

The Effectiveness of Criminal Law Jurisdiction on Children in Indonesia

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ABSTRACT

The range of instances of violence in opposition to kids has left many query marks on how some distance the position of the kid safety regulation itself is. Law Number eleven of 2012 regarding the Juvenile Justice System withinside the Preamble letter reads "that kids are a mandate and present from God Almighty who has the respect and really well worth as an entire human being". Letter b reads "that to preserve their dignity, kids have the proper to important safety, mainly prison safety withinside the judicial system. Therefore, it's miles essential to understand the regulations of the Juvenile Criminal Justice System in Indonesia. Fulfilment of the rights of kids in battle with the regulation have to were assured when you consider that the kid became specified as a suspect till the kid started to perform punishment/guidance. Recommendations for the Criminal System in Indonesia which might be orientated toward education according with the reason of punishment (the idea of objectives) are predicted to offer training to kids in order that they're without a doubt modified and aware. The Juvenile Criminal Justice System (SPPA) desires to be reconstructed, mainly concerning the sample of presenting prison aid, financing and unique rooms for kids in each jail or detention centre in Indonesia. Child safety prison devices in crook regulation want to be updated, mainly regulation enforcement with a sorrowful technique for kids, so restorative justice desires to be grounded.

KEYWORDS

Effectiveness; the role of law; criminal justice; children; Indonesia

INTRODUCTION

Article 1 (3) confirms that "Indonesia is a country governed by the rule of law".^{1,2} Indonesia is a constitutional state based on Pancasila and her 1945 Constitution established by Decree No. III of the People's Council of the Republic of Indonesia.³ MPR/2000 on Law Sources and Legal Systems The rule of law is a state that guarantees the basic rights of its citizens from birth to death in good health People who have problems with the law have problems As with children, legal issues that should be of greater concern cannot be addressed with the same approach as adults. Article 28d (1) reads, "Everyone has the right to recognition, security, protection, fair legal certainty and equal treatment before the law."

¹ Sekretaris Jenderal MPR RI, The Constitution of the Republic of Indonesia Year 1945, *Amendment to III on November 9, 2001*, MPR RI, Jakarta, 2015, p 78.

² Wantu, F. M., Mahdi, I., Purba, A. S., Haris, I., & Amal, B. K. (2021). The Law on Plant Protection, an Effort to Save Indonesia's Earth: A Review of International Publications. *International Journal of Modern Agriculture*, 10(1), 867-879.

³ Pasal 1 ayat (3) yang berbunyi tentang *Sumber Hukum Dasar Nasional*.

The Constitution guarantees, under Article 28(1)(2), that no one shall be discriminated against or their human rights violated. The basic rights regulated by the Constitution were subsequently regulated by several laws. Paragraph b states that "children are entitled to special protection, in particular legal protection in the judiciary, in order to protect their dignity".⁴

The principles of legal protection of children should be consistent with the Convention on the Rights of the Child ratified by the Government of the Republic of Indonesia by issuing Presidential Decree No. 36 of 1990 ratifying the Convention on the Rights of the Child. not. The concepts of child protection and best interests are implied. Also, the explanation of Law No. 16 of 2011 on Legal Aid fully adopts the meaning of Article 1(3) above by stating that in a constitutional state the State recognizes and protects the human rights of all individuals,⁵ including the law is doing. About Legal Aid. Preamble (b) of Law No. 16 of 2011 states: Article 16 Section 5 Paragraph 1 of the Law 2011 on Legal Aid states.⁶

Previously, the right to legal aid was also included in Law No. 4 of 2004 on Judiciary. Article 38 states: ". Next, Articles 54, 55 and 56 of Law No. 8 of 1981 (KUHAP) on the Code of Criminal Procedure establishes the right to legal advice for those dealing with judicial proceedings at all levels of the judiciary⁷ detailing. The International Covenant on Civil and Political Rights recognizes the universal recognition and guarantee of the right to legal assistance, the right of all persons to legal protection, and the right to legal protection in all its forms. It states that discrimination must be avoided.⁸ States uphold human rights through constitutional mandates, including children's rights, which are characterized by ensuring the protection and realization of children's rights. In addition to the normative Constitution, the legal protection of children, in particular the Criminal Code, is also specifically regulated by Law No. 11 of 2012 on the Juvenile Justice System. This is done through the objective of child protection as an effort to preserve human life and the sustainability of the country and nation.⁹ This is because children are the next generation of a nation whose welfare must be protected and guaranteed.^{10, 11}

