

## CHAPTER II

### LITERATURE REVIEW

#### A. Conceptual Framework

##### 1. Rights

###### a. The Definitions of Rights

We often hear the words rights and obligations in our daily life.

The rights of human being are naturally existed since they were born.

When born, humans have essentially had rights and obligations. Every human being has different rights and obligations, depending on his position or his position on society.

Rights all the things must be obtained by all those who have been born. According to Standford Encyclopedia of Philosophy, rights are entitlements to perform certain actions or to be in certain states.<sup>1</sup> Also, rights can be interpreted as something ownership, authority, or power to do something. Rights are the form of governments, the contents of laws, and the shape of morality as it is currently perceived.<sup>2</sup>

From the statement above it can be conclude that rights are legal, social or ethical principles of freedom or entitlement. Rights are the

<sup>1</sup> Stanford University. and Center for the Study of Language and Information (U.S.), *Stanford Encyclopedia of Philosophy*. (Stanford University, 1997), <https://plato.stanford.edu/entries/rights/>.

<sup>2</sup> Ibid.

fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory.

## **b. Types of Rights**

In general, rights can be understood from the human relationship and human action itself. The different types of rights are frequently coexisted, they may flow from:<sup>3</sup>

### **1) Moral Rights**

Moral rights are rights between the creator of a work to their creation of work or it could be interpreted as the integrity of the creator.<sup>4</sup> Generally, moral rights are to claim something or claim freedom from something.<sup>5</sup>

### **2) Legal Rights**

Legal rights are the rights of citizens that rises because of the guarantee of the law and regulations under the law.<sup>6</sup> Basically, legal rights exist because of the law. Legal rights are based on society's customs, laws, statues or actions by legislatures. The entities of legal

<sup>3</sup> Moli Paul, "Rights," *Archives of Disease in Childhood* 92, no. 8 (2007): 720–25, doi:10.1136/adc.2005.091629.

<sup>4</sup> "Arts Law : What Are Moral Rights?," accessed October 30, 2018, <https://www.artslaw.com.au/legal/raw-law/what-are-moral-rights>.

<sup>5</sup> Paul, "Rights." Pages 271.

<sup>6</sup> Stanford University. and Center for the Study of Language and Information (U.S.), *Stanford Encyclopedia of Philosophy*. (Stanford University, 1997), <https://plato.stanford.edu/entries/legal-rights/#LegaRighConcRelaOtheTypeRigh>.

rights are anyone who has *locus standi* (the rights or ability to bring a legal action to a court of law<sup>7</sup>) must be a holder of some rights within the system.

### 3) Political Rights

Political rights have been described as the basic building blocks of the contemporary liberal state but have just as convoluted a history and varied sets of justification as moral rights. Some political rights are bound on concept of citizenship and whether children have this status is questionable.

## c. Specific Categories of Rights

### 1) Human Rights

Human rights are the fundamental rights and freedoms that belong to every single of human.<sup>8</sup> No one can take these rights and freedoms away from human. Human rights help to protect all people everywhere from severe political, legal, and social abuse. Human rights give us the right to freedom of religion, the right to fair trial when charged with a crime, the rights not to be tortured, and the

<sup>7</sup> “LOCUS STANDI | Meaning in the Cambridge English Dictionary,” accessed October 30, 2018, <https://dictionary.cambridge.org/dictionary/english/locus-standi>.

<sup>8</sup> “What Are Human Rights? | Amnesty International NZ,” accessed October 30, 2018, <https://www.amnesty.org.nz/what-are-human-rights>.

rights to political activity.<sup>9</sup> These rights are existing in the law of national and international levels.

The traumatic of World War II led the effort of history to promote human rights. At the beginning of the war, no international laws existed that might be prohibited the Nazi Holocaust against the Jews. The outraged world community recognized that it needed to set standards and develop international laws that would limit a government's power to trample the human rights of its citizen.<sup>10</sup>

According to Article 55 of UN Charter, the United Nation that founded in 1945 is to promote universal respect for and observance of human rights and fundamental freedoms for all without distinctions as to race, sex, language or religion.<sup>11</sup> Because of its urgency the United Nations launched a Human Rights Commission to draft a document to protect human rights.

