

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Legal Protection Against Child Negligence Based on Justice

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Abstract. *Protection against child neglect is an action that is detrimental to children and violates their rights to receive care, education and protection from responsible parents or guardians. Therefore, effective and justice-based legal protection is needed to protect children who are victims of neglect. The ministry responsible for justice-based legal protection against child neglect in Indonesia is the Ministry of Law and Human Rights. This ministry has the task of developing policies and programs for legal protection of children, including in terms of handling cases of child neglect. Apart from that, there are also various laws and regulations relating to child protection in Indonesia, such as Law Number 23 of 2002 concerning Child Protection, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Normative research methods can be used in research on justice-based legal protection against child neglect. This method involves the study of legal materials, such as laws, regulations, and court decisions relating to legal protection against child neglect. Normative research can be carried out by analyzing existing legal materials and comparing them with relevant legal concepts. Researchers can also analyze the implementation of existing policies and regulations in practice. The results of research on justice-based legal protection against child neglect show that the problem of child neglect is still a serious problem in Indonesia. Even though there are laws and regulations governing child protection, policy implementation is still a major obstacle in providing adequate protection for neglected children. Effective application of the law and law enforcement are also key factors in providing legal protection against child neglect. There needs to be cooperation between the authorities, social institutions and the community to prevent child neglect and provide support to neglected children. Justice-based legal protection against child neglect includes the implementation of*

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laws and regulations governing children's rights, supervision and law enforcement in cases of child neglect, as well as support and services for neglected children. An approach based on human rights and justice is very important in providing equal and fair legal protection for all children in Indonesia.

Keywords: Justice; Legal; Protection.

1. Introduction

Children are a trust and a gift God Almighty, who is within him attached dignity and honor as completely human. Children are the shoots, potential and successors of the young generation's ideals nation, has a strategic role and has special characteristics and traits guarantee the continued existence of the nation and the country in the future. So that every child able to assume these responsibilities, So children need to get a chance as widely as possible to grow and develop optimally both physically or mentally, it requires effort protection and to realize child welfare by providing guarantee for the fulfillment of their rights and the existence of treatment without discrimination.

According to the Convention on Rights, a person child means every human under age eighteen years unless according to laws that apply to children, maturity is reached earlier.

²Refer of the KHA, Law no. 35 years old 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection explains that What is meant by a child is a person who is not yet 18 (eighteen) years, including children who are still under content.³ From this definition, presumably the state has obligations in facilitate all forms of needs children until the child is 18 years old.

One of the efforts made by the government through the Ministry of Women's and Children's Empowerment (PPA) in order to achieve 1 Article 1 of the Convention Children's Rights 2 Article 1 Number 1 Law no. 35 of 2014 concerning concerning Amendments to Law Number 23 2002 Concerning Child Protection protection regarding various children's rights field of life, then make it Ministerial regulation Empowerment Country Women and Child Protection Republic of Indonesia Number 11 of 2011 regarding Development Policy Child Friendly Regency/City. According to Ministerial Regulation Regency/City that is Child Friendly hereinafter abbreviated as KLA is districts/cities that have a system based development children's rights through integration of commitment and government, community and resources planned business world

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comprehensive and sustainable policies, programs and activities for guarantee the fulfillment of children's rights.

Neglect of children is a form of treatment worst and violent acts experienced by children and this is human rights violations against children. Form of legal protection by State to children, actually has stated by the establishment of laws Special invitations for children include Law Number 35 of 2014 About Child Protection and Law Number 11 of 2012 About the Juvenile Criminal Justice System.

Furthermore, in handling cases of children in conflict with the law by the Prosecutor's Office There are no regulations in the Criminal Code, Criminal Procedure Code, Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office and Law Number 3 of 1997 concerning Juvenile Justice that open up opportunities for Prosecutors to carry out diversion against children who are in conflict with the law, but since the enactment of Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the Prosecutor's Office already has a legal umbrella to carry out diversion.

