

CHAPTER II

LITERATURE REVIEW

A. Conceptual Framework

1. The Conceptual Framework of Child

1.1. Definition of Child

The definition of child according to Kamus Besar Bahasa Indonesia or KBBI can be defined as⁴:

- Second Offspring
- Small humans

According to Merriam Webster Dictionary, someone who has not yet been born or has been born but is not yet old or a young child who is between infancy and puberty.⁵

According to R.A. Kosnan, "Children are young people at a young age in the soul and the journey of his life because it is easily affected for the surrounding circumstances."⁶ Because of that children need to be taken seriously. However, as the most vulnerable and weak social creatures, ironically children often place themselves in the most disadvantaged positions, do not have the right to speak

⁴ "Arti Kata Anak - Kamus Besar Bahasa Indonesia (KBBI) Online," accessed June 19, 2019, <https://kbbi.web.id/anak>.

⁵ "Child | Definition of Child by Merriam-Webster," accessed July 25, 2019, <https://www.merriam-webster.com/dictionary/child>.

⁶ R.A. Koesnan, *Susunan Pidana Dalam Negara Sosialis Indonesia*, 1st ed. (Bandung: Sumur, 2005), hlm 113.

out, and even they are often victims of acts of violence and violations of their rights.⁷

In Indonesia, there are several different definitions of child according to Indonesia's Laws:

- a. In Criminal Code Article 45 *"In the case of criminal prosecution of a person who is not yet an adult for committing an act before the age of sixteen,..."* from the article it can be seen that the age of a child who cannot be called an adult is under 16 years.⁸
- b. In Civil Code Article 330, the immature people are those who have not reached the age of even twenty-one years and have not married before.⁹
- c. In Law of the Republic of Indonesia Number 4 Year 1979, child is someone that has not reached 21 years old and has not gotten married yet.¹⁰
- d. In Law of the Republic of Indonesia Number 39 Year 1999 Article 1 Act 5, Children are every human being under the age of 18 (eighteen) years old and unmarried, including children who are still in the womb if it is in their interest.¹¹

⁷ Arif Gosita, *Masalah Perlindungan Anak* (Jakarta: Sinar Grafika, 1992), hlm 28.

⁸ *Kitab Undang-Undang Hukum Pidana.*

⁹ *Kitab Undang-Undang Hukum Perdata.*

¹⁰ *Undang-Undang Nomor 4 Tahun 1979 tentang Kesejahteraan Anak.*

¹¹ *Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia*

- e. In Law of the Republic of Indonesia Number 13 Year 2003, Children are every person under the age of 18 (eighteen) years.¹²
- f. In Law of the Republic of Indonesia Number 21 Year 2007, Child is a person who is not 18 (eighteen) years old, including a child who is still in the womb.¹³
- g. In Law of the Republic of Indonesia Number 44 Year 2008, Child is someone who is not 18 (eighteen) years old.¹⁴
- h. In Law of the Republic of Indonesia Number 35 Year 2014, child is someone who is not 18 (eighteen) years old, including a child who is still in the womb.¹⁵

2. The Conceptual Framework of Indonesian Child Protection Commission (KPAI)

2.1. History

The Indonesian Child Protection Commission (KPAI) was formed based on the mandate of Law of the Republic of Indonesia Number 23 Year 2002 concerning Child Protection. The law was ratified by the Plenary

¹² *Undang-Undang Nomor 13 Tahun 2003 Mengenai Ketenagakerjaan*

¹³ *Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang*

¹⁴ *Undang-Undang Nomor 44 Tahun 2008 Tentang Pornografi*

¹⁵ *Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak*

Session that held by House of people's representatives on September 22, 2002 and signed by President Megawati Soekarnoputri, on October 20, 2002. A year later according to the provisions of Article 75 of the Law of the Republic of Indonesia Number 23 Year 2002, the President issued Presidential Decree Number 77 Year 2003 concerning the Indonesian Child Protection Commission. It takes about 8 months to elect and appoint Indonesian Child Protection Commission (KPAI) members as regulated in these laws and regulations.

