

LEGAL PROTECTION OF CHILDREN IN CONTACT WITH THE LAW BASED ON THE PRINCIPLE OF BEST INTEREST FOR THE CHILD

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Abstract

Legal protection for children who are in conflict with the law in Indonesian legislation is the result of the Ratification of the United Nations (UN) Convention on the Rights of the Child in 1989, which in one of the principles in the convention is the principle of the best interests of the child. Ratification is carried out by incorporating and making the basis for the formation of laws involving children. The principle of best interest for children is the main reference. This study used the Juridical-Normative Research Method with a Descriptive Analysis Approach, with the aim of analyzing Legislation Related to Children in Conflict with the Law and then to look at the essence and objectives of the Principle of Best Interests for Children. So that this research results in that Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) is the Main Law being studied, in that Law provides Legal Protection for children who are dealing with the Law with Three Classifications, children as perpetrators prioritizing restorative justice and diversion, children as victims receive special medical treatment, and children as witnesses are facilitated by electronic recording media to reduce trauma. This is given as an effort to protect the law against children who are in conflict with the law according to the status of children in criminal acts, in addition to obtaining rights that are general in nature, children who are positioned as perpetrators, victims and witnesses still get special rights. under legal protection.

Keywords: *Legal Protection, Children Against the Law, The Best Interests of Children.*

INTRODUCTION

National development in the future cannot be separated from the role and contribution of children as successors. Children are the continuation of the nation's struggle and become human resources who have the potential to change conditions and civilization. Thus, children need intense

protection and guidance as a form of guarantee which is the duty and obligation of the state. In this regard, the state has a full stake in being able to guarantee the protection and guidance of children, but in line with the development of the times, the protection and guidance of children is faced with problems and challenges in society, and it is not uncommon to find behavioral deviations committed by children (Dewi Sartika, 2019).

The state participates in guaranteeing the protection of children in the form of attention to their growth and development and protection guarantees, this is stated in Article 28 B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI), with the aim of guaranteeing the protection of children sought by government. Children are assets in the future in the advancement of national and world civilization, so that children are of particular concern to the nation in terms of moral, physical and spiritual growth in efforts to fulfil constitutional rights for children. However, in the development of an increasingly elusive world order, it causes children to commit inappropriate acts or irregularities, such as crime or children in conflict with the law.

Improper acts (deviations) committed by children are caused by the underlying factors, including environmental factors, developments in technology and information, the rapid and rapid flow of globalization, advances in science, and the impact of the entry of traditional products from abroad which affect the character and the personality of the nation's children. Another factor is the lack or lack of love and attention, care, parental guidance towards children which will drag children to association and a free environment.

Impact exists of these factors regarding legal deviations by children, including data from reports from the Child Protection Commission (KPAI) in 2016 and 2021, KPAI said that in 2016, they had received 3,581 public complaints regarding cases of violations of children's rights, with children dealing with (conflict) are the largest number of cases (1,002). In contrast, the Fulfilment of Children's Rights (PHA) cluster in 2021 received 2,971 clusters. KPAI obtained clusters of fulfilling children's rights in the following order: family environment and alternative care in 2,281 cases (76.8%), education and use of leisure time in 412 cases (13.9%), cultural and religious activities in 197 cases (6.6%), and civil rights and freedoms in 81 cases (2.7%).

Children have special and special characteristics and characteristics, in the settlement of cases before the law must be done in a special and certain way. This specificity can be reflected in the legal

process that is handled by the General Court, and from the moment a child is arrested, examined, detained, and tried, his actions must be handled by experts who specifically understand children's problems. Because of the purpose of juvenile justice not only aims to provide criminal sanctions to children who have committed criminal acts, but is oriented towards the principle of the best interests of the child and for the welfare of the child in the future. The purpose of the juvenile justice system should be that in handling juvenile criminal cases it should be handled by a special juvenile court, not the general court. It is important to see countries in the world that are dissatisfied and frustrated with formal criminal laws that have not been able to deliver justice. So that special criminal justice for children is an alternative way of legal justice for children and society (Marlina, 2009) .

Legal protection for children who are in conflict with the law in Indonesia refers to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which was previously contained in Law Number 3 of 1997 concerning Juvenile Courts. The most fundamental change in the law is the position of children when dealing with the law, between being the same as adults or getting different protection and mechanisms for settling cases outside the litigation channel (Andrisman, 2013).

