



Protection of the Constitutional Rights of Children Conflict the Law Based on Legal Certainty

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Abstract- Existing technological developments can have positive and negative impacts on society, especially for children who are still at a vulnerable age. The large amount of negative content on social media used by children in general can lead children into negative things, so that many children commit crimes that harm themselves and even others. In this normative juridical research, the author focuses on defending children's constitutional rights when they commit crimes. Because children are the nation's and development's future, they are prepared to implement sustainable development and to shape a nation's future. For this reason, over the course of human history, there have been constant disputes about protecting children. Respecting Pancasila and Undang-Undang Dasar 1945, child protection in Indonesia refers to safeguarding human resources' potential and fostering the full development of the individual in the direction of a fair and prosperous society on both a material and spiritual level. Therefore, children who are positioned as perpetrators, victims, or witnesses still receive special rights under legal protection, in an attempt to protect the law from children who are against the law.

Keyword- Protection, Constitutional Rights, Children, Criminal act

I. INTRODUCTION

Increasing cases of children in conflict with the law, alarm for society and the state. The current development of cultural progress and technological science is enough to provide better hope, however, it also adds to the complexity of human behavior in society and as a whole. Of course, there are behaviors that fall into the category of being in line with standards and behaviors that do not, when seen through the lens of law. Deviations from accepted standards or behavior that is out of the ordinary can have negative effects on society and the legal system. Social norms typically classify this kind of mistreatment as a transgression, even as a crime.

As is known, children who are still underage are vulnerable to influences coming from outside, which can have a negative impact on themselves and perhaps even on other people, but because their souls are still unstable, they cannot yet assess whether the things they do are good or bad. . Therefore, a child should receive guidance so that they do not do something that has a negative impact on themselves and others, as well as protection for their rights so that they are not oppressed by people who take advantage and abdicate their responsibilities. The threats that come from peers, adults, and other criminal activity are growing. not as "victims," but as individuals with rights, whose integrity both psychological and physical must be respected. [1]

Juvenile delinquency, which is the legal term for delinquency committed by minors, is the precursor of child crime. Any act or violation of social and legal standards by young children is considered juvenile delinquency. Children must still have the state uphold their rights even when they commit crimes. Not only do children generally receive legal protection, but youngsters who are in legal trouble also do. Even while children need care since they are still developing physically and mentally, they also have a right to particular protection before and after birth, as well as legal protection. The criminal justice system must handle minors who have broken the law by committing crimes.

The establishment and recognition of children's special protection within the juvenile criminal justice system have evolved, reflecting changing societal attitudes and a deeper understanding of child development and justice. In the past, the criminal court system frequently treated children as adults, lacking appropriate consideration for their unique vulnerabilities and potential for rehabilitation. When it comes to the juvenile justice system, there is a tension between respecting the child's liberty and taking into consideration their greater vulnerability once they are within the system. [2]

II. LITERATURE REVIEW

In this paper, the author examines the Child Criminal System Law, the Child Protection Law and looks at the Constitutional Court's rulings regarding child protection and how legal protections for children who commit crimes are applied to them. It is common knowledge that child protection activities must be carried out appropriately and specifically in order to carry out the immediate implementation of kid limitations. This is done in order to prepare future generations to be resilient and capable of meeting any challenge that comes their way. Conceptually, juvenile offenders or minors in confrontation with the law are children under the age of eighteen who are associated with the criminal justice system because they are suspected or proven guilty of committing a crime.

A. Theory of Child Protection

Legal protection for children's rights is emphasized by the philosophy of legal protection for children. The goal of child protection philosophy can be understood as an attempt to use the legal system to protect children's many interests regarding their welfare, as well as their fundamental rights and freedoms. Article 1 of Law Number 35 of 2014 ensures children's rights to life, growth, development, and full involvement in a manner that respects their honor and dignity, as well as protection from discrimination and violence. It also includes any and all acts taken to guarantee this safety.

