

PROTECTION OF CHILDREN'S RIGHTS IN CHOOSING RELIGION IN INDONESIA

Erdian¹, Natsir Asnawi²

Borobudur University¹, Borobudur University²

Email : erdianassociates@gmail.com¹ , m.natsir@borobudur.ac.id²

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Abstract

The protection of children's rights in choosing religion and practicing worship is a constitutional issue that is increasingly relevant in a democratic legal country that upholds human rights. Although freedom of religion is guaranteed in the 1945 Constitution of the Republic of Indonesia, the practice of positive legal regulation still shows the tension between children's rights, parental authority in parenting, and state obligations through the national education system. This study aims to analyse the normative construction of the protection of children's rights to freedom of religion and worship, as well as to test the coherence of its regulation in the perspective of human rights. The main questions asked are what is the position of children's rights in conflict with parental rights and what is the appropriate model of protection within Indonesia's positive legal framework. This research uses a normative juridical method with a legislative and conceptual approach. Data was collected through literature studies on relevant primary, secondary, and tertiary legal materials, then analysed qualitatively to assess the consistency and harmonization of norms. The results of the study show that constitutional guarantees for children's religious freedom exist, but they are not fully coherent when dealing with sectoral norms that give dominant space to parents and the education system. This research offers a child-centred rights protection model based on the principles of the best interests of children and evolving capacities as a normative harmonization framework. In conclusion, the protection of children's rights to religious freedom requires a clearer affirmation of normative parameters as well as corrective mechanisms that are responsive to family conflicts.

Keywords: children's constitutional rights, freedom of religion, parents and children

A. INTRODUCTION

Human rights are the normative foundation for respect for human dignity in the life of society, nation, and state. This concept of rights is driven by two keys, namely the scientific situation that bring to the idea that human beings from birth have been accompanied by natural rights in the form of freedom, and community agreements that bring to the idea that individuals give up part of their freedom to the ruler to protect these natural rights for the sake of creating order (Muhshi 2015). The doctrine of human rights is universally accepted as a moral, political, legal framework, and as a guideline in building a more peaceful world free from fear and oppression and unfair treatment, so that in the understanding of the rule of law, the guarantee of human rights protection is an absolute feature in every state of law (Asshiddiqie 2006). In this context, the state plays a role not only as a regulator, but also as the main guarantor of the protection of citizens' rights, without exception, and is not limited by gender or age.

Religion is a belief system inspired by the five human senses, accompanied by a series of behaviours to interpret the source of strength, calmness, comfort, direction in the face of

uncertainty, including control over the dimensions of individual or social life and the environment as well as another dimension that is beyond human control, which is the driving force in humans (Herianto 2023). In a religion there is an inherent behaviour with a certain ordinance that is offered to God, known as worship. Freedom of religion and worship is one of the most basic and sensitive rights within the framework of human rights. This right is directly related to the freedom of thought, conscience, and individual belief, which are philosophically inseparable from the existence of human beings as beings who have moral and spiritual autonomy. This right includes internal freedoms (*forum internum*) which are absolute, as well as external freedoms (*forum externum*) which can be strictly restricted by law.

In the context of constitutional democracy, children must be seen as rights holders who have the capacity to develop to determine their life choices. In principle, all actions and decisions concerning a child must be made on the basis of the best interests of the child (Eleanora, et al. 2021), including respect for freedom of religion and worship as fundamental rights. The protection of children's rights in choosing and exercising religious beliefs is a constitutional issue that is increasingly relevant in a democratic legal country that upholds human rights. Children are no longer seen solely as objects of protection, but as legal subjects who have inherent rights from birth (Permana and Hosnah 2025). This paradigm shift requires a rearrangement of the relationship between the state, parents, and children in the context of decision-making regarding religious identity and beliefs. This dimension becomes complex because children are in power relations with parents and educational institutions.

Children's rights are guaranteed by the constitution in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that every child has the right to survival, growth, and development and is entitled to protection from discrimination, which is then regulated in more detail in the Law on Child Protection. In addition, Article 28E and Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia guarantee freedom of religion for everyone. Normatively, the phrase "everyone" includes the child as the subject of constitutional rights. On the other hand, the right of parents to determine their children's education also gains legitimacy in the National Education System Law, especially the provisions regarding religious education according to the religion adopted by students. The national education system integrates religious education as a compulsory subject, which on the one hand is intended to strengthen public morality, but on the other hand has the potential to limit children's freedom to form their beliefs independently. The problem arises when the child's right to freedom of religion is confronted with the rights and obligations of parents in

determining education and childcare. In practice, parents still have significant authority in determining children's religion, especially in the early childhood phase. This norm raises a fundamental question, is the religion that the child adheres to identical to the religion of the parents, or does the child have an autonomous space to determine his own beliefs?

