

# Immunization Rejection as a Parental Right and Children's Right to Health in the Perspective of Health Law in Indonesia

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## ABSTRACT

Parental refusal of immunization for children creates a conflict between parental rights in caregiving and the child's right to health, which is guaranteed by law. This research aims to analyze the conflict between these two rights within the framework of Indonesian health law and to explain the state's authority to protect children's health rights. This research uses a normative juridical method by analyzing legal regulations, scholarly literature, and legal principles concerning the best interests of the child. The results indicate that parental rights are relative and may be restricted if they endanger the child's health. The state has a constitutional obligation to ensure immunization as part of the child's right to health. The best interests of the child principle form the legal basis for limiting parental rights, and refusal of immunization can be classified as neglect of the child's rights. This study recommends strengthening immunization regulations, community education, and inter-institutional collaboration between health and legal sectors to ensure optimal protection of children's rights.

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## 1. INTRODUCTION

Immunization is one of the most effective public health interventions in preventing infectious diseases and reducing morbidity and mortality rates, especially in children. The World Health Organization (WHO) notes that immunization can prevent the deaths of 2-3 million children every year worldwide. In Indonesia, immunization programs have become an integral part of the government-facilitated basic health care system through various programs, including the National Immunization Program. One of the main targets of this program is children, as a vulnerable age group who are entitled to optimal health protection from the state.

Despite this, the reality on the ground shows that not all parents are willing to immunize their children. The phenomenon of vaccine refusal by parents is often an issue that raises a dilemma between respect for parents' rights in childcare, and the child's right to obtain an optimal degree of health. This

rejection is generally based on religious reasons, beliefs, concerns about side effects, and false information (hoaxes) circulating in the community. On the other hand, the consequences of this refusal not only have an impact on the individual child, but also on the community, because declining immunization coverage can trigger the occurrence of an extraordinary event (KLB) of infectious diseases that can actually be prevented.

Legally, this issue creates tension between two fundamental rights guaranteed by laws and regulations, namely the right of parents to determine child care as stipulated in Law No. 1 of 1974 concerning Marriage and the right of children to obtain health services as stipulated in Law No. 17 of 2023 concerning Health and Law No. 35 of 2014 concerning Child Protection. This conflict becomes even more complex when parents consciously refuse immunization, while the state has a constitutional obligation to protect children's health rights, which in some cases, demands legal intervention.

From a health law perspective, immunization denial raises a crucial question: to what extent can states restrict parental rights in medical decision-making of children in order to protect the best interests of the child? On the one hand, the law upholds individual freedom and parental autonomy in parenting, but on the other hand, the state also has a positive obligation to guarantee children's right to health, including through mandatory immunization programs. This requires juridical clarity about the meeting point between the two interests so that there is no violation of rights and obligations on the part of parents, children, and the state.

This legal issue is increasingly relevant in the global context, where the increasing anti-vaccination movement has led to a decline in immunization coverage in various countries. Indonesia is not spared from this phenomenon. Data from the Indonesian Ministry of Health shows that in 2022, there were more than 100 thousand children who did not receive complete basic immunizations due to parental refusal. This encourages the importance of strengthening regulations governing immunization obligations and sanctions for unfounded refusals.

This study aims to explore and analyze the legal conflict between parents' rights in parenting and children's rights to health in the context of immunization refusal, as well as how laws and regulations in Indonesia provide legal certainty in responding to these problems. Using a juridical normative approach, this paper also discusses the efforts that can be made by the state in harmonizing the two rights without ignoring the principle of the best interest of the child which is a fundamental norm in the legal protection of children.

The results of this study are expected to be an academic contribution to the development of health law in Indonesia, as well as provide strategic recommendations for the government in formulating immunization policies that are fair, proportionate, and respect for human rights.

## 2. METHOD

This study uses a juridical normative approach, which is a legal research method that examines and analyzes primary and secondary legal materials to understand applicable legal norms, especially in the context of immunization denial between parental rights and children's rights in health law in Indonesia. This approach was chosen because the main problem in this study is normative, namely the conflict between two rights regulated in laws and regulations.

