

## IMPLEMENTATION OF LEGAL AND HUMAN RIGHTS PROTECTION FOR CHILDREN AND DISABILITIES

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### Abstract

This research explores the legal protection of children and persons with disabilities in Indonesia within the framework of human rights. The study assesses the implementation of Law No. 35 of 2014 concerning child protection and Law No. 8 of 2016 regarding disabilities. The constitutional context, incorporating human rights in the 1945 Constitution, sets the foundation for the protection of citizens' rights and obligations. While child protection laws exist, the increasing violations and challenges faced by children in various aspects of life underscore the need for an effective implementation mechanism. Additionally, the absence of derivative regulations for the Disability Law hampers its optimal enforcement, leading to uncertainties and potential rights violations for persons with disabilities. The study utilizes the Normative Juridical method, relying on secondary data through library research to analyze legal provisions and regulations. The results highlight the broad spectrum of legal protection for children, encompassing human rights, judicial processes, welfare, and protection from exploitation. Conversely, the research identifies shortcomings in the implementation of disability laws, emphasizing the crucial role of derivative regulations in ensuring effective protection for persons with disabilities. The conclusion emphasizes the need for improved government actions, collaboration, and the issuance of derivative regulations to enhance the practical realization of legal protections for both children and persons with disabilities.

**Keywords:** *Legal protection; Children and Disabilities and Implementation*

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## INTRODUCTION

In amending the Constitution of the Republic of Indonesia in 1945 the fourth amendment, article 28 I paragraph (2) regulates Human Rights (HAM), the addition of the formulation of human rights and guarantees of respect, protection,

implementation and promotion in the 1945 Constitution is not solely because of the desire to accommodate the development of views on human rights which are increasingly considered important as a global issue, but because it is one of the requirements of the rule of law. With the

formulation of human rights in article 28 I paragraph (2) of the 1945 Constitution, constitutionally the human rights of every citizen and resident of Indonesia have been guaranteed. In this connection, the Indonesian people are of the view that human rights must pay attention to the characteristics of Indonesia and human right must also be balanced with obligations so that it is hoped that mutual respect and respect for the human rights of each party will be created. One aspect of the formulation of human rights included in article 28 I paragraph (2) of the 1945 Constitution is human rights related to legal protection of Indonesian citizens and having equal rights and obligations for all citizens in all aspects of life and livelihood is a prerequisite for the achievement of social welfare for all Indonesian people (Al Faruq, 2022) (Hsb, 2021).

In Indonesia, regulations on child protection have been issued in accordance with the needs of the people in Indonesia, the role of the international community in overseeing the fulfillment of children's rights based on the Convention of the Right of a Child has also had a positive effect on the development of child protection in Indonesia. Law Number 35 of 2014 concerning child protection affirms that the organizers of child protection are parents, families, governments and the state, the first burden in the implementation of child protection falls on parents, but in the modern era like today most parents are busy with their work and begin to ignore their children. Various regulations both in law, religious and cultural teachings have discussed a lot about child protection, but still from year to year violations of child protection continue to increase with the times, due to less visionary

forms of regulation so that it tends to be seen as a new problem (Said, 2018).

Meanwhile, Law No. 8 of 2016 concerning disability has been passed, but in the implementation, there is no PP related to derivatives of the implementation of the law so its implementation has not been maximized. Even though people with disabilities are not explicitly mentioned in the 1945 Constitution, they are part of human beings who are equal in position. As the principles in human rights are universal, non-discrimination, cannot be denied, cannot be shared and cannot be reduced. The fulfillment of rights needs a legal umbrella, this is in line with the objectives of the formation of the state as stated in the Preamble of the 1945 Constitution "advancing general welfare, educating the nation's life, realizing social justice for all Indonesian people". In essence, its manifestation for all Indonesian people is indiscriminate. Both humans are born "normal" and born with "physical or mental imperfections" (Itasari, 2020) (Pawestri, 2017).

The primary objective of this research appears to be an examination of the legal and human rights protection for children and persons with disabilities in Indonesia. The study aims to assess the effectiveness of Law Number 35 of 2014 concerning child protection and Law No. 8 of 2016 concerning disabilities. It also seeks to understand the roles of the government, parents, and the community in addressing issues related to child protection and disabilities.

