

## CHAPTER II

### LITERATURE REVIEW

#### A. Conceptual Framework

##### 1. Child

##### a. Definition of Rights

Rights are something that must be obtained by every person who has been born since even before birth. In Indonesia Dictionary (*Kamus Besar Bahasa Indonesia*) the rights means something that is true, property, possession, authority, power to do something (because it has been determined by law, rules, etc.), the power over something or to demand something, degree or dignity. Whereas obligation is something that must be carried out, must (something that must be done). In history, the theme of rights is relatively younger than the theme of obligation, even though it was previously born. The theme of the new rights was “born” formally in 1948 through the UN Declaration of Human Rights. Human rights is intended to be the rights that humans have and not because they are given by society, but based on their dignity as humans. Human rights cannot be eliminated or declared invalid by the state.<sup>1</sup>

Sometimes we often hear “the rights” in daily life. A human right is a nature that has existed since they were born. When someone is born,

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<sup>1</sup> Sunggono, Bambang, Harianto, Aries, “Bantuan Hukum dan Hak Asasi Manusia,” (2009): 44.

human beings have the rights and obligations. Every human being has different rights and obligations, depending on for example, their occupation or position in society. Before discussing further about rights and obligations, the author wants to explain the notion of rights.

K. Bertens in his book entitled Ethics explains that in Ancient Roman thought, the word *ius-iurus* (rights) only shows the law in an objective sense. Which is mean the rights are seen as a whole law, rules and institutions that regulate people's lives in the public interest (law in the sense of Law, not the rights). At the end of the Middle Ages, *ius* in a subjective sense, not an object that belongs to a person, namely the ability of someone to like something or to do something (the rights, not the law). Finally, the right at that time is a subjective right which is a reflection of the law in an objective sense.<sup>2</sup> Rights and obligations are related. Obligations are divided into two types, namely perfect obligations that are always related to the rights of others and the another one is the imperfect obligations that are not related to the rights of the others. Perfect obligations have a basis for justice, while imperfect obligations are based on morals. Rights is something that is urgent in this life, everyone has the right to get rights after fulfilling their obligations. Rights is something that absolutely belongs to us and it depends on us how the rights will be use.

#### **b. Definition of Child**

Child is a person who is have not reach 18 (eighteen) years old, including children who are still in the womb of their mother according to

<sup>2</sup> Bertens,K, "Etika", (2007): 177.

the contents of *pasal 1 angka (1) Undang-Undang Nomor 23 Tahun 2002* Amendments to *Undang-Undang Nomor 35 Tahun 2014* concerning Child

Protection.<sup>3</sup> The child is a descendant between father and mother through legal or not marriage.<sup>4</sup> Humans as a living creature develop and continue their generation that develop so as to form a family tree.

Child's meaning based on the Black's Law Dictionary is generation as correlative of parents which means son or daughter considered as in relation with the father and mother.<sup>5</sup> In a family, children is something which is very valuable for all parents. Every parent must take care, maintain, guide, and educate their children as well as possible so that they become a useful children for everyone.

The meaning of children according to other legal regulations, including:

1. Convention on the Rights of the Child

The convention states that humans whose ages have not reached 18 (eighteen) years. However, recognition of the different age limits that may be applied in national legislation is given.<sup>6</sup>

2. Criminal Code (*Kitab Undang Hukum Pidana*)

The Criminal Code regulates and designates legal proceedings and legal material for minors. The related articles are articles 45, 46 and 47 of

<sup>3</sup> UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 35 TAHUN 2014 TENTANG PERLINDUNGAN ANAK PASAL 1 ANGKA (1).

<sup>4</sup> "Pengertian Anak." Accessed May 20, 2019. <http://kamusbahasaIndonesia.org/anak/mirip>

<sup>5</sup> "What Is Child." Accessed May 20, 2019. <http://thelawdictionary.org/child/>

<sup>6</sup> Convention on the Rights of the Child 1989 Article 1.

the Criminal Code. Article 45 of the Criminal Code is an article that regulates the limit of age and the limit of time for prosecution because it is

related to acts of crime and violations that committed under the age of 16 (sixteen) years. However, the provision was revoked by the issuance of Law Number 3 of 1997 concerning Juvenile Courts.<sup>7</sup>

### 3. Civil Code Article 330 (Kitab Undang Hukum Perdata)

The Civil Code regulates the limit of age for immature people, namely those who are have not reached the age of 21 (twenty one) years old and have never been married before.<sup>8</sup>

### 4. UNICEF ( United Nations Emergency Children's Fund )

UNICEF is an international organization under the auspices of the United Nations which was established on 11 December 1946 to provide humanitarian assistance especially to children living as a result of World War II. UNICEF defines children as residents aged between 0 (zero) and 18 (eighteen).<sup>9</sup>

### 5. *Undang–Undang Nomor 3 Tahun 1997 tentang Pengadilan Anak, Pasal 1 butir 2*

<sup>7</sup> Criminal Code Article 45, 46 and 47.