The result of the form of this commission is the Universal Declaration of Human Rights (UDHR), which was adopted by the General Assembly on December 10, 1948. Which is now December 10 is celebrated as the Human Rights Day.

<sup>9</sup> Stanford University. and Center for the Study of Language and Information (U.S.), *Stanford Encyclopedia of Philosophy*. (Stanford University, 1997), <https://plato.stanford.edu/entries/rights-human/>.

<sup>10</sup> Loretta Ross, "Bringing Human Rights Home: Human Rights Education for the 21st Century," *Social Education* 62, no. 6 (1997): 377–80.

<sup>11</sup> "UN Charter (Full Text) | United Nations," accessed October 30, 2018, <http://www.un.org/en/sections/un-charter/un-charter-full-text/>.

As we know, human rights are designed to protect people against discrimination. The Declaration of Human Rights spells out five categories of human rights protections to which all are entitled:<sup>12</sup>

a) Civil Rights

Civil rights known as the rights to treated people equally with other in society.

b) Political Rights

Political rights give us the rights to vote, to freedom of speech, and to obtain information.

c) Economic Rights

Economic rights are the rights to an economy that benefits all and to a job at a livable wage.

d) Social Rights

Social rights give the right to get education, health care, food, clothing, and shelter.

e) Cultural Rights

Cultural rights give us the rights to choose freedom of religion, and to speak the language and practice the culture of one's choice.

<sup>12</sup> Ross, "Bringing Human Rights Home: Human Rights Education for the 21st Century."

The Universal Declaration of Human Rights declares that these rights to be universal, mean everyone has the same rights no matter what race, skin color, poor or rich they are. These rights belong to everybody in the world. Indivisible, no single human rights is important than other. The governments are not in the place to b picky and choose which are respected. And interconnected, each right depends on the others, and no one should be forced to wait patiently for full of his or her human rights. Because human rights cannot be taken away from human.<sup>13</sup>

## 2) Children's Rights

Children's rights began to be discussed in the 19<sup>th</sup> century. The child began to be considered as a needing protection.<sup>14</sup> In the 1970s the specific discussion about children's rights are expanded. Which is it is not only talking about the children's rights itself, but also expanded into theory and research on children and childhood, parents and parenthood, and children's and parent's rights.<sup>15</sup>

<sup>13</sup> "What Are Human Rights? | Amnesty International NZ."

<sup>14</sup> "History of the Rights of the Child | BICE | NGO for Child Protection," accessed October 30, 2018, <https://bice.org/en/history-rights-child/>.

<sup>15</sup> Paul, "Rights."

According to the Convention on the Rights of the Child (CRC) defines child as any human being below eighteen years unless under the law applicable to the child, majority is attained earlier.<sup>16</sup>

## **2. Children's Rights**

### **a. The Definition of Child**

Children are part of young human beings. As human beings, there are things that should not be done to them as a child. At the same time, children are different from adult human beings, they prevent to do what adults are permitted to do. In majority jurisdiction, children are not allowed to vote, to marry, to buy alcohol, to have sex, or to be employed. Generally, a child is a minor boy or girl.

According to the Convention on the Rights of the Child, 1986, a child is defined as every human being below the age of eighteen years, unless the law applicable to the child, majority is attained earlier.

Under Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000, defines a child as any person under eighteen years of age.

In Indonesian law, according to the Law No. 35 of 2014 on Child Protection, a child means a person who has not completed the age of

<sup>16</sup> United Nations General Assembly, "Convention on the Rights of the Child Convention on the Rights," no. November 1989 (1989), doi:10.1177/0907568213481816.

eighteen years including those still in the womb. However, under the Law No. 11/2012 on the Juvenile Justice System, defines the age of child who is conflicting with the law is twelve year, but haven't reached eighteen years.

### **b. The Definition of Children's Rights**

The discussion about children's rights started in the 1970s.<sup>17</sup> The children's rights is different with adult rights. Child is defined as a human being below eighteen years.<sup>18</sup> If we talk about children's rights it means that we also talk about the basic principle concerning children's rights. The Convention on the Rights of the Child govern the core principles of children's rights. The four core principles of the convention are:

#### 1) Non-discrimination

Article 2:

*“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”*

This article explained that a child should not be discriminated against their religion, race, color, sex, and culture.