Based on the explanation of article 75 of Law of the Republic of Indonesia Number 23 Year 2002, paragraph (1), (2), (3), and (4) of the Child Protection Act, it is stated that the Membership of the Indonesian Child Protection Commission (KPAI) consists of 1 (one) chairperson, 2 (two) vice-chairman, 1 (one) secretary, and 5 (five) members, where the membership of the Indonesian Child Protection Commission (KPAI) consists of elements from the government, religious leaders, community leaders, social organizations, community organizations, professional organizations, non-governmental organizations, businesses, and groups people who care about child protection. The Indonesian Child Protection Commission (KPAI) membership is appointed and dismissed by the President

after being given consideration by the House of people's representatives of the Republic of Indonesia, for a term of 3 (three) years, and can be reappointed for 1 (one) term. The first period (first) of Indonesian Child Protection Commission (KPAI) began in 2004-2007.¹⁶

2.2. Main Tasks and Functions

According to the Law of the Republic of Indonesia Number 34 Year 2014, there are the functions and main tasks of Indonesian Child Protection Commission (KPAI):¹⁷

- Functions

a. In order to increase efficiency Supervision of the implementation of fulfillment children rights, with this Regulation established Indonesian Child Protection Commission which is independent.

b. If it is needed, the Regional Government can form a Regional Child Protection Commission or institutions of the same type to support supervision the implementation of Child Protection in the region.

- Main Tasks

a. supervise the implementation of protection and fulfillment of the Rights of the Child;

¹⁶ "PROFIL | Komisi Perlindungan Anak Indonesia (KPAI)," accessed July 25, 2019, <http://www.kpai.go.id/profil>.

¹⁷ *Ibid*

- b. provide input and proposals in the formulation of policies regarding the implementation of Child Protection.
- c. collect data and information regarding Child Protection;
- d. accepting and reviewing complaints from the public regarding violations of Child Rights;
- e. mediate on disputes over violations of the Rights of the Child;
- f. cooperate with institutions formed by the Community in the field of Child Protection and
- g. give a report to the authorities about the alleged violation of this Regulation.

Based on the article above, the mandate of Indonesian Child Protection Commission (KPAI) is to guard and supervise the implementation of child protection carried out by the obligation holders of child protection obligations as stated in Article 20, namely: "*State, Government, Society, Family and Parents*" in all level, both central and regional , in the domestic and public domain, which includes the fulfillment of basic rights and special protection. Indonesian Child Protection Commission

(KPAI) is not a technical institution that organizes child protection.

The Indonesian Child Protection Commission (KPAI) considers the need to establish a Regional Indonesian Child Protection Commission (KPAID) at the provincial and district/city level as an effort to guard and supervise the implementation of child protection in the regions. Regional Indonesian Child Protection Commission (KPAID) is not a representative of Indonesian Child Protection Commission (KPAI) in a hierarchical-structural sense, but rather is coordinative, consultative and functional. The existence of Regional Indonesian Child Protection Commission (KPAID) is in line with the era of regional autonomy where the development of child protection is the obligation and responsibility of the regional government.

Indonesian Child Protection Commission (KPAI) appreciates those regions that already have a Regional Regulation on Child Protection which regulates in detail the forms of child protection services ranging from primary services, secondary to tertiary services, the implementing institutions, and independent supervisors conducted by

Regional Indonesian Child Protection Commission (KPAID).¹⁸

2.3. Position

Indonesian Child Protection Commission (KPAI) is an independent state institution formed based on article 74 of Law of Republic of Indonesia Number 23 Year 2002 concerning Child Protection.

Indonesian Child Protection Commission (KPAI) position is on par with other state commissions, such as the National Human Rights Commission (Komnas HAM), the National Commission on Violence Against Women (Komnas Perempuan), the Indonesian Broadcasting Commission (KPI), and the National Police Commission (KOMPOLNAS), Prosecutor's Commission, Business Competition Supervisory Commission (KPPU), and others.

Indonesian Child Protection Commission (KPAI) is one of three national institutions guarding and supervising the implementation of human rights in Indonesia (NHRI / National Human Rights Institution) namely Indonesian Child Protection Commission (KPAI), National Human Rights Commission (Komnas HAM), and National Commission on Violence Against Women.¹⁹

¹⁸ *Ibid*

¹⁹ *Ibid*

2.4. Vision, Mission, and Strategy

a. Vision

"Realization of Child-Friendly Indonesia"²⁰

b. Mission

Increase the commitment of stakeholders related to child protection policies²¹:

1. Increasing understanding and participation of the community in child protection;
2. Building a system and network for monitoring child protection;
3. Increase the number and competence of child protection supervisors;
4. Increase the quantity, quality, and utility of child protection supervision reports;
5. Increasing the capacity, accessibility, and quality of public complaints services;
6. Improve the performance of the KPAI organization.

c. Strategy

1. Use the System Building Approach (SBA) as the basis for the implementation of duties and

²⁰ *Ibid*

²¹ *Ibid*

functions, which includes three system components²²:

- a) system of norms and policies, including rules in legislation and derivative policies both at the central and regional levels;
- b) structure and services, including how the organizational structure, institutions, and governance, who are responsible officials and how their capacity;
- c) the process, including how the procedure, coordination mechanism, and SOP are;

2. Strengthening institutional capacity and human resources that are professional, credible and structured, so that it is expected that the duties and functions of KPAI can take place effectively and efficiently;

3. Strengthening public awareness to encourage the availability of supporting facilities and infrastructure that provide easy access to the

²² *Ibid*

implementation of child protection in all sectors;

4. Perspectives and approaches that are holistic, comprehensive and not partial in responding to problems or cases, because problems or cases of children never stand alone but always intersect with various aspects of complex life;

5. Dissemination of the concept of Child-Friendly Indonesia (IRA) to various obligations holders and organizers of child protection which necessitates the existence of child rights mainstreaming in all aspects and levels of development in a sustainable manner;

6. Strengthening the mechanism of the referral system in receiving complaints, so that KPAI. This is seen as important to strengthen the process of handling child protection issues originating from public complaints.

7. Strategic partnerships with the government and civil society in every field of work and issues so that every problem can get the right

recommendations and solutions, and monitor their progress.

B. Jurisdiction Framework

1. United Nations Convention on the Rights of the Child

- Article 2

1. *“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, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*
2. *“States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”*

- Article 3

2. *“States Parties undertake to ensure the child such protection and care as is necessary for his or her*

well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. *States Parties shall ensure that the institutions, services, and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”*

Article 4

“States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

- **Article 5**

“States Parties shall respect the responsibilities, rights, and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”

- **Article 6**

1. *“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.”*

- **Article 7**

2. *“States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”*

- **Article 8**

1. *“States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”*

- **Article 9**

1. *“States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.*
3. *States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.”*

- **Article 12**

1. *“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.”*

- **Article 14**

1. *“States Parties shall respect the right of the child to freedom of thought, conscience, and religion.*
2. *States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.”*

- **Article 15**

1. *“States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.”*

- **Article 17**

“States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;*
- b) Encourage international co-operation in the production, exchange, and dissemination of such information and material from a diversity of cultural, national and international sources;*
- c) Encourage the production and dissemination of children's books;*
- d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;*
- e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her*

well-being, bearing in mind the provisions of articles 13 and 18.”

- Article 18

1. *“States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.*
3. *States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.”*

- Article 19

1. *“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of 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.”

- Article 20

1. *“A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*
2. *States Parties shall in accordance with their national laws ensure alternative care for such a child.*
3. *Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.”*

- Article 21

“States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- a) *Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives, and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;*
- b) *Recognize that inter-country adoption may be considered as an alternative means of child's care if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;*
- c) *Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;*
- d) *Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;*

- e) *Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.”*

- Article 22

1. *“States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”*

- Article 23

1. *“States Parties recognize that a mentally or physically disabled child should enjoy a full and*

decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. *States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.*

4. *States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.”*

- **Article 24**

1. *“States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*
2. *States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:*
 - a) *To diminish infant and child mortality;*
 - b) *To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;*
 - c) *To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;*

d) *To ensure appropriate pre-natal and post-natal health care for mothers;*

e) *To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;*

f) *To develop preventive health care, guidance for parents and family planning education and services.*

3. *States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.*

4. *States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.”*

- **Article 25**

“States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.”

- **Article 26**

1. *“States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.”*

- **Article 27**

1. *“States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*
2. *The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the*

conditions of living necessary for the child's development.

3. *States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing, and housing.*

4. *States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.”*

Article 28

1. *“States Parties recognize the right of the child to education, and with a view to achieving this right*

progressively and on the basis of equal opportunity, they shall, in particular:

- a) Make primary education compulsory and available free to all;*
 - b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*
 - c) Make higher education accessible to all on the basis of capacity by every appropriate means;*
 - d) Make educational and vocational information and guidance available and accessible to all children;*
 - e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.*
- 2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.*

3. *States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.”*

Article 31

1. *“States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.*
2. *States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.”*

Article 32

1. *“States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous*

or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. *States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:*

a) *Provide for a minimum age or minimum ages for admission to employment;*

b) *Provide for appropriate regulation of the hours and conditions of employment;*

c) *Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.”*

- Article 33

“States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of

children in the illicit production and trafficking of such substances.”

