

Legal Views for Orphans Abused by Foster Parents

¹Debora K Nayoan, ²Junifer Dame Panjaitan

^{1,2}Faculty of Law, Mpu Tantular University

ARTICLE INFO

Keywords:

*Legal protection;
Child Welfare;
Children's Human Rights,*

Email:

nayoandebora1@gmail.com

ABSTRACT

The aim of legal protection for children is to protect children's basic freedoms and opportunities from various interests that have an interest in their welfare. Child welfare refers to a way of life that ensures children receive normal physical, spiritual and social development. Due to various challenges, not all parents are able to recognize the welfare of their children. Legal protection for children is regulated in several statutory regulations, namely in Law Number 17 of 2016 concerning the Determination of Perppu Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Welfare. Children are one of the key elements in the creation of legal arrangements in Indonesia.

Copyright © 2023.

Jurnal Restorasi :Hukum dan Politik

All rights reserved is Licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License \(CC BY-NC 4.0\)](https://creativecommons.org/licenses/by-nc/4.0/)

INTRODUCTION

Legal protection for children is related to the child's legal status. According to Maidin Gultom. There are two ways to protect children: direct and indirect. Children are the direct targets of the activities carried out. These activities usually include keeping children safe from both external and internal dangers, teaching, growing, helping children in many ways, keeping them healthy and hungry, giving them tools for self-development, and so on. Child protection initiatives carried out or involving parties other than children are called indirect child protection.

Constitutionally, according to the 1945 Constitution, the article that regulates child protection is stated in article 28B paragraph (2) "All children have special rights in the form of resilience, development and progress, and are entitled to guarantees regarding violence and segregation."

Regulation No. 17 of 2016 concerning Guarantees. Informal Law Replaces Regulation No. 1 of 2016 concerning the Second Revision of Regulation No. 23/2002 concerning Guarantees for Young Children. Becomes a regulation containing legal guidelines for administering insurance. Article 72 paragraph (2) of this law states that "Government social assistance institutions, educational institutions, regional associations and the business world carry out regional work as referred to in the paragraph.

Parents must understand the importance of their children, parental authority over their children in certain cases can be revoked due to the parents' inability to provide guidance, protection, health and so on to their children. According to Abintoro Prakoso, if parents are unable to guarantee the safety of their children, then the law guarantees their protection by establishing day care facilities.

Evidence from the real world shows that many parents fail to fulfill their duties and responsibilities to protect their children, leaving many children deprived of attention and direction. In extreme cases, this can make children naughty. issues related to statutory regulations, etc.

As expressed by Munir Fuady. Guardianship occurs when a parent is appointed to care for a minor child as a replacement for the parent who was previously responsible for the child's personal belongings. This happens when parents are not present. The child's protection status is permanent,

meaning that the child's legal ties with their parents are permanently severed, if the orphanage administrator is proven to be incompetent. Likewise, if an orphan child is taken from an orphanage and adopted by foster parents, then the child is fully the responsibility of the foster parents. And foster parents still have an obligation to protect and provide for the orphaned child.

The younger generation is the next generation. It is our collective duty to treat children well in this way so that they can grow up well and become ambassadors of civilization for this country. Children are very special people with special qualities. Even so, he is free to behave according to his own wishes, feelings and thoughts. It turns out that a child's behavior is greatly influenced by the environment around him. Therefore, children really need protection, direction and guidance from parents, teachers and other adults in order to develop.

The Criminal Code (hereinafter referred to as the Criminal Code) is the basis of criminal law in Indonesia and is the main source of law that applies there. If the definition of child is to be included in the scope of criminal law, it must also be linked to the UURI Criminal Code. The Criminal Code only defines "not old enough (minderjarig)"; There is no definite definition of a child. However, the concept of child in the Criminal Code is not explained in terms of not being old enough. There are other articles in the Criminal Code that partially define children. For example, Chapter IX defines several terms in Article 45 of the Criminal Code. Provisions regarding the prosecution of children were revoked because UURI Number 11 of 2012 concerning the Juvenile Criminal Justice System more specifically regulates issues relating to children.