<sup>17</sup> Paul, “Rights.”

<sup>18</sup> United Nations General Assembly, “Convention on the Rights of the Child Convention on the Rights.” Article 1.



## 2) Devotion to the best interest of the child

### Article 3:

*“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*

This article explained about the best thing about the child's life interests must be taken into consideration.

## 3) The right to life, survival and development

### Article 6:

*“States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.”*

This article explained about Children must live and develop as humans.

## 4) Respect for the views of the child

### Article 12:

*“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”*

This article explained about a child must be respected and listened to when expressing opinions.

## 3. Child Sexual Abuse

### a. The Definition of Child Sexual Abuse

Article 19 paragraph (1) of CRC gives a statement about child sexual abuse:

*“States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of..... sexual abuse, while in the care of parent (s), legal guardian(s) or any other person who has the care of the child.”*

Article 34 of CRC refers to “*all forms of sexual exploitation and sexual abuse*”, which is elaborate the requirement for the State Parties to protect children from sexual exploitation and abuse as follows:<sup>19</sup>

- a) The inducement or coercion of a child to engage in any unlawful sexual activity.
- b) The exploitative use of children in prostitution or other unlawful sexual practices.
- c) The exploitative use of children in pornographic performances and materials.

Child sexual abuse been recognized as a significant social problem. The Convention on the Rights of the Child not only mentions sexual abuse in several articles, but also explicitly devotes Article 19 to responding to the protection of children from sexual abuse while in the care of parents, guardians, or others.<sup>20</sup>

<sup>19</sup> Ibid. Article 34.

<sup>20</sup> Roger J.R. Levesque, “Sexual Use, Abuse and Exploitation of Children: Challenges in Implementing Children’s Human Rights,” *Brooklyn Law Review* 60, no. 3 (1995): 959–98.

The Convention on the Rights of the Child does not make clear what is the distinction is between child sexual abuse and child sexual exploitation. However, it is important to know that child sexual abuse requires no element of exchange and can occur for the mere purpose of the sexual gratification of the person committing the act, while the sexual exploitation of children can be distinguished by an underlying notion of exchange.<sup>21</sup> The fact that a person who sexually abuses a child more often, than not is someone familiar to the child also facilitates the repetition of the act.<sup>22</sup> Child sexual abuse is committed by someone who is no stranger to the victim and who has some form of authority or power over them. Such authorities can be based on family (example: relative), a position of authority or control (example: teacher, coach), or other factors.<sup>23</sup> The power over a child can be obtained from a relationship of trust or dependency, for the purpose of manipulating the child to engage in sexual activities.

Child sexual abuse has been defined as:<sup>24</sup>

*“Any sexual activity between a child and closely related family member (incest) or between a child and an adult or older child from outside the family. It involves either explicit force or coercion or, in cases where consent cannot be given by the victim because of his or her young age, implied force.”*

<sup>21</sup> Greijer, Doek, and Interagency Working Group, *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. Pages 18.

<sup>22</sup> *Ibid.* Pages 19.

<sup>23</sup> *Ibid.* Pages 19.

<sup>24</sup> *Ibid.* Pages 18.

WHO provides the definition of child sexual abuse as:<sup>25</sup>

*“Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person.”*

According Kalmus, he defined child sexual abuse as:<sup>26</sup>

*“Child sexual abuse is one of several major types of non-volitional sexual behavior. Like rape, forced sex, sex trafficking, and violence against people with nonconventional sexual identities, child sexual abuse involves behavior that violate a person’s right to choose when and with whom to have sex and what sexual behaviors to engage in.”*

From the statement above, we can conclude that child sexual abuse is a form of any sexual activity between a child and an adult or closely related family, to satisfy the needs of the other person by implying force. Some forms of child sexual abuse include:<sup>27</sup>

- 1) Exhibitionism, or exposing oneself to a minor.
- 2) Fondling.
- 3) Intercourse.

<sup>25</sup> Charles Felzen Johnson, “Child Sexual Abuse,” *Lancet* 364, no. 9432 (2004): 462–70, doi:10.1016/S0140-6736(04)16771-8. Pages 75.

