

# Legal Protection for Children Victims of Criminal Offences According to The Indonesian Juvenile Criminal Justice System

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## Abstract

Children play a vital role as future national assets, yet the rise in child delinquency highlights the limitations of Indonesia's juvenile criminal justice system. Law Number 3 of 1997 emphasizes punishment (retributive justice), which often fails to rehabilitate children or support their growth. This study aims to explore policy reforms that integrate restorative justice in addressing child delinquency. Using a normative legal approach, the study analyzes secondary data through statute and conceptual frameworks. The findings suggest that restorative justice, involving victims, perpetrators, families, and communities, is more effective in resolving child delinquency while supporting rehabilitation and development. The study concludes that legal protection for children as victims in the criminal justice system requires mandatory diversion efforts by child judges, following the SPPA Law, to promote a fair and constructive resolution process.

**Keywords:** Legal Protection, Victims, Juvenile Justice System

## 1. Introduction

Children are considered as valuable members of the nation who are expected to mature and evolve into a competent generation capable of contributing to the progress and prosperity of Indonesia, in line with the objectives outlined in the preamble of the 1945 Constitution of the Republic of Indonesia. Hence, it is the responsibility of the government to ensure the safety of children as they navigate through their journey of self-discovery and encounter legal complications. A juvenile justice system is necessary to ensure protection and justice for children within the context of maintaining social order. It should offer hope for the future while avoiding the negative impacts of previous legal proceedings and past trauma (Lestari et al., 2022).

Their rights should be the focus of any legal action against them, and the main goal should be to provide guidance and support rather than punitive measures (Umami & Fadilla, 2022). When legal disputes arise among children and the state or society, as well as among children with the right to protection, the pursuit of justice becomes complex and challenging.

From a philosophical perspective, children are seen as valuable members of the upcoming generation and are considered to be essential for continuing the nation's ideals and values in the future. They possess unique qualities and characteristics that require specific care and support in order to thrive (Nashriana, 2011).

The explanation of the Law of the Republic of Indonesia Number 11 of 2012 regarding the Juvenile Justice System emphasizes the importance of children in the survival and prosperity of a nation. According to the Indonesian Constitution, children play a crucial role and are entitled to protection,



growth, and development as well as freedom from harm and prejudice (Suseno et al., 2025). The well-being of the child should be prioritized as essential for the continuation of civilization. It is crucial to implement policies that safeguard children in accordance with Article 28B of the 1945 Constitution of the Republic of Indonesia.

Children must be shielded from the adverse consequences of swift progress, globalization in communication and information, strides in science and technology, and alterations in the lifestyle and parenting methods of certain individuals which have sparked significant social transformations impacting the values and conduct of children. The misbehavior or illicit actions of children are typically the result of external factors impacting the child. Information from the Directorate General of Corrections on juveniles in legal trouble indicates a surge in criminal activity and the detrimental effects of substance abuse on children.

To preserve the well-being and unique needs of children, it is essential that cases involving minors who have broken the law are handled in a separate court designed specifically for juvenile offenders within the broader legal system. Children's cases in the legal system, starting from their arrest to their trial, require the involvement of individuals with expertise in understanding children's challenges. Prior to entering the legal system, it is mandatory for law enforcement officers, families, and communities to explore alternative solutions, such as Restorative Justice, for resolving issues outside of court.

Some argue that the decision of the Juvenile Court convicted the child offender with a sentence below the minimum threat of the Child Protection Law, considering that according to the law it is also stated that punishment should be used as a last resort if other efforts are no longer felt to be effective in providing a sense of justice.

When it comes to safeguarding children involved in criminal activities, the juvenile criminal justice system should be viewed in a broader sense. It should not be limited to merely dealing with juvenile offenders. Instead, it should also address the underlying reasons for their actions and focus on prevention measures. Additionally, the juvenile criminal justice system deals with a diverse array of challenging issues, such as a child's initial interaction with law enforcement, the legal proceedings, detention conditions, and reintegrating into society, involving various individuals in the process. Therefore, the concept of the juvenile criminal justice system encompasses the laws, rules, procedures, resources, organizations, and agencies specifically designed for minors involved in criminal activities.

