

THE DYNAMICS OF INDONESIA'S POPULATION REGULATION IN THE CHILD IDENTITY CARD POLICY

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Abstract

In terms of the concept of the State which has constitutive and declarative elements, of course, citizens and residents in the context of the people who inhabit the territory of the State include constitutive elements that absolutely must be fulfilled by the State, in terms of having been discussed in depth relating to the concepts of Citizens, Residents, Citizenship and Population in the theoretical review and juridical review of legislation. In addition, there are studies that show national laws and regulations that do not prioritize "equalization" of perceptions in the context of child age limits, which indirectly correlate to discrimination and even violations of children's rights, especially regarding aspects of norm clarity that cause legal uncertainty in the context of differences in the formulation of age limits from the perspective of one legislative regulation to another. This needs to be researched through this paper based on normative juridical research methods supported by statutory, conceptual, and legal fact approaches, with literature studies and analytical juridical analysis.

Keywords: Dynamics, Regulation, Population, Child Identity Card

INTRODUCTION

The Unitary State of the Republic of Indonesia according to data from the Central Statistics Agency from 2010 to 2013¹, has a population of between 238,518,800 people in 2010 to reach 248,818. 100 people in 2013², even in the projection data released by the Central Bureau of Statistics shows an increase

in Indonesia's population figures that occurred both in 2014 and 2015³, as well as in projections until 2035, which makes Indonesia the country in the world with the fourth largest population, with its own uniqueness that the entire population spread from Sabang and Merauke without distinguishing ethnicity, religion, race, culture, or any group that is glued together through Pancasila⁴ as a unifying

¹ Badan Perencanaan Pembangunan Nasional, 2014, *Statistik Politik 2014, Cetakan Pertama*, Badan Perencanaan Pembangunan Nasional bekerjasama dengan Badan Pusat Statistik, Jakarta, h. 1-2. Baca juga Badan Pusat Statistik, 2013, *Proyeksi Penduduk Indonesia 2010 – 2035, Cetakan Pertama*, Badan Pusat Statistik bekerjasama dengan Kementerian PPN dan UNFPA, Jakarta, h. 68-70. Selanjutnya disebut Badan Pusat Statistik I.

² Dalam data Badan Pusat Statistik (BPS), secara urut data kependudukan yang memuat jumlah penduduk Indonesia mencatatkan adanya peningkatan dari tahun 2010, jumlah penduduk Indonesia mencapai 238.518.800 jiwa, tahun 2011 mencapai 241.990.700 jiwa, tahun 2012 mencapai 245.425.200 jiwa, dan pada tahun 2013 mencapai 248.818.100 jiwa. Baca lebih lanjut pada Badan Pusat Statistik I, *op.cit.*, h. 68.

³ Dalam data yang dilaporkan oleh Badan Pusat Statistik, di tahun 2014, diproyeksi mencapai 252.164.800 jiwa, dan ditahun 2015, diproyeksi mencapai 255.461.700 jiwa, tahun 2016, diproyeksi mencapai 258.705.000 jiwa hingga pada tahun 2035, diproyeksikan jumlah penduduk Indonesia akan mencapai 305.652.400 jiwa. Baca lebih lanjut pada Badan Pusat Statistik I, *op.cit.*, h. 70-71. Dan sebagai perbandingan dalam data yang dirilis Badan Pusat Statistik melalui Susenas 2014 dan 2015, angka yang diproyeksi mendekati dengan angka kenyataan di lapangan dengan jumlah penduduk mencapai 254.900.000 jiwa. Baca lebih lanjut dalam Badan Pusat Statistik, 2015, Susenas 2015, Badan Pusat Statistik, Jakarta, h. 55-56, yang selanjutnya disebut Badan Pusat Statistik II.

⁴ Indraswari, R., & Aryani, N. M. (2018). The Diaspora Project on Education Sector: Cultivating

nation with the national motto “Bhinneka Tunggal Ika”⁵ which means that although different but still one, which is the key to unifying the Indonesian nation.

With such a large number of Indonesians, it cannot be separated from the impact or excesses, both positive and negative, especially regarding the increase in the number of Indonesians in the age group 0-15 years or commonly referred to as the pre-working age group, which is predicted that by 2035 it will enter the demographic bonus, which is certainly not an easy thing and can even have negative effects if not prepared carefully by the government. In such urgency, there are concrete efforts by the Indonesian government to be able to utilize all national potential⁶ which must also be balanced with government efforts to continue to provide supervision and monitoring of the increasing population growth rate in the coming years⁷.

The pre-working age group in question is the entire population of Indonesia, which is commonly referred to as children, which when examined there are fundamental differences regarding the age limit of the child both in terms of the laws and regulations, such as in the Criminal Code that the age of the child is under 16 years, in contrast to the Civil Code, which clearly only provides the age limit of the child, namely 21 years based on the ability to act legally, as well as in Law Number 1 of 1974, which confirms the category of children

under 18 years of age which is then legally absorbed in several other laws and regulations, As well as the Correctional Law, the Manpower Law including the Child Protection Law states that the age limit of children is under 18 years of age including those in the womb, so that it appears on the surface, even in the aspect of state administration, there are phrases that implicitly provide the age limit of children as in the General Election Law for Members of the House of Representatives, Regional Representatives Council, and Regional Representatives Council, that the age that is not classified as a voter is under 17 years of age or unmarried⁸, in the context of the age limit of children which is still in the spotlight of legal practitioners and legal academics who expect harmony regarding the age limit of the child.

