



## **Literature Review: Health Aspects and Legal Protection for Children in Scotland and Indonesia**

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### **Abstrak**

This paper for the first time presents the results of research related to Health Aspects and Legal Protection for Children. The research method presented in this paper is a literature study. Two countries, Scotland and Indonesia, were included to gain various perspectives through a literature review. The results show that the Health and Legal Protection Aspects for children are still based on the philosophical approach to the welfare and best interests of children.

**Keywords:** health, legal protection, the best interests of children.

### **Introduction**

Every child in the world has the right to health insurance and legal protection. Every country has laws that protect this right. Health is not a program that guarantees 'health for all'. Every child in the world has the right to health, regardless of race or gender. All children, regardless of their limitations or circumstances, have an interest in realizing the best for themselves.

Health and legal protection are some of the important factors implemented to achieve the 'best interests of the child'. Health and legal protection are strategies used to protect children's rights to obtain proper health and legal protection without discrimination (Convention on the Rights of the Child, 2014). Conventions and international treaties relating to Gender Equality that have been ratified are evidence that equal legal protection has been recognized and implemented in a number of countries.

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Some countries in the west are known to have the best health systems, and legal protections; for example, Scotland is known to have the superior legal protection system in the west. In Scotland, the Child Listening System deals with adolescent girls who commit abuses, and children in need of health care and legal protection (Bramita & Cahyaningtyas 2018). Together with other agencies, the Scottish Child Reporters Administration (SCRA) operates this system with a single vision: to strive to achieve the best interests of children.

In Indonesia, based on research results from the Working Group on Women and Children of the Supreme Court of the Republic of Indonesia (MARI) and the Indonesian Judicial Monitoring Society, the Faculty of Law, University of Indonesia (MaPPI FHUI) once studied women in conflict with the law and submitted recommendations for changes to regulations, and guidelines for sentencing. In general, there has been a study of the Gender Perspective Decisions from the Supreme Court, including Decision Number 179/SIP/1961. Decision Number 86 K/AG/1994. Decision Number 410/Pid.B/2014/PN.Bgl. Decision Number 1143/Pdt.G/2012/PA.JB. Decision Number 266 K/AG/2010. Decision Number 137 K/AG/2007. Decision Number 583/Pdt.G/2011/PN.Jkt.Sel. Decision Number 1331 K/Pdt/2010. Decision Number 16 K/AG/2010. This study generally examines aspects of religious court decisions, civil decisions of district courts. This study is useful regarding decisions from a gender perspective, the substantive equality/equity approach is seen as the most appropriate approach. This approach gives a high appreciation of the special function of women's reproduction, along with their maximum contribution in society. Based on the MARI and MAPPI research, there are gaps, in the sense that the judge's decision seems inconsistent in dealing with sexual violence. However, there has not been a specific study related to the health system and what kind of legal protection is appropriate. On this basis, it is very urgent to conduct a special study that discusses the health system and legal protection for children.

This literature review was conducted to gather sufficient information about the development of the health system, and legal protection in countries, particularly Scotland and Indonesia. The method used in this study is a literature study, which was carried out by collecting data from several previous studies to answer questions about how the development of the health system and legal protection in these three countries works.

## **Literature Review**

### **Children's Rights Concept**

In the broadest sense, 'child rights' can be said to include civil, political, and social rights (Branson et al 2017). The construction of children as powerless has given rise to categories of rights that can be described as protective or paternalistic. The history of children's rights in

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international law is oriented toward the philosophy of protection. Children need the right to be adequately cared for and receive adequate guidance and advice. In essence, it is more of an acknowledgment of the obligations imposed on the state and parents—to ensure the growth and well-being of children (Foster et al 2019).

