

# Harmonization of Legal Principles for Regulating Children's Rights in Indonesia

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## Abstract

Legal harmonization in the form of changes to existing regulations creates harmony with international agreements. This can occur between countries or through mandates from supranational institutions and it is very common in this modern era. Indonesia is a civil law system adherent, so ideally legal harmonization is determined by the rule of law. Likewise, regarding the fulfillment and protection of children's rights as legal rights which are part of Human Rights, Indonesia as part of the international community has ratified The Universal Declaration on Human Rights and Convention on the Rights of the Child. This research is a normative legal research and the approach used in this research is a conceptual approach and a statute approach. As a consequence, Indonesia must harmonize laws and regulations, especially those related to the protection of children's rights, so that uniformity or meeting points can be found in fundamental and universal principles, especially the principle of the best interests of the child, as a primary consideration in The Convention on the Rights of the Child.

**Keywords:** Harmonization, Regulation, Principles, Right of the Child

**DOI:** 10.7176/JLPG/139-11

**Publication date:** February 28<sup>th</sup> 2024

## 1. Introduction

The obligation to fulfill children's education and care as regulated in Law Number 16 of 2019, regarding amendments to Law No. 1 of 1974 concerning Marriage (Marriage Law) is formulated narrowly. Where obligations are only imposed on parents regarding the rights of children from the time the child is in the womb until the child marries or is able to stand alone as regulated in Article 45 of the Marriage Law which determines:

1. Both parents are obliged to care for and educate their children as best as possible;
2. The parental obligations referred in paragraph (1) of this article apply until the child married or is able to stand alone, which obligations continue to apply even if the marriage between the parents divorce.

The obligation of parents to care and educate children is an obligation that parents must carry out even though the marriage between the child's parents has broken up. However, if both parents cannot carry out these obligations, then as a consequence their authority as parents will be revoked. This is confirmed in Article 45 of the Marriage Law which stipulates that this obligation does not stop even if the marriage between the parents divorce. (Delinda 2016)

This is different if you look at the constitutional mandate as stipulated in Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which stipulates: "Every child has the right to survival, growth and development and the right to protection from violence and discrimination". In an effort to realize the welfare of children, the burden of responsibility does not only rest on the parents. In certain circumstances, the state, through the government and regional governments, also has an obligation to guarantee the protection, care and welfare of children.

The rationale is that the position of children is an inseparable part of human survival and the sustainability of a nation and state. So that in the future they will be able to take responsibility for the sustainability of the nation and state, and therefore every child needs to have the widest possible opportunities to grow and develop optimally, both physically, mentally and socially. For this reason, it is necessary to take protective effort to realize children's welfare by providing guarantees for the fulfillment of their rights without discriminatory treatment. This is explained in the background of Law Number 35 of 2014 regarding Amendments to Law Number 3 of 2002 concerning Child Protection.

The same view was conveyed by Barda Nawawi Arief who argued that legal protection for children can be interpreted as an effort for the fundamental rights and freedoms of children as well as various interests related

to children's welfare. (Delinda 2016) Referring to Barda Nawawi's view, the fundamental rights and freedoms of children ultimately to create welfare for the child himself. And this welfare starts from obtaining children's fundamental rights and freedoms.

One of the basic milestones in upholding human rights in the world was the ratification of The Universal Declaration on Human Rights 1948. Based on this declaration, the subject of human rights is every person or every human being, including family and children. Regarding children's rights, it is stated in Article 25 of the 1948 Universal Declaration of Human Rights, which states that 'Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.' The protection of children's rights as stated in the 1948 Universal Declaration of Human Rights is also regulated in various international conventions relating to Human Rights, especially the Convention on the Rights of the Child.

Various regulations relating to children's rights as human rights have been developed both nationally and internationally. Provisions related to guaranteeing the fulfillment of children's international rights in national law are realized through the ratification of international conventions on children's rights, namely the ratification of the Convention on the Rights of the Child based on Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child. This convention is a logical consequence because Indonesia as a member of the UN has expressed its commitment to respect and guarantee children's rights without discrimination in the jurisdiction of the Unitary State of the Republic of Indonesia.