In summary, the Criminal Code defines minors as falling into one of three categories: children under the age of sixteen in article 283 paragraph (1), which regulates material that violates decency, such as writing, pictures or objects, as well as tools. used to terminate pregnancy; children under the age of 15 in article 287 paragraph (1) regulates sexual treatment. Thus, it is clear that although the other articles above are exceptions to general provisions, Article 45 of the Criminal Code is a general provision.

The judge has the authority to decide whether to prosecute someone who is underage (minderjarig) for committing an act before the age of sixteen. If the act constitutes a crime or is one of these offenses, the judge can also order that the guilty person be handed over to the government without facing any repercussions.

In addition, due to lack of experience and limited skills, young people cannot fulfill their own freedom. It is important for adults – especially parents – to uphold children's rights. Indonesia's highest legal standard, the 1945 Constitution, states that "every child has the right to grow, develop, and be protected from violence and discrimination."

According to the author's argument, a child must have freedom and commitment that they, even though they are foster parents, must understand because a child does not have the experiences they know. This article aims to find out what is the view of legal protection for orphans who are abused by foster parents and what is the legal protection for a child.

METHOD

This method uses several methods such as the Literature Method, Interview Method, Survey Method and Special Analysis Method. It is important to ensure that research is conducted with high ethics, respecting privacy rights and prioritizing the welfare of the orphans involved. Apart from that, coordinating with institutions and organizations that are competent in child protection issues can also strengthen the validity of research.

RESULTS AND DISCUSSION

Legal Arrangements for Child Protection

UUD No. 23 of 2002 concerning child protection is a government regulation regarding child protection in Indonesia. Because it refers to the official title of statutory regulations, this guideline is the main legal regulation that connects it with child protection.

The General Explanation of Regulation No. 23 of 2002 concerning Guarantees for Young Children and which came into effect on 22/10/2002 states that children are a trust from Allah SWT who need to be looked after because they have honor, dignity and honor. Human rights are adequately protected. The Human Rights Section of the 1945 Constitution and the Children's Rights Section of the KPBB both mention children's human rights. After all, children are the successors of the nation and the nation's next generation in national and state life; Therefore, all children have the right to life, growth, development, the right to contribute and be protected from violence and discrimination and to enjoy freedom and civil rights.

Even though children's rights have been included in UUD No. 39 of 1999 concerning Human Rights, children are still needed as a legal basis for carrying out responsibilities and because it is the duty of parents, family, society, government and the state to protect children. as. From this it is clear that the stipulation of laws and regulations relating to various aspects of child protection is one component of national development initiatives, especially improving the welfare of the nation's nation.

In general, Law No. 23 of 2002 concerning child protection underlines that a number of sustainable actions need to be taken by the government and parents in order to safeguard children's rights. To ensure children's physical, mental, spiritual and social development and improvement, these activities need to be advanced and focused. The aim of this regulation is to provide the maximum possible livelihood for children so that they grow up to be strong, patriotic individuals, and uphold the integrity and unity of the nation and have the primacy of Pancasila.

In accordance with the interpretation of article 2 of Law Number 23 of 2002 concerning Child Protection, the priority is the welfare of the child. The definition of child welfare means that the government, society, legislators and judges have responsibility for all activities related to children.

The value of child assurance is carried out by considering standards of non-separation, children's welfare, respect for children's perspectives, and choices to live, grow and create. Regulation No. 23 of 2002 concerning Youth Security has several regulations, including problems involving children related to the law, victims of illegal exploitation, victims of social financial conspiracy who become victims of the mob, and who are the recipients of violence. become outcasts, and children in conflict situations. The implementation of this regulation is in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia concerning collective freedom, including the right of children to develop and be creative as individuals.

In addition, even though there is legal protection, UUD No. 23 of 2002 concerning Child Protection cannot function effectively because sectoral legislation regarding the definition of children still overlaps. The increase in crimes against children in society, including sexual violence, requires greater commitment from the authorities, regional officials, the community, all administrators involved in child protection. This is explained in the General Explanation of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

Law Number 23 of 2002 concerning Changes to Child Protection also highlights the need for stronger criminal penalties to provide a deterrent effect for those who commit crimes against children and to support proactive steps to help victims and/or perpetrators to get back on their feet. physical, psychological and social well-being. This is necessary so that children who are victims of crime.

