

Neglect of Children Perspective of Law no. 35 of 2014 and Law No. 17 of 2016

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ABSTRACT

The purpose of this research is to determine the sanctions against perpetrators of child neglect according to Islamic law and Law Number 17 of 2016 concerning Child Protection. The research method for normative juridical research is by examining or analyzing secondary data in the form of secondary legal materials by understanding law as a set of regulations or positive norms in the legal system that regulates the problems in this research. The results of sanctions against perpetrators of child neglect according to law number 35 of 2014 concerning protection are in Law Number 17 of 2016 concerning Child Protection which is regulated in article 76B with sanctions in article 77B.

Keywords: Children, Law, Family, Parents, Constitution.

1. INTRODUCTION

Children are a trust and a gift from God Almighty, which we must always look after because they have inherent honor, dignity and rights as human beings which must be upheld. Children's rights are part of the human rights contained in the 1945 Constitution and the United Nations Convention on the Rights of the Child. In terms of national and state life, children are the future of the nation and the next generation of national ideals, so that every child has the right to survival, growth and development, participation and the right to protection from acts of violence and discrimination as well as civil rights and freedom (Lombu , 2017).

Parents, families and communities are responsible for safeguarding and maintaining these human rights in accordance with the obligations imposed by law. Likewise, in the context of implementing child protection, the state and government are responsible for providing facilities and accessibility for children, especially in ensuring optimal and directed growth and development.

Accountability of parents, families, communities, government and the state is a series of activities carried out continuously to protect children's rights. This series of activities must be sustainable and targeted to ensure children's growth and development, both physically, mentally, spiritually and socially. This action is intended to create the best life for children who are expected to be potential future successors of the nation, strong, possessing nationalism imbued with noble morals and Pancasila values, and with a strong desire to maintain the unity and integrity of the nation and state (Aidil, 2020).



Discussions about children and their protection will never stop throughout the history of life, because children are a generation that is prepared as implementing subjects for sustainable development and in control of the future of a country, including Indonesia. Protection of Indonesian children means protecting the potential of human resources and developing Indonesian people as a whole, towards a just and prosperous society, materially and spiritually based on Pancasila and the 1945 Constitution.

In Indonesia, children experience complex problems. Culturally they are still in the midst of an oppressive situation, the image of ideal children as stated in the Convention on the Rights of the Child is still far from reality, they are still marginalized, exploited, expressed by the environment and culture in which they live; such as in the family, community, formal education at school and other sectors of life. Modernization in this country has not paid proper attention to children's problems, in fact what has happened is that they have become victims of the ongoing modernity (Herlina, 2022).

Poverty, which is often combined with low levels of education, unemployment and mental stress, is generally seen as the dominant factor that drives cases of violence against children. Violence against children is often identified with visible violence, such as physical and sexual violence. However, psychological and social (structural) violence also has negative and permanent impacts on children. The term child abuse or mistreatment of children can range from physical (physical abuse) to sexual (sexual abuse), from psychological (mental abuse) to social (social abuse) which has the dimension of structural violence (Nasir, 2001).

Structural violence is systemic and invisible violence, but which destructively gives rise to poverty, death and extraordinary long-term suffering for children. Structural violence, which is often referred to as system abuse, can take the form of corruption, collusion, nepotism (KKN), depressive control, monopolistic and exploitative economic practices that are detrimental to the state, and in turn create socio-economic conditions that give birth to and nourish the roots of poverty and social violence. towards children. This also creates a form of oppression. Oppression is inhumane, something that denies human dignity (dehumanization). Dehumanization is double, in the sense that it occurs to the majority of the oppressed and also to the minority of the oppressed. Both violate true human nature. The majority of oppressed people become dehumanized because their human rights are insulted, they are made powerless and immersed in a "culture of silence". Meanwhile, the oppressive minority becomes inhumane because it has lied to the nature of its own existence and conscience by imposing oppression on its fellow humans.



Child neglect is part of a form of violence against children, because it is included in social child abuse. Social child abuse includes child neglect and child exploitation. Child neglect is the attitude and behavior of parents who do not give proper attention to the child's growth and development process, for example the child is ostracized, exiled from the family or not given proper education and health.