Children are especially important to the country in terms of their moral, physical, and spiritual development in efforts to fulfill their constitutional rights because they will be assets in the future for the advancement of both national and global civilization. Therefore, it is imperative that the State, the Government, and the General Section of the Laws of the Republic of Indonesia Number 35 of 2014 explanation specify which states this Regional Government, the Community, the Family, and the Parents bear the responsibility of guaranteeing that the human rights of children are fulfilled in compliance with their duties and obligations. There is child protection, children's rights must be respected, fulfilled, and protected, and government efforts to safeguard the foundation of children's rights must be the ideals of human rights, since there is currently no guarantee that children will receive the care and opportunities they need in all areas of life Constitutional Court in Child Protection

Constitutional Court rulings demonstrate the protection of children's constitutional rights. One of the decisions of the Constitutional Court number 33/PUU-XV/2017. In its decision, the Constitutional Court declared that children are a gift and a trust from the All-Powerful God, with the inherent honor and dignity that come with becoming complete human beings. Children are essential to the existence of the country and state because of their unique qualities and critical role for years to come. They are the potential, the young generation's shoots, and the successors to the fight of the country. Therefore, it is imperative that efforts be made to ensure children's well-being by providing assurances for the fulfillment

of their rights and treatment, as children ought to have the best possible chance to develop socially, intellectually, physically, and morally without facing discrimination (refer to the part on child protection under the Consideration of Law Number 35 of 2014).

III. METHOD

In this research, in order to approach the primary legal materials, the author applies normative juridical research, looking at relevant theories, conceptions, legal principles, statutory rules, and decisions made by the Constitutional Court. In addition, the author uses a bibliographic technique, searching through books, legal manuals, and other publications relevant to the topic. Finding norms, ideas, and legal rules to answer the legal problems posed is the process of conducting legal research. This is consistent with the prescriptive character of legal science, which entails the use of legal research to provide original hypotheses, arguments, or concepts that offer suggestions for addressing problems. Legal study is conducted in order to address the raised legal concerns. The intended results dictate what should be done.

IV. RESULT AND DISCUSSION

1. *Legal Protection for Children Who Conflict The Law*

The term "child protection" describes all measures used to guarantee that children's rights are respected allowing them to live, grow, develop, and participate as completely as possible in keeping with one's human dignity and and to keep themselves safe from violence and discrimination. Regarding the welfare and protection of children, the term "prevention" usually refers to actions taken to stop child abuse or maltreatment before it starts as well as actions taken to stop already-existing problems from getting worse or becoming more ingrained. It can also mean encouraging good deeds or habits that safeguard youngsters.[3]

Based on data that the author examined, data from the Ministry of Justice and Human Rights' Directorate General of Corrections indicates that the number of children in legal trouble increased between 2020 and 2023. Furthermore, the Indonesian Child Protection Commission has obtained exclusive information about child protection:

Special Child Protection Cluster	Amount
Children Who Are Sexual Crime Victims	252
Children Victims of Physical and Psychological Violence	141
Other Special Child Protection Cases	46
Children in Conflict with the Law	33
Child Victims of Pornography or Cyber Crime	31
Children Victims of Abuse and Neglect	23
Children Exploited Economically and Sexually	11

Source Pusdatin KPAI 2023

Based on the numerous examples presented above, it is clear that children should receive the finest care possible, which includes putting their best interests ahead of all other considerations. It takes the best engagement from all parties involved. The goal of this is to preserve children's survival as well as their growth and development. Article 1 paragraph 1 of Law Number 1/2012 regulating the Juvenile Criminal Justice System confirms this. All initiatives aimed at ensuring and defending children's rights and enabling them to live, grow, and develop.

The principles of nondiscrimination, the child's best interests, consideration for the child's viewpoint, and the child's right to life, growth, and development form the foundation of child protection strategies. In addition to safety and permanence, child protection systems have evolved to view child outcomes from a holistic viewpoint that includes the well-being of the child. The Law has been implemented in accordance with the Republic of Indonesia's 1945 Constitution's mandate for the guarantee of human

rights, including the right of children to develop and grow as human beings. [4]

One component of criminal policy is the prevention of crime. Here, "criminal policy" refers to the logical controls that society places on its attempts to combat crime. Criminal law enforcement, law enforcement, the broad category of law enforcement politics includes all state administrative law enforcement. All of this is part of social politics, or efforts by society and the state to improve the welfare of its citizens. Repressive criminal policies that only utilize the criminal justice system will basically be inadequate if they are not complemented by preventive measures using non-criminal legal means. [5]

According to Barda Nawawi Arief, criminal politics play a critical role in social welfare as well as social defense, or the effort to protect society. Protecting society in order to attain social welfare is the ultimate purpose of criminal politics. [6] Policies for society's protection (social defense policy) and welfare (social welfare policy) make up social policy as a whole. Criminal laws specify how community protection policies are to be implemented. These laws employ both criminal and non-penal measures to accomplish their objectives, making the usage of both types of laws an essential component of both community protection and welfare initiatives.

