

## *Parental Responsibilities Towards Children Who Do Begging Activities In Gorontalo City*

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ARTICLE INFO	ABSTRACT
<p><b>Keywords :</b> <i>Parents Responsibility, Child Labour, Beggar</i></p> <p><b>How To Cite :</b></p> <p>Suleman A.R, Kasim N.R ., Kamba. S.N.M . (2020). <i>Parental Responsibilities Towards Children Who Do Begging Activities In Gorontalo City</i> . <i>Estudiante Law Journal</i>. Vol. 2 (3): 602-613</p> <p><b>DOI :</b></p>	<p>This study aims to determine and analyze the responsibilities of parents in employing children as beggars and to determine the purpose of Islamic law and civil law on parental responsibilities. The type of research used is empirical research, namely research that includes legal identification and research on legal effectiveness. The results of the study show that the basis of parental responsibility in employing children as beggars in Gorontalo City is an error in the soul of parents concerning their behavior in this case employing children as beggars who can be sanctioned. Based on his psyche, the perpetrator can be reproached because of his behavior, in other words, only with this inner connection can the prohibited act be held accountable for the parents who employ their children as beggars. In Islam, the law of begging has been explained that the law is not allowed. What is recommended is that it is better to give each other the hand above than the hand below.</p>

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## 1. Introduction

The State of Indonesia is a country that refers to a problem based on law, which in this case is included in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph 3. In a country based on law, the constitution or the constitution is a unified legal system that must be followed. For this reason, the law must be obeyed, implemented, respected, and enforced by all people within the scope of the State. The Indonesian state must protect every community, including children.

In the KBBI (Big Indonesian Dictionary) it is stated that children are the second generation.<sup>1</sup> Meanwhile, in Article 330 of the Civil Code, children are interpreted as humans whose age has not reached the legal age as legal subjects or as subjects in national law as stipulated by the Civil Code. Children are part of the youth who are part of the potential resources as well as the successor to the ideals of the nation's struggle by having a strategic position that has special characteristics and characteristics, requires guidance and protection with the aim of ensuring physical, mental and social development and growth in a sustainable manner. complete, harmonious, harmonious, and balanced.<sup>2</sup> As part of the youth, children have an important role because they are the hope of the nation as well as the capital of HR (Human Resources) for the progress of the nation and state. Thus, efforts to carry out the life and welfare of a child should not be neglected for the sake of the realization of the nation's goals.

Article 298 of the Civil Code states that every child must obey and respect their parents and follow their orders as long as the orders lead to goodness. Parents are responsible for their children when they are born in this world. What is meant by parental responsibility is the bond between the two which is aimed at the welfare of the child itself. Islam views children as bound by the concept of *hadanah*, in the view of fiqh experts, *hadhanah* is the act of caring for underage children, whether male or female, even those who have reached adulthood but are not yet *mumayyiz.*, presumably give something that aims for his good, protect him from everything that can damage and hurt him, provide education both physically, spiritually, and intellectually so that he can be independent in facing his life and carrying out his responsibilities.<sup>3</sup>

The Indonesian government has ratified the rights of children, which in essence states that every child has the right to obtain a qualified education and that children do not fully participate in economic activities from an early age. However, the impact of poverty pressure, the lack of parental awareness of the importance of education, and various other influences, children are forced or voluntarily made part of their family income source.

Normatively in all forms of applicable laws and regulations, the rights and obligations of parents to children have been regulated. In Civil Law Article 298 of the Civil Code,

children should be devoted and respectful to both parents, and loyal parents are obliged to provide for and provide education to their children and provide allowances in terms of providing for them even though the parents have lost the power to legally raise their children. While in Islamic law itself in QS. Al-Baqarah: 233 explains that a mother who wants to perfect their breastfeeding can breastfeed her child for two whole years, but it is not a sin if it is not until two years ago to wean her. A father must provide for his mother in terms of feeding and clothing. On QS. At-Tahrim: 6 tells every parent to protect himself and his family from the fire of hell. This means that in worldly affairs, parents are required to guide, provide for, and protect their family members, including their children. And in the hadith narrated by Imam Bukhari, it is explained that everyone, including parents, is a leader who will be held accountable for what they have done to their children.