This purpose can be juxtaposed with other types of rights; the right is taken to describe an area of personal freedom in which the right holder can operate without interference either from other individuals or from the state. In this sense, rights are basically permissive. Freedom of expression and freedom of religion are examples of these natural rights (Article 12 of the United Nations Convention). The idea that children as human beings should have ‘human rights’ has been described as less revolutionary. The granting of such rights to a child emphasizes his autonomy and makes the assumption that he will be able to exercise it, either or with assistance, thereby assuming a level of ability and competence. The United Nations Convention itself still provides protection for children. For example, Article 32, identifies the protection of children from hazardous work, and exploitation. Article 33 protects children from the use of illegal drugs. In addition, the United Nations Convention guarantees the right of children to express their own views freely, the views of children are regulated in accordance with their maturity and age. Children need to be heard in every administrative and judicial process, through representatives or directly. It expressly acknowledges their agency. Simultaneously, it maintains a focus on protecting them by softening rights taking into account their age and maturity. Thus it maintains the character of welfare provisions and makes room for the exercise of individual wisdom. Children in welfare theory need protection and are especially vulnerable; The child takes full responsibility for his actions because he is the agent who caused them and their consequences. An appropriate tension between powerlessness and independence is inherent in the status of being a child. If the law, in general, wants to treat children fairly, it must accommodate them as they are, taking into account this paradox. Reconciliation of children’s needs for protection with their encouragement for independent action is possible in the legal field which in turn will become a model for reconciliation in efforts to unite welfare and justice (Cree, et al 2018). In this way, through reconciliation, children’s rights help in developing children as autonomous children who need protection at the same time.

Children’s agency, as the term is understood in agency law. Thus, the child’s client gives instructions about his wishes and the lawyer puts them into practice. Thus, it clearly recognizes the autonomy of the child client. On the other hand, representatives may, present the best interests of the child client and be appointed to defend the child’s interests in proceedings (Children (Scotland) Act 1995). Research suggests that the patrons themselves view their role as advising the court about what is in the best interests of the child. The views of the child obviously have an important role in determining the content of these

interests, but it is the child's needs, as assessed, paternalistically, by the protected party, that drive the recommendations that are ultimately made. In Miller's case, it was decided that the examination of the child determines the rights of the child in civil proceedings under the provisions of article 6 of the European Convention on Human Rights. This necessitates the provision of legal representation for children (Murphy 2021). The role of legal representation is defined, as 'to enable the child to participate effectively in court proceedings' (Children Hearing Scotland Rule 2001). Children's participation in line with one of the pillars of the UN convention is the right of children to be heard. It has long been recognized that the Convention itself contains an inherent tension between rights and welfare. In Scotland, collaborative law and mediation are the main mechanisms used in the context of cases involving children (Murphy 2021). Divorced Scottish parents are now provided with a complete package of materials to enable them to make arrangements for the future care of their children. Similarly, the new systems approach to child support emphasizes the need for parents to come to their own agreement. Again, empowering people to find their own solutions is welcome, but as long as the voices and welfare of the children involved are at the center of the process—something the law doesn't try to guarantee. However, the trend is far from universal.

While the juvenile hearing law recognizes the right to participate, the picture that practice research paints at trial is one of at least partial powerlessness on the part of children (Komalasari & Mustafa 2021). Formal legal recognition of rights can be said to be quite advanced, but when we turn to practice, time and money pressures can hinder the exercise of Scottish children's rights. In this way, the representative exercises the rights of the child when he or she carefully presents the best interests of the child client and recognizes the autonomy of the child client. This means that children's rights help in constructing children as autonomous children and at the same time need protection.

### **Concept of Welfare**

As a philosophical approach, welfare is holistic. Reducing offensive behavior is one goal, but not the only one (Herring & Foster 2012). Welfare has been considered a 'soft' response to juvenile crime, but the breadth of discretion it provides is such that almost any intervention can be imposed on children. However, in the concept of welfare, punishment does not play a role (Komalasari & Mustafa 2021). The youth tribunal appears to be an example of toughness rhetoric made for life. Overall, it would be wrong to characterize youth justice as anything but an 'although' response to juvenile crime in terms of resilience/well-being, the dichotomy discussed above, but these two points at least suggest a slightly paradoxical approach. Even these largely punitive measures are necessitated by welfare considerations (Herring & Foster 2012). In this way, in relation to the resilience/welfare dichotomy, the term "justice" is seen as inappropriate to be juxtaposed with welfare.

