

## LEGAL PROTECTION FOR CHILD VICTIMS OF CRIMES ACCORDING TO THE CHILD CRIMINAL JUSTICE SYSTEM IN INDONESIA

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### Abstract:

Children are legal subjects and national assets, but every year, juvenile delinquency always increases. One of the efforts to overcome juvenile delinquency is implementing a juvenile criminal justice system. Law Number 3 of 1997 concerning Juvenile Courts specifically regulates the juvenile criminal justice system in Indonesia. The philosophical paradigm of Law Number 3 of 1997 adopts a formal legal approach with an emphasis on punishment. The process of punishment given through formal criminal justice placing children in Correctional Institutions has not succeeded in deterring them. This study uses a normative legal approach method, examining secondary data collected using literature studies using a legislative and conceptual approach. The formulation of policies for handling children must be carried out using a restorative justice approach, a settlement process carried out outside the criminal justice system by involving victims, perpetrators, families of victims and perpetrators, the community and those interested in a crime that occurs to reach an agreement and resolution. This policy is based on the fact that the response or reaction of perpetrators of juvenile delinquency is ineffective without the cooperation and involvement of victims, perpetrators and the community. Restorative justice-based legal protection for children as victims in handling legal cases requires child judges at the District Court to conduct diversion before examining criminal cases of children, as ordered by the SPPA Law. Diversion must be carried out within 7 days, involving related parties, according to the terms and conditions stipulated in the SPPA Law.

## INTRODUCTION

Children are legal subjects and national assets that must grow and develop into a generation with potential, play a role and enjoy national development towards achieving the goals of the Republic of Indonesia as mandated in paragraph IV of the Preamble to the 1945 Constitution of the Republic of Indonesia. Therefore, the state is obliged to protect children, who, in their growth and development, are still in the process of finding their identity, especially when they are faced with or experience conflict with the law. In the context of social order, a juvenile criminal justice system is needed that is able to provide protection and a sense of justice for children so that they still have hope to face their future without having to be hampered by the suffering of past trauma that has experienced excessive legal action in court.

Legal actions taken against them must prioritize the development and restoration of their rights without having to be subjected to excessive legal action. This becomes a complicated issue from the perspective of justice; if the legal conflict occurs not only between children and the state or society but also in relations between children who both have the right to receive protection, then how should the path of justice be taken?



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"Philosophically, children as part of the younger generation, as one of the human resources that is the potential and successor to the ideals of the nation's struggle in the future, who have a strategic role and have special characteristics and traits, require special guidance and protection as well."

In the general explanation of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Justice System (UU SPPA), it is stated:

Children are an inseparable part of human survival and the survival of a nation and state. In the Indonesian constitution, children have a strategic role, which expressly states that the state guarantees the rights of every child to survival, growth, and development, as well as protection from violence and discrimination. Therefore, the best interests of children should be lived as the best interests for the survival of humanity. The consequences of the provisions of Article 28B of the 1945 Constitution of the Republic of Indonesia need to be followed up by making government policies aimed at protecting children.

Children need protection from the negative impacts of rapid development, globalization in the field of communication and information, advances in science and technology, and changes in the lifestyle and way of life of some parents who have brought fundamental social changes in the lives of society that greatly influence the values and behavior of children. Deviant behavior or unlawful acts committed by children, among others, are caused by factors outside the child. Data on children in conflict with the law from the Directorate General of Corrections shows that the level of crime and the adverse effects of abuse of narcotics, psychotropic drugs, and addictive substances are increasing.

Given children's unique characteristics and traits and for the protection of children, cases of children in conflict with the law must be tried in a juvenile criminal court within the general court environment. From the time they are arrested, detained, and tried, the judicial process for juvenile cases must be carried out by special officials who understand children's problems. However, before entering the judicial process, law enforcers, families, and the community must seek a settlement process outside the court, namely through the Restorative Justice approach.

Some argue that the Juvenile Court's decision sentenced the child perpetrator to a guilty verdict with a sentence below the minimum sentence under the Child Protection Act, considering that the law also states that criminal punishment should be used as a last resort if other efforts are no longer effective in providing a sense of justice.

