

Principles of Child Protection in the National Criminal Code: Law Number 1 of 2023

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Abstract

The protection of children is a state responsibility based on the principles of the Convention on the Rights of the Child (CRC). As a member state, Indonesia ratified the Convention through Presidential Decree No. 36 of 1990. This study aims to analyze the implementation of child protection principles within the National Penal Code (Law No. 1 of 2023), referencing the four main pillars of the CRC: Non-Discrimination, the Best Interests of the Child, the Right to Survival and Development, and Child Participation. In this context, the author examines the application of these principles within various provisions of the Penal Code relevant to child protection. The analysis is conducted by categorizing these provisions based on the four main pillars of the CRC. This approach seeks to assess the extent to which the Penal Code aligns with international child protection standards while identifying potential inconsistencies that could harm children as legal subjects. By categorizing these provisions, the study aims to provide a deeper understanding of the integration of CRC principles into national criminal law and their implications for child protection in Indonesia. The results indicate that these principles have been incorporated into the Penal Code through specific provisions, particularly those concerning child protection. This reflects a national commitment to safeguarding children as a vulnerable group and ensuring their rights are fulfilled in accordance with international standards.

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1. INTRODUCTION

Children are a trust and gift from God in whom dignity is inherent as a human being whose rights must be upheld and protected without exception. (New Eleanora (2017)) It is said to be inherent because these rights are owned by anyone as a result of the nature of their birth as a human, not because they were given by any power organization. (Rizky Ariestandi (2013))

In essence, children cannot protect themselves from various kinds of actions that cause mental, physical and social harm in various areas of life and livelihood (Yulianus Pabassing (2021)), therefore children are part of a vulnerable group who have a high risk of becoming victims of crime. (See Explanation of Article 54, Law Number 39 of 1999 concerning Human Rights) The position of those who are considered weak socially, physically and psychologically explains that criminals tend to exploit victims' shortcomings to gain advantage or minimize the risk of resistance. (Ananda et al. (2023)) in a victimology perspective suggests that children as a vulnerable group are often unable to provide physical or verbal resistance to perpetrators of sexual crimes. This condition is exacerbated by children's lack of understanding of their rights and their limitations in accessing legal protection mechanisms. Another factor that strengthens this vulnerability is a lack of

structural protection, such as weaknesses in law enforcement and a lack of rehabilitation support for victims.

Crimes against children include various forms of violence, such as physical, psychological, sexual violence, and even economic exploitation. This condition not only threatens the physical integrity of the victim but also has a significant impact on their psychological and social condition. Children who are victims of sexual exploitation often experience severe stress which affects their mental development in the future. (Sari (2022)), This pressure can take the form of deep trauma that requires special treatment, such as psychological and social rehabilitation. Criminal law policy in Indonesia must be responsive in responding to this by focusing on the formation of legal instruments that not only provide a deterrent effect to perpetrators, but also guarantee justice for victims. (Yulia (2012)) In this context, criminal law must act as a tool to uphold justice as well as a tool for recovery for victims that is oriented towards victim protection.

"Protecting children is protecting humans and building humans, as fully as possible. The essence of National Development is the complete development of virtuous Indonesian people. Ignoring child protection issues means not strengthening national development. The consequences of not protecting children will have an impact on social problems that can disrupt law enforcement, order, security and national development. So, this means that child protection must be sought if we seek national development." (Thalib & Qahar (2021))

Adequate legal protection is a must to guarantee their rights, as well as encourage reporting of cases of violence so that perpetrators can be punished according to applicable law. Legal protection of children is not only the state's obligation, but is also an integral part of efforts to uphold human rights.

In order to realize the fulfillment of children's rights and protection, every country recognizes the need for encouragement or support in the form of binding policies so that every country is determined to make it happen. From this policy, children's rights are regulated and agreed upon through the regulations that apply in each country. This policy is the Convention on the Rights of the Child, a binding agreement between countries to implement/regulate children's rights.

