



## **Criminal Liability of Parents Who Abandon Children With Disabilities**

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### **Abstract**

Not all parents sincerely accept and give affection to children with disabilities. Disabled children are still considered a disgrace from the family therefore so many cases of children to abandon with disabilities carried out by their own parents. Humans are creatures created by the Almighty God who has the same position. Every human being has the dignity and inherent of humanity. This condition should not be the cause of the dignity lose of children with disabilities or an excuse for not aligning them with other children. Indonesia guarantees the survival of every citizen, including persons with disabilities who have the same legal and human rights position as Indonesian citizens. The act of abandoning children with a disability is a crime that must be held a liability to each of the perpetrators including both the children's parents and children who are victims of abandoning from their parents must obtain legal protection from the government. This research is analyze the criminal liability of parents who abandon children with disabilities. The method used was normative law which aimed at finding and formulating legal arguments, through analysis of the subject, the approach used in this study was legislation approach by examining the applicable legal rules related to criminal liability of parents who abandon children with disabilities.

**Keywords:** Abandon; children with disabilities; criminal liability

### **INTRODUCTION**

Children are mandate and gift from Almighty God which inherits the dignity and inherent of a whole person, including children with disabilities. Not all parents accept and devote their love to children with disabilities, some still consider that children with disabilities are a disgrace to the family which causes so many cases of children to abandon with disabilities. Humans are creatures created by Almighty God who has the same position. Every human being has the dignity and inherent of humanity. This condition should not be the cause of the loss of the dignity of the children with disabilities, or as a reason to not align them with others.

The Unitary State of the Indonesian Republic guarantees the survival of every citizen, including persons with disabilities who have legal standing and have the same human rights as citizens of Indonesia and as an inseparable part of citizens and Indonesian citizen, is a mandate and gift of the Almighty God, to live progressively and develop in a just and dignified manner. The act of neglecting children with disabilities is a crime that must be held liable to each of the perpetrators including both the children's parents and children who are victims of neglecting from their parents must obtain legal protection from the government.

According to Indarti (Indirati, 2014), The right victim protection models to develop are: Placing children in the family and social home, which is an environment that provides a sense of security by being monitored by officers. Provision of restitution or compensation that is actually received for the benefit of the child. Recovery of physical and psychological

conditions of children with psychiatric assistance and supervision by government officials so that a practical and sustainable monitoring system is needed. Making Local Regulations.

In reality, there are still many protection models that do not yet work well. (Kurniawan, 2011) in his research in Aceh found that legal protection for children in the area has not been fully met. the constraints faced relate to laws and regulations, the governing body, the governing body, health facilities and participation.

In accordance with legal protection established by the government, every parent who carries out a child must be obliged legally and criminally responsible, that matter has been clearly regulated in Article 305 and Article 308 Criminal Code. Normally the Criminal Code regulates sanctions for parents who neglect anal but concerning the protection of children's rights has not yet been clearly regulated (Kismadewi & Darmadi, 2017). Abandoned children in terms of Law Number 23 of 2002 jo Republic of Indonesia Law Number 35 of 2014 concerning child protection is not meeting the needs of children naturally, physically, mentally, spiritually, and socially, even parents who failed to fulfill its obligations in the fulfillment of children's rights (Rompas, 2017).

Based on background above, this research is analyze the criminal liability of parents who abandon children especially for children with disabilities. people with disabilities were chosen as the object of this research because besides requiring special attention, legal protection is very influential for children's lives so that all their needs are met according to children's rights.

## **METHOD**

The method used in this research was normative legal research that carried out by examining existing literature such as laws and regulations, books relating to law and dictionaries or encyclopedias (Soekanto & Mamudji, 2009). The technique of collecting legal materials was by library research. The approach method used was a legislative approach. Legal materials collected were then analyzed in order to solve existing problems in order to produce a clear description.

## **RESULT AND DISCUSSION**

The definition of a child has many meanings in every statutory regulation in Indonesia. In article 1 paragraph 1 the Regulation of the Minister of Women's Empowerment and Children Protection Number 4 in 2017 states; "a child is someone who is not 18 (eighteen) years old including a child who is still in the womb".

According to article 1 paragraph (7) of Law Number 35 in 2014 concerning Amendment of Law number 23 in 2002 concerning to children protection, the definition of children with disabilities is children who experience physical, mental, intellectual, or sensory limitations in the long term in interacting with the environment and the attitudes of the community can encounter obstacles that make it difficult to participate fully and effectively based on equal rights.

A variety of people with disabilities including:

- Persons with physical disabilities;
- Persons with intellectual disabilities
- People with mental disabilities, and
- People with sensory disabilities.

All children including those with disabilities have the right to grow and develop and are entitled to protection from violence and discrimination.

