

Constraint between the Principles of the Convention on the Rights of the Child and the Domestic Development Policy Objectives in Developing Countries

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ABSTRACT: *This study aims to examine the adoption of the principles of the Convention on the Rights of the Child (CRC) into domestic policy on child protection in developing countries. The study focusses on how the children's rights to get education recognised in CRC are accommodated in the government policy on child protection in Indonesia. This article argues that although the CRC key principles are compatible with the domestic development policy objectives, this can not guarantee the children's rights to get education are protected because the CRC principles and the domestic development policy objectives would have different emphases and point of view on any policy relating to children protection. The study was conducted using appropriate methodology such as literature review to achieve the objectives of the study. This study contributes to greater understanding of implementation of the policies on child protection in developing countries especially in Indonesia.*

Keywords: *Child Protection, children's rights, convention on the rights of the child, education development, policy*

I. INTRODUCTION

There has been increasing discussion on the right of child since The United Nations General Assembly adopted the Convention on the Rights of the Child (CRC) in 1989 [1]. One of the discussion topics is how the rights of child in the CRC can be adopted by all countries. Adoption of the CRC principles is not an easy thing because it would cause constraint between the CRC principles and the domestic development objectives.

The child protection discourse in Indonesia has been started since legalisation of the Indonesia regulation no. 23/2002 on the child protection [2]. The regulation becomes a momentous sign of the beginning of new phase of child protection discourse in Indonesia. The regulation has been amended by the Indonesian regulation no. 35/2014 on changes on the Indonesian regulation no. 23/2003 on the child protection. Some articles in the Indonesia regulation no. 23/2002 have been amended by the Indonesia regulation no. 35/2014 [3]. Adoption of the CRC principles to the regulations on child protection is still problematic, even though the CRC principles are compatible with the domestic development objectives in Indonesia. To assess this adoption process, this paper will focus on Article I Paragraph 29 on education, of the Indonesia regulation no. 35/2014 on changes on the Indonesia regulation no. 23/2003 on the child protection.

This article argues that Article I Paragraph 29 of the Indonesia regulation no. 35/2014 reflects on the convention on the right of the child but it still more serves the domestic education policy objectives rather than the ideas, norms and standards of the convention because it more considers children as potential human resource of the country in the future rather than as citizen who are entitled to exercise their human rights especially their right to have proper education service. In order to achieve this, the article will be organized as follows. Firstly, the paper will provide a definition of children. Secondly, it will identify the rights of children while attempting to focus more on the right to get education. Thirdly, it will shortly discuss on the domestic education development objectives. Fourthly, it will discuss on constraint between the right of children to get education and the domestic education development objectives. This part will be split on the pregnant student and the child worker. The last section provides a concluding remark.

II. DEFINITION OF CHILDREN

There are many definitions on children or childhood. The researchers on children matter provide various definitions on children and childhood based on their points of view. For example, Nasman defines children based on their position within state. Nasman as cited by James, *et al.* [4], argues that 'children are identified, registered, evaluated and treated as individuals in some contexts as adult citizens but in others not'. Recognition of children as adult citizens depends so much on the situation or the context. Often, it is not clear in which context children should be taken account as adult citizens. This leads recognition of children as adult citizen is often neglected. Haziness of determining which context children should be taken account as adult citizen leads their rights as individual are so frail and unprotected.

Moreover, to provide proper protection to children, it is so important to identify children based on age. 'The convention on the right of the child defines child as every human being below the age of eighteen years unless under the law applicable to the child' (Article 1 of CRC). The definition clearly identifies who are children. However, the Indonesia regulation no. 35/2014 on amendments to the Indonesian regulation no. 23/2003 on the child protection makes the definition of children different. Besides identifying child as person having age below eighteen years old, the regulation also identifies baby in womb as child whose rights are protected under the regulation (Article I Paragraph 1 of the regulation). Therefore, identification of children is an important primary effort to provide proper protection for children.

