

Obligations implementation of parents are connected with article 26 verse 1 law number 35 of 2014 concerning child protection in Pangandaran village Pangandaran district Indonesia

Abstract

Child development is a very important development issue. The right of every child is guaranteed by the State. Not only the right to growth and development, but also the right to survival and the right to protection from violence and discrimination. The fulfillment of children's needs is the responsibility of parents. The author want to see how the implementation of the obligations of parents towards children in Pangandaran Village related to Article 26 paragraph 1 of Law number 35 of 2014 concerning child protection. To achieve this goal, the authors use descriptive research methods with a normative juridical approach. The method delineates a problem and none of them draws precise general conclusions. The participation of the children in making a living and dropping out of school that occurs in Pangandaran Village is against the prevailing laws and regulations. To prevent children from dropping out of school, the role of parents and the government or local government is very important in an effort to encourage children to continue their education.

Keywords: children's rights, child protection, state, parental obligations, law, Pangandaran

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Abbreviations: KLA, child-friendly district; PKH, the hope family program from Social Ministry

Introduction

Child are the nations next descendants need guidance and protection in order to assure complete and balanced physical, mental and social growth and development.¹ The author chose this topic because child development is a very important development issue. This is confirmed in Article 28 B paragraph (2) of the 1945 Constitution which states that every child has the right to survival, growth and development, and the right to protection of violence and discrimination. Pancasila and the 1945 Constitution are the basis for implementing child protection in Indonesia.² Meeting children's needs is the responsibility of parents. In the legal dictionary, responsibility can be defined as the term Liability refers to legal responsibility, namely accountability due to mistakes made by legal subjects, while the term responsibility refers to political accountability. The theory of responsibility emphasizes the meaning of responsibility due to statutory provisions so that the term *liability* is more appropriate to use. This term is a concept related to the obligations of someone who is legally responsible for certain actions and can be subject to sanctions if their actions violate the law. The responsibility of parents towards children is not differentiated based on the sex of the child. Although the responsibilities of parents are regulated in various laws and regulations, no one has regulated the limits on the responsibilities of parents towards their children until now, especially when the children are already being adults. In positive law in Indonesia, a child is defined as a person under age, an underage person (*minderjarigheid/ inferiority*), or commonly referred to a child under the supervision of a guardian (*minderjarige/ under voordij*). However, there is no definite legal unification that applies universally to determine the criteria for limiting a person's age to be classified as a child. Based on the laws in force in Indonesia, the limits for a child's maturity can be seen in the table 1.

Table 1 Definition of children based on the legislation in Indonesia

Laws and Regulations	Definition of Child
Article 1 point 2 of Law Number 4 Year 1979 concerning Child Welfare	A person who has not reached the age of 21 (twenty one) years old and is not yet married.
Law number 3 of 1997 on Juvenile Court	A person who in the case of a delinquent child has reached the age of 18 (eighteen) years old and has never been married.
Law number 1 of 1974 concerning Marriage	A person who has not reached the age 21 (twenty one) years old must obtain permission from the parents and marriage is only permitted if male party has reached 19 (nineteen) years old and the woman has reached the age of 16 (sixteen) years old.
Criminal Code	A person is not yet mature or not yet 16 (sixteen) years old.
Civil Code Article 330	A person who has not yet reached the age of 21 (twenty one) years old and has not previously been married.
Law number 35 of 2014 Article 1 number (1) concerning Amendments to Law Number 23 of 2002 concerning Child Protection	A person who is not yet 18 (eighteen) years old, including children who are still in the womb.

Furthermore, in Article 26 paragraph 1 of Law number 35 of 2014 it is explained that parents are obliged and responsible for:

- a. Caring for, nurturing, educating, and protecting children.
- b. Developing children according to their abilities, talents and interests.
- c. Prevent child marriage.
- d. Providing character education and instilling character values in children.

The obligations and responsibilities of parents are also regulated in Article 45 paragraph (1) and (2) of law number 1 of 1974 concerning marriage, namely as follows:

- a. Both parents are obliged to care for and educate their children as well as possible.
- b. The obligations of the parents as meant in paragraph (1) are valid until the child is married or can stand alone, the obligation continues to apply even if the marriage between the two parents breaks up.

