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# LEGAL PROTECTION FOR ABANDONED CHILDREN

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## ABSTRACT

Every child has the right to survive, grow and develop and is entitled to protection from various forms of violence, both physical and non-physical. Forms of violence and discrimination have often occurred in society. This raises concern because it is the parents or the child's relatives who carry out the neglect of the child because his biological parents have left him. In terms of children's rights are part of human rights that must be guaranteed, protected and fulfilled by parents, family, community, state and government. The purpose of this study is to find out how legal protection is for neglected children and whether parents can be subject to sanctions. While the method used in this research is normative law research or library research. The results of the study show that child neglect is a crime and can be subject to criminal sanctions. Meanwhile, the form of legal protection for neglected children is through the formation of laws and regulations, and through law enforcement efforts. Therefore in accordance with Article 26 of Law Number 23 of 2002 as amended by Law Number 35 of 2014 that children must be protected and educated without violence. It is even explained that it is the obligation of parents to look after their children and their rights as children.

**Keywords:** *Legal Protection, Abandoned Children, Parents.*

## 1. INTRODUCTION

Children are the pillars of hope for the nation, state, community or family, because of the condition of their children as children, special treatment is needed so that they can grow and develop properly both physically, mentally and spiritually [1]. Children as the younger generation are one of the human resources who are potential and continue the ideals of the nation's struggle in the future which have a strategic role and have special characteristics and characteristics, require guidance and protection in order to ensure growth and development of physical, mental and social balance. Actually concerning the existence of children in the process of growth and development has become a basic right that every child must have. And this existence is naturally the nature and responsibility of every parent or family. However, when looking at the reality of social life in Indonesian society, there are still cases of intentional neglect of children either for various reasons or for other reasons that are not acceptable to common sense, such as leaving the child in a place where there is no guilt or guilt. In this context, legal protection for children has been explicitly regulated both nationally

and internationally. In international instruments the protection of children's rights is mainly regulated in the 1989 Convention on the Rights of the Child. This agreement regulates various things that must be done by each country so that every child can grow up healthy, go to school, be protected, be heard opinion, and be treated fairly. In the national context, the contents of the Convention on the Rights of the Child are in line with Article 28 B of the 1945 Constitution of the Republic of Indonesia which states that every child has the right to survival, growth and development, and the right to protection against violence and harassment, discrimination. In Indonesia itself, children are classified as a vulnerable group. This is stated in the details of Article 5 paragraph (3) of the Law on Human Rights which states that vulnerable groups include the elderly, children, the poor, pregnant women and people with disabilities[2]. This is not much different from what is stated in the Convention on the Rights of the Child, because children are not yet mature physically and mentally so they need special support and protection, including adequate legal protection, before and after birth [3].

Even though the protection of children's rights has been regulated by various legal instruments, it is not directly proportional to the reality or reality that occurs in society. There are still many children who are less fortunate in realizing their rights, including the right to life, growth and development, protection from violence and discrimination, including neglect. Based on the records issued by the Child Protection Commission (KPAI) in 2021 there were 2,982 cases of violations of children's rights [4]. This figure is very large and really should be a concern for the state, in this case the government, so that legal protection for children must become an urgent priority agenda to be realized in line with law enforcement.

According to Barda Nawawi Arief stated that legal protection for children can be interpreted as an effort to protect the law against the basic rights and freedoms of children (fundamental rights and freedom of children) as well as various interests related to child welfare [5]. According to Barda Nawawi, legal protection for children is quite extensive. Various international documents and meetings show that the need for protection of children can cover several aspects, namely: a) protection of human rights and child violence; b) child protection in court; c) protection of children's welfare (in the family, educational and social environment; d) protection of children in the event of arrest and deprivation of liberty; e) protection of children from all forms of exploitation (slavery, child trafficking, prostitution, pornography, etc.; f) protection of street children; g) protecting children from the consequences of war/armed conflict; h) protection of children from violence. Meanwhile, according to Arif Gosita in Said (2018) that child protection is an effort to protect children from the implementation of their rights and obligations [6].