In connection with the age limit of the child, there are also problems that have urgency in the field of national citizenship and population, such as the real difficulty in controlling the rate of population growth, especially regarding the age group 0-15 years or the pre-working age group, besides that when the population in the age group above increases significantly, it also raises problems regarding orderly administration⁹ which is certainly important for the legal status of children so that legal certainty is created for children, for example in terms of having population documents such as Family Cards, Birth Certificates, and several other documents¹⁰.

Positive Perception of Indonesia Through International Education. Udayana Journal Law and Culture, 3(2), 123-140.

⁵ Hermanto, B., & Mas Aryani, N. (2021). Omnibus legislation as a tool of legislative reform by developing countries: Indonesia, Turkey and Serbia practice. *The Theory and Practice of Legislation*, 9(3), 425-450.

⁶ Hermanto, B. (2023). Deliberate legislative reforms to improve the legislation quality in developing countries: case of Indonesia. *The Theory and Practice of Legislation*, 11(1), 1-31.

⁷ Hermanto, B. (2023). Dynamics on Constitutional Court Decision towards Indonesia Citizenship Arrangement: *Dinamika Putusan Mahkamah Konstitusi terhadap Pengaturan Kewarganegaraan Indonesia*. *Jurnal Konstitusi*, 20(2), 216-237.

⁸R. Soetojo Prawirohamidjojo dan Marthalena Pohan, 1991, *Hukum Orang dan Keluarga (Personen en Familie Recht)*, Cetakan Pertama, Airlangga University Press, Surabaya, h. 1-3.

⁹ Yusa, I. G., et.al. (2021, December). Law Reform as the Part of National Resilience: Discovering Hindu and Pancasila Values in Indonesia's Legal Development Plan. In *International Conference For Democracy and National Resilience (ICDNR 2021)* (pp. 1-10). Atlantis Press.

¹⁰ Soetojo Prawirohamidjojo dan Marthalena Pohan, *op.cit.*, h. 6 dalam Titik Triwulan Tutik, 2008, *Hukum Perdata dalam Sistem Hukum*

In the context of facts on the ground, it is evident that there are still serious problems for children so that not a few age groups of children are displaced and marginalized due to administrative order problems, especially regarding the child's population documents, so that the child cannot get an education, cannot apply for a job in a cross-sector both in the public sector and the private sector, so that it becomes a much more serious problem, especially with regard to the Indonesian Government's efforts to utilize and maximize the demographic bonus that will be achieved in the next few years.

In overcoming problems in the field of citizenship and population, especially in the context of children, the Government of the Republic of Indonesia through the Ministry of Home Affairs stipulates Regulation of the Minister of Home Affairs Number 2 of 2016 concerning Child Identity Cards, which provides a fundamental step change in the field of citizenship and population in Indonesia¹¹, where legal products concerning the field of citizenship and population which on the one hand get various views¹², some people express pros and others express cons to the emergence of these regulations. However, it is very relevant to study with regard to population documents for children, in addition to other juridical aspects for children, which is evident according to empirical facts in the field with the provisions of laws and regulations that still provide a "loophole" of discrimination, which inspires us also in addition to seeing from the review also to be able to examine and provide an assessment regarding how the constitutionality of the regulation is in addition

to the regulatory aspects of the Regulation of the Minister of Home Affairs Number 2 of 2016.

RESEARCH METHOD

The method of writing this scientific book is to use the normative method¹³, where this writing is compiled through excavation, search, review, and scientific reasoning¹⁴ from various national and international literature accompanied by a study of regulations related to the subject matter raised. This article is prepared by applying the normative juridical research method, by positioning law as a prescriptive discipline¹⁵ and placing law in the context of norms or a hierarchal norm system of legislation¹⁶. This article is supported by a statutory approach, legal conceptual approach, and case approach. Specifically, the primary and secondary legal materials used in this article are examined with a legal search method through literature study¹⁷, with the aim of tracing, finding, reviewing, and examining / analyzing issues, through the preparation of texts based on descriptive analytical techniques¹⁸, legal construction techniques, and argumentative techniques.

Nasional, Cetakan Pertama, Kencana Prenada Group, Jakarta, h. 65-66.

¹¹ Majalah Tempo, "Etnis Cina di Zaman yang Sudah Berubah, Edisi Khusus 17 Agustus", Terbit 16-22 Agustus 2004, h. 15-16.

¹² Hermanto, B. (2022). Reformulasi Undang-Undang Kewarganegaraan Indonesia: Perspektif Politik Hukum, Problematik, dan Prospek Pengaturan. *Jurnal Legislasi Indonesia*, 19(2), 209-230.