<sup>8</sup> Civil Code Article 330.

<sup>9</sup> "UNICEF." Accessed May 20, 2019. [www.unicef.org/indonesia/id/](http://www.unicef.org/indonesia/id/)

The law stipulates that children are person in cases of delinquent children who have reached the age of 8 (eight) years, but have not reached the age of 18 (eighteen) years old and have never been married before.<sup>10</sup>

The sociological aspect of children's understanding shows that children are social creatures that created by God, who always interact with the national community and state. In this case the child's position in the community is quite small. The children's meaning from this social aspect leads to natural protection because of children has a limit of interacting with adults. The ability limitation factor is because the child is in the process of growing, learning, and the socialization process due to the age of the adolescent: due to childrens intelligence ability and physical condition in spiritual or mentality growth which is under the adult age category.

In the psychology of child development there is a lot of things to discuss about the basics of a person's personality that formed from their childhood age. The process of development that occur in a child plus everything that the children had experienced and received during their childhood age will gradually enable him to grow and develop into an adult human.<sup>11</sup> As the child growing, they will continue to explore until how far their parents can tolerate their actions and the next step requires their parents revaluation. Childrens also feel that they still have to test their parents firmness until how far their parents will hold on with their

<sup>10</sup> UNDANG UNDANG REPUBLIK INDONESIA NOMOR 3 TAHUN 1997 TENTANG PENGADILAN ANAK., Pasal 1 butir 2.

<sup>11</sup> Gunarsa, Singgih, D, "Psikologi Perkembangan Anak dan Remaja," (1985): 3.

children's behavior. Those parents who were only act as a best pal, inevitably will be experience such a problem. In the end, these parents have to be assertive, at least starting from those times, or in the end they will lose their temper and become angry with their child.<sup>12</sup>

In reality, society often process children to carry out economic activities or productivity activities that can produce economic values. Childrens understanding in the economic field, leads to the concept of child welfare stipulated by Law No. 4 of 1979 concerning child welfare is “human rights must be work it out together.” The children’s outlook from religious understanding will be built according to religious teachings, children will get special position.<sup>13</sup> Children are entrusted by God to parents to be loved and educated. In our law, there is pluralism regarding the understanding of children, this as a result of each legislation regulation which regulates separately about the understanding of the child.<sup>14</sup>

### c. **Children’s Rights**

Since birth, childrens have their rights as human beings, child protection is needed to ensure that their rights as human beings can be fulfilled. Based on Article 4 of Law No. 23 of 2002 concerning Child Protection states that every child has the right to live, grow, develop and participate fairly in accordance with the dignity and dignity of humanity, and receive protection from violence and discrimination. Every child has

<sup>12</sup> Spock, Benyamin, “Menghadapi Anak di Saat Sulit,” (2000): 127.

<sup>13</sup> UNDANG UNDANG REPUBLIK INDONESIA NOMOR 4 TAHUN 1979 TENTANG KESEJAHTERAAN ANAK.

<sup>14</sup> “Pengertian Anak Menurut Para Ahli.” Accessed May 20, 2019. <https://www.idjoel.com/pengertian-anak-menurut-para-ahli/>

the right to a name as self-identity and citizenship status.<sup>15</sup> Every child has the right to worship according to his religion, thinking and expressing

according to their intelligence level and age in parental guidance.<sup>16</sup> Every children has the right to aknowledge by their parents, every child has the right to be raised and cared for by their own parents. Childrens also has the

right to be cared for or appointed as a foster children or adopted children by other people in accordance with the provisions of the applicable legislation if there is any reasons that their parents cannot guarantee the

child's growth and development, or the child is neglected. Every child has the right to receive social security in accordance with physical, mental, spiritual and social needs.<sup>17</sup>

Article 9 Number (1) of Law Number 23 of 2002 concerning Child Protection states that every child has the right to be educated, self developing based on the level of their intelligence in accordance with their interests and talents. In addition, specially for children with disabilities, they also have the right to get the extraordinary education, while for those children who have excellence, they are also entitled to a special education.