In order to prevent crime, it is essential to combine efforts to safeguard society (social defense) and advance community welfare (social welfare), which must be implemented systematic and integrated. As a result, it is reasonable to claim that criminal politics is ultimately a subset of social politics, which are actions or policies aimed at promoting social welfare. Rational efforts to control or overcome crime do not only use penal means, but can also use non-penal means. Penal crime prevention is accomplished by creating criminal law norms which include structural, cultural, and substantive aspects of the community in which the legal system is practiced. Efforts to combat crime through penal facilities are operationally carried out through a criminal justice system which operates in harmony with its supporting subsystems, including the police, prosecutor's office, Corruption Eradication Commission, courts, correctional institutions and advocates. [7]

Consequently, the goal of justice is to settle the case as well as determine whether or not a certain incident is proven before rendering a verdict. Keeping in mind that children need to be protected. It requires particular care and attention as a result. Therefore, in the context of juvenile justice, the focus should not be on whether the child's act or violation is proven to have occurred or not; rather, consideration should be given to the child's background, the reasons behind it, and his or her motivations, as well as any potential repercussions of the decision the child may face and for the future benefit of the children. [8]

In the future, punishment should not be intended to cause suffering and humiliate human dignity. A fundamental concept of balance regarding the goals of punishment, particularly between components of community safety and aspects of personal protection, must exist in the KUHP. This can be seen from the protection of public interests in terms of crime prevention, community security, and restoration of balance by bringing a sense of peace, while in terms of individual protection by protecting individuals against arbitrary sanctions from law enforcers and coaching so that they are free from feelings of guilt. [9]

A child deserves is unique from adults in general and should get specific protection and care. The most precious resource in the country is its children because they will carry on the nation's ideas and struggle in the future. As such, the state has responsibility to safeguard and mentor children. Children who commit crimes can be considered delinquents because they are incapable of considering the consequences of their actions rationally. To minimize negative stigmatization of children, particularly those who are accused of crimes, and to allow them to resume regular social contacts in their home contexts, the criminal justice system provides protections for children who respect their unique rights to remain silent and avoid the court system. Since children who commit crimes are often viewed as immature and extremely vulnerable, it is anticipated that the application of restorative justice and diversion will give offenders a positive experience in handling cases and help them overcome their fear of dealing with the law and criminal justice system. This will support maintaining these kids' psychological health. [10]

Both national laws and international agreements have an impact on Indonesia's juvenile justice system's awareness of children's protection. The Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (here in after referred as "Law No. 11 of 2012") emphasizes the importance of diversion, restorative justice, and the best interests of the child in dealing with juvenile offenders. [11] Furthermore, Indonesia ratified the UNCRC in 1990, reinforcing its commitment to safeguarding children's rights within the justice system. Indeed, the examination of Indonesia's juvenile justice system's history is inseparable from its early ratification of the UNCRC. [12] Taking part in international conferences on children that the

United Nations (UN) hosts, such as the UN Standard Minimum Rules for the Administration of Juvenile Justice, is one way the Indonesian government demonstrates its commitment to and giving special consideration to children's protection. These legal frameworks have contributed to the establishment of specialized courts and diversion programs that focus on the rehabilitation and reintegration of young offenders. [13]

Children must be held accountable for their conduct under Law Number 11 of 2012's provisions regarding to the criminal justice system, given the chance to resolve conflicts on their own, and given a sense of fairness. This is because restorative justice approaches, which prioritize returning things to their original state, offer alternatives. The Criminal Justice System Law does not contain specific regulations regarding restorative justice; however, Law 11 of 2012 Concerning the Juvenile Criminal Court System, specifically paragraph 8(1), states that the diversion process involves victim and guardian consultations, professional social workers, community guidance, and children utilizing restorative justice. The implementation of restorative justice follows the diversion mechanism, which is the transfer of legislation from the criminal justice process to the criminal justice process, according to the explanation from Article 8. [14]

The requirement to prevent children from being punished is also a call from the international community. The international community has made certain requests that are outlined in a number of international agreements, particularly those that deal with the punishment of minors are as follows:

a. The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

According to Resolution 45/112 of December 14, 1990, one of the international accords pertaining to the use of punishment on children is the Riyadh Guidelines, also known as The United Nations Guidelines for the Prevention of Juvenile Delinquency. Several important things contained in UN Resolution 45/112 related to the application of criminal punishment to children, include the following: [15]

