

The Existence of Children in Difficult Living Conditions and Its Legal Protection

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ABSTRACT

This study was carried out using an empirical juridical approach. Juridically, this study was conducted by identifying societal norms, legal rules, or policies related to child protection in private and public life. On the other hand, empirically, this study was conducted by observing social phenomena towards children in difficult living conditions and the scope of its legal protection. The deepening of the substance was carried out in the Gorontalo City area through interviews and discussion groups with resource persons and respondents for qualitative analysis.

The results show that children in difficult living conditions in Gorontalo City are divided into several groups: street children, child laborers, child beggars, and children who are in trouble with the law. The legal protection is carried out in a preventive and repressive manner by the Office of Social Affairs and the Women and Children Protection Sector of Gorontalo City through fostering, rehabilitation, social security, and legal assistance. The provision of protection through regulations has been carried out through the Regional Regulation on Child-Friendly Cities. However, the implementation has not been optimal. There needs to be an integrated improvement and joint commitment among all related elements, families, communities, and local governments in realizing child protection in Gorontalo City.

Keywords: *Children, Difficult living conditions, Legal Protection.*

1. INTRODUCTION

In Indonesia, legal guarantees for children's rights are regulated in the 1945 Constitution, in Article 28 B, which states that: "every child has the right to survival, growth and development, and the right to protection from violence and discrimination." Further arrangements are contained in the law on child protection and other legal instruments. However, the reality of children's lives both in the family and in social life is not as beautiful as expected. The portrait of children's lives is getting blurry with the physical, psychological, financial, and biological violence they receive almost everywhere, such as at school, on the street, and even in the family. This condition is made possible by the rapid advancement of information and communication technology, which is increasingly harming children's social and cultural lives.

Children under challenging conditions are vulnerable to exploitation, hazardous work, obstructed access to education, and hampered physical, psychological, and social development. Even in some instances, child labor has entered the most intolerable situation (the intolerable form of child labor)[1]. The central issue regarding child labor arises from the

negative consequences of being too early to work, affecting children's development. For this reason, the most vital step to take is the effort to tackle children's problems, so they do not fall into more profound and more complex problems. However, children must be rescued immediately from forms of exploitation that harm them[2].

Various studies on the existence of children and their protection have been widely conducted by researchers before, such as in Suryadi, et al[3] which examined the "Phenomenon of Street Children in Cirebon City" in socio-cultural aspects that indicate that the activities of street children in any form have the risk of inhibiting normal child development. Even children are at risk of abuse and vulnerable to violence. As understanding as to the opinion of Suryadi, et al., author Herlina Astri[4] discusses more broadly and complexly in her article about the order of street children's lives in Indonesia from various aspects. The facts revealed about the condition of children to the street activities they engage in trigger the vulnerability of criminal factors, defy the dominant culture that exists in society to affect physical conditions, and indirectly indoctrinate street children against differences in values and norms in social life.

The study of street children in the city of Gorontalo itself, specifically conducted by Zamroni Abdussamad[5], in the context of the implementation of government policies associated with human rights. Similarly, child protection studies in general both street children, working children and children victims of domestic neglect, have been conducted in community service (IbM), then published in journals[6].

Various other writings describe the form of violence experienced by children, can be in the form of neglect or economic violence by allowing children to be malnourished, not receiving proper care and health, letting children drop out of school, and forcing children to become beggars, laborers, and other jobs endanger the child's growth and development.

This phenomenon occurs in big cities and penetrates small areas that are developing as service-providing cities, such as Gorontalo City. This fact is evidenced by the increasing number of street children, child laborers, child beggars, and children who have legal problems. It shows that children who are in difficult situations already need to be handled intensively and integrated.

2. CHILDREN PROBLEMS AND ITS FORMS OF PROTECTION OF USE

Children are a gift from God that must be nurtured, protected, and protected from things that can interfere with their growth and development. During this process, children can take advantage of their potential as the next generation who are given space to participate in the process of development and renewal of the nation in the future. Therefore, the responsibility for child protection is entirely borne by parents and the surrounding environment, and the state.

a. Children In Private and Public Life

According to R.A. Kosnan, children are young people at a young age in their souls and life journey because their surroundings easily influence them[7]. From another point of view, children are the next generation of the nation and the successors of development who are prepared to implement sustainable development and control the future of a country, including Indonesia[8]. Understanding children's definition concerning child delinquency behavior is usually based on age levels to find out at what age level a person can be categorized as a child[8].