III. CHILDREN'S RIGHTS

CRC is underpinned by four key principles which are survival, development, protection and participation. These principles provide basis to protect children in exercising their rights such as the right to survive, the rights to get education, health care services, housing, identity, leisure, proper standard of living and culture, and the right to participate. Indeed, CRC clearly identifies the rights of children which should be protected. To promote the rights of children it requires appropriate 'social and welfare policies and services for children' [5]. Indonesia as one of the countries ratified the CRC has adopted the key principles of children protection in form of a regulation. In 2002 the Indonesia Government and the People Representative Council passed the Indonesian regulation no. 23/2002 on Child Protection which was amended by the Indonesian regulation no. 35/2014 in 2014. The key principles of CRC are adopted entirely in both regulations because in the article 2 of the Indonesia regulation no. 23/2002 (the article is not amended in the Indonesia regulation no. 35/2014) it states that child protection in Indonesia is based on Pancasila (the state ideology), UUD 1945 (Indonesian Constitution) and the CRC. It means that all rights of children in the CRC are adopted in the regulation including the right of children to get education. Recognition of the right of children to get education in the regulation is endorsed by national development policies in Indonesia. Therefore, recognition of the children right to get education is easy to adopt in the Indonesian regulation because it is compatible with the national development policies.

IV. THE NATIONAL EDUCATION DEVELOPMENT OBJECTIVES

'The development policies in Indonesia which focus on poverty alleviation and economic growth' ensure the generational sustainability of the civil society [6]. Education is perceived as effective way to achieve the development policy objectives. McClure argues that education is so important to improve economic performance and social protection [7]. The Indonesia education development aims to 'strengthen the people's faith and piety to God the Almighty and their moral character as a means for enhancing the intellectual capacity of the nation' and developing the Indonesian people fully (The Indonesian regulation no. 20/2003 on the National Education System). Actually, the education development in Indonesia is more directed to educate children because children are deemed as potential human resource in the future. Churchill says that 'educated races' will determine the future of the world [8]. Educating children is an important strategy of the Indonesia education development to achieve better economic growth and poverty reduction as a mean for sustaining the country's existence. Indeed, the national education development objectives are suitable with the CRC key principles especially the right of child to get education. International norms would be accepted voluntarily in the domestic policy process as far as they connect with advance desired domestic objectives [9]. However, the right of child to get education as stated in CRC is still problematic to be accommodated in Article I Paragraph 29 of the Indonesia regulation no. 35/2014 on amendments to the Indonesia regulation no. 23/2002 on child protection because the CRC principles especially the right of child to get education still constrain with the national education development policies. They have different emphasis on the education discourse.

V. THE DOMESTIC EDUCATION DEVELOPMENT OBJECTIVES AND THE VALUES OF THE CONVENTION

Legalization of the regulation no. 23/2002 on child protection is momentous occasion, which signs the beginning of new phase of child protection discourse in Indonesia. The development of child protection discourse in Indonesia continue to grow to the next phase marked by the legalization of the Indonesia regulation no. 35/2014 on changes on the Indonesia regulation no. 23/2002 on child protection. These regulations reaffirm the role of government to provide appropriate education services to children as well. Indeed, the CRC values especially the right of children to get education would not confront with the domestic development objectives. That is the reason why the CRC key principles are so easy to accommodate in both Indonesia regulations on child protection, especially in Article I Paragraph 29 on education of the Indonesia regulation no. 35/2014. However, the right of children to get education which is accommodated in Article I Paragraph 29 of the Indonesian regulation no. 35/2014 is still questionable whether or not it is indeed based on the CRC principles.

Article I Paragraph 29 of the regulation no. 35/2014 states the government and the local governments are responsible to provide nine years of primary education to all children. The article accommodates the right of children to get education. The article provides opportunity to children to have access to education services. Amartya Sen says that the development of any country should be measured not by the economic performance using the GNP but by opportunity provided by country to citizen [10]. The article deems children as citizens who have the right to get access to education to improve their capabilities. Moreover, the article rules the government to ensure that there is no discrimination of any kind, such as race, sex, religion, and language in providing education service to all children. Even though in the article it is not clearly stated on discrimination and its kinds, the term 'to all children' can be understood that there is no discrimination to get access to the government services in education. All children from different backgrounds have right and opportunity to get the education services. Therefore, the article would not be discriminatory in term of providing opportunity to all children to get access to education services especially the compulsory education program of the government.