Referring to this process, there are 3 (three) stages of juvenile justice, the first stage involves preventing children from committing crimes. The initial phase involves putting into action social policy goals that allow children to develop in ways that align with what is best for them. The next phase is marked by the child interacting with the official methods of the legal system. This phase represents a form of accountability for children through the legal process. The third phase, known as resocialization, starts when the child is isolated in correctional facilities until their release.

In line with the framework mentioned above, global guidelines on juvenile justice systems focus on promoting the individuality of juvenile justice practices and establishing a tailored criminal justice system to ensure that children in conflict with the law are treated according to their age and maturity. The difference in maturity levels between adults and children, in terms of morals, cognitive abilities, psychological development, and emotional awareness, is the reason behind the need for a unique juvenile justice system. It is important to view children who break the law as victims, despite their criminal actions.

The level of vulnerability and risk of experiencing violence is higher for girls, especially sexual harassment and abuse of authority during detention and investigation. Furthermore, they are potentially exposed to HIV/AIDS and other infectious diseases. Then, issues related to women detainees

or prisoners, especially girls, revolve around safety and comfort, which includes institutional issues, such as space placement, facilities, and reproductive health services. Even women, including girls who are deprived of their freedom because they are female, have the potential to experience gender-specific torture. Related to the above issues, the UN Standard Minimum Rules for the Treatment of Prisoners (UN Standard Minimum Rules for the Treatment of Prisoners) Paragraph 8 emphasizes that: Differential categorization of detainees shall be maintained through the separation of institutions or parts of detention institutions on the basis of sex, age, criminal record, legal grounds for detention or treatment.

The objective of this study is to examine how policies are developed to address the issue of children impacted by criminal activities within Indonesia's justice system. In addition, this research also aims to examine the legal protection of children in the criminal justice system that adopts the Restorative Justice approach, in order to create a more effective solution and support the rehabilitation and overall development of children.

## 2. Methods

The epistemological aspect is absolutely necessary to ensure truth and scientific accountability in this research by obtaining knowledge of the problem under study (Wignjosoebroto, 2002). This aspect is relevant to the research method used to examine the subject matter in this study. Ibrahim (2008) stated that one of the ways of scientific work is characterized by methods. Determining legal research methods should depart from the nature of legal science (Hadjon, 2017). 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 difficult to be grouped in one of the branches of the science tree. Based on the characteristics of legal science, this research uses normative juridical research methods. The characteristics of legal science place law not merely as a social symptom, but also enter into the essential thing, namely the intrinsic law. This legal investigation begins with the premise that the purpose of legal research is to uncover legal regulations, legal concepts, and legal theories in order to address legal matters (Hadjon, 2017). For this reason, this research is to find how legal protection efforts for children as victims of crime in the criminal justice system. In this research, the author uses the following research methods.

### 2.1. Research Specifications

The type of legal research in this study is descriptive analytical with the consideration that the starting point of the research is not only limited to the analysis of laws and regulations related to legal protection efforts for children as victims in the criminal justice system, but also a review of cases that have not been resolved to date due to constraints on legislation that has not regulated and is also still multi-interpretation. However, the research is not only on Indonesian legislative materials but also materials and legislation from various countries that regulate the handling of efforts to deal with children as victims of crime.

### 2.2. Approach Method

To answer the research problems above, an appropriate method is needed. Observing the research problem, the method in this research uses normative juridical research. This method is used with the belief that research should not only focus on laws and regulations concerning the legal protection of children who are victims of crime within the criminal justice system, but also a review of cases that have not been resolved at this time due to constraints on legislation that has not regulated and is also still multi-interpretation. However, this research is not only conducted on legislative

materials in Indonesia but also materials and laws from various countries that regulate the handling of efforts to overcome children as victims of crime. This research is supported by conceptual and statutory approaches (Marzuki, 2013).