However, there are still some children in Gorontalo City who become beggars, and people who become beggars also bring their children as an option to earn money, under the pretext of difficulty in finding work, lack of talent, or skills, and lack of capital to start a business. The emergence of the practice of people who choose to become beggars in Gorontalo City is from various circles, ranging from children, adults, and the elderly. In this incident, the children were forced or forced by their parents to carry out begging activities, making the rights of the children lost, such as the right to play, to get a good education, the right to grow and develop, and the right to be protected from harm. discrimination and violence.

## **2. Method**

The type of research used by researchers in compiling this research is empirical research. The types and sources of data used in this study are primary and secondary.

## **3. Problem Formulation**

In Article 330 of the Civil Code, minors are those who have not reached the age of twenty-one years and have not been married before. If the marriage is dissolved before they are twenty-one years old, then they will not return to their minor status.<sup>4</sup> Children are interpreted as human beings whose age has not reached the legal legal age limit as legal subjects or as subjects in national law as stipulated by the Civil Code. Children are part of the youth who are part of the potential resources as well as the successor to the ideals of the nation's struggle by having a strategic position that has special characteristics and characteristics, requires guidance and protection with the aim of ensuring physical, mental and social development and growth in a sustainable manner. complete, harmonious, harmonious, and balanced. In this case, parents have the burden of legal responsibility in the form of criminal sanctions because of positive law in Indonesia, both the Criminal Code in Article 301 of the Criminal Code and Article 76 I and Article 88 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2014 2002

concerning Child Protection regulates that ordering children to beg is a criminal act and the perpetrators can be subject to criminal sanctions.

With the actions of children becoming beggars, if we pay attention to several aspects that are the scope of child protection as mentioned above, then the act of children becoming beggars is an act that ignores the protection of children from all forms of exploitation. Everyone is prohibited from exploiting children in any form as regulated in Article 301 of the Criminal Code junto Article 76 I and Article 88 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 301 of the Criminal Code reads :

"Whoever gives or gives to another person a child who is under his legal control and who is less than twelve years old, even though it is known that the child will be used for or while doing begging or for work that is dangerous, or which can damage his health, is punishable by a maximum imprisonment of four years".

Article 76 I of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection reads:

"Everyone is prohibited from placing, allowing, carrying out, ordering to do, or participating in economic and/or sexual exploitation of children ".

Article 88 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child:

" Based on the description above, it can be said that the sanctions given to perpetrators who order children to become beggars can be subject to imprisonment or fines or both at once. The threat of imprisonment is a maximum of 10 (ten) years, while a maximum fine of IDR. 200,000,000.00 (two hundred million rupiah).

The actions of children as beggars are classified as violent crimes against children. The Social Work Dictionary. Violent crimes against children are inappropriate behavior that results in physical, psychological, or financial harm or harm to individuals or groups. Crimes of violence against children are intentional acts that cause harm or harm to children physically or emotionally. The term violence against children includes various forms of behavior, from acts of direct physical threats by parents or other adults to neglecting children's basic needs and especially to parents or adults who employ children as beggars.

As a social problem, acts of violence and violations of children's rights initially did not receive serious public attention, because these actions were usually considered only casuistic in nature and only occurred in certain families who had psychological problems and the family's economic condition.

In cases of violent crimes against children, the child as the victim is in a completely helpless position. From a physical point of view, children clearly can't do anything about adult humans who seem to be giants to them. In the case of children being employed as

beggars, the mental burden is heavier on children than in other cases of violence against children. Seeing that a child should be able to live normally and well as the goals aspired to by our nation and state as stated in the opening of the 1945 Constitution of the Unitary State of the Republic of Indonesia, in paragraph IV: "To protect the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace, and social justice". Seeing this, a child as an asset for the future of the country needs to get more attention. Conceptually, violence against children (child abuse) is an event of a physical, mental or sexual injury which is generally perpetrated by people who have responsibility for the welfare of the child.

In this case, many minors have to work for reasons of meeting the needs of daily life because of the economic difficulties of their parents and or for the benefit of the child's self-development. So what are the rules if minors have to work because of urgency, including being beggars? There are exceptions to the provisions in the following conditions:

For children aged between 13 years to 15 years to do light work as long as it does not interfere with physical, mental, and social development and health. To employ children for light work this must exist:

1. written permission from parents or guardians;
2. work agreement between entrepreneur and parent or guardian;
3. maximum working time of 3 (three) hours;
4. is carried out during the day and does not interfere with school time;
5. occupational safety and health;
6. there is a clear working relationship; and
7. receive wages following applicable regulations<sup>5</sup>

In article 71 paragraph (2) of the Law on Manpower, children can do work to develop their talents and interests on the condition that:

1. under the direct supervision of a parent or guardian;
2. the maximum working time is 3 (three) hours a day; and
3. working conditions and environment do not interfere with physical, mental, social development, and school time.