- 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 35

“States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”

- **Article 36**

“States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.”

- **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 38

- 1. “States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.*
- 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.*

3. *States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.*
4. *In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”*

- **Article 39**

“States Parties shall take all appropriate measures to promote physical and psychological recovery 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 conflicts. 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 defence;

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; counseling; probation; foster care; education and vocational training programs and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”*

- **Article 42**

“States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.”

**2. Law of Republic of Indonesia Number 23 Year 2002
Concerning Child Protection**

- Article 20

The state, government, community, family and parents are obliged and responsible for the implementation of child protection.

- Article 21

States and governments have the obligation and responsibility to respect and guarantee the rights of every child regardless of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status of children, birth order of children, and physical and / or mental conditions .

- Article 22

States and governments have the obligation and responsibility to provide support for facilities and infrastructure in the implementation of child protection.

- Article 23

1. The state and the government guarantees the protection, care and welfare of children by taking into account the rights and obligations of parents,

guardians or other persons who are legally responsible for the child.

2. *The state and the government supervise the implementation of child protection.*

Article 24

The state and the government guarantees the child to exercise his right to express his opinion according to the age and intelligence level of the child.

Article 25

Obligations and responsibilities of the community towards the protection of children are carried out through the activities of the community's role in the implementation of child protection.

Article 26

- 1) *Parents have the obligation and responsibility to: a. nurture, care for, educate and protect children; b. nurture children according to their abilities, talents, and interests; and c. prevent marriages at the age of children.*

- 2) *In the event that parents are absent, or their whereabouts are unknown, or for some reason,*

unable to carry out their obligations and responsibilities, then the obligations and responsibilities referred to in paragraph (1) may be transferred to the family, which is carried out in accordance with the provisions applicable laws and regulations.

- Article 74

In the context of increasing the effectiveness of the implementation of child protection, with this law an independent Indonesian Child Protection Commission is formed.

- Article 75

- 1) *Membership of the Indonesian Child Protection Commission consists of 1 (one) chairman, 2 (two) deputy chairs, 1 (one) secretary, and 5 (five) members.*
- 2) *Membership of the Commission as referred to in paragraph (1) consists of elements of the government, religious leaders, community leaders, social organizations, social organizations, professional organizations, non-governmental*

organizations, business world, and community groups who are concerned with child protection.

3) *Membership of the Commission as referred to in paragraph (1) and paragraph (2) shall be appointed and dismissed by the President after receiving the consideration of the House of Representatives of the Republic of Indonesia, for a term of 3 (three) years, and may be reappointed for 1 (one) time length of service.*

4) *Further provisions regarding organizational completeness, work mechanism, and financing are stipulated by Presidential Decree.*

Article 76

The Indonesian Child Protection Commission is tasked with: conducting socialization of all provisions of the laws and regulations relating to child protection, collecting data and information, receiving public complaints, conducting reviews, monitoring, evaluating and supervising the implementation of child protection; provide reports, suggestions, input, and considerations to the President in the context of child protection.

**3. Law of Republic of Indonesia Number 35 Year 2014
Concerning Child Protection as amended by Law of Republic
of Indonesia Number 23 Year 2002**

There are several articles that amended in this first amendment relating to writer's research, namely:

- Article 21

- a) *The State, Government, and Regional Government are obliged and responsible to respect the fulfillment of the Rights of the Child regardless of ethnicity, religion, race, class, sex, ethnicity, culture and language, legal status, birth order, and physical and / or mental condition.*
- b) *To guarantee the fulfillment of the Rights of the Child as referred to in paragraph (1), the state is obliged to fulfill, protect and respect the Rights of the Child.*
- c) *To guarantee the fulfillment of the Rights of the Child as referred to in paragraph (1), the Government is obliged and responsible in formulating and implementing policies in the field of the implementation of Child Protection.*
- d) *To guarantee the fulfillment of the Rights of the Child and implement the policy as referred to in paragraph (3), the Regional Government is obliged*

and responsible for implementing and supporting national policies in the implementation of Child Protection in the region.

e) The policy as referred to in paragraph (4) can be realized through the efforts of the regions to develop appropriate districts/cities for children.

f) Further provisions regarding the appropriate district/city policy for children as referred to in paragraph (5) are regulated in a Presidential Regulation

- Article 22

The State, Government, and Regional Government are obliged and responsible to provide support for facilities, infrastructure, and availability of human resources in the implementation of Child Protection.

