

Legal Protection of Children's Survival Rights in the Perspective of the Principles of Justice

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Abstract

Every child has the right to protection by parents, family, society, and the state, and the right to survival is the responsibility and obligation of parents, government and the state, in maintaining and non-discrimination of children's rights to life. descriptive analytical research, a research that describes and describes, the facts as an object or an event that occurs in connection with the legal protection of children's survival. The research was conducted using a normative juridical method. The right to life is a human right, an absolute right that is inherent in everyone and is included in the category of non-derogable rights, namely rights that cannot be reduced under any circumstances

Keywords: Legal protection, Right to Life, Son, Justice.

Introduction

The beginning of human life as a legal subject begins with its status as a child born through the womb of a woman, who uses her reproductive rights. Everyone has the right to live and has the right to defend his life and existence. Life is a gift and entrusted by God Almighty, which must be guarded and respected from birth (Hayati & Yanto, 2020; Yanto et al., 2020). Everyone, including children, is recognized as a complete human person, who has the right to receive equal treatment and protection in accordance with human dignity before the law (Fatimah, 2021).

Children are a mandate from God Almighty who must be protected in order to achieve a period of growth and development to become an adult human being as a continuation of the nation's future (Said, 2018). Children as creations of God Almighty, inherent in themselves the dignity and worth of the whole human being (Lubis & Siregar, 2021). In this case, the law is needed by humans to realize their rights as members of the community of a nation. The essence of law is to protect and safeguard human beings in maintaining their dignity as free beings.

Every child has the right to survival, growth and development and is entitled to protection from violence and discrimination (UU No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection., n.d.) Parents and/or families are responsible for child survival by caring for and treating it through various efforts. Child health efforts are carried out through fetal health services in the womb; newborn health; infant, toddler and preschool health; health of school-age children and adolescents; and health protection (Regulation of the Minister of Health No. 25 of 2014. Child Health Efforts, n.d.) Child health protection aims to ensure the fulfillment of children's rights so that they can live, grow and develop in accordance with human dignity.

This research was motivated by the existence of several problems and cases regarding abortion, which were carried out by abortion syndicates, which had been disclosed by the Malang City Police. This syndicate has been in action since the end of 2018, the target is girls who want to have an abortion resulting from an extramarital relationship (Aminudin, 2019). It's sad that a 4-month-old baby is fed rice, the pediatrician is angry. Children of that age should only drink milk, these are fed whole rice. At that age, they can't chew yet, their stomach isn't ready to digest

something solid. The baby was taken to the emergency room with a distended stomach, tightness, cold feet, pulse not palpable, and weak crying, the results of the abdominal photos were plain, the stomach was almost bursting, the condition of the stomach was bigger than the heart, and the feces were collected in the intestines, and could not come out, the longer the condition decreases, the SpO₂ is only 75, the pulse is 44, the breath is intermittent.

A device is installed after the OGT, the goal is for the liquid or food to come out through the tube, 2 hours later it turns out that the baby has died. Furthermore, in the case of discarded babies, this condition is a form of discrimination against the survival of babies/children, including the case of discarding babies resulting from a relationship with their lover, WF is threatened with 15 years in prison, the perpetrator WF (24) is known to be the father of an unfortunate baby who is also DR's lover, the biological mother of the poor baby. There was also a case of early marriage, in April (2018), the public was shocked by a pair of underage children who were passionate about getting married. They are a 'young' couple from Bantaeng, South Sulawesi. The age of the girl is 14 years, while the boy is 15 years. Both of them are still in middle school. The teenage couple's marriage application was rejected by the Religious Affairs Office of Bantaeng District. This incident is only one of the many child marriages that have taken place in Indonesia. There is sexual abuse of children by close people who are family members, and there are many cases of abuse and violence against children. Children's rights to survival are neglected, even victims of discrimination and violence. The rights that are not fulfilled include the fundamental rights, namely the right to life, the right to survive, the right to grow and develop, and the right to get protection from both their parents, society and the state. This research was conducted with the intention of examining that children get legal protection in an equitable manner, so that their right to survival is fulfilled.

