

## Underage Perpetrators and Victims of Crime According to a Legal Perspective

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### ABSTRACT

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How does the law view minors through the lens of justice, where these children are perpetrators of criminal acts who must face trials in criminal cases? Also to understand the procedures, flow and process in carrying out trials in child criminal cases. Apart from that, of course it is to analyze the comparison of various differences that will arise from trials of child criminal cases with trials of normal/adult people. The type of research used is the normative juridical method, which is one of various types of research that utilizes statutory regulations. Normative juridical research or what is more familiarly known as doctrinal research aims at all written rules and includes research that is closely related to books, papers, writings and libraries to produce various kinds of data, both of which are secondary in nature. the place where it is located or in the library. In special juvenile justice, there are many differences in how the law treats and views defendants. The trials carried out for the children themselves are more family friendly and carried out briefly. Carrying out trials on children is different from carrying out regular trials on adults. In juvenile justice, the method used is restorative justice, especially criminal acts which of course involve the perpetrator, the victim, the perpetrator's family and the victim's family, as well as the participation of other stakeholders, who will then work together to find a fair solution while remaining focused on recovery. original condition and no motive for revenge.

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### INTRODUCTION

In general, people say: "Children are a trust, gift and entrustment from God Almighty, wherever there is respect, self-respect and dignity of parents as complete human beings. Every child has the right to live, to grow and develop, to take part in society, and to be protected from violence, discrimination, and denial of their civil rights and freedoms because they represent the future of the country. In Indonesia there are a number of crimes, some of which involve sexual violence. Cases of sexual violence themselves are also increasing every year, the victims are not only adults but are now expanding to include teenagers/school children, children who still have to play and even toddlers who are always in their mother's lap. The phenomenon of sexual violence against children is becoming increasingly familiar, cases are widespread and global in most countries and will continue to increase as time progresses.

Social growth and progress can have negative impacts, such as the existence and emergence of delinquency among children and children aged 12 - 21 years whose actions can pose a risk to the quality of the nation's future leaders who will influence the future development of the country. The issue of child delinquency has always been a hot issue in most countries, including Indonesia. The existence of mischief committed by children not only threatens the safety and comfort of society, but

can also cause dangers that can destroy the future of the nation and state. Delinquency in children is often considered to be okay under the pretext that "they are also children", so that it often motivates children to carry out other behavior, such as committing crimes at a very young age.

However, even though a teenager commits a crime, he is not always a teenager in conflict with the law or a teenager who behaves badly. Often their rights are abused and ignored at every level of investigation, from the investigation to the trial stage. Not to mention the negative social discrimination experienced by children, being expelled from school, being ostracized by friends and other situations will certainly put pressure on their psychology and morality. This problem certainly has a significant impact on the child's growth and development and future. These stigmas can traumatize children and make them afraid to communicate again, especially as time goes by, causing news to spread very quickly. Therefore, effective legal protection is needed to avoid unexpected events that could have an adverse impact on children and also on the progress of the state which acts as the person responsible. Legal protection of children is the responsibility of the entire community because their role and existence is very important as the nation's next generation in protecting and achieving future goals.

Therefore, it is necessary to ensure that they are given lots of guidance and moral support so that they can grow healthily and develop well. This is of course very important in restoring children's sense of confidence and self-confidence and can also be a preventive step for reintegration into society. This is actually well regulated in Indonesian legislation, specifically in article 28B paragraph 2 of the 1945 Constitution of the Unitary State of the Republic of the Republic of Indonesia which reads: "Every child has the right to survival, growth and development and the right to protection from violence and discrimination" . Then, in article 28D paragraph (1) of the 1945 Constitution of the Unitary State of the Republic of Indonesia, it is also regulated that: "Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law." Based on this regulation, it is very clear and has been emphasized that the law looks at how protection for children must be enforced.

Objective This research is to find out what are the criminal acts and criminal sanctions against minors in the Criminal Code and Law Number 23 of 2002 concerning Child Protection and what is the level of effectiveness of UU SPPA No. 11 of 2012?

## METHOD

The method used in this research is normative legal research (normative juridical), namely research that refers and leads to legal norms and principles and is sourced from literature (library research) and various statutory regulations related to the writing of this research..

## RESULTS AND DISCUSSION

### **No and criminal sanctions imposed on minors in the perspective of the Criminal Code and Law No. 23 of 2002 concerning Child Protection**

Children are a gift from God. This is not only for the parents, but also for the country. Children are the bearers of our country's future destiny and are our future leaders who will determine what and how this country will be. Children are also unique individuals and have their own characteristics. A child's growth and ability in any activity, the environment in which the child lives plays a role in influencing his behavior. Therefore, both parents, teachers and other adults in society can play a good and most needed role in shaping children's behavior and characteristics in order to guarantee their future. However, some children do not have a good life. Some of them have to be confronted or involved in things they don't want to do, such as criminal activities. Unfortunately, anyone, including children, can become involved in criminal activity.