In family law and medicine, the best interests and concepts of welfare play an important role. Article 1 of the 1989 Children's Law stipulates that the main consideration of the court is on the basis of the welfare of the child. These considerations relate to the determination of children's assets and child care (Herring and Foster 2012).

The Mental Capacity Act 2005 Article 1(5) provides that decision-making must be in the best interests of the child. In practice, the terms best interests and welfare are seen by the courts as synonymous. To promote the best interests of the child, the atomistic entity of the child must be seen by the courts, regardless of the impact on society at large, on the child's parents, or on other children. The welfare principle in the 1989 Children's Law requires the best interests of the child as the basis for court considerations (Murphy 2021). Well-being can only be defined fairly well by the place to link the chain of relationships in which beings occur. This can consist of perfecting qualities, for example, one's satisfaction, goal attainment, and relationships. However, in considering the best interests of the child, particularly in articulating principles or values, courts have conventionally refused and failed (Kubek et al 2020). The best interests or well-being are better understood as individuals who regard the relational nature of our lives and the interests of humanity. The development of Eekelaar's writings on the child rights approach is used as a comparison. According to Kubek, the goal is to lead children to early adulthood through full opportunities to follow and form life goals that reflect independent choices (Kubek et al 2020). In order to improve a child's decision-making, care must be taken to avoid the harsh effects of the early period of a child's growth that unduly limit a child's ability to approach their own characteristics, and best developmental context (Herring and Foster 2012). In this way, to construct such an ideal type, the children's atomistic entities must be seen. Their life purpose must be conveyed.

## **Scotland's Health System and Legal Protection**

In this section, we present a perspective on child welfare in Scotland. We will observe the chronology of history in Scotland to see the process of development of the concept of welfare.

About 2 centuries ago in 1840, during the industrial revolution, Scotland had pioneered the concept of child welfare. The situation in 1840, there was no legislation regulating child welfare, because of the economic crisis in 1840, many neglected children and juvenile delinquents were tried in court (Birckhead 2012). Judge/Sherrif Watson from Aberdeen was one of the influential people in introducing the concept of welfare in 1840, through his decision Sherrif Watson ordered every child on trial to undergo Industrial school. This industrial school is a free school founded by Sherrif Watson. Every child is required to go to school and equipped with work skills and income that can help their parents. At that time the idea of Industrial school was supported by the community.

About a century later the concept of welfare was continued with the existence of the Kilbrandon report commission which recommended five pillars of the concept of welfare, namely: 1) Managerialism and accountability; 2) protection of the public, effective practice, and risk management (public protection, effective practice, and risk management); 3) crime prevention and the inclusion of social (crime prevention and social inclusion); 4) responsibility and the rights of individual; 5) restorative's justice and victims as stakeholders (Bramita & Cahyaningtyas 2018).

Based on the recommendations of the Kilbrandon commission, the Children's (Scotland) Act 1995 was born. This law gave birth to the Children Hearing System. This system consists of a Panel (which is a Lay Judge). Then there is a reporter in charge of referring children. Then there are Social Workers who are tasked with assisting the implementation of panel decisions in collaboration with other relevant agencies. Since the Children Hearing System was implemented, almost 95% percent of child cases are referred to the Children Hearing System. The recent Children (Scotland) Act 2011 expanded the scope of cases for children who can be referred to the Children Hearing system (Whincup et al 2018).

From our visit to the Children Hearing System in March 2013, we got the findings. That the system works more with an informal approach (compared to the court system which tends to be more formal) that this system unites restorative justice programs and upholds three main principles: the privilege of children; the need to take into account the views of the child, and the principle of non-intervention. Based on these principles, it appears that the Children Hearing System in Scotland remains based on the philosophy of welfare.

