



## **PROTECTION OF CHILDREN'S RIGHTS IN THE ASPECT OF INTERNATIONAL LAW**

**Ni Ketut Suriati**

*Faculty of Law and Social Sciences, Ganesha University of Education*

*e-mail : [suriati@undiksha.ac.id](mailto:suriati@undiksha.ac.id)*

---

### **Info Artikel**

*Masuk: 1 September 2023*

*Diterima: 10 Oktober 2023*

*Terbit: 1 November 2023*

### **Keywords:**

*Child, Protection of Children's Rights, International Law*

---

### **Abstract**

*This article aims to (1). Children and Child Protection in Indonesian Law. (2). How to Protect Children's Rights in Aspects of International Law. The results of the discussion of this article show that (1) In Law no. 23 of 2002 concerning the protection of children, states that children are a mandate and gift from God Almighty, in which the dignity and worth of being a complete human being is inherent in him. Guaranteed rights for children are protected through Law no. 34 of 2014, there are 4 general principles of child protection, namely the principle of non-discrimination, the principle of the best interests of the child, the principle of the right to life and the principle of respect for the opinion of children, the regulation regarding the protection of children's rights in Indonesia is also contained in the 1945 Constitution Article 28B Paragraph (2), as well as in Law no. 39 of 1999 concerning Human Rights, and Law no. 23 of 2002 concerning Child Protection. (2) The regulation regarding the protection of children's rights in the aspect of international law is contained in the Convention on the Rights of the Child which was declared unanimously on November 20, 1989 by the United Nations General Assembly (UN Resolution No. 44/25 dated December 5, 1989). - Children's rights are also contained in the ILO Conventions.*

**Kata kunci:**

*Anak, Perlindungan Hak-Hak Anak, Hukum Internasional*

**Corresponding Author:**

*Ni Ketut Suriati*

**DOI:**

xxxxxxx

---

**Abstrak**

Anak Dalam Undang-Undang Di Indonesia. (2). Bagaimana Perlindungan Hak-Hak Anak Dalam Aspek Hukum Internasional. Hasil pembahasan dari artikel ini menunjukkan bahwa (1) Dalam Undang-Undang No. 23 Tahun 2002 yang membahas tentang perlindungan anak, menyatakan bahwa anak adalah amanah dan karuni Tuhan Yang Maha Esa, dimana dalam dirinya melekat harkat dan martabat sebagai manusia seutuhnya. Jaminan hak untuk anak dilindungi melalui UU No. 34 Tahun 2014, terdapat 4 prinsip umum perlindungan anak yakni prinsip non-diskriminasi, prinsip kepentingan terbaik untuk anak, prinsip hak hidup dan prinsip penghargaan terhadap pendapat anak, pengaturan mengenai perlindungan hak-hak anak di Indonesia juga dimuat dalam UUD 1945 Pasal 28B Ayat (2), serta di dalam UU No. 39 Tahun 1999 tentang HAM, dan UU No. 23 Tahun 2002 tentang Perlindungan Anak. (2) Pengaturan mengenai perlindungan Hak-Hak Anak dalam aspek Hukum Internasional terdapat pada Konvensi Hak Anak yang dideklarasikan pada tanggal 20 November 1989 secara bulat oleh Majelis Umum PBB (Resolusi PBB No. 44/25 tanggal 5 Desember 1989), selain itu perlindungan Hak-Hak Anak juga di muat di dalam Konvensi ILO

*@Copyright 2023.*

---

**INTRODUCTION**

Overall, international law is a law that regulates the rules and principles in which this law regulates relations or issues that cross state boundaries, namely between countries and countries and countries with other legal subjects that are not countries or non-country subjects with each other. The need for international law by society is because international society itself is not static, so this causes international law to develop based on the development of society (Kusumaatmadja :4) International society as the sociological basis of international law will continue to develop, causing international law to continue to develop as well. So with things like this it is very important for us to know the development of international law itself.

There are several terms regarding international law, namely public international law and also private international law and there are also terms regarding law between countries. However, here if we use the term law between nations/states then the discussion is only on the law that regulates relations between nations/states, whereas here international law does not only regulate

relations between nations/states, but also regulates relations between nations. / countries with non-state subjects of international law, examples of relations between countries and international organizations, for example relations between Indonesia and the UN, as well as relations between one international organization and another, relations between states and the Holy See and relations between states and other individuals (Setianingsih, 2006 : 4).

