

## The Legal Protection of Criminal Action on Child Addiction

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Article	Abstract.
<p>Keywords: Addiction; Child; Criminal; Protection.</p> <p>Article History Received: 2021-11-24; Reviewed: 2022-02-24; Accepted: 2022-03-28; Published: 2022-03-28.</p> <p>DOI: <a href="http://dx.doi.org/10.30659/jdh.v5i1.18117">http://dx.doi.org/10.30659/jdh.v5i1.18117</a></p>	<p>The aims of this research is the practice of abdicating responsibility and illegally claiming offspring on Child neglect. This is due to such as economic and social factors and mental illness. The law explicitly designs forms of child protection as stated in Article 5 of Act No. 23 of 2004 "every child has the right to worship according to his religion, think and express according to his level of intelligence and age under the guidance of his parents and guardians" but what happened was so many children who live on the streets due to the absence of parents as full responsibility. The long-term goal of this study is to find out specifically the causes of child neglect in Bonebolango district, as well as to explore the factors that cause a child to be neglected, this research can be achieved in the future, giving birth to benefits for all legal scientists. The research method was used in this study was empirical/sociological type of research where the researcher would go directly to the field to conduct in-depth research and assessment. The research results obtained are 1. Factors that hinder the legal protection of criminal acts of child neglect in Bone Bolango Regency based on the results of the study, namely the factors of facilities and infrastructure that are still inadequate, and law enforcers who are still considered incompetent in handling cases of child neglect so that strength is still needed. 2. The form of legal protection for the criminal act of child neglect in Bone Bolango Regency can be seen from several elements such as (not discriminating against children) which means that it does not discriminate against children.</p>

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### 1. Introduction

One of the instruments owned by a nation and state, namely in managing the development of the times and managing development progress, the benchmark for a developed country that is just and prosperous is a country that can provide progress, welfare, and social justice<sup>1</sup> for all its people as stated in the constitution. 1945 which is

<sup>1</sup> Maria Stagaki, Tobias Nolte, Janet Feigenbaum, Brooks King-Casas, Terry Lohrenz, Peter Fonagy, P. Read Montague, The mediating role of attachment and mentalising in the relationship between childhood maltreatment, self-harm and suicidality, *Child Abuse & Neglect, Science Direct*, Volume 128,

affirmed in article 1 paragraph 3 which reads "the Indonesian state is based on law, not based on mere power"

The form of protection provided by a country for the protection of children as regulated in Act No. 23 of 2004 concerning the elimination of domestic violence<sup>2</sup> which in article 5 affirms "everyone is prohibited from committing domestic violence against people within the scope of his household" as there are 4 forms of protection that have been confirmed, namely:

- Violence in physical form
- Violence in the form of psychological
- Violence in the form of sex
- Violence in the form of neglect

The four instruments above reflect the unitary state of the republic of Indonesia that explicitly provides real protection as a state of law (*rechtaat*) and also prepares rules that specifically regulate child protection, namely in article 6 of Act No. 35 of 2014 on child protection which states "every child has the right to worship. According to their religion, think and express according to their level of intelligence and age under the guidance of their parents<sup>3</sup>.

Based on a comparative study with several general samples obtained through checking various media sources as a secondary reference material in carrying out this research, there are about 4.1 million children who are neglected, and 5,900 children who are victims of human trafficking, and 3,600 who are dealing with the law, and even worse, there are around 1.2 million neglected minors whose average age is under (5) years and there are also street children amounting to 34,000 children<sup>4</sup>.

If we look at the data in Bone Bolango Regency, which according to 2019 data, the No. of children aged 13-15 years is 8,190, this does not rule out the possibility that there are still many children who are neglected without the attention of the local government, so this is a motivation for researchers to conduct research.<sup>5</sup>

## 2. Research Methods

The method used in this research is the type of empirical research. That is research that explores the values of facts in the field or at the research location originating from human behavior, or the state of an area to be studied. This method is by collecting data in the form of secondary data and primary data as a source of research data, after that the data that has been collected will be processed using qualitative descriptive methods, namely by trying to explain in detail what is contained in the research.