<sup>26</sup> David K. Carson, Jennifer M. Foster, and Nishi Tripathi, “Child Sexual Abuse in India: Current Issues and Research,” *Psychological Studies* 58, no. 3 (2013): 318–25, doi:10.1007/s12646-013-0198-6. Pages 157.

<sup>27</sup> “Child Sexual Abuse | RAINN,” accessed February 14, 2019, <https://www.rainn.org/articles/child-sexual-abuse>.

- 4) Masturbation in the presence of a minor or forcing the minor to masturbate.
- 5) Obscene phone calls, text messages, or digital interaction.
- 6) Producing, owning, or sharing pornographic images or movies of children.
- 7) Sex of any kind with a minor, including vaginal, oral, or anal.
- 8) Sex trafficking.
- 9) Any other sexual conduct that is harmful to a child's mental, emotional, or physical welfare.

#### **b. The Consequences of Child Sexual Abuse**

The consequences of child sexual abuse could lead to both psychological and physical. Even though the physical could heal by the time, but the psychological consequences may persist. Another thing can cause the consequences of child sexual abuse is some sexually-transmitted diseases result in lifelong effects, suicide attempts, and psychological consequences such as post-traumatic stress disorder.

Here are some consequences of child sexual abuse:<sup>28</sup>

##### 1) Psychological consequences

The first consequences of child sexual abuse's victim are psychological consequences. The child can have both immediate

<sup>28</sup> Glyn Thomas, "Child Sexual Abuse.," *Contemporary Psychology Series.*, 1991, 227–41, doi:10.1007/978-1-4757-9777-0\_15.

and long-term adverse psychological effects that carry over into adulthood. This is one reason why all children who are suspected of being sexually abused should be referred for psychological assessment and treatment.

The other psychological consequences are children who are being sexually abused could lead to depression and interfere with quality of life, poor academic performance, and the worse could lead to suicide attempts.<sup>29</sup>

## 2) Recognizing behavioral consequences

Once a physician dealing with adult whose condition is associated with a history of child sexual abuse may fail to ask about the abuse of, they are unaware of the association or are uncomfortable asking such question.

The consequences faced by adult whose condition is associated with a history of child being sexually abused are adjustment problem, panic disorder, sexual dysfunction, depression, conversion disorder, anxiety, maternal function problem, marital conflict, and so on.<sup>30</sup>

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

That is why children with a history of child sexual abuse should be referred for behavioral therapy. In time, as trust is built with therapist, a history of child sexual abuse may surface.

Although many sexually abused children do not engage in sexualized behavior, the presence of inappropriate sexual behavior may be an indicator of sexual abuse.<sup>31</sup> Sexualized behavior in children could be defines as problematic when:<sup>32</sup>

a) It occurs at a much earlier stage then would be developmentally appropriate. For example, a 10 year-old boy versus a 2 year-old boy playing with his penis in public, or a 6 year-old girl masturbating repeatedly in school.

b) It interferes with the child's development. For example, a child learning to use sexual behaviors as a way of engaging with other people. it is accompanied using coercion, intimidation or force. For example, one 4-year-old forcing another to engage in mutual fondling of the genitals or an imitation of intercourse.

c) It is associated with emotional distress. For example, eating or sleeping disturbances, aggressive or withdrawn behaviors.

d) It reoccurs in secrecy after intervention by caregivers.

### 3) Physical consequences

<sup>31</sup> Johnson, "Child Sexual Abuse." Pages 77.

<sup>32</sup> Ibid.

a) Injury

Child sexual abuse may cause internal lacerations and bleed depending on the age and size of the child, and degree of force used. In severe cases, damage to internal organs may occur, which, in some cases may cause death.<sup>33</sup> Some type of abuse, such as exhibitionism, voyeurism, viewing or creating pornography, touching, and licking may not result in physical findings.<sup>34</sup>

b) Infections

Child sexual abuse may cause infections and sexually transmitted disease. Due to lack of enough vaginal fluid, chances of infections can heighten depending on the age and size of the child. Vaginitis has also been reported.<sup>35</sup>

Both physical and psychological health problems that are associated with sexual abuse in children have been well documented in the scientific literature.

The physical health consequences include:<sup>36</sup>

<sup>33</sup> James F. Anderson, Nancie J. Mangels, and Adam Langsam, "Child Sexual Abuse: A Public Health Issue," *Criminal Justice Studies* 17, no. 1 (March 26, 2004): 107–26, doi:10.1080/08884310420001679386.