Within the framework of international law, children's rights to receive protection are regulated in the Convention on the Rights of the Child (KHA), which Indonesia has ratified through Presidential Decree No. 36 of 1990. This instrument emphasizes that the state has the responsibility to prevent violence, protect victims, and provide access to justice and recovery for children who are both victims and perpetrators of crimes that are oriented towards child protection. The importance of protecting children is because the impact is not only individual, but also affects their families and communities. Based on this background, the problem formulation in this research is, the implementation of child protection principles in law number 1 of 2023 concerning the Criminal Code.

2. RESEARCH METHOD

The research is normative legal research, namely establishing law as a norm system building. The norm system in question is about principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). Peter Mahmud Marzuki stated that normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal problems faced. Normative legal research examines legal rules or regulations as a building system related to a legal event.

In this writing, the researcher used a statutory approach (the statute approach) and a conceptual approach (conceptual approach). The legislative approach is research on legal products. This approach is taken to examine laws or regulations related to researchers' research. Meanwhile, the conceptual approach is research into legal concepts, such as legal

sources, legal functions, legal institutions, and so on. This approach departs from the views and doctrines that develop in legal science. This approach is important because understanding the views/doctrine developing in legal science can be a basis for building legal arguments when resolving the legal issues faced. Views/doctrine will clarify ideas by providing legal definitions, legal concepts, and principles that are relevant to the problem.

The legal materials used in this research are primary, secondary and tertiary legal materials. Primary legal materials are legal materials that are authoritative. Where in this case, primary legal materials consist of statutory regulations, official records, or minutes in making legislative regulations. (Soekanto, (1984)) Next, researchers also use secondary legal materials. Secondary legal materials, namely legal materials that provide explanations of primary legal materials, namely: books related to researchers' research and research results as well as scientific papers related to researchers' research. Tertiary legal materials are legal materials that provide instructions or explanations for primary and secondary legal materials, namely: legal dictionaries and large Indonesian dictionaries.

3. RESEARCH RESULTS AND DISCUSSION

Criminal policy not only functions to overcome criminal acts or prevent crime, but must also be oriented towards protecting victims. This approach emphasizes that criminal policy should not only focus on punishing the perpetrator, but must also pay special attention to the recovery and protection of victims, especially children as a vulnerable group. The victim protection approach in criminal policy is also supported by victimology theory which highlights the importance of the role of victims in the criminal justice system. . The importance of developing criminal policies that are responsive to victims' needs, including strengthening access to legal and rehabilitation services. (Fitria (2024)) Protection policies include fulfilling their basic rights, including the right to a sense of security and legal support that is victim-oriented and increasing public awareness, especially protecting children's rights. The importance of collaboration between government, law enforcement agencies, civil society organizations and the education sector is the key to creating a comprehensive and sustainable legal protection ecosystem. Forms of legal protection for children in Indonesia include various mechanisms regulated in several laws and regulations.

3.1. Research result

This research shows that the National Criminal Code (UU No. 1 of 2023) has integrated the principles of child protection in accordance with the Convention on the Rights of the Child (KHA) into the articles in the National Criminal Code related to child protection. There are four main principles that form the basis of child protection, namely:

- a. Non-Discrimination: Implemented through guarantees of equal treatment regardless of the social, economic background or condition of the child.
- b. Best Interests of the Child: Used as a guide in all legal decisions, including the care, treatment and protection of children.
- c. Right to Survival and Development: Provides protection for children's basic rights such as health, education, and physical and mental protection.
- d. Child Participation: Ensure children have space to be heard, especially during adolescence (15-18 years).

The research results also confirm the commitment of national law in realizing comprehensive and sustainable child protection, in accordance with international standards.

3.2. Discussion

Child Protection Principles

Article 1 paragraph (2) of Law Number 23 of 2002 concerning Child Protection states that child protection includes all efforts to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and dignity. . This protection also includes guarantees against all forms of violence and discrimination. The principle of child protection is based on the understanding that children are individuals who are not yet able to fight for their own rights, so it is the responsibility of the state and society to provide adequate protection.