Problems faced by persons with disabilities in Indonesia include lack of access to information about the importance of rehabilitation, lack of public facilities that make it easier for persons with disabilities to

carry out daily activities and lack of access to employment for persons with disabilities (Baturangka, Kaawoan, & Singkoh, 2019) (Darmawan et al., 2023). As citizens of Indonesia, persons with disabilities are also part of Indonesian citizens who have the same position, rights, obligations, and roles as citizens. Other. Even the 1945 Constitution has stipulated that "Everyone has the right to facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice. So that in this study we can see the problem of whether the implementation of Law No. 35 of 2014 concerning child protection has been effective, and how so far the role of the government, parents and the community in mutual collaboration pays attention to association and child protection. In addition, it is also related to Law No. 8 of 2016 concerning Disability, what is the impact if the derivative of the legislation does not exist and how so far the government's attention in the disability action, whether it has been maximized, still needs to be improved a lot.

## **METHOD**

The research method used in this study is using the Normative Juridical method, which refers to the provisions of positive laws and regulations in Indonesia, especially laws and regulations on legal protection of children, disabilities and human rights.

In this study, secondary data will be examined. Thus there are two main activities carried out in carrying out this research, namely library research, which is obtained through literature, by studying, reviewing and processing literature, laws and regulations, articles or writings related to the problem to be researched.

## **RESULTS AND DISCUSSION**

### **Legal and human rights protection for children**

According to the Big Indonesian Dictionary (KBBI), Children are the trust and gift of God Almighty who has dignity and dignity as a whole person (Hanafi, 2022). Law 35/2014 provides the concept of child protection consisting of several aspects including; Protection of children's human rights and freedoms, protection of children in judicial processes, protection of child welfare (in the family, education and social environment), protection of children in matters of detention and deprivation of independence, protection of children from all forms of exploitation (slavery, child trafficking, prostitution, pornography, trafficking or abuse of drugs, exploiting children in committing crimes and so on). Legal protection for children has a fairly broad spectrum (Nasution, 2006). In addition to child protection, the government also makes regulations related to children committing crimes or violating the law which are resolved in juvenile justice laws. No. 11 of 2012 concerning the criminal justice system for children, this aims to provide legal guarantees for children who face criminal problems.

In various documents and international meetings, it is seen that the need for legal protection for children can cover various aspects, namely: protection of children's human rights and freedoms, protection of children in judicial processes, protection of child welfare (in the family, education and social environment), protection of children in issues of detention and deprivation of independence, protection of children from all forms of exploitation (slavery, child trafficking, prostitution, pornography, drug trafficking or abuse,

exploiting children in committing crimes and so on), protection of street children, protection of children from the consequences of war or armed conflict, protection of children against acts of violence (Prasetyo, 2020). From this explanation, it can be seen that lawmakers (DPR and Government) have legal politics that are responsive to child protection. Children are placed in a noble position as the mandate of God Almighty who has a strategic role in ensuring the continuity of the existence of this country. Through Law No. 23 of 2002, the guarantee of children's rights is protected, and even the Indonesian Child Protection Commission (KPAI) was established which has the responsibility to improve the effectiveness of child protection (Departemen Sosial, 2008).

The Indonesian Constitution, the 1945 Constitution as the highest legal norm has outlined that "every child has the right to survival, growth, and development and the right to protection from violence and discrimination". (Article 28B Paragraph (2) of the 1945 Constitution) With the inclusion of the child's rights in the body of the constitution, it can be interpreted that the position and protection of children's rights are important things that must be further elaborated and carried out in everyday reality (Fahlevi, 2015). In Law No. 39 of 1999 concerning Human Rights, 15 articles 52-56 were formulated which specifically formulated children's rights, because the framers of the law realized that children are a group that is vulnerable to human rights violations. The importance of the position of children for this nation makes us have to be responsive and progressive in managing applicable laws and regulations (No, 39AD). Looking at the definition of children as expressed above, we can understand

comprehensively. However, to determine the age limit in terms of the definition of children, we will get various kinds of age limits for children, considering the various definitions of child age limits in several laws, we can see the following:

1. Law No.1 of 1974 concerning Marriage, requires a marriage age of 19 years for women and 19 years for men;
2. Law No. 4 of 1979 on Child Welfare defines children as 21 years old and never married;
3. Law No. 3 of 1997 on Juvenile Court defines a child as a person who in the case of a delinquent child has reached eight years old, but has not reached 18 years old and has never married;
4. Law No.39 of 1999 concerning Human Rights states that a child is someone who is not yet 18 years old and has never married;
5. Law No.13 of 2003 concerning Manpower allows the working age to be 15 years;
6. Law No. 20 of 2003 concerning the National Education System enforces 9-year compulsory education, which connotes children aged 7 to 15 years;
7. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) states that Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years old but not yet 18 (eighteen) years old who are suspected of committing a crime.
8. Customary law states that customary law does not determine who children say and who adults say. However, in customary law, the size of children can be said to be adults not based on age but on certain tangible characteristics. Mr.R.Soepomo based on the results of research on West Java civil law states that a person's

maturity can be seen from the following characteristics: 1. Can work alone, 2. Able to do what is required in social life and responsible, 3. Can take care of own property.

Child protection is an important issue and is considered very important to be pursued from things that develop in people's lives, such as prostitution which is closely related to economic aspects. Other problems that are often faced by children, namely violence faced at home and at school related to the era of poverty, social values, religion and customs Another thing is also found in the development of technological advances that children are often involved in criminal problems, such as child trafficking and child pornography.

Child protection is carried out according to their needs so that it does not seem excessive or protection of children is carried out by taking into account the impact on the environment and the child itself, so that protection of children is carried out rationally, responsibly and beneficially which is done effectively and efficiently (Yuliyanto, 2020).

Looking at the number of complaints mentioned above, it is certainly not without attention at all from the Government of Indonesia. Many things have been done by the government, both policies regarding improving sanctions for child protection violators or concrete efforts that have been implemented, various regulations and legislation, planning and budgeting and the establishment of institutions that can address children's problems more systematically have been carried out by the Government of Indonesia. Apart from the facts that occur in the field, it is very concerning related to the widespread exploitation of children in the sexual sector,

so that here the role of the government, parents and various components is very necessary so that the Law on children can be implemented properly in overshadowing the law in community life.

### **Legal and Human Rights Protection for Disability**

Raising public awareness and the responsibility of States to address disabilities is an important task so that everyone, regardless of the type and severity of disability, is able to enjoy their most basic rights. Concerns about discrimination against persons with disabilities are serious matters and need attention from the government (Basuki, 2012). Human rights protection is closely related to legal protection for the people, because basically legal protection is a concrete step to strengthen human rights in positive law. Thus, human rights protection is not sufficient with normative instruments but must also be complemented by institutional mechanisms. Therefore, apart from positive law, human rights must also be protected through legal institutions. In the context of providing legal protection for the position and rights, obligations and roles of persons with disabilities, the Government is among others obliged to protect and provide accessibility rights. Accessibility for people with disabilities is very important to realize, it is a form of convenience provided for people with disabilities to realize equal opportunities in aspects of life and livelihood (Priamsari, 2019).

Guarantees regarding the rights of persons with disabilities in addition to being complete, detailed and specifically stated in Law No. 19 of 2011, in general are also regulated in Articles 41, 42 and 54 of Law No. 39 of 1999 on Human Rights which affirms:

Article 41:

"Every citizen has the right to the social security necessary for a decent life and for his or her full personal development. Every disabled person, the elderly, pregnant women and children, has the right to facilities and special treatment."

Article 42

"Every citizen of the elderly, physically handicapped or mentally handicapped has the right to care, education and training, and special assistance or state expenses, to ensure a decent life in accordance with human dignity".

Article 54

"Every child with physical or mental disabilities has the right to care, education and training, and special assistance at state expense, to ensure a decent life in accordance with human dignity, increased confidence and ability to participate in the life of society, nation and state".

In addition to the above forms of protection, Article 28 H of the 1945 Constitution states that: "everyone has the right to facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice".