Regarding efforts to protect children in conflict with the law, the juvenile criminal justice system (UU SPPA) must be interpreted broadly; it is not only interpreted as merely handling children in conflict with the law. However, the juvenile criminal justice system must also be interpreted to include the root causes of why children commit crimes and efforts to prevent them. Furthermore, the scope of the juvenile criminal justice system includes a wide variety and complexity of issues ranging from children making their first contact with the police, the trial process, detention conditions, and social reintegration, including the perpetrators in the process. Thus, the juvenile criminal justice system refers to legislation, norms and standards, procedures, mechanisms and provisions, institutions and bodies specifically applied to children who commit crimes.

Referring to process, there are 3 (three) stages of juvenile justice; the first stage includes preventing children from criminal acts. This stage includes the implementation of social policy objectives that allow children to grow in accordance with their best interests. The second stage is marked by children coming into contact with formal procedures of the criminal justice system. This stage is a form of child responsibility through the criminal justice process. The third stage,





resocialization, begins with the isolation process in correctional institutions until the release of the child.

In line with the above framework, the international standards of the juvenile criminal justice system are, in principle, aimed at encouraging the specificity of juvenile criminal justice practices and developing a different criminal justice system so that the treatment of children in conflict with the law is following their age and level of maturity. This is because there is a gap in the level of maturity between adults and children, both morally, cognitively, psychologically, and emotionally. Therefore, building a juvenile justice system should be based on the perspective that children in conflict with the law are basically victims, even though the child has committed a crime.

The level of vulnerability and risk of experiencing violence is increasingly experienced by girls, especially acts of sexual harassment and abuse of authority during detention and investigation. Further impacts, they are potentially exposed to HIV/AIDS and other infectious diseases. Then, issues related to female detainees or prisoners, especially girls, revolve around safety and comfort, which include institutional issues, such as the placement of rooms, facilities, and reproductive health services. Even women, including girls who are deprived of their freedom because they are female, are potentially subject to gender-specific torture. Related to the above problems, the United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners Paragraph 8 emphasizes that Differentiation of categorization of prisoners must be maintained through the separation of institutions or parts of detention institutions based on gender, age, criminal record committed, legal reasons for detention or treatment of them.

Based on the description above, the author is interested in conducting a study entitled "LEGAL PROTECTION FOR CHILD VICTIMS OF CRIMINAL ACTION ACCORDING TO THE CHILD CRIMINAL JUSTICE SYSTEM IN INDONESIA."

**Identification of problems.** Based on the explanation of the research background above, the identification of problems in this research is as follows:

- a) How is the policy formulation for dealing with children as victims of crime in the criminal justice system in Indonesia?
- b) How is the legal protection for children in the criminal justice system that is Restorative Justice?

## METHODS

The epistemological aspect is necessary to guarantee the truth and scientific accountability in this research by gaining knowledge from the research problem. This aspect is relevant to the research method used to study the main problems in this study. Johny Ibrahim stated that one of the ways of scientific work is characterized by a method. Determining legal research methods should start from the nature of legal science. Legal science has the characteristics of legal science as *sui generis*, which means that legal science is a science of its own kind because legal science with scientific quality is complex to group into one branch of the tree of science. Based on the characteristics of legal science, this study uses a normative juridical research method. The characteristics of legal science place law not merely as a social phenomenon but also into the essential, namely the intrinsic law. This legal research departs from the understanding that legal research is a process to find legal rules, principles, and doctrines to answer legal issues. For this reason, this study aims to find out how to provide legal protection for children as victims of crime in the criminal justice system.

**Research Specifications.** The type of legal research in this study is descriptive-analytical, with the consideration that the starting point of the study is not limited to the analysis of laws. Regulations related to legal protection efforts for children as victims in the criminal justice system





and a review of cases that have not been resolved until now because they are constrained by legal instruments that have not been regulated and are still multi-interpretive. However, the study is not only on legal materials in Indonesia but also on materials and legal regulations from various countries that regulate the handling of efforts to overcome children as victims of crime.

**Approach Method.** To answer the research problems above, an appropriate method is needed. Observing the research problems, the method used in this study is normative legal research. The use of this method is based on the consideration that the starting point of the study is not only limited to the analysis of laws and regulations related to legal protection efforts for children as victims of crime in the criminal justice system but also a review of cases that have not been resolved at this time because they are constrained by laws and regulations that have not been regulated and are still multi-interpretive. However, this study was not only conducted on legal materials in Indonesia but also on materials and laws and regulations from various countries that regulate the handling of efforts to overcome children as victims of crime. Conceptual and legislative approaches support this research.