According to the author, the meaning of the phrase “can stand alone” means that children are able to meet their own needs without depending on their parents.³ If the parents are unable to fulfill their obligations, they can be replaced by a family or a person or legal entity that meets the requirements and is appointed as guardian of the child concerned as stated in the general explanation of Law of the Republic of Indonesia number 4 of 1979 concerning child welfare. If a father or mother who holds the parental power is incompetent or unable to fulfill their obligations in maintaining and educating their children,

the parents can be released from power at the request of guardianship council or the demands of the prosecutor’s office. This is stated in Article 319 letter (a) of civil law code. Parental power can also be revoked if parent are negligent in carrying out their duties. Negligence is an act of carelessness or disregard for obligations. According to Hans Kelsen (R.H. Soemitro, 1998), negligence is a failure to exercise the prudence required by law is called negligence which is seen as a type of error (culpa).⁴ The penalties for parents who are negligent in Article 30 paragraphs (1) and (2) regarding the power of care state that supervision of parents or revocation of foster care can be carried out through a court ruling. Revocation of parental power due to negligence or very bad parental behavior is stated in Article 49 of Law number 1 of 1974 concerning marriage which states that the power of one or both parents over a child or more can be revoked by a court decision at the request of the child’s family, adult siblings, or authorized officials. However, even though the parental power has been revoked, the obligation of the parents to provide maintenance costs to the child still applies. This is the child’s right to their parents. It is the duty of the State, government, local government, society, family, and parents or guardians to respect and guarantee the human rights of every child regardless of ethnicity, religion, class, gender, legal status of the child, order of birth of the child, physical condition, and or mental children.⁵ In Article 1 paragraph (12) Law number 35 of 2014 states that children’s rights are part of human rights that must be guaranteed, protected and fulfilled by parents, family, community, state, government and local governments. Children’s rights are also contained in Article 52 to Article 66 of the Law on Human Rights, but this law does not provide for detailed children’s obligations.⁵ The following are children’s rights and obligations which are described in Law number 35 of 2014 (table 2).

Table 2 Children’s rights and obligation based on law number 35 of 2014

Children’s Rights	Obligation of the Child
The right to live, grow, develop and participate, and receive protection from violence and discrimination	Respect for parents, guardians and teachers
The right to a name as personal identity and citizenship status	Loving family, community and cherishing friends
The right to worship according to one’s religion	Loving homeland, nation and country
The right to obtain health services and social security	Performing worship in accordance with the teachings of his religion
The right to education and teaching	Carry out ethics and noble morals
Children with disabilities also have the right to receive special education, while children who have advantages also have the right to receive special education	
The right to state and be heard	
The right to rest and take advantage of free time	
Children with disabilities are entitled to rehabilitation, social assistance, and maintenance of a level of social welfare	
Children who are in the care of their parents/ guardians are entitled to protection from treatment: discrimination; exploitation both economic and sexual; neglect; cruelty; violence and persecution; injustice; and other mistreatment	
The right to obtain protection from: abuse in political activity; involvement in armed conflict; involvement in social unrest; involvement in events that contain elements of violence; and involvement in war	
The right to obtain freedom according to law	
Every child who is deprived of his/ her liberty has the right to: receive humane treatment and be separated from adult; obtain legal aid or other assistance effectively at every stage of the legal remedy in effect; and defend oneself and obtain justice before an objective and impartial juvenile court in closed sessions to the public	
Every child who is a victim or perpetrator of sexual violence or who comes into contact with the law has the right to be kept confidential	
Every child who becomes a victim or perpetrator of a criminal act receive special protection	

The author wants to know how the implementation of the obligations of parents towards children in Pangandaran Village related to Article 26 paragraph 1 of Law number 35 of 2014 concerning child protection and the hope of local government that Pangandaran becomes a Child-Friendly District (KLA). The Term KLA was first introduced in 2005 by the State Ministry for Women's Empowerment through the child Friendly City policy.⁶ However, KLA has become a Child-Friendly District to accommodate local governments which is an attempt by district government to accelerate the implementation of conventions on children's right from the legal framework into definitions, strategies and development interventions. The development of KLA is contained in presidential decree number 36/1990 concerning the ratification of the convention on children's rights, the 1945 Constitution (Articles 28b, 28c), the national program for Indonesian children in 2015, the Minister of State Regulation Government Regulation number 2 of 2009 concerning KLA policy and Law number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning child protection. The Author also wants to highlight the implementation of local laws and regulations on child protection where the community needs time to understand and realize a new regulation established by the government. This paper will describe the obstacles that occur and the efforts taken to ensure that Law number 35/2014 on child protection can run so that children's welfare can be realized.