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2022, 105576, ISSN 0145-2134, <https://doi.org/10.1016/j.chiabu.2022.105576>,  
(<https://www.sciencedirect.com/science/article/pii/S0145213422000965>)

<sup>2</sup> Etik purwaningsih, Legal Protection On Children As A Victims Of Sexual Violence Based On Progressive Law, *International Journal of Law Recnstruction*, Vol 1, No 1 (2017), DOI: <http://dx.doi.org/10.26532/ijlr.v1i1.1640>

<sup>3</sup> Act No. 35 of 2014 concerning Child Protection

<sup>4</sup> <https://news.detik.com/berita/2916183/mensos-ada-41-juta-anak-terlantar-di-Indonesia>

<sup>5</sup> [http://apkapm.data.kemdikbud.go.id/index.php/cberanda/penduduk?kode\\_wilayah=300400&tahun=&tabs=bps](http://apkapm.data.kemdikbud.go.id/index.php/cberanda/penduduk?kode_wilayah=300400&tahun=&tabs=bps)

### 3. Results and Discussion

#### 3.1. What are the factors that hinder the legal protection of the crime of child neglect in Bone Bolango Regency?

##### 3.1.1. Factors of Facilities and Infrastructure

The purpose of the rule of law is the influence and application of the law itself which becomes whether it can be used as a guide or a barrier to provide legal protection for neglected children and in implementing the law it is always based on the legal principles that have been found in the provisions of the law in order to achieve this. a legal goal in the wider community effectively<sup>6</sup>.

Legally, the regulation regarding child protection is very adequate, although some children's rights have not been regulated in detail, and the regulations governing children's facilities and infrastructure are still far from expectations<sup>7</sup>. Based on the results of an interview with Mrs. Mastin jahidi, head of the child protection sector, which was conducted at the KB Population Control and Child Protection Service, Bone Bolango Regency

*"We have carried out child protection evenly by using existing regulatory rules, however the rules are made, but there are things that are required by law as facilities and infrastructure in law enforcement that cannot be prepared by the state, for example, the juvenile justice agency does not yet exist in the district. Bone Bolango even though the law provides a mandate for that"*

In accordance with the results of interviews that have been carried out by the author in comparison with the sound of Article 59 of Act No. 23 of 2002 specifically children are given protection by: "Children in emergency situations (refugees, children victims of riots, children in natural disasters, children in situations of armed conflict); Children in conflict with the law; Children from minority groups and isolated; Children are explored economically and/or sexly; Trafficked children; Children who are victims of abuse of Narcotics, Alcohol, Psychotropics, and Other Addictive Substances (Drugs); Child victims of abuse<sup>8</sup>; Abandonment; Children with disabilities"

From the several points above, it is important to note that in dealing with neglect of children, it is imperative that all stakeholder parties cooperate in order to achieve the ideals of a nation. If we look at and pay attention to what conditions are happening in the field based on the findings of research on the Devices in the Government System which specifically regulates child neglect, it is almost certainly not available at the village or sub-district level, so that in providing legal protection to children quickly it is certain that there is none, if we Seeing the polemics regarding children's cases which

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<sup>6</sup> Prabasini, O. S. (2021). Legal Protection for Children in Conflict with the Law: Process and Problems. *The Indonesian Journal of International Clinical Legal Education*, 3(3), 381-398. <https://doi.org/10.15294/ijicle.v3i3.48264>

<sup>7</sup> Kayus Kayowuan Lewoleba, Beniharmoni Harefa, Legal Protection for Child Victims of Human Trafficking, *International Journal of Multicultural and Multireligious Understanding*, Vol 7, No 2 (2020), DOI: <http://dx.doi.org/10.18415/ijmmu.v7i2.1470>

<sup>8</sup> Shaquanna Brown, Paula J. Fite, Marco Bortolato, The mediating role of impulsivity in the associations between child maltreatment types and past month substance use, *Child Abuse & Neglect, Science Direct*, Volume 128, 2022, 105591, ISSN 0145-2134, <https://doi.org/10.1016/j.chiabu.2022.105591>, (<https://www.sciencedirect.com/science/article/pii/S0145213422001119>)

are getting more and more uphill day by day and are very far from our expectations. It should be from the village apparatus as the front line to prepare facilities and infrastructure for child protection, namely the section that specifically takes care of the welfare of the local people related to women and children.