<sup>34</sup> Thomas, "Child Sexual Abuse."

<sup>35</sup> A R De Jong, "Vaginitis Due to Gardnerella Vaginalis and to Candida Albicans in Sexual Abuse.," *Child Abuse & Neglect* 9, no. 1 (1985): 27–29, doi:10.1016/0145-2134(85)90088-2.

<sup>36</sup> Johnson, "Child Sexual Abuse."



a) Gastrointestinal disorders. For example, irritable bowel syndrome, non-ulcer dyspepsia, chronic abdominal pain.

b) Gynecological disorders. For example, chronic pelvic pain, dysmenorrhea, menstrual irregularities.

c) Somatization (attributed to a preoccupation with bodily processes)  
The following psychological and behavioral symptoms have been reported in child victim of sexual abuse:<sup>37</sup>

a) Depressive symptoms.

b) Anxiety.

c) Low self-esteem.

d) Symptoms associated with PTSD such as re-experiencing, avoidance/numbing, hyperarousal.

e) Increased or inappropriate sexual behavior.

f) Loss of social competence.

g) Cognitive impairment.

h) Body image concerns.

i) Substance abuse.

## **B. Legal Frame Work**

### **1. The UN Convention Related Regulation to The Child Sexual Abuse Which Have Been Ratified by Indonesia:**

<sup>37</sup> Ibid.

- a. The Convention on the Rights on the Child 1989 (CRC); ratify by Indonesia in 1990, provides:

Article 1:

*“For the purposes of the present Convention, a child means every human being below of the eighteen years unless under the law applicable to the child, majority is attained earlier.”*

Article 19:

- 1) *“States Parties shall take all appropriate legislative, administrative social and educational measures to protect the child from all forms or physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*
- 2) *Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up instances of child treatment described heretofore and, as appropriate for judicial involvement.”*

Article 34:

*“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:*

- a) *The inducement or coercion of a child to engage in any unlawful sexual activity;*
- b) *The exploitative use of children in prostitution or other unlawful sexual practices;*
- c) *The exploitative use of children in pornographic performances and materials.”*

Article 37:

*“States Parties shall ensure that:*

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner, which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”*

Article 39:

*“State’s Parties shall take all appropriate measures to promote physical and psychological and social reintegration of a child victim of; any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflict. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”*

Article 40:

1. *"States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*
2. *To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:*
  - (a) *No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;*
  - (b) *Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*
    - (i) *To be presumed innocent until proven guilty according to law;*
    - (ii) *To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;*
    - (iii) *To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;*
    - (iv) *Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;*
    - (v) *If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;*

- (vi) *To have the free assistance of an interpreter if the child cannot understand or speak the language used;*
- (vii) *To have his or her privacy fully respected at all stages of the proceedings.*

3. *States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:*

(a) *The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;*

(b) *Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.* 4. *A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt within a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”*

## **2. The National Law Regulation Related to Child Sexual Abuse is:**

a. Law No. 35 of 2014 on the revision of Law No. 23 of 2002 concerning of Child Protection, provides:

### Article 1:

- 1) *“Anak adalah seseorang yang belum berusia 18 (delapan belas) tahun, termasuk anak yang masih dalam kandungan.*
- 2) *Perlindungan anak adalah segala kegiatan untuk menjamin dan melindungi Anak dan hak-haknya agar dapat hidup, tumbuh berkembang, dan berpartisipasi secara optimal sesuai dengan harkat dan martabat kemanusiaan, serta mendapat perlindungan dari kekerasan dan diskriminasi.”*

(Translation:

- 1) Child is a person who is not 18 (eighteen) years old, including a child who is still in the womb.
- 2) Child protection is all activities to ensure and protect children and their rights so that they can love, grow and participate

optimally in accordance with human dignity, and get protection from violence and discrimination.)