Every child has the right to declare and be heard, accept, seek, and provide

<sup>15</sup> UNDANG UNDANG REPUBLIK INDONESIA NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK., Pasal 4.

<sup>16</sup> UNDANG UNDANG REPUBLIK INDONESIA NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK., Pasal 6.

<sup>17</sup> UNDANG UNDANG REPUBLIK INDONESIA NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK., Pasal 8.

information based on the level of intelligence and age for their own self development that suitable with the values of decency.<sup>18</sup>

Article 11 of Act Number 23 of 2002 concerning Child Protection states that every child has the right to rest and use their leisure time, interact with other same age children, play, recreation and create according to their own interests, talents, and level of intelligence for self development. Article 12 of Law Number 35 Year 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection states that every child with disability condition has the right to obtain rehabilitation, social assistance, and maintenance of the level of social welfare.<sup>19</sup>

Furthermore, the law states that every child that still in the parents guidance, guardians, or any other party responsible for taking care of that children, reserve the right of protection from these treatment:

1. Discrimination
2. Exploitation, both economic and sexual
3. Neglected
4. Cruelty, violence and persecution
5. Injustice, and
6. Other wrong treatment.

<sup>18</sup> UNDANG UNDANG REPUBLIK INDONESIA NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK., Pasal 9, Angka (1).

<sup>19</sup> UNDANG UNDANG REPUBLIK INDONESIA NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK., Pasal 11.



Article 13 Number (2) of the law states that in the case of parents, guardians or caregivers of children carrying out all forms of treatment as

referred to in Number (1), the doer is considered to get a additional extra sentence.<sup>20</sup> Article 14 Number (1) states that every child has the right to be nurtured for by their own parents, unless there are reasons and / or law that

indicate that the separation is in the best interest of the child and is the last consideration.<sup>21</sup>

Furthermore, in Article 15 it is stated that every child has the right to obtain protection from:

1. Misuse in political activities
2. Involvement in armed disputes
3. Involvement in social unrest
4. Involvement in events that contain elements of violence, and
5. Involvement in warfare
6. Sexual crime<sup>22</sup>

Article 16 Number (1) states that every child has the right to obtain protection from the target of mistreatment, torture, or inhuman punishment. Number (2) states that every child has the right to obtain freedom in accordance with the law Number (3) states that arrest,

<sup>20</sup> UNDANG UNDANG REPUBLIK INDONESIA NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK., Pasal 13, Angka (2).

<sup>21</sup> UNDANG UNDANG REPUBLIK INDONESIA NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK., Pasal 14, Angka (1).

<sup>22</sup> UNDANG UNDANG REPUBLIK INDONESIA NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK., Pasal 15, Perubahan atas UNDANG UNDANG REPUBLIK INDONESIA NOMOR 23 TAHUN 2002

detention or criminal offense of child imprisonment is only carried out if it is in accordance with applicable law and can only be done as a last effort.<sup>23</sup>

Rahmitha P. Soendjojo and Irwanto, describing children's rights into eight variety, namely:

### 1. Food Rights

At least, children are given nutritious food 3 times a day, not just eating or snacking on junk food just because parents don't want to bother to cook. Even since in the womb, the child has the right to get nutritious food. The most basic thing and must be known by parents that the best food for a baby is breast milk, for which a baby deserves it. Unless the condition of the mother really does not allow to give breast milk such as illness.

### 2. Clothing Rights

Children have the right to get proper clothing. Decent clothes does not have to be expensive and branded, but the most important is the clothes are clean and neat. Also wear the clothes politely and properly so that children will get used to it.

### 3. Residence Rights

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<sup>23</sup> UNDANG UNDANG REPUBLIK INDONESIA NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK,

Children should get a decent place to live. However, it is very unfortunate that currently housing for the middle and lower classes is still apprehensive, narrow and slum dwellings.

#### 4. Health Service Rights

Children have the right to prioritize health services in accordance with standards, whether in the form of immunization as a preventive measure or in the form of medication or healing. Currently POSYANDU (*Pos Pelayanan Keluarga Berencana - Kesehatan Terpadu*) has begun to be routinely held every month in hamlets as an effort to fulfill children's rights in the form of health services for children.

#### 5. Education and Self-Development Rights

Children have the right to go to school and if necessary the child is also entitled to take part in school activities, including additional tutoring. As parents, they must pay attention to children's desires, interests and talents in determining school. Every child has the right to develop the potential that exists in them and of course they also need parents support. We are not only obliged to pay attention to gifted / talented children but also children with special needs such as people with autism, blind, deaf, mentally retarded, or children with certain disorders and diseases.