RESEARCH METHODS

Data collection in this study on juvenile justice uses prescriptive legal methods. That is, the main sources of information are secondary and primary data. Secondary data are based on the views of legal experts drawn from the literature supporting the analysis of juvenile court law. The main data is the legislation related to Law No. 11 of 2012 on the

⁴ Elucidation of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System.

⁵ The explanation of the Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid reads.

⁶ The explanation of basic rights as stated in Article 4 paragraph (2) "Basic rights as referred to in paragraph (1) include the right to food, clothing, health services, education services, work and business, and or housing". Meanwhile, Article 14 paragraph (3) of the ICCPR provides conditions related to legal aid, namely: 1. The interests of justice, and 2. Unable to pay an advocate.

⁷ Compare with Taufik Basari's writings, Individual Rights in Criminal Law, Indonesian Legal Aid Guide, YLBHI and PSHK Publishers, 2009 edition, page 336.

⁸ For more details, see also the general explanation of the Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid, paragraph three (3).

⁹ Nashriana, *Perlindungan Hukum Pidana Bagi Anak di Indonesia*, Raja Wali Press, Jakarta, 2012, p. 13.

¹⁰ The third paragraph (3) explanation of Law Number 35 of 2014 concerning Child Protection.

¹¹ Amal, B. K., Rambe, T., Ampera, D., Purba, A. S., Ridho, H., & Daud, D. (2022). Parents' perceptions of children's education and parents' attitudes towards the education of fishermen's children. *Jurnal Pendidikan, Sains Sosial, dan Agama*, 8(1), 85-97.

Effectiveness of Criminal Courts for Children in Indonesia. Secondary legal materials are the result of academic papers such as articles, journals, papers, relevant readers, and research reports dealing with issues related to the effectiveness of criminal courts against children in Indonesia. This research can use normative law to explain the issue of the effectiveness of judicial law against children. In prescriptive methods, research focuses on explaining the power of existing laws to provide justice for children.

RESULTS AND DISCUSSION

Juvenile Justice System Act No. 11 of 2012 uses the term Juvenile Justice but does not define it as a judicial body within the meaning of Article 24(2) of the 1945 Constitution.

History of Juvenile Courts in Indonesia

The history of juvenile justice in Indonesia began during the Dutch colonial period. At that time, several local kings and youth leaders of the country had succeeded in founding an institution called *Pro Juventute*.¹² The National Legal Development Agency (BPHN) revealed that Indonesia only had the opportunity to think about a special law that tried children about half a century ago, in 1954 to be exact. Maengkom was assisted by Pra Juwana employees, but detentions were generally combined with adults. With the existing limitations, since then there have been efforts to pay attention to children in conflict with the law, plus there is an oral agreement between the Police, the Prosecutor's Office and the Court to help resolve child cases responsibly outside the court. Although institutions outside the court play an active role in helping to resolve cases of children outside the court because the courts are bound by institutions and conflict with the law. According to D. Y. Staa, the basis of the agreement is:

- 1) In countries that have implemented special criminal procedure laws for children, what is used is the psychological basis that children who commit crimes are not bad people, but only naughty children.
- 2) Although at the time of juvenile delinquency in our country, especially in the jurisdiction of the Jakarta High Court, it was still not a serious problem, we all realize how important these young shoots are who will replace the older generation in the effort to build our country towards society. fair and prosperous.
- 3) Representatives from the Police, the Prosecutor's Office and the courts are equally aware that children are psychologically different from adults so special treatment must be given so that their souls will not experience pressure from having been tried before the court, which will certainly interfere with this young shoot's business as a good society.
- 4) Court hearings must be carried out in such a way that things that cause mental disorders can be eliminated.¹³

The start of special treatment for children who are in conflict with the law are:

1. Police;
 - (a) When detaining a child separate his place from adults.
 - (b) When making preliminary minutes do not wear uniforms.
2. Prosecutor;
 - (a) At the time of the trial did not wear a toga or uniform.
 - (b) Involving the family;

¹² *Pro Juventute* received recognition from the Dutch government for providing guidance to parents who have difficulty in providing advice and guidance to children involved in crimes.