Article 13:

- 1) *“Setiap anak selama dalam pengasuhan orang tua, wali, atau pihak lain mana pun yang bertanggung jawab atas pengasuhan, berhak mendapat perlindungan dari perlakuan:*
- a) Diskriminasi;*
  - b) Eksploitasi, baik ekonomi maupun seksual;*
  - c) Penelantaran;*
  - d) Kekejaman, kekerasan, dan penganiayaan;*
  - e) Ketidakadilan; dan*
  - f) Perlakuan salah lainnya.”*

(Translation: Every child during the care of parents, guardians, or any other party responsible for care, has the right to be protected from treatment:

- a) Discrimination;
- b) Exploitation, both economic and sexual;
- c) Neglect;
- d) Cruelty, violence and persecution;
- e) Injustice. And
- f) Other wrong treatments.)

Article 15:

*“Setiap Anak berhak untuk memperoleh perlindungan dari:*

- a. Penyalahgunaan dalam kegiatan politik;*
- b. Pelibatan dalam sengketa bersenjata;*
- c. Pelibatan dalam kerusuhan sosial;*
- d. Pelibatan dalam peristiwa yang mengandung unsur Kekerasan;*
- e. Pelibatan dalam peperangan; dan*
- f. Kejahatan seksual.”*

(Translation: Every child has the right to obtain protection from:

- a. Abuse in political activities;
- b. Engagement in armed disputes;
- c. Engagement in social unrest;
- d. Engagement in events that contain elements of violence;
- e. Engagement in warfare; and
- f. Sexual crime.)

Article 59:

- 1) *“Pemerintah, Pemerintah Daerah dan lembaga negara lainnya berkewajiban dan bertanggung jawab untuk memberikan Perlindungan Khusus kepada Anak.*
- 2) *Perlindungan Khusus kepada Anak sebagaimana dimaksud pada ayat (1) diberikan kepada:*
  - a. *Anak dalam situasi darurat*
  - b. *Anak yang beradapan dengan hukum;*
  - c. *Anak dari kelompok minoritas dan terisolasi;*
  - d. *Anak yang dieksploitasi secara ekonomi dan/atau seksual;*
  - e. *Anak yang menjadi korban penyalahgunaan narkotika, alkohol, psikotropika, dan zat adiktif lainnya;*
  - f. *Anak yang menjadi korban pornografi;*
  - g. *Anak dengan HIV/AIDS;*
  - h. *Anak korban penculikan, penjualan, dan/atau perdagangan;*
  - i. *Anak korban Kekerasan fisik dan/atau psikis;*
  - j. *Anak korban kejahatan seksual;*
  - k. *Anak korban jaringan terorisme;*
  - l. *Anak Penyandang Distabilitas;*
  - m. *Anak korban perlakuan salah dan penelantaran;*
  - n. *Anak dengan perilaku sosial menyimpang; dan*
  - o. *Anak yang menjadi korban stigmasi dari pelabelan terikat dengan kondisi Orang Tuanya.”*

(Translation:

- 1) The Government, Regional Government and other state institutions are obliged and responsible for providing Special Protection to Children.
- 2) Special protection for children as referred in paragraph (1) is given to:
  - a. Children in a situation that is central
  - b. Children facing law;
  - c. Children from minority groups and isolated;
  - d. Children who are economically and / or sexually exploited;
  - e. Children who are victims of narcotics, alcohol, psychotropic and other addictive substances;
  - f. Children who are victims of pornography;
  - g. Children with HIV / AIDS;
  - h. Children who are victims of abduction, sale and / or trade;

- i. Child victims of physical and / or psychological violence;
- j. Children victims of sexual crimes;
- k. Children victims of terrorism networks;
- l. Children with Disabilities;
- m. Children who are victims of mistreatment and neglect;
- n. Children with deviant social behavior; and
- o. Children who are victims of the stigmatization of labeling are bound by the conditions of their parents.)

Article 59A:

*“Perlindungan Khusus bagi Anak sebagaimana dimaksud dalam Pasal 59 ayat (1) dilakukan melalui upaya:*

- a. Penanganan yang cepat, termasuk pengobatan dan/atau rehabilitasi secara fisik, psikis, dan sosial, serta pencegahan penyakit dan gangguan kesehatan lainnya;*
- b. Pendampingan psikososial pada saat pengobatan sampai pemulihan;*
- c. Pemberian bantuan sosial bagi anak yang berasal dari keluarga tidak mampu; dan*
- d. Pemberian perlindungan dan pendampingan pada setiap proses pemulihan.”*

(Translation: Special protection for children as referred to in Article 59 paragraph (1) is carried out through efforts:

- a. Rapid handling, including physical and psychological treatment and / or rehabilitation, and prevention of diseases and other health problems;
- b. Psychosocial assistance during treatment until recovery;
- c. Providing social assistance for children from poor families; and
- d. Giving protection and assistance in every recovery process.”)

