Commission of Jurists, the principles that are considered important characteristics of the rule of law are: 1. The state must obey the law. 2. The government respects individual rights. 3. An independent and impartial judiciary (Nwokeocha, 2023a).

RESEARCH METHODS

In accordance with the title and formulation of the problem that will be explained in this article, a research method that will be used in making this article is the Normative Juridical method. This Juridical-Normative method is a research method that is obtained based on literary sources in order to get results from researching from library materials or only secondary materials (Nwokeocha, 2023b). By using this juridical-normative research method, it can make it easier to obtain the materials needed in making articles that relate to the core of the discussion. Thus, this article is cumulative because it is based on the norms written in the existing laws and regulations. Legal research materials that have been collected will later be re-analyzed using the theories and concepts contained in the theoretical framework to discuss and/or provide answers to the issues raised in this article using qualitative juridical analysis methods. In juridical reasoning, there are 3 (three) basic things that become a reference that need to be considered, namely: (1) Has the potential to realize positivity, meaning that law is generally obliged to have legal power; (2) Law as an order, must be able to create harmony; (3) The law must be able to realize justice for all people by properly regulating relations between communities with one another (Obichili et al., 2023).

RESEARCH RESULTS AND DISCUSSION

Definition and Concept of Child Protection, Rights and Obligations of Parents and Children Based on Laws and Regulations

According to the Law of the Republic of Indonesia Number 23 of 2002 concerning child protection. The definition of children is generally understood by society as the second descendant of the father and mother. In various regulations in Indonesia there are no clear regulations regarding the criteria for children, the Line of laws and regulations also has a different meaning. For example in Article 1 paragraph (3) of Law No. 11 of 2012 concerning the juvenile criminal justice system also explains children in conflict with the law, namely: "A child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old." suspected of committing a crime" (Daniel et al., 2022).

Furthermore, Child Protection is all efforts made to create conditions so that every child can carry out his rights and obligations for the sake of the child's development and growth in a natural manner both physically, mentally and socially. Because we know that children are the holders of the Estafeta baton to continue the nation, so their security and justice need to be protected. Protection Child protection is an embodiment of justice in a society, thus child protection is sought in various fields of state and social life. Child protection activities have legal consequences, both related to written and unwritten laws. Because the law is a guarantee for child protection activities. As Aris GoSita said that legal certainty needs to be sought for the continuity of child protection activities and to prevent lighting in rooms which have unwanted negative consequences in child protection (Ejem et al., 2022).

Tracing the development of the formation of Law No. 23 of 2002 concerning child protection, in essence it cannot be separated from the government's anxiety about the

suppression of children's rights. So that this has implications for the many occurrences of trafficking, abuse, discrimination, and child labor. This was because at that time there were no clear regulations governing child protection. With the emergence of this law, it is hoped that it will be able to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity. As well as receiving protection from violence and discrimination, for the realization of quality Indonesian children with noble character and prosperity (Ioraa, 2022).

Parents are people who have full responsibility for children in terms of nurturing, caring for, nurturing, and developing children's talents according to the talents possessed by children, and parents are also obliged to prevent underage marriages. This is in accordance with the wording of Article 26 which states that: Parents are obliged and responsible for: Raising, nurturing, educating and protecting children, Growing children according to their abilities, talents and interests, Preventing marriage at the age of children. When a child is in the care of a parent or guardian, or any party responsible for child care, he or she must be able to protect the child from being treated in terms of: Discrimination, Exploitation, both economic and sexual, Neglect, Cruelty, violence and abuse, Injustice, Other mistreatment (Martins, 2022).

Discussion of children's rights and obligations in the Child Protection Act No. 23 of 2002 is in chapter III from Article 4 to Article 19. Children's rights in this law include:

1. Every child has the right to be able to live, grow, develop, and participate fairly in accordance with dignity and humanity, and to receive protection from violence and discrimination (Article 4).
2. Every child has the right to a name as an identity and citizenship status (Article 5).
3. Every child has the right to worship according to his religion, think and express according to his level of intelligence and age, under the guidance of his parents (Article 6).
4. (a) Every child has the right to know his parents, to be raised and cared for by his own parents. (b) In the event that for some reason the parents cannot guarantee the child's growth and development, or the child is in a neglected state, then the child has the right to be cared for or appointed as a foster child or adopted child by another person in accordance with the provisions of the applicable laws and regulations (Article 7).
5. Every child has the right to obtain health services and social security according to their physical, mental, spiritual and social needs (Article 8).
6. (a) Every child has the right to receive education and tutoring in order to develop his personality and level of intelligence in accordance with his interests and talents. (b) In addition to the rights of the child referred to in paragraph (1), especially for children with disabilities they are also entitled to receive special education, while children who have advantages are also entitled to special education (Article 9).
7. Every child has the right to express and have his opinion heard, receive, seek and provide information according to his level of intelligence and age for the sake of self-development according to the values of decency and decency (Article 10)
8. Every child has the right to rest and take advantage of free time. Hang out with children of the same age, play, tidy up, tidy up creations, and work creatively according to their interests, talents and level of intelligence for self-development (Article 11)
9. Every child with disabilities has the right to receive rehabilitation, social assistance, and maintenance of social welfare levels (Article 11).
10. Every child while in the care of parents, guardians, or any other party responsible for upbringing, has the right to receive protection from treatment: (a) Discrimination (b) Exploitation, both economic and sexual (c) Impairment (d) Cruelty, violence, and persecution (e) Injustice (f) Other mistreatment (Article 13),