¹³ Abintor Prakoso, *Pembaruan Sistem Peradilan Pidana Anak*, Aswara, Yogyakarta, 2016, p. 247.

3. Judge;
 - (a) Judges are specially appointed by the Chief Justice of the District Court;
 - (b) The judge in trial does not wear a toga;
 - (c) The trial is on a specially determined day and is closed,
 - (d) The presence of the child's parents;
 - (e) Correctional institutions appoint special staff to help children;
 - (f) Assisting the trial by making a social report now called Bispa.¹⁴

Principles of Juvenile Criminal Justice

Law No. 11 of 2012 on Juvenile Justice System Article 2 “The juvenile justice system shall be implemented on the basis of the following principles:¹⁵

1. Protection;
2. Justice;
3. No Discrimination.
4. Best Interests of Children.
5. Five. Respect children's opinions.
6. Child survival and development.
7. Guidance and guidance of children.
8. proportional;
9. Deprivation of liberty and punishment as a last resort.
10. Ten Avoid retaliation.

Rights of Children in Conflict with the Law

Criminal Execution

The Indonesian Correctional System is more focused on fostering prisoners, correctional students or correctional clients who have preventive, curative, rehabilitative and educative characteristics. Article 14 of Law no. 12 of 1995 regulates the rights of prisoners, including:

1. Worship according to a religion or belief.
2. Get mental and physical treatment.
3. Get education and training.
4. Get adequate health care and food.
5. submit a complaint;
6. Obtain reading material and follow other non-prohibited mass media programs.
7. Receive wages or bonuses for work done. (Refer to Article 29, Paragraph 1)
8. Receiving visits from the attorney's family members or other designated persons.
9. Commutation (general and special orders)
10. Ten Get opportunities for assimilation, such as free time to visit family.
11. Received probation.
12. You have other rights in accordance with applicable laws and regulations.

Decree No. 31 of 1999 on Guidance and Guidance of Prisoners consists of 7 chapters and 69 articles, 40 of which stipulate the rights of students of prisoners.¹⁶

¹⁴ *Ibid*

¹⁵ For more details see Law no. 11 Year 2012.

¹⁶ Adi Mansar, Legal Aid for Naughty Children within the Authority of the Class 1 A Medan District Court “TESIS” Postgraduate Program USU Medan, 2002, p. 7..

Child Development

Criminal Child by PP No. 31 of 1999 there are three stages of coaching (beginning, continuation, end), the transfer of these stages is carried out by a meeting of the Observer Team (Article 17). The development of State Children is focused on education (Articles 19 and 24), which includes: Religious education and character education, general education, scouting education, and skills training. The fostering of civilian children is in accordance with the educational interests of the civilian children concerned (Article 26 (1)). In addition to Correctional Students (ADP), there are correctional clients who must receive guidance in stages, including Initial, advanced and final stages (Articles 31, 33). The Child Special Development Institution (LPKA) still has technical and non-technical obstacles, but this should not discourage us from fostering children who become ADP-KP. There are many problems encountered in the implementation of coaching in LKPA, among others:¹⁷

- a. The presence of repeat offenders and the relatively stable number of prisoners indicate that the development system has so far been suboptimal and therefore needs to be improved.
- b. Lack of clear criteria for success and failure.
- c. The number of security guards is greater than the number of rehabilitation personnel.
- d. That is, the ratio of the number of rehabilitation officers is not proportional to the number of inmates.
- e. The rehabilitation carried out is still far from what it should be due to the lack of qualifications of rehabilitation personnel.
- f. Physical violence still exists as punishment under the guise of coaching.
- g. Lack of infrastructure that hinders the development process.
- h. Lack of coordination between coaching systems within children's prisons and coaching outside prisons.

