

# The Implementation of Legal Protection of Street Children' Education Right

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## Abstract

Children are major foundation in sustainable nation-building. Physical development that is not balanced with nation' moral development will result in the destruction of the order of life within society itself. The type of research is a legal-research to examine legal concepts related to legal protection of street children' education rights in South Sulawesi Province, Indonesia, precisely in Makassar, Pare-Pare, and Palopo. The results show that the legal provisions on the street children's rights protection are the legal provisions both at the level of provincial and district/city regulations that governing protection, survival, development, caring, welfare, education, physical health, social moral and mental-spiritual. The responsibility of protecting the street children' education right that the responsibility of the government, provincial government, district/city government, and the obligations of parents, families, and communities and countries. Ideally, the legal provisions for the children education have a good regulatory harmony at the level of regulation as issued by the whole government level. Good provisions in terms of responsibility, to the involvement of the community in the management of education based on the basic norm (*grundnorm*) of the Republic Indonesia.

**Keywords:** Children, Education, Legal Protection, Constitutional Rights

## 1. Introduction

The development of era is so rapid and very fast and competitive in all aspects of human life and the whole level of society demand all levels of society to move to follow. The demand for economic needs is higher especially in the big cities, which are the basis of the life needs in a society without exception. This happens in the upper and lower economic community. In lower economic community, the fulfillment of economic in a household demands the participation of all family members without exception including their children are still under age, who should not be allowed to be directly involved in the fulfillment of the family economy. Such thing is mostly found in the middle to lower economic communities.

Children are major foundation in sustainable nation-building. As major measure of the welfare of a nation is the extent to which the State is able to provide services to children based on the ways and forms of their respective countries. It is a potential for the development of a nation has special traits and characteristics, this specificity is in the attitude and behavior and in the fulfillment of the world that must be faced.<sup>1</sup> Therefore, children should be given special protection by the State through the constitution or law.

In this context, the basis of protection of children, as the Preamble of the 1945 Constitution of the Republic of Indonesia affirms that:

*And then to form a Government of the State of Indonesia that protects all Indonesian people and the entire land of Indonesia and to develop the welfare of the people, the life of the nation, and participate in the world orderliness based on freedom, eternal peace and social justice, National Freedom of Indonesia is prepared in a Constitution of the State of Indonesia, formed in a structure of the State of the Republic of Indonesia with people sovereignty based on the One Supreme God, Just and civilized humanity, Indonesian unity and Democracy lead by wisdom in Deliberation/Representation, and by realizing a Social justice to all Indonesian people.*

As the preamble of the constitution above, as a derivative of Article 28B Paragraph 2 of the 1945 Constitution that every child entitled to the survival, grow and develop and protection from violence and discrimination.

Street children are a phenomenon in the community that shows the disruption of social functioning. It is said to be disturbed social functioning because a child should be in a home situation, school or playground in which there is a supportive interaction for the child's development, whether physical, motor, social, psychological and moral. This condition is not fulfilled by the lives of street children. The involvement of child in economic fulfillment in household is still commonly found especially in big cities, the number of children who work as street (newspaper) sellers, hawkers, and other work, they are called street children.<sup>2</sup>

The community of street children is very easy found as they clustered at traffic lights, shopping malls, bus

<sup>1</sup> Simon Butt. (2010). "Regional autonomy and legal disorder: The proliferation of local laws in Indonesia". *Sydney Law Review*, Vol. 32: 177-191.

<sup>2</sup> Kompas News. "Bisakah Anak Jalanan ke Sekolah Reguler", 28 July 2010

terminals and crowded places that allow them to earn money. Street children, according to Tata Sudrajat<sup>1</sup> can be grouped into 3 (three) groups based on the relationship with their parents: *First*, the child who broke up with his/her parents, did not go to school and live on the streets (*children off the street*). *Second*, children who are not communicate regularly with his/her parents, not school, and return to their parents once a week, bi-weekly, two months or three months are usually called children who work on the street (*children on the street*). *Third*, children who are still in school or have dropped out of school, this group into the category of *vulnerable to be street children*.