Child Protection, determines that every child has the right to receive protection from treatment, discrimination, exploitation, both economic and sexual, neglect, cruelty, violence and abuse, injustice and other wrongful treatment, as regulated in paragraph (1) of article 13 of law number 23 of 2002 concerning Child Protection, paragraph (2) states that if while in the care of a parent, guardian or any other party responsible for the care, the parent, guardian or caretaker of the child carries out all forms of treatment as intended in paragraph (1), then the perpetrator is subject to increased punishment.

Indonesia, as part of the international community, has strengthened its commitment to child protection by ratifying the Convention on the Rights of the Child (KHA) through Presidential Decree Number 36 of 1990. This convention emphasizes the importance of fulfilling children's rights as a whole. Based on life cycle design principles (*life circle approach*) (Maidin Gultom, (2013)) this principle refers to the understanding of protection given early and continuously, throughout life from the womb to adulthood which is based on four main principles, namely non-discrimination, the best interests of the child, the right to life, as well as children's participation.

These four principles have been integrated into various laws and regulations in Indonesia as a form of implementing holistic and sustainable child protection policies. This integration shows the government's strong commitment to ensuring that children's rights are protected in accordance with international standards and ensures that children's interests are considered *of paramount importance* (highest priority) in every decision concerning children. (Maidin Gultom, (2013))

Implementation of Child Protection Principles in the National Criminal Code

The National Criminal Code (KUHP) acts as the main legal basis that regulates various aspects of social life including child protection. As a basic legal instrument, the National Criminal Code should contain comprehensive and balanced regulations, including prevention and rehabilitation law enforcement in line with the principles of child protection in the convention on the rights of the child. Application of articles related to child protection principles by grouping them based on the four main principal pillars of the Convention on the Rights of the Child.

Implementation of the principles contained in the Convention on the Rights of the Child is very important to ensure that children's rights are recognized and protected effectively. The articles in the Criminal Code that are relevant to child protection are grouped based on the main principles in the Convention on the Rights of the Child (CRC), namely non-discrimination, the best interests of children, the right to life and survival, and child participation.

a. Principle of the Right to Live, Grow and Develop

The principle of the right to life occurs in the early life cycle, the articles that confirm the right to life in Law Number 1 of 2023 concerning the Criminal Code, include:

- 1) Article 99 paragraph (4) states that the implementation of the death penalty against pregnant women must be postponed until the child is born, even until the baby is no longer there to consume mother's milk. This article guarantees the basic rights of newly born babies to be able to grow and develop.
- 2) Article 460(1) A mother who takes the life of her child on when or not long after birth, because of fear of birth If the child is known to someone else, he will be punished for murdering his own child, with a maximum prison sentence of 7 (seven) years.

The principle of growth and development, this phase occurs in two, namely during childhood (age range 0-12 years) and adolescence (age range 13-18 years).

During childhood (age range 0-12 years),

At this time, the principle of the best interests of children is that policies and legal actions must be directed at fulfilling children's basic rights such as parenting, care, health and basic education. This stage emphasizes active protection from parents and the environment including supervision to prevent the risk of harm. Articles that confirm the principle of this age in Law Number 1 of 2023 concerning the Criminal Code include:

- 1) Article 40 Criminal liability cannot be imposed on children who at the time of committing the crime were not yet 12 (twelve) years old,
- 2) Article 41 In the event that a child who is not yet 12 (twelve) years old has committed or is suspected of committing a crime, investigators, community counselors and professional social workers make a decision to hand him or her back to their parents/guardians, or participate in education, development programs, and guidance in government agencies or social welfare organizations in agencies that handle the field of social welfare, both at the central and regional levels, for a maximum of 6 (six) months.
- 3) Article 341 Every person who is required to look after a child, leaves the child unsupervised, or leaves the child unattended so that it can pose a danger to the child or other people, shall be punished with imprisonment for a maximum of 6 months or category II
- 4) Utilization of Children for Begging Article 425 paragraph (1) Any person who gives or surrenders to another person a child who is under his or her legal control and is not yet 12 (twelve) years old, even though it is known that the child will be used to commit acts of begging or for carrying out work which is dangerous or which may endanger one's health, shall be punished with a maximum imprisonment of 4 (four) years or a maximum fine of category IV. Paragraph (2) Every person who accepts a child for use as intended in paragraph (1), shall be punished with the same crime.