Substantially what is regulated in Law Number 11 of 2012 includes, among other things, the placement of children who are undergoing a judicial process placed in a special place or Special Child Development Institution (LPKA). Related to this, according to Wagiati Soetodjo, the most basic substance in this law is strict regulation of restorative justice and diversion which is aimed at preventing children from litigation to non-litigation which has an impact on reducing community stigma for children who are in conflict with the law, because This stigmatization often causes children who are in conflict with the law to experience tremendous mental pressure which will potentially hinder the child's development in the future (Rifky Taufiq Fardian, d. g.).

Based on Article 1 Point 7 of Law Number 11 of 2012, it states that diversion can be interpreted as a transfer of settlement of child cases from litigation to non-litigation. Meanwhile, restorative justice according to the General Explanation in Law Number 11 of 2012 is part of the diversion process, namely by all parties working together to overcome problems and be resolved amicably with burdens and responsibilities that are still given according to the mutual agreement of all parties involved, and its orientation is to find solutions together, not merely revenge. Restorative

Justice and Diversion are also important differentiators between Law Number 11 of 2012 and Law Number 3 of 1997 (Harry E, 2003).

Paying attention to restorative justice and diversion in Law 11 of 2012 is basically aligned towards the principle of the best interests of the child. As one of the principles contained in the Convention on the Rights of the Child (*Un Convention on The Rights of The Child 1989*) which was ratified by Indonesia in 1990, so that technically Indonesia has voluntarily bound itself to the provisions that apply in the Convention. So that on this basis it becomes the basis for research to find out and prove that legal protection for children who are in conflict with the law can be based on the principle of the best interests of children (Wahyudi, 2011).

The data and facts mentioned at the beginning of the discussion show that cases of children in conflict with the law are relatively high. So that this problem is a strong basis for this research to be carried out in an effort to ensure the best interests of the child for children who are in conflict with the law, because basically every child has the same right to get protection from the state through the constitution and laws related to children, without distinguishing in any case.

The type of research method used in this research was qualitative research, with a juridical-normative approach. Using Secondary Legal Materials originating from Laws and Regulations that regulate children, related journals that discuss children's issues, and other related legal materials. Then the available materials were analysed by normative analysis (Asikin, 2004).

The data analysis method used was collecting and studying secondary legal materials and looking at the synchronization between facts, data and reality. Meanwhile, to analyze the legal material that has been collected in the research, it used a type of descriptive analysis that was used to look at Law Number 11 of 2012 concerning the Juvenile Criminal Justice System with the Best Interest Principle for the Child. (*The Best Interest of Child*) in the application and ratification of the laws and regulations governing children in Indonesia

DISCUSSION

The laws governing children in Indonesia have their own differences in defining children and age limits for being referred to as children. This is because the legal skills of children in each legislation have their own basis. So it is necessary to know in advance the Definition of Children and

Age Limits called children according to several laws that regulate Children in Indonesia (Apong, 2014).

A. Definition of Children according to Legislation

The definition of a child and the age limit for a child in the Indonesian laws and regulations regarding children have been regulated and explained below:

1. Definition of Children According to the Books of the Criminal Law Code (KUHP)

In criminal law, a child is defined as a person who has unique rights and needs protection in accordance with applicable law, but is not yet an adult. If it is associated with the normalization of children's deviant behavior towards the development of identity and responsibility, the classification of children in criminal law emphasizes positive legal aspects. In the end, children have the right to appropriate care. For example, the description of the Criminal Code regarding children states that a child is considered a child if he has not reached the age of 15 (fifteen) years.

2. Definition of Children According to Law Number 3 of 1997 concerning Juvenile Courts

According to this law, what is meant by a child is someone who, in the case of a naughty child, has reached the age of 8 (eight) years but is not yet 18 (eighteen) years old and has never been married. Violent children are those who engage in behavior that is considered inappropriate for children under local, state, federal and other laws applicable to the community.

3. Definition of Children According to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA)

Law Number 11 of 2012 defines a child as a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime.

4. Definition of Children according to Law Number 35 of 2014 concerning Child Protection

Law Number 35 of 2014 in defining children is relatively the same but what is called a child is a child who is not yet 18 (eighteen) years old, including children who are in the womb.

5. Definition of Children According to the Convention on the Rights of the Child

In the United Nations (UN) Convention on the Rights of the Child, a child can be interpreted as every human being who is 18 (eighteen) years old unless according to applicable law adult status is reached earlier.

Related to the different definitions of children in each law, it results in legal impacts being taken on children who are in conflict with the law, but researchers in this case refer to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), namely what is called a child. are those who are 12 (twelve) years old but not yet 18 (eighteen) years old. This is because the definitions and ages in the SPPA Law are the middle of all laws governing the definitions and ages of children.