- a) Conceptual Approach;
- b) Legislative approach;

**Data collection technique.** In data collection efforts in this writing, the author uses documentation by searching for data from sources in the form of documents, facts and notes. The data required for writing is collected employing document studies or literature studies, which are carried out to collect and inventory all library or secondary data related to the research topic.

The research collects data through library research in order to obtain a theoretical basis in the form of opinions or writings of experts or other authorized parties. It also obtains information, both in the form of formal provisions and data, through existing official documents.

**Data Collection Procedure.** To obtain data, the author conducted library research. In this study, the author researched and collected legal materials as a tool to study legal issues related to legal protection for child victims of crime according to the child criminal justice system applicable in Indonesia, including:

- a) Secondary data of primary legal materials.
- b) Secondary data secondary legal materials.
- c) Secondary data tertiary legal materials.

## RESULT AND DISCUSSION

**Policy on Handling Children as Victims of Crime in the Criminal Justice System in Indonesia.** The problem of criminal acts committed by children is now increasing in society, both in developed and developing countries. The development of society, which began with an agrarian life and moved to an industrial life, has significantly impacted most people's socio-cultural values. Values that originate from industrial life are increasingly shifting the values of agrarian life, and this process occurs continuously so that, in the end, it brings changes in values, including patterns of behavior and social relations.

Such developments are also taking place in Indonesia, with the integration of values characterized by industrial society. Thus, the clash between traditional local values and modern values is inevitable. In the end, the most noticeable impact of very rapid social change towards industrial life is the deviation of children's or adolescents' behavior.

Juvenile delinquency increases every year if we observe the development of criminal acts committed by children so far, both in terms of quality and modus operandi; sometimes, the





violations committed by children are felt to have disturbed all parties, especially parents. The phenomenon of increasing violent behavior committed by children seems not to be directly proportional to the age of the perpetrator. Therefore, various efforts must be made to prevent and overcome juvenile delinquency immediately.

**Determination of the Age of Criminal Responsibility for Children According to the Age and Maturity Level of the Child.** One of the critical issues in criminal justice policy is providing legal mechanisms that reflect the transition from childhood innocence to maturity and full responsibility under criminal law. The age of criminal responsibility refers to the age at which a person is considered to have the capacity to judge (the capacity to distinguish between right and wrong) and can bear responsibility for the crime he/she has committed. In this regard, there are 2 (two) issues, namely: (i) the age at which a child is considered to have the mental capacity to commit a crime and (ii) the age at which a child is considered fit to bear responsibility for prosecution and formal sanctions for the crime he/she has committed. Along with this issue, there are 2 (two) provisions regarding criminal responsibility, namely: (i) the minimum age of criminal responsibility and (ii) the gradual imposition of criminal responsibility, which depends on the child's understanding of the wrong actions he has committed. Furthermore, there are 3 (three) types of differences in mens rea, namely:

- a) intention; someone intends to do actus reus;
- b) willful blindness: a person knows that his or her actions are possibly illegal but chooses not to ask or investigate the situation;
- c) Criminal negligence is when a person is not aware of the consequences of his actions.

These three differences can be used to examine the extent to which a child's capacity to understand the crime he/she has committed. In other words, children within a specific age limit cannot yet analyze the risks of the crime he/she has committed. At this point, the child's age and maturity level become the benchmark for determining and measuring the degree of children's mens rea.

**Policy Through the Concept of Restorative Justice.** According to Howard Zehr, restorative justice is defined as a process that involves and enables the involvement of broader parties, namely parties who have an interest in a specific violation. Then, together, identify and direct losses, needs, and obligations to heal and place the parties' rights as a possible point to be resolved. According to Sharpe, restorative justice has fundamental characteristics with various values: participation, democracy, responsibility, recovery, security, healing, and reintegration.