As an example of the failure of correctional facilities to protect children's rights, which was disclosed by the Kompas reporter on Wednesday, October 28, 2003, regarding the discovery of 15 (fifteen) problems that occurred in the Tangerang Children's Correctional Institution;

- a. To get out of the quarantine cell you have to spend money;
- b. Quarantine period: bathing, urinating, defecating, playing in a quarantine cell;
- c. Ideally diesel quarantine is only one week, but in practice up to months;
- d. Branch ages in child prisons are between 11 (eleven) years old to 27 (twenty-seven years);
- e. With the age disparity, the younger children become targets of extortion and violence by the older ones;
- f. Almost every year some children suffer from venereal diseases;
- g. In 2002 a child died of gonorrhoea;
- h. In general, eat and sleep without a mat;
- i. Only children who have money can sleep on thin mattresses
- j. The person who visits his child pays a sum of money to the gatekeeper;
- k. Souvenirs brought by visitors did not reach the intended child;
- l. The rationed food was sometimes without vegetables, while the rationed consumption was rice with drinking water;

¹⁷ Abintor Prakoso, *Pembaruan Sistem Peradilan Pidana Anak*, Aswara, Yogyakarta, 2016, p. 247.

m. The Children's Prison cannot provide boiled water, so they drink water directly from the tap.¹⁸

Child Protection

Juvenile justice is the judicial process of enforcing the law and making motivated decisions without prejudice to freedom of expression and freedom of defense.¹⁹ In the criminal justice system, the overriding motive is to protect children, child victims, and child witnesses in investigations, prosecutions, and court proceedings. Child protection is all activities aimed at securing and protecting children and their rights so that they can live, grow and develop, participate in appropriate conditions and be protected from violence and discrimination.²⁰ Article 2(2) of the Child Protection Act No. 23 of 2002 provides for non-discrimination, the best interests of the child, the right to life and respect for the opinion of the child.²¹

The explanation of Article 4 of Law No. 23 of 2002 on the Protection of Children states that children's rights correspond to the provisions of Article 28B (2) of the 1945 Constitution. grow up and qualify for protection from violence and discrimination”, and the fundamental principles enshrined in the Convention on the Rights of the Child.²² Law No. 4 of 1979 on the Welfare of Children, Section 2 (2), Section 3 (3) states: Dhawan Print's Child Welfare is a system for children's lives that can adequately guarantee their growth and development. Right to parental, family, social and state protection”. Article 52(2) “The rights of the child are human rights, and for the benefit of the child, the rights of the child are legally recognized and protected from the moment of birth”.²³

A review states that the basis for the formation of child protection regulations should be guided by Islamic law which has regulated the protection of children, especially regarding the types of criminal penalties.²⁴ Child protection is legally divided into several aspects, but explicitly in our constitution the 1945 Constitution Article 34 reads "The poor and abandoned children are cared for by the state".²⁵ Constitutionally, the State of Indonesia is a country that provides protection for children, as the implementation of the 1945 Constitution, there have been many laws and regulations that have been issued in regulating the protection of children, such as:

1. Law No. 4 of 1979 on Child Welfare
2. Presidential Decree No. 36 of 1990 ratifying the Convention on the Rights of the Child.
3. Law No. 23 of 2002 on Child Protection.
4. RI Government Regulation No. 40 of 2011 on Counseling, Support, and Recovery for Child Pornography Victims or Offenders.

¹⁸ *Ibid*, this is contrary to the United Nations General Assembly on December 9, 1988 with resolution 43/173 of the General Assembly of the Organization which

¹⁹ Wagiaty Soetodjo, *Op. Cit*, p. 71.

²⁰ Article 1 number 2 (two) of Law Number 35 of 2014 concerning Child Protection, amendment to Law Number 23 of 2002 concerning Child Protection..