¹³ Langbroek, P. M., Van Den Bos, K., Simon Thomas, M., Milo, J. M., & van Rossum, W. M. (2017). Methodology of legal research: Challenges and opportunities. *Utrecht law review*, 13(3), 1-8.

¹⁴ Hutchinson, T. (2015). The doctrinal method: Incorporating interdisciplinary methods in reforming the law. *Erasmus L. Rev.*, 8, 130.

¹⁵ Hutchinson, T. (2013). Doctrinal research: researching the jury. In *Research methods in law* (pp. 15-41). Routledge.

¹⁶ Sudiarawan, K. A., Tanaya, P. E., & Hermanto, B. (2020). Discover the legal concept in the sociological study. *Substantive Justice International Journal of Law*, 3(1), 94-108.

¹⁷ Kilcommins, S. (2016). Doctrinal legal method (black-letterism): assumptions, commitments and shortcomings. *Journal of Legal Education*, 301, 302.

¹⁸ Taekema, S. (2021). Methodologies of rule of law research: why legal philosophy needs empirical and doctrinal scholarship. *Law and philosophy*, 40(1), 33-66.

RESEARCH RESULTS AND DISCUSSION

A. Population in Theoretical Studies and Reviews from Renowned Scholars in the Population Sector

In general, the concept of population remains inseparably linked to changes in population numbers commonly referred to as population dynamics, which from year to year always changes either positive growth with an increase in population growth rate or negative growth with a decrease in population growth rate¹⁹.

According to Malthus²⁰, known as the Malthus theory of population which he put forward in his essay entitled "Essay on the Principles of Population"²¹, where in his essay, Malthus tried to suggest a relationship between the size and growth rate of the population and economic prosperity, where in his essay also found the essential concept of population which not only experienced an unlimited rate, but the size and growth rate of the population, each of which used a different number series pattern with the components of economic prosperity, and through this essay also became increasingly known as "Neomalthusianism".

In another perspective, population dynamics or changes in population rates²² are determined according to three main factors,

namely births (natalitas), deaths (mortality) and population movements (migration), all of which involve demographic concepts which must be seen from sources that have relevance and validity in the field of population such as through population censuses, population registrations and population surveys²³.

In the perspective of public policy, according to Dr. Elibu Bergman, a doctor from Harvard University, provides a definition of population from a population policy perspective in a quote from Siasah Masruri²⁴ which can be interpreted as a government action to achieve a goal which includes the influence and characteristics of the population. In general, the concept of population through the perspective of population policy should be aimed at population policies aimed at influencing the size, composition, distribution and level of population development, which in the end is to protect the interests and develop the welfare of the population itself, especially future generations, even providing the possibility for each person to gain greater freedom, to determine what is best for the welfare of themselves, their families and children.

Meanwhile, according to Kurniatmanto Sutoprawiro²⁵, population is closely related to its juridical or regulative aspects, namely population can be seen from the perspective of population law which can be defined as all regulations concerning regulatory aspects and provisions that contain matters relating to the population in a country.

In the Big Indonesian Dictionary, it is explained that the definition of population is the matter or characteristics of being a

¹⁹ Munawir, dkk., 2006, *Cakrawala Geografi Kependudukan, Suatu Pengantar, Cetakan Kedua (Revisi)*, Yudhistira, Bogor, h. 27.

²⁰ Siti Nurjanah, 2015, *Sejarah Dunia, Pengantar III*, Viva Pakarindo, Surakarta, h. 23-24.

²¹ Anonim, 1973, *Encyclopedia International, Second Edition*, Grolier, Great Britain, h. 117 dalam Yasin M., et all, 1985, *Dasar-dasar Demografi*, Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia, Jakarta, h. 170-171.

²² Lihat lebih lanjut dalam Badan Pusat Statistik, 2000, *Penduduk Indonesia Hasil Sensus Penduduk 2000*, Badan Pusat Statistik, Jakarta, h. 3-6, untuk selanjutnya disebut sebagai Badan Pusat Statistik III.

²³ Lihat lebih lanjut dalam United Nations, 1958, *UN Statistical Papers, Series M Number 7*, United Nations, New York, h. 15-23, dalam Badan Pusat Statistik I, *op.cit.*, h. 3-5.

²⁴ Siasah Masruri, Muhsinatun, dkk., 2002, *Pendidikan Kependudukan dan Lingkungan Hidup*, UPT MKU Universitas Negeri Yogyakarta, Yogyakarta, h. 2.

²⁵ Kurniatmanto Sutoprawiro, 1993, *Hukum Kewarganegaraan dan Keimigrasian, Cetakan Kedua*, Gramedia Pustaka Utama, Jakarta, h. 16-17.

resident, or matters concerning the population. As an illustration, in the Dictionary, the word population is defined as people or people who inhabit a place (village, country, island, etc.)²⁶

Meanwhile, Article 1 point 2 of Law No. 52/2009 on Population Development and Family Development states that Population is a matter relating to the number, structure, growth, distribution, mobility, spread, quality, and welfare conditions concerning the political, economic, socio-cultural, religious and environmental aspects of the local population²⁷. Law No. 52 of 2009 amended Law No.10 of 1992 on Population Development and Family Welfare Development²⁸.