The data sources in this study include:

1. Primary legal materials, namely relevant laws and regulations such as Law No. 17 of 2023 concerning Health, Law No. 35 of 2014 concerning Child Protection, Law No. 39 of 1999 concerning Human Rights, as well as international conventions such as the Convention on the Rights of the Child (Convention on the Rights of the Child).
2. Secondary legal materials, such as scientific literature, legal journals, the results of previous research, and the opinions of health and child law experts.
3. Tertiary legal materials, namely legal dictionaries, encyclopedias, and other sources that support the understanding of legal terms and concepts used.

Data analysis was carried out in a qualitative descriptive manner, with an emphasis on legal interpretation and an examination of the provisions of the laws and regulations that regulate children's rights to health and parental rights in parenting, as well as the principle of the best interests of children as a normative basis in determining the limits of parental authority. In addition, the analysis also pays attention to the legal policy aspects of the state in realizing its constitutional obligation to protect children's health rights, including the legal mechanism for refusal to immunize.

This method allows research to identify, explain, and formulate legal arguments systematically, thereby providing a complete understanding of norm conflicts and providing alternative solutions within Indonesia's positive legal framework.

### 3. RESULTS AND DISCUSSION

#### Parental Rights in Child Care and Medical Decision Making

Parental rights to children in the aspect of parenting and medical decision-making are an integral part of the family law system in Indonesia. This provision is contained in Article 45A paragraph (1) of Law Number 1 of 1974 concerning Marriage which states that parents have an obligation to maintain, educate, and protect their children. These obligations include the right to make decisions on behalf of children who are not legally competent, including decisions related to health services. In practice, this right reflects the state's recognition of parental authority in guiding and determining the direction of children's growth and development.

The role of parents as medical decision-makers is often seen as an extension of the moral and legal responsibility for the welfare of the child. Decisions such as accepting or refusing certain medical measures, from treatment to immunization, are within the scope of parental authority. The decision is usually considered valid as long as it is in the best interest of the child according to the parents' understanding. However, this right is not absolute and can potentially lead to ethical and legal dilemmas, especially when there are differences of opinion between parents and healthcare providers.

When a parent's decision has the potential to harm a child's physical or psychological condition, the law provides room for the state to intervene. One example is when parents refuse to give immunizations that have been scientifically proven to be able to prevent infectious diseases. Such refusal can threaten children's rights to health and decent survival. The state in this case may consider that the decision of the parents is contrary to the principle of child protection and act to ensure that the child's rights are not neglected.

State intervention in such situations is based on a principle of public law known as *parens patriae*, which is the authority of the state to act as a guardian for vulnerable citizens, including children. The state has a responsibility to protect children when parents fail to adequately fulfill their obligations or make decisions that are not in line with the best interests of the child. This principle provides legal legitimacy for the state to take certain steps to ensure a child's access to health services, even if the decision may be against the wishes of the parents.

The balance between parental rights and legal protection for children is an issue that continues to develop in social dynamics and public policy. When a child's health is at stake, the state cannot be passive to the medical decisions made by parents. Children's right to health as part of human rights must be maintained and fulfilled by all parties, including through legal policies that provide room for intervention in parents' decisions that have the potential to harm children. This kind of approach is expected to be able to create a comprehensive child protection system, not only based on parental rights, but also based on the principle of the best interests of children.

#### Children's Right to Health as a Human Right

Children's right to health is an integral part of inherent human rights from birth and must be protected by the state. The constitutional guarantee of children's rights is stated 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, as well as the right to be protected from violence and

discrimination. This provision provides a strong legal basis for the state to formulate health policies and programs that are in favor of children, including in the aspect of disease prevention through immunization.

Further provisions regarding children's rights to health services are described in Law Number 17 of 2023 concerning Health. Article 8 paragraph (1) of the law emphasizes that every child has the right to receive complete basic immunizations to prevent infectious diseases. The right to immunization is not only a medical measure, but also a form of state protection for the younger generation so that they are free from the risk of transmission of preventable diseases. This protection not only impacts the individual, but is also closely related to the protection of public health at large.

The protection of children's health rights is strengthened by Law Number 35 of 2014 concerning Child Protection, which in Article 44 paragraph (1) states that children have the right to receive health services and social security in accordance with their physical and mental needs. Immunization is included in preventive health services designed to maintain children's immunity to various infectious diseases. When parents refuse to immunize without a clear medical reason, the condition can be considered a form of neglect of the child's right to protection and fulfillment of health as a whole.