Experiment methods

The author uses a descriptive research method with normative juridical problem approach. This method will describe the state of the object or a problem and no one has come to draw a general precise conclusion.⁷ The normative juridical approach uses the existing factual approach by means of observation and research in the field then

reviewed and reviewed based on the applicable laws and regulations and as a reference for solving existing problems. The research was conducted in Pangandaran Village, Pangandaran District.

Result and discussions

Pangandaran Village is one of the economic centers of Pangandaran tourism object with an area of 471.13 hectares and a population of 7,956 people. The livelihoods of local residents are traders, farmers and fishermen. The character of the inhabitants of Pangandaran Village is Sundanese tribe who are regionally located in the West Java area, but not a few who also descendants of the Central Java region. This is marked by diversity of cultures in society such as the language used to communicate using a mixed language between Sundanese and Javanese.

Pangandaran Village is one of the villages of 8 (eight) villages located in Pangandaran District. The Pangandaran District in one of the sub-districts of 10 (ten) sub-districts located in Pangandaran Regency, West Java, Indonesia. Map of administrative area of Pangandaran Regency can be seen in Figure 1. In Pangandaran Village there are 3 kindergartens and 6 elementary schools. There are three junior high school and senior high school in Pananjung Village each. The farthest distance from the village to kindergarten, elementary, junior high, and senior high school is not more than 2 kilometers. Based on National Family Planning Coordination Board of West Java data in 2017, the number of family heads in Pangandaran Regency was 129,049 with 30834 children (aged 0-5 years), 23,998 children (6-9 years), and youth (10-24 years) 86,630 soul. For Pangandaran Village, the number of children was 1,777 and adults were 6,179. The number of families based on the prosperous age group in Pangandaran Regency can be seen in Table 3.

Table 3 The number of families based on the prosperous age group in Pangandaran Regency

Regency/Village	Number of family head	Toddler (0-5 years)	Child (6-9 years)	youth (10-24 years)	Adult (25-59 years)	Elderly (60 years and over)
Regency						
Pangandaran	1,29,049	30,834	23,998	86,630	1,75,358	45,207
Village						
Pangandaran	1,777				6,179	

Source: National family planning coordination board of West Java.

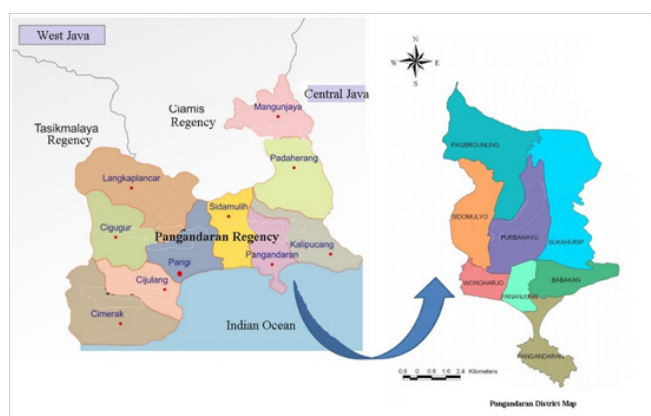


Figure 1 Map of administrative area of Pangandaran Regency.

Through an interview with a housewife who lives in Pangandaran Village, it was found that her child had dropped out of school and

chose to work help ease the burden on her family. The participation of children in earning a living and dropping out of school in Pangandaran Regency, of course, contradicts Article 26 paragraph 1 of Law number 35 of 2014 concerning child protection and the hope of the local government that Pangandaran becomes a Child Friendly District (KLA). This can occur due to:

- Insufficient family economic situation,
- Lack of children's awareness of the importance of educational values, and
- Culture of the surrounding environment.

The efforts that can be done are to increase:

- Preventive Role of Parents,
- The Coercive Role of Parents,
- The Curative Role of Parents, and

- d. The Role of Government and local government in providing extension assistance to children in order to continue their education.