- Article 23

a) The State, Government, and Regional Government guarantee the protection, maintenance, and welfare of the Child by taking into account the rights and obligations of Parents, Guardians or other people who are legally responsible for the Child.

b) *The State, Government, and Regional Government oversee the implementation of Child Protection.*

- **Article 24**

The State, Government, and Regional Government guarantee the Children to exercise their rights in expressing opinions according to the age and level of intelligence of the Child.

- **Article 74**

a) *In order to improve the effectiveness of supervision of the implementation of the fulfillment of the Rights of the Child, with this Act an Indonesian Child Protection Commission was formed which was independent.*

b) *In the event that it is needed, the Regional Government may form a Regional Child Protection Commission or other similar institution for support supervision organizing Child Protection in the area.*

- **Article 75**

a) *Membership of the Indonesian Child Protection Commission consists of 1 (one) chairperson, 1 (one) vice-chairman, and 7 (seven) members.*

- b) *Membership of the Commission as referred to in paragraph (1) consists of elements of the Government, religious leaders, community leaders, community organizations, the business world, and community groups concerned with the Protection of Children.*
- c) *The membership of the Commission as referred to in paragraph (1) and paragraph (2) is appointed and dismissed by the President after being given consideration by the People's Representative Council of the Republic of Indonesia for a term of 5 (five) years and may be reappointed for 1 (one) term*
- d) *Further provisions regarding the completeness of the organization, work mechanism, and financing are regulated by a Presidential Regulation*

- **Article 76**

The Indonesian Child Protection Commission has the duty:

- a) *supervise the implementation of protection and fulfillment of the Rights of the Child;*
- b) *provide input and proposals in the formulation of policies regarding the implementation of Child Protection.*
- c) *collect data and information about Child Protection;*

- d) *accepting and reviewing complaints from the public regarding violations of the rights of the child;*
- e) *mediate on the dispute over the Rights of the Child;*
- f) *cooperate with institutions formed by the Community in the field of Child Protection; and*
- g) *provide a report to the authorities about alleged violations of this Law.*

4. Law of The Republic of Indonesia Number 17 Year 2016 Concerning Determination of Government Replacement of Law of Republic of Indonesia Number 1 Year 2016 Concerning Second Amendment to Law of Republic of Indonesia Number 23 Year 2002 Regarding Child Protection into Law

There are several articles that amended in this second amendment but not used in this research, namely: Article 1, Article 82, and Article 82.

5. Regional Regulation of Riau Islands Province Number 7 Year 2010

- Article 9

Local governments, NGOs / social organizations, communities, and families are obliged to provide protection for children in the womb, children under five, children aged

schools, abandoned children, children who need special protection accordingly with statutory regulations.

- **Article 31**

Regional governments, communities, families, and parents are obliged and responsible for the implementation of child protection.

- **Article 32**

Regional Government is obliged and responsible for:

- a. *respect and guarantee the rights of every child regardless of ethnicity, religion, race, class, sex, ethnicity, culture and language, child status, order of birth of the child, and physical and / or mental conditions;*
- b. *guarantee the protection, care, and welfare of children by taking into account the rights and obligations of parents, guardians, or other people who are legally responsible for children;*
- c. *supervise the implementation of child protection; and*
- d. *guaranteeing children to use their rights in expressing their opinions according to the age and intelligence of children.*

Article 33

1. *To guarantee cooperation between parties at the provincial level, with and between parties in the Regency / City and all related elements in the implementation of Child Protection, the Provincial Government is obliged to determine the duties and authorities of the parties in the form of Operational Instructions, Minimum Service Standards (SPM) and Standard Operating Procedures (SOUP).*
2. *Further provisions on Operational Instructions, SPM, and SOP for Child Protection are stipulated by a Governor Regulation.*

Article 34

1. *The community can play a role in helping to prevent and handle victims of violence against children.*
2. *Community participation as referred to in paragraph (1) is realized by:*
 - a. *provide information and / or report any known violence;*
 - b. *provide protection for victims;*
 - c. *provide emergency assistance;*

d. provide advocacy against victims and / or the community about handling cases of violence against children; and

e. assist in the process of return and social reintegration.