#### 6. Right to Be Protected

The right of the child to get protection, namely physical, emotional, sexual, and neglect. Physical protection, never beat or even persecute a

child. In fact, making and pinching on the grounds of enforcing discipline is not justified. Emotional protection, do not curse children, label them

with negative names, or other verbal abuse. Especially at the age of a toddler, the child does not understand behavior that they are doing whether they have done the right thing or the wrong thing. Sexual protection, do

not treat a child's body like a “toy”, even the intention just joking around.

There are some ways to provide sexual protection, namely:

- a. Teach the children about how to resist mistreatment of their body, including touches on the genitals and breasts
- b. Do not let the children come out of the bathroom naked
- c. Explain comfortable-uncomfortable and safe-unsafe limits, for example, they may only kiss on hands and cheeks but not other beside these
- d. Also explain the differences in kisses and hugs as expressions of love, friendship or even lust
- e. Make it a habit to sleep in a closed room and wear a shirt or blanket that does not show on your thighs or chest (over skin showing)
- f. Teach to refer to the genitals with the correct name, penis for men and vagina for women.
- g. Protection from neglect is often overlooked by parents both from marginal communities where children and even babies are exploited to become workers such as beggars / street

singers, neglect occurs in the form, for example, let the babies to play alone.

#### 7. Right to play

Children has the right to play and enjoy leisure time. Many children are hired as beggars so they do not have time to play and socialize with their peers. Even though by playing, children can develop their creativity and potential.

#### 8. Right to Participate

The right of this one is the most often overlooked by parents above the other rights because they think little children do not know anything.

Since childhood, children should be introduced to their rights to participate, from offering or giving food and clothing choices to the activities they want to do<sup>24</sup>

## 2. Child-Friendly City

### a. Definition of Child-Friendly City

Child-Friendly City is an administrative development system of an area that integrates commitment and resources of the government, society, and the business world that are planned in a comprehensive and

<sup>24</sup> "Hak Hak Anak." Accessed May 20, 2019.  
<http://bola.kompas.com/read/2008/07/23/09433547/Sudahkah.Kita.Memenuhi.Hak-hak>

sustainable manner in policies, programs and activities to fulfill children's rights.<sup>25</sup>

Child-Friendly City is a district / city development strategy that integrates the commitments and resources of government, business, and communities that are planned and sustainable in the program for fulfilling children's rights.<sup>26</sup>

Child Friendly City is a term first that introduced by the State Ministry of Women's Empowerment in 2005 through Child Friendly City Policy. The reason is to accommodate the district government, the term of "Child Friendly City" later became a Child-Friendly Regency / City and then abbreviated as KLA (*Kota Layak Anak*). In the Policy, it was described that KLA is an effort of the district / city government to accelerate the implementation of the Convention on the Rights of the Child (CRC) from the legal framework into development definitions, strategies, and interventions such as policies, institutions and programs that are appropriate for children.<sup>27</sup> Child Friendly Cities / Regency sometimes these two terms are used in the same sense by some experts and officials in explaining the importance of accelerating the implementation

<sup>25</sup> "Dasar Hukum Kota Layak Anak." Accessed May 21, 2019. <http://kla.slemankab.go.id/dasar-hukum/>

<sup>26</sup> Child-Friendly City is a district / city development strategy that integrates the commitments and resources of government, business, and communities that are planned and sustainable in the program for fulfilling children's rights.

<sup>27</sup> World Fit for Children, 2002 which is also a continuation of the meeting City Summit Istanbul Turkey 1996.

of the Convention on the Rights of the Child into development as a first step to providing the best interests of children.<sup>28</sup>

**b. Child Friendly Cities / districts in the Framework of the Convention on the Rights of the Child (CRC)**

A Child-Friendly Regency / City (KLA), ideally must fulfill all indicators that established by the Convention on the Rights of the Child (CRC). To facilitate the classification of the fulfillment of children's rights, those indicators are grouped into 6 (six) sections, involve the institutional strengthening section and 5 (five) children's rights clusters, namely:

1) Civil and Freedom Rights

a) Right to identity

Make sure that all children are registered and have certificate of deed birth as soon as possible as fulfillment of state responsibility on behalf and nationality of the child (including date of birth and pedigree); and guarantee the implementation of the birth certificate free of charge and a service approach is carried out at the village.