Since the Law on Persons with Disabilities No. 8 of 2016 was passed, the public has continued to urge the government to immediately issue a government regulation (PP) as a derivative of Law Number 8 of 2016 concerning Persons with Disabilities. This is because, the Law on Persons with Disabilities cannot be implemented optimally because the provisions for the implementation of the Law do not yet exist. Regarding the unratification of implementing regulations (Government Regulations / PP) on the Disability Law, of course, it has consequences, although the Law can still be implemented, certain

technical matters and more specific arrangements will not be applicable, while the procedural law continues.

The consequences that then arise as a result of the absence of implementing regulations on the Law on Persons with Disabilities are, the insecurity of legal certainty for persons with disabilities, the inability to enforce the real rules contained in the article-by-article of the Law in question, and the birth of legal loopholes that can trigger individuals to make inappropriate policies so that the potential for non-fulfillment of the rights of persons with disabilities as stipulated in the Law People with Disabilities 2016 (Wijaya & Anggriawan, 2022). The following are the rights for persons with disabilities specifically regulated in Article 5 of Law of the Republic of Indonesia No. 8 of 2016, for the protection and fulfillment in accordance with the specificity of the conditions and needs they have, namely: the rights of persons with disabilities, the rights of women with disabilities and the rights of children with disabilities, as follows: The rights of persons with disabilities in general include the right to life, the right to be free from stigma, privacy rights, justice rights and legal protection, education rights, employment rights, entrepreneurship, and cooperatives, health rights, political rights, religious rights, sports rights, cultural and tourism rights, social welfare rights, accessibility rights, public service rights, disaster protection rights, habilitation and rehabilitation rights, concession rights, data collection rights, the right to live independently and be involved in society, the right to expression, communicate, and obtain information, the right to change and citizenship; and free from acts of discrimination, neglect, torture, and exploitation (Priscyllia, 2016).

In addition to regulations related to PP on disability have not been issued by the government, the public service sector in Indonesia tends to have several basic problems. In addition to the relatively low effectiveness of organizing and public participation in service delivery, public services also do not have a complaint and dispute resolution mechanism. As a result, the quality of service products has also not satisfied its users. Public services in Indonesia are also not responsive to the community, especially people with special needs, namely people with disabilities. Public services in terms of the availability of public facilities such as schools, hospitals, offices, recreation areas, hotels, post offices, terminals, public telephones, banks and other places do not yet have accessibility for people with disabilities.

This reality shows a fundamental difference in cultural aspects and understanding of the issue of disability between developing and developed countries. In developed countries, appreciation and recognition of the rights of persons with disabilities has been going well. This can be seen by the existence of legal regulations that function effectively to protect the basic rights of persons with disabilities such as accessibility of the environment and buildings, provision of decent employment and education, and social security for persons with disabilities who experience serious disabilities or often referred to as "always patients". As in the United States, there is a federal law called the American Disability of Act (ADA) which regulates and simultaneously protects the rights of people with disabilities in access to education, housing, employment, health, to social security The provision of accessibility facilities to public service

facilities is a necessity for people with disabilities. An environment accessible to persons with disabilities will provide great support to the process and successful development of the potential and social functioning of persons with disabilities. This is because an accessible environment will facilitate and provide ease of mobility for people with disabilities due to physical limitations in all aspects of their lives

## CONCLUSION

Constitutional Guarantees for Human Rights in Indonesia are underscored by the fourth amendment to the 1945 Constitution, particularly in Article 28 I paragraph (2), reflecting a commitment to the regulation of Human Rights (HAM) in line with global trends and the rule of law. Child protection is addressed by Law Number 35 of 2014; however, challenges persist, including the busy schedules of parents and a deficiency in visionary regulations, contributing to ongoing violations. Similarly, Law No. 8 of 2016 emphasizes the rights of persons with disabilities, but the absence of implementing regulations hinders optimal implementation, leading to legal uncertainties and potential rights violations. Persons with disabilities face obstacles such as limited access to information, insufficient public facilities, and employment barriers due to the lack of government attention and specific regulations. Legal age definitions for children vary, ranging from 15 to 21 years old, potentially causing inconsistencies in legal practices. The importance of legal protection for children covers a wide range, encompassing human rights, judicial processes, family and education welfare, protection from exploitation, and issues like child trafficking and pornography. Challenges in disability protection include

the absence of government regulations and inadequate accessibility in public services, emphasizing the need for improved cultural understanding and legal frameworks. Despite existing laws, gaps in implementation persist due to factors such as the absence of derivative regulations, lack of accessibility, and insufficient government attention, highlighting the importance of addressing these gaps to ensure effective protection of rights.