- Article 36

1. The Regional Government is obliged to facilitate and / or form a Regional Children Forum as a forum for children to gather, express and be heard, as well as seek, receive and convey information.

2. The Regional Children Forum as referred to in paragraph (1) shall be formed by the Regency / City Government.

3. Further provisions regarding the Regional Children Forum are stipulated by a Governor Regulation.

- Article 37

1. To realize the fulfillment of children's rights, the Implementation of Child Protection is carried out in an integrated and integrated manner with and among all development sectors through the City of Child-Friendly Policy.

2. *Implementation and Implementation of Child-Friendly City Policies are implemented in all Regencies / Cities in the province.*
3. *Further provisions regarding Child-Friendly City are stipulated by a Governor Regulation.*

- **Article 38**

1. *To guarantee the implementation of child protection, then Regional Commission for Supervision and Protection of Regional Children is formed independently.*
2. *Membership of Regional Child Protection Supervisory Commission members a minimum of 5 people and a maximum of 7 people consisting of:*
 - a. *chairman;*
 - b. *Vice-Chairman; and*
 - c. *member.*
3. *Membership of the Regional Child Protection Supervisory Commission consists of Government elements and/or religious leaders and/or community leaders and/or social organizations and/or social organizations and/or professional organizations and/or non-government organizations and/or the*

world businesses and/or community groups who care about protection child.

4. *Membership of the Regional Child Protection Supervisory Commission is appointed and dismissed by the Governor, after receiving the Board's consideration Provincial Regional People's Representative, for a term of 5 (five) years and can be reappointed for 1 (one) term of office.*

Article 39

Regional Child Protection Supervisory Commission has the following tasks:

- a. *Disseminating all provisions of the law relating to child protection, collecting data and information receive public complaints, conduct reviews, monitor, evaluation, and supervision of the implementation of child protection;*
- b. *provide reports, suggestions, and input to the Governor in order child protection; and*
- c. *further provisions concerning, formation, organizational structure, and mechanism of work of the Regional Child Protection Commission at stipulate the Governor Regulation.*

- **Article 40**

1. *For the smooth implementation of the duties of the Supervision and Protection Commission Child, the Regional Government forms the Supervisory Commission Secretariat Regional Child Protection.*
2. *Further provisions concerning organization structure, financing, and mechanism of work of the Commission and the Secretariat of the Commission for the Supervision of Protection Regional Children are determined by Governor Regulation.*

**6. Governor's Regulation of Riau Islands Province Number 39
Year 2011**

- **Article 2**

With this governor's regulation, the KPPAD of Riau Islands Province was formed, which is domiciled in the capital of Riau Islands Province.

- **Article 3**

KPPAD has duties:

- a. *Socialize all statutory provisions and policies relating to child protection*
- b. *Receive public complaints*
- c. *Collect data and information about children*

- d. *Reviewing, monitoring, evaluating and monitoring the implementation of child protection.*
- e. *Provide reports and input to the Governor regarding the implementation of child protection.*

C. Theoretical Framework

1. The Effectiveness of Law Theory

According to the Kamus Besar Bahasa Indonesia, effective is something that has an effect (consequently, its effect, impression) since the entry into force of an Act or regulation.²³

While effectiveness itself is the situation in which he is played to monitor. If viewed from a legal standpoint, what is meant by "him" here is the authority, namely the police. The word effectiveness itself comes from the word effective, which means that the effect or effect is desired in an action. Every efficient job means effective because it is seen in terms of the results of the goals to be achieved or desired from the action.

When we want to know the extent of the effectiveness of the law, then We must first be able to measure the extent to which the law is adhered to by the majority of the targets that are subject to obedience, we will say that the legal rule in question is effective. However, even if said rules are adhered to it is effective, but we

²³ "Arti Kata Efektif - Kamus Besar Bahasa Indonesia (KBBI) Online," accessed August 31, 2019, <https://kbbi.web.id/efektif>.

still can still question further the degree of effectiveness because someone obeys or not a rule of law depends on its interests.²⁴

While Soerjono Soekanto uses a benchmark for effectiveness in law enforcement on five things, namely:²⁵

1. Factors of legal law or regulation. Legal Law functions for justice, certainty, and expediency. In the practice of implementing the law on the ground, there are times when there is a conflict between legal certainty and justice. Legal certainty is concrete in tangible form, while justice is abstract so that when a judge decides a matter in the application of the law only, there are times when the value of justice is not achieved. So when looking at a problem regarding the law at least justice is a top priority. Because law is not only seen from the point of written law. The first element that influences whether or not law enforcement is the rule of law itself. As for a rule of law, it can be said to be good if it meets the following concepts:

- a. Applies legally: its validity is based on the effectiveness of a higher level of rule and is formed in a way that has been applied.