2. RESEARCH METHODS

Normative juridical research. What is meant by normative juridical research type is studying or analyzing secondary data in the form of secondary legal materials by understanding the law as a set of regulations or positive norms in the legal system that regulates the problems in this research. In this research, the library research or library research method will be used.

3. RESULTS AND DISCUSSION

An Overview of Child Neglect

Children are the forerunners of the young generation who are the successors of the ideals of the nation's struggle, play a strategic role and show special characteristics that guarantee the continued existence of the nation and state in the future. So that every child is responsible as the next generation of the nation, they must be given the widest possible opportunity to grow and develop optimally, both physically, mentally and socially, and need to make efforts to protect and realize children's welfare by providing guarantees for the fulfillment of their rights and treatment without discrimination. .

The rights of children have been regulated and contained in several laws and regulations in force in Indonesia, namely:

- a. Children's Rights in the 1945 Constitution of the Republic of Indonesia

In Article 28B paragraph (2) it is stated that: "Every child has the right to survival, growth and development and the right to protection from violence and discrimination." Based on the contents of this article, it can be interpreted that the position of every child is the same, namely the right to survival, growth and development, and protection from all forms of violence and discrimination.

- b. Children's Rights in Presidential Decree (KEPPRES No. 36 of 1990) concerning Ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child)

All parties, including individuals, parents, social organizations, government and society, recognize children's rights and encourage all efforts to fulfill them (Bapino, 2022). Ten principles regarding children's rights according to the declaration:

1. Every child, without exception, must enjoy all the rights referred to in this declaration without distinction or discrimination.
2. Every child enjoys special protection, provided by law or other equipment with facilities and means so that he can develop physically, mentally, morally, spiritually and socially in a healthy and normal manner.
3. Every child born is required to have a name and national identity.
4. Every child should benefit from social security benefits.
5. Every child with physical and mental disabilities must receive special treatment, education and support according to their conditions.
6. Every child needs full and balanced love and understanding for their personal development.
7. Every child should receive free education based on compulsory education.
8. Every child in any situation must first receive protection and help.
9. Every child must be protected from all forms of neglect, violence and exploitation.
10. Every child must be protected from discriminatory practices based on race, religion and other forms.

c. Children's Rights in Law No. 4 of 1979 concerning Child Welfare (Number, 4 C.E.).

Children's rights are regulated in Chapter II a. Law No. 4 of 1979 concerning Child Welfare which includes:

1. The right to welfare, care, upbringing and guidance.
2. Right to service.
3. Right to preservation and protection.
4. The right to environmental protection.
5. The right to get first aid.
6. The right to receive care.
7. The right to obtain assistance.
8. The right to be provided with services and care.
9. The right to obtain special services.
10. The right to receive assistance and services.

d. Children's Rights in Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection.

Children's rights are regulated in the Child Protection Law, which includes:

- (1) The right to live, grow, develop and participate, as well as receive protection from violence and discrimination.
- (2) The right to a name as personal identity and citizenship status.
- (3) The right to worship according to one's religion.
- (4) The right to obtain health services and social security.
- (5) The right to education and teaching.
- (6) Children who have disabilities also have the right to receive special education, while children who have disabilities also have the right to receive special education.
- (7) The right to express and have one's opinion heard.
- (8) The right to rest and use free time
- (9) Children with disabilities have the right to receive rehabilitation, social assistance and maintenance of social welfare levels.
- (10) Children who are in the care of parents/guardians have the right to receive protection from treatment: 1) discrimination; 2) exploitation, both economic and sexual; 3) neglect; 4) cruelty, violence and abuse; 5) injustice; and 6) other wrongful treatment.
- (11) The right to obtain protection from:
 - 1) Abuse in political activities;
 - 2) Involvement in armed conflict;
 - 3) Involvement in social unrest;
 - 4) Involvement in events containing elements of violence; And
 - 5) Involvement in war.
- (12) The right to obtain freedom in accordance with the law.
- (13) Every child deprived of liberty has the right to:
 - 1) Receive humane treatment and placement separated from adults;
 - 2) Obtaining legal aid or other assistance effectively at every stage of applicable legal action;
 - 3) Defend yourself and obtain justice before an objective and impartial juvenile court in a trial closed to the public.
- (14) Every child who is a victim or perpetrator of sexual violence or who is in conflict with the law has the right to confidentiality.