Actually, the definition and understanding of international law depends on the terminology used. International law is closely related to states, where in international law states are the main and only object of international law, so that in the past international law itself was called inter-state law. Nationalism emerged around the Middle Ages, the emergence of this nationalism was motivated by the existence of a state which was identified with the nation. The term international law was introduced after World War II, this coincided with the emergence of many countries and the increasing strength of international relations and interactions. The term international law is used to this day because the term international law reflects its substance better than inter-state law. Even though the term international law has become widespread, in the works of legal scholars after World War II there are still those who use the term law of nations (Mangku, 2021 : 4).

In the context of legal science, international law is understood as a rule or code that applies to its subject. International law is used as an instrument used by the government of a country to achieve national goals or international law as an instrument of national policy. The function of international law as an instrument must be distinguished from international law as a code. In its existence as a political instrument, international law is based on the reality of relations between countries. International law is used as a political instrument by states to concrete problems (Juwana, 2012 :106).

Until now, children's rights have not yet become a legal entity that can clearly be separated from the universe where this is greater than individual human rights. The opinion of legal scholars considers that this is a child's right that originates from parental rights or individual rights recognized by international or national law. However, civilized as has been explained, children do not have the rights we usually understand. They are like property to be disposed of at will. Then during the late 18th and early 19th centuries reformers began to agitate to protect children from exploitation by labor laws, compulsory school laws, child abuse and neglect. Laws and other forms of state action against elder abuse.

At the end of the 1880s, child rights advocates in Europe and the United States demanded that children be given at least some of the rights they deserved, the rights in question were rights in both civil law and criminal law. The United Nations convention on the Rights of the Child must be recognized by their national governments. But it reveals the tensions that still linger in the child domain between parental control, and to a lesser extent the state. Protecting children and children's autonomy can be claimed through the rights recognized in this international agreement (Corcos, 1991 : 171) So based on this, there are several problem formulations that will be answered in this article, including (1). Children and Child Protection in Indonesian Law. (2). How to Protect Children's Rights in the Aspect of International Law.

## **RESEARCH METHODS**

This research is normative legal research. In this research, three types of approaches are used, namely, the Statute Approach, The legal materials used in this research, namely primary and secondary legal materials obtained from library/literature studies, were then studied and analyzed for their relationships and interrelationships in helping and explaining the concepts and theories used in this research.

## **RESULTS AND DISCUSSION**

### **Children And Protection In Indonesian Law**

Child protection is anything or activity carried out in order to guarantee and protect children to obtain their rights to be able to live and adapt well based on human dignity, with this, child protection is expected to provide children protection against violence and discrimination. Children are the second offspring which is the result of a man and woman's marriage relationship. In Law no. 23 of 2002 concerning child protection, states in detail that children are a gift that must be protected, given by God, in whom there is inherent dignity and worth as a complete human being. They are shoots, who have the potential to become the young generation who will continue the ideals of the nation's struggle, where children as the next generation have a strategic role and have special characteristics and traits that guarantee the continued existence of the nation and state in the future. In this way, every child needs to have the widest possible rights to grow, develop optimally both physically, mentally and socially and have noble character, so if children have received these rights, they will be able to assume the obligations they bear.

The legislators, namely the DPR and the Government, should have legal politics that are responsive to children and the protection of children's rights. As a mandate from the Almighty, children should be placed in a noble position, where this position has a strategic role in ensuring the continued existence of the state and nation. Guarantees of children's rights are also protected through Law no. 34 of 2014. Meanwhile in the Indonesian Child Protection Commission (KPAI), where KPAI is responsible for providing and facilitating everything related to children

In Indonesia itself, paying attention to child protection is one of the goals of national development. As stated in Article 1 paragraph (2) of Law Number 35 of 2014 concerning child protection which reads "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, as well as receiving protection from violence and discrimination" 6. Regarding the protection of children's rights, it was also conveyed in the Seminar on Protection of Children or Adolescents by Juwana which was held in 1997, at which time there were 2 formulations discussed in the seminar regarding the rights and protection of children.

In fact, child protection is also a development of the younger generation, which is part of national development in terms of a just and prosperous, safe and peaceful society based on Pancasila and the 1945 Constitution (UUD 1945). The concept of protecting children's rights itself covers quite broad matters, this means that protecting children's rights is not only about protecting the child's body and soul but also includes the protection of all rights and interests that are felt to help and guarantee their growth and development. normal development of children, spiritually, physically and socially so that Indonesian children can and are able to work to achieve and maintain the national development goals.