B. The Principle of Best Interests for Children

Through Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (State Gazette of the Republic of Indonesia of 1990 Number 57), dated 25 August 1990 (hereinafter referred to as Presidential Decree 36/1990), Indonesia ratified the UN Convention on the Rights of the Child (UN Convention on the Rights of the Child). 1989). Indonesia is formally committed freely to the provisions of the Convention on the Rights of the Child with this ratification and voluntarily implements all the provisions that apply in the Convention (Zulchaina, 1999).

The four principles of child protection outlined in the Convention on the Rights of the Child include, First. the principle of non-discrimination (Article 2), the principle of the best interests of the child or *The Best Interest Of Child* (Article 3), the principle of the right to life, survival and development (Article 6), as well as the principle of respecting the opinion of the child underlies all efforts to protect children. (Article 12). The best interest of the child is the most underlying Principle of the other Principles. So that Indonesia in implementing policies regarding children must prioritize the Principle of

Best Interests for Children (Faisal Riza, 2021).

In more depth Article 2 letter (d) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System defines the best interests of the child as, "all decision making must always consider the survival and development of the child". In line with the meaning of the Best Interests for the child in Article 2 of the Declaration of the Rights of the child which states, "children must enjoy special protection, and must be given opportunities and facilities by law or in other ways, in an effort to ensure the physical development and growth and development of children in normal conditions and in a condition of freedom and dignity".

Any policy involving children must be made by prioritizing the best interests of the child as the top priority. Then, Law Number 23 of 2002 concerning Child Protection (State Gazette of the Republic of Indonesia of 2002 Number 109, Supplement to the State Gazette of the Republic of Indonesia Number 4235), as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 2002 concerning Child Protection (State Gazette of the Republic of Indonesia of 2014 Number 297, Supplement to the State Gazette of the Republic of Indonesia Number 4235), then Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), also adopted the principles of child protection (Abu, 2012)

Article 3 of the Convention on the Rights of the Child contains the principle of best interests for the child, which states that the best interests of the child must always come first in all decisions involving children made by state or private social welfare agencies, courts, administrative authorities, or legislatures. It is emphasized in Article 4 of this Convention that the state parties which have approved it will take all administrative, legislative and other reasonable steps to ensure the fulfillment of the rights of minors recognized in the Convention. This. The best interests of children must always be prioritized for Indonesia because it has signed the Convention on the Rights of the Child (Rifky Taufiq Fardian, d. g.). Including in relation to children dealing with the law in handling cases and so on, the principle of the best interests of the child must be prioritized. And the most important thing of all is part of the Legal Protection Efforts for Children in Conflict with the Law. Because the Best Interests Principle for children

is a reference in terms of Legal Protection, and policy decisions that involve children in the existing laws and regulations in Indonesia (Dignan, 1993).

And from a juridical-normative analysis, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, as well as other laws governing children, have included the principle of the best interests of the child in it, but only differ in form and technical implementation. As is the case when Law Number 11 of 2012 is implemented with Restorative Justice and Diversion as a real effort in the Legal Protection of Children who are in conflict with the Law. Another thing that needs to be known is Legal Protection for Children who are in conflict with the law, whether children become Victims, Witnesses, or perpetrators of Crimes that are appropriate and based on the Best Interests Principle for Children.

C. Legal Protection for Children in Conflict with the Law Based on the Best Interest Principle for Children

Children in conflict with the law are defined as children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts, in accordance with Article 1 Paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Children in conflict with the law are children who are 12 (twelve) years old but not yet 18 (eighteen) years old, according to Article 1 Paragraph 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). Strengthened by Apong Herlina's Opinion, that children who are in conflict with the law can be classified into three, namely children as perpetrators, children as victims, and children as witnesses where all of these legal positions children still have the right to legal protection (Maidin, 2008):

1. Legal Protection of Children as Actors

UU no. 11 of 2012 Article 1 Paragraph 3 stipulates an age limit for minors who violate the law. The minimum age for a child having problems with the law is 12 (twelve) years, but may not be more than 18 (eighteen) years. The rights of minors in the criminal justice system are then expressly stated in Law Number 11 of 2012 Article 3 concerning the Juvenile Justice System.

Children's rights must be protected at all levels of the juvenile justice system; This protection is given as a sign of respect for children's human rights. The tight control of "restorative justice and diversion" represents a fundamental shift in the way children are protected when these rules are violated. This regulation aims to keep children away from and excluded from the legal system to prevent the stigmatization of young people who break the law, in this case children as perpetrators who also get an extraordinary mental burden from stigmatization.

To protect children who are in conflict with the law, the settlement process must involve all parties, including parents, family, community, government, and other state institutions whose job is to improve children's welfare. The child concerned also needs special protection.