1. It is necessary to use legislation, constructive social activities, and better human approaches to all facets of social life, including paying attention to and treating children and adolescents humanely, in order to promote non-criminogenic attitudes in children and in society.
2. Ensuring the harmonious development of youth: In order to maintain the early personality development of children and adolescents, it is not necessary to subject them to constant supervision and socialization. This includes realizing that minor infractions committed by children and adolescents do not always require criminalization and punishment.

b. The United Nations for the Administration of Juvenile Justice (The Beijing Rules)

The United Nations for the Administration of Juvenile Justice (The Beijing Rules) approved on 6 September 1985 and made into a UN Resolution on 29 November 1985 in Resolution 40/33. In The United Nations for the Administration of Juvenile Justice (The Beijing Rules) contains the following main provisions: [15]

1. A comprehensive social strategy that supports achieving the highest level of child welfare is necessary, since this will lessen the influence of the juvenile criminal justice system.
2. Children must be safeguarded during the investigation and prosecution phases from things that could harm the child. The initial contact between children and the police must be avoided from actions in the form of bullying, physical violence, and so on. Because children's engagement in the legal system has really been stigmatized, diversion a method that permits children to be redirected from the court process to the social service prioritized.
3. To ensure optimal consideration during the adjudication and disposition process, the social investigation report of the child, as well as the principles and guidelines for case resolution and child placement are important requirements to pay attention to. One important principle that must be remembered in this regard is that placing children in prison should be placed as a last resort, and even then only for the short term.
4. After going through the adjudication process, children can ultimately be placed in an institution or outside an institution to be fostered. The implementation of child development outside of institutions needs to be carefully prepared by involving an independent institution, for example a child welfare institution with qualified officers supported by adequate facilities for child rehabilitation.

Meanwhile, the development of children in institutions is directed so that the development is not general in nature, but rather pays attention to the economic, social and cultural conditions of the child concerned, providing medical personnel, psychologists, especially for children addicted to narcotics.

2. *Constitutional Court in Guarding Children's Constitutional Rights*

The Constitutional Court as a constitutional enforcement institution upholds its role in carrying out its authority to decide on judicial review cases of Child Protection Law. The 1945 Constitution's Article 28B paragraph (2) guarantees children's rights, and the Constitutional Court, as an institution dedicated to upholding the constitution, maintains its role in exercising its authority to decide on judicial review cases pertaining to the Child Protection Law. Article 28B paragraph (2) of the 1945 Constitution states: *"Every child has the right to survival, grow and develop and have the right to protection from violence and discrimination."*

During its development, the Constitutional Court also stated its standing in efforts to protect children, which was reflected in its decisions regarding 3 (three) judicial review cases of the Child Protection Law, namely:

1. Decision 6/PUU-XV/2017
2. Decision 33/PUU-XV/2017
3. Decision 018/PUU/III/2005

A brief description of the three Constitutional Court decisions in the judicial review case of the Child Protection Law against the 1945 Constitution shows that the court positions itself as a judicial institution that plays an active role in the state's efforts to protect children's constitutional rights through decisions that reject all of the applicant's requests. The Court also emphasized its stance on several important points in considering its decision as follows:

[3.11.2] ... Children are a trust and gift from Almighty God, in whom the honor and dignity of being a complete human being is inherent. Children are the next generation of the ideals of the nation's struggle who have a strategic role and have special characteristics and characteristics that are expected to ensure the continued existence of the nation and state in the future. Therefore, children need to have as wide an opportunity as possible to grow and develop optimally, both physically, mentally and socially. Due to their nature, children's growth and development must take place in an environment that protects them from all dangers in the form of optimal care ...".[16]

[3.11.3] ... For Indonesia at this time, the state's obligation to respect, protect and guarantee the fulfillment of children's rights is not only a constitutional obligation as mandated by the 1945 Constitution, but also an obligation born of international law (international legal obligation), in this case the obligation international law which is born from agreements (contractual international legal obligations). Thus, the Law requested for review in the a quo Petition is precisely the implementation of constitutional obligations as well as the state's international obligations to respect, protect and guarantee the fulfillment of children's rights. [17]

The author's main focus in researching and elaborating on the function of the Indonesian judiciary is the Child Protection Law, in this case the Constitutional Court positions itself towards efforts to fulfill the rights of children who of course also have constitutional rights; as well as efforts to combat crime which can damage the future of children as the country's future generation. If we examine the several rulings rendered by the Constitutional Court, there are no cases where the applicant is a child who violated the law in order so they can be subject to juvenile punishment. However, the court in several of its decisions emphasized that children are a group category that requires special treatment where the punishment of children is the ultimum remedium.

