

Legal Protection of Population Administration in The Recording of Deeds

The Birth of A Street Child in Indonesia

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Abstrak

Population administration serve as protection, acknowledgment, quotation for Indonesian citizen personal status also legal status which regulated by Republic of Indonesia and 1945 constitution of Republic Indonesia. Birth Certificate is one kind of population administration which have to be given by the Country. More than 90% street children in big city as Bandung, Jakarta, and Tangerang doesn't have birth certificate. House shelter in Tangerang city uncover the administration difficulty to gain a birth certificate for those street children. These street children were very vulnerable to violation of Human Rights. This is an descriptive-qualitative study. Primary, secondary and tertiary legal material were used for this Study purposes. This study show us that Indonesia haven't fulfilled the legal protection for children rights.

Keywords: Birth Certificate, Street Children, Child Identity

A. INTRODUCTION

The birth certificate is part of the population administration in the form of a civil registry document and the identity of a child. The right to identity is a basic right inherent in every child that must be granted by the state. The identity of the child is given the state after the child is born, the absence of a birth certificate results in the child not having obtained his rights as a citizen. Children who are unregistered and do not have a birth certificate are at risk of human trafficking, sexual exploitation, forced marriage, and exploitation of child labor. According to Law Number 35 of 2014, the state must guarantee the fulfillment of the basic rights of all children and protection of their survival growth and development. The state is obliged to provide the identity of the child as recognition and legal evidence that a person exists and is easily recognizable.

Civil registry deeds as artificial documents have a very important position and role in the national development process. This is because it can provide an advantage for individuals to determine their legal status as the most powerful evidence and provide benefits for the government's interests to improve the order of population management. Supporting data for planning and development. A birth certificate is a paper document issued nationwide that contains details of the identity of the child born, namely the name, date of birth, name of the parents, and the signature of the authorized official. Article 23 paragraphs (1) and (2) of the Child Protection Act of 2002 states that the identity of each child must be stated from birth and that identity is stated on the birth certificate.

Because street children are still vulnerable individuals who need protection in terms of human physical and psychic development, the state, government, society, family, and parents are obliged and responsible to carry out the protection of street children. 1 The more street children who are not registered on the birth certificate, the more street children are unprotected. Many problems of street children arise from the manipulation of children's identities. The more unclear the identity, the more likely it is that street children are to become victims of crime and violence. The sooner a child's identity is recorded, the better the child will be protected by the state, and the faster the data collection will be, especially for the development of policies related to the protection of street children. More than 90% of street children do not have birth certificates. Factors causing the low ownership of birth certificates include in the implementation order, the rules regarding the manufacture of birth certificates are harmonized, such as between Law Number 23 of 2002 concerning child protection, in the

implementation of making birth certificates as low as possible at the level of dilution and Number 23 of 2006 concerning the administration of Population Management in the Preparation of Birth Certificates at the District Level.

Efforts to realize legal protection of children in obtaining birth certificates which are the duties and responsibilities of the government which are based on the theoretical basis namely the Welfare law state according to Utrecht is a modern law or moderne rechtsstaats. A distinctive feature of modern law is the purpose for which the State of Law must undertake to provide guarantees and legal certainty both welfare to its rakyat. The welfare concept embodies the general welfare, as stated in the readings of Article 1 Paragraph (3) of the 1945 Constitution.

A number of policies regarding birth certificates have been issued, but they still cannot be fulfilled as expected, especially for street children who still have not obtained a birth certificate, therefore, the purpose of this study is to find out and analyze the legal protection of street children in obtaining birth certificates based on the Principles of Child Protection. Reviewing and analyzing obstacles in the implementation of the Birth Certificate making program for Street Children and Reviewing and finding the concept of legal protection for Street Children to obtain Birth Certificates as an effort to create an orderly Population Administration.

B. RESEARCH METHOD

The type of research used by the author is a qualitative descriptive method that describes the applicable laws and regulations, along with the practice of legal theory and positive legal practice. The authors in this study used primary legal materials, secondary legal materials and tertiary legal materials to examine the problems under study. Primary legal materials include Law Number 39 of 1999 concerning Human Rights, Law Number 1 of 1974 concerning marriage, Law Number 23 of 2002 concerning child protection, Law Number 12 of 2006 concerning Citizenship, Law Number 23 of 2006 concerning Population Administration, Law Number 25 of 2009 concerning Public services, Law Number 28 of 2009 concerning Regional taxes and Regional Levies, PP Number 37 of 2007 concerning the Implementation of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Administration, Presidential Regulation Number 25 of 2008 concerning the requirements and procedures for Population Registration and Civil Registration, Strategic Plan of the Ministry of Home Affairs 2011 all Indonesian children are recorded for birth, convention on the rights of the child (KHA), compilation of Islamic law and the Civil Code.

