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CHILDREN'S NATURAL RIGHTS IN THE LAW ON MOTHER AND CHILD WELFARE ACCORDING TO MONTESQUIEU

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Abstract. This study focuses on Article 12 paragraph (1) letter g of Law No. 4-2024, Indonesia. This article states that "every mother and father has the obligation to instill religious values, faith in God Almighty, and good character in their children." The essence of the obligation of every mother and father, while a natural obligation, is not part of the state's obligation to regulate because it would violate the natural rights of children. This study uses normative research but in its elaboration it still relies on the belief in what is right. Normative research asks questions that are relevant to the development and implementation of legislation. The natural rights in Article 12 paragraph (1) letter g are not in accordance with the teachings of Montesquieu because the state has made them a norm and they are not in line with the origins of their formation. The state was formed because society was unable to fulfill its natural desires due to a lack of facilities. Even if there were no facilities, mothers and fathers would refer to Article 12 paragraph (1) letter g of Law No. 4-2024 and would try to instill religious values, faith in God, and good character in their children.

Keywords: *children; natural rights; mothers and fathers.*

Rezumat. Prezentul studiu se concentrează pe articolul 12 alineatul (1) litera g din Legea nr. 4-2024, Indonezia. Acest articol prevede că „fiecare mamă și tată are obligația de a insufla valori religioase, credința în Dumnezeu Atotputernicul și un caracter bun copiilor lor”. Esența obligației fiecărei mame și a fiecărui tată, deși este o obligație naturală, nu face parte din obligația statului de a reglementa, deoarece ar încălca drepturile naturale ale copiilor. Acest studiu utilizează cercetarea normativă, dar în elaborarea sa se bazează totuși pe credința în ceea ce este corect. Cercetarea normativă pune întrebări relevante pentru dezvoltarea și implementarea legislației. Drepturile naturale din articolul 12 alineatul (1) litera g nu sunt în conformitate cu învățăturile lui Montesquieu, deoarece statul le-a făcut o normă și nu sunt în concordanță cu originile formării lor. Statul a fost format deoarece societatea nu a putut să-și îndeplinească dorințele naturale din cauza lipsei de facilități. Chiar dacă nu ar exista facilități, mamele și tații s-ar referi la articolul 12 alineatul (1) litera g din Legea nr. 4-2024 și ar încerca să insufle copiilor lor valori religioase, credința în Dumnezeu și un caracter bun.

Cuvinte cheie: *copii; drepturi naturale; mame și tați.*

1. Introduction

In universal legal literature, children are legal subjects who need legal protection. The legitimacy of a child is determined based on a valid, void, or voidable marriage. Children born from a valid marriage are considered legitimate, while children born from a void or voidable marriage are considered illegitimate. The actions of both parties determine the status of children in society. If both parties enter into a valid marriage, the child resulting from that marriage is considered legitimate. If not, and they live together and conceive a child, then the child is labeled as illegitimate, suffering greatly even though they are innocent and have done nothing wrong [1]. This cycle does not make the child wrong in legal terms, but rather provides more adequate protection. In human resource development, the population group that needs attention is children. Based on the results of the 2020 Population Census, there are 79.71 million children among the total population of Indonesia. These children will grow up and contribute to the economy in the future. Therefore, providing welfare for children today is tantamount to preparing for the welfare of society in the future. In the context of sustainable development, children are agents of change and successors, so investing in children is very important to achieve sustainable development targets [2]. Finally, in 2024, there was Law of the Republic of Indonesia Number 4 of 2024 concerning the Welfare of Mothers and Children in the First Thousand Days of Life (Law No. 4-2024), but the articles tended to regulate the protection of children. Referring to the positive law of Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, there is a contradiction because, naturally, what is desired for children is the obligation of parents. There are legal peculiarities regarding differences in beliefs in various societies, but for Montesquieu, these differences usually lead to 'prejudice' or 'superstition', which are prone to being eliminated as interaction between societies and individuals increases, whether through trade, immigration, or mixed marriages, so that children remain part of their parents [3].