Not only the victims, but also the perpetrators of the crime. This requires special attention from justice enforcers because it is very clear that the mental health and psychology of minors and adults are certainly different. Of course, many criminal cases involve minors as suspects, and this is sad but true. In certain areas in Indonesia, crimes against minors occur every year. KPAI Chairman Asrorum Niam was quoted as saying, "The number of children causing criminal cases is increasing," in the Jakarta Electronic Industry Media. On the other hand, the number of children who are victims of violence has decreased."

Many factors can influence a child's ability to do these things: environmental, family, school, community factors or even factors within the child himself can also influence teenagers. These factors generally attack children, especially at a young age whose level of emotional control is still quite low. Tannebaum said that juvenile crime (juvenile delinquency) can arise from various causes of conflict itself, such as conflict between a group and the wider community.

The development and progress of the times due to globalization has contributed to the emergence of juvenile delinquency, causing children to commit negative and even criminal acts. Unfortunately, this unfortunate incident is often taken lightly by society. In fact, their highly illegal behavior can lead them to much more dangerous things such as crime, ranging from petty crimes like theft to serious crimes like murder. Furthermore, this child's bad behavior not only creates chaos and security, but also has the potential to pose a risk to the future of the country when the child holds state power for the next 20 to 30 years.

Those who should only be charged with playing and studying with their best friends must be faced with rules that they may not understand. Even if they are still children, that is no reason to let them go. But crimes still have to be enforced and they still have to face the results of their actions. Legal protection of children can be understood as an effort to legally protect various human rights and freedoms as well as interests related to the prosperity of children. To create quality human resources who have a leadership spirit, are competitive and can maintain the peace and unity of the Republic of Indonesia, continuous development is needed so that children's lives can continue to run based on human rights.

According to Article 1 number 2, Law No. 35 of 2014 concerning Child Protection, it is stated that: "Child protection includes all efforts made to protect children from danger and ensure that they have the opportunity to have a healthy and satisfying childhood, as well as free from violence.". There are a number of privileges in trying minors as a concrete manifestation of Article 11 UUSPPA which must be implemented by the judicial institution responsible for handling criminal acts against such children. Because often these children do not demand their rights in court, especially as social discrimination will certainly put pressure on their mental and psychological health. Therefore, it is important to provide adequate legal protection to children so that they feel safe, but also avoid bad things that can have a bad impact on children who violate the law. Because children are at a vulnerable and dependent age, and because some children experience difficulties in physical, mental, spiritual or social development, it is important that laws provide certain protections for them.

Protecting minors has benefits, not only for children but also for children's parents and the government. Therefore, it is necessary to coordinate cooperation issues in the implementation of child protection so that there is no inequality in handling child protection problems in general. This law provides comprehensive protection for minors. The need for legal protection for children has been discussed at length in a number of international conferences and papers, in particular:

1. Children's human rights and freedoms;
2. Protection of children in court proceedings;
3. Social security;
4. Guarantees in cases of detention and deprivation of liberty;

5. Avoid all forms of exploitation;
6. Safe from street child status;
7. Protect children from the consequences of war/armed conflict;
8. Protect children from acts of violence;

It is important to remember that there are two types of child protection: direct and indirect. When we talk about protecting children directly, we are talking about taking action with children in mind. Steps that can be taken in this direction include protecting children from external and internal dangers. Furthermore, indirect protection means actions that are not directed against children but against other parties who lead or are involved in efforts to protect children. The involvement of parents in protecting their children from danger, both internal and external, is the main illustration of protective efforts carried out by parents.

They are responsible for caring for and supporting children in various ways, and they are also involved in reducing child hunger, optimizing health, and preparing foods that are important for children's personal development, etc. Therefore, those who work to protect children are members of society in their own right, each with their own methods and contexts. Every adult must take steps to ensure the safety of children so that they can grow up healthily and successfully. Many factors contribute to juvenile delinquency and criminal behavior, creating tensions with the law and the criminal justice system.

#### **UUSPPA No. 11 of 2012**

Therefore, the entire process of handling juvenile crimes that is related to the law, starting from the investigation stage to the post-criminal orientation stage, is all regulated in Law Number 11 of 2012. UUSPPA Number 11 of 2012 is intended as an improvement. previous regulations and therefore replaced Law Number 3 of 1997. On 30 July 2012, UUSPPA was signed into law by Susilo Bambang Yudhoyono, the fifth president of Indonesia and currently:

1. Children are a gift and gift from God who have complete human dignity.
2. To protect honor and dignity.
3. Because it is a signatory to the Convention on the Rights of the Child, Indonesia must ensure that minors who experience legal problems receive extra protection.
4. Law Number 3 of 1997 concerning Children's Courts is outdated and not in line with the needs and developments of modern law because it does not provide universal protection for children in conflict with the law.