From several of these regulations, child protection is actually the responsibility of parents, families, communities, regional governments, the government and the state, which is a series of activities carried out continuously for the protection of children's rights, as organizers of child protection. (Iksan and others 2020) Regulations regarding children's rights has been accommodated in several laws of the Republic of Indonesia, but the implementation is still far from expectations because there are still many cases occurring in Indonesia, meaning that child protection organizers have not been able to provide guarantees that children's rights are fulfilled so that they can live, grow, develop, funds participate optimally in accordance with human dignity. (Iksan and others 2020) Even though several international agreements related to children have been ratified, such as The Universal Declaration on Human Rights 1948 and the Convention on the Rights of the Child, some Regulations related to children's rights still do not show similarity. There are even clashes of norms that should not occur in one legal system.

## **2. Research methods**

This research is normative legal research and the approach used in this research is a conceptual approach regarding the doctrine of the theory used in this research. Besides that, this research also uses a statute approach which will examine the object of this research with the norms in the laws and regulations in force in Indonesia and several international conventions or agreements relating to children's rights.

Legal materials in the form of statutory regulations, agreements and international conventions, especially agreements that have been ratified by Indonesia related to children's rights, are the primary legal materials in this research, as well as secondary legal materials in the form of legal journals and textbooks related to theories the issues in this research. Collection of legal materials was obtained through literature study. All legal materials are selected, described and analyzed to then be linked to statutory regulations and formulated systematically in accordance with the subject matter through the approach used in this research.

## **3. Discussion**

### **3.1. Children's Rights in International Agreements**

The concept of rights is basically based on human dignity, where a person's dignity leads to respect for the individual. In some literature, a right cannot be separated from the law or is better known as a legal right. Legal rights are often contrasted with moral rights. (Sarah Worthington 2006) It is further said that rights based on law are determined by legal rules, especially in countries adhering to a civil law system, which are stipulated in the constitution. On the other hand, in countries adhering to common law, legal rights can be identified from the sanctions imposed by the court for violations of these rights. It is also emphasized that if the court imposes sanctions, it can be ensured that this is related to legal rights and obligations. (Sarah Worthington 2006)

Such views, if explored more closely, are the views of British figures, one of whom is Jeremy Bentham, who stated that rights have no meaning if they are not supported by law (John G. Riddall 2005). Even though Jeremy Bentham is better known as the founder of the utilitarian view, it was actually Bentham who laid the foundations of legal positivism or what is also called analytical jurisprudence. (Peter Mahmud Marzuki 2008) Likewise, the concept of protection of children's rights departs from the concept of the rule of law which contains indicators for the fulfillment of children's rights which are part of human rights. For this reason, in this section we will discuss children's rights in The Universal Declaration on Human Rights and Convention on the Rights of the Child.

### 3.1.1. The Universal Declaration on Human Rights

Protection of human rights does not only mean guaranteeing the state to protect human rights in various regulatory policies, but also reacting quickly to take legal action if human rights violations occur. If in a country, human rights are neglected or violated intentionally and the suffering they cause cannot be dealt with fairly, then that country cannot be called a rule of law country in the true sense. Sudargo Gautama defines the rule of law as follows :

"A country, where individuals have rights against the state, where human rights are recognized by law, where to realize the protection of these rights, state power is separated so that state administrative council, law-making council and judicial council are shared hands, and with the structure of a judicial council that is independent of its position, to be able to provide proper protection to everyone who feels that their rights have been harmed, even if this happens by the state's own instruments." (Gautama 1983)

Meanwhile, Arief Sidharta stated that the essence of the concept of the rule of law lies in the existence of legal principles to limit the government's power in administering state power. In summary, the five aspects of the rule of law are:

- a. The existence of a rule of law has two requirements, namely: first, predictability of behavior, especially government behavior which implies order for the sake of security and tranquility for everyone, and; second, the fulfillment of minimum material needs for human life which guarantees human existence with human dignity.
- b. The basic elements and principles of the rule of law, which consist of: first, recognition, respect and protection of human rights which are rooted in respect for human dignity; second, the principle of legal certainty, one of the details of which is that human rights must be formulated and their protection guaranteed in the UUD/constitution.
- c. The principle of *similia similibus* (principle of equality), which is related to equality of position before the law and government.
- d. Principles in democracy.
- e. The government and public officials carry out public service functions which include three principles, namely: first, general principles of proper government (*algemene beginsellen van besture van behoorlijk*); secondly, the fundamental conditions for human existence with human dignity are guaranteed and formulated in statutory regulations, especially in the constitution; third, the government must rationally organize each of its actions and assess clear and effective objectives (*doelmatigheid*). (Sidharta 2009)

From these views it is clear that every legal state must have commitments and instruments related to protecting human rights. Law and human rights are a unity that is difficult to separate. If a legal building is built without paying attention to respect for human rights principles, then the law can become a tool for the authorities to perpetuate their power (abuse of power). Likewise, vice versa, if human rights are built without being based on a clear legal commitment, then these human rights will only become a fragile building and are easy to deviate, meaning that the law must function as a juridical instrument, a means and/or tools that pays attention to respect for the principles in human right. (Dwidja Priyatno 2005) Therefore, in a rule of law country, a very close correlation emerges between the application of law and the upholding of human rights.

Etymologically, HAM is a translation of "*droits de l'home*" which comes from French, and "*menselijke rechten*" in Dutch. Human rights in English are known by four terms, namely human rights, fundamental rights, citizen rights, and collective rights. Dutch uses the terms *ground rechten* and *fundamentele rechten* as translations

of fundamental rights and fundamentele rechten. In the United States, besides using the term human rights, the term civil rights is also used. (Deli Bunga Saravistha and dkk 2022)

In Indonesia, the term "human rights" is generally used, which is a translation of basic rights. Juridically in Indonesia, the definition of Human Rights can be seen in Article 1 point 1 of Law Number 39 of 1999 concerning Human Rights. In this article it is stated that Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts which must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity.

Satjipto Rahardjo said that human rights are not a concept that is one hundred percent neutral, where there are many points of contact with universal things. (Rahardjo 1993) Human dignity comes from God who created him. (Febriansyah 2017) Therefore, there is no power in this world that can revoke it without a strong and legitimate legal basis or reason. Thus, it can be said that individuals as human beings have inherent human rights from birth which cannot simply be removed without valid legal reasons.

The origins of the idea of human rights come from natural rights theory. If traced, the natural theory regarding rights begins with natural law theory. In its development, through efforts to fight against power, a renewal movement emerged or also known as the Renaissance period which hoped for a return to Greek and Roman culture which respected individuals. This renewal movement was then continued by the school of natural law pioneered by Thomas Aquinas and Grotius which emphasized that every person in life is determined by God. But everyone regardless of status submits to God's authority. It means that not only the King's power limited by Divine rules, but all humans are endowed with a unique individual identity, which is separate from the state where they have natural rights which state that each individual is an autonomous being. (Fernando 2021)

In another part, John Locke, who was a supporter of natural law, argued that all individuals are gifted by nature with inherent rights to life, liberty and property which belong to them and cannot be revoked by the state. Through a social contract, the use of their inalienable rights is handed over to the authorities. If the authorities break the social contract by violating the natural rights of individuals, the people can replace them with a ruler who is able to respect these rights. (Daulay 2021) The essence of the view John Locke stated that human rights belong to all human beings at all times and all places by virtue of belonging to being born as human beings. Human rights standards in this conception are the protection of humans as autonomous individuals and individual freedom.

The term human rights was first introduced by Eleanor Roosevelt when formulating The Universal Declaration on Human Rights. (Purnama 2021) One of the basic milestones in the enforcement of Human Rights in the world was the ratification of The Universal Declaration on Human Rights 1948. Based on this declaration, the subject of Human Rights is every person or every human being, including family and children. Regarding children's rights, it is stated in Article 25 which states that 'Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

### **3.1.2. Convention on the Rights of the Child**

The protection of children's rights as mentioned in The Universal Declaration on Human Rights 1948 is also regulated in various international conventions. Among of them are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The peak was when the UN General Assembly ratified a convention specifically regulating children's rights, namely the Convention on the Rights of the Child in 1989.