The purpose of criminal procedural law among other things "to seek justice and get or at least approaching material truth, namely the complete truth from a criminal case with apply the provisions of procedural law punish honestly and appropriately The aim is to find out who the perpetrator is who can be charged with committing it a violation of the law, and then ask for an inspection and decision of the judiciary find out whether it is proven that a criminal act was committed and whether the person being sued can to blame."

As one of the executors of the law, namely the Judge, is authorized by law to receive, examine and decide a criminal case, Therefore, the judge in handling a case must be able to act fairly, as a judge, in giving a decision the possibility of being influenced by things that exist in him due to the influence of religious, cultural, education, values, norms, and so on so that it can be possible differences in viewpoints that influence considerations in decisions.⁸ An effective child protection system protects children from everything forms of violence, abuse, exploitation and neglect. At a fundamental level, it causes various problems such as violence, abuse, exploitation And Child neglect is interrelated.

To get to the root of these problems and to identify various Actions that must be taken to protect children require a systems-based approach, not an issue - based approach which is narrow and focuses only on certain groups of children.

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The problem that will be discussed in this research is justice-based legal protection against child neglect. Child neglect is the act of leaving a child unsupervised, unguarded and uncared for by someone who should be responsible for the child. Child neglect can have very bad impacts on children, such as health problems, psychological disorders, and even criminal acts. Therefore, it is important to ensure that children are legally protected from acts of neglect.

Even though there is a law that regulates the protection of children from neglect, there are still problems in implementing this law. Several problems related to legal protection against child neglect include a lack of coordination between relevant institutions, a lack of resources available to protect children from neglect, and the existence of inequality and injustice in the application of laws related to child neglect. Therefore, this research will discuss how the existing law on protecting children from neglect is implemented and evaluate the effectiveness and fairness of this law in providing appropriate legal protection for children who are victims of neglect.

2. Research Methods

The type of research used in this research is normative, that is legal research which has the above object targets of statutory regulations, court decisions, norms regulated by principles and also doctors. Sources of Data and Legal Materials Which used in this research is secondary data with primary, secondary legal materials. Primary legal materials. This research will examine and analyze laws related to legal protection against child neglect, taking into account the applicable principles of justice. Some of the relevant laws in this research are Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 23 of 2002 concerning Child Protection, and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2004 concerning Women's Empowerment and Child Protection. The research methods used include searching and analyzing legal materials, interpreting legal norms, and drawing conclusions based on the findings of the analysis that has been carried out. In this study, researchers will evaluate the effectiveness and fairness of existing laws to protect children from neglect and provide appropriate legal protection.

3. Results and Discussion

a. Legal Protection Against Child Neglect

According to Fitzgerald, as quoted by Satjipto Raharjo, the beginning of the emergence of the theory of legal protection came from the theory of natural law or flow of natural law. This school was pioneered by Plato, Aristotle (Plato's student), and Zeno (founder of the Stoic school). According to the school of natural law, it states that the law originates from God who is universal

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and eternal, and intermediate law and morals cannot be separated. The adherents of this sect look that law and morals are reflections and rules internally and externally of human life which is realized through law and morals.

In Phillipus M. Hadjon's opinion, legal protection for people as a preventive and repressive government action. Protection Preventive law aims to prevent disputes from occurring, which directing government actions to be careful in making decisions based on discretion, and repressive protection aimed at resolving disputes, including handling them in judicial institutions.¹²

Legal protection is a protection provided to legal subjects in the form of instruments laws both preventive and repressive, both written and unwritten. In other words legal protection as an illustration of the function of law, namely the concept by which law can provide something justice, order, certainty, benefit and peace. Legal protection is always associated with the concept of rechtstaat or the concept of Rule of Law because the birth of these concepts cannot be separated from the desire to provide recognition and protection of human rights, the concept of rechtsct emerged in the 19th century and was first coined by Julius Stahl. At the same time, almost at the same time, the concept of the rule of law emerged which was pioneered by AVDicey.

Children are the next generation of the nation who need special legal protection that is different from adults, due to the physical and mental reasons that children are immature and mature. Legal protection for children is defined as an effort to protect the freedom and human rights of children related to their welfare. Child growth and development is a very important development issue and is confirmed in Article 28B paragraph (2) of the 1945 Constitution which regulates that, Every child has the right for survival, growth and development, and the right to protection from violence and discrimination.