As data obtained from the Social Affairs of Makassar City that street children in 2011 amounted to 918 people, in 2012 amounted to 990 people, and 2013 amounted to 1.043 people.<sup>2</sup> As stated by Amir Lolo, Head of Social Affairs of Parepare City that “the population of street children in Parepare is still tens, but it predicted the number of street children will continue to increase annually. As a step-in handling it is “going to field with some volunteers who partner with us to help build the street children” the volunteers in question are: *Karang Taruna*, *Pekerja Sosial Masyarakat* (PSM), and *Tenaga Kesejahteraan Sosial Kecamatan* (TKSI). While, total street children in South Sulawesi in 2007 is 3931 people as report of the Ministry of Social Affairs of the Republic of Indonesia.<sup>3</sup> In this research is very important to study the street children, on the aspect of legal protection, state responsibility, and implementation of the protection of children’s education rights with street children.

## 2. Method of the Research

The type of research is a legal-research<sup>4</sup> to examine legal concepts related to legal protection of street children’ education rights in South Sulawesi Province. It was conducted in South Sulawesi Province, Indonesia, precisely in Makassar, Pare-Pare, and Palopo. The author uses a descriptive-qualitative method, to describing objective condition of field in question and the collected will be processed and related to the contents, and then analyzed and interpreted on the basis of deductive ways of thinking.

## 3. State Liability and Accountability Concept

Literally, responsibility<sup>5</sup> can be interpreted as a state of being obligated to bear everything if something happens may be prosecuted, blamed, or even implied or the right to accept the imposition as a result of attitude by others. From the two descriptions above illustrates that the responsibility is the obligation in recovering the existence of the losses incurred, hence the analysis of authors is the responsibility in relation to the constitution of the Republic of Indonesia.<sup>6</sup>

In the concept of the *welfare state*, the State whose government guarantees the welfare of its people, the State must actively pursue welfare, acts equitably which its entire society can feel equally and equitably, not only the welfare of a particular group, but all people. Thus, *welfare state* is a concept of government in which the State takes an important role in the protection and priority of the economic and social welfare of its citizens. This concept is based on the principle of equal opportunity, equal distribution of wealth, and community responsibility to people who are unable to meet the minimum requirements to live a decent life.

Different with the system in the *Poor Law*, the welfare state is focused on organizing an institutionalized social protection system for everyone as a reflection of the right of citizenship, on the one hand and state obligation on the other. The welfare state is aimed at providing social services for the whole population, parents and children, men and women, rich and poor, as well as and wherever possible. It seeks to integrate source system and provide service networks that can maintain and improve the citizens well-being fairly and sustainably.

*The welfare state* is closely related to social policy which in many countries includes the strategies and efforts of the government in improving the welfare of its citizens, especially through social protection covering social security (in the form of social assistance and social insurance) as well as social safety nets.

In Indonesia the concept of social welfare is indicated in the Constitution of the Republic of Indonesia No. 6 of 1974 which defines social welfare as a life and social, material and spiritual life order and livelihood which is overwhelmed by a sense of salvation, morality and peace of mind that makes it possible for every citizen to carry out the fulfillment of the best physical, spiritual and social needs for self, family and society by upholding human rights or obligations in accordance with Pancasila. Article 33 of the 1945 Constitution on economic system and article 34 concerning the care of the state to the weak group, places the state as the most responsible party in realizing social welfare.

<sup>1</sup> Tata Sudrajat. (1999). *Isu Prioritas dan Intervensi Untuk Menangani akan Jalanan*. Jurnal Hakiki, Vol. 1 No. 2 Nov. page. 5.

<sup>2</sup> Social Agency of Makassar, 2016.

<sup>3</sup> The Ministry of Domestic Affairs of the Republic of Indonesia: <http://www.kemendagri.go.id/news/2016/06/13/presiden-umunkan-pembatalan-3143-perda-bermasalah>. Accessed on 21 July 2016.