Article 64:

*“Perlindungan Khusus bagi Anak yang berhadapan dengan hukum sebagaimana dimaksud dalam Pasal 59 ayat (2) huruf b dilakukan melalui:*



- a. *Perlakuan secara manusiawi dengan memperhatikan kebutuhan sesuai dengan umurnya;*
- b. *Pemisahan dari orang dewasa;*
- c. *Pemberian bantuan hukum dan bantuan lain secara efektif;*
- d. *Pemberlakuan kegiatan rekreasional;*
- e. *Pembebasan dari penyiksaan, penghukuman, atau perlakuan lain yang kejam, tidak manusiawi serta merendahkan martabat dan derajatnya;*
- f. *Penghindaran dari penjatuhan pidana mati dan/atau pidana seumur hidup;*
- g. *Penghindaran dari penangkapan, penahanan atau penjara, kecuali sebagai upaya terakhir dan dalam waktu yang paling singkat;*
- h. *Pemberian keadilan di muka pengadilan Anak yang objektif, tidak memihak, dan dalam sidang yang tertutup untuk umum;*
- i. *Penghindaran dari publikasi atas identitasnya.*
- j. *Pemberian pendampingan Orang Tua/Wali dan orang yang dipercaya oleh Anak;*
- k. *Pemberian advokasi sosial;*
- l. *Pemberian kehidupan pribadi;*
- m. *Pemberian aksesibilitas, terutama bagi Anak Penyandang Disabilitas;*
- n. *Pemberian pendidikan;*
- o. *Pemberian pelayanan kesehatan; dan*
- p. *Pemberian hak lain sesuai dengan ketentuan peraturan perundang-undangan.”*

(Translation: Special protection for children dealing with the law as referred to in Article 59 paragraph (2) letter b is done through:

- a. Humane treatment with regard to needs according to their age;
- b. Separation from adults;
- c. Provision of legal assistance and other assistance effectively;
- d. Enforcement of recreational activities;
- e. Exemption from torture, punishment or other cruel, inhuman and degrading treatment and degree;
- f. Avoidance from the imposition of capital punishment and / or life sentence;
- g. Avoidance of arrest, detention or imprisonment, except as a last resort and in the shortest amount of time;

- h. Provision of justice before the court Children are objective, impartial and in a closed session to the public;
- i. Avoidance of publication of his identity.
- j. Providing assistance to parents / guardians and people trusted by children;
- k. Providing social advocacy;
- l. Giving personal life;
- m. Providing accessibility, especially for Children with Disabilities;
- n. Providing education;
- o. Providing health services; and
- p. Granting other rights in accordance with statutory provisions.)

Article 76D:

*“Setiap orang dilarang melakukan kekerasan atau ancaman kekerasan memaksa anak melakukan persetubuhan dengannya atau dengan orang lain.”*

(Translation: Everyone is prohibited from committing violence or threats of violence forcing children to have intercourse with them or with other people.)

Article 76E:

*“Setiap orang dilarang melakukan kekerasan atau ancaman kekerasan, memaksa, melakukan tipu muslihat, melakukan serangkaian kebohongan, atau membujuk anak untuk melakukan atau membiarkan dilakukan perbuatan cabul.”*

(Translation: Everyone is prohibited from committing violence or threats of violence, coercion, deception, conducting a series of lies, or persuading children to commit or allow obscene acts.)