In the Convention on the Rights of the Child, there are 4 (four) general principles related to child protection which are the basis for every country in implementing child protection, namely the principle of non-discrimination, the principle of the best interest of the child, the principle of the right of life, survival and development and the principle of respect for the views of the child. What is relevant to the issue in this article is related to the principle of continuity of child development and the principle of the best interests of the child. Article 27 paragraph (2) of the Convention on the Rights of the Child states that '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.

Countries that ratify the convention must participate in ensuring that children's rights can be fulfilled. Its implementation in Indonesia, regarding children's rights, is constitutionally stated in Article 28B paragraph (2)

which states that "Every child has the right to survival, growth and development and the right to protection from violence and discrimination".

Various regulatory provisions relating to children's rights as human rights have been developed both nationally and internationally. Provisions related to guaranteeing the fulfillment of international children's rights are realized through the ratification of international conventions on children's rights, namely the ratification of the Convention On The Rights Of The Child based on Presidential Decree Number 36 of 1990. This convention is a logical consequence because Indonesia is a member of the UN which participates declares a commitment to respect and guarantee children's rights without discrimination in Indonesian jurisdiction.

Relate to the best interests of the child, it is known as the principle of the best interests of the child, adopted from article 3, The Convention on the Rights of the Child which determines:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
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 responsibility of his or her parents, legal guardians, or other individuals legally 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 authority, particularly in the areas of safety, health, in the number and suitability of their staff, as well as component supervision. (PSHK-Unicef 2010)

The principle of the best interests of the child is so important, it can be seen by placing it as a primary consideration in all actions towards children, whether by social welfare institutions in the public or private sector, courts, administrative authorities, or legislative councils.

### **3.2. Regulation of Children's Rights in Indonesia**

#### **3.2.1. Child Welfare Act**

Regulations related to child welfare are regulated in Law Number 4 of 1979 concerning Child Welfare ("Child Welfare Law"). In the preamble to the Child Welfare Law, it is stated that children are the potential and successors of the nation's ideals, the foundations of which have been laid by previous generations. In order for every child to be able to assume this responsibility, he or she needs to have the widest possible opportunity to grow and develop properly both spiritually, physically and socially. Several children's rights related to welfare are regulated in Article 2 of the Child Welfare Law which states:

1. Children have the right to welfare, care, upbringing and guidance based on love both within their families and in special care to grow and develop naturally;
2. Children have the right to services to develop their abilities and social life, in accordance with the nation's culture and personality, to become good and useful citizens;
3. Children have the right to care and protection, both while in the womb and after birth.
4. Children have the right to protection from the environment which can harm or hinder normal growth and development.

In general, the provisions of Article 2 of the Child Welfare Law regulate children's rights, especially those relating to child welfare, children's rights to services to develop their abilities and social life, children's rights to care and protection, and the right to protection against the environment which can be dangerous or inhibit normal growth and development.

The reality is that in society there are still quite a lot of children who experience disabilities in the economic, social, physical and spiritual fields. In such conditions, children need special services as regulated in the Child Welfare Law, namely:

1. Incapacitated children are children who, for some reason, cannot have their needs, both spiritual, physical and social, properly fulfilled.
2. Abandoned children are children whose parents, for some reason, neglect their obligations so that the child's needs cannot be fulfilled properly, both spiritually, physically, socially and economically.

3. Children who experience behavioural problems are children who show behaviour that deviates from societal norms; And
4. Children who are spiritually and/or physically disabled are children who experience spiritual and/or physical obstacles that interfere their normal growth and development. (Aprita Serlika 2020; Sudrajat 2011)

In ideal conditions, a child lives with both parents, but sometimes a child can no longer live with both parents and this results in their rights not being fullest fulfilled. This condition can be caused by parents ignoring their child's right to support as a result of the divorce of his parents so that the rights to welfare as regulated in the Welfare Law are not fulfilled properly. These rights include:

1. The right to welfare, care, upbringing and guidance.
2. The right to services,
3. The right to care and protection.
4. The right to protection of life.
5. The right to receive first aid.
6. The right to receive care.
7. The right to obtain assistance.
8. The right to obtain special services.