### 3.1.2. Law enforcer

Talking about law enforcement means talking about professionalism in working as a team that is used to strategically eradicate the crime of neglect of children. Law enforcement has a strategic function in upholding justice for children, law enforcers should provide services in a structured, systematic and massive manner in providing education to the wider community, as a form of building commitment<sup>9</sup>.

Any act that injures a child should be considered an act that must be prevented and the solution must be in accordance with the rules of the law, because an act that injures and injures a child's rights cannot be viewed as anyone who does it, whether it is the child's parent, child's relative, child's neighbor, teacher employees and so on must all be dealt with if they commit violations that injure children's rights

The main purpose of law enforcement is to realize justice and legal certainty and provide legal benefits for the public at large, but there are still some weaknesses in law enforcement, such as the results of the author's interview with one of the heads of sections who handle law enforcement against children in Bone Bolango Regency, namely Mrs. Mastin Jahidi is the head of the child and women protection division

"Our law enforcers are still very minimal and still very lacking in addition to these shortcomings, some law enforcement resources are still lacking in terms of understanding experience and actions that are not too capable in solving children's cases, the main reason that becomes an obstacle in law enforcement is in accompanying a child, not only people who understand the law are needed but also experts from various fields of science such as pediatricians, physiotherapists, and all instruments that can have a positive impact on children."

Based on data taken from the Central Statistics Agency regarding the birth rate of children in Bone Bolango Regency and the possibility of child neglect, it shows that children born and having birth certificates in Bone Bolango Regency in 2017 reached 77.28% because it has good and correct and clear data sources. regarding their children's data, while 13.59% of children who cannot show their birth certificates, this is due to ambiguity in the child's parental data, and 9.13% of children who do not have a birth certificate in the sense that they do not have it due to behavioral consequences parents who do not obey the law, one of the examples interviewed by the author is a person who performs betel marriage. The serial marriage of Mrs. Dahlia Mokodongan from Bone Bolango:

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<sup>9</sup> Kajung Hong, Nicholas M. Morelli, Jackelyne Garcia, Jacqueline B. Duong, Meghan C. Evans, Alan J. Litrownik, Miguel T. Villodas, Trajectories of adolescent psychopathology among youth who were maltreated and placed in out-of-home care, *Child Abuse & Neglect, Science Direct*, Volume 128, 2022, 105589, ISSN 0145-2134, <https://doi.org/10.1016/j.chiabu.2022.105589>, <https://www.sciencedirect.com/science/article/pii/S0145213422001090>

*"We were married in betel and I gave birth to my child but I couldn't make my child's certificate because my marriage was not legally valid, besides my husband had a legal first wife and as a result my child was the victim"*

Based on the author's analysis, it illustrates that child neglect is not only seen as limited to how old parents provide a living and so on but also children who are not given space to learn and get free education are Embryos from child neglect.

### 3.1.3. Public

Abandonment of children is a form of behavior that commits criminal acts, and based on the criminal act a person can be subject to severe sanctions, therefore one of the instruments that can be used as the main tool in providing optimal supervision is the community itself, because society is an accomplice as well as the eyes and ears of a country, if the instrument that states that the community is the main support in supervision does not carry out its function, it will certainly happen what is called (Social Abuse) namely social violence<sup>10</sup> which impacts damage the traditional order of a region<sup>11</sup>.

The function that is the main task of the community is as a social function as expressed by Husain [3] That social function is behavior or tasks that must be carried out by everyone to meet their needs both as a family, group and the wider community Husain also said that the implementation of social functions is one way to evaluate, assess the achievement of the welfare and safety of each person and provide an overview of behavior or habits in the form of norms that function well in society.

If we refer to the regulation which regulates the function of the community as supervision of children, we can see the Government Regulation of the Republic of Indonesia No. 29 of 2019 concerning the Terms and Procedures for Appointing Guardians contained in article 26 paragraph (3), namely

Supervision by the community is carried out by: Individuals; family; Organization; Childcare institutions; Child protection agency

The above regulation shows that indeed the supervision of children should be the same as the above as an example in the supervision of the wider community.