Legal protection against child neglect can be carried out in various ways, including by implementing criminal sanctions against perpetrators of child neglect. Apart from that, legal protection can also be provided by providing protection and social assistance to children who are victims of neglect. Legal protection against child According to included laws in action or act of neglect includes:

Neglect also includes efforts to ensure that children receive their full rights, such as the right to care, health, education, and protection from violence and exploitation.

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- a. The resulting action does not meeting children's needs in a way normal, fine physical, mental, spiritual and social (Article 1 point 6 of the Protection Law Child).
- b. The act or act of ignoring deliberately obligated to maintain, care for, or take care of children as they should (Art 13 paragraph (1) letter c, Protection Act Child). Including in the depths of child neglect is:
 - a. Neglect to get health care, for example deny its existence serious illness in child.
 - b. Neglect for getting security, for example injuries caused by lack of supervision and situation that house endanger.
 - c. Neglect emotions, do not give attention to the child, rejecting existence child.
 - d. Educational neglect, children not receiving education appropriate to their age, not taking children to educational facilities or u ordering children to earn a living for the family, so they are forced to dropout
 - e. Neglect n physical, that is if the child needs not met food, clothing, or place a stay worth having get grow blooming optimal.

The definition of protection in legal science is a form of service that must be carried out by the authorities law enforcement or security forces to provide a sense of security, both physical and mental, to victims and sanctions from threats, harassment, terror and violence from any party given at the investigation, investigation, prosecution, and upon examination at court hearings. Definition of Protection is a place of refuge, things (actions and so on) protect. In Law Number 23 of 2004, all efforts are aimed at providing flavor security for the victim carried out by the family, advocates, social institutions, police, prosecutor's office, court, or other parties either temporarily or based on a court order. Meanwhile, the protection contained in Government Regulation No. 2 of 2002 is a form of service that must be carried out by law enforcement officers or security forces to provide a sense of security, both physical and mental, to victims and witnesses, from threats, interference, terror, and violence from any party, which is given at the investigation, investigation, prosecution, and/or stages examination in court.

The provisions of the 1945 Constitution were then explained in various regulations legislation, including Law No. 4 of 1979 about Child Welfare, Law No.3 of 1997 concerning Juvenile Justice, Law No.23 of 2002 concerning Child Protection³ as has been amended by Law No.35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection.

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Legal protection in this case is in accordance with the theory of legal interpretation as put forward by Sudikno Mertokusumo, that interpretation is a method of legal discovery that provides a clear explanation of the text of the law so that the scope of the rules can be determined in relation to certain events. The judge's interpretation is an explanation that must lead to implementation that is acceptable to society regarding legal regulations regarding concrete events.

Actions taken by the government in the context of protection against children is by enforcing Law Number 35 of the Year 2014 regarding Child Protection. Article 55 Paragraph (1) states that maintenance, social care and rehabilitation of abandoned children must be carried out by central government and regional government, both within institutions (through the system government institutions and private institutions) as well as outside institutions (care system family or individual).

Apart from that, Republic of Indonesia Government Regulation Number 78 applies 2021 concerning Special Protection for Children, Article 75 states that special protection for children victims of abuse and children victims of neglect as intended in Article 3 paragraph (1) letter m is carried out through monitoring, prevention, treatment, counseling and rehabilitation efforts Social, and Social Assistance. Furthermore, in the Minister of Social Affairs Regulation Number 4 of 2020 concerning Basic Social Rehabilitation for Neglected Children states that every child has the same right to live, protection is a protection given to the subject law in the form of instruments both preventive and repressive in nature both oral and written.²² Child Protection and related laws and regulations child protection in society. Because, they are one of the characters the key to success in increasing the effectiveness of child protection wide community.

b. Legal Protection Against Based Child Neglect Justice

Children are the next generation of the nation and the successor to development, namely the generation that is prepared as the subject of implementing sustainable development and is in control of a country's future, including Indonesia. Within the scope of the Law on Human Rights Humans and the Law on Child Protection itself it is determined that a child is someone who has not yet reached aged 18 years, including children who are still in the womb, and never married. In this case it means the child in question is a child who is still under the age of majority need nurturing, education, coaching, protection and protection. Children's rights are inherent rights within oneself a child who is part of human rights. To carry out guidance and provide protection towards children, support is needed, both in terms of more adequate institutions and legal instruments.