Population issues have been regulated in the Constitution and other laws and regulations since 1945. The 1945 Constitution, which was ratified on August 18, 1945, does not explicitly regulate population. In fact, there is no single article that specifies it. However, this does not mean that population issues are not guaranteed constitutional protection. The elucidation of Articles 28, 29(2) and 34 of the 1945 Constitution confirms that "These articles concern the position of the population". Thus, one aspect of population, namely the right to population, is constitutionally recognized. The rights of the population include political rights, namely freedom of association, freedom of assembly, and freedom of expression. Other rights include the freedom to embrace religion, worship, and belief in God Almighty; and the

right to social welfare, especially for the poor, which is maintained by the state.

In contrast to the 1945 Constitution, the Constitution of the Republic of Indonesia of the United States of America (RIS) 1949 specifies specifically about population in Chapter IV on "Citizenship and Residents of the State" and scattered in the articles of Chapter V on "Basic Human Rights and Freedoms". Article 6 stipulates that Indonesian citizens are those who reside in Indonesia according to the rules stipulated by federal law. Furthermore, the rights of residents are specified in Article 20, namely the right to freedom of assembly and the right to freedom of assembly guaranteed by legislation, and other rights that are inclusive of basic human rights and freedoms²⁹. However, during the enactment of the 1949 RIS Constitution, there were no federal laws and regulations intended to guarantee the position of residents.

The 1950 Provisional Constitution (UUDS) regulated residents in exactly the same way as the 1949 RIS Constitution. Several laws and regulations were enacted during the enactment of the 1950 UUDS, including Drt. Law No. 9 of 1955 which had been enacted. No. 9 of 1955 which was enacted into law by Law No. 1 of 1961, and Law No. 62 of 1958. The 1945 Constitution came back into force for the second period on July 5, 1959, replacing the 1950 Constitution. However, Law No. 62 of 1958, which was enacted under the 1950 Constitution, still remained in force. Other provisions regarding the population at that time included Cabinet Presidium Instruction No. 37/U/IN/1967 on "Basic Policy for Resolving the Chinese Problem", Law No. 3 of 1972 on "Basic Provisions for Transmigration", Presidential Decree (KepPres) No. 52 of 1977 on "Population Registration", and Law No. 10 of 1992.

²⁶ Cristianingsih, E. (2020). Implementasi kebijakan administrasi Kependudukan di kabupaten bandung. *Jurnal Ilmiah Magister Ilmu Administrasi*, 12(2).

²⁷ Rahmadhony, A., Setiawan, I., & Ekorian, M. (2020). Problematika 'Delegated Legislation' Pada Undang-Undang Nomor 52 Tahun 2009 Tentang Perkembangan Kependudukan Dan Pembangunan Keluarga. *Jurnal Legislasi Indonesia*, 17(4), 407-422.

²⁸ Hidayat, N. (2013). Kajian Kebijakan Kependudukan di Indonesia. *Publikauma: Jurnal Administrasi Publik Universitas Medan Area*, 1(2), 24-36.

²⁹ Aryani, N. M. (2016). Perlindungan Hukum Terhadap Anak Sebagai Korban Kekerasan Seksual Di Provinsi Bali. *Kertha Patrika*, 38(1), 1-14.

After the second amendment to the 1945 Constitution on August 18, 2000, citizenship and population issues are regulated in Chapter X, namely in Article 26 of the 1945 Constitution. As implementing regulations for this article, Law No. 12/2006 was issued in relation to citizenship issues and Law No. 52/2009 which replaced Law No. 10/1992, and in 2013 Law No. 24/2013 was issued to amend Law No. 23/2006 on Population Administration. Article 64 paragraph (7) of Law 24 of 2013 stipulates that e KTP is valid for life³⁰. As a follow-up to the enactment of Law No. 24 of 2013, Minister of Home Affairs Tjahjo Kumolo has issued two circular letters on Friday (29/01/2016) related to the validity period of electronic ID cards (KTP-el) for life, namely:

First, Circular Letter No. 470/295/SJ dated January 29, 2016 regarding Electronic ID Cards (KTP-el) Valid for Life, addressed to Working Cabinet Ministers and heads of non-ministerial institutions.

Second, Circular Letter Number 470/296/SJ dated January 29, 2016 regarding Electronic ID Cards (KTP-el) Valid for Life, addressed to Governors and Regents/Mayors throughout Indonesia. The circular emphasized that ID cards issued before the issuance of Law 24 of 2013 are also valid for life.

Furthermore, in 2016 Permendagri No. 2 of 2016 was issued concerning Child Identity Cards, with this Permendagri a child is required to have a Child Identity Card (KIA) until the age of 17 years³¹.

So it can be concluded that population is closely related to economic studies as in the essay that became the theory of "Malthusianism" from Malthus, demography in several literature studies, as well as population geography, as well as the concept of population policy according to Dr. Elibu Bergman and juridical aspects as seen by Kurniatmanto Sutoprawiro, which cannot be separated and separated from the entire population in a state area.