The definition of a child mentioned in Indonesian laws and regulations usually describes the age limit of a child. These definitions include:

- 1) Law Number 35 of 2014 concerning Child Protection, as stated in Article 1 paragraph 1, that "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb".
- 2) Law No. 13 of 2003 concerning Manpower Article 1 item 26 states, "Child is every person under the age of 18 (eighteen) years".
- 3) Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Article 1 item 3, 4, and 5 states that children are those who have not reached the age of 18 years, while someone who is over 18 years old is said to be an adult.
- 4) The Civil Code in Article 330 Paragraph (1) explains that children are those who have not reached the age of even twenty-one years and have never been married before.
- 5) Law No 1 of 1974 concerning Marriage in Article 7 Paragraph 1 specifies that the age limit for children to get married is 19 years old for men and 16 years old for women.

From several regulations concerning the age limit of children, there is no absolute determination regarding the age limit of a child in the laws and regulations in Indonesia. There are three age limits for children: 18 years, 19 years, 16 years, and 21 years. This difference will affect the process of applying the law in a crime involving children.

Therefore, a child can be defined as a person who is not an adult or a person who is underage and is not yet capable of being before the law and being responsible for his actions because the process of growth and development has not determined the child to be a stable person in dealing with and doing an act. According to law, the definition of a child can vary depending on the place, time, and purpose. This difference will also affect the limits used to determine the age of the child. The difference in the definition of a child can be seen in each of the existing laws and regulations[9].

The guarantee of protection of children's rights as a state responsibility can be introduced in the formulation of Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which states that "Every child has the right to survive, grow, and develop, and have the right to protection from violence and discrimination." Based on the formulation of the article, it can be interpreted that the state has a great responsibility in protecting and guaranteeing the fulfillment of children's rights. The existence of guaranteed protection for children in the Constitution's contents shows that children as the next generation of the Indonesian nation are essential in the development of human resources in Indonesia. Child protection activities are legal actions that have legal consequences[10].

Child protection as an action that is closely related to legal issues must have two aspects. The first aspect relates to the laws and regulations governing children's rights, child criminal law, and implementing these regulatory policies. The second aspect concerns the participation of the community and parents in protecting children from the influence of criminals or victims of criminal acts.

Legal protection for children can be taken to protect various freedoms and human rights of children. This protection of children also includes interests related to the welfare of children, including children who are in trouble with the law, as regulated in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System.

b. Categories of Children in Social, Economic, and Cultural Life

In particular, what is emphasized in this study are children under challenging conditions, whose existence can be mapped as follows:

1) Street Children

Street children are those who spend most of their time on the streets or in other public places to earn a living or wander around.

Surbakti classifies street children into several types, namely children who have economic activities on the streets but still have relationships with their families (Children on the street), street children who spend most of their time on the streets and cut off relations with their families (Children of The Street), and street children who spend all their time on the streets and also come from street families (Children in The Street)[11].

2) Beggars

Beggars are people who earn income by begging in public with the reason to expect mercy from others[12].

3) Child Laborers

Child laborers are children aged 4 to 18 years who work in various fields of continuous work and almost take up their time so they cannot go to school like other children[13]. Furthermore, as stated in the ILO/IPEC, child laborers are children who work in all types of work, which are harmful or detrimental to their physical, mental, intellectual, and moral nature. Children who are allowed to work indirectly in economic activities at the age of 5 to 11 years need to be eliminated, 12 to 14 years are allowed to do light work, and those aged up to 18 years are not allowed to work in dangerous places.

4) Abandoned Children

Abandoned children are children whose mental, physical, spiritual, and social needs are not adequately met (Article 1 Paragraph (6), Law Number 35 of 2016 concerning Child Protection).

5) Children in Trouble with the Law

A child can be defined as a person who is not an adult or a person who is underage and is not yet capable of being before the law and being responsible for his actions because the process of growth and development has not determined the

child to be a stable person in dealing with and doing an act. According to law, the definition of a child can vary depending on the place, time, and purpose. This difference will also affect the limits used to determine the age of the child.

c. Factors Affecting the Existence of Children in Difficult Conditions

Difficult conditions in children tend to result in child exploitation. Factors that cause child exploitation include[13]:

- 1) Economic Factor
- 2) Migration Factor
- 3) Cultural Factor

Several cultural factors contributed to the increase in the number of children in difficult conditions, including the role of the family, early marriage, economy (indebtedness), social relationships, and other factors.