²¹ H.R. Abdussalam and Adri Desasfuryanto, *Hukum Perlindungan Anak, Cetakan ke 7 edisi Revisi*, PTIK, Jakarta, 2016, p. 7th edition Revised edition 37.

²² Hadi Supeno, *Kriminalisasi Anak, Tawaran Gagasan Radikal Peradilan Anak Tanpa Pemidanaan*, Gramedia Pustaka Utama, Jakarta, 2010, p. 44.

²³ Darwan Prints, *Hukum Anak Indonesia*, Citra Aditya Bakti, Bandung, 1997, p. 79.

²⁴ YLBHI, *Hukum dan Hak-hak Anak*, Penyunting Mulyana W. Kusumah, Rajawali, Jakarta, 1986, p. 16.

²⁵ Wagiaty Soetodjo, *Hukum Pidana Anak, Refika Aditama*, Bandung, 2008, p. 67.

5. Law of the Republic of Indonesia No. 9 of 2012 on Ratification of the Optional Protocol to the Convention on the Rights of the Child on Children's Involvement in Armed Conflict.
6. Republic of Indonesia Law No. 10 of 2012 on Ratification of the Optional Protocol to the Convention on the Rights of the Child on Child Trafficking, Child Prostitution and Child Pornography (Children);
7. Law No. 11 Year 2012 on Juvenile Justice System. 8) Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection.
8. Law Number 35 of 2014 Amendments to Law 23 of 2002 concerning Child Protection.²⁶

Child protection is the result of interplay between existing phenomena and mutual influences.²⁷ Therefore, if we want to know whether child protection is good or bad, we should pay attention to which relevant phenomena play an important role in the emergence of child protection activities. Child protection is an effort to support the fulfillment of rights and obligations.²⁸ Child protection can be understood as the legal protection of various freedoms and rights of children (fundamental rights and freedoms of children) and various concerns about children's well-being.²⁹ Irma Setyowati Soemitro says she has two areas in child protection. a) legal protection; b) extra-legal protection.³⁰ Meanwhile, J.E. Doek and H.M.A. Drewes understand child protection in what he divides into two parts: broad child protection and narrow child protection.³¹ On the other hand, Irma Setiyowati Soemitro, her H. De Bie, articulates the Children's Law (the legal aspect of children) as a comprehensive legal provision for the protection, guidance and justice of children/adolescents increase.³² Protection, care, support and care are therefore the rights of all children, including children in conflict with the law.³³

Imposing imprisonment on children has a significant impact on their personal development, so protecting children in conflict by resolving diversion protects them. The Human Rights Research and Development Agency concluded in 2004 that children who break the law are more likely to receive prison sentences than criminal offenses.³⁴ It is very important to protect children from court decisions (juvenile courts) are based on the Fatherland principle. This means that when a child needs help, the authorities must act, and children who commit crimes must be unpunished, protected and supported.³⁵ The impact of modern trends in criminal law when considering criminal offenses is more directed towards its production, and thus the differentiation of punishment according to the circumstances and the person who committed it. Children in conflict with the law can be divided into three distinct categories: children in conflict with the law, child victims (victims) and child witnesses.^{36, 37}

²⁶ Marwan Setiawan, *Karakteristik Kriminalitas Anak dan Remaja, Dalam Perspektif Pendidikan, Juvenile Delinquency, Narkotika, Hukum, Hak Anak, Agama dan Moral*, Ghalia Indonesia, Bogor, 2015, p. 15.

²⁷ Shanty Dellyana, *Wanita dan Anak di Mata Hukum*, Liberty, Yogyakarta, 2004, p. 13.

²⁸ Moch. Faisal Salam, *Hukum Acara Peradilan Anak di Indonesia*, Mandar Maju, Bandung, 2005, p. 3.

²⁹ *Ibid*

³⁰ Maulana Hasan Wadong, *Advokasi dan Hukum Perlindungan Anak*, Grasindo, Jakarta, 2000, p. 41.

³¹ *Ibid*

³² Irma Setiyowati Soemitro, *Aspek Hukum Perlindungan Anak*, Bumi Aksara, Jakarta, 1990, p. 15.