The plurality of religions and beliefs in Indonesian society further complicates the issue. In pluralistic societies, religious identity is often part of the social construction of families and communities. When children show different beliefs from their parents, there is a tension between the child's autonomy and parental authority. Normative problems arise because Indonesia's positive law only regulates the age limit for a person to be categorized as a child or adult, but has not explicitly formulated an age limit or objective indicator regarding the capacity of children in determining religious beliefs. The void of this parameter creates legal uncertainty and opens up different interpretations. Until now, there has been no constitutional test that specifically examines the conflict between children's rights and parental rights in the context of religious choice, although in practice such conflicts often occur.

Previous research on religious freedom in Indonesia has generally focused on issues of intolerance, discrimination against minorities, or religion-state relations. Some research on children's rights in the education system has highlighted more aspects of protection from violence or exploitation, rather than conflicts of religious autonomy. This conflict of rights must be tested through the principles of legality, proportionality, and the principle of non-discrimination as parameters in a democratic state of law. Without such testing, norms that give broad authority to parents or the state have the potential to reduce children's constitutional rights.

Based on this description, the main problem of this study lies in the normative construction of the protection of children's rights in choosing and exercising religious beliefs and the coherence of regulation between parental rights, state obligations in education, and children's religious freedom in positive Indonesian law. This problem is further formulated in the question, how to coherence the regulation between parental rights, state obligations in education, and children's religious freedom from a human rights perspective, to find an appropriate normative reconstruction model for the protection of children's rights in choosing and exercising religious beliefs and worship in Indonesia's positive law.

B. METHODOLOGY

This study uses normative juridical legal research methods with a legislative and conceptual approach. Data collection was carried out by literature studies sourced from primary, secondary, and tertiary legal materials, all of which are related to the right to freedom of religion and worship as one of the human rights. The data obtained was then analysed qualitatively.

C. RESULTS OF RESEARCH AND DISCUSSION

1. Children as Human Rights Subjects

The development of human rights theory shows a fundamental shift in the view of children in the legal system. Children are no longer treated as entities that are completely under adult domination, but rather as rights holders who have normative claims to the state and parents. Recognition of children as subjects of rights means that the state has an obligation to ensure effective protection of these rights, including from potential disproportionate restrictions by other parties, including by their parents. The state cannot completely hand over the issue of children's religious freedom to the family authorities without providing clear normative parameters. In the international world, this recognition is strengthened through the Convention on the Rights of the Child which affirms that children have civil and political rights, including freedom of thought and religion. The recognition rests on the principle of the best interests of the child as the main consideration in every action that concerns him/her. This principle is not just a moral principle, but a legal norm that has binding power and functions as a test tool for public policy and parental actions. Regarding the choice of religion, the discussion is not solely who has the authority to determine the child's religion, but whether the decision to choose a religion for the child is really in line with the best interests of the child objectively.

The doctrine of evolving capacities recognizes that the rational and moral capacities of children develop gradually. This means that the higher the level of maturity of the child, the greater the recognition of his autonomy in making life choices, including religious beliefs. This concept provides a normative justification that parental authority is not absolute and must be adjusted to the child's development. In Indonesia, the conception of children as legal subjects can be traced in the Child Protection Law which affirms the right of children to express and be heard their opinions according to age and intelligence level. This provision has direct

implications for decision-making related to religion. If the child has the right to participate, then his preference in matters of belief cannot be ignored unilaterally.

2. Religious Freedom as a Human Right Is Linked to Parental Rights in Education and Parenting

A person's ability to recognize or understand religious values that lie in his noble values and make values in attitude and behaviour is a characteristic of religious maturity, so religious maturity can be seen from a person's ability to understand, live and apply the noble religious values that he adheres to in daily life (Sholihah 2018). Freedom of religion is part of freedom of thought and conscience that has a special position in the human rights system, touching on the most basic dimension of personal identity. The distinction between *forum internum* and *forum externum* is the key to understanding the scope of its protection. The *forum internum* is the freedom of the individual to embrace and defend his or her beliefs without intervention, which is an absolute right and should not be restricted under any circumstances. Meanwhile, *forum externum* include the expression of beliefs in the form of worship, teaching, and other religious practices, which may be restricted under certain conditions in order to maintain public order, morals, or the rights of others (Perwitasari 2025). In the context of children, the *forum internum* acquires a special meaning because it concerns the formation of a personal identity that is still developing. If the state or parents impose certain beliefs without providing room for reflection according to the child's development, then potential violations of the *forum internum* can occur. Restrictions that affect certain groups differently, including children from families with minority beliefs, must be rigorously tested so as not to create structural injustices.