Based on the results of the author's research obtained in the field regarding the data of abandoned children, there is an asynchronous data obtained by the author which illustrates that: In 2018 data on neglected children taken from the Office of the Family Planning and Child Protection Population Control Service only 1 child was included in the neglected child category. The data obtained is not in accordance with the news on the Gorontalo Provincial Government Public Relations Website which shows that the data on neglected children in 2018 in Bone Bolango Regency were 180

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<sup>10</sup> Niken Subekti Budi Utami, Imam Prabowo, Legal Protection For Children As Victims Of Sexual Violence In Fulfillment Restitution Rights, *Yustisia Jurnal Hukum*, Vol 9, No 2, DOI: <https://doi.org/10.20961/yustisia.v9i2.35208>

<sup>11</sup> WIJAKUSUMARIASIH, Ni Putu Ika. Legal Protection For Children Againts Sexual Exploitation and Abuse of Children Online. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, [S.l.], v. 8, n. 1, p. 1-12, may 2019. ISSN 2502-3101, <https://ojs.unud.ac.id/index.php/imhu/article/view/47237>

children in 10 (LKSA) Child Social Welfare Institutions along with the quote from Idah Syahidah's statement representing the Gorontalo provincial government.<sup>12</sup>

### **3.2. What are the Forms of Legal Protection against Child Abandonment?**

Currently, the government is trying to protect children as a form of prosecution for child neglect, which is carried out through the process of implementing legal requirements, namely the Criminal Code which explicitly provides special protection, as well as laws that explicitly ignore children. . With regard to criminal cases and prosecutions, from the beginning of the investigation to the verdict, it is easy to determine that a prisoner returns to society.

In the current implementation of law enforcement, of course, it will involve law enforcement officers with high integrity, such as the police, prosecutors, and institutions that are empowered to provide full protection. Therefore, the author tries to describe law enforcement efforts from government agencies, in this case local governments, and law enforcement agencies.

If we look at the ratification of the United Nations General Assembly Convention on the Rights of the Child on November 20, 1987 which ratified the basic principles of children's rights, namely:

#### *3.2.1. Non-Discrimination*

One way to protect children who are considered neglected is by not discriminating against children, that is, not distinguishing all interests of children in any way, the principle of non-discrimination is one of the instruments made by the convention on children, namely that children have the right to justice and equal treatment to other children, without being limited by skin color, ethnicity, race, religion and other social strata

However, in reality, discriminatory behavior against children still occurs in the community, schools and households even though this is because parents or the wider community do not understand the impact of children's growth and development if they feel that discriminatory behavior occurs.

In addition to non-discrimination in criminal acts, non-discriminatory behavior is also required in the application of criminal sanctions, that is, it does not distinguish who the perpetrators are who commit the crime of neglecting children, which must be given a deterrent effect.

The principle of non-discrimination is referred to as the result of the author's interview with a child activist that:

*"A child should get deep protection from both parents and a child should not get a difference in terms of parental behavior so that the child does not feel cornered by his family life".*

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<sup>12</sup> <https://humas.gorontaloprov.go.id/pemprov-gorontalo-searah-700-juta-untuk-tabung-social-anak/> accessed on Tuesday 27 August 2019 at 19.04 wit

### 3.2.2. Criminal sanctions

In an effort to legally protect neglected children, the government has given birth to a rule or regulation for those who neglect children. Based on article 1 paragraph (1) of the child protection Act No. 35 of 2014 confirms that:

Article 1 paragraph (1)

*"Child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb"*

Article 1 paragraph (2)

*"Child protection is all efforts to ensure and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and protection, and receive protection from violence and discrimination."*

Seeing the sound of article 1 paragraphs 1 and 2 above, it is strongly emphasized in the child protection law that children are children who are not yet 18 (eighteen) years old who still need protection by all instruments in society, the incident of child neglect is indeed realized that this incident is still very prominent from the point of view of the law.

