



## Is the Implementation of the Juvenile Justice System Already Appropriate? A Perspective on Fulfilling Children's Rights

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ARTICLE INFO	ABSTRACT
<p><b>Article history:</b> <b>RECEIVED</b> 17 October 2024 <b>ACCEPTED</b> 21 October 2024 <b>PUBLISHED</b> 25 October 2024</p> <p><b>Keywords:</b></p> <p>Juvenile; Rights</p>	<p>The primary goal of this study is to comprehensively comprehend the degree to which the juvenile justice system in Indonesia upholds the rights of children engaged in criminal cases. The research employs a normative legal analysis approach, concentrating on the legal provisions that oversee juvenile justice. The central objective is to discern the level of conformity or misalignment between the existing legal framework and the principles governing children's rights. The outcomes of the legal scrutiny indicate that the majority of legislations strive to afford special protection to children, distinguishing their legal regulations from those applicable to adults. Nevertheless, specific operational facets necessitate further regulatory refinement, alongside an enhanced understanding and execution by authorities through a comprehensive dissemination and educational strategy encompassing all legislation pertinent to children.</p>

### 1. Introduction

As a country that provides guarantees for the future of children, Indonesia has made a series of efforts through programs to achieve the vision of a Golden Indonesia 2045. Children are considered a trust and gift from Almighty God, who carry within themselves the dignity and dignity of being human as a whole. Furthermore, it was stated that children are considered as shoots, potential, and the young generation who will continue the ideals of the nation's struggle, play a strategic role, and have special characteristics and traits that guarantee the continued existence of the nation and state in the future. In a visionary view, children are considered a form of investment that is an indicator of a nation's success in implementing development. Success in developing children is considered to influence the quality of human resources in the future. Conceptually, children were initially referred to as Children in Especially Difficult Circumstances (CEDC) or children who need special protection, especially when they are in an environment where the relationship between the child and the people around him, especially adults, is complicated. with acts of violence or a tendency to care or neglect.

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The juvenile criminal justice system in Indonesia is a legal framework that is specifically designed with the aim of realizing justice that truly guarantees the best interests of children in conflict with the law as the nation's successors.(Mulyadi, 2014) One very effective solution that can be taken in handling juvenile criminal cases is a restorative justice approach, which is implemented by means of diversion. Restorative justice is a resolution process carried out outside the criminal justice system by involving victims, perpetrators, families of victims and perpetrators, the community and parties with an interest in a criminal act that occurred to reach an agreement and resolution. Restorative justice is considered a new way of thinking/paradigm in viewing a crime committed by someone.

The juvenile criminal justice process so far has not been successful in providing adequate special protection for the welfare of children, and still tends to be repressive with the high number of judgments imposing prison sentences on children.(Amardhotillah & Harefa, 2023) This legal fact is the basis for conducting a more in-depth study regarding the formulation of diversion in the juvenile justice system in Indonesia. The main challenge involves fulfilling the rights of children as subjects in the legal process(Widya Romasindah Aidy, 2021). Evaluation of the juvenile justice system is crucial to assess the extent to which this system can operate well and meet the needs of children involved in criminal cases. The juvenile justice system in Indonesia has evolved over time to respond to the dynamics and demands of societal development. However, there is still a mismatch between theory and practice in this system, raising concerns regarding its effectiveness in protecting children's rights. Some of the problems that arise include limited children's access to information(Rahmawati, 2022), inadequate legal representation(Nurusshobah, 2022), and the implementation of sanctions that do not always take into account rehabilitation aspects.(Ghoni & Pujiyono, 2020)

The main problem that this research aims to solve is the extent to which the juvenile justice system in Indonesia is successful in fulfilling the rights of children involved in criminal cases in accordance with applicable principles.(Ibid, 2014). Given the discrepancy between system ideals and field practice, there is an urgent need to identify concrete problems faced by children during the justice process(Suryawijaya, 2023). It is hoped that this study can reveal the formulation of diversion within the framework of educational punishment for children as perpetrators of criminal acts, and contribute to offering a model of an educational punishment system that is suitable for children involved in criminal acts.

The academic benefit of this research is that it provides deeper insight into the evaluation of the juvenile criminal justice system in Indonesia, providing a more solid knowledge base for researchers and academics in the field of juvenile law. For the legal world, it is hoped that this research will provide a more critical view of juvenile justice policies and practices, allowing for improvements based on empirical findings. The benefits can also be felt by legal practitioners, judges and advocates involved in the juvenile justice process, enabling them to gain a deeper understanding of the needs of children as legal subjects. In general, the benefits of this research can also be felt by the community, especially children who are the main stakeholders in the juvenile justice system. This research can help create awareness among the public about the importance of actively involving children in the legal process, as well as encourage greater participation from various related parties.

