

THE ROLE OF SOCIAL ENVIRONMENT IN THE IMPLEMENTATION OF OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

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Abstract: *Children are the next generation of a state and nation. Children must get protection in all aspects of life. Convention on the Rights of the Child is an international convention on the rights of children which includes the civil, political, economic, social and cultural rights of children. It is not enough to just ratified Convention on the Rights of the Child, Indonesia has also ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography through Act No. 10 of 2012. The implementation of Act No. 10 of 2012 requires the role of the social environment especially the environment of family as the smallest system in a social environment. Issues concerning the Role of the Social Environment in the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography are understood through normative studies with the aim to find out the role of the social environment especially the family in realizing the protection of children from acts of violence, especially those relating to child trafficking, child prostitution and child pornography. The results of a normative study of the Role of the Social Environment in the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, that the role of the family as the smallest system in the social environment and society has an important role in preventing violence against children. Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution And Child Pornography define that parents and family are one of the parties who responsible for children's welfare and which being a form of efforts to prevent acts of violence against children , especially child trafficking, child prostitution and child pornography.*

Keywords: *Social Environment, Child Protection, Child Violence.*

1. Introduction

Indonesia as a state law provides a form of certainty for each protection, including child protection. Children as the next generation of the nation are expected

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to have the ability and responsibility in maintaining and ensuring the continued existence of the nation and state. Children must get the maximum opportunity in growth and develop optimally, both physically, mentally and socially. Children should have good morals too. Children must get protection in realizing the welfare of children through guarantees for the fulfillment of their rights and get treatment without discrimination to realize the protection and welfare of children. The issue of legal protection for children is one side of the approach to protect Indonesian children. The problem is not merely approachable legally, but needs a broader approach, namely: economic, social and cultural. (Gultom, 2010).

In Indonesia, children are given protection both preventive and repressive protection. Some regulations are made to provide protection for children. Act No. 4 of 1979 concerning Child Welfare, Act No. 23 of 2002 concerning Child Protection which has been amended by Act No. 35 of 2014 (hereinafter as Child Protection Act), and Act No. 11 of 2012 concerning the Criminal Justice System for Children. The Indonesia Constitution 1945 as a written basic law provides special legal protection for children and is regulated in Article 28 B par. 2 which guarantees the life sustainability, growth and development of children and guarantees protection from violence and discrimination.

Child Protection Act in Indonesia are also based on the basic principles of the Convention on the Rights of the Child which specifically regulates everything about children's rights. The Convention on the Rights of the Child entered into force on September 2nd, 1990 through the United Nations resolution dated November 20, 1989. In this convention the child is the holder of basic rights and freedoms as well as the party receiving special protection. (Fitriani, 2016)

The Child Protection Act also guarantees the fulfillment of children's rights to live, grow and develop. Children must be able to participate optimally according to human dignity. Children must receive protection from acts of violence and discrimination in order to realize quality, noble, and prosperous Indonesian children who are able and responsible in maintaining and ensuring the continued existence of the Indonesian nation and state.

Barda Nawawi Arief (Arief, 2001) said that the protection of victims can also be seen in two meanings, namely: Legal protection for not being a victim of a criminal offense (which means protection of human rights or the public interest of a person); and Protection to obtain legal protection / compensation for the suffering / loss of people who have been victims of criminal acts (therefore identical to "victims compensation").

Children have the right to get protection from economic exploitation and actions that can disrupt the child's development both physically, mentally, spiritually, morally and the social environment of children. The implementation of child protection and welfare is the responsibility of all parties, regionally, nationally and internationally. In the interest of child protection, the Government of Indonesia on September 24th, 2001 had signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography as a form of the Indonesian government's commitment to implementing the Convention on the Rights of the Child .

Protection of children from acts of children trafficking, child prostitution and child pornography are a small part of the form of child protection regulated in the Child Protection Act. Act No. 10 of 2012 concerning Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on July 23rd, 2012 is a form of the commitment of the Indonesian government in providing full protection for children

Child protection is an obligation and responsibility of the state, government, society, family and parents which includes protection in the fields of religion, education, health and social affairs. (al, 2017) In providing protection to children as in the Convention on the Rights of the Child and in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, it is necessary to conduct research on how the role of the social environment in providing protection to children, especially from actions that lead to child trafficking, child prostitution and child pornography. The closest social environment to children is family and society. What is the role of family and society in

providing protection to children as desired in the Convention on the Rights of the Child and in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

2. Theoretical Framework and Hypothesis Development

The social environment is a system that consists of a set of social roles that form a network of interactions. The social environment that plays an important role in forming the personality of someone who has a value in life. (DosenSosiologi.com, 2019). Social environments can be experienced at multiple scales, often simultaneously, including households, neighborhoods, cities, and regions. Social environments are dynamic and change over time as the result of both internal and external forces. (Pathak, Elizabeth & Casper, Michele, 2001).

The characteristics of the social environment include 3 things: All parties are included and each has a role and responsibility; The results can be enjoyed by the society in order to improve their welfare; and Respect for community rights.

The definition children in the Child Protection Act is someone who has not been invited 18 years and includes children who are still in the womb. Every child has the right to get protection from violences and discrimination. Violence is every act that results in the occurrence of past misery or suffering by physical, psychological, sexual and or neglect, including threats to commit acts, coercion, or deprivation. Each child is also entitled to the protection of the sexual abuse carried out by educators, educational staff, fellow students and / or other subjects in the environment of the education unit. And every child has the right to protection from sexual crime.