In Indonesia, the family, especially parents, is a basic social unit that has the main responsibility for children's development, including determining where children get religious education according to their religion. The normative conflict between parental rights and children's rights in determining religious beliefs acquires a special dimension in the context of a state that makes religion an integral part of the social and educational system. On the one hand, parents have the legal and moral legitimacy to guide and determine the direction of their children's education. This norm is often interpreted as legitimacy for parents to determine the child's religion exclusively. However, this does not mean that parental rights are positioned as infinitely superior to children's rights. Parental rights function as a means of guidance, not as an instrument of domination. Children are holders of constitutional rights to freedom of thought and religion which cannot be ruled out solely because of age. Therefore, the limits of parental authority must still adhere to the principle of the best interests of the child and the development

of their capacity. In such situations, the law is required to provide a constitutional principle-based settlement mechanism, not simply leave it to family authorities. The principle of equality of constitutional norms requires conflict resolution through an integrative, not subordinative approach.

Parental rights in parenting are basically derivative rights that function to support the interests of children. Parental rights are understood as responsibility-based rights, which are inherent rights because of the responsibility for the welfare of children. This authority cannot be used to ignore the child's right to internal freedom in determining his beliefs. When a child shows a different belief preference than the parents, the conflict cannot be decided solely on the basis of biological authority or social tradition. The parameters of the solution must rest on the principle of the best interests of the child which is tested objectively and rationally. This approach prevents absolutism in family relations and ensures that the rights of the child are not reduced by domestic power structures.

From the perspective of constitutional law, this conflict is also related to the concept of restriction of rights by non-state subjects. Although restrictions on human rights are usually associated with state actions, in the context of children, restrictions can occur in the family's private space. Therefore, the state has a positive obligation to ensure that private relationships do not result in violations of constitutional rights. The state's role as a regulator puts it in a sensitive position. The state must not be passively neutral when there is a violation of children's rights, but also must not intervene beyond constitutional limits. The state is in a dual position as a duty bearer that must balance the protection of children's rights with respect for family authority. Potentially problematic arises when administrative policies, such as the inclusion of religion in population documents or the obligation to attend certain religious lessons, lock down a child's religious identity without considering the development of his capacity. If there is no correction mechanism or alternative options, then the policy can be considered to limit the child's internal freedom space indirectly.

The analysis of norm conflicts shows that the main problem is not the absence of normative guarantees, but the lack of optimal harmonization between norms. Indonesia's positive legal arrangement has a weakness in the absence of normative indicators regarding the limits of children's capacity to make their choice of belief. Harmonization must be carried out through a constitutional approach that places children's religious freedom as a fundamental right that cannot be eliminated, while recognizing the function of the family as a space for moral development. Indonesia's positive law does not contain an explicit prohibition for

children to have beliefs different from their parents. However, the absence of a formal recognition mechanism for such choices can create de facto restrictions. Children's rights, parental rights, and state obligations are in intersecting positions and potentially limiting each other. This condition shows that there is a gap in the construction of norms that are not fully coherent with constitutional guarantees. If restrictions on a child's religious freedom are based on the grounds of maintaining family stability or social harmony, then it must be proven that such restrictions are absolutely necessary and that no lighter alternatives are available. For example, a dialogical approach in the family can be a more proportionate solution than prohibition or coercion. This approach avoids the extreme dualism between child autonomy and parental dominance. The protection of constitutional rights requires the state to provide corrective mechanisms when conflicts occur between children and parents. The mechanism can be in the form of mediation based on the principle of the best interests of the child or access to child protection institutions. The resolution of rights conflicts should not depend on cultural assumptions or traditions alone, but should be through normative parameters that can be tested rationally and objectively, so that the coherence of the legal system can be maintained and the protection of children's rights can be realized effectively.

