

Legal Protection for Children: A Conceptual Paper

Laili Hanifah¹, M. Ishaq^{1,*}

¹ *Department of Non-Formal Education, Faculty of Education, Universitas Negeri Malang, Malang 65145, Indonesia*

* *Corresponding author. Email: m.ishaq.fip@um.ac.id*

Abstract: Indonesia is a legal state that upholds Human Rights Enforcement (HAM). Nowadays, there is often a violation of human rights violations, which is not only done by adults, but also by children, either alone or together with various forms. Appropriate handling and enforcement of the child as a criminal offence is required. Children are part of the young generation as one of the human resources which is the potential and successor of the nation's struggle ideals, which have strategic roles and have special characteristics and traits, requiring coaching and protection in order to ensure physical, mental and social growth and development. Indonesia, already has a number of rules to protect, enrich and fulfill the rights of children. Indonesia has passed the Law Number 4-year 1979 on child welfare. It should be a referral in policy-making to child protection. Indonesia passed Law Number 3 of 1997 on children's judiciary and Law Number 23 of 2002 on child protection.

Keywords: legal protection, child, criminal offence

1. INTRODUCTION

Indonesia is a law country that upholds the enforcement of human rights. Nowadays, there is often a violation of human rights violations, which is not only done by adults, but also by children, either alone or together with various forms. Appropriate handling and enforcement of the child as a criminal offence is required. If the child is in violation of the law, the child must be accountable for his actions, but despite having to account for his actions, the child should be protected. Child protection is closely related to the five pillars namely, parents, family, community, government, local governments and the country [1], [2]. The fifth has to do with each other as a child protection organizer.

Children are part of the younger generation as one of the human resources which is the potential and successor of the nation's struggle ideals, which have strategic roles and have special characteristics and traits, requiring coaching and protection in order to ensure physical, mental and social growth and development. Indonesia, already has a number of rules to protect, enrich and fulfill the rights of children. Indonesia has passed the Law Number 4-year 1979 on child welfare. It should be a referral in policy-making to child protection. Indonesia passed Law Number 3 of 1997 on children's judiciary and Law Number 23 of 2002 on child protection.

The children's Court law in the article governs some principles that distinguish it from a criminal trial for adults [3]–[5]. The principles are as follows:

a. General limitation (article 1 point 1 jo Article 4 paragraph 1) As for the person who can be heard in the child court event is determined limitative, i.e. a

minimum of 8 years and maximum 18 (eighteen years) and has never married.

- b. Scope of the problem in the Restrict (article 1 paragraph 2) problems that can be examined in a child's trial is only limited to the cause of the naughty child.
- c. Special officers handled (article 1 paragraph 5, 6, and 7) of Law Number 3 of 1997 determines the child's case should be handled by special officers such as: a. At the rate of investigation by: (1) child investigator; (2) at the level of prosecution by the general closing; (3) in court by the child judge, the child's appellate judge.
- d. Role of public guiding (article 1 paragraph 11) The Children's Court law acknowledges the role of: (1) civic guidance; (2) social worker; and (3) voluntary social worker.
- e. The atmosphere of family examination. Examination of the case in the court is done in a family atmosphere. Therefore judges, prosecutors and legal counsel do not wear toga.
- f. The necessity of splitting (article 7) The child shall not be judged in conjunction with adults of both civil and military status, in the event of a criminal offence with an adult, the child is tried in the child's trial, while the person the ordinary trial, or when it was military in military justice.
- g. Closed Inspection events (article 8 paragraph 1). The examination at the child's trial is conducted in a closed. The child's own interests. However, the verdict should be pronounced in a hearing that is open to.
- h. Examined the sole judge (sections 11, 14, and 18). The judge examining the child's cause, either at the state

court, the appeal or the cassation carried out with the sole judge.

- i. Shorter detention period (section 44-49) the child's detention period is shorter than the detention period according to the criminal KUHAP (Criminal Procedure Code).
- j. The penalty is lighter (section 22-32).

Protection is a shelter or a protective act. While the law is a rule made by the ruler (government) or customary that applies to everyone in a society (state). In Indonesia, legislation relating to legal protection for crime victims, among others: (1) Constitution 1945; (2) TAP Number IV/MPR/1999, regarding the outline of the state's bow 1999-2004; (3) it is also related to other regulations, such as: Law Number 6 of 1974 on social Welfare; Law Number 4 of 1979 on child Welfare; Law Number 23 year 2002 on child protection; (4) Law Number 4 of 2004 on judicial power; (5) The Code of the Criminal Program Law; and (6) The Code of Criminal Law.