Disabled children have several rights stipulated in article 5 paragraph (3) of Law Number 8 in 2016 concerning Persons with Disabilities, including:

Get special protection from discrimination, abandoned, harassment, exploitation, violence, and sexual crime;

Get care for families or substitute families to develop optimally;

Protected interests in decision making;

Giving treatment for children humanely in accordance with the dignity and rights of children;

Fulfillment special needs;

The same treatment with other children to achieve social integration and individual development;

Get social assistance.

In article 1 paragraph (6) of Law Number 35 in 2014 concerning to Children Protection, abandoned children are children who are not met their needs fairly, physically, mentally, spiritually and socially.

The definition of children abandoned is the attitude and treatment of parents who do not give proper attention to the children's growth process.

Children abandoned is a condition where adult failed to take responsibility for providing adequate needs for various needs, for example: in terms of physical failure to provide adequate food, clothing or hygiene, emotional namely failure to provide care or affection, failure to provide formal education, and failure to provide medical treatment when the children are sick.

The definition of children protection according to article 1 paragraph (2) of Law Number 35 in 2014 concerning Amendment to Law Number 23 in 2002 concerning Children Protection, are all activities to guarantee and protect children and their rights, therefore, they can live, grow, develop and participate optimally in accordance with human dignity and inherent, and receive protection from violence and discrimination.

Legal protection provides protection for human rights that are harmed by others and the protection given to the community in order to enjoy all the rights given by law", or in other words that must be given by law enforcement to provide security, both mind and physical from interference and various problems from any party (Rahardjo, 2000).

Legal protection can be divided into 2 (two), namely:

Preventive legal protection, namely legal protection provided by the government with the aim of preventing before the occurrence of violations. It is contained in the laws and regulations with the intention to prevent a violation and provide limits in carrying out an obligation.

Repressive legal protection, the final protection in the form of sanctions such as fines, imprisonment and additional penalties given when a violation has occurred.

The 1945 Constitution provides protection for abandoned children with disabilities, namely in Article 34 states that abandoned children are maintained by the state.

Indonesia is a legal state that provides protection for human rights in children, these children's rights have been regulated in article 1 paragraph (12) of Law No. 35 in 2014 concerning to Children Protection, states that children's rights are part of human rights that are guaranteed, protected, and fulfilled by parents, family, community, state, government and regional government. Article 59 paragraph (2) letter I also states that special protection is given to children with disabilities.

In article 59A of the Children Protection Law, it is stated that special protection is defined as:

Rapid treatment, including physical, psychological and social care, and/or rehabilitation and prevention of diseases and other health problems;

Psychosocial assistance during treatment until recovery;

Providing social assistance for children from poor families;

Providing protection and assistance in every judicial process.

Protection regarding abandoned children is also included in the scope of Law No. 23 in 2004 concerning to the Elimination of Violence in the Household, because of abandoning children is a resistance in the household regulated in article 5, "Every person is prohibited

from committing domestic violence against people within their household by means of physical violence, psychological violence, sexual violence, household abandoned (Maryandani, 2016).

In the Convention on the Rights of the Children, there are four general principles which form the basis and reference for the parties, especially the state when carrying out the obligation to fulfill and protect children's rights. These principles including:

The principle of non-discrimination, this principle requires the state that all children in conflict with the law get the same treatment;

The principle of the best interests of the children, this principle systematically by considering the rights of the children and the interests of the children will be influenced by the decisions and actions of these boards;

Principles for survival and development;

The principle of respect for children.

Children with disabilities should get more special treatment and protection from family, society and the state, it is regulated in article 2 letter k of Law Number 8 in 2016 concerning to Person with Disabilities, that the implementation and fulfillment the rights of persons with disabilities are based on special treatment and more protection. Special protection for children with disabilities is a form of protection received by children with disabilities to fulfill their rights and get guaranteed security, against threats that endanger themselves and their lives in their growth and development.

The implementation and fulfillment of the rights of persons with disabilities aim to protect persons with disabilities from abandoned and exploitation, harassment and all discriminatory acts, as well as violations of human rights. Specific regulation contained in article 5 paragraph (3) letter a, states that children with disabilities have the right to get special protection from discrimination, abandoned, harassment, exploitation, violence, and sexual crimes. Since children's rights are part of human rights, children with disabilities should get the same rights and treatment as other children. Families should provide more protection and attention to children with disabilities. The community should also care more about children with disabilities, if they know that there are children abandoned with disabilities, they should report to the Office of Women's Empowerment, Children Protection, and Family Planning or the police. Persons with disabilities must get the same opportunity in developing themselves through independence as human beings who are dignified in the perspective of human rights.