Methods

The form of research is analytical descriptive, with a normative juridical approach, namely legal research using a theoretical approach, in the form of legal protection theory, and justice theory, as well as analytical methods which are included in dogmatic legal disciplines. The research is focused on examining the principles or norms in positive law according to literature studies. The data generated or obtained from literature studies and field studies were analyzed using qualitative juridical methods, namely analyzing the data without using mathematical calculation formulas or statistics. Analysis is carried out to reveal the existing reality. The research results obtained are presented in the form of a description and explanation of the problems discussed.

Result And Discussion

1. Legal Protection Theory

Preamble to the 4th (fourth) paragraph of the 1945 Constitution: "... The state protects the entire Indonesian nation and the entire homeland of Indonesia. The fourth paragraph of the Preamble to the 1945 Constitution shows that every protection has a meaning aimed at something that needs to be protected, because and because of a position that tends to be unfavorable. That is, protection and protection is something that is more to the point of emphasis for objects that are unable to deal with pressure from other things or parties. And protect the entire nation, including the legal protection of the right to survival of children (Van Bueren, 2021; Lubis et al., 2020). The principle of legal protection in Indonesia is the principle of recognizing and protecting human dignity which is based on Pancasila, and the principle of a legal state based on Pancasila. Recognition and protection of human dignity and worth is said to originate from Pancasila, because recognition and protection of it are intrinsically attached to Pancasila, and should give color and style as well as the contents of a legal state based on Pancasila (Hadjon, 1987).

The definition of legal protection according to Satjipto Rahardjo: "Legal protection is to provide protection for human rights that are harmed by other people, and that protection is given to the community so that they can enjoy all the rights granted by law" (Rahardjo, 1983). According to Philipus M. Hadjon: Legal protection is protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of arbitrariness (Hadjon, 1987). The theory of legal protection is a theory that examines and analyzes the form or form or purpose of protection, protected legal subjects and objects of protection provided by law to their subjects (Fatimah, 2021).

In the Child Protection Act, the goal of protecting children is to ensure the fulfillment (Salim, HS and E.S Nurbani, 2016; Lubis et al., 2020) of children's rights so that they can live, grow, develop, and participate optimally in accordance with human dignity; and 2) receive protection from violence and discrimination, for the sake of realizing Indonesian children who are of good quality, have noble character, and are prosperous. The principle of legal protection for the Indonesian people is rooted in Pancasila and the concept of a rule of law, both of these sources prioritize recognition and respect for human dignity and worth (Fatimah, 2021). Philosophically, the existence of Law Number 23 of 2002 concerning Child Protection is to protect children. Children need to get protection, because children have not been able to take actions to fulfill and protect their rights, and children are vulnerable to becoming victims, therefore parents, families, communities and the state are obliged to carry out their duties to protect children's rights as in Article 52 paragraph (1) In the Law on Human Rights, every child has the right to protection by parents, family, society and the state. And Article 58 paragraph (1) of the Human Rights Law states that every child has the right to receive legal protection from all forms of physical or mental violence, neglect, ill-treatment and sexual abuse while in the care of their parents or guardians, or other parties or those who responsible for the upbringing of the child (Law No. 39 of 1999 concerning Human Rights, n.d.)

2. Justice Theory

Fair can be likened to a balanced form of decision, but forming a balanced decision is a difficult matter to do. Thus if no decision appears, then justice cannot be realized. In essence, concretely, justice is a human attitude to provide balance for other humans in living life as God's creation. In principle, humans are born in this world given equal rights by God to live and live their lives. Such a thing is a form of justice from God (Febriansyah, 2016). Justice is one of the purposes of law besides legal certainty and legal benefits. According to Gustav Radbruch, the three basic values of law are legal objectives, certainty, benefit and justice (Sova, 2013; Sanberg, 2018). Basically justice is an absolute human right given by God Almighty to achieve a decent life as a human being. The question arises, if justice cannot be realized in society, then of course the fulfillment of a decent life will never be obtained by humans in social life. The essence of justice itself arises because of the existence of human life that is interdependent with other human beings (Cook, 2020; Kilkelly, 2020). The justice that society wants is the embodiment of the concept of a rule of law that protects and protects all the rights and obligations of its citizens in the life of the nation and state (Febriansyah, 2016).