This study focuses on Article 12 paragraph (1) letter g of Law No. 4-2024, which states that "every mother and father has the obligation to instill religious values, faith in God Almighty, and good character in their children." The essence of the obligation of every mother and father, while a natural obligation, is not part of the state's obligation to regulate because it would violate the natural rights of children. To support the originality of this paper, the first comparison is with the work of Januar Akbar Wibisono, who states that when a mother brings her child into a correctional institution as a prisoner, this must be supported by "standards and principles of children's best interests and special protection for women" [4]. This shows that there are children's needs that cannot be replaced by anything else and that a mother's support is a natural right. The second comparison by Elisabeth Anderson shows that the impact of a mother's retirement changes the behavior of child workers. This means that a mother's retirement means that children do not need to work, resulting in a reduction in child labor. This has a positive impact on children's development [5]. The third comparison is by Ratna Kartika Wati, Ani Kusbandiah, and Indriati Amarini, who found that online loans have become an increasingly common phenomenon among students, especially in today's digital era. However, the decision to take out such loans often involves complex moral considerations. The factors that influence students' decisions to borrow from online loans are financial needs, social pressure, and a lack of understanding of the risks [6]. From the third comparison of the studies, there is no state involvement in realizing children's wishes. In the originality search, no similarities were found that discuss child welfare from a natural rights perspective. The tendency for law-based research only leads to rights and obligations, so that

the end result is the fulfillment of rights that have implications for sanctions on what mothers and fathers do to their children. Based on the above arguments, this study raises the question of whether children's natural rights in Law No. 4-2024 are in accordance with Montesquieu's teachings.

2. Materials and Methods

This study uses normative research but in its elaboration still relies on the belief in what is right. Normative research asks questions that are relevant to the development and application of legislation [7]. In this case, the legislation in question is Law No. 4-2024, where social order is also part of legal science. Normative research in the traditional sense is based only on applicable legislation but must be adjusted to current empirical conditions.

Legal theory, as a continuation of general legal doctrine, definitively occupies a place between legal dogmatics on the one hand and legal philosophy on the other. As with general legal doctrine, legal theory is, at least by most people, viewed as a value-free and non-normative science. This distinguishes legal theory from legal philosophy and legal dogmatics [8]. This assertion is very important because when absolute normative research is used, it will not answer "whether" based research questions. The two cases were synthesized and analyzed based on relevant principles and rules obtained mainly from relevant statutes and legal doctrines [9]. The main approach is legal interpretation so that readers also share the researcher's belief that natural rights are biased in legal science.

3. Results and Discussion

Arguments Using Montesquieu's Teachings

Montesquieu was born on January 18, 1689, and died on February 10, 1755. He was a French philosopher who lived during the Renaissance. Montesquieu had a very unique personality. He spent much of his time not only observing the political and legal systems in France but also comparing them with those in other regions. His restless soul, seeing the reality of injustice suffered by the people and the arbitrariness of the rulers, led him to visit the centers of Western civilization such as Vienna, Venice, Florence, Rome, and Naples. He also traveled extensively to England, the Netherlands, and Germany. In these places, he studied and investigated local political institutions. These experiences led him to understand the causes of injustice and how justice is present in society. Montesquieu believed that human nature is inherently fair, but due to certain social situations, people begin to choose to be fair or unfair. His most popular work is *The Spirit of Laws*, and his famous teachings are related to the separation of powers. In this line of thinking, society is synonymous with freedom that stems from its own natural will. Book VIII states that "it is in the nature of a republic that it must have a small territory; without it, it is almost impossible for it to exist. In a large republic, there is great wealth, and as a result, there is little moderation of spirit. In a large republic, the public interest is sacrificed for a thousand considerations; the public interest is subordinated to various exceptions; the public interest depends on chance. In a small republic, the public interest is more strongly felt, better known, and closer to every citizen." The natural will of the state is not the same as the will of the state. The state cannot escape its monopolistic, coercive, and both natures. There is a polarization of needs so that the state also sometimes acts as if it is fulfilling the desires of the people. Ola Olsson argues that the size of a state has two main effects: First, a large territory means less dependence on foreign trade and a greater absolute value of expected rental income from land and mines. Second, that the strong concentration of power in a country's capital and core regions implies that

public goods such as the rule of law spread according to a spatial decay function, so that the level felt in the interior is much weaker than in the capital [11]. This supports the state in being able to act according to its will. The separation of powers does not necessarily provide a sense of moral justice for society, but the separation of powers was originally intended to break away from the absolute power of the king.