Based on the data obtained by the author at the KB Population Control and Child Protection office, Bone Bolango Regency regarding cases that harm children's rights, namely:

**Table 1**

2017 Interval Report							
Year	Sex	No. of Victims of Violence	Physical	Physical	Psychic	Abandonment	Trafficking
2017/1	M	32	13	2	-	-	-
	F	38	10	-	5	-	-
	Total	70	13	-	5	-	-

**Table 2**

2017 Interval Report							
Year	Sex	No. of Victims of Violence	Physical	Physical	Sex	Abandonment	Trafficking
2017/2	M	7	8	4	-	-	-
	F	19	15	-	4	-	-
	Total	26	23	4	4	-	-

**Table 3**

2018 Interval Report							
Year	Sex	No. of Victims of Violence	Physical	Physical	Sex	Abandonment	Trafficking
2018/1	M	6	6	-	-	-	-
	F	20	16	-	4	-	-
	Total	26	22	-	4	-	-



**Table 4**

<b>2018 Interval Report</b>							
<b>Year</b>	<b>Sex</b>	<b>No. of Victims of Violence</b>	<b>Physical</b>	<b>Physical</b>	<b>Sex</b>	<b>Abandonment</b>	<b>Trafficking</b>
<b>2018/2</b>	M	10	9	-	1	-	-
	F	18	7	-	10	1	-
	Total	28	16	-	11	-	-

**Table 5**

<b>2019 Interval Report</b>							
<b>Year</b>	<b>Sex</b>	<b>No. of Victims of Violence</b>	<b>Physical</b>	<b>Physical</b>	<b>Sex</b>	<b>Abandonment</b>	<b>Trafficking</b>
<b>2019/1</b>	M	9	6	-	2	-	-
	F	25	16	-	10	-	-
	Total	34	22	-	11	-	-

*Source of data: taken and processed by the KB Population Control and Child Protection Service, Bone Bolango Regency*

The data obtained above at the KB Population Control and Child Protection office, Bone Bolango Regency regarding cases that harm rights looks very high which in 2017 there were about 96 cases against children and in 2018 there were around 54 cases and in 2019 There are 34 cases, all of which are about violence against children and neglect.

The description of the data above is appropriate for the government to provide the right solution to the rights of neglected children so as to provide good protection<sup>13</sup>.

If we look at the theory of child neglect, it can certainly be concluded that legal certainty in child protection must be put forward in order to prevent negative actions against children.

Based on the case data above and several regulations governing criminal sanctions for neglecting children, the author argues that indeed the regulations have regulated in such a way regarding sanctions for perpetrators not only regulated for civilians as perpetrators but also regulated for the community in the sense that they have the capacity as civil servants, educators, or organizations that commit crimes of child neglect will be charged with a more severe punishment.

Severe criminal sanctions do not have such a big effect on perpetrators as seen from year-to-year data and almost all sectors of crime against children each year are the highest in crimes against people, the thing that needs to be considered for everyone is how to provide protection and participation of local governments and organizations engaged in child protection to provide teaching and education as well as to increase the socialization of child protection so that the wider community in general understands this better

<sup>13</sup> Al-Fatih, S. (2021). House Of Role As An Effort To Protect Children From Violence: An Indonesian Human Rights Perspective. *Audito Comparative Law Journal (ACLJ)*, 2(1), 1-10. <https://doi.org/10.22219/aclj.v2i1.15145>



### 3.2.3. Coaching

One of the law enforcement efforts that must and should be carried out by the government is fostering all elements involved in child protection in the sense of the wider community.