Several consequences are resulting from child exploitation which can be described as follows[14]:

- 1) Children lose their right to learn
- 2) Children have deviant behavior
- 3) Children become deprived of love
- 4) The psychology and soul of the child is adversely affected

d. Legal Protection for Children

Everyone who lives in an environment or region has the right to feel safe and comfortable. The embodiment of this statement is in the form of protection for everyone, especially protection from a legal perspective. The term legal protection comes from English, namely legal protection theory, while in Dutch, it is called *theorie van de wettelijke bescherming*, and in German, it is called *theorie der rechtliche Schutz*[15].

Legal protection can be interpreted as the protection provided by law or protection by using legal institutions and means. There are several ways of legal protection, including the following[16]:

- 1) Making regulations (by giving regulation), which aims to:
 - a) Give rights and obligations;
 - b) Guarantee the rights of legal subjects
- 2) Enforcing regulations (by the law enforcement) through:
 - a) State administrative law that functions to prevent (preventive) violations of consumer rights through licensing and supervision.
 - b) Criminal law which functions to repress (repressive) any violation of laws and regulations by imposing legal sanctions in the form of criminal sanctions and punishments;

- c) Civil law serves to restore rights (curative, recovery) by paying compensation.

Direct protection efforts include procurement so that children are protected and saved from something dangerous, prevention of everything that can harm or sacrifice children, supervision, guarding against disturbances from within or from outside, mental, physical, and social development, correctional formal and informal education, parenting (shaping, loving, fostering), rewarding (rewards), arrangements in laws and regulations. On the other hand, indirect protection efforts include prevention of harming and sacrificing children's interests through a statutory regulation, increasing the proper definition of children and their rights and obligations, counseling on child and family development, coaching (mental, physical, and social) to participants other than children in the implementation of child protection and prosecution of those who hinder child protection efforts[17].

Legal protection protects legal subjects through laws and regulations that are applied and enforced by sanctions. Muchsin divides legal protection into two, namely[18]:

1) Preventive Legal Protection

It is defined as the protection provided by the government to prevent violations before they occur. It is contained in laws and regulations to prevent a violation and provide signs or limitations in carrying out an obligation.

2) Repressive Legal Protection

Repressive legal protection is the absolute protection in the form of sanctions such as fines, imprisonment, and additional sentences given if a dispute has occurred or a violation has been committed. This kind of perception is better known as law enforcement. Regarding law enforcement, Fenty U. Puluhulawa states that law enforcement can be carried out through supervision and the application of sanctions by using various means, including administrative law, civil law, and criminal law facilities, so that the applicable provisions can be obeyed. Concrete law enforcement is the application of positive law in practice as it should be obeyed"[19].

Satjipto Rahardjo emphasizes that law enforcement is a form of effort to realize legal ideas (justice, certainty, and legal benefits) into a reality, where the process of realizing these legal ideas is the essence of the law enforcement process[20].

According to Soerjono Soekanto, the factors that influence law enforcement are as follows:

- 1) The Legal Factor Itself (including the law)
- 2) Law Enforcement Factor
- 3) Facilities and Infrastructure that Support Law Enforcement
- 4) The society in which the Law is Applied

- 5) Cultural Factors Result from Work, Creativity, and Initiative Based on the Human Initiative in Social Life.

In Gorontalo City, the implementation of preventive child protection programs is in the Office of Social Affairs and Community Empowerment, while the repressive protection programs are in the Office of Population Control, Family Planning, Women's Empowerment, and Child Protection.