It is the obligation of both parents to fulfil the needs of the child's rights in order to meet the needs of the child's growth and development. However, parents' obligations towards their children are not just physical needs, but also psychological needs and a good environment that can determine and build the child's behaviour in the child's future life.

### **3.2.2. Child Legal Protection Act**

Child protection is the responsibility of parents, families, communities, regional governments, the government and the state which is a series of activities carried out continuously for the protection of children's rights, as organizers of child protection. (Iksan and others 2020) Regulations on children's rights has been accommodated in several laws of the Republic of Indonesia, but its implementation is still far from expectations because there are still many cases occurring in Indonesia. This means that child protection organizers have not been able to provide guarantees that children's rights are fulfilled so that they can live, grow, develop and participate optimally in accordance with human dignity. (Iksan and others 2020)

As explained previously, children's rights as one of the human rights are guaranteed protection and fulfillment in Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In efforts to realize the welfare of children, the burden of obligations does not only rest on their parents. In certain circumstances, the state, through the government and regional governments, also has an obligation to guarantee the protection, care and welfare of children. This is a constitutional mandate, namely an obligation to provide legal protection for human rights, in this case children's rights.

The position of children is an inseparable part of human survival and the sustainability of a nation and state. In order to be able to take responsibility for the sustainability of the nation and state, every child needs to have the widest possible opportunities to grow and develop optimally, both physically, mentally and socially. For this reason, it is necessary to take protective efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights without discriminatory treatment as explained in the background to the Child Protection Law.

The state's commitment as seen in the general explanation of the Child Protection Law states that the state, government, regional government, community, family and parents are obliged to provide protection and ensure the fulfillment of children's human rights with their duties and responsibilities. The protection of children carried out so far has not provided guarantees for children to receive treatment and opportunities in accordance with their needs in various field of life, so that in carrying out efforts to protect children's rights by the Government it must be based on the principles of human rights, namely respect, fulfillment and protection of children's rights.

Based on Article 1 point (2) of the Child Protection Law, it states that: "Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity, and receive protection from violence and discrimination". The Child Protection



Law places an obligation to provide protection to children based on the principles of non-discrimination, the best interests of the child, the right to life, survival, development and respect for children's opinions as contained in the provisions of Article 2 of the Child Protection Law which determines: "Administration of child protection is based on Pancasila and based on the 1945 Constitution of the Republic of Indonesia as well as the basic principles of the Convention on the Rights of the Child which include non-discrimination, the best interests of children, the right to life, survival, development and respect for children's opinions."

In a more comprehensive explanation of Article 2 of the Child Protection Law, it is explained that the principles of child protection in this Law are in accordance with the basic principles contained in the International Convention on the Rights of the Child. It is further explained that what is meant by the principle of the best interests of children are all actions concerning children carried out by parents, government, society, legislative council and the judiciary, so the best interests of children must be the main consideration.

Various efforts have been made by the government, to realize and provide protection for children's rights, which is also the state's obligation to guarantee the protection, care and welfare of children as mandated by Article 23 of the Child Protection Law which stipulates that:

- a. The State, Government and Regional Government 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;
- b. The state, government and local governments supervise the implementation of child protection.

The provisions of Article 23 of the Child Protection Law can be said to be the implementation of Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which places the State, Government and Regional Governments under an obligation to guarantee the protection, care and welfare of children by paying attention to the rights and obligations of parents, guardians or other people. who is legally responsible for the child. Apart from being obliged to guarantee the protection, care and welfare of children, the state, government and regional governments supervise the implementation of child protection. The provisions of this article emphasize that the issue of child protection is not only the responsibility of parents, but is also the responsibility of the state, government and regional governments.