Furthermore, according to the United Nations Office on Drugs and Crime (UNODC), restorative justice refers to the process of solving criminal acts (crimes) by focusing on repairing the victim's losses (injuries), holding the perpetrator responsible for his actions, and involving the community in resolving the conflict that occurred. Thus, the restorative process is any process in which the victim and perpetrator or other individuals or members of the community affected by a crime actively resolve various problems that arise due to the criminal act with the help of a facilitator.

**Policy Through the Concept of Diversion in Juvenile Justice.** Diversion can be interpreted as an effort to distance a case with specific criteria from the formal criminal justice process towards community support to avoid negative impacts caused by the criminal justice process. Diversion actions can be carried out at any stage in the criminal justice process. The implementation of diversion depends on the decision of the police, prosecutor, court, or similar bodies. However, in many systems, the decision to diversion is made at the beginning of the criminal justice process. Thus, diversion is a channelization of certain cases to be distanced from the criminal justice system





which is generally based on certain conditions that place the perpetrator in a difficult position (fait accompli).

Furthermore, according to Van Rooyen, diversion can also be defined as prima facie the diversion of a case from settlement efforts through the normal trial process. This implies that the charges against the perpetrator based on certain conditions can be withdrawn or stopped. Furthermore, the perpetrator must participate in a special program or restore the victim. Diversion can also be called an out-of-court settlement where the charges against the defendant are stopped or dropped, but in return, the suspect must comply with the conditions agreed upon by the parties.

**Children in Conflict with the Law Policy Under International Law.** Beginning with the United Nations Standard Minimum Rules for the Treatment of Prisoners in 1955, the UN has since adopted several standards and norms designed to advance the administration of justice worldwide. These standards and norms have been adopted in international cooperation, treatment of criminals, justice, law enforcement, juvenile justice, witness protection, the death penalty, prevention of cruel and inhuman punishment, and human rights.

The application of UN standards and norms can be a useful tool to improve respect and promotion of human rights, improve the performance of the criminal justice system, and protect the community. The instrument can also be used as a basis for developing measurable parameters related to fair play and the effectiveness of the operationalization of the national criminal justice system from an international perspective.

## CONCLUSION

Conclusions Based on the description of the previous chapters, a closing description can be presented consisting of conclusions and facilities as follows: (1) The policy of formulating the handling of children as victims of crime in the criminal justice system in Indonesia must be carried out using a restorative justice approach, namely a settlement process carried out outside the criminal justice system by involving victims, perpetrators, families of victims and perpetrators, the community and parties interested in a crime that occurs to reach an agreement and resolution. This policy is based on the assumption that responses or reactions to perpetrators of child delinquency will not be effective without cooperation and involvement from victims, perpetrators and the community. The underlying principle is that justice is best served if each party receives fair and balanced attention, is actively involved in the judicial process and obtains adequate benefits from their interactions with the juvenile justice system. The policy of formulating the handling of children is carried out by considering (a) Determining the age of criminal responsibility of children according to the age and level of maturity of the child; (b) Policy through the concept of restorative justice by considering three critical bases, namely process-based, justice-based and combination. (c) Policy through the concept of diversion in juvenile justice, namely efforts to move a case with specific criteria away from the formal criminal justice process towards community support to avoid negative impacts from the criminal justice process. (2) Legal protection for children as victims in the criminal justice system, which is restorative justice in handling issues of children in conflict with the law, is necessary. It is necessary to pay attention to several things: (a). Harmonization of national legal instruments that refer to international instrument standards on child protection. This legal harmonization is carried out because there are so many laws and regulations in Indonesia that regulate children, besides that Indonesia is part of the international community that is bound by several conventions and other international legal instruments that aim to provide child protection in order to improve the status, dignity and welfare of children. (b) Age limit for child detention and criminal responsibility of children that can be submitted to the juvenile court. The difference in the



minimum and maximum age limits for criminal responsibility not only has an impact on the differences in handling of the juvenile criminal justice system but is also related to organizations and institutions such as social workers and child services. (c) The diversion concept is intended to concretize the restorative justice approach. In the District Court, juvenile judges are required to carry out diversion before examining cases of child crimes, because diversion is an order from the SPPA Law. In the diversion process, the child judge is given the opportunity for 7 (seven) days and is required to involve the relevant parties in deliberation following the terms and conditions of the SPPA Law in the district court, closed to the public in a particular room, while taking into account the principles of resolving child criminal cases.

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