Discussion

As is well known, the child of a family in Pangandaran Village chose to work to help ease the burden on his family so that he dropped out of school. The child worked as a watchman for a surfboard rental place on the West Coast of Pangandaran from Friday to Sunday and becomes a traveling seller with his mother Monday to Thursday. The child's father works as a janitor at one of satay stalls in Pangandaran. The activities carried out by the child made him unable to participate in the teaching and learning process at school. In addition, the amount of contact with adults can affect a child's mental, moral, social and spiritual development. Based on this, it can be said that the implementation of the obligations of parents to children related to Article 26 paragraph 1 of Law Number 35 of 2014 concerning child protection is not running properly. In addition, children's rights to education and teaching are also not fulfilled.

Matter that becomes obstacles in implementing the obligations of parents to children related to Article 26 paragraph 1 of Law number 35 of 2014 in Pangandaran Village are explained as follows. First, the family's economic situation is not sufficient. It is undeniable that financial ability determines the level of welfare in people's lives, even influencing one's social and cultural life. Children who grow up in well-off families have a tendency to be happy, get an education, behave well, and realize the importance of social values, and think positively and productively. A child who grows up in an insufficient family tends to feel dissatisfied and angry so that it is easier to do negative things and violate existing values and rules. Moreover, if it is not supported by good education, then the opportunity for children to improve or improve their quality of life is getting smaller. Second, the lack of children's awareness of the importance of educational values. A child's thinking is not mature and developed. They do not realize that that by getting a good and higher education, the opportunity to have prosperous life will be greater.⁸ This proves that the implementation of the obligations of parents has failed to provide character education and inculcation of ethical values as well as to develop children according to their abilities, talents and interests. Third, culture of the surrounding environment. A child learns by imitating what he sees and hears. If the child lives in an environment where many children drop out of school and instead choose to work as a fisherman or another profession that allows him to do this, the child may think that dropping out of school is commonplace and that's fine. This thinking naturally lowers the child's belief in going school, especially if there is doctrine of belief from the culture of his environment that economic situation of his family can be better even without him getting an education. This is one of the big problems for nation's generation and must be taken seriously by the State.

Efforts that can be taken in realizing the implementation of the obligations of parents to children related to Article 26 paragraph 1 of Law number 35 of 2014 are described as follows. First, the preventive role of parents. Parents as the first educators in the family have an important role in preventing children from dropping out of school. Parents need to instill in their children the importance of the education and knowledge they get from school. Parents also act as encouragement for children because children need encouragement and direction from parents to foster courage and self-confidence in facing problems. Preventive action prevents possible violations of the norms prevailing in society. Based on the results of observations and interviews conducted by researchers in the field, the preventive

role that parent have played, such as motivating children to go to school in order to gain knowledge that is useful for their children's future, is very lacking in families whose children drop out of school in Pangandaran Village. This is because parents are busy working to meet the economic needs of the family or it can also be due to parent's lack of understanding of the importance of education in life. Not all families who are not well of economically have children who drop out of school. Even though they are poor, many parents always provide motivation and advice so that their children stay in school to increase their knowledge so that they do not have low education like their parents. Second, the coercive role of parents. Parents as role models in the family need to provide examples and role models for children, both in speaking honestly and in carrying out daily life and in society. To avoid children dropping out of school, parents need to be more patient and understand the character and problems of children. Parents can be a source of information, interlocutors or friends to exchange ideas about children's difficulties or problems, so that children feel comfortable and protected. This effort serves to form new rules to replace old ones that have been shaken. In this case, the duty of parents is to provide views, instill understanding, and warnings so that children want to continue their studies. If deemed necessary, parents can also provide sanctions and advice to children. Based on the results of observations and interviews conducted by researchers in the field, the coercive role that has been carried out on parents whose children have dropped out of school in Pangandaran Village is forcing children to continue to school, providing a view of the bad effects of dropping out of school, and providing sanctions in the form of punishment, reprimands and advice to children. In this way some work, but some fail. Children still choose to drop out of school on the grounds of helping the family economy. This form of coercion is indeed inappropriate to apply, especially without an explanation of the child. In essence, children have the pleasure of straying from order due to their limited knowledge and understanding of the realities of life, and are easier to learn based on the examples they receive from compelling rules.⁹ This can also occur because of the children's belief obtained from the culture of the surrounding environment and due to the wider association of children when they become food vendors or surfboard keepers. Third, the curative role of parents. Parents act as supervisors to guide children so they don't drop out of school. The obligation of parents is to observe and supervise children's behavior so that it does not deviate from and does not violate the prevailing norms, especially due to the influence of the outside environment, both from the family, school, and community environment. Parents also act as counselors for children. Parents can provide an overview and considerations of positive and negative values so that children are able to make the best decisions. This effort aims to raise awareness of deviant behavior and provide a deterrent effect. Based on results of observations and interviews conducted by researchers in the field, the curative role that parents have done to parents whose children have dropped out of school, such as reprimanding and advising children as best they can, prohibiting and controlling children's activities so that they are not affected by bad understanding outside the home. They claim to have often reminded their children that studying at home is better than playing and working. However, in the end they were forced to agree with the child's choice to work to help their parents. Parents should be aware that supervising their children after dropping out of school will be much more difficult, especially in terms of controlling their children's activities in order to avoid the bad influence of their friends who have also dropped out of school. The role of parents is very influential as well as determining the success of children's education. Parents must provide encouragement of love for their children and establish good relationship with children