(15) Every child who is a victim or perpetrator of a crime has the right to receive legal aid and other assistance.

Criminal Sanctions for Child Neglect

In Law no. 11 of 2012 concerning the Criminal Justice System. The child explains that the criminal sanctions that can be imposed on children are crimes and actions. Children can only be sentenced to crimes or actions based on the provisions in Law no. 11 of 2012 concerning the Criminal Justice System. The severity of the act, the child's personal condition, or the circumstances at the time the act was committed or what occurred later can be used as a basis for the judge's consideration of not imposing a crime or imposing action by considering aspects of justice and humanity (Mamengko, 2019).

a. Criminal Sanctions

Criminal sanctions that can be imposed on children are divided into 2 (two), (Hutahaeon, 2013), namely:

(1) Basic Punishment, the main punishment for children consists of:

- 1) Warning Crime.
- 2) Punishment with conditions, namely coaching outside the institution, community service, or supervision.
- 3) Job training.
- 4) Construction in the board.
- 5) Prison.

(2) Additional punishment, additional punishment for children consists of:

- 1) Confiscation of profits obtained from criminal acts.
- 2) Fulfillment of customary obligations.

b. Action Sanctions

Sanctions that can be imposed on children are:

- (1) Return to parent/guardian;
- (2) Surrender to someone;
- (3) Treatment in a mental hospital;
- (4) Treatment at LPKS;
- (5) Obligation to attend formal education and/or training provided by the government or private bodies;
- (6) Revocation of driving license; and/or
- (7) Repairs resulting from criminal acts.



Legal Protection for Abandoned Children

Child protection 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 receive protection from violence and discrimination (Utami, 2023).

A positive legal perspective views that children must actually receive legal protection so that their growth and development can go well in the future. If a child is neglected by his parents, the child has the right to receive legal protection, because legally the child's rights and obligations are not fulfilled by parents, family or the community around him, so the child must receive legal protection (Said, 2018).

Law no. 39 of 1999 concerning Human Rights, states that every child has the right to protection by parents, family, society and the state (Article 52 paragraph (1)). According to Law no. 35 of 2014 concerning Child Protection Article 1 paragraph (2) which is meant by child protection is all activities that guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with their dignity, humanity and receive protection from violence and discrimination. In Law no. 11 of 2012. Article 2 letter a, states that child protection includes direct and indirect activities involving actions that endanger children physically and/or psychologically which can be clearly understood in the description of the concept of legal protection for children. Based on the explanation above, legal protection is the act of protecting children who are weak and not yet strong physically, mentally, socially, economically and politically, to obtain social justice which is not only adaptive and flexible but also predictive and anticipatory based on applicable law (Gultom , 2008).

One of the special protections provided by the government and other institutions is to provide protection for children who are victims of abuse and neglect, the form of protection is explained in article 71 of Law no. 35 of 2014 that: Special protection for children victims of abuse and neglect as intended in article 59 is carried out through supervision, prevention, care and rehabilitation by the government and the community. Every person is prohibited from placing, allowing, involving, ordering to involve children in situations of abuse and neglect as intended in paragraph (1).

It is clear that abandoned children receive special legal protection from the government, if we refer to article 71 of Law no. 35 of 2014 concerning legal protection for abandoned children, one form of protection is that abandoned children must receive supervision from the government so that all children's rights and obligations are fulfilled. This explanation is regulated in Law no. 35 of 2014:



- a. That the Unitary State of the Republic of Indonesia guarantees the welfare of every citizen, including the protection of children's rights which are human rights;
- b. That every child has the right to survival, growth and development and is entitled to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia;
- c. That children as buds, potential, and the young generation who will continue the ideals of the nation's struggle have a strategic role, characteristics and special characteristics so that they must be protected from all forms of inhumane treatment that result in violations of human rights.

After receiving supervision and prevention, neglected children must receive care and rehabilitation from the government. In article 55 of Law no. 35 of 2014 concerning the care of abandoned children explains the obligations for the care and treatment of abandoned children, namely:

- a. The government is obliged to organize the maintenance and care of abandoned children, both in institutions and outside institutions.
- b. The maintenance as intended in paragraph (1) can be carried out by community institutions.
- c. To organize the maintenance and care of abandoned children, government institutions and community institutions, as intended in paragraph (2), can collaborate with various related parties.
- d. In terms of carrying out maintenance and upkeep as intended in paragraph (3), supervision is carried out by the Minister of Social Affairs.