b) Right of identity protection

Ensure a system for preventing various acts of crime against the children such as illegal adoption, age manipulation, name manipulation, or embezzlement of the origin and restoration of

<sup>28</sup> Child Friendly City Initiative introduced by UNICEF and UNHABITAT in City Summit Istanbul Turkey 1996.

children's identity in accordance with the actual situation before the crime against the child; and guarantee the priority rights of

children to be raised by their own parents.

c) **The right to express and express opinions**

Guarantees for children's rights to opinion; and provision of space for children to be able to express their opinions or express themselves independently according to their wishes.

d) **Right to think, conscience and religion**

Guarantee that childrens are given space to carry out their beliefs peacefully; and recognize the right of parents to provide guidance.

e) **Right to be organize and gather peacefully**

Guarantee that children can gather peacefully and blend in the organizations that are appropriate for them.

f) **Personal life protection right's**

Guarantee that a child is not disturbed by their personal life, or being exposed to the public without permission from the child or that will interfere their growth and development.

g) **Right to access appropriate information**

Guarantee the information provider complies with the provisions regarding the criteria information eligibility for children;



providing adequate facilities and facilities that allow children to access information services for free; and availability of licensing and supervision institutions.

h) The right to be free from torture and other cruel, inhuman or degrading punishment

Guarantee that every child is need to be treated humanely without violence actions.

## 2) Family Environment and Alternative Care

a) Parental guidance and responsibility

Ensure that childrens are cared by their parents. Therefore, it must be done to strengthen the capacity of parents to fulfill their responsibilities in child care and growth, including the provision of facilities, information and training that provide guidance and consultation for parents in fulfilling children's rights, for example:

*Bina Keluarga Balita (BKB)*

b) Childrens who are separated from parents

Ensure that childrens are not separated from their parents unless the separation is in the best decision for the child.

c) Reunification

Ensure that childrens are reunited with their parents after being separated, for example separated by natural disasters, armed conflicts, parents who are abroad, or kidnapped and trafficked.

d) Illegal transfer of children

Ensure that children are not illegally transferred from their regions to overseas or abroad, for example: the prohibition of child labor migrants.

e) Welfare support for children

Ensure that childrens remain in safe condition even though their parents are unable.

f) Childrens who are forced to be separated from the family environment

Ensure that childrens who are exiled from the family environment receive alternative care at the expense of the state.

g) Adoption of children

Ensure that the children adoption is carried out in accordance with the regulations, monitored and evaluated for their growth and development for the needs of the child are still fulfilled.

h) Periodic review of placements

Ensure childrens rights to growth and protection who are in *Lembaga Kesejahteraan Sosial Anak (LKSA)* / orphanage are fulfilled.

i) Violence and neglect

Ensure that children do not receive cruel action, inhuman and degrading treatment.

3) Basic health care and welfare

a) Children with disabilities

Ensure that disabled children get access to public services and guarantee their health care and welfare.

b) Health services ensure that every child gets comprehensive and integrated health services.

c) Social security services and health facility

Ensure that every child has the access to social security and health facilitation, for example: *Jamkesmas and Jamkesda*.

d) Living standards

Ensure childrens reach the highest standards of life in terms of physical, mental, spiritual, moral and social. This can be achieved by reducing child mortality, increasing life expectancy,

nutritional standards, health, education and the environment.

4) Education, leisure time and cultural activities

a) Education

Ensure that every child has the access to have a certain quality education and training without discrimination.

b) Educational goals

Ensure that educational institutions aim to develop children's interests, talents and abilities and educate children to be responsible for life which is tolerant, respectful of each other and

be able to work together (team work) for world progress in the spirit of peace.

c) Vacation, cultural activities and sports

Ensure that children have time to rest and could take advantage of their free time to do various arts, cultural, sports and other activities.

5) Special protection

a) Children in emergency situations

Children who experience emergency situations due to the loss of parents / caregivers / living quarters and facilities to fulfill basic needs (school, clean water, food, clothing, health, etc.) need to be prioritized in fulfilling and protecting their basic rights.

i. Child Refugees: ensure that every child who has to move from his place of origin to another place must obtain an assurance of the optimal fulfillment of the right to growth and protection.

ii. Situation of armed conflict: ensure that every child in a conflict area is not recruited or involved in any role.

b) Children who are faced with the law

Ensure those children who are facing the law get protection and access to their growth and development in a reasonable manner and ensure the implementation of restorative justice and priority for diversion for children, as part of the framework of thinking that children are perpetrators as well as victims of a larger social system.

c) Children in exploitation situations

Exploitation situations are all conditions that cause the child in a state of being threatened, depressed, discriminated against and

hampered by his access to optimal growth and development.