Even though there has been a lot of research related to the juvenile justice system in Indonesia, there is a research gap that needs to be filled, especially in understanding the

perspective of children as parties directly involved. This research attempts to fill this gap with an in-depth qualitative approach, exploring children's views and experiences of the juvenile justice system. Thus, it is hoped that this research can make a significant contribution in identifying concrete problems and potential solutions to improve the effectiveness of the juvenile justice system in Indonesia.

## **2. Literature review**

### **2.1 Justice and children's rights and guarantees of protection**

Protection of children's rights in the judiciary is the main focus of the laws and policies implemented in Indonesia. Child Protection Law no. 35 of 2014 (UUPA) and the Juvenile Criminal Justice System (SPPA) becomes a legal instrument that regulates children's rights during the judicial process in Indonesia. UUPA, in its implementation, has carried out the basic principles of child protection (Alin Pratama & Panjaitan, 2023), including the right to live, grow and develop optimally, the right to protection, and the right to participate in the development process.

### **2.2 Implementation in Indonesia**

Even though the relevant legal framework has been clearly regulated, the implementation of child protection and the Juvenile Criminal Justice System Law (SPPA) in Indonesia is still experiencing an imbalance, especially in the treatment of children as perpetrators of criminal acts. (Luthfi & Suwanto, 2022). The juvenile justice process tends to be unbalanced, with greater emphasis on punishment rather than rehabilitation. The involvement of children as perpetrators of criminal acts is often met with harsh punishment (Anggalana et al., 2023), without considering aspects of developing potential and improving children's behavior.

Furthermore, there is a tendency for excessive intervention in the juvenile justice process (Nisa & Mulyasari, 2023). For example, interference from the family, community, or other parties involved in judicial decision making. This can result in a lack of objectivity in the legal process and can harm children's rights as legal subjects (Alin Pratama & Panjaitan, 2023; Pramukti & Primaharsya, 2015).

### **2.3 Law from a child's point of view**

From a child's perspective, the law is not just a tool for upholding justice, but a system that needs to understand and involve them as individuals who have special rights and needs. (Jiwandono & Utomo, 2023). The importance of active involvement of children in the justice process and recognition of their views must be recognized as urgent (Marsiari et al., 2023), in accordance with the principles of child participation recognized in the Convention on the Rights of the Child (Ibid, 1989). Law for children should not only focus on punishment, but also on the development and rehabilitation of children as members of society (Luwangula, 2012). Including children's perspectives in legal decision making is a crucial step in establishing a juvenile justice system that is responsive and appropriate to their needs. Thus, the law not only plays a role as an enforcer of justice but also as a guardian of the rights and welfare of children.

### **2.4 Children in conflict with the law**

Children can act as victims, witnesses, or perpetrators in the judicial process(Munajat, 2022). When children are victims or witnesses, it is important to prioritize protecting their rights. Children's rights to receive protection, support and access to child-friendly justice processes must be guaranteed.

When children are involved as perpetrators of criminal acts, it is important to apply a balanced punishment approach with the principle of rehabilitation, which supports the fulfillment of children's rights(Van Bueren, 2021). Treatment of children as criminals must consider psychological, social and educational factors that may influence children's behavior(Roesch & McLachlan, 2018). The implementation of sanctions must be educational and support the process of children's reintegration into society. Thus, there is a need for a holistic approach in dealing with the diverse roles of children in the context of the justice system.

### **3. Methods**

This research applies an analytical normative legal approach method. This method is focused on analyzing applicable legal regulations(Negara, 2023). This approach aims to understand, interpret and evaluate the normative aspects of the juvenile justice system in Indonesia. Research involves searching for and collecting legal materials, such as related laws and regulations. Normative analysis was carried out to assess the extent to which the legal framework reflects the principles of children's rights and their protection in the context of juvenile justice. This involves an in-depth analysis of the legal provisions governing juvenile justice and their relationship to the principles of child rights and protection.(Hirsch Ballin, 2020)

This research involves an in-depth understanding of the legal interpretation of various relevant court decisions. Normative legal research methods are applied with an analytical focus on juvenile justice legal provisions. The aim is to identify the compatibility or incompatibility between the legal framework and the principles of children's rights. By involving an in-depth understanding of legal interpretation and applying normative research methods, this research focuses on the relationship between the existing legal framework and the principles of children's rights in the context of juvenile justice.(Berrick et al., 2022)