The state's involvement in providing child protection is not only a commitment of the Indonesian state, but has become a global concern. This can be seen in the provisions of Article 3 paragraph (2) of the Children's Convention which confirms that 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 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. Even more firmly, it can be seen in the formulation of Article 3 paragraph (3) of the Convention on the Rights of the Child which stipulates "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 authority, particularly in the areas of safety, health, in the number and suitability of their staff, as well as component supervision."

In the Children's Convention, it is very clear that legal protection for children cannot be imposed on the child alone, but the involvement of the state must also be required to protect the interests and rights of children. In fact, every country must participate in regulating the protection of children's rights, because the state and government have the responsibility to guard and deliver the quality of human resources that are the character of all their citizens. (Naskur 2015) Because the truth is, children cannot protect themselves from various kinds of actions that cause mental, physical, social impacts in various field of life and livelihood. Children must be assisted by other people in protecting themselves, considering the situation and condition of children who need to receive protection so that they do not experience harm, both mentally and socially. (Maidin Gultom 2012)

This is in line with one of the principles in the Children's Convention, namely the principle of the best interests of the child which is also stated in Article 14 paragraph (1) of the Child Protection Law which stipulates that: "...every child has the right to be raised by his own parents, unless there are valid legal reasons or rules show that separation is in the best interests of the child and is the final consideration." The provisions of this article are articles that implement the principle of the best interests of the child in relation to the right to care for the child by the parents themselves. Even if there are valid reasons or legal regulations indicating that the separation must still take into account the best interests of the child and the separation is a final consideration.

In connection with the principle of the best interests of the child, adopted from article 3, The Convention on the Rights of the Child. The principle of the best interests of the child is so important, it can be seen by placing it as a primary consideration in all actions for children, whether by social welfare institutions in the public or private sector, courts, administrative authorities, or legislative council.

### 3.3. Harmonization of Laws Related to Children's Rights

In the concept of legal harmonization, Christopher Stuart gives an example of the case of harmonization in the context of the Islamic legal tradition and the Western legal tradition, which shows that there are 3 (three) meanings, namely (1) as the adoption of another form of legal system; (2) as integration through agreements between countries; and (3) as convergence through meeting the same regulatory objectives. The first form of harmonization requires a process of determining domestic laws identical to the laws of other countries. This means-based harmonization and is usually proven through the restructuring of domestic law, thereby entering the legal channels of other jurisdictions. This usually results in substitution (replacement) of the original form in a foreign legislative system, which mostly gives rise to divergence. The second form of harmonization does not require abandoning or separating local systems. However, modifications to local systems were made as a result of negotiations, so that all participating countries had a stake. This harmonization is carried out through consensus, and can sometimes be seen through the integration of international conventions or agreements, such as The Universal Declaration on Human Rights 1948 and The Convention on the Rights of the Child, which were promulgated as a bridge between legal systems. Third, the broad form of harmonization is based on a framework approach. The state works toward the general goal of legislation through modifying local societal systems to produce the desired results. This form of harmonization respects local community systems more. In contrast to the form of harmonization which requires broad effectiveness, the new law resembles the form of a copied legal regime. The focus is ends-based harmonization, namely the conformity of the objectives of legal reform with the form of the local community system.

Indonesia also seems to be experiencing these three forms of legal harmonization. The problem is that there is neglect of local community law, as in the first form it dominates legal development in Indonesia. Domination can certainly mean elimination at a certain level, especially in concept or structure. In addition, if the second or third form is adopted in legal development, theoretically, the meeting of legal institutions or legal systems will never become a tailor-made model. This is partly due to the inevitable mismatch between the two national souls. In other words, it gives rise to a paradox due to the existence of diversity in addition to similarity between the recipient's legal system (host system, recipient) and the original legal system (home system, model). In addition, it is possible for contamination to occur, as happened in the European Union. For example, in the context of the European Union, civilian law concepts enter common law in England at the conceptual level, and not at the structural and technical level. Likewise in Hong Kong, common law is now surrounded by Chinese law, a variation of the civilian tradition, in structure, if not in content, and will be sandwiched between the lower layer of traditional law and the upper layer of Chinese/civilian law. Hypothetically, this is what causes local norms and values or concepts with a Pancasila character in Indonesia to be more misunderstood than Western legal values and concepts, which incidentally accommodate the interests of a society with an industrialist character.