Criminal responsibility is a mechanism to determine whether a defendant or suspect is responsible for a criminal act that occurred or not. To be able to be prosecuted by the perpetrator, it is required that the crime committed to fulfilling the elements determined by the law.

Responsibility or what is known as the concept of liability in terms of legal philosophy, Roscoe Pound states that "I use simple word "liability" for the situation whereby one may exact legally and other is legally subjected to the exaction" Criminal liability is defined as an obligation to pay retribution that will be received by the perpetrator from someone who has been harmed, according to him also that the responsibility carried out is not only about legal issues but also concerns the moral problems or moral values that exist in society (Atmasasmita, 2000).

Actions to be criminally liable must contain errors. The error consists of two types, namely intentional (opzet) and negligence (culpa).

The main requirement in criminal convictions is the existence of an offense that violates the law. Basically, each action consists of elements that are born because of actions that contain behavior and the consequences caused thereof. These criminal elements can generally be divided into:

There are cause and effect

There is a situation that accompanies an action

The element is against the objective law

The elements against the subjective law

Someone who has fulfilled all the elements and forms of children abandoned, then the act must be criminally liable for his mistake and negligence in the case of children abandoned in accordance with the applicable law.

Several articles can be used to ensnare the perpetrators of the children abandoned with disabilities are as follows:

Regulations in the Criminal Code relating to the children abandoned with disabilities are in Book II of the Criminal Code concerning Crime in Chapter XV concerning leaving people needed to help, namely as follows:

Article 304 of the Criminal Code, states that, "anyone who intentionally places or leaves someone in a state of misery, even though according to the law that applies to him or because of an agreement he is obliged to give life, care or maintenance to that person, is threatened with imprisonment of two years and eight month or criminal fine with a maximum of four thousand five hundred rupiahs.

Article 305 of the Criminal Code states that "anyone who places a child who is not seven years old yet to be found or leaves the child with the intention to escape from him, it is threatened with a maximum of five years and six months imprisonment".

Article 306 of the Criminal Code states that:

If one of the acts based on article 304 and 305 causes serious injuries, the guilty person is threatened with a maximum imprisonment of seven years and six months.

If it resulting in death, he will get in maximum imprisonment of nine years.

Article 307 of the Criminal Code states that "if the person who commits a crime under article 305 is the father or mother of the child, then the crimes stipulated in article 305 and 306 can be added to one third".

Law Number 23 in 2004 concerning the Elimination of Domestic Violence, namely as follows:

Article 9 paragraph (1) states, "Everyone is prohibited from abandoning a person within his household, even though according to the law that applies to him or because of an agreement or covenant he is obliged to give life, care or maintenance to that person".

Article 49 letter a, states, "Sentenced to imprisonment of a maximum of 3 (three) years or maximum is Rp. 15,000,000 (fifteen million rupiah) for each person who: a. Abandon others in the scope of their household as referred to article 9 paragraph (1)".

Law Number 35 in 2014 concerning Amendment to Law Number 23 in 2002 concerning Children Protection, as follows:

Article 76B states "Every person is prohibited from placing, allowing, involving, ordering to involve children in situations of mistreatment and abandon".

Article 77B states "Anyone who violates the provisions referred to article 76B, shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of Rp.100,000,000 (one hundred million rupiahs)".

Law Number 8 in 2016 concerning to Persons with Disabilities, as follows:

Article 26 states that "The right to be free from discrimination, abandoned, torture and exploitation for persons with disabilities including:

socialize and interact in family life, community, and state without fear and;

get protection from all forms of physical, psychological, economic and sexual violence.

Article 143 letter q states that "everyone is prohibited from obstructing - and/or prohibiting persons with disabilities from getting:

the right to be free from discrimination, abandoned, torture, and exploitation as referred to article 26.

Children with disabilities who are abandoned by their parents should be given legal

protection because they have been regulated in laws and regulations and give their rights to be protected.

The responsibility of parents who deliberately abandon children with disabilities due to a state of coercion or liability and negligence, the parents can be sentenced according to the applicable rules.

## **CONCLUSION**

Children with disabilities abandoned by their parents should be given legal protection by the state. Someone who fulfilling the elements and forms of abandon children with disabilities must be criminally liable for his mistakes and negligence in the case of abandon children with disabilities based on the applicable law. The family and the surrounding community should take an active role in reporting to the Social Service, Women's Empowerment Service, and Children Protection or to the Police if they know of any children with disabilities being abandoned. Law enforcement officials should be assertive in dropping criminal acts against perpetrators of abandoned children with disabilities to provide a deterrent effect. Providing education to the public regarding criminal sanctions for perpetrators of abandoned children with disabilities and equal rights possessed by persons with disabilities is needed to reduce the number of cases of children abandoned with disabilities.

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