The characteristic of Pancasila justice is to humanize humans in a fair and civilized manner according to their human rights. Human rights have been inherent since humans were in the womb. Just and civilized humanity, shows that justice gives what is human rights. Human dignity must be recognized because humans as social beings have inherent human rights from birth to death (Bertheolet, 2020; Popvich et al., 2019). These human rights must be respected by other humans as social beings, fair treatment of fellow human beings. Thus the Pancasila principle of justice provides justice for all citizens without exception in accordance with their rights (Febriansyah, 2016)

3. Children's Rights

The position of children as the younger generation who will continue the noble ideals of the nation, as future leaders of the nation, and as a source of hope for the previous generation, needs to get the widest possible opportunity to grow and develop properly spiritually, physically and social spiritually (Palacios et al., 2019). Child protection is the effort and activity of all levels of society in various positions and roles, who are fully aware of the importance of children for the nation and the nation in the future. If they have matured their physical and mental and social growth, then it is time to replace the generation (Maidin, 2014). Indonesia guarantees welfare for every citizen, one of which is providing protection for children's rights which is one of human rights (Fitriani, 2016).

Legal protection for children can be interpreted as an effort to protect the law against various freedoms and human rights of children (fundamental rights and freedoms of children) as well as various interests related to children's welfare (Sidabutar, 2018). The purpose of protection is to guarantee the fulfillment of these children rights so that they can live, grow and develop, and participate optimally in accordance with human dignity and dignity, as well as receive protection from violence and discrimination, for the realization of quality, noble and prosperous Indonesian children. (Law No. 35 of 2014 concerning Amendments to the Law, Law Number 23 of 2002 concerning Child Protection., n.d.). Fundamental rights of children include survival rights, development rights, protection rights, and participation rights (Sochmawardiah, 2013).

Thus the right to survival includes the right to life, the right to defend life, and the right to improve their standard of living, including the right to live in peace, security, peace, happiness, physical and spiritual prosperity, as well as the right to a good and healthy environment as stated in Article 9 Law no. 39 of 1999.(UU No. 39 of 1999 concerning Human Rights, n.d.), constitutionally the right to life as a human right, namely the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of a law that applies retroactively are human rights that cannot be reduced under any circumstances (Article 28I of the 1945 Constitution). (1945 Constitution, n.d.). The survival of children can be realized, through legal marriages to their parents Article 28B paragraph (1) of the 1945 Constitution, and every child has the right to survival, growth and development and is entitled to protection from violence and discrimination (Article 28B paragraph (2) of the 1945 Constitution).

From the cases above, the victim is a child who does not get justice for his main rights, the right to live and continue his life, therefore under any circumstances a baby in the womb or a child must still receive legal protection, both in conditions of not dealing with legal issues, let alone in dealing with with legal problems (Pribadi, 2018), parents are also responsible for the actions committed by their children, and parents have an obligation to continue to supervise and pay attention to the child's survival, therefore, the right to life of children and the right to survival of children can be realized, but in reality there are still it appears that children, including babies in the womb, have not received the right to an equitable survival.

The principles underlying children's rights, including the principle of non-discrimination, all recognized rights must be applied to every child without distinction of ethnicity, skin color, religion, social status, etc., are protected from all forms of discrimination Article 2 paragraph (1) and paragraph (2) KHA (Convention on the Rights of the Child, n.d.). To realize the right to survival of children, it is carried out through legal protection efforts. Legal protection for children can be seen clearly in the statement in paragraph IV of the Preamble of the 1945 Constitution, that the State of Indonesia is based on Pancasila. The first precept is Godhead God Almighty, and

the second precept, Just and Civilized Humanity. The statement in the preamble to the Constitution emphasizes the existence of constitutional protection for children who are still in the womb who receive life from God the Creator, and therefore humans according to their nature are obliged to protect, nurturing, raising and maintaining its survival (Fanggi, 2012).

Conclusion

Every child has the right to protection by parents, family, society and the State, and the child's right to survival is the responsibility and obligation of parents, the government and the state, in maintaining and non-discriminating against the child's right to life. The embodiment of the right to just survival of children is carried out through legal marriage according to state law (Article 28B paragraph (1) of the 1945 Constitution). God gives the gift of life itself. The right to life is an absolute right of every person and is included in the category of non-derogable rights, namely rights that cannot be reduced. The affirmation of the right to life as a right that is absolute and cannot be reduced under any circumstances has been guaranteed in Article 28I paragraph (1) of the 1945 Constitution.

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