B. Root of the Issue: The Dichotomy of Age Limitation of Children as Citizens and Residents

When viewed carefully, the formulation of the concept of general provisions in both Law of the Republic of Indonesia Number 23 of 2006³² and Law of the Republic of Indonesia Number 24 of 2013³³, there are no significant differences in formulation, in the context that there are no significant changes to the existing formulation³⁴, there are only fundamental changes to Article 1 Point (14) of Law of the Republic of Indonesia Number 23 of 2006 from the manual Identity Card regime to the E-ID Card regime as formulated above.

In the context of the 21st Century, it must actually be recognized that there have been significant changes to the concept of state administration, not only regarding the form of the State and the form of Statehood as stated by Jimly Asshidiqie³⁵, but also fundamental

³⁰ Rudatyo, R., Suharno, S., Mahmud, H., Ismiyanto, I., Suparwi, S., & Junaidi, A. (2022). SOSIALISASI URGENSI ADMINISTRASI KEPENDUDUKAN BAGI WARGA MENURUT UU NO. 24 TAHUN 2013. J-ABDI: Jurnal Pengabdian kepada Masyarakat, 2(1), 3521-3528.

³¹ Muhimah, U. U. (2022). Peran Pemerintah dalam Bidang Administrasi Kependudukan dalam Kerangka Perlindungan Hukum Warga Negara Ditinjau dari Undang-Undang No. 23 Tahun 2006 tentang Administrasi Kependudukan. Sultan Jurisprudence: Jurnal Riset Ilmu Hukum, 2(1), 53-63.

³²Lihat rumusan Pasal 1 Angka (14) Undang-undang Republik Indonesia Nomor 23 Tahun 2006 tentang Administrasi Kependudukan.

³³ Lihat perbandingan rumusan dari Undang-undang sebelumnya, dan bandingkan dengan Pasal 1 Angka (14) Undang-undang Republik Indonesia Nomor 24 Tahun 2013 tentang Administrasi Kependudukan.

³⁴ Hermanto, B., & Aryani, N. M. (2023). The Guardian of Ideology and the Pancasila by the Constitutional Court Decision. Literasi Hukum, 7(2), 39-52.

³⁵ Aryani, N. M., & Hermanto, B. (2023). Quo Vadis Kebijakan Data Pribadi Di Indonesia: Penormaan Lembaga Pengawas. Literasi Hukum, 7(1), 37-46.

changes that are “not realized” stemming from the development of technology, information, culture and social aspects in society that cannot be separated in the concept of community culture³⁶. In this context, it cannot be separated in the field of citizenship and population.

Even in 2016, the Ministry of Home Affairs of the Republic of Indonesia launched a new idea in the field of Indonesian citizenship and population with the emergence of the Child Identity Card ³⁷, which is explicitly elaborated through technical regulations in the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 2 of 2016 concerning Child Identity Cards ³⁸, with formulations and further studies that will be reviewed in more detail in the next discussion.

The child as mandated in the laws and regulations in the field of citizenship as a citizen who certainly has its own rights and obligations that have been guaranteed and protected by the regulation and implementation in the Constitution of the Republic of Indonesia and the organic laws under it such as the Law on Child Protection.

The regulative aspects of children in Indonesia as mentioned above in this Reformation era are based on the Child Protection Law, both the Law of the Republic of Indonesia Number 23 of 2002 which was later amended into the Law of the Republic of Indonesia Number 35 of 2014, which then became one of the National legal bases that can also be used as a reference to understand

children comprehensively. The two laws and regulations were also born from several other national instruments.

With regard to the concept of children, of course, it is important to understand from a juridical historical aspect where there is legal pluralism ³⁹, especially with regard to the definition of children based on age limits, which then also creates discrimination against these children in various aspects and lines of life, with the non-uniformity of adult age limits or child age limits in various laws and regulations in Indonesia empirically, raising questions about which limits should be used.

When viewed from the perspective of citizens, the children as formulated in the table above, can actually be categorized as citizens, especially looking at the formulation and interpretation of Article 26 Paragraph (1) of the 1945 Indonesia Constitution which reads, “The citizens are indigenous Indonesians and people of other nations authorized by law as citizens”⁴⁰, it is clear that in age by not seeing any quantitative limitations of a certain age, including children and people who are not classified as children's age⁴¹.

C. Child Identity Card through Permendagri Number 2 Year 2016: Juridical Aspects, and Aspects of Conformity with Constitutionalism

As previously discussed, the Government of the Republic of Indonesia at the beginning of 2016, in order to achieve consensus and concrete solutions to several considerations contained in the considerations

³⁶Suantra, I. N., SH, M., Made Nurmawati, S. H., Griadhi, M. N. M. A. Y., & Aryani, N. M. (2016). *Hukum Kewarganegaraan dan Kependudukan*.