<sup>4</sup> Soerjono Soekanto, 2006. *Pengantar Penelitian Hukum*, Third edition. UI Press, Jakarta. Page. 53

<sup>5</sup> Department of Education and Culture, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, page. 1006

<sup>6</sup> F, Soegeng Istanto, 1994, *Hukum Internasional*, Yogyakarta: Penerbitan UAJ Yogyakarta page.77

From this definition, it can be said that social welfare always is a goal of development in Indonesia. We can see how important the state intervention at the time of soaring cooking oil prices due to the scarcity of oil supply to the country. The state then provides market operations to the imposition of imported cooking oil to entrepreneurs. That is, the free market is not always perfect, and the arena of imperfection is the role of the state is needed. In this context, Indonesia is a country based on the law. A state should be based on the law in all its matters, already coveted since Plato, Immanuel Kant with the law state (formal), Julius Stal with the law state (material) and Dicey with "Rule of Law".

In the constitution asserted that Indonesia is a law state (*rechtsstaat*) not a power state (*machtsstaat*). As outlined by the former Act of 1945, Indonesia is a state based on the law with the formulation of "*rechtsstaat*", assuming also taken not to deviate from the definition of law state in general (*genus begrip*), adjusted to the state of Indonesia. That is, it is used with the size of our life view and our state view.

In the 1945 Constitution at the preamble of the fourth paragraph "... *promoting general welfare, educating the life of the nation and participating in a world order based on freedom, eternal peace, and social justice.*" In its explanation, Section IV states that the Constitution only contains the main rules, the outlines as instructions to the central government and state organizers to organize the life of the social welfare state. Can be concluded that the country desired by the nation of Indonesia is a prosperous country, which is full of physical prosperity (material) and spiritual. Such a country is called the welfare state. Thus, it is clear that the meaning of the state based on law is the welfare state.

The State of the Republic of Indonesia illustrates the existence of state obligations in implementing the protection of citizens. As confirmed in the preamble that; "*Protecting the whole of the Indonesian nation,*" it is understood that the state has a responsibility in protecting citizens, while the state in question is the government as a state manager, while the government in question is who are given duties and functions with all rights. While the rights and obligations are attached to a position that belongs to each. More details as in the following description below:

### 3.1. Position Responsibilities (*Fautes Personelles*)<sup>1</sup>

The responsibility *fautes personnelles* is a theory that states that losses to third parties are imposed on officials who because of their actions have caused harm. Accordingly, the burden of responsibility is directed at the human as a person. That a responsibility is due to cause a harm/loss then thus charged to their position. In a position may be charged to a position because of acts that commit an action outside of authority.<sup>2</sup> The authority in question is due to taking action beyond the limits of authority, performing actions not in its authority, and committing an arbitrary act.

A position which acted outside of authority is an action of officials in their duties and functions are already specified their assigned task but in addition to the tasks assigned implemented, at the same time also carry out tasks that should have been undertaken not tasks inherent in their job, but the task is supposed to be carried out by other positions.

The position held not attached to his/her position is indeed his/her duty but he does not commit as the provisions. This means that a position inherent in the duty of function and/or authority, but the duty of such function is that it is not carried out. Thus, that is what is meant as not exercising his/her authority. While arbitrary acts, it is intended as an act arbitrarily. In the presence of a given position is inherent the authority in the position, but other he carried out but also arbitrarily.

*Fautes Personelle* relates to the authority that the standard of a position responsibility is the legal provisions either as a duty, function and or because of his/her position is not based on a legal provision. *Fautes Personelle* in relation to the street children is a position in an agency that is given the task in conducting supervision of the guidance of street children but it conducted is not in accordance with the inherent position of the duties and functions hence the position must be responsible.

In some areas, there are not a few street children doing an activity on the streets and it runs continuously, so then there is certainly a position in an agency to take care of it, so they must be responsible for street children. In carrying out these responsibilities is not only done in one position but can only cooperate and or coordinate with other positions, which have to do with positions related to street children.

### 3.2. Agency Responsibility (*Fautes the Services*)<sup>3</sup>

The theory explains that the loss to a third party is imposed on the agency of the official concerned. According to this theory, responsibility is charged to position. In practice, the losses incurred are also adjusted whether the

<sup>1</sup> Ridwan H.R., *Hukum Administrasi Negara*, Raja Grafindo Persada, Jakarta, 2006, pages. 335-337

<sup>2</sup> Angel C. (2005). Victims meet their offenders: Testing the impact of restorative justice conferences on victims' post-traumatic stress symptoms. *Journal of Experimental Criminology*. Australian Institute of Criminology. [http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp127/09\\_references.html](http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp127/09_references.html). Accessed Sept 21, 2016.