If speaking of this legal protection it will be outlined about the protection of the child after it will be described some things concerning the law, namely:

a. Child Protection

If we talk about the child then this will not run from a discussion on the protection of children as perpetrators. So, who must strive to protect the child is every member of the community in accordance with its ability with various kinds of business in certain situations and conditions? Child protection is a business that conducts conditions in which a child can exercise its rights and obligations.

According to [6], [7] child protection can be distinguished in two senses: (1) protection of children is juridical which includes protection in public law, and civil law; and (2) child protection is non-juridical which includes social field, health field, and field of education.

b. The Defendant's Law

Law is a rule made by a ruler (government) or custom that applies to everyone in a society (state). The law is essentially abstract, although in its manifestations it can manifest concrete. Therefore, the question of whether the law, always a question that the answer could not be one with another word, the perception of people about the law is varied, depending on the angle in which they looked at it. Among the judges would look at the law from their profession's perspective as a judge, the law scientists would look at the law from the viewpoint of their scholarly profession, the small people would see the law from their viewpoint, and so on.

The legal defendant of the Oxford English Dictionary is: "Law is the body of rules, whether formally enacted or customary, which a State or community recognizes as binding on its members or subjects. The law is a collection of rules, legislation or customary law, in which a state or community admits it as a binding force against its citizens. Utrecht itself sees the law not merely as a rule but also as a

social symptom and as a facet of wealth. And if the law is seen as a rule, he gives the defendant the law as follows.

The law is a set of instructions for the commandments and prohibitions that govern the ordinances of the community, and should be obeyed by the community members who the violation of these life guidelines could lead to action by the Government or the ruler of the community.

While Ali, himself gave the defendant the law: "The law is a set of rules or sizes arranged in a single system, which determines what is and what should not be done by humans as citizens in life The community, which is sourced both from the community itself and from other sources, which is recognized as being made possible by the highest authority in the society, is actually done by citizens (as a whole) in And if the rule is violated it will authorize the supreme authority to impose an external sanction".

c. Legal Purposes

Legal issues can be examined through three points of view, among others: (1) from the viewpoint of positive-normative or juridical legal sciences, where the objectives of the law are focused on the legal certainty; (2) from the viewpoint of legal philosophy, where the purpose of law is focused on fairness; and (3) from the point of view of legal sociology, the purpose of law is focused on the terms of its benefits.

d. Law Enforcement

Law enforcement is an effort to bring abstract ideas into reality. So, law enforcement is a process to realize the legal desires here are nothing but the minds of lawmakers who are formulated in the regulation of the law. Law and law enforcement in this reform era cannot be separated from the political behavior of the ruling elite. Legal relations and law enforcement in such political behavior can only occur in an undemocratic state where transparency, supreme law and promotion and human rights protection are excluded [8], [9].

Law enforcement according to the governing body of the legal profession of Lampung states that: (1) law enforcement is the activity of the relationship of values that are described in the methods/solids assessing and grading and the attitude of acts as a series of the description of the final stage values to create (social engineering) and social control and peace of life; and (2) Law enforcement is a combination of the warden system and rules of conduct (Gedrageregelen system).

The condition that immutable the society today is not as good as lies in the dissatisfaction of the practice of the judiciary (which can be referred to as "law enforcement in the narrow sense), but rather dissatisfaction with law enforcement in a broad sense), namely enforcement of all norms/settings, community life.

So in case of law enforcement also need to be discussed about the law enforcement officers namely: (1) police are referred to as "the state tools of law

enforcement”; (2) the prosecutor is referred to as an official authorized by the act to act as a public prosecutor and execute a court order; and (3) the judge is an “officer who performs the duty of judicial power”.

Thus, judging by the sense of the criminal in the broad meaning (as one process chain), the application of the wisdom / authority of the criminal allotment (which in fact also means the application of policy / authority: (1) application of policy / authority investigation, (2) application of prosecution policy / authority, (3) application of pipetting policy / authority, and (4) implementation of the criminal executor policy/authority.