³⁷ Adnyani, N. K. S. (2018). *Pelayanan Sektor Publik Terkait Pengaturan Administrasi Kependudukan Tentang Identitas Anak Dengan Pemberlakuan Permendagri Nomor 2 Tahun 2016*. *Jurnal Ilmiah Ilmu Sosial*, 4(2), 200-203.

³⁸ Yusa, I. G., & Hermanto, B. (2017). *Konstitusionalitas Peraturan Menteri Dalam Negeri Nomor 2 Tahun 2016 tentang Kartu Identitas Anak dalam Konteks Tinjauan Hak Konstitusionalitas Anak sebagai Warga Negara Indonesia*. Cetakan Pertama, Swasta Nu-lus, Denpasar.

³⁹ Ahmad Kamil dan H.M. Fauzan, 2010, *Hukum Perlindungan dan Pengangkatan Anak di Indonesia, Cetakan Kedua*, Rajawali Press, Jakarta, h. viii-ix, 11-17.

⁴⁰ Nurmawati, M., & Suantra, I. N. (2020). *The Arrangement of Dual Citizenship of the Indonesian Diaspora: A Legal and Human Rights Perspective*. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 9(3), 495.

⁴¹ Rusli Pandika, 2014, *Hukum Pengangkatan Anak, Cetakan Pertama*, Sinar Grafika, Jakarta, h. 1-3.

of the Minister of Home Affairs Regulation Number 2 of 2016 concerning Child Identity Cards.

First, that children aged less than 17 years and unmarried do not have a national identity that is valid nationally and integrated with the Population Information and Administration System as formulated in the Population Administration Law which was last amended in 2013.

Second, that the Government is obliged to provide a nationally valid identity to all Indonesian citizens as an effort to protect and fulfill the constitutional rights of citizens.

Third, that the provision of legal identity to children will encourage the improvement of data collection, protection and public services to realize the best rights of children.

Thus, with such philosophical, sociological and juridical foundations, it is a consideration for the Ministry of Home Affairs of the Republic of Indonesia to carefully formulate provisions regarding Child Identity Cards which are a concrete solution to problems in the field of citizenship and population in Indonesia, on the part of children in order to realize the responsibility of the State through Article 28 I paragraph (4) and paragraph (5) and Article 28J paragraph (2) of the 1945 Indonesia Constitution.

Overall, the formulation of the general provisions in the Regulation of the Minister of Home Affairs expressly and clearly reflects consistency in terms of the formulation of phrases and sentences in Chapter I General Provisions which do not deviate from the National Legislation, in which case the Ministerial Regulation is not a hierarchy of legislation according to current positive law and also as a technical regulation in the context of orderly administration in the field of Citizenship and Population in Indonesia⁴².

⁴² Sumiati, S. A., & Lestari, L. (2020). Partisipasi Masyarakat Dalam Pelaksanaan Undang-Undang Nomor 24 Tahun 2013 Tentang Administrasi Kependudukan. Jurnal Dimensi, 9(1), 35-47.

The purpose of the Minister of Home Affairs Regulation Number 2 Year 2016 is based on the explicit formulation in Article 2 which reads as follows.

CHAPTER II

PURPOSE

Article 2

The government issues KIA with the aim of improving data collection, protection and public services as well as efforts to provide protection and fulfillment of citizens' constitutional rights.

Then, with regard to the requirements and procedures for ownership of the Child Identity Card, it is divided into two, namely in the context of the child as an Indonesian citizen and on the one hand, the child as a foreign citizen, which can be seen through the visualization of the following table.

Table 1. Requirements for Child Identity Card Ownership for both Indonesian Citizen Children and Foreigner Children⁴³

No.	<i>Differentiator</i>	
	<i>Children of Indonesian Citizens</i> <i>Children of Foreigners</i>	<i>Children of Indonesian Citizens</i> <i>Children of Foreigners</i>
	Article 3	Article 3
	(1) The Department issues new KIA for children less than 5 years old at the same time as issuing a birth certificate excerpt.	(1) The Department issues new KIA for children less than 5 years old at the same time as issuing a birth certificate excerpt.
	(2) In the event that a child less than 5 years old already has a birth	(2) In the event that a child less than 5 years old already has a birth

⁴³ Baca lebih lanjut dalam Bab III Persyaratan dan Tata Cara dalam Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 2 Tahun 2016.

	certificate but does not yet have a KIA, the KIA is issued after fulfilling the following requirements:	certificate but does not yet have a KIA, the KIA is issued after fulfilling the following requirements:
	a. photocopy of the birth certificate excerpt and show the original birth certificate excerpt;	a. photocopy of the birth certificate excerpt and show the original birth certificate excerpt;

Thus, there is no meaning between the children of Indonesian citizens and the children of foreigners who are currently living in Indonesian territory.

In this case, there has been a concrete effort by the State to provide technical guarantees regarding children's constitutional rights where the juridical formulation has been comprehensively fulfilled, as formulated in Chapter X A concerning Human Rights in Article 28 B Paragraph (2), Article 28 D Paragraph (4), Article 28 E Paragraph (1), Article 28 G Paragraph (1), Article 28 I Paragraph (4) and Paragraph (5), and Article 28 J Paragraph (2) of the 1945 Indonesia Constitution.