²⁴ Achmad Ali, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)* (Jakarta: Kencana, 2009), hlm 375.

²⁵ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: PT. Raja Grafindo Persada, 2007), hlm 5.

b. It applies sociologically: the rule of law is recognized and accepted by the community to whom the rule of law is enforced.

c. Applies physiologically: the rule of law is in accordance with the ideals of the law (rechtsidee) as the highest positive value.

d. Applies futuristically: the rule of law can apply.

According to Soerjono Soekanto, the rule of law can be effective if,

a) Existing regulations concerning certain fields of life are systematic enough.

b) The existing regulations regarding certain fields of life are sufficiently synchronous, hierarchically and horizontally there are no contradictions.

c) Qualitatively and quantitatively the existing regulations regulating certain areas of life are sufficient.

d) Issuance of certain regulations is in accordance with existing juridical requirements

2. Law Enforcer Factors in the functioning of the law, the mentality or personality of law enforcement officers plays an important role if the regulations are good, but the quality of the officers is not good, there is a problem. So far there has been a strong tendency among the community to

interpret the law as an officer or law enforcer, meaning that the law is identified with the real behavior of officers or law enforcers. Unfortunately, in carrying out its authority, problems often arise because of attitudes or treatment that are deemed to be beyond authority or other actions that are deemed to undermine the image and authority of law enforcers. This is due to the low quality of the law enforcement officers. According to Soerjono Soekanto that the problems affecting the effectiveness of written law in terms of the apparatus will depend on the following:

- e) The extent to which officers are bound by existing regulations.
- f) To what extent are officers permitted to give discretion.
- g) What kind of example should officers give to the community.
- h) To what extent is the degree of synchronization of assignments given to officers so as to provide strict limits on their authority.

3. Factors Supporting Facilities or Facilities Factors or supporting facilities include software and hardware, According to Soerjono Soekanto that law enforcers cannot work properly, if not equipped with vehicles and proportional communication tools. Therefore, facilities or

facilities have a very important role in law enforcement. Without these facilities or facilities, it would be impossible for law enforcement to harmonize their roles with actual roles. In connection with the facilities and infrastructure said in terms of these facilities, Soerjono Soekanto predicts the benchmark effectiveness of certain elements of the infrastructure, where the infrastructure must clearly be a part that contributes to the smooth functioning of the apparatus in the place or location of work. The elements are:

- i. Existing infrastructure is well maintained.
- ii. Infrastructure that does not yet exist needs to be in place by taking into account the time frame of its procurement.
- iii. Inadequate infrastructure needs to be completed immediately.
- iv. Damaged infrastructure needs to be repaired immediately.
- v. Functions that are stuck need to be launched immediately.
- vi. Functions that are experiencing deterioration in function need to be increased in function

4. Community Factors comes from the community and aims to achieve peace in the community. Every citizen or group has

a little legal awareness. The problem that arises is the level of legal compliance, namely legal compliance that is high, moderate, or lacking. The existence of a degree of community legal compliance with the law is one indicator of the functioning of the law concerned. Some elements of measuring effectiveness depend on the condition of the community, namely:

- a. Factors that cause people to not obey the rules despite good regulations.
- b. Factors that cause people to not obey the rules even though the rules are very good and the authorities are very authoritative.
- c. Factors that cause people to not comply with good regulations, officers or authorities as well as adequate facilities.

5. Cultural Factors basically include the values that underlie applicable law, which values are abstract conceptions of what is considered good (so obeyed) and what is considered bad (so avoided). Thus, Indonesian culture is the basis or underlying the prevailing customary law. In addition, written law (legislation) also applies, which is formed by certain groups in the community who have the power and authority to do so. The statutory law must be able to reflect

the values that form the basis of customary law so that the laws of the law can be actively applied.