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In this research, legal protection theory aims to integrate and coordinate various interests in society. In a society, there are many interests that must be protected and defended. However, to protect certain interests, we often have to limit other interests. Therefore, legal protection theory exists to find the right balance in protecting various interests of society.

Child protection in Law Number 35 of 2014 about Child Protection is defined as all activities to ensure and protect children and their rights so they can live, grow, growing, and participate optimally in accordance with human dignity and respect receive protection from violence and discrimination.

Get Protection is the right of every child, and protection is realized for children, it means the realization of justice in a society. Effort protection and child welfare can realized institutional ideas and rules, inner child meaning general gets attention not only in science knowledge, but can noticed from the side centralized view life, like religion, law and sociological who makes children are becoming more nationalistic and actual in environment social.

So important is children's rights, children's welfare is a child's human right that must be worked on together, ²⁷ the state in this case also pays attention and guarantees it, namely by making several appropriate laws and regulations with what has been mandated by the state constitution, the most recent of which is the Law No. 35 Year 2014 about Protection Son, where in Article 20 stated that Country, Government, Society, Family and Parents obliged And responsible regarding the implementation of protection child. More specifically regarding the obligation to care for and educate children, the law Number 1 Year 1974 concerning Marriage Article 15 paragraphs (1) and (2) states that: Both parents are obliged to care for and educate their children as best as possible. The obligation to care for and educate extends to the child the getting married or they haven't been able to m a self, though marriage between both end/break up.

In accordance with Article 52 paragraph (2) Law No.39 of 1999 concerning Human Rights which states that: "children are recognized and protected by law even from the time they are in the womb." The basic rights of children are: right to obtain protection from parents, the state and public obtain education, guaranteed health and welfare is part of children's rights. One of children's human rights is guarantee to obtain protection in accordance with religious values and humanity.

Article 55 Number 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection also stated that:

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(1) The government is obliged to organize maintenance and care of children neglected, both in institutions or outside the institution.

(2) Organizing maintenance as intended in paragraph (1) can be carried out by institutions public.

(3) To organize maintenance and care of children abandoned, government agencies and community institutions, as intended in paragraph, can collaborate with various parties involved.

(4) In terms of maintenance maintenance and care as intended in paragraph (3), supervision is carried out by Minister Social. In the explanation, it was stated that what he meant was other assistance namely medical, social, rehabilitation, vocational and educational assistance. Article 59 Law No.35 of 2014 is the basis for children victims of criminal acts to receive legal assistance. Based on Law of the Republic of Indonesia Number 35 of the Year 2014 concerning Amendments to Law Number 23 of 2002 Regarding Child Protection, it is stated in Article 1 number 6, that in the meaning of abandoned children is "Abandoned children are children who are not their needs are met appropriately, whether physical, mental, spiritual or other social." In case of occurrence neglect of children where are the rights of children for normal growth and development, as regulated in Article 4 up to Article 18 is not fulfilled due to negligence, no people understand old, or because it was intentional, the sanctions are strict clearly regulated in Article 77 paragraph (b) which threatened with 5 (five) years imprisonment and / or fine at most Lots 100,000,000.00 (one hundred million rupiah), as stated in article the:

"Neglect of children resulting in children experience pain or suffering, whether physical, mentally or socially, be punished with the longest prison sentence 5 (five) years and/or fines maximum IDR 100,000,000.00 (one hundred million rupiah)".

Protecting children actually also means protecting the family, community, nation and state in the future. Child protection is very important for the future continuity of a community, whether it is the smallest community such as a family or the largest community such as a country. By providing protection to children in the community, not only are their rights protected, but they also provide an investment in their future lives.