- a. Conceptual Approach;
- b. Statutory approach;

### **2.3. Data Collection Technique**

Data collection efforts in this writing, the author uses documentation, namely by searching for data from its sources in the form of documents, facts and records (Soekanto, 2006). The data required in writing is collected by means of document studies or literature studies, which are carried out to collect and inventory all literature data or secondary data related to the research topic. The study gathered information through library research to establish a theoretical foundation using expert opinions and writings, as well as formal regulations and data from official sources.

### **2.4. Data Collection Procedure**

To obtain data, the author conducted library research. In this research the author examines and collects legal materials as a tool to examine legal issues related to the legal protection of child victims of crime according to the juvenile criminal justice system in force in Indonesia, including:

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

## **3. Results and Discussion**

### **3.1. Policy on Child Victims of Crime in the Indonesian Criminal Justice System**

The issue of juvenile delinquency is on the rise in societies worldwide, whether they are advanced or still developing. The transition from rural to urban living has greatly influenced the societal values and norms in many communities. Values derived from industrial life are increasingly shifting the values of agrarian life and the process occurs continuously, eventually bringing changes in the value system including patterns of behavior and community relations. In Indonesia, a similar evolution is happening, where traditional values are blending with modern industrial values, leading to a clash between the two. The rapid shift towards industrialization is causing noticeable changes in the behavior of children and teenagers.

Every year, there is a noticeable rise in child delinquency, particularly in the severity and methods of criminal acts committed by children. The disturbances caused by these offenses are a cause for concern for everyone involved, especially parents. It appears that the increase in violent behavior among children does not necessarily correspond with their age. As a result, urgent action is required to address and prevent child delinquency (Ediwarman, 2006).

### **3.2. Determination of the age of juvenile criminal responsibility in accordance with the age and maturity of the child**

Creating legal frameworks that align with the journey from childhood naivety to adulthood and complete criminal liability is a crucial aspect of criminal justice policy (Graycar, 2000). The age of criminal responsibility refers to the age at which a person is considered to have the ability to judge (the capacity to distinguish right from wrong) and can bear responsibility for the criminal offense he or she has committed. In this regard, there are 2 (two) issues, namely: (i) the age at which a child is deemed to have the mental capacity to commit a criminal offense; and (ii) the age at which a child is deemed fit

to assume responsibility for the prosecution and formal sanctions for criminal offenses 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 wrongful act committed (Graycar, 2000). Furthermore, there are 3 (three) different types of *mens rea*, namely:

- a. intention: a person intends to commit an actus reus;
- b. willful blindness: a person is aware of the possibility of his or her actions being illegal but chooses not to inquire or investigate the situation;
- c. criminal negligence: when a person is unaware of the consequences of their actions (The Ontario Justice Education Network, 2020).

These three differences can be used to examine the extent to which children have the capacity to understand the criminal acts they commit. In other words, children of a certain age do not have the ability to analyze the risks of the criminal acts they commit. At this point, the age and level of maturity of children become the benchmark for determining and measuring the degree of *mens rea* of children.

### 3.3. Policy Through the Concept of Restorative Justice

Howard Zehr suggests that restorative justice is a method that brings together various stakeholders who have an interest in a particular offense to acknowledge and address the losses, needs, and responsibilities involved in order to promote healing and prioritize the rights of those involved. Sharpe argues that restorative justice is centered around key principles such as participation, democracy, accountability, rehabilitation, safety, recovery, and reintegration (Skelton & Tshela, 2008).

Moreover, as per the United Nations Office on Drugs and Crime (UNODC), restorative justice involves addressing crimes by prioritizing the restitution of victims' losses, holding perpetrators accountable, and engaging the community in resolving conflicts. Restorative processes involve victims, offenders, and other members of the community affected by a crime working together with a facilitator to actively resolve issues stemming from the criminal act (UNODC, 2011).