Nonetheless, the article still more emphasis the domestic education development objectives rather than the CRC key principles because actually the government's compulsory education program is more designed to generate the knowledge, scientific and skill progress which will keep the country sustainable rather than focusing on the best interest of children. Education is perceived as investment in human resource rather than as an effort to protect the children rights. Education would stay behind a wish or a need rather than being a right [11]. Tendency of this article to adopt domestic education objective rather than the CRC principles can be seen in its limitation to accommodate those children who have personal problem such as pregnant teenagers.

1. The pregnant student

There are many cases in Indonesia that pregnant teenagers are forced to leave school because of their pregnancies. Teenage pregnancy is seen as a deed which breaks the school order so that the pregnant girl student should get penalty by dropping out from her school. Actually, schools consider decision to throw the pregnant teenager out of the school as a warning for other girls to not being pregnant in school. Indeed, schools do not want to be judged by society as bad school because of accepting pregnant teenagers to study in the schools. Moreover, teenage pregnancy is caused by the absence of appropriately sex education [12]. However, teenage pregnancy is social reality which makes the pregnant teenagers more suffer and difficult to get access to public services especially to education services in Indonesia.

The Article I Paragraph 29 of the Indonesian Regulation no. 35/2014 shows how the domestic education development objectives and the CRC principles, which are adopted in the article, constrain each other to deal with the pregnant teenagers' problem relating to lack of access to education services. The level of teenage pregnancy is often considered as a measure of school performance. The lower the level of teenage pregnancy of any school is, the better its performance is. Because of this, the schools strictly imposes penalty to the pregnant girl students by expelling them from the schools. This leads the pregnant students cannot continue their studies and not having access to education services anymore. Indeed, the compulsory education would be so exclusive because it is more offered to the good students rather than to the students with personal problems. The educational development policies can promote social exclusion [13] of those students who have personal problems. This situation is contrary to the CRC principles especially the item 2 of the article 6 and the article 28. Thus, even though Article I Paragraph 29 of the Indonesia regulation no. 35/2014 provides free access to education, it still does not benefits to those students whose personal problems especially the pregnant students.

Article I Paragraph 29 of the Indonesian regulation no. 35/2014 can bring about social exclusion of the pregnant girl students from the education services. Klasen [14] attempts to distinct two mechanisms, which cause social exclusion, based on its sources. In the first mechanism, the exclusion can occur as a consequence of disadvantage of individuals and households such as social, economic, birth and background [15]. Whilst, in the second mechanism, the exclusion is principally caused by public policy which would make disadvantage of individuals and households being social exclusion [16]. However, the pregnant students experience social exclusion to get access to education services in two ways as identified by Klasen [17]. Firstly, their disadvantage especially their early pregnancy makes them difficult to join the class as well as the other students who are not pregnant. The pregnant students are less likely to attend the class [18] because the physical and psychological reasons. Secondly, the education policy, which encourages the schools to refuse the pregnant students, makes them difficult to continue their studies.

Moreover, Article I Paragraph 29 of the Indonesian regulation no. 35/2014 which causes exclusion of the pregnant students from education services would affect not only on themselves but also their baby in the womb as well. The pregnant students' problem relating to early pregnancy and exclusion from school would put the baby in their womb at greatest risk of emotional, social and health disadvantage [19]. This would break the survival principle of CRC convention and Article I Paragraph 1of Indonesia regulation no. 35/2014 which identifies the baby in the womb as child who should be protected. Thus, it can be seen that even though the child

development principles of CRC relates to the domestic educational development objectives, it does not easy to adopt the child development principle to domestic policy.

2. The child worker

The other evidence which shows the key principles of CRC constrain with the domestic education development objectives in Article I Paragraph 29 of the Indonesian regulation no. 35/2014 is the exclusion of the child worker from compulsory education which refers to Article I Paragraph 29 of the Indonesian regulation no. 35/2014. Article I Paragraph 29 of the Indonesia regulation no. 35/2014 states that the compulsory education which is designed by the government is offered to all children. Literally, the article would not be discriminatory to offer the compulsory education to all children. However, the compulsory education would neglect the right of the child worker to get education especially to join the compulsory education program.