Common practices are known as being used as sex workers, narcotics jockeys, child laborers, domestic workers, children in the

worst forms of child labor, trafficking and child abduction, or organ harvesting. It is necessary to ensure that there are prevention and monitoring programs so that children are not in exploitative

situations, and ensure that the perpetrators must be dealt with. In addition, children of victims of exploitation must be handled optimally from health services, social rehabilitation, to repatriation

and reintegration.

d) Children who belong to minority groups and customs

Ensure that children from minority and indigenous groups are guaranteed their right to enjoy their culture, language and beliefs.<sup>29</sup>

### c. Principles of Child-Friendly City

Furthermore, principles that must always involve with the implementation of each cluster of children's rights are:

#### 1. Non-discrimination

<sup>29</sup> "Indikator dan Klaster Kota Layak Anak." Accessed May 20, 2019. <https://www.kemenpppa.go.id/lib/uploads/slider/09e6c-kla.pdf>

Which does not discriminate ethnicity, race, religion, gender, language, political understanding, national origin, economic status, physical or psychological condition of the child, or the other factors.

2. **The best interest for children**

Which is to make the best thing for children as a primary consideration in every policy, program and activity.

3. **The right to life, survival and child development.**

Guarantee the right to life, survive and development of children as much as possible, and respect for children's opinion, namely recognizing and ensuring that every child who has the ability to express their opinion is given the opportunity to express their own opinion freely on anything that affects them.

## **B. Legal Framework**

1. **Law of Republic of Indonesia Number 23 year 2002  
Concerning Child Protection**

Child is someone who have not reach 18 (eighteen) years old, also including children who are still in the womb of their mother. Child protection is to guarantee and protect children and their rights so that they can live, grow, develop, and participate, optimally in accordance with human dignity, and get protection from violence and discrimination. The implementation of child protection is based on *Pancasila* and is based on

the 1945 Constitution of the Republic of Indonesia and the basic principles of the Convention on the Rights of the Child including:<sup>30</sup>

- a. Non-discrimination;
- b. The best interests of the child;
- c. The right to life, survival and development;
- d. Respect for children's opinions.

Child protection aims to ensure the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination, for the realization of quality, noble, and prosperous Indonesian children.

## **2. Law of Republic of Indonesia Number 35 Year 2014 Concerning to Changes of Law of Republic of Indonesia Number 23 Year 2002**

Comprehensive legislation on protection of children. Child is defined as person under the age of 18, including child in uterus. Basic objective is to guarantee and protect rights of children, so as to ensure their survival, growth and development. Divided into 14 chapters. Chapter 1 contains general provisions; Chapter 2 sets forth basic principles and objectives. Chapter 3 regulates rights and obligations of child. Chapter 4 provides for obligations and responsibilities of state, government, society, family and parents in implementing child protection. Chapter 5 regulates

<sup>30</sup> "Law No. 23 of 2002 on child protection." Accessed Sep 13, 2019.  
<https://pih.kemlu.go.id/files/UUNo23tahun2002PERLINDUNGANANAK.pdf>

status of child. Chapter 6 provides for upbringing power. Chapter 7 deals with custody; Chapter 8 with upbringing and adoption of child. Chapter 9 provides for implementation of protection; Chapter 10 for public participation. Chapter 11 establishes Indonesian Child Protection Commission. Chapter 12 contains criminal provisions. Finally, Chapters 13 and 14 contain transitional and closing provisions.<sup>31</sup>

**3. Law of 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**

In *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, it states that the State guarantees children's rights to survival, growth and development, as well as protection from violence and discrimination. Along with the rapid flow of globalization and the negative impact of the development of information and communication technology, violence against children especially related to sexual violence is increasing sharply. Law No. 23 of 2002 concerning Child Protection has been amended through Law No. 35 of 2014 concerning Amendment to Law No. 23 of 2002 concerning Child Protection, which one of the changes focuses on the imposition of criminal sanctions against perpetrators of sexual violence against children. However, changes to the law have not significantly reduced the level of sexual violence against children.