so that it is easy to motivate children, provide guidance and advice, control, and pay attention to children's education. Fourth, the role of the government and local governments in providing extension assistance to children in order to continue their education. In this case, the role of government and the local government is very important, especially if the efforts made by parents do not go as expected to convince their children to continue their education. Teachers and local governments or related agencies need to motivate children to continue their schooling and conduct ongoing counseling of children. Local governments can emphasize the role of the free school program for children so as not to burden their families. Social assistance such as the family hope program (PKH) or vocational training for the child's parents so that their economic situation can be helped and developed. Local governments can also consider the option of forming a social worker unit that specifically handles child problems like this. Child protection will always be a demand and sometimes it takes a lot of time for the practitioners involved. Prudent child protection practices and adherence to principles will flourish if they are well organized and closely supervised by a team of practitioners who are competent on child protection.¹⁰ The most important thing is the success in replanting the importance of education in children, which the parents have failed to do.

The phenomenon of child or underage labor is not new. According to Satrio Ageng Rahardi in his paper, he states that this is often found in various regions in Indonesia.¹¹ The main triggering factor is economic pressure. Economic difficulties cause parents to lack understanding of the child's position so that it is easy to involve children in work so that they can meet the needs of their family life. Poor families tends to have less family harmony so that children lose their sense of comfort and security around their parents and end up being afraid of their parents. Violation of children's rights is certainly contrary to Pancasila and the 1945 Constitution. Children's rights are part of human rights guaranteed in Article 28 B paragraph (2) of the 1945 Constitution which states that every child has the rights to survival and growth, flowers, and the right to protection from violence and discrimination. Legal protection measures for children must have a minimum level of quality equal to that of adults regardless of gender because everyone has an equal position before the law (equality before the law). Based on a case study on the protection and fulfillment of children's rights in Banyumas (Central Java, Indonesia), it is known that level of happiness and education of children is influenced by parenting. Good quality education and cheerful children are found in children who are cared for by their parents, while children whose care is not by parents but grandparents or other families, on average have a low quality of education. The author suggests using democratic parenting (authoritative parenting), namely dialogical methods so that children and parents or those who are given custody of children can understand each other, both thoughts and feeling, and provide punishment when there is a violation of principles that are accompanied by with dialogical explanations so that children understand why they are punished and what behavior should be done.⁹ For Pangandaran, the law on child protection at district level was only passed on July 23, 2019. In contrast to national level, child protection is contained in Law number 23 of 2002. Implementation of the legislation faces obstacles related to the economic dynamics of society. Periodic socialization of the laws and regulations on child protection, supervision and cooperation of all parties including the community and local government to ensure the implementation of the obligations of parents to children in Pangandaran Village related to Article 26 paragraph (1) of Law number 35 of 2014 concerning

child protection can be carried out properly. This indicates that it really takes time and effort so that people understand and are able to implement a new regulation set by the government.

Conclusion

The implementation of the obligations of parents towards children in Pangandaran Village related to Article 26 paragraph (1) of Law Number 35 of 2014 concerning child protection is not running properly. The activities of children making a living and dropping out of school are against these laws and regulations. There are various obstacles faced, such as inadequate family economic conditions, lack of children's awareness of the importance of education, and the cultural influence of the environment around the place of residence. To prevent children from dropping out of school, the role of parents and government or local government is very important in efforts to encourage children to continue their education. A statutory regulation, especially concerning child protection, requires time and periodic socialization so that the community understands and complies with these laws and regulations.

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Conflicts of interest

The author states that there is no conflict of interest in publishing this paper.

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