The practice of diversion is another name for the idea of restorative justice. In order to find the best answer for the child without the revenge aspect, all parties involved in a particular violation come together during the diversion process to jointly solve the problem and create responsibility for improving the situation.

Agreements that involve all parties, jointly resolve cases, and find the best solutions to cases faced by children are known as restorative justice approaches. This approach protects children in conflict with the law by prioritizing the best interests of the child.

The position of children as perpetrators gets special treatment but with reasonable limits in accordance with the applicable laws and regulations, and continues to prioritize the principle of joint responsibility, not merely retaliation, all of which relate to and implementation of the principle of best interest for the child.

2. Legal Protection of Children as Victims

According to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning the Protection of Underage Children, victims of crime underage children are protected. According to paragraph 2 of Article 1, "Child Protection" refers to all actions taken to ensure that children's rights are upheld and

so that they can live, develop and be involved in society in a manner that is in accordance with human decency and morals, and remains protected from violence and prejudice.

To ensure that children have a bright future filled with success and happiness, it is important to handle cases involving children who have problems with the law, especially those involving child victims. Article 1 paragraph (4) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states regarding child victims as follows: Victims are children who are not yet 18 (eighteen) years old who suffer physical, mental and/or economic losses as a result of a result of a criminal act.

In addition, Article 90 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that witnesses and victims who are minors have the right to receive medical and social remedies both inside and outside the facility. Children who are victims of criminal acts receive special psychological assistance in addition to these rights to improve their mental and psychological health.

3. Legal Protection of Children as Witnesses

A child who is a witness to a crime, also known as a child witness, is a child under the age of 18 who can provide information for the purposes of investigation, prosecution and examination before a court of law regarding a criminal case that he hears himself, seen, or experienced. This is stated in Article 1 paragraph (5) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

The regulation of child witnesses in conflict with the law is contained in Articles 89 to 91 Chapter VII of Law Number 11 of 2012 which regulates the juvenile criminal justice system. According to Article 89, a child who is a victim or witness to a crime is entitled to all the protections and privileges outlined in laws and regulations.

It is very important to protect children who become witnesses, as evidenced by the provisions of the Juvenile Justice System Act regarding witness protection.

The existence of electronic recording arrangements functions as a witness service to reduce the trauma experienced by children and prevent them from having direct contact with perpetrators of crimes. As a result, apart from being followed by parents/guardians, social workers, and managers of children's correctional institutions (bapas), the child's testimony will be more free and adaptive so that it allows the creation of legal facts that are in accordance with the events experienced by the child himself, in the form of seeing or even feeling a criminal event.

Protection of child witnesses who are dealing with the law is important because of their role and contribution in handling criminal cases, to be able to open the veils of crime so that child witnesses deserve the rights listed in the Law on the Indonesian Juvenile Criminal Justice System.

CONCLUSION

Children who are in conflict with the law, whether as perpetrators, witnesses or victims, often experience physical injuries in addition to psychological wounds that take a long time to heal. Therefore, as a legal remedy that supports the interests of the child, the government provides guarantees for victims as outlined in laws and regulations, all of which are the result of ratification of the United Nations (UN) Convention on the Rights of the Child, one of which is the Best Interests Principle for Children. Sometimes the pain experienced by children who are in conflict with the law is not light and it takes a long time to recover. Both the community and the government take preventive and punitive actions to protect children who face the law. And in terms of facts and data, children who are in conflict with the law have increased, so this needs to be scrutinized and a solution is found.

The handling of child cases is improved by protecting children who are in conflict with the law and using restorative justice strategies. Children who are in conflict with the law, both those who are victims of criminal acts and those who become witnesses, are separated and strictly regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). With a different form of protection from adults, this is done so that children who are in conflict with the law, both as perpetrators, victims, and witnesses, still get their rights as children towards a bright and hopeful future. This is also clear evidence that in terms of legal protection for children who are in

conflict with Law Number 11 of 2012, they have used and implemented the best interest principle for children.

With the presence of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Restorative and diversion justice settlement procedures are now used to resolve cases of children who have had legal problems in the past through the courts. When cases involving children as perpetrators can be resolved out of court through restorative justice and diversion by bringing together all parties, both perpetrators, victims and witnesses in resolving conflicts that occur by using a restorative justice approach that prioritizes recovery rather than retaliation in resolving child cases.

This research focuses on the Juridical-Normative study of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) and looks at several other laws concerning children. However, there are still flaws in terms of the sharpness of Juridical Analysis which only uses Descriptive Analysis. So that it is hoped that researchers can be perfected in the future through other research, in terms of not only one law (UU No. 11 of 2012) but can use collaboration with other relevant laws, and can use a more in-depth and sharp Juridical Analysis

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