The Child Hearing System deals with teenage girls who commit abuses, and children who need care and protection. Together with other agencies, the Scottish Child Reporters Administration (SCRA) operates this system. Reporters refer to a total of 42,532, children in 2009/10. This number represents 4.7% of all children in Scotland (Whincup et al 2018).

A total of 13,829 children were subjected to supervision requirements as of March 31, 2010. To address high-risk situations, Hearings may arrange for the Sheriff to issue a Child Protection Order (CPO). Section 52(2) of the Children Act (Scotland) 1995, establishes the basis for Referrals, including the antisocial behavior referred to by the Sheriff; is an unreasonable absence from school; drug abuse; serious injuries caused by lack of care; has committed a violation; have been victims; uncontrolled care or parenting; risk of moral harm (Whincup et al 2018). The best interests of the child are the basis for measurement and consideration of supervision.<sup>94</sup> Child welfare is also the basis for consideration of the panel's decision-making. Section 67(2) of 2011 (Scotland) Children's Law establishes new reference bases, which include having committed domestic violence; it had a close relationship with the offender under the Sexual Offenses (Scotland) Act 2009; which has a severe opposite effect

on children's development, children's health, children's safety; subject to physical, emotional or other pressure to enter into a civil partnership; should be forced into marriage (Biehal et al 2019). The auditory system that follows the core values of the Kilbrandon report includes the separation between the determination of disputed facts and the child's treatment decisions; treatment decisions are made by a lay panel; the main consideration is the recognition of the child's needs; the problems of children are handled vitally by the family; preventive and educational approaches are adopted. Research shows that the system needs to learn more about the selection of panel members; the skills and methods involved in the supervision of children are required. In practice, this system touches on restorative justice programs and highlights three main principles: the welfare of the child is paramount throughout his childhood; the need to take into account the views of the child; and the principle of non-intervention (Birckhead 2012). In this way, the Scottish children's hearing system remains grounded in a philosophical approach to well-being.

In Scotland, the Child Hearing System has offered some protection to many Scottish children and young people from neo-conservative reactions to young offenders (Bramita & Cahyaningtyas 2018). This respect for them as moral beings is distinguished in a way that grants appropriate kinds of transformation between mature and mature agents as well as moral goals to support the later mature to take the 'relay' from before. In contrast, in juvenile delinquency courts in the United States, very large numbers of children in the system are not making ends meet (Murphy 2021). It is much easier for system stakeholders to blame youth than to change policies and practices that might contribute to inequality. For example, a child who is in conflict with the law on behalf of Marcus, like all our children, deserves better (Murphy 2021). Trying to realize the potential of young people should be at the core. The Scottish Parliament should deal with juvenile offenses on this basis. The European Convention on human rights, article 8 is perhaps the most likely to present a direct challenge to the principle of welfare and concentration on the rights of this child, taking place, a considerable emphasis on the need to obtain their views, in reaching decisions on their welfare ( Birckhead 2012). The Children's Panel Advisory Committee (CPAC) aims to recommend to the Secretary of State the names of applicants for appointment. The welfare approach has persisted in Scotland despite increasingly punishing climates elsewhere. There are five key themes underpinning the development of Scottish youth justice: 1) managerialism and accountability; 2) community protection, effective practice, and risk management; 3) crime prevention and social inclusion; 4) individual responsibilities and rights; 5) restorative justice and victims as stakeholders (Biehal et al 2019). This integration provides a potential benefit to the resulting actual capabilities for the holistic response of the child and individual conditions despite knowing that certain children may have different requirements.

In this way, managerialism and accountability; community protection, effective practice and risk management; crime prevention and social inclusion; individual responsibilities and rights; Restorative justice and victims as stakeholders are key themes supporting the development of Scottish youth justice.