It is important to distinct between child worker and child labor. George attempts to distinct definition child worker and child labor by comparing the meanings of 'work' and 'labor'. George identifies work as a process naturally embedded to human existence which contains a range of social relation, self-expression, self-discovery, and self-realization and encouraging the development of identity [20]. Whilst, labor is identified as a process encouraged by employers' profit-motivated needs economically rather than by the individual's psychological and physiological needs [21]. Thus, child worker is child working based on their own decision without coercion and exploitation while child labor is child working under coercion and exploitation, which have negative effects on physical, mental, psychological and social development so that it should be prohibited. However, difference between child worker and child labor is not too huge because both child worker and child labor are at great risk of neglecting their rights. For example, neglect of the right of child worker to get education services especially compulsory education as stated in the Article I Paragraph 29 of the Indonesian regulation no 35/2014.

Implementation of compulsory education program would not consider the children for which the program is designed. The program treats children in the same way without taking account difference among children. The child work, for example, is absolutely different with their counterpart whose lives are financed by the parents or other people. Actually, the child worker has timework, which often clashes with the time to go to school. Chance to attend a class is almost impossible because they are more likely to choose their work to get money to maintain their lives and even their family. Heward adds that historically, a lot of poor families depend on the children's wage to maintain their lives [22]. Indeed, the compulsory education program as stated in Article I Paragraph 29 of the Indonesian regulation no. 35/2014 would not be offered to the child worker [23]. Article I Paragraph 29 is more likely to focus on the domestic education development objectives rather than the best interest of the child worker.

Article I Paragraph 29 of the Indonesian regulation no. 35/2014 does not cover to the child worker's right to get education. Actually, the compulsory education program is conventionally designed to all children. It would lead from the quality of teaching and material is not suitable with the child worker's condition and background. Moreover, the compulsory education is 'no guarantee of an economically active adulthood' [24]. This would make the child worker bored to attend the class because they are not able to get something useful for them especially for improving their skills and work. Indeed, the capacity of government is challenged in implementation of compulsory education [25] to provide the appropriate teaching material and methods which considers difference of children. Thus, the article 48 would discriminate the child worker to get education.

VI. CONCLUSION

Adopting the CRC key principles to the domestic policy is not easy even though the CRC key principles are compatible with the domestic development policy objectives. Article I Paragraph 29 of the Indonesian regulation no. 35/2014 on changes on the Indonesia regulation 23/2002 on child protection shows how the CRC key principles constrain with the domestic education development objectives. Thus, compatibility between the CRC key principles and the domestic education development objectives does not guarantee that the right of children can be protected because either the CRC key principles or the domestic education development objectives has different focus and emphasis each other on the policy relating to child protection.

The compulsory education program should be designed by focusing more on the best interest of children rather than on the program itself. Article I Paragraph 29 of the Indonesian regulation no. 35/2014 does not cover the children with certain circumstance such as the pregnant student and the child worker. The pregnant student and the child worker are potentially excluded from education. Article I Paragraph 29 more emphasis on how to implement the compulsory education program itself rather than taking account the children and their best interest. Moreover, Article I Paragraph 29 proves that among the CRC key principles there is contradiction. The best interest of children and non-discrimination principles of CRC are neglected when Article I Paragraph 29 more emphases on the development principle. Thus, adoption of the CRC principles should be imposed equally.

Finally, it can be concluded that the adoption process of the CRC principles is not easy. The CRC principles are compatible with the domestic development objectives but they would constrain each other. This is due to the CRC principles and the domestic development objectives would have different emphases and point of view on any policy relating to children protection.