<sup>3</sup> Ridwan HR. *Op.Cit*, p. 341

mistake is a serious or minor mistake, where the hard and light of a mistake implicate the responsibility to be charged.

In the structure of government consists of several levels from the President, Governor, Regent/Major and the head of village. Likewise, horizontally with the agency that handles the field of protection of street children, for example at the ministry of education, social ministries, education offices, social services either in provincial government or district/city.

In such an institution is a position that becomes the responsibility in carrying out their duties according to the responsibilities given as in the provisions. Its relation to the street children is basically no wrongdoing done by citizens without the agency handling. Street children should be handled by the government in accordance with their respective institutions either from the central government level, provincial, or district/city government.

### 3.3. Facility Responsibility

The 1945 Constitution of the State of the Republic of Indonesia, Article 34 Paragraph 1 states that, “the poor and neglected children are kept by the state”. The constitutional basis with measurable indicators is explicit in the 1945 Constitution, Article 34 Paragraph 2 that:

*“The state develops a social network for all people and empowers the weak and incapable peoples as the dignity of humanity.”*

Philosophically, the responsibility of street children is the responsibility of the state, while the state in question is the government from the central government, provincial to the district/city government. That each has a responsibility in performing their duties in accordance with their respective territories.

The facility responsibilities according to the author are the description of the legal system proposed by Satjipto Rahardjo that in addition to justifying Laoren Friadmans’ view of substance, structure and culture, Satjipto adds the necessity of facilities in carrying out the provisions.

The ambiguity of the approach to street children still feels partial and puts forward the ego of every institution, which has not been able to synergize into a national power, to combat the roots of poverty and social exclusion. The social inclusive program to bring back street children to an adequate living environment is minimal, and current treatments seem cosmetic, and do not open the cause of social exclusion, including street children.<sup>1</sup>

The function of “*shelter house*” as a gathering place for street children is just a program for a moment and will not reduce the accumulation of street children, if “pro poor” policies, inclusive programs for street children and the poor are not nationally synergized, then the street handling programs will be populist.

Protection of street children is not only enough with the regulation, position and public participation. However, the state in this case is the government along with the community is able to provide facilities to provide space to street children in obtaining education. That the behavior of street children is not only due to the omission that by the government based on the responsibility of position and agency responsibility, but also the responsibility of providing facilities, especially the educational facility is very necessary.

### 4. Legal Responsibility for Children Education

Basically, right protection to children education is the government has the authority in implementing the supervision of education, and provides scholarship assistance, but also the government is responsible in providing educational facilities and infrastructure in order to support the teaching and learning process.

The responsibility for the protection of children education rights is at the level of the education ministry. In general, ministries are responsible for the management of the national education system. As a manifestation of ministerial responsibility for children in obtaining teaching education includes; procurement, utilization and development of education personnel, curriculum, textbooks, and educational equipment from educational units organized by the government through ministries.

Legal protection efforts for children can be interpreted as legal protection against various fundamental rights and freedoms of children and interests related to the welfare of children. So, Barda Nawawi Arief states the issue of legal protection for children covers a very wide scope.<sup>2</sup>

Child handling is to restore and build the social function of children. This function includes<sup>3</sup> a combination of technical expertise and specialized facilities aimed at physical, social and psychological adjustment, counseling and personal and workplace guidance, vocational training and placement.

Its relation with the local government is that local governments are responsible for the procurement, maintenance and repair of buildings and the provision of primary school land held by local governments. To

<sup>1</sup> Sumiarni, Endang and Halim, Chandra. (1999). *Perlindungan Hukum Terhadap Anak dalam Hukum Keluarga*. Yogyakarta: Universitas Atma Jaya.