³³ Widodo, *Problematika Pembinaan Anak Pelaku Tindak Pidana Dalam Perspektif Hukum Pidana*, Aswaja Pressindo, Yogyakarta, 2015, p. 10.

³⁴ Sri Sutatiek, *Rekonstruksi Sistem Sanksi Dalam Hukum Pidana Anak di Indonesia, Urgensi Penerbitan Pemidanaan untuk Hakim Anak*, Aswaja Pressindo, Yogyakarta, 2013, p. 40.

³⁵ BPHN, *Lokakarya Tentang Peradilan Anak*, Bina Cipta, Bandung, 1979, p. 81.

³⁶ See also Article 1 point 2 of Law no. 11 Year 2012.

Law No. 11 of 2012 on the Juvenile Court System refers to the terms child, child victim and child witness. The problem child is the child who is in trouble with the law. A child in trouble with the law is a child suspected of a crime. If a child is suspected of a crime and is being processed by police and prosecutors, the child is still a 'suspect' and their status changes to 'defendant'³⁸ when reviewed by a court after the failed diversion stage. Section 23(1) of the SPPA Act states ”.

The explanations in this article are pretty clear, but how can a child's parent/guardian provide legal assistance to a child who is in conflict with the law if they are unaware that their child is in conflict with the law? is not normatively certain. When a child has no parents. All the parent/guardian needs to be placed is to provide a power of attorney or similar to the legal aid provider for the child in conflict with the law. Since the child is considered legally incapable and incapable of forming relationships with other parties, a guardian must be placed and there is also a procedure for granting a special power of attorney to the legal aid provider.

Children who are in trouble with the law must consult a lawyer. The word mandatory under this clause means that without legal assistance this is void and if the child or parent/guardian does not have legal assistance to provide assistance it is free means (prodeo).) country is obliged to submit. Legal protection against illegitimate children in juvenile criminal proceedings is intended to give special protection to children under investigation for criminal offenses in emergencies. Another form of protection is the duty to look after the child's best interests and maintain a homely atmosphere. Children in conflict with the law must keep their identities private from being published in print or electronic media. A child who commits a criminal offense before the age of 18 and is tried after the age of 21 will continue to be tried under the Juvenile Justice Procedural Mechanism. Unlike when the crime was committed by a child under the age of 12, investigators, community her counselors, and professional social her workers determine:

- a. Return to parent/guardian. Also
- b. Participate in her LKPS education, coaching and mentoring programs in government agencies or institutions dealing with social welfare, both at central and regional level for up to 6 months.³⁹

At any level of investigation, a child witness child victim must be accompanied by the child victim's parents and/or guardians and/or a child witness or social worker. Assistance for children and children of victims/child witnesses is different because if a child conflicts with the law it is obligatory to be accompanied by a legal aid provider at every level, but for child victims/child witnesses it is not required to be accompanied by a legal aid provider (advocate). Law No. 11 of 2012 on the Juvenile Justice System provides for children's rights in conflict with the law, as Article 3 reads:

- a. Disabled in humans considering age-appropriate needs
- b. Away from adults
- c. Obtain effective legal aid and other assistance.
- d. Leisure activities.
- e. Not be subjected to torture, punishment or other cruel, inhuman or degrading treatment.
- f. Not sentenced to death or life imprisonment;

³⁷ Syafrizal, S., Purba, A. S., & Corry, C. (2022). Changes in Cultural Assimilation in Harmonization of Children's Social Relations. *Randwick International of Social Science Journal*, 3(3), 620-633.

³⁸ Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

³⁹ See also Article 21 paragraph (1) of Law no. 11 Year 2012.

- g. Not arrested, imprisoned, or imprisoned except for the shortest possible period as a last resort
- h. Seek justice in an objective, impartial, closed juvenile court.
- i. Me. His identity will not be made public.
- j. Get help from parents/guardians and people your child trusts.
- k. Receive social advocacy
- l. Get a private life
- m. Accessibility, especially for children with disabilities.
- n. Get an education
- o. Receipt of medical services;
- p. Obtain other rights as provided by law.