Children's rights are one segment of human rights whose implementation must be guaranteed, protected and also fulfilled, whether from parents who are the first and main environment, family, community, state and government. All of these aspects have an important role in fulfilling children's rights. . The rights of children referred to include:

1. The right to an alternative family and care environment
2. Basic health and welfare rights
3. Educational rights
4. The right to use free time and cultural activities, as well
5. Children's special protection rights

We need to fulfill these children's rights to create a better future for the nation. Fulfilling the rights of children is the foundation and also our initial capital in protecting children as potential shoots of the nation and the young generation who will become the nation's successors. With things like this, no child should be neglected in terms of obtaining their rights, regardless of where the child is, regardless of their condition, whether they are normal children or children with disabilities, because children with disabilities also have the same rights in various lives. Legal protection has a fairly broad spectrum. Then based on the Convention on the Rights of the Child and Law no. 23 of 2002 concerning Child Protection, there are 4 general principles of child protection which are the foundation for the nation in implementing child protection, these four (4) principles include:

- 1) Non-Discrimination Principles ; This principle means that all rights recognized and contained in the Convention on the Rights of the Child (CRC) must be applied to every child without any distinction. This principle is in Article 2 Paragraph (1), where the Article reads "States parties respect and guarantee the rights set forth in this convention for every child within their jurisdiction without discrimination of any kind, regardless of race, color, sex, language , religion, political opinion or opinion. other, national, ethnic or social origin, ownership status, disability or not, birth or other status either from the child himself or from his legal guardian." Paragraph (2): "States parties will take all necessary steps to ensure that the child is protected from all discrimination or punishment based on the status, activities, expressed

opinions or beliefs of the child's parents, legal guardians or family members." The sound of this verse means that each participating country must be able to respect the rights of children and not discriminate between them either in RAS or others.

- 2) Principle of the Best Interests of the Child; This principle means that the state must be able to guarantee every interest of children which concerns the best survival for children. As a government institution, it must guarantee everything that is in the interests of children, for example in the interests of education, a decent life and so on. This principle also contains an element of meaning that no one should destroy the future of the children they should protect.
- 3) Principles of the Right to Life, Survival and Development; This is stated in the Convention on the Rights of the Child (KHA) in Article 6 Paragraph (1) and Paragraph (2), where the Article reads; Paragraph (1) "States parties recognize that every child has an inherent right to life." Paragraph (2): "States parties shall ensure to the maximum extent the survival and development of the child". This principle explains that the nation must guarantee the survival of every child. For example, the state government can provide infrastructure that can support children in growing and developing. Providing assistance in the form of educational allowances can also be done by the state government in terms of ensuring the survival of children. In Indonesia, we often find the implementation or provision of educational assistance in areas where people can be said to be less fortunate. The educational assistance provided can be in the form of supporting school fees and so on.

Principle of Respect for Children's Opinions; in the Convention on the Rights of the Child, this principle is contained in article 12 paragraph (1), where the article reads "States parties shall ensure that children who hold their own views have the right to express their views freely in all matters affecting the child, and those views will be assessed according to the age and level of readiness of the child". This principle means that children have a personality that cannot be underestimated (a weak view. This means that we should position the child's interests as the main interest be it in any case. Because actually, without us realizing it, these children have a desire to imagine, which we must understand to support what they need. 7. As has been explained, efforts to protect children's rights in Indonesia have been published in Law No. 39 of 1999 concerning Human Rights , and Law No. 23 of 2002 concerning Child Protection and is also contained in the 1945 Constitution Article 28B Paragraph (2).

### **Protection Of Children's Rights In The Aspect Of International Law**

International law has developed rapidly over the last few periods, this can be seen since the formation of the UN, when the rules and norms governing activities

carried out outside the laws of national boundaries were developed, then various international-bilateral, regional or multilateral agreements emerged which has been agreed upon and has become an international custom. Based on this, how are children's rights protected in the aspect of international law?

Protection of children's rights today has become very important, this is due to several actions taken by several organizations and even individuals, which clearly violate children's welfare, and even treat children not like humans, but as goods to be sold. Some people stress that in these modern times, children are much better protected than they were in decades past. Then to consider all these things, it is important to examine how the international community protects children, what steps need to be taken to safeguard the rights of minors. The United Nations Convention on the Rights of the Child contains an innovative document, an international legal and political consensus of opinion regarding the rights that children should expect to be recognized by their national governments. Until the Convention was opened and signed, child rights advocates had channeled demands for minors through other conventions and treaties such as the International Covenant on Civil and Political Rights. Currently, many international agreements focus on human rights in international law, and their implications include the protection of children's rights under international law. The United Nations Charter states that "one of its aims is to reaffirm belief in fundamental human rights, in the dignity and value of the human person and in the equal rights of boys and girls in both large and small nations. Apart from that, the Universal Declaration of Human Rights also reflects the international consensus regarding basic human rights and marks the start of the struggle to create international norms that can be enforced.

