

The Function of the Law in Promoting the Rights of the Child

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I. Protection of the interests of the child in Indonesian law

LONG BEFORE the Convention on the Rights of the Child, Indonesians were convinced that the future of our people and that of the Indonesian state would lie in the hands of the next generation. Therefore we can find in our Constitution, which dates from the year 1945, that :

- Every citizen has the right to obtain education (article 31 part. 1);
- Orphans, the poor and neglected children shall be cared for by the state (article 34).

Furthermore, since 1969, the First Five Year Development Plan already contained nation-wide programmes for the improvement of the health and welfare of mothers and children, which not only included family planning programmes, but also health-care programmes for each village in the country. This continuous care for children has already changed the situation of Indonesian children, as compared to the 1920s or 1930s, when our children looked undernourished and unhappy. Nowadays even children in the villages look quite happy, well clad and alert.

In 1979 a special Act on Child Welfare, Act No. 4 of 1979, was promulgated and a Presidential Decree dated July 23rd, 1986

declared the years 1986 to 1996 as the child's decade. During this decade much has been done to improve the welfare of children.

Apart from these specific legal provisions concerning children, there are numerous other provisions on the rights of children, scattered in other laws. For instance our inheritance law recognizes the right of an unborn legitimate child at the time of death of his or her father to become heir to parental property, whenever the child is born posthumously.

Article 45 paragraph 1 of Act No. 1 of 1974 on marriage clearly obliges parents to care for and educate their children as best as they can. This includes also the obligation to provide for a religious education, although article 29 paragraph 2 of the 1945 Constitution states that the State shall guarantee the freedom for every inhabitant to adhere to/her own religion and perform his/her religious duties.

In article 47 paragraph 1 of the Marriage Act it is said that a child, who has not reached the age of 18 years, and who has never been married, shall be under the care of his parents. If not cared for by his/ her parents he/she shall be in the care of a guardian (article 50 paragraph 1).

Furthermore article 47 paragraph 2 states that the child shall be represented by his or her parents in all kinds of legal actions.

In criminal cases articles 45, 46 and 47

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of the Criminal Code and the Regulation of the Minister of Justice No.M.06.Um.01.06.01.06.1983 mentions the age of sixteen years (instead of 18) as the limit upto which a child can be brought before the juvenile court. Conditions governing the juvenile court are as follows:

(1) The court officials (judge, prosecutors and social workers) shall be professionally educated people, who can sufficiently understand children and are able to give judgement in the best interests of the child's life and future.

(2) During the trial (investigation) the atmosphere must be such that child is able to express his/her feelings without fear or shame.

Children must not be separated from their parents or guardians. The severest judgement for the child should not exceed 50% of the maximum sentence for an adult.

(3) There shall be a separate prison for children, and the judges and prosecutors shall not wear their official robes while trying a child. In prison, the children shall not only receive mental and spiritual education, but shall also be given the opportunity for sports. They shall also obtain help from legal advisors to cater for their welfare and special needs.

In Indonesia therefore, we can find in prisons for children a boy scout and girl guide type of organisation. Children even meet once a year to compete.

The Ministry of Interior has for more than a decade been coordinating a nationwide family welfare programme, which is conducted in every one of the *approximately* 23,000 villages throughout Indonesia. This welfare programme concentrates on 10 plans of action including:

(1) Dissemination of the National Pancasila philosophy which encompasses the principles of:

- Belief in One Almighty God;
- Humanity;
- National Unity;
- Democracy and,
- Social Justice.

(2) Social behaviour of brotherhood;

(3) Improvement of food production and food consumption;

(4) Improvement of production and use of clothes;

(5) Improvement of housing facilities and household management;

(6) Education and vocational training;

(7) Health;

(8) Improvement of cooperatives;

(9) Improvement of the natural environment;

(10) Planning.

This year (1994) the new law on compulsory education will be enforced, changing the old regulation, which provided for 6 years of compulsory primary school education starting at the age of 6, to 9 years up to the secondary school level.

Through this provision we hope not only to upgrade the intellectual capabilities and general knowledge of children, but also to enable them to play and socialize with their friends, rather than work and help their parents in the fields or at home all day. Furthermore the effect will probably be that the age at marriage for girls (and boys) will shift from 12-15 years to 16- 18 years or later, as the age at marriage for educated women has in the last few decades changed from 21 to around 27, having an overall influence on the health, welfare and education of their children.

II. Ideals and facts

Unfortunately the ideals and norms set

forth in our Constitution, laws and several other regulations and policies have as yet, not all been completely implemented, because of the lack of resources, both human and financial.

However, both the government and our people are determined to improve the quality of life of our children in the shortest time possible, especially because the 1925 generation which fought for our Independence and is imbued with the ideals of setting up a new state to protect and improve the lives of the people of the new Indonesian nation, is fading away. Indeed very much is still to be done, although in the last 20 years of development we have achieved a significant realisation of our ideals. Many Indonesian children today enjoy better nutrition, better housing, better clothes and better education. Only children aged 10 in very remote places might still be unable to read and write. And while one can still see children at work trying to earn an honest living, as newspaper boys, car cleaners, food peddlers, baby sitters, household maids, factory labour and the like, we are working hard to diminish the number of working children.

III. The function of law in promoting the rights of the child

As the few examples mentioned in this

paper show, most of the articles of the Convention on the Rights of the Child have been addressed by our laws, regulations and government policies. However, it would be simplistic to expect that these laws would automatically change the social and economic situation without sufficient financial resources and social support.

The daily news informs us that many of today's social problems of violence, child abuse and sexual abnormality, whether in the United States of America, Europe, India or Indonesia, stem from the way we have brought up our children. These problems are not only confined to poor countries. Living in affluence seems to have created almost the same problems. This is why international understanding, cooperation and solidarity is of utmost importance towards a better future for children all over the world.

In conclusion we may say, that although law in the form of international conventions or national legislation can contribute considerably towards the betterment of the lot of the world's children, we still need other means, *viz.*, political, psychological, managerial, economic, social and financial in order to implement what is said in the law.