Child protection in criminal law, apart from being regulated in Article 45, Chapter 46, and Chapter 47 of the Criminal Code (has been revoked with the promulgation of Law No.3 1997 concerning Juvenile Justice). Then there are also several articles directly or indirectly related to child protection ie including Article 278, Art 283, Chapter 287, Chapter 290, Chapter 301, Chapter 305, Chapter 308, Chapter 341, and Article 365 Criminal Code. Furthermore, in Law

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No.35 of 20014 concerning Child Protection In principle, it regulates the protection of children's rights. In Law No.4 of 1979 concerning Child Welfare.

Based on this paradigm, Law Number 23 of 2002 concerning Child Protection which is currently in force ± (approximately) 12 (two fifteen) years was finally changed by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which changes several provisions or articles and emphasizes the need to increase criminal sanctions and fines for perpetrators of crimes against children. For the effectiveness of implementation supervision child protection is necessary independent institutions that are expected to support the Government and Regional Government in implementation child protection. On this basis the government passed Law no. 35 of 2014 concerning Change Based on Law Number 23 of 2002 concerning Child Protection.

The country's view is based on Article 28 of the Constitution the Republic of Indonesia in 1945, along with its amendments. Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia regulates that "Everyone has the right to personal protection, family, honor, dignity and property under his authority, and is entitled to a sense of security and protection from threat of fear to do or not do something that is a right human rights." Article 28 H paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that "Everyone has the right to receive convenience and treatment specifically to obtain the same opportunities and benefits to achieve equality and justice". Current developments show that action physical, psychological, sexual violence and domestic neglect in fact, this happens so that adequate legal instruments are needed to do so eradicate domestic violence.³⁴

Forms of legal protection in dealing with children who being a victim of neglect from both parents or one of them includes:

- a. If the child is abandoned by his father, then the child The child has the right to receive protection from his mother.
- b. If the child is abandoned by both parents then the child has the right to receive protection from the family nearby.
- c. If the child is abandoned by both parents then the child has the right to receive protection from the service social. In social services children are cared for and cared for government accountability.

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If the law is not enforced, this can be considered an act of denial of universal norms or rules that should exist to guarantee human benefit. Laws are created to maintain order and justice in society, but if the law is not enforced, it can damage these principles. Therefore, it is important to ensure that the law is enforced fairly and consistently in society in order to fulfill the main purpose of the law as a means of ensuring human benefit.

4. Conclusion

Legal protection against child neglect must be based on the principle of justice. This justice includes various things, such as justice for children to obtain proper care, treatment and protection from responsible parents or guardians. Apart from that, legal protection must also pay attention to justice for parents or guardians who have valid reasons for not being able to care for their children. In this case, the government and related institutions must ensure that there is an effective and efficient legal mechanism to handle cases of child neglect. This mechanism must protect children's rights to receive appropriate care and upbringing, as well as provide sanctions for parents or guardians who neglect their children without a valid reason. Based on normative research regarding justice-based legal protection against child neglect, it can be concluded that children are vulnerable and need special protection from the state and society. The relevant laws in this case are Law Number 23 of 2002 concerning Child Protection and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. In both laws, the rights and protection of children are explained, including in cases of child neglect. In the case of child neglect, the party responsible must be subject to sanctions in accordance with applicable law. It is important for the state and society to ensure that children's rights and protection are well guaranteed to guarantee a better future for Indonesian children. Justice-based legal protection against child neglect is balanced protection between the child's rights to receive care, education and protection from parents or guardians who are responsible, as well as the interests and rights of parents or guardians who are responsible for providing care. and a good education for their children. Legal protection must ensure that if a child is abandoned by a responsible parent or guardian, the child can receive appropriate care and education as well as protection from violence or exploitation. In terms of handling cases of child neglect, legal protection must prioritize efforts to restore the relationship between the child and the parent or guardian who is responsible, but if these efforts are not possible or successful, then legal protection must ensure that the child is placed in a safe and secure environment. stable under the care of another person or an adequate child protection system.

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Law no. 4 of 1979

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