The Child Protection Act regulates the prohibition of child trafficking, child prostitution and child pornography through several additional articles and is regulated in Act No. 35 of 2014. Some of these crimes are everyone is prohibited from committing violence or the threat of violence forcing children to have sexual intercourse with or with other people; everyone is prohibited from committing violence or threat of violence, coercing, making tricks, making a series of lies, or persuading children to commit or allow rape act; and everyone is prohibited from

placing, allowing, committing, or participating in kidnapping, selling, and / or trafficking children.

3. Research Method

Research on the role of the social environment in the implementation of Optional Protocols for the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography uses normative research methods with a conceptual and statute approach.

Synchronization of regulations relating to the role of the social environment in the implementation of Optional Protocols for the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography is conducted research on several legal materials, both primary legal materials, secondary legal materials or tertiary legal material.

4. Results and Discussion

The main objective of the Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution And Child Pornography is to provide protection for children so as not to become victims of the sale of children, child prostitution, and child pornography. This protection is a preventive protection, but in its implementation that the protection provided to children, is not only preventive protection, but also repressive protection, which includes efforts to prevent, eradicate and criminalize the criminal offender.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in its implementation also involves the relevant society as stated in the obligations of the state party. The Government of Indonesia as a state party is obliged to increase society's awareness in preventing the sale of children, child prostitution and child pornography, through education and training as well as information relating to the sale of children, child prostitution, and child pornography. Article 34 Indonesia's Constitution 1945 has emphasized that "the poor and abandoned children are nurtured by the state" This

shows the importance of paying attention to the government for children's rights and protection. (Wagiati Soetedjo, 2013).

The obligation of state parties to involve the society as one of the social environment in the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography is implemented in the Act No. 23 of 2002 concerning Child Protection and amendments have been made with Act No. 35 of 2014. This Child Protection Act defines the society as individuals, families, groups, and social organizations and / or society organizations.

The role of the society in providing protection to children has been guaranteed in the Child Protection Act. The form of protection provided to children is special protection, which is a form of protection received by children in situations and conditions that require children to be protected from threats that endanger both physically and psychologically in the child's growth and development. One type of protection guaranteed in the Child Protection Act is protection from sexual crimes as desired in the Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution And Child Pornography.

Special forms of protection for children who are exploited economically or sexually are carried out through the dissemination and / or socialization of regulation relating to the Protection of Children who are exploited economically and / or sexually. The implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in the Child Protection Act which regulate the role of the social environment is carried out in the following method such as everyone must protect the child from the influence of pornography and prevent the child's access to information that contains pornographic elements; special protection for children who are victims of pornography is carried out through efforts to assist and recover both social, physical and mental health; assistance and social recovery both physical and mental health is given to children who being as victims and it is a form of repressive protection.

The role of the social environment in this case the society, participates in child protection, both individually and in groups. It can be done by individuals, child protection institutions, social welfare institutions, social organizations, educational institutions, mass media, and the business world. Child protection is carried out by providing information through socialization and education about children's rights and regulation regarding children. For this reason, the Child Protection Act prohibits anyone from placing, allowing, doing, telling to do, or participating in the kidnapping, sale and / or trafficking of Children. And every person is prohibited from placing, allowing, doing, telling to do, or participating in economic and / or sexual exploitation of children.

5. Conclusion, Implication and Limitation

5.1. Conclusion

The implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography is further regulated in the amendment to Act No. 23 of 2002 concerning Child Protection through Act No. 35 of 2014. Some forms of child protection are added to the amendment of Child Protection Act like guarantee the protection and fulfillment of children's rights being the obligations of parents, family, society, state, government, and regional government. Parents and families are part of the social environment that is closest to the child. They have a very large role in the implementation of the Child Protection Act and Optional Protocols to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

5.2. Implication and Limitation

The role of the social environment in providing protection for children from the crime of trafficking of children, child prostitution, and child pornography in Indonesia's regulation has not been regulated in detail in separate regulations. Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography is only through the amendment of Child Protection Act. For this reason, it is necessary to make

regulations concerning the importance of parents and family obligations as the closest form of social environment for children in providing guarantees, protection and fulfillment of children's rights

Reference

Convention on the Rights of the Child

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Act No. 10 of 2012 concerning ratification of Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Act No. 35 of 2014 concerning amendment of Act No. 23 of 2002 concerning Child Protection

Barda Nawawi Arief, 2001, *Masalah Penegakan Hukum – Kebijakan Penanggulangan Kejahatan*, Bandung, Citra Aditya Bakti.

Jonny Purba, 2005, *Pengelolaan Lingkungan Sosial*, Jakarta, Yayasan Obor Indonesia

Maidin Gultom, 2010, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia*, Bandung, Refika Aditama.

Pengertian Lingkungan Sosial, Ciri, Jenis, Faktor, dan Contohnya, diakses dari <http://dosensosiologi.com/>

Pathak, Elizabeth & Casper, Michele. (2001). A definition of "social environment" [1]. *American journal of public health*. 91. 465. 10.2105/AJPH.91.3.465a.

Rini Fitriani, 2016, Peran Penyelenggara Anak Dalam Melindungi dan Memenuhi Hak-Hak Anak, *Jurnal Hukum Samudra Keadilan*, Vol.11 No.2.

Wagiati Soetedjo & Melani, 2013. *Hukum Pidana Anak*, Refika Aditama, Bandung.