During the celebration of the International Year of the Child, Poland suggested that the United Nations draw up a treaty that would implement the principles relating to children set out in the Universal Declaration of Human Rights. Through the authority of the General Assembly, the United Nations Human Rights Commission or UN began drafting the Convention on the Rights of the Child. As part of the 30th anniversary of the Universal Declaration, various groups began to lobby for a final version of the convention which would be voted on in 1989. Then within three (3) years, the Human Rights Commission, part of the Economic and Social Council The United Nations launched a working group whose mission was to study children's rights in international law. Other UN agencies are also actively studying children's rights, including the United Nations Children's Emergency Fund (UNICEF) and the World Health Organization. After going through a long process, efforts to protect children's rights finally produced real results, this can be seen from the unanimous declaration of the Convention on the Rights of the Child on 20 November 1989 by the UN General Assembly (UN Resolution No. 44/25 dated 5 December 1989). Since this declaration, children throughout the world have received special attention in international standards. Then, basically, the aim of establishing a

juvenile criminal justice system in The Beijing Rules, is stated in Rule 5.1 which states that the juvenile justice system must emphasize the welfare of children and must ensure that every reaction towards juvenile offenders must always be proportional to the circumstances of the offender and the offense.

The Convention on the Rights of the Child or Child Rights Convention is an international agreement that describes the matters that are the basis for guaranteeing children's rights throughout the world. Based on International Law, conventions are classified as sources of international law, apart from international customs (International Custom), general principles of law recognized by civilized nations or Principles of Law Recognized by Civilized Nations and decisions or resolutions of international organizations (vide Article 38 Paragraph 1 of the Statute of the Supreme International Court). The UN specifically regulates children's issues throughout the world, the CRC is a UN convention where this convention is the most complete convention in describing and providing recognition regarding human rights instruments seen from the beginning of the development of the United organization (Ikhsan, 2002). What can be seen in the Convention on the Rights of the Child regarding children's rights is in Principle 1, Principle 2, and Principle 9 which states that

- a. Principle 1; "children should enjoy all the rights set forth in this declaration. Every child, without any exception, shall receive these rights, without distinction or discrimination of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other social status. , both himself and his family". The meaning of the principle is that every country must guarantee all the rights that every child has without having to look at which tribe the child comes from, meaning that all children have the same rights regardless of their race.
- b. Principle 2; "Children must enjoy special protection and must be given opportunities and facilities, by law or other regulations, to enable them to grow physically, spiritually, mentally, mentally and socially in a healthy and normal condition in conditions of freedom and dignity. In establishing laws for this purpose, the best concern is when the child should be the first consideration." This principle explains that the state must be able to provide opportunities for all children to be able to enjoy all facilities which can help children to develop healthily physically and mentally in accordance with what we have hoped for together.
- c. Principle 9, "Children must be protected from all forms of neglect, cruelty and exploitation. Children should not be the targets of trafficking in all its forms. The purpose of this principle is that everyone must be able to provide protection to children from all aspects of injustice. And children should not be sold either<sup>10</sup> (Child, 1989).



The Convention on the Rights of the Child also stipulates certain obligations for countries throughout the world. And this can be seen in the Convention on the Rights of the Child in Article 6 Paragraph (1) which reads "The participating countries recognize that every child has an inherent right to life" which means that the child is "attached" to life which is a right This right is not a gift from the state but is a right that belongs to the child himself. Apart from that, Article 27 Paragraph (1) also states that "participating countries recognize that every child has a standard of living that is adequate for the child's physical, mental, spiritual, moral and social development." Furthermore, regarding Article 28 Paragraph 1 states that participating countries recognize the child's right to education and to realize this right gradually and based on equal opportunities, so with this the state should be able to guarantee every child's basic rights such as the right to basic education, the right to earn a decent living. Apart from that, to be able to guarantee every child's rights, the state can also provide or provide so that children can take good steps. The state can also do things such as providing educational assistance for less fortunate children in obtaining an education. Children should also be free from early childhood work that they should not get. This can take away their right to education. The state must also ensure that children are free from child trafficking, because nowadays there are many individuals who use children as a place to earn income by selling them. Protection regarding children's rights is also contained in the International Labor Organization (ILO) Convention. Where the International Labor Organization also produces conventions that regulate the protection of child workers. Where this is related to whether it is permissible to employ children or not. In the International Labor Organization convention Number 138 of 1973 regarding the Minimum Age to be allowed to work. In this convention, countries are encouraged to establish national policies to eliminate the practice of child labor and increase the working drinking age. Based on the provisions of Article 2 Paragraph (1) of the ILO Convention, countries throughout the world must increase the minimum working age. For example, Indonesia, based on the ILO Convention, Indonesia has declared the minimum working age to be 15 years, this is based on Law Number 20 of 1999 which ratifies ILO Convention Number 138 of 1973