The guidance in question is a pattern of prevention in order to minimize the high rate of neglect of children and behavior that violates children's rights

Guidance for children and violators and even the pattern of educational development is very necessary for the pattern of coaching, namely: Training for the community; Guidance of counseling carried out by all law enforcement circles, especially those dealing with children; It is necessary to take concrete steps in alleviating child protection in the village sector so that it is easily detected

The coaching referred to in point 1 is

- Guidance in the form of providing training to local communities where the level of violation of children's rights is the highest, the training in question is to provide lessons on how to treat and educate children from birth so that they have character as the nation's successors have the capacity as a child observer
- Guidance in the form of counseling carried out by all law enforcement circles, especially those dealing with children, the purpose of coaching in the form of counseling is that all groups, both government and academics, should have regular and detailed programs or progress in conducting counseling on child protection every year, counseling This is considered very important because it is the most important facility as a determinant in providing children's rights if the level of public knowledge about children's rights and child protection will increase the prevalence of child neglect in the future, but if public knowledge about child protection is adequate it will have a positive impact on growth children, the most appropriate thing to do is counseling
- It is necessary to take concrete steps in alleviating child protection in the village sector so that it is easily detected The concrete steps in question are the steps taken by the local government to the village government in dealing with child protection, this is considered a concrete step because almost all villages do not find any kind of special program or activity specifically in providing protection to children. , such as the Community Activity Center PKM shelter which uses a community participation approach in law enforcement as a function of providing information, this needs to be done because it is community-based which provides education, as well as participatory and collaborative learning between all elements of society to achieve the same goal.

One of the coaching steps taken by the local government of Bone Bolango Regency in carrying out child protection is the discovery of a Pokja (main work) at the offices of the Family Planning Population Control and Child Protection office, Bone Bolango Regency which is regulated in Regent Regulation (PERBUP) no 40 of 2016 concerning Organizational Structure, Description of Duties and Functions, and Work Procedures for the Office of Population Control, Family Planning and Women's Empowerment, Child Protection, Bone Bolango Regency as described in the sixth part

of article 41 which has several functions as follows<sup>14</sup>

- Planning the implementation of activities for the protection of women and children
- Prepare materials for the formulation of technical instructions for the implementation of women and children protection activities
- Carry out activities to protect women and children
- Carry out activities for developing integrated service center facilities for women and children empowerment
- Carry out monitoring, evaluation and reporting of women and children protection activities
- Carry out other functions in accordance with the duties and authorities of the field

Some of the things that have been regulated above show that the steps of the local government of Bone Bolango Regency in implementing the eradication of the crime of neglect of children are very appropriate, but some things that still need to be done by the regional government are to involve and encourage the growth of local child watchdog organizations so that they can do more supervision and development of the wider community,

With this, according to the author, almost all regulations regulate the protection of children, but must be improved in terms of fostering the mindset of the people who tend to be indifferent to child protection and the need for regulations that involve village or sub-district officials in providing guidance and protection to children who located in a place that cannot be directly reached by the central and regional governments.

#### **4. Conclusion**

Factors that hinder the legal protection of the criminal act of neglecting children in Bone Bolango Regency can be seen based on the results of the author's research, namely the factors of facilities and infrastructure that are still inadequate, and law enforcers who are considered incompetent in handling cases of child neglect so that the necessary forces that support the source the power of law enforcement itself as well as community factors that are considered to still lack knowledge about child protection and neglect of children who are indifferent when there are incidents of child neglect around their environment. The form of legal protection for the criminal act of neglecting children in Bone Bolango Regency can be seen from several elements, such as non-discrimination (not discriminating against children) which means not distinguishing one child from another from the offering of attention, and offering continuous supervision and the form of offering a criminal witness if indeed there are those who are involved or there are those who directly commit the criminal act of neglecting children, apart from that another form of protection is the development of all community instruments in carrying out children's education in the family environment and the environment where the children live interact.

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<sup>14</sup> PERBUP No. 40 of 2016 concerning Organizational Structure, Description of Duties and Functions, and Work Procedures for the Office of Population Control, Family Planning and Women's Empowerment, Child Protection, Bone Bolango Regency

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- [3] <https://humas.gorontaloprov.go.id/pemprov-gorontalo-searah-700-juta-untuk-tabung-social-anak/> accessed on Tuesday 27 August 2019 at 19.04 wit

**Regulation:**

- [1] Act No. 35 of 2014 concerning Child Protection.
- [2] PERBUP No. 40 of 2016 concerning Organizational Structure, Description of Duties and Functions, and Work Procedures for the Office of Population Control, Family Planning and Women's Empowerment, Child Protection, Bone Bolango Regency.