Child abandonment is a failure and loss of basic humanity. If this is identified, there are several problem points that must be the focus of handling related to neglect for children, including: weak law enforcement in protecting children's rights related to social politics and welfare politics that apply, then the application or implementation of laws on protection is not optimal. children for parents who have abandoned their children and also not maximally applying the law on the elimination of domestic violence (KDRT) for parents who commit violence against children and the low legal awareness of parents in providing protection for their children child.

## 2. METHOD

The type of research used in this research is normative legal research or library research by examining library materials or secondary data [7]. Bahder Johan Nasution stated that the main characteristic of normative legal research in conducting

legal studies is that the main source is legal material, not data or social facts, because in normative legal research, what is studied is legal material that contains normative rules [8]. So the normative juridical method will be used if what is to be studied is the juridical aspect and simultaneously the value content of a rule of law [9]. Normative legal research or library law research includes: 1) research on legal principles; 2) research on legal systematics; 3) research on the level of vertical and horizontal synchronization; 4) legal comparisons; 5) legal history [10]. This type of normative legal research examines the applicable positive legal norms in the form of laws and regulations relating to the application of the law of neglect of children by parents according to Indonesian positive law [11]. In this type of legal research, law is often conceptualized according to what is written in the law as rules or norms which are norms of human behavior that are considered appropriate [12].

## 3. RESULTS AND DISCUSSION

Child protection as formulated in Article 1 number 2 in the Law concerning Amendments to Law Number 23 of 2002 Concerning 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 the dignity of humanity, and receive protection from violence and discrimination. Law on Amendment to Law Number 23 of 2002 concerning Child Protection, Law Number 35 of 2014 Article 1 number 1 A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Because legal protection is the right of every person given by the state since he was still in the womb for the sake of realizing justice in the life of society, nation and state. Regarding legal protection related to Legislation which essentially provides legal protection for children, are as follows:

1. The 1945 Constitution of the Republic of Indonesia
2. Law No. 23 of 2002 concerning Child Protection.
3. Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.
4. Law No. 4 of 1979. Law on Child Welfare.
5. Law No. 23 of 2004, Law on the Elimination of Domestic Violence.
6. Law No. 11 of 2012, Law on Juvenile Justice System.
7. Law no. 39 of 1999 concerning Human Rights.

If you look at some of the statutory instruments mentioned above, then actually the issue of neglect of children has space that can be controlled by the state or government so that incidents of child neglect are

unlikely to occur. This must be seen from various dimensions of the causes of child neglect. But in this research according to this type of research, what is being questioned is how every parent must have absolute obedience to positive legal norms because this concerns the basic principles of humanity because it involves their own flesh and blood. Therefore, when analyzed using the analysis tool/instrument of legal protection theory from Fitzgerald, that children's rights (abandoned) are human rights so that every child without discrimination has the right to get legal protection for all his rights, and all parties without exception must respect, uphold and protect children's rights including the right not to be neglected [13].

Abandonment of children by parents is part of the violence experienced by children. Therefore, the need for the state to be present through laws that must regulate the security and protection of the interests of every person/citizen, where children who are abandoned by their parents are the next generation of the nation. According to Law Number 23 of 2004 Article 9 stipulates that a) Everyone may not abandon his family members, even if he is bound by law or by agreement or contract to maintain the life, maintenance or support of that person; b) Abandonment as referred to in article (1) also applies to anyone who, by canceling and/or preventing decent work at home or outside, causes economic dependence in such a way that the victim is under the control of that person. Forms of child neglect can be classified as follows:

- a. Physical neglect: A child's needs, such as food, clothing or shelter, whose rights cannot be met.
- b. Educational neglect: parents do not educate children, while children must receive proper education.
- c. Emotional abuse: someone who is ignored, bullied, humiliated or isolated. So that the child cannot express or express his feelings.
- d. Medical neglect: a child who does not receive medical care. Like high fever or toothache, she needs to check her child and needs medical attention [14].

The obligations of parents' children in caring for children are clearly stated in Law Number 23 of 2002 concerning Child Protection jo. The Law of the Republic of Indonesia Number 35 of 2014 explains that:

1. Parents are obligated and responsible :
  - a. care, upbringing, education and protection of children;
  - b. develop children according to their abilities and interests;
  - c. prevent child marriages.