<sup>31</sup> "Law No. 35 of 2014 on child protection." Accessed May 22, 2019. [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=63103](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=63103)



Therefore, the State needs to take optimal and comprehensive steps by not only imposing criminal sanctions, but also implementing preventive measures by providing chemical castration, installing electronic detection devices, and rehabilitation for perpetrators of sexual violence against children. To respond the phenomenon of sexual violence against children, give a deterrent effect on perpetrators, and prevent sexual violence against children, the President has enacted Government Regulation in Law No. 1 Year 2016 concerning Second Amendment to Law No. 23 Year 2002 concerning Child Protection on 25<sup>th</sup> May 2016.<sup>32</sup>

The Government Regulation in Law No. 1 Year 2016 has received approval from the House of Representatives to then be ratified into Law on the Establishment of Government Regulation in Law No. 1 of 2016 concerning Second Amendment to Law No. 23 of 2002 concerning Protection The child becomes a law based on the provisions of Article 22 paragraph (21) of the 1945 Constitution of the Republic of Indonesia).

#### **4. Minister Regulation of Women's Empowerment and Child Protection of the Republic of Indonesia No. 11 of 2011 concerning Eligible District / City Development Policy**

*Peraturan Menteri Negara Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 11 Tahun 2011 tentang Kebijakan Pengembangan Kabupaten/Kota Layak Anak.* The development

<sup>32</sup> "Law No. 17 of 2016 on child protection." Accessed Sep 13, 2019. <http://lkbh.stainkudus.ac.id/files/UU2016-17-pub-11242016165848.pdf>

of Child Friendly City aims to develop district / city government initiatives that lead to transformation efforts of child rights into policies concept, programs and activities to ensure the fulfillment of children's rights in the district / city.<sup>33</sup>

**5. Minister Regulation of Women's Empowerment and Child Protection of the Republic of Indonesia No. 12 of 2011 concerning Child-Friendly District / City Indicators**

*Peraturan Menteri Negara Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 12 Tahun 2011 tentang Indikator Kabupaten/Kota Layak Anak.* Child Friendly City indicators are made in order to measure districts / cities to be child-worthy. The Ministry of Women's Empowerment and Child Protection together with all stakeholders at the national and regional levels, set 31 indicators (thirty one) 'Indicators of Fulfilling the Rights of the Child' which are also a 'KLA Indicator'. A district / city can be called child worthy, if it meets 31 (thirty one) KLA indicators. The KLA indicator was developed in reference to the Convention on the Rights of the Child (CRC) and legislation related to children. The thirty-one indicators are grouped into 6 parts, namely the institutional strengthening section and 5 (five) children's rights clusters, which include:

- a. Cluster of civil rights and freedom
- b. Cluster of family environment and alternative care
- c. Cluster of basic health and welfare

<sup>33</sup> Peraturan Menteri Negara Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 11 Tahun 2011 tentang Kebijakan Pengembangan Kabupaten/Kota Layak Anak.

d. Clusters of education, utilization of leisure time, and cultural activities

e. Cluster of special protection

Based on *Peraturan Menteri Negara Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 12 Tahun 2011 tentang Indikator Kabupaten/Kota Layak Anak*. Explained about 31 child-friendly district indicators as follows;<sup>34</sup>

Article 8 describes the KLA indicator for clusters of civil rights and freedoms covering letter (a):

- a. Percentage of registered children and those children who have birth certificate
- b. Child-friendly information facilities are available, and
- c. Number groups of child, including children's forums, which are in regencies / cities, sub-districts and villages.

Furthermore, in Article 9, the KLA indicators for clusters of family environments and alternative care include:

- a. The percentage of first marriage age is under 18 (eighteen) years
- b. Consultation institutions are available for parents / families regarding parenting, child care, and
- c. Child social welfare institutions are available.

<sup>34</sup> Peraturan Menteri Negara Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 12 Tahun 2011 tentang Indikator Kabupaten/Kota Layak Anak.

Article 10 The Government Regulation regulates the KLA indicator for basic health and welfare clusters which includes:

- a. Infant mortality
- b. Prevalence of malnutrition in children under five
- c. Percentage of exclusive breast milk (ASI)
- d. Amount of ASI corner
- e. Percentage of complete basic immunization
- f. Number of institutions that provides reproductive and mental health services
- g. Number of children from poor families who have access to improved welfare
- h. Percentage of households with clean water, and
- i. Available area without cigarettes.

Then article 11 regulates the KLA indicator for education clusters, leisure time utilization, and cultural activities including:

- a. Early childhood education participation rates
- b. Percentage of 12 (twelve) years of compulsory education
- c. Percentage of child-friendly schools
- d. Number of schools that have programs, facilities and infrastructure for children's trips to and from school, and
- e. There are facilities for creative activities and child-friendly recreation outside the school that can be accessed by all children.