Table 2. Procedures for Ownership of a Child Identity Card for Indonesian Citizen Children and Foreign Children⁴⁴

No.	<i>Differentiator</i>	
	<i>Children of Indonesian Citizens</i> <i>Children of Foreigners</i>	<i>Children of Indonesian Citizens</i> <i>Children of Foreigners</i>
	Article 13	Article 13
	(1) The applicant or child's parents submit the requirements for issuing KIA by	(1) The applicant or child's parents submit the requirements for issuing KIA by

⁴⁴Lihat lebih lanjut dalam Bab III Persyaratan dan Tata Cara Peraturan Menteri Dalam Negeri Nomor 2 Tahun 2016.

	submitting the requirements as intended in Article 3 paragraph (2) to the Service. Article 14	submitting the requirements as intended in Article 3 paragraph (2) to the Service. Article 14
	(1) For children who already have a passport, the child's parents report to the Department by submitting the requirements as intended in Article 8 paragraph (1) to issue KIA.	(1) For children who already have a passport, the child's parents report to the Department by submitting the requirements as intended in Article 8 paragraph (1) to issue KIA.
	(2) The Head of Service signs and issues the KIA. (2) The Head of Service signs and issues the KIA.	(2) The Head of Service signs and issues the KIA. (2) The Head of Service signs and issues the KIA.

As explained above, the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 2 of 2016 is a legal breakthrough in Indonesia, especially in the field of National Citizenship and Population, in addition to providing a technical explanation of the State's responsibilities, in this case the Government, to be able to fulfill the constitutional rights of children as Indonesian citizens.

Linked to the most basic issues related to the specific constitutionality of children's ages⁴⁵, there is still legal uncertainty regarding children's age limits, which can be seen from several decisions of the Constitutional Court below.

Firstly, in the Decision of the Constitutional Court of the Republic of Indonesia Number 1/PUU-VIII/2010, it is the

⁴⁵ Hermanto, B., Yusa, I. G., & Aryani, N. M. (2020). Constitutional Court of the Republic of Indonesia: Does the Ultra Petita Principle Reflect the Truth of Law?. *Fiat Justisia: Jurnal Ilmu Hukum*, 14(3), 261-286.

Constitutional Court which examines, adjudicates and decides on constitutional cases at the first and last level which makes the decision in the case of the petition for Review of Law Number 3 of 1997 concerning Juvenile Courts. to the 1945 Indonesia Constitution. In the judge's consideration, there are three things which are the main points of the petition and which are related to the discussion of this scientific paper, namely specifically the first point of the petition, namely whether the age limit for children is at least 8 (eight) years. is an age limit that is too low so that it can violate the constitutional rights of children and is contrary to the 1945 Indonesia Constitution, and in the Decree, that the Panel of Constitutional Judges in the First Point of the Decision, accepted the case petition in part, then in the Second Point of the Decision, the phrase "... 8 (eight) years...", in Article 1 number 1, Article 4 paragraph (1), and Article 5 paragraph (1) of Law Number 3 of 1997 concerning Children's Courts, along with an explanation of the This law, especially related to the phrase "...8 (eight) years..." is conditionally contrary to the 1945 Indonesia Constitution (conditionally unconstitutional), meaning unconstitutional, unless it is interpreted as "...12 (two) twelve) years...", as well as in the Third Point of the Decision, states the phrase,"... 8 (eight) years...", in Article 1 number 1, Article 4 paragraph (1), and Article 5 paragraph (1) Law Number 3 of 1997 concerning Children's Courts, along with an explanation of this Law, especially regarding the phrase "...8 (eight) years..." does not have conditionally binding legal force (conditionally unconstitutional), meaning it is unconstitutional , unless it is interpreted as "...12 (twelve) years...", with a note in the Fourth Point of the Decision, rejecting the Petitioners' request in addition and in addition, as well as the Fifth Point of the Decision, that orders the publication of this Decision in the State Gazette of the Republic Indonesia as it should be. In essence, on the basis of the Constitutional Court's decision, there is a

conditional interpretation of the phrase minimum age limit of eight years as contrary to the 1945 Indonesia Constitution, which was deemed unconstitutional by the Panel of Judges.

Second, in the Decision of the Constitutional Court of the Republic of Indonesia Number 30-74/PUU-XII/2014, it is the Constitutional Court which examines, hears and decides on constitutional cases at the first and last level which makes the decision in the case of the petition for Review of Law Number 1 of 1974 concerning Marriage is subject to the 1945 Indonesia Constitution, where in the Judge's consideration, it is clear that Article 7 Paragraph (1) of Law Number 1 of 1974 concerning Marriage is considered in accordance with the conditions of various customs and interpretations of the open legal policy of The Indonesian government at the DPR RI Plenary Session on 23 December 1973 in addition to the promulgation on 2 January 1974 ⁴⁶. And in the Decree it was stated that the applicant's petition was regarding the phrase "...16 (sixteen) years..." in Article 7 Paragraph (1) of Law Number 1 of 1974, which stated that it rejected the Petitioners' petition in its entirety.