11. In the event that parents, guardians or caregivers of children carry out all forms of treatment as referred to in paragraph (1), then the perpetrators are subject to increased punishment (Article 13)
12. Every child has the right to be cared for by his own parents, unless there are valid reasons and/or legal regulations indicating that separation is in the best interest of the child and is the final consideration (Article 14)
13. Every child has the right to obtain protection from: (a) Abuse in political activities (b) Involvement in twilight disputes (c) Involvement in social unrest (d) Involvement in events that contain elements of violence (e) Involvement in war (Art. 15)
14. (a) Every child has the right to receive protection from being subjected to torture, torture or inhuman punishment with applicable penalties and can only be carried out as a last resort (Article 16)
15. Every child who is deprived of his freedom has the right to: (1) Get treated humanely and be placed separately from adults (2) Get legal assistance or other assistance effectively at every stage of legal proceedings (3) Defend himself and obtain justice before objective and impartial juvenile court in a session closed to the public (Article 17). b. Every child who is a victim or perpetrator of sexual violence or who is in conflict with the law has the right to be kept secret (Article 17)
16. Every child who becomes a victim or perpetrator of a crime has the right to receive legal assistance and other assistance (Article 18)
17. Every new child is obliged to: Respect parents, guardians and teachers, Love family, community, and love friends, Love the motherland, nation and country, Perform worship in accordance with the teachings of their religion, Implement the noble Ethics of Ethics of the noble Kado Ahlaq (Article 19)

Legislation that is technical and binding in nature related to children's rights

1. The 1945 Constitution of the Republic of Indonesia The 1945 Constitution stipulates that there are several provisions regarding children listed in Article 28G, Article 28H, Article 28I, Article 29 and Article 34, among others:
 - a. Article 28 G Paragraph (1) Everyone has the right to protection for himself/herself, family, honor, dignity and property under his control, and has the right to feel safe and protected from threats of fear to do or not do something which is a human right. Paragraph (2) Everyone has the right to be free from torture and treatment that degrades human dignity and has the right to obtain political asylum from another country.
 - b. Article 28 H Paragraph (1) Everyone has the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment and has the right to obtain health services. Paragraph (2) Everyone shall receive facilities and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice. Paragraph (3) Everyone has the right to social security which allows for his full self-development as a human being with dignity. Paragraph (4) Everyone has the right to own personal property rights and such property rights may not be taken over arbitrarily by anyone.
 - c. Article 28I Paragraph (1) The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as an individual before the law, and the right not to be prosecuted on a retroactive basis are human rights that cannot be reduced under any circumstances. Paragraph (2) Everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment. Paragraph (3)

The cultural identity and rights of traditional communities are respected in accordance with the development of the times and civilization. Paragraph (4) The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. Paragraph (5) In order to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations.

- d. Article 29 Paragraph (1) The state guarantees the freedom of each resident to embrace their own religion and to worship according to their religion and beliefs.
2. A joint decision by the chairman of the Supreme Court, the Attorney General, the head of the National Police, the minister of law and human rights, the minister of social affairs and the state minister for women's empowerment and child protection regarding the handling of children who come into conflict with the law. The existence of this joint decision is shown so that there is an integration in efforts to resolve cases of handling children in conflict with the law which are carried out in a coordinated manner by law enforcement officials and all related parties. This joint decision contains various things that must be done by related agencies so that cases of children in conflict with the law can be resolved by prioritizing children's rights at all stages involving the related agencies in this joint decision. Handling of children who are in conflict with the law is carried out on children who are perpetrators, witnesses, and victims. Each agency has a role in carrying out the actions specified in the joint decision in accordance with their authority so that the handling of cases of children in conflict with the law can proceed according to the objectives of this joint decision.
3. Decision of the Constitutional Court Number I/PUU-VIII/2010. The Petitioner is currently reviewing Law No. 3 of 1997 concerning juvenile courts consisting of two legal entities that are directly involved in child protection. Petitioner I is the Indonesian Child Protection Commission which is a state institution formed by Law Number 23 of 2002 concerning child protection (Child Protection Law). Petitioner I argues that since its establishment until now it has actively and continuously carried out activities in the field of child protection, including advocacy, child services and complaints of child protection cases and carried out other activities in the field of policy advocacy and laws and regulations.

CONCLUSION

Child Protection is the responsibility of parents, family, community, local government, government and the state which is a series of activities that are carried out continuously for the protection of children's rights, as child protection providers. In its simplest form, child protection strives so that every child's rights are not harmed. Child protection is complementary to other rights ensuring that children will receive what they need so they can survive, develop and grow. Arrangements regarding children's rights have been accommodated in several laws of the Republic of Indonesia, but their implementation is still far from expectations because there are still many cases that occur in Indonesia, meaning that the implementation of child protection has not been able to guarantee the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in accordance with human dignity. In addition, to receive protection from all kinds of violence, injustice, neglect, discrimination, exploitation, and other negative actions. Child protection providers must be able to handle problems of fulfilling children's rights to the fullest and all child protection providers must rise together to build a better Indonesia in the future. Starting with educating children with universal good values and instilling moral and character education.

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