Article 70 stipulates the exclusion of children under the age of 18 years from working in companies provided that the child is not less than 4 years old and the work is part of the education or training curriculum approved by the competent authority, and clear instructions must be given on how to do this. carry out the work as well as guidance and supervision in carrying out the work, and must also be given clear occupational safety and health protection.

Then there are types of work that are prohibited from being carried out and involving minors as regulated in Article 74 of the Law, namely the prohibition of employing and

involving children in the worst jobs, namely;

1. any work in the form of slavery or the like;
2. any work that uses provides, or offers children for prostitution, pornography production, pornographic performances, or gambling;
3. any work that utilizes provides, or involves children for the production and trade of liquor, narcotics, psychotropics, and other addictive substances; and/or;
4. any work that endangers the health, safety, or morals of children.

In conclusion, it is possible for minors as described above to work as long as they meet the conditions described above. Minors receive legal protection, both by the Manpower Act and the Child Protection Act, so that every person (Employer) or Company (Entrepreneur) in employing children must understand the two laws. , then some sanctions can be imposed on entrepreneurs. The sanctions include the following:

Sanctions for Employing Minors According to the Manpower Act, whoever employs children and violates Article 68 and Article 69 paragraph (2) of the Manpower Law is subject to a minimum imprisonment of 1 (one) year and a maximum of 4 (four) years and/or a maximum fine of 1 (one) year. a minimum of Rp. 100 million and a maximum of Rp. 400 million. Meanwhile, the violation of Article 71 paragraph (2) of

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5 Article 69 paragraph (2) of the Manpower Law

the Manpower Law is subject to a criminal sanction of imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and/or a fine of at least Rp. 10 million and a maximum of Rp. 100 million.

Sanctions for Employing Minors According to the Child Protection Law Article 76I of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection ("Law 35/2014") which states that everyone is prohibited from placing, allowing, committing, order to do, or participate in economic and/or sexual exploitation of children. The sanctions for violating the article above are sentenced to a maximum imprisonment of 10 years and/or a maximum fine of Rp. 200 million.

So, if parents do employ children and are proven to have violated the things mentioned above, then there will be legal sanctions imposed on them. Therefore, with this understanding, it is hoped that parents can meet the requirements for employing children and not violate the provisions mentioned above if in the future they do not want to be questioned because they have employed minors as beggars. Based on the discussion above, it is understood that as the basis for the responsibility of parents in employing children as beggars in Gorontalo City, it is the fault that lies in the soul of the parents with their behavior in this case employing him as a beggar who can be given sanctions and based on his mental state the perpetrator can be reproached because of his behavior. In other words, only with this inner connection can the prohibited act be held accountable for the parents who employ their children as beggars. This wrong mind is an error which

is the subjective nature of the crime because it is inside the perpetrator, therefore the error has two aspects, namely the psychological aspect and the normative aspect.

The existence of parental responsibility in employing children as beggars in Gorontalo City requires a condition that the maker can take responsibility. A person cannot be held accountable if he is not able to be responsible. The question that arises is when someone is said to be able to take responsibility. Is the measure to state the existence of that responsibility. The Criminal Code does not mention the meaning of the ability to be responsible. Related to that is Article 44.<sup>6</sup>

Whoever commits an act that cannot be accounted for by him, because his soul is disabled in growth or whose soul is disturbed due to illness will not be punished. Article 44 and from the opinions of several legal scholars, Moeljatno concludes that for the ability to be responsible there must be:<sup>7</sup>

- a. The ability to discriminate between good and bad deeds; under the law and against the law;
- b. The ability to determine his will according to the realization of the good and bad deeds earlier.

The first is the reason factor, which can distinguish between what is permissible and what is not. The second is the feeling or will factor, which is being able to adjust his behavior to the realization of what is permissible and what is not. As a consequence, of course, the person who is unable to determine his will according to the realization of the good and the bad of the action has no fault. Such a person cannot be held

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<sup>6</sup> Article 44 KUHP

<sup>7</sup> Moeljatno. 2008. *Asas-Asas Hukum Pidana*. Bandung: Rineka Cipta

accountable. According to Article 44, the disability must be caused by a defect in the mental apparatus or pain in the body.