Children are God's trust and gift to the world, and they are also whole human beings who are dignified and valuable. Children have a strategic role, have unique traits and characteristics that

guarantee the survival of the nation and state in the future, and are also buds, potential and substitutes for younger people towards the standards of the country's struggle.

Lack of love, attention and guidance, as well as guidance in developing attitudes and supervision from other people are the main causes of children easily entering the negative social currents of society and their environment. There are efforts to protect and create peace for children which guarantees the implementation of their rights and provides good treatment. Because all children will have this responsibility, they must be given as many opportunities as possible in the process of optimal growth and development, both physically, spiritually and socially, as well as having noble morals.

A legal system that views children as a group that has legal standing and is categorized as incompetent or immature, determines the level of children in the legal realm as legal subjects. The condition of children who are affected by the development of intelligence and physical growth is what gives rise to the notion of impotence. It is impossible to separate the field of treatment of children as subjects born in a social structure that is different from the principles and actions of criminal law and contract law in the civil law system.

Social welfare initiatives that focus on protecting children, specifically by meeting their needs, are known as child welfare initiatives.

1. Child welfare efforts include initiatives to promote, develop, prevent, and rehabilitate which are included in child welfare laws.
2. Both society and the government strive to protect children.\
3. The government monitors, directs, advises and assists community-based child protection initiatives.

Children's Rights and Obligations

The following includes children's rights:

1. Children must be prosperous, guided by love in the family or cared for, to grow and develop normally. This right applies to children who are in the care of parents, guardians or other responsible parties.
2. In order to grow into worthy and contributing members of society, children have the right to services that help them develop their skills and social life in accordance with the values and character of the country.
3. Children have the right to be protected at all times, including during their growth period.
4. Children have the right to defend their environment from danger or things that can hinder their natural development.

In protecting children's rights, children also have the following responsibilities:

1. Children should respect parents, teachers, and those who are more mature, have traditions of order, good manners, and the ability to respect.
2. Affectionate, able to provide love and protect his siblings, friends, and love family and community.
3. Carrying out worship according to religious teachings.
4. Implement a code of ethics and good deeds.

So that children and their lives have rights and responsibilities, which must be carried out at the same time. Or complete one. Apart from that, underage children are physically, mentally and socially mature. This is caused by the child's fragile condition, depending on his development. Legal protection for children can be defined as an effort to protect children's freedom and RIGHTS (security and freedom) for various purposes related to child protection. Legal protection issues for children include; Broad Restrictions for Children: (1) Guarantee of opportunities for the younger

generation; (2) Guarantee of basic freedoms; (3) Legal guarantee of government assistance for all generations linked to quality.

Child Protection aims to ensure respect for children's rights to live, grow, develop and participate effectively by respecting human dignity and dignity and being protected from violence and discrimination, with the aim of creating ethical and well-known and prosperous Indonesian children's behavior. Even if it is a child. That person is not his own flesh and blood, or an adopted child, or perhaps a child. Orphans have not received their rights, namely their rights to welfare, safety, care and guidance. Children also have the right to develop their skills in academic and non-academic fields. The protection that parents give to their children starts from birth until the child is born.

Children's rights are legally and politically binding between countries to regulate issues related to children's rights. The Convention establishes four principles (CRC), namely as follows:

1. *Non-discrimination* This means that all rights recorded in the CRC are deemed to apply to all children without distinction.
2. Providing the best for children implies that all activities have an impact on children, so providing the best for children is undoubtedly a fundamental idea.
3. *survival and development* includes recognition and protection of every child's right to life. The survival and growth and development of children must be guaranteed.
4. Respecting children's opinions means that children's thoughts, especially regarding matters that influence their lives, must be included in making decisions.

According to the CRC Convention, it can be divided into four main areas of law:

1. The right to survive, namely the right to protect and defend one's life, as well as the right to the most advanced health system and the best possible services.
2. The right to protection, in particular the rights outlined in child rights contracts, including the right of refugee children to be protected from discrimination, abuse and neglect.
3. The right to growth and development (developmental rights), including children's rights and the Convention on the Rights of the Child, which covers all types of education (formal and informal) and the capacity to achieve a quality of life that is capable of physical, mental and spiritual demands. Children have moral and social rights.
4. The right to participate, namely children's rights, includes the right to express opinions on all matters concerning children. The right to participate includes children's rights to identity, cultural heritage, childhood, and development participation in society.