REFERENCES

- [1]. United Nations Convention on the Rights of the Child, 1989.
- [2]. Undang-Undang no.23 Tahun 2002 tentang Perlindungan Anak (The Indonesian Regulation no. 23 Year 2002 on Child Protection).
- [3]. Undang-Undang no. 35 Tahun 2014 tentang Perubahan atas Undang-Undang no. 23 Tahun 2002 tentang Perlindungan Anak (The Indonesian Regulation no. 35 Year 2014 on Amendment to the Indonesian Regulation no. 23 Year 2002 on Child Protection).
- [4]. James, A., Jenks, C. and Prout, A., 1997. *Theorizing Childhood*, Teachers College Press, New York, p. 6.
- [5]. Rogers, W.S., 2004. 'Promoting better childhood: constructions of child concern', in M.J. Kehily (ed), *An Introduction to Childhood Studies*, Open University Press, Maidenhead:125-145, p. 135.
- [6]. McClure, M.W., 2002. *School Ready to Teach, Children Ready to Learn, Communities Ready to Protect Both: minimum service standards in Indonesia*, DSEF Project, p. 3.
- [7]. McClure, M.W., 2002. *School Ready to Teach, Children Ready to Learn, Communities Ready to Protect Both: minimum service standards in Indonesia*, DSEF Project, p. 3.
- [8]. Cootes, R.J., 1984. *The Making of the Welfare State*, Longman, Harlow, p. 87.
- [9]. Bessell, S., 1999. 'The politics of child labour in Indonesia: global trends and domestic policy', *Pacific Affairs*, 72(3):353-71, p. 354.
- [10]. Saraswathi, T.S. and Larson, R.W., 2002. 'Adolescence in global perspective: an agenda for social policy', in B.B. Brown, R.W. Larson and T.S. Saraswathi (eds), *The World's Youth: adolescence in eight regions of the globe*, Cambridge University Press, Cambridge:344-63, p. 346.
- [11]. Tomasevski, K., 2001. *Free and Compulsory Education for All Children: the gap between promise and performance*, Right to Education Primers no. 2, The Swedish International Development Cooperation Agency, Gothenburg, p. 19.
- [12]. Selman, P. and Glendinning, C. 1996. 'Teenage pregnancy: do social policies make a difference?', in J. Brannen and M. O'Brien (eds), *Children in Families: research and policy*, Falmer Press, London, p. 212.
- [13]. Klasen, S., _____. 'Social exclusion and children in OECD countries: some conceptual issues', www.oecd.org, p. 7.
- [14]. Klasen, S., _____. 'Social exclusion and children in OECD countries: some conceptual issues', www.oecd.org, p. 5.
- [15]. Klasen, S., _____. 'Social exclusion and children in OECD countries: some conceptual issues', www.oecd.org, p. 5.
- [16]. Klasen, S., _____. 'Social exclusion and children in OECD countries: some conceptual issues', www.oecd.org, p. 5.
- [17]. Klasen, S., _____. 'Social exclusion and children in OECD countries: some conceptual issues', www.oecd.org.
- [18]. Selman, P. and Glendinning, C. 1996. 'Teenage pregnancy: do social policies make a difference?', in J. Brannen and M. O'Brien (eds), *Children in Families: research and policy*, Falmer Press, London, p. 215.
- [19]. Selman, P. and Glendinning, C. 1996. 'Teenage pregnancy: do social policies make a difference?', in J. Brannen and M. O'Brien (eds), *Children in Families: research and policy*, Falmer Press, London, p. 203.
- [20]. George, I., 1990. *Child Labour and Child Worker*, Ashish Publishing House, New Delhi, p. 15-6.
- [21]. George, I., 1990. *Child Labour and Child Worker*, Ashish Publishing House, New Delhi, p. 18.
- [22]. Heward, C., 1993. 'Reconstructing popular childhoods', *Children and Society*, 7(3):237-54, p. 240.
- [23]. Undang-Undang no. 20 Tahun 2003 tentang Sistem Pendidikan Nasional (The Indonesian Regulation no. 20 Year 2003).
- [24]. Olsen, R., 2000. 'Families under the Microscope: parallels between the young carers debate of the 1990s and the transformation of childhood in the late nineteenth century', *Children and Society*, 14():384-94, p. 390.
- [25]. Tomasevski, K., 2001. *Free and Compulsory Education for All Children: the gap between promise and performance*, Right to Education Primers no. 2, The Swedish International Development Cooperation Agency, Gothenburg, p. 25.