So in this case, it is clear from several decisions of the Constitutional Court that the constitutionality of several laws and regulations relating to the minimum age limit for children both in the field of punishment and in the context of marriage provides clarity regarding the plurality of age limits for children which has unknowingly given rise to a number of discrimination ⁴⁷ and The State's inability to carry out the Constitution's mandate that it is obliged to promote, protect,

⁴⁶ Hermanto, B., & Yusa, I. G. (2018). Children Rights and the Age Limit: The Ruling of The Indonesian Constitutional Court. *Kertha Patrika*, 40(2), 61-70.

⁴⁷ Nurmawati, M. (2022). Stateless Person In Indonesia: Consequences and Legal Protection. *Jurnal Magister Hukum Udayana*, 11, 76-88.

respect and fulfill⁴⁸ the constitutional rights of citizens, including children as formulated in the 1945 Indonesia Constitution.

From a judicial review, constitutionally, the Minister of Home Affairs Regulation does not conflict with the formulation of the 1945 Indonesia Constitution, in fact the mandate of the Ministry of Home Affairs in the Ministerial Regulation is in line with the formulation of the 1945 Indonesia Constitution, especially the articles concerning the constitutional rights of children, both Articles 27 Paragraph (1), Article 28 B Paragraph (2), and Article 28 H Paragraph (2) of the 1945 Indonesia Constitution⁴⁹.

Where in this case, it is closely related to the obligations of the State, through the Government, to carry out the Constitutional Mandate as formulated in Article 28 I paragraphs (4) and (5) of the 1945 Indonesia Constitution, so that in this case it can be concluded according to textual interpretation, original intent, or systematic interpretation of these articles, it becomes increasingly clear that the Minister of Home Affairs Regulation Number 2 of 2016 is in line with the 1945 Indonesia Constitution.

CONCLUSION

A. Conclusion

The position of children as citizens is based on the basic rights inherent in children as human beings, which constitutionally have been formulated in the 1945 Indonesia Constitution in Article 28 B Paragraph (2) which is commonly referred to as children's rights.

Then, it is also discussed in detail and comprehensively regarding the juridical review

and implementation review of constitutional rights in the Minister of Home Affairs Regulation Number 2 of 2016 which has actually been traced to the definition, objectives, requirements and procedures, as well as the concept of benefit which has been formulated in the regulation. starting from Article 1 to Article 21 of the Minister of Home Affairs Regulation.

Finally, with regard to the constitution and constitutionality which are linked to the issue of children's constitutional rights, especially the pluralism of child age limits which gives rise to discrimination and inequality which empirically occur in society, which is formulated and demonstrated through the efforts of society and certain institutions to carry out judicial reviews of The Constitutional Court, including through the Decision of the Constitutional Court of the Republic of Indonesia Number 1/PUU-VIII/2010 which was accepted in part and the Decision of the Constitutional Court of the Republic of Indonesia Number 30-74/PUU-XII/2014 which was rejected in its entirety, but in the context of material review of The Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 2 of 2016 concerning Child Identity Cards has not yet been reviewed, however, in reviewing constitutional rights as explained previously in the discussion, this regulation is actually constitutional, especially as it provides guarantees for the technical implementation of the articles in the Constitution of the Republic of Indonesia 1945 relates to children's rights and when linked to Article 28 I Paragraph (4) and (5) of the 1945 Constitution regarding the State's responsibility in promoting, respecting, protecting and fulfilling the constitutional rights of Indonesian citizens, in this case children.

B. Suggestions

The related suggestions are as follows.

3.2.1. It is hoped that the Government, especially the Minister of Home Affairs, will

⁴⁸ Yusa, I. G., et.al. (2020). No-spouse employment and the problem of the constitutional court of Indonesia. *Journal of Advanced Research in Law and Economics*, 11(1 (47)), 214-226.

⁴⁹ Wahyuni, L. (2022). Implementasi Kebijakan Pada Pelayanan Pembuatan Kartu Identitas Anak (Kia) Di Dinas Kependudukan Dan Pencatatan Sipil Kota Dumai. *Jurnal Administrasi Publik dan Bisnis*, 4(1), 50-53.

provide a special forum that will in depth discuss scientific studies both from theoretical and empirical reviews regarding the implementation of all legal products of the Ministry of Home Affairs, in this case related to Minister of Home Affairs Regulation Number 2 of 2016 with the field of National Law in the field of Citizenship and Population.

3.2.2. In particular, if the formulation of norms outlined in Minister of Home Affairs Regulation Number 2 of 2016 can be implemented nationally in a relatively short time accompanied by very capable preparation and involving all components of society so that the essential objectives in the regulation can be achieved.

3.2.3. Finally, related to socialization, efforts need to be made to direct correct and appropriate orientation in relation to the Minister of Home Affairs Regulation Number 2 of 2016, so that all legal components related to justice, legal certainty and the benefits of the law for society, especially for nation building and Country.

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