The Convention on the Rights of the Child recognizes that one right is limited to the humanity of children as individuals with dignity and the dignity of the people. The state is obliged to guarantee respect for children's rights. Although children are placed individually, this partnership recognizes the important role that parents and the community play in understanding children's rights. Article 5 of the CRC says:

“Contracting States must respect the duties, rights and obligations of parents applicable to members or communities, as the case may be, local customs, guardians or other legal means of caring for children, providing them with good care and the child's ability to develop, appropriate teaching and implementation of children's rights stipulated in the agreement”.

The issue in article four (1) states that children do not have parents. have the right to receive services from the state, person or organization. Article 5 Paragraph 1 states that disabled children have the right to receive assistance in their families, they can grow and develop naturally. Next, defining children's rights through Law No. 4 of 1979 above, the Indonesian government has verified the UN Convention on the CRC, with Presidential Decree No. 39 of 1990. According to the CRC which was ratified by the UN General Assembly in 1989, without distinction of race, gender or Ancestry, religion or language, there is jurisdiction covering 4 areas:

1. The right to continuity of life affects the ability to live a full life and complete health care.
2. Open Rights, including opportunities for training, data, recreation, expression and culture, opportunities for thought, belief and religion, and children with disabilities benefit from special services, treatment and protection.
3. Security Rights, including protection against all types of duplicate transactions. barbaric and erratic treatment within the framework of law enforcement.
4. Privileges of Support, including opportunities for articulation, assembly and assembly, and the option to take part in direction regarding this issue

Definition and Function of family

The family is the closest environment, and has a big impact on development and life in general. The family is defined as the smallest unit which is a social unit making the object "parents and child". According to Lemme (1995), the family is a social system that is independent and interdependent on mutual influence and cooperation between members of the system. Meanwhile, Yadi Mulyadi et al (1995: 108) say that family work is to obtain offspring, love or affection, relationships, economic, social, protection or security. Apart from that, according to the work of McIver & Page, families will care for, nurture and protect their children so that they can have human relationships so that they can be independent and become human beings. (Khairuddin, 1985:9)

Persecution Concept

In the KBBI the meaning of persecution is from the word *anaya*, especially horrific demonstrations (such as harassment, torture). Temporarily (Torture) is an activity that is not big (such as harming, torturing). Persecution is a demonstration that is not major (such as persecution, torture).

Persecution is intentionally causing injury or pain to another person. According to Mr. MH Tirtaamidjaja. However, an activity that causes suffering or injury is not considered abuse on the assumption that the activity aims to provide greater well-being.

Physical crime is an act in the form of injury, beating that does not cause death, 19 or cutting off a body part. Acts of physical violence are called physical violence which is the same as intentional, for example A gives a blow to the head and a slap to B but does not cause an injury, but it causes swelling to the point where the bone can be seen. According to the Shafi scholar "Yes. The grouping of violence against children is as follows: According to Shafi scholars "Yes:

- *Physical child abuse*
Torture and all forms of violence against children that cause injury or death constitute physical violence. Abrasions resulting from aggression are an example of an injury. Bite marks, pins, rope, or rattan are examples of fragile materials. It could also be hot fuel, a cigarette lighter, or metal. Lesions on the legs, arms, mouth, cheeks, chest, stomach, back, or buttocks often occur. This can also develop in children who imitate their parents' bad behavior, such as fussy or troublesome children who constantly cry, ask for snacks, go to the bathroom, or break something important, and so on.
- Psychological violence against children: Violence, using harsh and dirty language, showing off books, pictures and watching pornographic films to the younger generation are examples of psychological violence. Children usually get bad treatment, develop social identities, are shy, afraid of being contacted, refuse to leave the house, and refuse to socialize.
- *Sexual child abuse*
Sexual violence is defined as pre-sexual behavior between children and other people (regular conversations, touching, visual images and exhibitionism associated with sexual relations between children and adults (incest, sexual exploitation, rape, etc.) .
- Social child abuse