## **CLOSING**

### **Conclusion**

Based on the results and discussions that have been discussed, the following conclusions can be drawn:

Child protection is anything or activity carried out in order to guarantee and protect children to obtain their rights to be able to live and adapt well based on human dignity, with this, child protection is expected to provide children protection against violence and discrimination. Children are the second offspring which is the result of a man and woman's marriage relationship. In Law no. 23 of 2002

concerning child protection, states in detail that children are a gift that must be protected, given by God, in whom there is inherent dignity and worth as a complete human being. They are shoots, who have the potential to become the young generation who will continue the ideals of the nation's struggle, where children as the next generation have a strategic role and have special characteristics and traits that guarantee the continued existence of the nation and state in the future. With this, every child needs to have the widest possible rights to grow, develop optimally both physically, mentally and socially and have noble character, so if children have received these rights, they will be able to assume the obligations they bear.

### **Recommendation**

The recommendations expected from this research are:

Protection of children's rights today has become very important, this is due to several actions taken by several organizations and even individuals, which clearly violate children's welfare, and even treat children not like humans, but as goods to be sold. Some people stress that in these modern times, children are much better protected than they were in decades past. Then to consider all these things, it is important to examine how the international community protects children, the steps that need to be taken to safeguard the rights of minors. The United Nations Convention on the Rights of the Child contains an innovative document, an international legal and political consensus of opinion regarding the rights that children must recognize by their national governments. Until the Convention was opened and signed, child rights advocates had channeled demands for minors through other conventions and treaties such as the International Covenant on Civil and Political Rights. Currently, many international agreements focus on human rights in international law, and their implications include the protection of children's rights under international law.

### **REFERENCES**

Anak, K. H. -H., 1989. Konvensi Hak-Hak Anak Disetujui oleh Majelis Umum Perserikatan Bangsa-Bangsa Pada tanggal 20 November 1989. New York, s.n.

Bahter, K. T., 2020. PERANAN UNICEF DALAM ASPEK HUKUM INTERNASIONAL TERHADAP PERLINDUNGAN ATAS HAK-HAK ANAK. *Lex Et Societatis*, VIII(2), pp. 1-8.

Batt suggests other UN organizations with an interest in children's rights, including "the Commission for Social Development, the Commission on the Status of Women, the International Research and Training Institute for Women, the United States Development Programme, the Food and Agriculture Organization of the United Nations and the International Fund for Development Alternatives." Id. at 68.

*Case Western Reserve Journal Of Internasional Law* , 23(2), pp. 171-172.

- Child, C. o. t. R. o. t., 1989. *Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.* New York, -.
- Corcos, C. A., 1991. *The Child in International Law: A Pathfinder and Selected Bibliography.*
- Dewa Sudika Mangku. 2021. *Pengantar Hukum Internasional.* 1st ed. Jawa Tengah: Lakeisha.
- G.A. Res. 217A, U.N. Doc. A/810 at 71 (1948). B.G. RAMCHARAN, THE CONCEPT AND PRESENT STATUS OF THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS: FORTY YEARS AFTER THE UNIVERSAL DECLARATION (1988), provides a learned study of the impact of the Universal Declaration and related covenants.
- Ikhsan, E., 2002. *Beberapa Catatan Tentang Konvensi Hak Anak.* -, (-), p. 1.
- Juwana, H., 2012. *Hukum Internasional Sebagai Instrumen Politik: Berharap Pengalaman Indonesia Sebagai Studi Kasus.* *Arena Hukum*, 6(2), pp. 106-107.
- Prof. Dr. Sri Setianingsih, S. M., 2006. *Pengertian Hukum Internasional*, Jakarta:
- UU Nomor 35 Tahun 2014 tentang Perlindungan Anak, (Bandung: Fokusmedia, 2014).