## **Health System and Legal Protection in Indonesia**

In this section, we present the perspective of child welfare in Indonesia. We will observe the chronology of legal protection in Indonesia to see the development process of legal protection for children. Furthermore, it should be noted that crimes and problems often occur in children and women. One form of sexual exploitation in the crime of pornography is child pornography. Law Number 44 of 2008 concerning Pornography regulates the crime of sexual exploitation of children in the context of child pornography, as regulated in Articles 4 to 12. In the case of decency crimes involving children as victims of child pornography, judges should pay attention to whether or not there is sexual exploitation of children in pornography cases. The judge in his decision on the crime of decency related to child pornography, must consider, among other things, the physical impact, namely when sexual violence occurs. The psychological impact, which of course can affect the development of children to adulthood, can be attached. Social impact, exclusion in society. Access to services and the stigma that children are immoral or have a view of children as perpetrators of immoral acts must be avoided, resulting in children being excluded from the community.

A study indicates various factors that can influence judges in making sentencing decisions against children who are in conflict with the law, including internal and external factors of judges. The internal factors include subjective factors (a priori behavioral attitudes, emotional behavior attitudes, and the judge's own moral attitude) and objective factors (social, cultural, and economic background). Based on the findings of research conducted in terms of enforcement of criminal acts of decency, it can be processed and decided according to the provisions of the applicable legislation. However, the implementation of Perma No. 3 of 2017 concerning Guidelines for Adjudicating Women Facing the Law, based on the author's analysis, has yet to be implemented optimally. The Perma has not been implemented optimally, based on the author's analysis, due to the perspective of the enforcement officers who have not placed women face to face in the true sense. The approach used by enforcers, especially judges, is still dominated by a perspective that focuses on the formulation of laws only (Mustafa et al 2021).

The process of developing the health system and legal protection in Indonesia still needs some improvement. This improvement is not only carried out by one party but is carried out jointly by the government, the health sector, law enforcement, and the community.



## Results and Discussion

In general, health insurance and legal protection for children with inclusive education are easy. Implementation in Scotland and Indonesia has its own challenges and benefits. However, it is important to note that the constraints faced by the three countries are the same. Especially in the aspect of children's privileges; the need to take into account the views of the child, and the principle of non-intervention.

In the areas of health care and legal protection, both countries face the same challenges in terms of considering the views of children. Many views of children tend to be underappreciated and under-considered in the health care and legal protection programs that have been developed (Branson et al, 2017; Bramita & Cahyaningtyas, 2018; Foster et al, 2019). Stakeholders tend to still lack full responsibility for health care programs and legal protection for children (Herring & Foster, 2012; Cree et al, 2018; Murphy, 2021). Healthcare workers and law enforcement find it difficult to exchange ideas with experts as well as with their colleagues. According to Whincup et al (2018), Biehal et al (2019), and Kubek et al (2020), health professionals and law enforcement specifically related to children have difficulty communicating with peers and competent people to exchange expertise and consult with the program they have created. According to Komalasari et al (2021), most professionals also struggle to communicate their programs with health care beneficiaries; this can contribute to parents' understanding of their children and the benefits of health care and legal protection programs that have been developed.

Based on the above discussion, guidelines for health insurance and legal protection for children that apply to health practitioners, legal practitioners still need to be studied. The presence of sentencing guidelines and efforts to improve the quality of reasoning and frame of mind of judges, especially on strategic issues, such as women dealing with the law, are an ideal combination in developing a health system and legal protection for children that are more in favor of the best interests of children.

## Conclusion

The implementation of legal protection for children is not without challenges. Many challenges must be overcome. Developed countries, such as Scotland, face similar challenges in developing legal protection for children. Cultural challenges that exist in society, such as the fact that there are many children who receive less attention in the aspects of health services and legal protection, as well as public acceptance of the situation of children in conflict with the law, experience several obstacles that are often faced. Judges in their decisions on children who are in conflict with the law must consider, among other things, the physical impact, namely when sexual violence occurs. The psychological impact, which of course can affect

the development of children. Access to health services and acceptance from the community can ultimately contribute to meeting the best interests of children in the Indonesian context.

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