Not only does the government have an obligation to provide care for abandoned children, in paragraph (1) what is meant by the phrase within the institution is through the system of government institutions and private institutions, while the phrase outside the institution is the system, family/individual care. So the problem of protecting and caring for children, especially neglected children, is not solely the responsibility of the state and government, but our collective responsibility. Article 20 of Law Number 35 of 2014 concerning Child Protection stipulates that: "The state, government, community, family and parents are obliged and responsible for implementing child protection."

Basically, parents are the first environment for children to receive education. The education a child receives in a family environment is very important for the child's future, because it will determine the nature and character of the child in the future. Parental involvement in the future. Parental awareness of education is very important, this is proven by the many positive



impacts on children. It is in the family that children are prepared to build knowledge about development before entering other levels of development in the world such as the world of adults, language, customs and culture. So this is the basis for the government to provide special legal protection to children if there are children who are abandoned by their parents.

Article 56 of Law Number 35 of 2014 concerning Child Protection explains the efforts that must be made by the government in providing care and care for neglected children, namely:

a. The Government and Regional Governments in carrying out maintenance and care are obliged to try and help children, so that children can:

1. Participate;
2. Free to express opinions and think according to one's conscience and religion;
3. Free to receive verbal or written information according to the child's age and development stages;
4. Freedom of association and assembly;
5. Freedom to rest, play, recreate, be creative and create arts and culture; And
6. Obtain play facilities that meet health and safety requirements.

b. Efforts as referred to in paragraph (1) are developed and adapted to the child's age, the child's level of ability, and the environment so as not to hinder or disrupt the child's development.

Criminal Sanctions for Child Neglect in Law Number 17 of 2016

Based on the 1945 Constitution in CHAPTER XA Article 28A, namely: "every person has the right to live and the right to defend his life and living". And in Article 28B paragraph 2, namely: "every child has the right to survival, growth and development and has the right to protection from violence and discrimination". 51 And Law Number 39 of 1999 concerning Human Rights also includes children's rights, but in Implementation of the obligations and responsibilities of parents, families, communities, government and the State still requires one more law as a basic legal basis to provide protection for children (Kleden, 2007).

The legal basis is Law Number 17 of 2016 in conjunction with Law Number 35 of 2014 concerning Child Protection, which regulates sanctions for perpetrators of violations of Law no. 17 of 2016 in conjunction with Law Number 35 of 2014 concerning Child Protection is regulated in CHAPTER XII concerning criminal provisions, which contains 13 articles 22 paragraphs, starting from articles 77-90 (Haryanto et al., 2013).

In cases of neglect of children where the child's rights to grow and develop naturally, as regulated in the Child Protection Law, are not fulfilled due to negligence, lack of understanding of



parents, or on purpose, explained in article 76B: "everyone is prohibited from placing, allowing, involving, ordering to involve children in situations of abuse and neglect"

The sanctions are clearly regulated in article 77B, namely: "any person who violates the provisions as intended in Article 76B shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of IDR 100,000,000.00 (one hundred million rupiah)".

Based on the law above, the criminal sanctions for perpetrators of child neglect are explained as stated in Law Number 17 of 2016 in conjunction with Law Number 35 of 2014 concerning child protection. If it is not enforced, it is a denial of the law as a norm or general rule, the aim of which is to guarantee human benefit (Malensang, 2017).

4. CONCLUSION

The form of legal protection for neglected children is in the form of providing basic needs in the form of clothing, food, housing, education, as well as health and morals which must be re-developed. In this case, legal protection is not only intended for the government but also for the community, local social institutions, families and individuals who can provide a decent life for abandoned children. Criminal liability for parents who abandon their children is contained in article 76B of Law no. 35 of 2014 concerning Child Protection as the sanctions are contained in article 77B and also contained in articles 304 and 305 of the Criminal Code. Sanctions for perpetrators of child neglect according to law number 35 of 2014 concerning protection, namely in Law Number 17 of 2016 concerning Child Protection which is regulated in article 76B with sanctions in article 77B.

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