When examined, the meaning of "needs according to age" includes performing worship according to one's religion or belief, getting visits from family and/or companions, receiving physical and spiritual care, receiving education and teaching, receiving health services and proper food, receiving reading materials. , submit complaints, and follow mass media broadcasts. What is meant by recreation is daily free physical exercise activities in the open air and children must have additional time to participate in daily entertainment, arts, or develop skills. What is meant by degrading their status and dignity is that children are told to take off their clothes and run around, children are to shave their hair, children are handcuffed, children are told to clean the toilets, and girls are told to massage the male investigators. What is meant by undergoing the judicial process is that a child has the right to enjoy a private life, for example, a child is allowed to bring his/her personal equipment, such as toys, and if the child is detained or placed in LPKA, the child has the right to have or bring a blanket or pillow, his/her clothes, and to be given a bed separated.⁴⁰ The implementation of rights and obligations for children who commit criminal acts needs to receive assistance and protection so that they are balanced and humane. To put legal aid as a legal institution in juvenile justice has been separated from adult justice since the birth of Law no. 3 of 1997 concerning Juvenile Court, so since the birth of Law no. 11 of 2012, child protection in the judicial process is mandatory, one of which is legal assistance. Thus, it is necessary to pay attention to and fight for the existence of children's rights, in the form of:

- a. Every child is treated as an innocent person;
- b. The time of juvenile justice is not interspersed with adult justice;
- c. Every child has the right to be defended by an expert;
- d. The atmosphere of question and answer is carried out in a family manner so that children feel safe and not afraid.
- e. The language used is the language that the child understands;
- f. Every child has the right to be protected from actions that are harmful, causing mental, physical and social suffering;
- g. Every child has the right to ask for compensation for his suffering (Article 1 point 22 of the Criminal Procedure Code).
- h. Children's trials should not be published in the mass media;
- i. During the process of examining children's cases, all officials or parties involved are not allowed to wear uniforms;⁴¹

Children in conflict with the law are increasingly being heard being brought to trial, because diversion does not work, even though the criminal acts that occur are minor crimes,

⁴⁰ Lilik Mulyadi, *Op. Cit*, p. 194.

⁴¹ Wagianti Soetodjo, *Op. Cit*, p. 70.

such as theft.⁴² In some cases where children conflict with the law do not receive legal protection such as legal assistance, community officers and the presence of parents/guardians.⁴³ In addition to children in conflict with the law, they must receive legal protection, child victims of crime and children as witnesses must also receive protection, in the form of:

- a. The child as a victim has the right to receive an explanation regarding the crime committed against the child;
- b. The right to receive protection against actions that threaten, persecute, and extort money that can cause material and immaterial losses;
- c. The right to seek compensation for the suffering experienced by the child;
- d. The right to be tried in a closed trial;
- e. The right to be accompanied by an advocate;
- f. The right to get court facilities.⁴⁴

Children as witnesses are also given rights, in the form of:

- a. The right to get facilities to attend the trial (transportation, escort, and security protection);
- b. The right to obtain an explanation regarding the procedure for the trial;
- c. The right to security protection;
- d. The right to get permission from educational and coaching institutions that are places of learning.⁴⁵

CONCLUSION

Fulfillment of the rights of children in conflict with the law should have been guaranteed since the child was designated as a suspect until the child began to carry out punishment/coaching in LPKA. Our Penalty System is oriented towards coaching for punishment (objective theory). The punishment of children will be more oriented by providing education to children so that they change and become aware. The SPPA Law needs to be reconstructed, especially regarding the pattern of providing legal aid, financing and special rooms for children in every prison, and detention centre in Indonesia. So that in the end, punishment does not create trauma to the child, but as a lesson so as not to repeat mistakes that are against the law.

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⁴² Rika Saraswati, *Hukum Perlindungan Anak di Indonesia*, Citra Aditya, Bandung, 2015, p. 13.

⁴³ Maulana Hasan Wadong, *Op. Cit*, p. 76.

⁴⁴ *Ibid*

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