### **4. Results and discussion**

#### **4.1 Revisiting the legal umbrella in the juvenile criminal justice system**

The law that has been drafted has succeeded in fulfilling all the principles that became the basis for the test, including the Principles of the Unitary State of the Republic of Indonesia (NKRI), the Principles of Justice, the Principles of Democracy, the Principles of Legal Certainty, and the Principles of Corruption Prevention(Bisri, 2004). However, it should be noted that several indicators for several principles have not been fully fulfilled, even though they do not conflict with the established indicators. Indicators that have not been met involve aspects of limiting foreign influence, the rights and obligations of individuals and corporations in politics, law, security and government, in line with the Principles of the Republic of Indonesia. Furthermore, there are indicators regarding regulations that support development patterns in accordance with the demands of the current generation, and provide support for the involvement of traditional law communities, local communities, women and other marginalized communities, in line with the Principles of Justice. In other words, non-fulfillment does not indicate a violation of the specified indicators, but is caused by the characteristics of the material contained in the law which do not

require regulation as described in the indicators. A thorough analysis of all articles in the law also shows that there is no material content that contradicts the indicators outlined.

The legal umbrella that regulates the Juvenile Criminal Justice System explains the diction "child's opinion" contained in Article 60 paragraph (2) and Article 68 paragraph (1). However, in both articles, there is a lack of providing sufficient details regarding the form of concrete channels for "children's opinions"(Ibid, 2012, pp. 27 & 31). In this case, it is necessary to pay attention to restrictions, namely the term "in certain cases" in Article 60 paragraph (2), without any provisions that clearly explain the conditions or situations meant by "in certain cases." This indicates the need for further clarification in the law to ensure effective implementation and protect children's participation rights in the context of juvenile criminal justice.

Furthermore, it is highlighted that Article 60 paragraph (2) only recognizes the right to opinion of children in the capacity of victims, ignoring equal rights for children who are perpetrators in the juvenile justice process. It is necessary to expand the scope of children's participation rights, especially those in conflict with the law, to emphasize that the right to express opinions is not only the exclusive right of child victims. This step is essential to ensure the provision of equal rights and protect children's participation rights, maintaining justice and balance in the context of fair and inclusive juvenile justice.

Meanwhile, in article 65 letters d and e it is written that there is an obligation for Community Guidance, which involves carrying out the following duties: providing assistance, guidance and supervision to children who, based on a court decision, have been sentenced to a crime or are subject to action; as well as providing assistance, guidance and supervision of children who receive assimilation, parole, leave before release, and conditional leave(Ibid, 2012, p. 30). In reality, there is often no official determination from the District Court Judge as a basis for the Social Care Administration Development Agency (Bapas) in carrying out its responsibility for criminal supervision of a child. This deficiency reflects problems in regulation or implementation that need to be taken into account in order to increase the effectiveness of the Fathers in carrying out their supervisory duties over children who are the objects of crime. Concrete steps are needed in both regulations and implementation to overcome these weaknesses and ensure the protection of rights and the success of the juvenile justice system.

Article 80 paragraph (1) places emphasis on the implementation of criminal coaching within institutions, which can be in the form of job training places or coaching institutions run by the government or the private sector. Meanwhile, Article 80 paragraph (4) states that children who have served at least half of the criminal training period in an institution, a minimum of three months, and show good behavior, are entitled to parole. However, obstacles arise due to the absence of further regulations regarding the process of granting conditional release for coaching crimes carried out by institutions outside the territory of the Ministry of Law and Human Rights of the Republic of Indonesia. This is an important concern because the parole process is an aspect regulated by the Ministry of Law and Human Rights, so further provisions are needed that explain the requirements and elements that must be fulfilled in granting parole.

The terminology related to granting 'conditional release' is regulated in Article 80 paragraph (4) and Article 81 paragraph (4). These articles state that conditional release can be granted to children who are serving sentences of guidance in institutions and imprisonment in Special Children's Correctional Institutions (LPKA). However, it should be noted that parole should not only be limited to this type of crime, but should also be given to children who are serving sentences with

conditions and job training sentences. This is due to the nature of restrictions inherent in each type of punishment and to ensure the best interests of children, parole should be applied uniformly to various types of punishment that may be applied to children.

Apart from the aspect of fulfilling these principles, it appears that there is a need to make changes to four articles in this law. The need for this change emerged from the results of analysis and evaluation which showed potential problems in it. Therefore, changes to these articles are an urgent step to increase the clarity and effectiveness of the implementation of this law in the context of the juvenile justice system. Efforts to make these changes need to be carried out carefully and in depth, considering their impact on the protection of children's rights and balance in the juvenile criminal justice system.