Ultimately, the natural will of society is limited by state power. This limitation is not a form of reduction, but rather the state's attitude of protecting the human rights of other communities. There cannot be true freedom, lest the natural will that actually arises from the desires of the people emerge, but it is very difficult to determine whether this is natural or influenced by the surrounding environment.

The Desired Behavior of the State in Law No. 4-2024

Law No. 4-2024 raises its own legal issues, namely the ambiguity of the meaning of "the first thousand days of life" in the formulation. Normatively, the first thousand days of life is the phase that occurs in a child from the formation of the fetus in the womb until the age of 2 (two) years. Merriam-Webster defines a year as a *cycle in the Gregorian calendar of 365 or 366 days divided into 12 months beginning with January and ending with December; a period of time equal to one year of the Gregorian calendar but beginning at a different time*. There is an inconsistency between the understanding of the first thousand days in Law No. 4-2024 and the global calculation. If adjusted, the wording of Article 1 point 2 would become a person whose life begins from the formation of the fetus in the womb until the child is 3 (three) years old. The ambiguity of this formulation makes the legal norms within it difficult to understand, which ultimately does not provide legal certainty.

In general, it is known that the family, as the smallest unit of society, plays an important role in sustainable development for future generations. One of the main efforts in shaping a quality generation is carried out by improving the welfare of mothers and children. The condition of mothers before pregnancy, during pregnancy, childbirth, and postpartum, breastfeeding children, or mothers who adopt, care for, educate, and/or nurture children is a special concern so that children can live, grow, and develop optimally. Law No. 4-2024 does not require the state to immediately implement its provisions because there is a maximum period of 2 (two) years from the date of its enactment before its implementing regulations are stipulated. This means that the state is passive and does not make the welfare of mothers and children a national priority. State behavior can be examined using a natural state approach. Philosophically, the existence of the state is to protect its people. Ibn Khaldun's thinking is divided into two parts. The first is the theory that views imamah and the formation of the state as an obligation and pillar of religion, as stated by the Shi'ah. According to them, an imam may be chosen by the people, but the process of his appointment must be based on religious texts. Second, there is a theory that views imamah and the state as neither an obligation nor a religious prohibition. It is not a religious duty, but a social issue concerning human relations. And third is a middle theory that positions itself between the two theories above. This theory states that imamate is obligatory, but it must be based on an election process, not on religious texts. There are levels of importance regulated by the state, but it must also pay attention to human relations. Specifically, humans tend to be influenced by the things they do. Humans are children of their habits, not of their ancestors [14]. This idea emerged because he was raised in a culture of Asabiyyah, which would attack and destroy smaller groups. In addition, the next generation enjoyed a luxurious lifestyle, neglecting their

valuable reputation and moral ideals. Thus, there was a decline after the fall of Asabiyyah. Natural rights driven by habit also cause a person to forget their ancestral entity.

Researchers have linked Ibn Khaldun's thinking as a comparison in finding state behavior because it refers to Article 1 paragraph 1 of Law No. 4-2024, a condition of fulfilling the basic rights and needs of mothers and children, which include physical, psychological, social, economic, spiritual, and religious aspects, enabling them to develop themselves and participate optimally in accordance with their social functions in the development of community life as state behavior that negates its obligations to society. Such contradictions ultimately result in the state only being able to provide assistance when mothers and fathers are unable to do so.