Not providing proper care and education for children, is sometimes unavoidable because of parents' poverty. However, this condition is still a crime of violence against children economically, because it influences children's development. One of the consequences is that children run away from home and become street children with very big risks.

Seeing the definition of several types of violent crimes against children, the act of employing children as beggars can be classified as a crime of economic violence against children.

Violence is very close to the lives of children. From a very early age, children have been introduced to forms of violence ranging from verbal, physical to sexual. The experience of children dealing with difficult situations and violence is very diverse, both in terms of the forms of violence experienced, the perpetrators of violence, the scene, and the causes

of the violence.

Based on the explanation above, parents who employ their children as beggars can be held criminally responsible, namely by giving sanctions to the perpetrators, those who ordered can be subject to imprisonment or fines or both at once. The threat of imprisonment is a maximum of 10 (ten) years, while a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).

The responsibility of parents in employing children as beggars in the perspective of civil law begins with the level of child welfare which is an order of life that can ensure the normal growth and development of children both physically and spiritually. Because the responsibility of parents cannot be separated from the protection of children from the aspect of civil law. What is meant by protection here is regarding the civil rights of children. Civil rights are all civil or personal rights that are owned by a child/human since he was born on earth, including the human rights of the child.

Children's civil rights are protected by law (Law No. 23 of 2002) The right to live, grow, develop and participate fairly following human dignity and protection from violence and discrimination (Article 4).

The child's civil rights are protected by law (Law No. 23 of 2002) The right to a name as identity and citizenship status (article 5). The right to worship, think and express (article 6), the right to health and social security (article 8). Children's civil rights are protected by law (Law No. 23 of 2002) The right to obtain education and teaching in the context of developing their personality and intelligence level according to their interests and talents, including disabled children and children with excellence (article 9 clause (1) and ( 2).

Allah SWT has made the care and protection of children a mandate that must be borne by parents, as Allah SWT says in Q.S Al-Anfal:27-28.

The verse above forbids betraying a mandate. Among the greatest mandates that should not be betrayed is the mandate in the form of children, because besides them as a baby, soul mate, and adornment of the world's life, on the one hand, children are the greatest mandate for the father or mother. Both parents will be asked about their responsibility in carrying out this mandate on the Day of Resurrection.

Every child needs the opportunity to grow and develop optimally, physically, mentally, and socially. For this reason, parents have an important role to pay attention to children's rights and fulfill their children's needs; both physical and spiritual needs, both primary/basic needs, and additional needs.<sup>8</sup>

In a family, the husband is obliged to provide for his family. As the word of Allah SWT in QS. Al-Baqarah: 233. The relationship between parents and children is a relationship of mutual dependence, reciprocity, and togetherness. So if a child can feel the attention of his parents for him, the gentle attitude and affection of both of them and feel their hard work for his happiness, he will feel compelled to be more devoted to them, always sincere and take care to always do the rights of parents.

Protection of children where there is a phenomenon of begging by minors, those who do

it voluntarily to help their parents or are forced to beg. That this is the author's concern. First, counseling to provide education to elementary school children which aims to provide understanding and education about introduction to the environment. This is so that children want to try and have a spirit of never begging. It can be said that counseling has the same meaning as counseling when it is associated with counseling. It can be said that no one wants children to beg. This is done by strengthening their faith, teaching them to always remember Allah, that begging is an act that is not liked by Allah S.W.T.

Especially to teach children to avoid lust and doubt that harms the child from the start, such as promiscuity. From this, the need for ways to strengthen their faith, could also be by directing them to associate with good young people in schools and mosques, recitation assemblies, and education and training centers.

It can be said that children have spiritual and physical needs both for the environment and for their parents, protection for religious and moral education. Avoiding all bad things and causing damage to a child's future due to free association or due to begging. Because in terms of educating children, several things need to be considered regarding the rights of children, namely:<sup>9</sup>

1. Protect children from lust and doubt
2. Familiarize children with noble character
3. Keep kids away from bad friends
4. Mingle and get closer to children
5. Be a good role model for children.

On the previous occasion, the author interviewed about the reasons why a child does begging, among others, to help their parents and only fill their spare time when they come home from school. However, whatever the reasons presented or encountered by the author is a social phenomenon where a child does this voluntarily, but this makes the child vulnerable to economic exploitation, the child can meet someone who is not responsible for asking for a deposit.