The four stages/processes are a unified integral criminal law enforcement system. Therefore, the entire system, process, or authority of criminal law enforcement must be materialized in an integral legislative policy. So according to [10], the renewal of criminal law for future law enforcement should have operational characters as follows.

1. Criminal law must not ignore aspects related to the human condition, nature and traditions of Indonesia. This means that the criminal law should be based on the domestic treasury as a crystallization of the opinion of society to create order.
2. Criminal law should be able to adapt to the emerging universal tendencies in the association of civilized societies. This means that criminal law also absorbs evolving insights and other communities, thus able to resolve global conflicts.
3. Criminal law must have preventive aspects. It aims to minimize the occurrence of criminal acts, because it has indirectly grown a feeling of reluctance (fear) to violate criminal law.

Criminal law should always be aware of the development of science and technology to improve the effectiveness of its functions in the community. It relates the ability of criminal law to ward off the development of evil forms, as the advancement of Science and technology and globalization.

2. METHOD

As the research objectives have been mentioned, this study uses qualitative methods. The researcher conducted a literature review that was relevant to the research topic. There are more than 15 references that we refer to from journals, proceedings and books. Furthermore, we analyzed all references and put them in this paper.

3. RESULT AND DISCUSSION

a. Understanding of Children

The son as a successor generation is cultivated to have a pattern of behavior in accordance with the norms prevailing in the culture of Indonesian society. According to Arif Gosita, the son is a development capital, which will

nurture and maintain and develop the results of Indonesian mental and social physical development. The understanding of children is also interpreted by Ginting as a novice human resource that continues to evolve towards maturity and potential successor of the nation’s ideals and to them sought to obtain an optimal level of welfare both mental/spiritual, temporal and social life [11].

Development of children consists of 3 (three) main categories: development and protection that is one of the efforts to build national law, because the physical and moral quality of children today determines the nation in the future. For a nation, the child is the successor values of the nation’s struggle and national resources that determine the day ahead of the nation as well as national development. The understanding of the child is a child must acquire the rights that can ensure the growth and development of spiritual, physical, and social, the child is also entitled to the Ministry to develop skills and social life, the child is also entitled to the Ministry to develop skills and social life [6].

Understanding the age limit of children in essence has a diversity of certain forms and specifications “the most important one belongs to the age of the child within the lower age of the child within the age of the child, namely 0 (zero) year prosecution limit of 8 (eight) years until the upper limit of 18 years and has never married. And in the United Nations Convention on the Rights of children signed by the Government of Indonesia on 26 January 1990 the age restriction of the child is under the age of 18 years.

b. Children in Legal Position

To put a child into the understanding of legal subjects such as adults and legal entities, the internal and external factors are very influential to classify the child’s status, the external element is: (1) internal element in child: subject of law; equality of children’s rights and obligations; and external element in the child; equality position in law; and (2) the privilege granted by the state or government arising from the Constitution 1945 and the abuse of invitations.

Departing from that later on 20 November 1958, the UN General Assembly endorsed the Declaration of the Rights of the Child (Declaration of Child Rights) consisting of 10 principles. Meanwhile, the problem of children continues to be discussed in the Congress, The United Nations on The Prevention of Crime and the Treatment of Offenders. During the I-I Congress in Geneva in 1955, the topic Prevention of Juvenile Delinquency at the 2nd Congress of 1960 in London talked about the New Forms of Juvenile Delinquency issue and the Juvenile Delinquency issue was still also left in the 10th Congress of the year 1965 in Stockholm. 54 According to Prof For this he said: condemnation comes from the word of the law, so that it can be interpreted as a rule of law or to decide on its law. Establishing the law for an event is not only concerned with criminal law, but also in the civil law. Because this paper revolves around the criminal law, the term must mean the condemnation of criminal matters that

are often with the transfer or the provision of criminal and legal allotment.

As for the meaning of EAS/punishment according to Prof. Van Hamel is as follows: A special suffering, which has been dropped by the authority to impose a criminal in the name of the state as a responsible for the general law order for a violator, ie solely because the person has violated a law rule that must be enforced by the state [12].