During adolescence (age range 13-18 years),

At this time children enter a stage of development that requires special attention, especially in terms of education, mental health and protection from violence or sexual exploitation, including development in their social life. At this stage, children begin to develop a personal identity and prepare to take on a role in society, so that protection is more directed at supporting a healthy transition to adulthood. Articles that emphasize the principle of growth and development at this age in Law Number 1 of 2023 concerning the Criminal Code include:

- 1) Article 408 Every person who openly displays, offers, broadcasts writings, or shows that he can obtain contraceptives for children, shall be punished with a fine.

- 2) Article 417 Every person who gives or promises to give a gift, uses authority that arises from a relationship of circumstances or by misdirection moves a person who is known or reasonably suspected to be a child, to commit an obscene act or allows an obscene act to be committed against him or herself, shall be punished with a maximum imprisonment of 9 (nine) years.
- 3) Article 419 paragraph (1) Every person who associates or facilitates another person to commit obscenity or have sexual intercourse with a person who is known or reasonably suspected to be a child, shall be punished with a maximum imprisonment of 7 (seven) years.
- 4) Article 422 paragraph (1) Every person who moves, carries, places, or hands over a child to another person to commit fornication, prostitution, or other acts that violate morality, shall be punished with a maximum imprisonment of 9 (nine) years. Paragraph (2) If the criminal act as intended in paragraph (1) is committed by promising a child to get a job or other promise, he is punished with a maximum imprisonment of 10 (ten) years.

b. Principles of Child Participation

The principle of child participation is possible from adolescence to adulthood (age range 15-18 years). At this time children have sufficient cognitive capacity to participate in decision making that affects their lives. Giving children the right to be involved in legal processes that concern themselves, this principle ensures that children have control over their lives, especially during the transition to adulthood. The article that confirms this principle is, Article 112 of Law Number 1 of 2023 concerning the Criminal Code which reads, Children who commit a criminal act are threatened with imprisonment for less than 7 (seven) years and are not a repeat criminal act. diversion is attempted. Diversion aims to prevent children from the negative impacts of the formal justice system, such as social stigma or trauma, by providing opportunities for children to improve themselves and defend their rights as children. In diversion deliberations, children must be actively involved in providing their opinions, which are respected according to their level of maturity and ability.

c. Principles of Non-Discrimination and Best Interests of Children

Every article in Law Number 1 of 2023 concerning the Criminal Code relating to child protection emphasizes the principle of non-discrimination and the best interests of children. The principles of non-discrimination and the best interests of children are the basis for ensuring that every child each level his life treated equally without exception regardless of background and all decisions, policies and legal actions must consider the best interests of children, in accordance with their developmental needs, starting from the early life cycle, childhood, through adolescence to adulthood.

4. CONCLUSION

Providing a statement that what is expected, as stated in the chapter "Every article in the National Criminal Code (UU No. 1 of 2023) related to child protection has been prepared in accordance with the principles of the Convention on the Rights of the Child (KHA) and reflects comprehensive and complementary implementation. The principles of Non-Discrimination and the Best Interests of the Child are applied in all phases of life to guarantee equal treatment regardless of children's social, economic background or condition, and ensure their safety and welfare. The principle of the Right to Survival and Development is focused on fulfilling children's basic rights, including health, education, and physical and mental protection. The Principle of Child Participation is realized

according to the level of maturity, especially during adolescence, by providing opportunities for children to express opinions in decisions that affect their lives. The integration of these principles shows national legal commitment to child protection in line with international standards and the developmental needs of children at every stage of their lives.

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