Article 12 describes the KLA indicator for protection clusters including:

- a. Percentage of children who need special protection and obtain services
- b. Percentage of cases of children facing the law are resolved by restorative justice
- c. The existence of disaster management mechanisms that pay attention to the interests of children, and
- d. Percentage of children released from the worst forms of child labor.

Furthermore, in article 13 paragraph (1), each indicator of a Child-Friendly City is given a size and value, and (2) the size and value as referred to in paragraph (1) are contained in the Annex to the Ministerial Regulation.

## **6. Minister Regulation of Women's Empowerment and Child Protection of the Republic of Indonesia No. 13 of 2011 concerning**

### **Guidelines for Eligible Child District / City Development**

*Peraturan Menteri Negara Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 13 Tahun 2011 tentang*

*Panduan Pengembangan Kabupaten/Kota Layak Anak.* To make all efforts to realize Child Friendly City effectively, the KLA approach carried out in this regulations needs to pay attention to the concepts and stages of KLA development as mandated in the Regulation of the Minister

of Women Empowerment and Child Protection No. 11 of 2011 concerning Eligible District / City Development Policies.

The KLA concept is the basis for the development of the KLA which aims to build district / city government initiatives that lead to transformation efforts of child rights into policies, programs and activities

to ensure the fulfillment of children's rights in the district / city. The stages of KLA development include:<sup>35</sup>

- a) Preparation;
- b) Planning;
- c) Implementation;
- d) Monitoring;
- e) Evaluation; and
- f) Reporting.

The important thing that must be considered is in each stage of the activity must consider the point of view of the children that obtained through child consultation. The child's consultation can be done, for example: through consultative meetings, capturing children's opinions and providing procedures that allow children's voices to be truly noticed.

**7. Minister Regulation of Women's Empowerment and Child Protection of the Republic of Indonesia No. 14 of 2011 concerning Guidance for Child-Friendly District / City Evaluation**

*Peraturan Menteri Negara Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 14 Tahun 2011 tentang*

<sup>35</sup> Peraturan Menteri Negara Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 13 Tahun 2011 tentang Panduan Pengembangan Kabupaten/Kota Layak Anak.

*Panduan Evaluasi Kabupaten/Kota Layak Anak*. The Child-Friendly District / City evaluation procedure is a series of activities that must be carried out step by step by the KLA Evaluation Team in the framework of evaluating and verifying Child-Friendly Districts / Cities.<sup>36</sup> The preparation of this evaluation procedure aims to create basic work mechanism standards and obtain the same perception in the members of the KLA Evaluation Team.

### C. Theoretical Framework

#### 1. The Effectiveness of Law Theory

The theory of legal effectiveness according to Soerjono Soekanto<sup>37</sup> is that whether or not an effective law is determined by 5 (five) elements, namely:

a) Factor of law or self-regulation

The likelihood is that there is a discrepancy in legislation regarding a particular field of life. Another possibility is a mismatch of legislation with written law or customary law, it is sometimes undisclosed between the law of record and customary law and so on.

b) Law enforcement, namely those who form and implement the law.

That is the parties that make up and apply the law. the mentality of law enforcement officers includes judges, police, prosecutors, defense lawyers, prison officials and so on, if the law is good but the mental person

<sup>36</sup> Peraturan Menteri Negara Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 14 Tahun 2011 tentang Panduan Evaluasi Kabupaten/Kota Layak Anak.

<sup>37</sup> Soerjono Soekanto, "Faktor-Faktor yang Mempengaruhi Penegakan Hukum," (2008): 8.

responsible for enforcing the law is still unstable, it can cause disturbance from the law itself.

c) Facilities that support law enforcement.

If the law is good and mentality of the person in charge of enforcing the law is also good but if the facilities are inadequate then the

law that had been running normally not in accordance with the plan.

d) Community, namely the environment in which the law applies or applied.

That is where the law is applicable or established. The community factor here is how the public legal awareness.

e) Cultural, namely as the result of work, creativity and sense based on human intention in life.

How the existing laws can fit into and integrate with the existing culture so that everything works well. Relavan with legal effectiveness

theory proposed by Soerjono Soekanto, Romli Atmatsasmita said the factors that hinder the effectiveness of law enforcement not only lies in the mental attitude of law enforcement apparatus (judges, prosecutors, police

and legal counsel) but also lies in the socialization factor of law which is often ignored.<sup>38</sup>

<sup>38</sup> "The Effectiveness of Law Theory Soerjono Soekanto." Accessed May 21, 2019. <http://www.iosrjournals.org/>