Secondary legal materials include books, journals, articles and legal magazines written by experts in the field of law both nationally and internationally. Tertiary legal materials include dictionaries, magazine articles, newspapers, internet print out data. The technique of collecting legal materials used through literature studies by studying various literature and through field studies in the form of in-depth interviews. The authors in this study used analytical techniques with the deduction method.

C. RESULT AND DISCUSSION

1. Legal Protection for Street Children in obtaining Birth Certificates based on the Principle of Child Protection

Protection is the right of all children, and achieving protection for children means achieving justice in society. Rule of law has always been associated with the concept of rule of law or rule of law. The concept of the legal state began in the 19th century, as Julius Stahl, since the birth of the concept was inseparable from the perception of human rights and the desire for the protection of human rights, the concept of rechtsstaat appeared in the 19th century that was first coined by Julius Stahl. At about the same time, the concept of the rule of law emerged, which was pioneered by A.V.Dicey. The assumption

of Age's opinion, which has been put forward appropriately that "protecting children essentially protects the family, society, nation and state in the future".³ The right to identity is a basic right inherent in all children and must be granted by the State in accordance with Law Number 23 of 2002 Article 22 concerning Child Protection.

Protection that is juridical or better known as legal protection. According to Barda Nawawi Arief, it is an effort to protect the law from various freedoms and human rights of children (fundamental rights and freedoms of children) as well as various interests related to the welfare of children.⁴

Legal protection in the civil sector, accommodated in the provisions in civil law governing children such as, (1) The position of legal children and inheritance law; (2) recognition and endorsement of children outside of marriage; (3) the obligations of the parents towards the child; (4) the pretermity of the child and the guardianship.⁵

In criminal law, child protection is not only regulated in Articles 45, 46, and 47 of the Criminal Code (has been repealed by the promulgation of Law Number 3 of 1997 concerning Juvenile Justice). Then, there are also several articles that are directly or indirectly related to child protection, namely Article 278, Article 283, Article 287, Article 290, Article 297, Article 301, Article 305, Article 308, Article 341 and Article 356 of the Criminal Code.

Given the importance of birth certificates, there should be no children who do not have birth certificates. As for children who must obtain a Birth Certificate, in addition to biological children such as legal children, children outside of marriage, children of orphanages, children born from marriages of believers and street children. The word street itself in the Big Dictionary Indonesian means street, hallway or all the way (without a necessary place).⁶ Street children with unrecorded births are vulnerable to human rights abuses. Some of these children's rights are threatened by their inability to fulfill, such as their right to health and access to educational services. Therefore, the recognition of civic identity through birth registration becomes important. As part of the protection of street children, the Ministry of Social Affairs signed a memorandum of understanding with seven other ministries in 2011 to expedite the registration of birth certificates.

Article 2 of the Regional Regulation of the Special Region of Yogyakarta Province says: The principles of protection of the rights of children living on the street include: non-discrimination; a) the best interests of the child; b) the right to life, survival, and development; and c) respect for the opinion of the child.⁷

And Article 3: The protection of a child living on the street aims to: a) rid the child of life on the street; b) ensuring the fulfillment of children's rights in order to live, grow, develop, and participate optimally in accordance with the dignity and dignity of humanity; and c) provide protection from discrimination, exploitation and violence, for the realization of a quality, noble character, and prosperous child.⁸

In principle, the government has also made every effort to protect street children, by creating regulations that provide legal protection against child exploitation and violence against children. These regulations include Law Number 23 of 2002 concerning Child Protection, Law Number 39 of 1999 concerning Human Rights, and Regulation of the State Minister of Women's Empowerment, Law Number 23 of 2006 concerning Population Administration and Child Protection of the Republic of Indonesia Number 06 of 2012 concerning Guidelines for Accelerating Ownership of Birth Certificates in the Context of Child Protection.

The government has also established a Child Protection Commission to improve the effectiveness of child protection implementation in Indonesia. The Child Protection Commission was established based on Law Number 23 of 2002 concerning Child Protection, and its legal basis is based on Presidential Decrees Number 36/1990, 77/2003 and 95/M/2004. Unregistered and unregistered

children are at greater risk of being trafficked, sexually exploited, forced into marriage, and exploited as child labor. Calculations using census data show that more than 10 million children are not registered throughout Indonesia.