<sup>8</sup> Heri Jauhari Muchtar, *Fikih Pendidikan*, Bandung: PT Remaja Rosdakarya, 2015, p.83

<sup>9</sup> Abdul aziz ibn fauzan ibn shalih al-fauzan, *fikih sosial: tuntunan dan etika hidup bermasyarakat*, jakarta: Qisthi Press,2017, p.227-228

In Islam, the law of begging has been explained that the law is not allowed. Instead, what is recommended is to give each other with the hands above being better than the hands being below. A hadith, Muslim about the prohibition of begging. Meaning: "And from Abu Hurairah radhiyallahu Anhu said, "The Messenger of Allah sallallahu 'alaihi wa sallam said, "Whoever asks for wealth from humans to enrich himself then indeed he has asked for coals of fire. Therefore, let him ask for a little or a lot." (HR. Muslim).<sup>10</sup>

In addition to the hadith above, the hadith narrated by Sahih Bukhari Muslim about the prohibition of begging. Meaning: It was narrated from Mu'awiyah r.a, he said,

"Whomever Allah wills goodness for him, he will make him understand religion. I am only a sharer, and Allah is the (Almighty) Giver. As long as this ummah stands on the religion of Allah, it will not be disturbed by those who oppose them until Allah's destiny comes."<sup>11</sup>

Prevention and provision of knowledge to children that are carried out are always improved or implemented as early as possible to provide a positive influence to protect the nation's future young generation. The ideals and goals of equal foundations are likened to qawaid fiqhyah, that is, every case depends on the intention).

## 5. Conclusion

Examining the discussion that has been described by the researcher above, several conclusions can be drawn, namely as follows:

1. The basis of parental responsibility in employing children as beggars in the City of Gorontalo is an error in the soul of the parents with their behavior in this case employing children as beggars who can be sanctioned. Based on his psychology, the perpetrator can be reproached for his behavior, in other words, only with this inner connection can the prohibited act be held accountable for the parents who employ their children as beggars. This wrong mind is an error which is the subjective nature of the crime because it is inside the perpetrator, therefore the error has two aspects, namely the psychological aspect and the normative aspect. The existence of parental responsibility in employing children as beggars in Gorontalo City requires a condition that the maker can take responsibility. A person cannot be held accountable if he is not able to be responsible. The question that arises is when someone is said to be able to take responsibility. Is the measure to state the existence of that responsibility. The Criminal Code does not mention the meaning of the ability to be responsible. Related to that is Article 44: "Barang siapa melakukan perbuatan yang tidak dapat dipertanggungjawabkan kepadanya, karena jiwanya cacat dalam tumbuhnya atau jiwa yang terganggu karena penyakit tidak dipidana". Beberapa pendapat sarjana hukum, Moeljatno menyimpulkan bahwa untuk adanya kemampuan bertanggung jawab harus ada:
  - a. The ability to discriminate between good and bad deeds; under the law and against the law;

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<sup>10</sup> Shahih Muslim (1041).

<sup>11</sup> Muhammad Fu'ad Abdul Baqi, Mutiara Hadist Shahih Bukhori Muslim, 2014, Solo: Darul Hadist Qahirah, hlm, 273

The ability to determine his will according to the realization of the good and bad deeds earlier.

The first is the reason factor, which can distinguish between what is permissible and what is not. The second is the feeling or will factor, which is being able to adjust his behavior to the realization of what is permissible and what is not. As a consequence, of course, parents are not able to determine their will according to the realization of the good and bad deeds, he has no faults. Such a person cannot be held accountable. According to Article 44, This inability must be caused by a defect in his mental apparatus or pain in his body.

The perspective of civil law and Islamic law on the responsibility of parents in employing children as beggars where between parents and children have a relationship of mutual dependence, reciprocity, and togetherness. So if a child can feel the attention of his parents for him, the gentle attitude and affection of both and feel their efforts for his happiness, he will feel compelled to be more devoted to them, always sincere and take care to always do the rights of parents. Protection of children where there is a phenomenon of begging by minors, those who do it voluntarily to help their parents or are forced to beg. In Islam, the law of begging has been explained that the law is not allowed. What is recommended is that it is better to give each other the hand above than the hand below.

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Law:

Pasal 330 KUHPperdata

Pasal 69 ayat (2) UU Ketenagakerjaan

Pasal 44 KUHP

Hadits:

Shahih Muslim (1041).