Social violence is manifested in the form of facilitating and modifying children. Abandoned children are the attitude of parents who do not love their children during their growth and development. For example, children who are victims of bullying, are alienated from their parents, or do not have access to adequate education or health services. Child exploitation refers to unfair or abusive treatment of children by families and society. For example, children are encouraged to do things for economic, social or political reasons without caring for the child to receive love based on physical, psychological and social development. For example, children are required to work in factories that do not guarantee their safety with low wages and provide inadequate personal protective equipment, or they are required to work in dangerous environments.

Law for Perpetrators of Criminal Persecution

Criminal Code article 351 says that:

- 1) The perpetrator is threatened with imprisonment for 2 years and 8 months, equivalent to a fine of 4,500.
- 2) If he causes serious injury, he will be sentenced to five years in prison.
- 3) If he is sentenced to death, he will be imprisoned for seven years.
- 4) Torture is intentional treatment that also harms people's health.
- 5) Attempts to commit this offense are not punishable by law.

According to the Criminal Code, a person who commits a criminal offense is threatened with imprisonment for a maximum of 2 years and 8 months. However, what if the interaction was carried out on a child and the perpetrator was his own father.

According to Law no. 23 of 2002 which regulates child protection, anyone who commits violence or cruelty against a child is threatened with imprisonment for 3 years and 6 months, with an additional life sentence if the perpetrator is their own parent.

The article on child abuse is contained in article 76C of Law no. 35 of 2014 which states "everyone is prohibited from allowing, carrying out, placing, ordering or participating in violence against children. Meanwhile, sanctions for people who act in the above manner of abuse or violence are specified in article 80 of Law 35/2014

- Paragraph (1) " Any person who does not heed the provisions as intended in Article 76 letter c, will be subject to strict sanctions for 3 years and 6 months as well as a fine of Rp. 72,000,000.00 (72 million rupiah)."
- Apart from that, if serious injury results, the perpetrator will be subject to imprisonment for 5 (five) years and a fine of IDR 100,000,000.00 (100,000,000 rupiah)
- Paragraph (2) "In the event that the child referred to in paragraph (1) is seriously injured, the perpetrator will be punished with imprisonment for 5 (five) years and/or a fine of IDR 100,000,000.00 (one hundred million rupiah)"
- The penalty is increased by one third of the provisions in paragraphs 1 and 2 if the perpetrator of the abuse is the parent.

The Impact That Occurs on Children

It is something that a person feels from other people's activities, which has a direct or indirect impact on a child's growth or socialization with their environment. The following are the consequences or impacts of violence against children:

a. Physical Impact

All children have the right to develop at their own pace. The nutrients that enter the body support good growth and development, thereby enabling teenagers to grow into physically healthy adults.

b. Psychological Impact

Unpleasant behavior or inappropriate treatment can impact children who have mental problems in this way making them people who do not try to communicate or convey what they feel or need. Inner components such as explanations, feelings, perspectives, capacities, well-being, and desires all influence the way humans behave. Meanwhile, the overall climate, the individuals involved, cultural tensions, and forced work all influence external variables.

c. Social Impact

Children are a component of life in a social context, where they receive social protection from their family and environment. When children are mistreated in society, they look for a place that accepts them and helps them feel comfortable. Parents and society who do not care about their children prevent them from getting the opportunity to adequately explore their social abilities in their environment.

CONCLUSION

Children are the successors of the nation, that is, in this case children have rights and obligations. A child's right is to receive protection and welfare. Mr MH Tirtaamidjaja stated that abuse is a situation where the victim is deliberately injured or in pain due to the performance. However, if the action is carried out for the safety of the body, then an action that causes injury or illness to another person is not considered a failure. Several things can be learned from the discussion of the legal perspective on orphans who are harmed by foster parents based on the author's arguments, as follows: Legal protection of children, namely efforts to legally defend various freedoms and human rights of children (fundamental rights and liberties of children), as well as various interests for the welfare of children. Legal protection issues for children include various issues for children: (1) Protection of children's freedom; (2) children's human rights; and (3) Legal all children's interests relating to child welfare. Children's welfare can be developed if they are well served and all their basic needs and rights are met. The family is the most intimate social environment and has a huge influence on growth and life in general. The family is described as the smallest social unit, with the "parents" and "children" being the social unit. According to Lemme (1995), the family is an independent social organization and has a relationship of mutual influence and reciprocity between its members. The law that regulates punishment for perpetrators of child abuse is Law no. 23 of 2002 concerning child protection, Criminal Code article 351, article 80 Law 35 / 2014, article 76C Law no 35 of 2014