2. If the parents are not present or their whereabouts are unknown, or for some reason they cannot fulfill their duties and responsibilities specified in paragraph (1), then the data will be submitted to the family being cared for in accordance with legal regulations. Article 45 of Law Number 23 of 2002 concerning Child Protection also explains that: 1) Parents and families are responsible for maintaining the child's health and caring for the child from birth 2) If parents and families cannot fulfill the obligations specified in paragraph (1), the government is obliged to fulfill it 3) The obligation as referred to in paragraph (2) is carried out in accordance with the applicable laws and regulations.

Child protection is also regulated in the Criminal Code (KUHP) where there are several articles that are directly and indirectly related to children namely Article 278, Article 283, Article 287, Article 290, Article 301, Article 305, Article 308, Article 341, and Article 365. The several provisions of the articles in the Criminal Code show that children with all their rights are actually guaranteed by law. In other words, parents who deliberately abandon children can be subject to criminal sanctions. The problem is that until now there are still cases of child neglect in society. This shows that information regarding neglect of children by parents will be charged with criminal law, it seems that it is still lacking and it is necessary to continuously increase the frequency of outreach to the community on a massive basis.

Regarding child neglect, where the child's right to grow and develop naturally and has been neglected by parents irresponsibly, it has also been clearly regulated in Articles 4 to 18 of Law no. 35 of 2014 which is not fulfilled due to parental negligence, ignorance or intention, then it is clearly regulated in Article 77 (b), punishable by imprisonment for a maximum of 5 years and/or a fine of up to Rp. 100,000,000.00 (one hundred million rupiahs) ). Article 77 states that every person deliberately takes action:

- a. Discrimination against children that results in children experiencing both material and moral losses that weakens their social functions; or
- b. Abandonment of a child resulting in a child experiencing physical, mental or social pain or suffering;
- c. Shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of up to Rp. 100,000,000.00 (one hundred million rupiah).

In cases of neglected children, we will find malnutrition without any organic basis, lack of fluids or dehydration, injuries or diseases that are left untreated, and do not receive basic immunizations. The definition of child neglect is the attitude and treatment of parents

who do not pay proper attention to the child's development process, for example being ostracized, alienated from the family or not given proper education and health [15]. When compared to children who are victims of violence, children who are victims of neglect receive less attention from the community because the suffering experienced by victims is normal and it seems that they have not been physically harmed such as abuse, torture or beatings and other things that look tragic because some victims have died. . In terms of child neglect is a form of irresponsible killing of rights and has clearly taken away and buried their future. This is in line with the opinion of Barda Nawawi Arief that legal protection for children can be interpreted as an effort to protect the law against various fundamental rights and freedoms of children as well as various interests related to child welfare.

If the problem of child abandonment is studied according to Barda Nawai Arief's view with his theory of Crime Prevention and Control, then this is related to implementation issues (judicial/judicial efforts/policies), namely legal protection for abandoned children through law enforcement against parents. Implementation efforts This could have started with the police, then the attorney general as the public prosecutor, and finally the court judge. So basically the application of the law meant here is a legal process that must be taken in which law enforcement components such as police, prosecutors and judges play a role in imposing criminal sanctions on perpetrators, in this case parents who abandon their children.

#### 4. CONCLUSION

Based on the results of the research and discussion, regarding legal protection for children who have been abandoned by their parents, it can be concluded that protection for children is basically the responsibility of parents, society, the state/government. Meanwhile, forms of legal protection for children's rights in general and children neglected by their parents is by establishing laws and regulations which in principle guarantee legal protection for children, and the state/government is serious about implementing regulations-there is also criminal responsibility because it is an individual's responsibility. So whoever is in prison or a fine. Related regulations are the Criminal Code (JUHP), Law No. 4 of 1979 concerning Child Protection, Law No. 39 of 1999 concerning Human Rights (HAM), Law No. 23 of 2004 concerning the Elimination of Domestic Violence, Law No. 35 2014 concerning amendments to Law No. 23 concerning Child Protection.

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