Reading Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) that the State of Indonesia is a Unitary State, which is a Republic. Here, there is glorification of society because a republic does whatever it takes to meet the needs of society. However, there are restrictions where fulfillment cannot be done absolutely by society. This is clarified in Article 33 paragraph (3) of the 1945 Constitution, which states that the land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. In line with Montesquieu's thinking, the state as intended in Law No. 4-2024 is in accordance with the will of the rulers and is part of the realization of Article 12 paragraph (1) letter g of Law No. 4-2024. However, there is a contradiction when the public reads this article, as it does not correspond with the state's interpretation. This is in line with Hans-Georg Gadamer's thinking to combine the fusion of the contemporary horizon in understanding the text of the law. Prejudice is a prerequisite for understanding; prejudice "represents the initial position from which an understanding originates". Our prejudices greatly influence our interpretation. Hans-Georg Gadamer frames prejudice as "initial or anticipatory understanding," and this meaning "should not be equated with its connotation as irrational or wrong thinking"[15]. Here, we need understanding in interpreting the state's behavior in Law No. 4-2024.

Natural Rights of Children

In the beginning, humans only used their minds to solve various problems. Using their minds did not mean negating the "powers" that existed outside of themselves, but rather optimizing what they believed in. Aristotle defined natural science as the study of "change," with kinematics at its core. This is a concept that encompasses not only change in place but also change in quantity (creation and destruction) and quality. If the existence of an individual entity is determined by a broader horizon that encompasses its boundaries, and if the expansion of that horizon is unlimited and retrospective in nature without a conclusive limit that prohibits further expansion, then the absence of boundaries complicates the discussion of the non-existence of the universe as a whole [16]. This means that the emergence of natural law influences humans to behave and defend their natural rights. Natural law is a law agreed upon by society, but there is a binding force even though there are no written sanctions.

The existence of sanctions is based solely on the beliefs of society. For example, if someone makes a mistake, there will be retribution in another form. This process makes it better for the state to be led by a philosopher, because he is able to resolve all problems with consideration. The definition of resolving all problems actually indicates the existence of

authority within a person, so that when there is recognition of what is believed, the state becomes better even though no one provides validation.

Humans participate in God's wisdom and goodness, which gives them control over their actions and the ability to regulate themselves for the sake of goodness and truth. Natural law reveals the original moral meaning that allows humans to distinguish between good and evil, truth and falsehood with reason. This law is universal because it is a set of general principles related to humans, which are not influenced by living conditions, culture, or circumstances. This law, in principle, is also immutable and remains valid throughout human history, because it is part of human nature [17]. Legal rights can guarantee these rights and thus promote these values. Such rights demonstrate their own existence so that fulfillment occurs [18].

By nature, children are the fruit of God's love. Not only do mothers and fathers have an obligation to provide the best, but because of the legal relationship between humans and the authorities, the state also has the same obligation. This obligation must be interpreted from a constitutional law perspective because of the role of power in it. The powers referred to are the executive, legislative, and judicial branches. The role of power in relation to children is important in Indonesia, as evidenced by the legal basis for child protection. Article 52 of Law No. 39 of 1999 on Human Rights (Law No. 39-1999) stipulates that every child has the right to protection by their parents, family, community, and the state. Children's rights are human rights, and for their sake, these rights are recognized and protected by law even from the womb. The state is obliged to fulfill these needs. These are the natural rights of children, meaning that regardless of whether they know they need them or not, their mother and father are obliged to fulfill them. Human goodness must be protected and enhanced, and must not be deliberately destroyed, in the person of all beings perfected by these goods, and entities are within the scope of this perfection precisely to the extent that they have dignity as human persons. "Human" in "human person" is essential because these goods are human goods; "person" is essential because it has the special advantage of being a free and rational being—again, at least in its essential capacity—all human beings are radically equal in status and thus entitled, justly and as a right, to be respected, enhanced, and not deliberately harmed [19]. In the section on the rights of citizens, the principle of "neminem laedere, suum cuique tribuere" can be applied. Almost all natural law thinkers acknowledge that these reciprocal individual rights must be respected even in a civil state after the social contract. Citizens under the law are only considered not to be allowed to use violence to defend themselves because the state will maintain their security and the courts will protect their rights. However, some of these thinkers will express this belief in terms of "permission in law" which is an unwritten part of an agreement.