Medieval Philosophy, among others, Thomas Aquino said: "The purpose of condemnation is not retaliation, but is adapted to the purpose of the state: welfare, scare and improve" [13]–[15].

c. Application of Child Law to Crime in Indonesia

Thus, the child's position in the investigation into the nuance that raises the rights of the child in particular. The rights of the child in question to be able to waive forced and forced action from the investigation (arrest and detention) of children, namely:

1. To a child's family as a suspect to be advised in advance either by letter/or orally before the arrest process is performed.
2. The arrest of the child is not permitted to use the appliance or weapon as a forced or forced authority.
3. The suspect child should immediately obtain legal assistance in a mandatory and free (in the arrest of investigators and public prosecutors should include a lawyer who will someday become legal counsel of the child).
4. Suspect a child or an immature person must immediately obtain a process of examination.
5. The right to obtain or claim damages as a result of errors in arrest and detention.

In essence, the judicial examination system of the child's judiciary by putting the rights of Indonesian children into the codification system of law and the unification of law that could include the child's own future. Protection of the rights of children in the proceeding proceedings begins with the determination of the judges set out to handle the judicial Court of the child. According to the provisions of article 9 of Law No. 3 of 1997 on the children's judiciary mentions that judges are appointed pursuant to the Decree of the Chairman of the Supreme Court or on the proposal of the Chairman of the District Court [16], [17]. The requirements to be established as intended judges include:

1. Has been experienced as a judge in court in the general judicial environment
2. Having interest, attention, dedication and understanding of child problems
3. The judge checks and decides the child's cause in the trial level is a sole judge, unless deemed necessary to be examined by the Tribunal.

In each of the levels of criminal examination and violations of the child can be discontinued or otherwise be forwarded. The detention period by a judge against a child who commits a criminal offence and or breach is limited to 15 days and can then be extended to 30 days. If the term of 45 trial of the child case is not completed, the child must be removed from custody. The timing limitation of the examination remembers that the child has rights protected by the law during the examination of the proceeding. The rights of the Child are [4], [18]:

1. As perpetrators of crimes, consisting of: a) Right to get clarification on the procedure of implementing the trial and case; b) Right to legal counsel; c) The right to obtain facilities that facilitate the trial (transportation, health care, school holidays) and others; d) The right to be accompanied by both parents and a probation, social worker; e) Right to apply for indemnification of treatment resulting in suffering or error of arrest/detention/examination without court case verdict; f) The right to be able to express opinions and objections to cases involving itself; g) Right to get a closed trial process
2. As a victim, consists of: (a) the right to be informed of the crimes committed against the child; (b) the right to obtain protection against threatening, persecuting and squeezing against the loss of material and spiritual damages; (c) the right to seek damages for the sufferings suffered by the child; (d) right to request a closed trial; (e) right to be accompanied by a lawyer/legal advisor; and (f) right of trial facilities
3. As a witness, consisting of: (a) the right of the child to obtain facilities to attend the proceeding (transportation, mentoring and security protections); (b) right to get clarification on the ordinance of proceedings; (c) right to obtain security protections; and (d) the right to obtain permission from the educational and coaching institutions that are the place to study.

The duties of child protection in the child Correctional Institution in the legal procedure are governed by the provisions of Law No. 12 of 1995 on correctional [19]. Correctional institutions generally serve as: (1) protective law; (2) received punishment (punitive); (3) correcting (reform); and (4) rehabilitation (rehabilitative). The eventual goal of the child Correctional Institution is coaching. To know the phenomenon of correctional institution that becomes essential is the introduction to the grouping of children who put the child correctional institution.

In the implementation of Law No. 12 of 1995 on correctional [19]–[21], grouping children into three categories as follows:

1. A criminal child, a child based on a court ruling on a criminal at the longest correctional institution until 18 years old

2. The state child, which is a child based on a court ruling handed over to the state to be educated and placed in a child penitentiary at the longest until the age of 18 years
3. The civil child, which is the child at the request of the parent or guardian to obtain a court order to be educated at a child correctional.

4. CONCLUSION

Based on the above exposure can be concluded:

1. The position of the child facing the law in Indonesia has got a place, with the enactment of special rules of law in treating the child facing the law, among others, especially those who set it is the birth of Law No. 3 of 1997 on children's Court. In addition, Indonesia has also had legislation specifically aimed at protecting children such as Law No. 23 of year 2002 on child protection.
2. The application of laws relating to the protection of children facing the law is still not able to run optimally. This is due to several factors, there are still some problems with the legal substance and other problems such as those related to the availability of human resources and infrastructure that support it.