The criminal policy against child abuse is one of the attempts to put their formulation into practice. Efforts to reduce violence against children with the creation of legislation that aimed at eliminating discrimination against children were realized with the plan formulation and passage of legislation that is strongly associated with their interests. It is possible to argue that the protection of society to create a prosperous community is the ultimate goal or primary purpose of criminal policies, since attempts to protect the public (social defense) and advance public welfare (social welfare) are inherently linked to those of combating crime. Social policy basically includes criminal policy as an integral part.[18]

A child who is in legal trouble gains from both a fair trial and humane treatment. All the rights inherent in his person must be respected at all stages of the procedure, in particular: consideration of his best interests in all decisions that concern him; the freedom from all forms of discrimination and punishment; the right for every child to participate in decisions that affect him, especially the right to be

heard in any judicial or administrative proceedings; the right to be protected against all forms of discrimination or punishment based on the race, color, sex, language, religion, political or other opinions of the child or of his parents or legal representatives; the right to national, social origin, or ethnic; the right to disability; and any other situation; the right of a child capable of discernment to be heard directly or by a legal representative and to express his opinions freely on any question which interests him, opinions duly taken into consideration having regard to his age and degree of maturity; the right to life, survival and the harmonious development of one's personality; the right to be shielded from torture and inhumane, cruel, or humiliating treatment in compliance with. [19]

To protect the rights of children, a new strategy is needed, one that values youth and children's abilities and includes them actively in solving problems that concern them. However, it is still challenging to actually implement the right of children to participate. It might not be easy to define the scope and conditions for children's and youth's meaningful involvement in international protection of children. Since it both necessitates and justifies the response of child protection, a vulnerability or dependency concept of, and approach to, children and young people is common in international child protection practice.[20]

However, in order to effectively support children's and youths' engagement, it is necessary to provide accurate information, reject stereotypes that portray children as passive, vulnerable, and homogenous, and to promote more balanced, intergenerational interactions. [21] Children and young people must be given sufficient knowledge to support their judgments and be aware of the implications of their viewpoints in order to participate. While adults have a responsibility to protect children and young people from harm, scholars have warned about overprotection. [22] In addition to the fact that adults tend to be resistant to giving up some control and sharing power, research shows that barriers to children and youth participation often come from adults' communication skills deficits, their lack of understanding of the true nature of youth engagement and their attitudes toward protection (participation judged harmful or unsuitable) and young participation (participation not recognized as vital). In the process of working toward more equitable and horizontal relationships, it is imperative to create new models for collaborative decision-making that empower youth and young adults to express their opinions and preferences in ways that promote their own well-being and that of their families and communities.[23]

Based on these various things, taking into account all of these factors, it can be said that denying children their freedom must only happen in extreme circumstances is not permitted in the event that deprivation of liberty actually enslaves the child's basic rights. The rights to health care, education, love, a clean and comfortable home, and other necessities of life must all be upheld and realized. However, the court in several of its decisions emphasized that children are a group category that requires special treatment where the punishment of children is the *ultimum remedium*.

V. CONCLUSION

The foundation for the legal protection of juvenile offenders is the concept of human rights recognition and protection. The government must be present to guarantee protection for children so that their rights are fulfilled, so that children can live, grow, develop and engage as fully as possible in daily activities, without fear and free from threats and discrimination. Progressive laws are needed to create enthusiasm to give children the greatest possible care who commit criminal acts, so that law enforcers need honesty and courage to implement statutory regulations as a reference for behavior and action, but while always listening to their conscience. Law enforcers must be brave in seeking the truth to uphold justice, even if they have to violate the law, because the laws that have been made cannot always provide justice for society. In this way, legal certainty and justice based on Pancasila can be achieved in giving children legal protection, especially children who conflict with the law. In this case, it is a form of justice which has a foundation from Pancasila as the basis for the formation of justice. With Pancasila, justice is given a positive basis in the form of the values contained in Pancasila. With the Pancasila philosophy, the principles established in Pancasila serve as a foundation for developing just and equitable behavior.

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