Regulations regarding guaranteed protection for children in difficult circumstances are scattered in several regulations, both in the form of laws and regional regulations. The mechanism for protecting children is carried out in an integrated manner between government agencies and the community. In a structured manner, the efforts taken are by establishing a Shelter House as a place for fostering and rehabilitation. The fostering process in the context of preventing the widespread operation of street children, child beggars, and child labor, including fostering their parents, is in the Social Service and the Civil Service Police Unit because it is related to public order. Meanwhile, the authority to handle children who have problems with the law is in the Child Protection Sector (PPA) of the Gorontalo City Government in collaboration with the Regional Integrated Implementation Unit (UPTD) which consists of academics, police, professional societies, social workers, clerics, and local governments. In addition, the Gorontalo Regional Government, which is currently still in the stage of improving public facilities to fulfill the requirements as a Child Friendly City, has substantially issued a Regional Regulation on Child-Friendly City. In article 1 paragraph 5 of the Gorontalo City Regional Regulation Number 7 of 2019 concerning the Implementation of a Child-Friendly City, it is stated that (Article 1 Paragraph (5) Gorontalo city Local Regulation Number 7 of 2019 Concerning the Implementation of Child-Friendly City):

"A child-friendly city and hereinafter abbreviated as KLA is a city that has a children's rights-based development system through the integration of government, community and business commitments and resources that are planned comprehensively and sustainably in policies, programs, and the desire to ensure the fulfillment of children's rights."

- e. Implementation of Gorontalo City Government Policies in Overcoming the Problem of Children in Difficult Conditions.

In the Indonesian Dictionary, implementation is defined as execution. Implementation is the ability to form further relationships in a causal chain that connects action to goals, while wisdom is the ability to use reason (experience and knowledge) and the ability to act when faced with difficulties. In this case, the implementation of government policies in question is an effort made by the government to overcome the problem of street children and fulfill children's rights to education.

Government policies in overcoming the problem of street children and the fulfillment of their right to education need to be considered as an effort to account for the state. The constitutional mandate in Article 34 of the 1945 Constitution states: "The poor and neglected children are cared for by the state."

The government needs to make every effort to realize the development and guarantee all the rights that must be obtained by the poor and neglected children, including street children. Therefore, the government's attention and policies on the issue of street children and the fulfillment of their right to education need to be carried out thoughtfully and measurably.

In general, the handling of street children leads to four models, namely[21]:

- 1) Street-centered intervention. In this model, the handling of street children is centered on the "road" where they usually operate. The goal is to reach and serve children in their immediate environment.
- 2) Family-centered intervention. In this model, the handling of street children is focused on providing social assistance or empowering families to prevent children from becoming street children or attracting street children back to their families.
- 3) Institutional-centered intervention. In this model, the handling of street children is centered in institutions (orphanages), either temporarily (preparing for reunification with their families) or permanently (especially if street children no longer have parents or relatives). This approach also includes temporary shelters (drop-in), "halfway houses," or "open houses" that provide "adapted orphanages and dormitories" for street children.
- 4) Community-centered intervention. In this model, the handling of street children is centered in a community. Community development programs are involved in empowering the community or strengthening the capacity of social institutions in the community by establishing networking through various institutions, such as government institutions and community social institutions. This approach also includes Corporate Social Responsibility.

The preventive measures taken by the Gorontalo City Social Service are as follows:

- Data collection
- Monitoring and supervision
- Campaign and outreach in all levels of society

Based on the researcher's observations, the Gorontalo City Social Service cooperates with Non-Governmental Organizations and related social institutions to overcome the problem of neglected children and the fulfillment of their right to education.

Data collection is considered vital because it contains identity, residence, background, socio-economic life,

regional origin, family conditions, and the main problems experienced by children. The data collection is beneficial for the Gorontalo City Social Service because the purpose of the data collection is to determine the population of street children scattered in Gorontalo City. Based on the Gorontalo City Social Service data, there are 80 street children and 109 children who beg with adult beggars. This figure is concerning since the number of street children and beggars increases, some of which come from outside Gorontalo City. In addition, according to 2019 data, 93 children are in trouble with the law, both as victims and perpetrators.

The child-friendly city policy formulated by the Gorontalo City government has developed as an effort by the local government, parents, families, communities, and the business world to ensure the fulfillment of children's rights. A child-friendly city is expected to solve social problems that the Gorontalo City government has faced.

The responsibility of the Gorontalo City government in implementing child protection can be in the form of policies, programs, and activities to ensure the fulfillment of children's rights so that children can live, grow, develop, and participate optimally following human dignity and so that children get protection from violence and discrimination which is the responsibility of the local government.

3. CONCLUSION

Legal protection for children in challenging conditions is a shared problem between families, communities, and local governments, including other related parties.

The implementation of local government policies on child-friendly cities needs to be optimized through the joint participation of all elements of society in building commitments that aim to protect children in their growth and development and safety and from discrimination both in family life and social life.

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