REFERENCES

- [1] T. Adelina and A. Darmadi, "Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Penganiayaan (Di Wilayah Hukum Kepolisian Resor Kota Denpasar)," *Kertha Wicara J. Ilmu Huk.*, vol. 7, no. 5, 2017.
- [2] A. Wastoni, "Sistem Pidanaan Edukatif terhadap Anak sebagai Pelaku Tindak Bidana." Fakultas Hukum Unissula, 2014.
- [3] B. Muhaemin, "Prinsip-prinsip Dasar Tentang Hak Perlindungan Anak," *DIKTUM J. Syariah dan Huk.*, vol. 14, no. 1, pp. 77–87, 2016.
- [4] W. K. Mulyana, "Hukum dan Hak-Hak Anak," *Jakarta Yayasan LBH Indones. Dan CV. Rajawali*, 1983.
- [5] S. M. Sinaga and E. Z. Lubis, "Perlindungan Hukum terhadap Anak Yang Melakukan Kejahatan dalam Persidangan Anak," *J. Mercat.*, vol. 3, no. 1, pp. 52–57, 2010.
- [6] I. S. Soemitro, *Aspek hukum perlindungan anak*. Bumi Aksara, 1990.
- [7] R. Juliana and R. Arifin, "Anak dan Kejahatan (Faktor Penyebab dan Perlindungan Hukum)," *J. Selat*, vol. 6, no. 2, pp. 225–234, 2019.
- [8] A. G. Ferguson, *The rise of big data policing: Surveillance, race, and the future of law enforcement*. NYU Press, 2019.
- [9] R. M. Gladden, P. Martinez, and P. Seth, "Fentanyl law enforcement submissions and increases in synthetic opioid-involved overdose deaths—27 states, 2013–2014," *Morb. Mortal. Wkly. Rep.*, vol. 65, no. 33, pp. 837–843, 2016.
- [10] B. Sanjaya, M. Muladi, R. K. Sari, and H. S. Disemadi, "Inkonsistensi Pertanggungjawaban Pidana Korporasi dalam Peraturan Perundang-Undangan di Luar KUHP," *Pandecta J. Penelit. Ilmu Huk. (Research Law Journal)*, vol. 15, no. 2, 2020.
- [11] J. Akther, "Influence of UNESCO in the Development of Lifelong Learning," *Open J. Soc. Sci.*, vol. 8, no. 3, pp. 103–112, 2020.
- [12] A. Quak, "Korrespondenz zwischen AG van Hamel und drei isländische Gelehrten," *Amsterdamer Beiträge zur älteren Ger.*, vol. 78, no. 2–3, pp. 336–372, 2018.
- [13] M. M. Rashid, "St. Thomas Aquinas and the Development of Natural Law in Economic Thought," 2019.
- [14] L. J. Elders, *The ethics of St. Thomas Aquinas: Happiness, natural law, and the virtues*. Catholic University of America Press, 2019.
- [15] D. M. Nelson, "The priority of prudence: virtue and natural law in Thomas Aquinas and the implications for modern ethics," 1992.
- [16] E. Z. Abidin, "Budaya hukum dalam Peradilan di Indonesia," *J. Huk. IUS QUIA IUSTUM*, vol. 6, no. 9, pp. 45–53, 1997.
- [17] M. Syamsudin and M. H. SH, *Konstruksi Baru Budaya Hukum Hakim Berbasis Hukum Progressif*. Kencana, 2011.
- [18] R. Fitriani, "Peranan Penyelenggara Perlindungan Anak Dalam Melindungi Dan Memenuhi Hak-Hak Anak," *J. Huk. Samudra Keadilan*, vol. 11, no. 2, pp. 250–358, 2016.
- [19] R. Indonesia, "Undang-Undang No. 12 Tahun 1995 tentang Sistem Pemasarakatan," *Lembaran Negara RI. Tahun*, 1995.
- [20] B. Hermidi and R. B. Sularto, "Pembinaan Narapidana Sebagai Upaya Untuk Mewujudkan Tujuan Pidanaan (Studi Kasus di Lembaga Pemasarakatan Magelang)," 2001.
- [21] T. Ticoalu, "Perlindungan Hukum pada Narapidana Wanita Hamil di Lembaga Pemasarakatan," *Lex Crim.*, vol. 2, no. 2, 2013.