In this environment, new laws and regulations were formed that regulate the juvenile criminal justice system. Article 1 paragraph 6 UUSPPA establishes restorative justice as the foundation of the juvenile justice system, where perpetrators, victims, families of perpetrators/victims, and other stakeholders participate in collaborative efforts to find fair and consistent solutions to criminal acts. Focus on restoring the original state, not revenge. Then, in Article 2 UUSPPA, the juvenile criminal justice system has principles, specifically:

1. Protection Principles;
2. Principle of Non-Discrimination;
3. Principle of Deprivation of Liberty and Punishment as a last resort;
4. The principle of the best interests of the child;
5. Principles of Justice;
6. Principle of avoidance of retaliation;
7. Principles of child survival and growth and development;
8. The principle of respect for children's opinions;
9. Proportional Principle and
10. Principles of child survival and growth and development;

And in Article 3 we can see that children have rights that need to be respected, including:

1. Treated humanely and paying attention to their needs as regulated in the Article;
2. Receive effective legal and other assistance;
3. Take part in recreational activities;
4. Not subjected to torture, harsh punishment, or humiliating treatment.
5. Cannot be sentenced to death or indefinite imprisonment.
6. Not subject to arrest, detention, or detention under any circumstances.
7. Have your child's case heard privately in an impartial and fair juvenile court.
8. Identity not disclosed;
9. Get help from the child's parents/guardians and trusted people;
10. Social protection;
11. Having a personal life;
12. Realizing accessibility, especially for children with disabilities;
13. Education;
14. Obtaining health services; And
15. Enjoy other rights determined by law.

Apart from that, Article 4 UUSPPA also regulates that children serving criminal sentences have the right to:

1. Reduced criminal penalties
2. Integrated.
3. Say goodbye to visit family.
4. Apply for parole
5. Apply for leave before release
6. Apply for conditional leave.
7. Enjoy other rights as provided by law.

According to Article 5 paragraph (2) UUSPPA, the criminal justice system for children includes:

1. Criminal investigations and prosecutions against children are carried out in accordance with the provisions of statutory regulations, unless otherwise provided in this Law;
2. Juvenile trials are carried out by courts at the general court; And
3. Order, supervise, monitor and/or assist when a violation or action is committed and after a violation or action is committed

Based on the article above, we can conclude that the challenges experienced by children and the challenges experienced by adults are different. Courts of children are based on certain principles and children have 16 rights that need to be respected by judicial authorities. This shows how Indonesian law protects minors who experience legal problems. We must also look for opportunities to shift attention from the defendant to the victim during the trial. One of the aims of this diversion of attention is to find alternative resolutions for legal disputes involving minors. Therefore, the child may not need to go through legal procedures but must reconcile with the victim. According to Article 6 of the Juvenile Criminal Justice Law, diversion has the following objectives:

1. Creating peace between victims and children.
2. Look for other ways to resolve child custody disputes outside of court.
3. Keep children from being confined.
4. Motivate local engagement.
5. Teach children to be responsible for their actions.

Apart from that, in juvenile trials, there is another special characteristic: the investigating agencies such as judges, council members, prosecutors and lawyers do not wear dresses. Later,

investigators Others accompanying the judge also did not wear jackets. All those in charge of the exam must avoid wearing clothes that are too big so that the child taking the exam does not feel uncomfortable or intimidated. This is done so that the trial can run smoothly without causing unnecessary emotional pressure on the child, so that the child can convey all the facts without hiding anything.

After the trial, the child must also receive counseling. Guiding children to commit crimes is the responsibility of all parties. Social organizations that have experience in resolving social problems must create a platform for themselves to punish and reform minors after completing the judicial process. So far, the role of society in ensuring that children do not repeat bad behavior after being punished has only been limited to providing supervision and oversight. This is important to prevent the same problem from recurring twice.

The most important thing is that parents and families have an obligation and responsibility to restore and improve the mental, emotional and spiritual condition of their children who are the subject of a lawsuit so that their children do not experience straight stress, can continue to take legal action and legal procedures with good health. physical and mental. Because juvenile justice is carried out not only to criminalize children, but also to restore their honor in society. It is also very important to understand the reasons why they have to do bad things/crimes, not one hundred percent because they broke the law at a young age, but the family and community environment also play an important role.

Therefore, it is natural that families and community organizations must be there beside them during the trial process, this is an accountability for what children do so that they must face justice. Concern alone will not create obstacles, but a sense of justice can create obstacles in the form of a moral obligation to fulfill various needs which if not met by children can threaten their lives.

## CONCLUSION

Every aspect of Indonesian society's life, including the treatment of children who find themselves in legal trouble, must remain guided by the supremacy of law if they want to maintain the nation's reputation as a "country of law". The term "legal protection of children" refers to measures taken to ensure that children's rights and freedoms, as well as their interests in their own well-being, are protected under the law. Because children are at a vulnerable and dependent age, and because some children experience difficulties in physical, mental, spiritual or social development, it is important that laws provide certain protections for them. In the juvenile criminal justice system there are child perpetrators, child victims, child witnesses to criminal acts and all problems related to SPPA (Juvenile Criminal Justice System). This law is needed because previous legislation, especially Law Number 3 of 1997 concerning Children's Courts, is outdated and not in line with current legal developments and demands because it does not provide universal protection for children in conflict with the law. Therefore, a new law is needed to replace the old law. To continue to follow legal channels and legal procedures properly, currently the most important thing is for parents and families to restore and improve the mental, emotional and spiritual condition of their children who are the subject of the lawsuit, so that the children do not immediately experience stress. . fitness of body and mind

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