Legal material relating to children's rights in The Convention on the Rights of the Child, at least the rights given to children such as survival rights, protection rights, development rights and participation rights, have become a reference for legal development in Indonesia, especially with regard to the protection of children's rights. (Prinst 1997) This is in line with the thoughts of Retnowulan Sutantio who says that child protection is one area of national development. Protecting children is protecting humans, and building humans as fully as possible. She also added that the essence of national development is the development of the whole Indonesian human being who is virtuous. Ignoring child protection issues means ignoring national development. As a result, the absence of child protection will give rise to various social problems that can disrupt law enforcement, order, security and national development. (Nugraha and Handoyo 2019)

In implementing international conventions in various countries, their own obstacles often arise due to the interests of each country. This is also experienced by the implementation of the Children's Convention, where not all of the main principles in the Children's Convention can be easily implemented in Indonesia. One thing



that has not been implemented optimally is related to children's support rights as part of children's human rights. Even though The Convention on the Rights of the Child has been ratified by the Indonesian Government, theoretically it does not rule out the possibility that there will be obstacles. Some of the obstacles that occur are the diversity of legal forms between countries because basically the nature of law is territorial, which means that a law only has legal force within certain territorial boundaries or on a national scale. Thus, in principle, no other country is bound to recognize or enforce the laws of that country. This thought was influenced by the views of Sieg Eiselent who stated "... that law is territorial in its nature. It only has the force of law within specified national boundaries, and in principle no other state is bound to acknowledge or apply it." (Eiselent 1996) This is understandable because every sovereign country has jurisdiction over all residents in its territorial area. To face the problem of implementing international agreements and/or conventions, it can be addressed using the concepts of unification and harmonization.. (Endarto dan others 2021)

The meaning of unification is the acceptance or adoption of a set of rules, standards or guidelines that have been agreed in international conventions. This understanding refers to the opinion of George A. Zaphiriou who stated: "International unification means adoption of an agreed set of rules, standards or guidelines for application to transnational transactions. In international trading, this was achieved by custom, international practice or by international agreement within the framework of professional organizations or between states by an international convention". (Zaphiriou [n.d.]) From this opinion it can be interpreted that unification can be achieved through customs, international practices or international agreements or between countries through international conventions. The scope of unification includes the elimination and replacement of an existing legal system with a new legal system.

Meanwhile, the definition of harmonization is processes in order to avoid conflict and produce balance. Harmonization is more directed at changing existing rules so that harmony arises. Harmonization can be achieved through international agreements between countries or through mandates from supranational institutions. The main aim of legal harmonization is to seek uniformity or common ground in the fundamental principles of various existing legal systems. (Adolf 2006)

From this discussion, Indonesia should harmonize laws and regulations, especially those related to comprehensive protection of children's rights. This is so that uniformity or meeting points can be found in fundamental and universal principles in an effort to provide protection for children's rights as stipulated in The Universal Declaration on Human Rights and Convention on the Rights of the Child.

#### **4. Conclusion**

The concept of protection of children's rights departs from the concept of the rule of law which contains indicators of the fulfillment of children's rights as legal rights which are part of human rights. On the other hand, regarding the protection of children's rights, Indonesia as part of the international community has an obligation to ratify the Universal Declaration on Human Rights and Convention on the Rights of the Child. Thus, steps that can be taken are through a harmonization mechanism in the form of changes to existing rules so that harmony arises. Harmonization of international agreements can occur between countries or through mandates from supranational institutions. Where the main aim of legal harmonization is to seek uniformity or common ground in the fundamental principles of various existing legal systems. Thus, Indonesia should harmonize its laws and regulations, especially those related to the protection of children's rights, with The Universal Declaration on Human Rights and Convention on the Rights of the Child so that uniformity or meeting points can be found in principles that are fundamental and universal as an effort to protect children's rights.

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