### 3.4. Policy Through the Concept of Diversion in Juvenile Justice

Interpretation of diversion involves redirecting a case with specific qualifications away from the conventional legal system towards community assistance in order to prevent harmful effects caused by the legal process. Essentially, diversion can be utilized at any point during the legal process. The execution of diversion is contingent upon the determination made by law enforcement, district attorneys, judiciary, or equivalent organizations. However, in many systems the diversion decision is made early in the criminal justice process. Thus, diversion is the canalization of certain cases to be kept out of the criminal justice system which is generally based on certain conditions that put the offender in a difficult position (*fait accompli*) (UNODC, 2017).

Furthermore, according to Van Rooyen, diversion can also be defined as the *prima facie* diversion of a case from resolution through the normal trial process. This implies that the charges against the offender under certain conditions can be withdrawn or discontinued. Furthermore, the offender must participate in a special program or restore the victim. Diversion can also be referred to as an out-of-court settlement where the charges against the accused are dropped or withdrawn, but in return the suspect must comply with the conditions agreed by the parties.

### 3.5. Policies for Children in Conflict with the Law Under International Law

Beginning with the UN Standard Minimum Rules on the Treatment of Prisoners in 1955, the UN has subsequently adopted a number of standards and norms designed to advance the administration of justice in all parts of the world. These standards and norms were adopted in the areas of international



cooperation, treatment of offenders, justice, law enforcement, juvenile criminal justice, witness protection, the death penalty, prevention of cruel and inhuman punishment, and human rights (Albanese, 2003).

The application of UN standards and norms can be used as a useful tool to improve the respect and promotion of human rights, improve the performance of criminal justice system achievements, and protect the public. Not only that, these instruments can 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 (Joutsen, 2019).

#### **4. Conclusion**

Based on the description of the previous chapters, a closing statement can be submitted which consists of conclusions and means as follows. In Indonesia, the policy should focus on using a restorative justice approach to address children who are victims of crimes in the justice system. This approach involves the victims, perpetrators, families, communities, and other interested parties in reaching agreements and resolutions outside of the traditional justice system. This approach is based on the belief that addressing juvenile delinquency requires the collaboration of victims, offenders, and the community for effective outcomes. It emphasizes the importance of ensuring that all stakeholders are treated fairly, actively participate in the justice system, and benefit from their involvement. The policy formulation of child countermeasures is carried out by paying attention to (1) Determination of the age of criminal responsibility of children in accordance with the age and level of maturity of children; (2) Policy through the concept of restorative justice by paying attention to three important bases, namely process-based, justice-based and combination. (3) Policy through the concept of diversion in juvenile justice, namely efforts to keep a case with certain criteria away from the formal criminal justice process towards community support to avoid negative impacts caused by the criminal justice process.

Legal protection of children as victims in the criminal justice system that is restorative justice in dealing with issues of children in conflict with the law, it is necessary to pay attention to the following matters: (a). Harmonization of national legal instruments that refer to standard international instruments 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 which is bound by a number of conventions and other international legal instruments that aim to provide child protection in order to improve the degree, dignity and welfare of children. (b) Age limit of child detention and criminal responsibility of children who can be brought to juvenile court. Differences in the minimum and maximum age of criminal responsibility not only impact on the handling of the juvenile criminal justice system, but also relate to organizations and institutions such as social workers and children's services. (c) The concept of diversion, a mechanism intended to concretize the restorative justice approach. In the District Court, juvenile judges are required to conduct diversion before examining juvenile criminal cases, as diversion is mandated by the SPPA Law. In the diversion process, juvenile judges are given an opportunity for 7 (seven) days, must involve related parties in a deliberation in accordance with the terms and conditions of the SPPA Law in the district court closed to the public in a special room, with due regard to the principles of resolving juvenile criminal cases.

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