The guarantee of the protection of children's rights to health does not only stop at the national level, but is also supported by international law. The Convention on the Rights of the Child (CRC), which Indonesia has ratified through Presidential Decree No. 36 of 1990, requires states to ensure adequate access to health services for children, including disease prevention measures. This provision strengthens the state's position in taking affirmative action to protect children, while affirming that the child's right to health is universal and cannot be compromised by the parents' personal views that are contrary to medical science.

The state's responsibility in guaranteeing children's right to immunization becomes increasingly relevant when parents' decisions are not in the best interests of the child. Certain views or beliefs that lead to rejection of immunization can have a serious impact, not only on the child concerned, but also on the community in which the child lives. The State has an obligation to ensure that the right of every child to health can be fulfilled fairly and comprehensively, including through legal policies that allow intervention in parental decisions if proven to be harmful to the health of the child and the wider community.

### **Conflict of Rights and Principles of the Best Interests of Children**

The conflict between parents' rights to care and children's rights to health is a complex issue when faced with medical decision-making, such as immunizations. In dealing with this situation, the principle of the best interests of the child is the main guideline that must be put forward. This principle has been recognized in various legal instruments, both national and international, as an ethical and juridical basis in formulating policies and making decisions that have an impact on children's lives. Article 4 of Law Number 35 of 2014 concerning Child Protection explicitly states that in every action concerning children, whether carried out by the state, institutions, or individuals, the best interests of children must be the main consideration.

The application of this principle is particularly relevant when there is a refusal of immunization by parents, especially if the decision risks endangering the child's health. The state has a responsibility to conduct an objective assessment of the parents' decisions, in order to ascertain whether the actions truly represent the interests of the child or simply ignore his or her fundamental right to live a healthy and free from infectious diseases. In the event that there is a potential danger to the condition of the child or the wider community due to the refusal, the state has a legal basis to limit or even eliminate the authority of parents in certain aspects. This restriction is not intended to remove parental rights, but rather as a form of greater protection for children as legal subjects who are not yet able to make decisions independently.

Regulations regarding the restriction of parental rights that are contrary to the rights of children do not conflict with human rights principles. The rights of every individual, including parents, are not

absolute and can be limited based on legal, moral, and public interest considerations. Public health, especially the protection of children, is part of the legitimate public interest to be used as a reason for restricting rights. When personal decisions have a direct impact on the safety of others, the state must be present as a mediator and protector. In the case of immunization, refusal that is not based on medical reasons can pose a wider risk of spreading the disease, so restrictions on parental rights are proportionate and legally justifiable.

A further legal basis for state intervention is contained in Article 49 of the Child Protection Law, which gives the state the authority to take action against parties who are negligent in fulfilling the child's right to health. This provision allows the government to impose administrative to criminal sanctions against parents or guardians who knowingly refuse basic health services such as immunizations, if such actions risk causing negative impacts on children or communities. This instrument emphasizes that child protection does not stop at persuasive efforts, but can be extended to coercive actions to ensure that children's rights are realized.

The principle of the best interests of children is the main foundation in harmonizing the conflict between parental autonomy and the needs of children. The state has a responsibility not only as a policy maker, but also as an implementer and supervisor of the fulfillment of children's rights. When there is a conflict between a parent's decision and a child's health rights, the state cannot be passive. The active role of the state is necessary so that crucial medical decisions, such as immunization, are not completely controlled by the subjective views of parents that may conflict with scientific facts. The protection of children as the next generation of the nation requires a legal commitment that is in favor of their health, safety, and welfare in the long term.

#### 4. CONCLUSION

Parental refusal of immunization of children creates a conflict between parental care rights and the child's constitutionally guaranteed right to health and in national health law. From a legal perspective, the right of parents to make medical decisions about their children is not an absolute right, but can be limited if it is contrary to the best interests of the child and endangers public health. Immunization is part of preventive health services that must be provided to children, as affirmed in Law No. 17 of 2023 concerning Health and Law No. 35 of 2014 concerning Child Protection.

The State, based on the principle of *parens patriae* and its constitutional obligations, has a responsibility to protect the child's right to health, including intervening in the event of immunization refusal that is detrimental to the child. In this context, the principle of the best interests of children is the main basis for assessing and responding to the conflict between the two rights. The protection of children's rights to health is a legal priority, so that the state can and must take affirmative action, both through education, regulations, and law enforcement.

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