Furthermore, to bridge the evolving capacities approach can also be adopted as a normative parameter. This principle recognizes that children's rational and moral capacities develop gradually according to their age and life experience. The recognition of the developing capacity is the basis for providing space for participation in decision-making. The more mature a child is, the more space he must be given to make his or her own choice of belief. The implementation of this principle in the context of national law can be carried out through a progressive interpretation of the provisions on child participation in the Child Protection Law. The right to be heard should not be limited to civil or criminal cases, but also include issues of identity and beliefs.

The evolving capacities approach does not mean negating the role of parents. On the contrary, parents have the responsibility and duty to carry out parenting functions and play a role in protecting their children from harmful actions (Web 2024). Family relations are no longer based on domination, but on a process of moral education that respects the internal freedom of the child. This can be realized through the provision of space for reflection and discourse in religious learning, so that children not only accept dogma, but also understand the basis of their beliefs rationally.

3. Child-Centred Rights Protection Model As A Normative Reconstruction

The normative reconstruction offered in this study is the child-centred rights protection model, which places the child at the centre of consideration in any regulation and policy concerning religious beliefs. First, this model requires vertical harmonization between the constitution and sectoral laws, in the event of a conflict of interpretation, the interpretation that best protects the rights of the child must take precedence. Second, this model integrates the principle of proportionality as a test tool for policies that limit children's choices, where each restriction must meet three conditions, namely legal-based, legitimate purpose, and not excessive, to prevent the occurrence of absolute restrictions on the basis of tradition or custom. Third, the state needs to provide conflict resolution mechanisms that are responsive to the interests of children, including child protection institutions and courts that have normative guidelines in handling cases related to differences in beliefs between children and parents, so that normative guarantees do not lose their effectiveness. Fourth, this model encourages the strengthening of human rights literacy in families and educational institutions, where religious education should not be understood as a mere means of indoctrination, but as a space for character formation that respects freedom of conscience.

This normative reconstruction has direct implications for strengthening the principle of the rule of law. Family relations as a private space are not beyond the reach of constitutional principles. By placing children as active constitutional rights holders, Indonesia's legal system will move towards a more inclusive and participatory model of protection. This approach is in line with the development of human rights theory in Indonesia which emphasizes the importance of respect for plurality and the dignity of the individual. Another implication is the need to update regulations that provide legal certainty regarding the mechanism for recognizing children's choice of beliefs according to the development of their capacity. The normative reform does not aim to reduce the role of the family, but ensures that the relationship between parents and children runs in a constitutional corridor. Overall, this harmonization and normative reconstruction affirms that the protection of children's rights to choose and practice religious beliefs is not a threat to family stability, but rather part of strengthening the rule of law that respects human freedom and dignity from an early age.

D. CONCLUSION

This study confirms that the normative construction of the protection of children's rights in choosing and exercising religious beliefs in Indonesian positive law has basically gained

constitutional legitimacy and is strengthened in the Child Protection Law, but the regulation is not fully coherent when dealing with norms regarding parental rights and authority and the national education system that still places religion as an administratively inherent identity from an early age. The analysis shows that parental rights in parenting are derivative and cannot be interpreted as an absolute authority that negates the autonomy of the child, so the solution must be based on the principle of the best interests of the child and the evolving capacities approach. This study formulates a child-centred rights protection model that places children as active constitutional subjects, integrates the principles of legality and proportionality in each restriction, and demands vertical harmonization between the constitution and sectoral regulations. Theoretically, these findings enrich the study of constitutional law and human rights law by affirming that private family relationships remain subject to the principle of constitutionality, while broadening the discourse on the restriction of rights by non-state subjects. Practically, the results of this study provide direction for lawmakers and child protection institutions to develop corrective mechanisms and normative guidelines in dealing with conflicts of belief between children and parents.

E. RECOMMENDATION

The government as policy makers should systematically harmonize regulations between the Child Protection Law, the National Education System Law, and population administration regulations with the constitutional principle of children's religious freedom, as well as formulate technical guidelines for schools and child protection institutions in dealing with differences in beliefs between children and parents. For legal practitioners and judicial officials, it is necessary to develop judicial guidelines that place the principle of the best interests of the child and the principle of proportionality as the main test tool in cases related to religious conflicts in the family. Meanwhile, for educational institutions and families, the results of this research can be implemented through strengthening the dialogical approach in religious education. Legal academics are also advised to integrate the perspective of children's rights and religious freedom in the curriculum of constitutional law and human rights law in order to build normative awareness from an early age among prospective legal practitioners.

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