REFERENCE

- Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia*, Refika Aditama, Bandung, 2014, Hlm. 45.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. (Pasal 28b Ayat (2)).
- Uu. No. 39 Tahun 1999 Tentang Hak Asasi Manusia. (Pasal 58)
- Tahun 2016 Tentang Perubahan Kedua Atas Uu. No. 23 Tahun 2002 Tentang Perlindungan Anak Menjadi Uu. (Pasal 72 Ayat (2)).
- Abintoro Prakoso, *Hukum Perlindungan Anak*, Laksbang Presindo, Yogyakarta, 2016, Hlm. 127.
- Munir Fuady, *Op Cit*, Hlm. 22
- Fahri, A. (2021). *Analisis Sosio Yuridis Kekerasan Terhadap Anak Di Kota Makassar* (Doctoral Dissertation, Universitas Bosowa).
- Ulya, Z. H. (2018). *Perlindungan Hukum Terhadap Anak Terlantar Sebagai Upaya Untuk Meningkatkan Kesejahteraan Anak (Studi Kasus Di Kabupaten Kudus* (Doctoral Dissertation, Iain Kudus).
- Uu. No. 23 Tahun 2002 Tentang Perlindungan Anak. (Penjelasan Umum)
- Uu No. 35 Tahun 2014 Tentang Perubahan Atas Uu No. 23 Tahun 2002 Tentang Perlindungan Anak (Penjelasan Umum).

- Hutahaean, B. (2013). Penerapan Sanksi Pidana Bagi Pelaku Tindak Pidana Anak. *Jurnal Yudisial*, 6(1), 64-79.
- Walayudi, *Hukum Perlindungan Anak*, Cv Mandar Maju, Bandung, 2009, Hlm. 1.
- Pasal 3, Undang-Undang Nomor 17 Tahun 2016 Perubahan Atas Undang-Undang Nomor 23 Tahun 2002, Tentang Perlindungan Anak.
- M. Nasir Djamil, *Anak Bukan Untuk Di Hukum*, Sinar Grafika, Jakarta, 2015, Hlm. 14.
- Mohammad Atho Mudzhar, Et., Al., Op. Cit., Hlm. 295.
- Adib Bisri, Munawwir A. Fatah, *Kamus Indonesia-Arab Arab-Indonesia Al-Bisri*, Indonesia: Pustaka Progressif, 1999, H. 10
- Kamus Besar Bahasa Indonesia*, Edisi Ketiga, Departemen Pendidikan Nasional, Jakarta: Balai Pustaka, 2005, H. 53
- Leden Marpaung, *Tindak Pidana Terhadap Nyawa Dan Tubuh (Pemberantasan Dan Prevensinya)*, Jakarta: Sinar Grafika, 2005, H. 5
- Wahbah Az Zuhaili, *Fiqh Islam Wa Adillatuhu*, Jilid 7, Jakarta: Gema Insani, 2011, Ibid, H. 664
- Suharto. *Eksplorasi Terhadap Anak Dan Wanita*. Intermedia, Jakarta
- Kitab Undang-Undang Hukum Pidana*, Jakarta: Sinar Grafika, 2013, H. 118
- Maknun, L. I. (2018). Kekerasan Terhadap Anak Oleh Orang Tua Yang Stress. *Jurnal Harkat: Media Komunikasi Gender*, 12(2), 117-124.
- Nancy Rahakbauw, *Faktor-Faktor Anak Diterlantarkan Dan Dampaknya*, Insani, Issn : 977-240-768-500-5, Vol. 3 No. 1 Juni 2016, Hlm. 40.