Article 78:

*“Setiap orang yang mengetahui dan sengaja membiarkan..... anak yang berhadapan dengan hukum, anak dari kelompok minoritas dan terisolasi, anak yang tereksplotasi secara ekonomi/seksual, anak yang diperdagangkan, anak yang menjadi korban penyalahgunaan narkotika, alkohol,*

*psikotropika, dan zat adiktif lainnya (napza), anak korban penculikan, anak korban perdagangan, atau anak korban kekerasan sebagaimana dimaksud dalam Pasal 59, padahal anak tersebut memerlukan pertolongan dalam Pasal 59, padahal anak tersebut memerlukan pertolongan dan harus dibantu, dipidana dengan pidana penjara paling lama 5 (lima) tahun dan/atau denda paling banyak Rp100.000.000.00 (seratus juta rupiah).”*

(Translation: Everyone who knows and intentionally leaves..... children facing the law, children from minority groups and isolated, economically / sexually exploited children, trafficked children, children who are victims of narcotics abuse, alcohol , psychotropic, and other addictive substances (drugs), child abducted children, trafficked children, or child victims of violence as referred to in Article 59, even though the child needs help in Article 59, even though the child needs help and must be assisted, sentenced to criminal maximum imprisonment of 5 (five) years and / or a fine of no more than Rp. 100,000,000.00 (one hundred million rupiah))

Article 81:

- (1) *“Setiap orang yang melanggar ketentuan sebagaimana dimaksud dalam Pasal 76D dipidana dengan pidana penjara paling singkat 5 (lima) tahun dan paling lama 15 (lima belas) tahun dan denda paling banyak Rp5.000.0000.0000,00 (lima miliar rupiah).*
- (2) *Ketentuan pidana sebagaimana dimaksud pada ayat (1) berlaku pula bagi setiap orang yang dengan sengaja melakukan tipu muslihat, serangkaian kebohongan, atau membujuk anak melakukan persetubuhan dengannya atau dengan orang lain.*
- (3) *Dalam hal tindak pidana sebagaimana dimaksud pada ayat (1) dilakukan oleh Orang Tua, Wali, pengasuh anak, pendidik, atau tenaga kependidikan, maka pidananya ditambah 1/3 (sepertiga) dari ancaman pidana sebagaimana dimaksud pada ayat (1).”*

(Translation:

- (1) Any person who violates the provisions referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and no longer than 15 (fifteen) years and a

maximum fine of Rp.5,000,000,000.00 (five billion rupiahs).

- (2) The criminal provisions as referred to in paragraph (1) also apply to anyone who deliberately commits deception, a series of lies, or persuades a child to have intercourse with him or with another person.
- (3) In the case of criminal offenses as referred to in paragraph (1) carried out by Parents, Guardians, caregivers of children, educators, or education personnel, the penalties are added to 1/3 (one third) of the criminal threat as referred to in paragraph (1).

Article 82:

- (1) *“Setiap orang yang melanggar ketentuan sebagaimana dimaksud dalam Pasal 76E dipidana dengan pidana penjara paling singkat 5 (lima) tahun dan paling lama 15 (lima belas) tahun dan denda paling banyak Rp5.000.000.000,00 (lima miliar rupiah).*
- (2) *Dalam tindak pidana sebagaimana dimaksud pada ayat (1) dilakukan oleh Orang Tua, Wali, pengasuh anak, pendidik, atau tenaga kependidikan, maka pidananya ditambah 1/3 (sepertiga) dari ancaman pidana sebagaimana dimaksud pada ayat (1).”*

(Translation:

- (1) Anyone who violates the provisions referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of a maximum of Rp.5,000,000,000.00 (five billion rupiahs).
- (2) In criminal acts as referred to in paragraph (1), parents, guardians, child caregivers, educators, or education personnel are carried out, the penalties are added to 1/3 (one third) of the criminal threat as referred to in paragraph (1).

### **C. Theoretical Framework**

#### **a. The Effectiveness of Law Theory**

Library research regarding the effectiveness of law theory shows us diversity in terms of the level of effectiveness indicator thing. In general,

the effectiveness of a thing is interpreted as success in achieving a predetermined target or goal.

According Soerjono Soekanto, the effectiveness of a law is determined by 5 (five) factors, namely:<sup>38</sup>

- a. Legal Factor;
- b. Law Enforcement Factors;
- c. Facility Factors;
- d. Community Factors; and
- e. Cultural Factors.

Those five factors above are connected to each other. So that in analyzing the effectiveness of the law must pay attention to the relevance of the factors mentioned above.

<sup>38</sup> Winarno Yudho and Heri Tjandrasari, "Efektivitas Hukum Dalam Masyarakat," 1987, 57–63.