<sup>2</sup> Barda Nawawi Arief. 1998. *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*. Citra Aditya Bakti. Bandung. page. 15

<sup>3</sup> Shanty Delyana, 1998. *Wanita dan Anak di Mata Hukum*, Liberty. Yogyakarta. page. 15

obtain the education of children by ministries at least is the availability of adequate education personnel, educational curriculum, and facilities in the form of textbooks and educational equipment. A description of the responsibilities of local government in South Sulawesi on aspects the teachers, curriculum and facilities as described in Table 1.

**Table 1.** Responsibility for the right protection of children education against the responsibilities of local governments

No	Local Government	Responsibilities					
		Student		Senior High School	Educator/Teacher		
		SD	SMP		SD	SMP	SMA
1.	Kota Palopo	19,451	8,784	33	978	629	1395
2.	Kota Makassar	155,535	66,635	234	5123	4,158	5440
3.	Kota Parepare	17,167	7,632	20	679	655	882

Data source: Education Agency of South Sulawesi, 2016 (edited)

The table above shows the data related to the number of students from elementary, junior to senior high school (equivalent) indicates that *first*; the primary school (equivalent) indicates that the Palopo for classroom teachers has sufficiency the classroom teachers. Similarly, the teacher Subject is sufficient while the BK teacher is less up to 90 people. In Makassar for classroom teachers experienced the sufficiency of classroom teachers, so with teachers Subjects is sufficient but less for BK teacher up to 478 people. The Palopo for classroom teachers is sufficient, as well the teachers Subject is sufficient while the BK teachers is less up to 76 people.

*Second*, in Junior High School (equivalent), Palopo for classroom teachers is sufficient but less for BP teacher up to 59 peoples. For Makassar, the classroom teacher is sufficient from the classroom teachers, so the teachers Subject is sufficient but less for BP teachers up to 302. For Parepare the classroom teacher is sufficient for classroom teacher, as well the teacher Subject is sufficient but less for BP teachers 6 teacher.

Its relation to the responsibility of the Government of South Sulawesi Province from the aspect of regulation as regulated in Regulation No. 2 of 2016 concerning the implementation of education that the regional regulation is a delegate of Act No. 23 of 2014 on local government related to the obligatory matters relating to basic services. While, the responsibility of the governors' policy is to fulfill the learning facilities and infrastructure, the provision of assistance/subsidy of the affordability of education services.

According to the authors that the Government of South Sulawesi Province shows the existence of good ethics embodied in the form of regulation to perform responsibilities in the field of education. However, according to the authors that the responsibility must be in accordance with the legal provisions at Regency/City level. Therefore, to streamline the regulation related to the responsibility policy in the field of education, the government of South Sulawesi Province must coordinate with all parties either at the central level or local (regency / city) in order to fulfill the service needs in education.

From 3 (three) major cities in the Province of South Sulawesi, basically regulate the responsibility of education for children is regulated in the respective regional regulations. In regulation, the government responsibility in the field of education by considering the aspects of regulatory, and philosophy; this can be proved by the existence of regulatory differences, but the substance is the affirmation of the government responsibility that regulates the responsibility both in the field of facilities and the arrangements in the field of educators.

## 5. Conclusion

The legal provisions on the street children's rights protection are the legal provisions both at the level of laws, provincial and district/city regulations that governing protection, survival, development, caring, welfare, education, physical health, social moral and mental-spiritual. The responsibility of protecting the street children' education right that the responsibility of the government, provincial government, district/city government, and the obligations of parents, families, and communities and countries. The management of education shall be the responsibility of the government and shall be responsible for any losses arising from the *fautes personnelles* (position) i.e the loss to the third party charged to the officer, the *fautes the services* (agency) of a third party shall be charged to the agency and the facility responsibilities.

Ideally, the legal provisions for the children education have a good regulatory harmony at the level of regulation as issued by the government, the provincial, and the district governments that contain good provisions in terms of responsibility, to the involvement of the community in the management of education based on the basic ideals of the Republic Indonesia. Should be on the implementation of the protection of street children' education right the content of regulation in the local regulation is to regulate the responsibility of the government together with the community or institution, 20% of funding in the Regional Revenue Budget.

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