2. Obstacles in the implementation of making Birth Certificates for Street Children

According to the Ministry of Social Affairs, there are various obstacles in issuing birth certificates for parents of street children, especially those who do not have a marriage certificate, Family Card (KK), or Identity Card (KTP). In fact, these three documents are one of the most important requirements in making a birth certificate. The hardest thing in advocating to issue birth certificates for street children is to find the parents of the street children.

The obstacles to obtaining birth certificates for street children can also be seen in the structure of the DKI Jakarta social service categorizing children (and parents) in part from PMKS (Persons with Social Welfare Problems) so that they become the object of a 'justitia operation' raid carried out by the PP police and then put into a children's

orphanage managed by a social institution while the education office considers children who do not have a birth certificate as 'Not a citizen of DKI Jakarta' so that they cannot be accepted in free public schools. As a result they entered in private schools or Ibtidayah madrasas by paying monthly tuition and paying base fees. Some end up not attending school and there is no cost.

Another obstacle, is that which comes from the child's parents. They think that the processing of birth certificates requires high costs. Currently, only 37% of street children's families are trying to get a birth certificate for their child. However, they failed because the required documents were incomplete and the management process was considered complicated. This is because Articles 13 and 59 of Law Number 23 of 2002 concerning Child Protection, affirm to the guardian parents, or any other responsible party, the government, and state institutions to provide guarantees and protection to children, especially street children, for exploitation and violence.

A possible obstacle in this matter is that guardian parents, or any other responsible party, the government, and state agencies to provide guarantees and protections for children, especially street children, are still not fully concerned about street children.

Costs are the most commonly presented reason for failure to register births regardless of place of residence and economic status. Recognising the importance of this issue, the Government has exempted birth registration from any cost. However, this fee waiver does not fully solve the above problems, since transportation costs and indirect costs (such as working time off) are still a problem, and the issue of costs will continue to be charged in some areas. The second most widely put forward reason for not registering the birth of a child is the lack of information. Many parents do not know why and where they should register births.

The biggest problem with Birth Registration is that parents of children do not care or do not want to make an effort to obtain Birth Certificates for their children. This often happens because they do not understand the importance of birth certificates, do not understand the process of registering births, or the price of Birth Certificates is too high or expensive for them. Birth Registration is still considered a rule that Dutch colonization made and is therefore not appreciated and rejected.

Another obstacle is the completeness of documents as a condition for making deeds, which is still an obstacle for most families of street children. In fact, based on the procedure for obtaining a birth certificate from the government, the completeness of these documents is an absolute requirement that must be met. These documents include a Birth Certificate, a Birth Report Letter from the Village, a Family Card or Domicile Letter, a Marriage Certificate or a parent's divorce. This has resulted in street children still finding it difficult to obtain legal protection, including the right to obtain birth certificates.

D. CONCLUSION

Based on the results of the research and discussion that has been described by the author previously, it can be concluded that there are still legal protections for children's rights that have not protected children in obtaining birth certificates, therefore it is necessary to harmonize by proposing changes to the Ministry of Home Affairs a series of laws and regulations governing children are absolutely to be carried out comprehensively. There are still many obstacles in making a legal child certificate, before the issuance of Law Number 24 of 2013 concerning Amendments to law Number 23 of 2006 concerning Population Administration that birth registration that exceeds the 1 (one) year deadline is carried out based on the determination of the Court. How to overcome this, the Ederan Letter of the Minister of Home Affairs of the Republic of Indonesia Number 472.11/3444/SJ dated September 13, 2011, which basically specifies that "children born after Law Number 23 of 2006 and have not taken care of a birth certificate can be served and issued their birth certificates without a court determination".

Out-of-wedlock children have problems obtaining birth certificates because they do not have their parents' marriage certificates, the solution is to write the mother's child on their birth certificate. Street children and orphanage children are also constrained in making birth certificates because most of them do not have AN ID card and KK, how to overcome this by including or adding to family members in the KK of the administrator or person in charge of the Orphanage or Foundation or Shelter House and the ID card used is the ID card of the administrator or person in charge of the Social Institution or Foundation or Shelter House. Similarly, children who were found to have difficulty obtaining birth certificates because they did not have a BAP because some police did not want to issue a BAP. The solution is to report to the Coordinating Ministry for Political Legal and Security Affairs (Komenko Polhukam) and children born from marriages of adherents of the cult of believers also face obstacles When taking care of birth certificates because their parents do not have marriage documents from the State just like children outside of marriage so the way to overcome the problem is to write only the mother's name on their child's birth certificate. Birth Registration which is the government's monopoly right in providing services to the community, namely the Government appears as a stabilizer, Dynamistor, Regulator, Communicator and Catalyst. In addition, the services of public institutions or officials today need to be directed to the standard of direct accountability to the public by presenting integrated service quality control integrated.

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