## REFERENCES

- Al Faruq, Assad. (2022). Hukum dan Ham Bagi Anak dan Disabilitas. *Al-Syakhsyiah: Journal of Law & Family Studies*, 4(1), 12.
- Basuki, Udiyo. (2012). Perlindungan HAM dalam Negara Hukum Indonesia: Studi Ratifikasi Konvensi Hak-hak Disabilitas (Convention on The Rights of Persons with Disabilities). *Jurnal Sosio-Religia*, 10(1), 17–34.
- Baturangka, Theresia, Kaawoan, Johannis, & Singkoh, Frans. (2019). Peran Dinas Sosial Kota Manado Dalam Pemberdayaan Masyarakat Penyandang Disabilitas. *Jurnal Eksekutif*, 3(3).
- Darmawan, Rahmat, Pulungan, Shelly Kilan Cahaya, Puspita, Reni, Yulinda, Jeni, Pasaribu, Sarif Muda, & Cipta, Hendra. (2023). Estimasi Penerima Alat Bantu Penyandang Disabilitas Di Dinas Sosial Kota Medan Menggunakan Metode Regresi Linier Berganda. *Indonesia Berdaya*, 4(2), 525–534.
- Departemen Sosial, R. I. (2008). Panduan Khusus Pelaksanaan Bimbingan Sosial Penyandang Cacat Tubuh Dalam Panti. *Jakarta: Dit. PRSPC*.
- Fahlevi, Reza. (2015). Aspek hukum perlindungan anak dalam perspektif hukum nasional. *Lex Jurnalica*, 12(3), 147255.
- Hanafi, Hanafi. (2022). Konsep Pengertian Anak dalam Hukum Positif dan Hukum Adat. *VOICE JUSTISIA: Jurnal Hukum Dan Keadilan*, 6(2), 25–35.
- Hsb, Mara Ongku. (2021). Ham dan kebebasan berpendapat dalam UUD 1945. *Al WASATH Jurnal Ilmu Hukum*, 2(1), 29–40.
- Itasari, Endah Rantau. (2020). Perlindungan Hukum Terhadap Penyandang Disabilitas Di Kalimantan Barat. *Integralistik*, 31(2), 70–82.
- Nasution, Adnan Buyung. (2006). *Instrumen Internasional Pokok Hak Asasi Manusia*. Yayasan Obor Indonesia.
- No, Undang Undang. (39AD). *Tahun 1999 tentang Hak Asasi Manusia*.
- Pawestri, Aprilina. (2017). Hak penyandang disabilitas dalam perspektif HAM internasional dan HAM nasional. *Era Hukum-Jurnal Ilmiah Ilmu Hukum*, 15(1).
- Prasetyo, Andik. (2020). Perlindungan hukum bagi anak pelaku tindak pidana. *Mizan: Jurnal Ilmu Hukum*, 9(1), 51–60.
- Priamsari, R. R. Putri A. (2019). Hukum yang berkeadilan bagi penyandang disabilitas. *Masalah-Masalah Hukum*, 48(2), 215–223.
- Priscyllia, Fanny. (2016). Kajian Hukum Terhadap Fasilitas Pelayanan Publik Bagi Penyandang Disabilitas. *Lex Crimen*, 5(3).
- Said, Muhammad Fachri. (2018). Perlindungan hukum terhadap anak dalam perspektif hak asasi manusia. *JCH (Jurnal Cendekia Hukum)*, 4(1), 141–152.

Wijaya, Alvian Dwiangga, & Anggriawan, Teddy Prima. (2022). Tinjauan Yuridis Tentang Pemenuhan Hak Anak Yang Mengalami Cacat Jiwa Dan Fisik Dalam Memperoleh Rehabilitasi. *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum*, 4(1), 15–23.

Yuliyanto, Yuliyanto. (2020). Pembinaan Anak Yang Berkonflik Dengan Hukum Di Lembaga Pembinaan Khusus Anak Kelas II Bandung. *Jurnal Penelitian Hukum De Jure*, 20(1), 103–116.