The understanding of the natural rights of children begins with Article 12 paragraph (1) letter a of Law No. 4-2024, which states that mothers and fathers are obliged to prepare for, check, and maintain their health from before pregnancy, during pregnancy, during childbirth, and after childbirth. The natural attitude of mothers and fathers is to behave appropriately without further regulation so that their basic obligations are fulfilled. From an individual perspective, security is characterized as a basic human need that requires fulfillment. Individuals strive to obtain security in order to maintain their ability to act and minimize the risk of being unable to act [21]. In the process of maintaining preparation from before pregnancy to postpartum, this fulfillment cannot be left entirely to the mother and father. Their natural ability is the ability to survive, but there must be agreement on the

alienation of rights owned by the state. Referring to Article 1 paragraph 2 of the Regulation of the Minister of Health of the Republic of Indonesia Number 2 of 2025 concerning the Implementation of Reproductive Health Efforts, it is stated that all forms of activities and/or a series of activities carried out in an integrated and continuous manner to maintain and improve the health status of the community in the form of promotive, preventive, curative, rehabilitative, and/or palliative measures by the central government, local governments, and/or the community. This means that continuous legal protection will enable children to truly experience their natural rights as children, not as legal objects receiving affection due to normalization.

Then, referring to Article 12 paragraph (1) letters b, c, d, e and f of Law No. 4-2024, it is stated that maintaining the survival and growth and development of children; providing exclusive breastfeeding from birth until the child is 6 (six) months old, followed by breastfeeding and complementary foods until the child is 2 (two) years old, unless there are medical indications; providing adequate and balanced nutrition for children and appropriate stimulation according to the child's age and condition, to optimize the child's growth and development; monitoring the child's growth and development and having the child's health checked regularly at a health care facility; caring for, nurturing, educating, and protecting the child with love and affection. These articles are also the natural rights of mothers and fathers.

These basic principles and norms of natural law may seem far removed from questions about the proper political order of society, but in fact, they provide the foundation for answering those questions. The fundamental point is the moral imperative to act in a manner consistent with the fulfillment of human needs in an integral way—combined with the obvious fact that humans can only thrive in communities, and that subpolitical communities such as families and civil associations are not self-sufficient in achieving their goals and fulfilling all human needs. Children's needs have become the political authority that the state uses to counter the natural will of society. Christopher Tollefsen divides the needs that the state can fulfill without negating the natural will of society into (1) the provision of public goods and services, such as utilities and infrastructure; (2) defense against external threats; (3) protection from internal threats and judicial administration; and (4) providing for members of society who are needy and dependent and have no one else to care for them.[23] Thus, the state's authority is fulfilled while still providing facilities for the fulfillment of the natural will of society.

4. Conclusions

The natural rights in Article 12 paragraph (1) letter g of Law No. 4-2024 are not in accordance with Montesquieu's teachings because the state has made them a norm and they are not in line with the origins of their formation. The state was formed because society was unable to fulfill its natural desires due to a lack of facilities. Even if there were no facilities, mothers and fathers would refer to Article 12 paragraph (1) letter g of Law No. 4-2024 and would try to instill religious values, faith in God, and good character in their children. This article can only be implemented when obligations are not interpreted as having sanctions, so that obligations do not arise naturally but rather from external factors imposed by the state. Ultimately, mothers and fathers will do whatever it takes to fulfill Article 12 paragraph 91) letter g of Law No. 4-2024.

A suggestion that can be given is that in the formulation of legislation, natural desires should not be included so that what should already be known to the community is not

normalized. The state should strengthen the continuity of natural rights with more adequate facilities. Thus, good legal certainty will be created.

Research Data Availability Statement: JSS encourages all article authors to make their research data available. In this section, indicate where the data supporting your findings can be accessed, including links to publicly archived datasets used or created in the study. If no new data were generated, or if access is restricted due to ethical or privacy reasons, you must still provide a statement. During peer review and editorial assessment, authors may be asked to share the datasets or raw data analyzed in the manuscript and clarify whether they will be accessible to other researchers after publication. Authors should also specify details of any previously existing datasets that were analyzed in the study.

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