#### **4.2 How are children's rights fulfilled when undergoing the justice system?**

Protection of children's rights in the criminal justice system is the main essence for maintaining justice and the sustainability of the legal process (Luthfi & Suwanto, 2022; Mulyadi, 2014). Children, who are the most vulnerable parties in this system, must receive maximum protection for their rights (Ghoni & Pujiyono, 2020). The rights in question include access to a lawyer, protection from violence, the right to a fair and non-discriminatory process, and the right to protection from cruel, inhuman and degrading treatment of children. (Ibid, 1989). Within the scope of statutory regulations which are the focus of legal analysis and evaluation in this research, the main attention is focused on the rights obtained by a child who is involved in the legal process, whether as a perpetrator, victim or witness. Clearly identified rights are regulated by norms in legislation, expressly recognized by the legal system. Evaluation of the legal regulations that are the object of research shows that these rights are clearly described and recognized in the applicable legal provisions.

From the results of inventory, analysis and evaluation of legal products related to the Juvenile Criminal Justice System, such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2014 concerning Child Protection, Law 16 of 2011 concerning Assistance Law, and Law Number 31 of 2014 concerning Protection of Witnesses and Victims, several provisions related to rights in the context of the juvenile criminal law system have been identified. In this research, there is the potential for overlap, ineffectiveness, or a legal vacuum in the Juvenile Criminal Justice System.

##### **a) Right to obtain legal aid**

The rights obtained by children facing legal proceedings include the right to obtain legal assistance at every stage of the examination, as regulated in Article 23 paragraph (1) of the Juvenile Criminal Justice System Law (SPPA). However, in reality there are still many cases of children who are not accompanied by a legal advisor or advocate, even though the law states that legal assistance "must be provided". law or accompanied by a competent legal aid provider, then the legal process can be declared null or void. Therefore, it is necessary to add regulations that strengthen this process so that a child can effectively defend his or her rights in accordance with applicable regulations. (Gulo et al., 2023; Luwangula, 2012).

##### **b) Right to information**

Children in conflict with the law have the right to obtain information, as regulated in Article 5 paragraph (1) of the Witness and Victim Protection Law. This right includes information about

case developments, court decisions, and other information related to the convict's release. Even though Article 90 of the SPPA Law makes it easier to obtain information, the regulation of this right is not supported by further provisions. Considering that this is a technical matter, clear procedures and procedures are needed to ensure the fulfillment of these rights (Roesch & McLachlan, 2018). Therefore, there is a need for further regulations regarding the fulfillment of the right to information for children in conflict with the law, whether as victims, witnesses or perpetrators.

**c) The right to obtain parole**

The right to conditional release is given to children undergoing the coaching process, as regulated in Article 4 paragraph (1) of the SPPA Law. However, Article 80 paragraph (4) which regulates the conditions for parole is not in line with the previous paragraph. Paragraph (1) states that coaching is carried out at work training sites or coaching institutions organized by either the government or the private sector. This disparity is related to the institution's authority to grant conditional release, which is issued by the Ministry of Law and Human Rights through the Directorate General of Corrections. Therefore, it is necessary to harmonize regulations regarding the authority of institutions in granting conditional release (Munajat, 2022).

**d) Right of restitution**

This is a right that involves the payment of compensation determined to the perpetrator based on a court decision which has permanent legal force regarding the losses experienced by the victim, whether material or immaterial. This right is explained in the Child Protection Law Article 71D paragraph (1). This norm states that every child who is a victim has the right to file a claim for restitution before the court. To ensure consistency and harmonization in regulations, it is necessary to research whether fulfilling the right to restitution should involve court mechanisms or can be regulated in other ways. In addition, provisions are needed that explain whether child perpetrators of crimes can be sued to fulfill the right to restitution. This action is needed to provide legal certainty in the context of child protection.

The importance of understanding and awareness of related parties, such as courts, prosecutors and lawyers, regarding children's rights is crucial in efforts to protect these rights. In practice, this is related to the extent to which the parties involved pay attention to children's rights. In assessing the juvenile justice system, an evaluation is needed that takes into account the level of awareness and understanding of the relevant parties regarding children's rights in the implementation of daily legal practice.

## **5. Effectiveness of the juvenile criminal justice system in Indonesia**

The Juvenile Criminal Justice System is a legal product prepared by the state to replace Law Number 3 of 1997 concerning Juvenile Courts and has had an impact on substantial, structural and legal cultural changes. Even though this legal product was created in 2012, it only came into effect in 2014, and after two years, there are still several obstacles in its implementation to date. One of the main obstacles is the incomplete formation of implementing regulations for the SPPA Law (Alin Pratama & Panjaitan, 2023). A number of articles in the Law delegate further regulation to Government Regulations and Presidential Regulations, but up to now only one Government Regulation and one Presidential Regulation have been formed from the six Government Regulations and two Presidential Regulations that are required. This weakness results in the suboptimal implementation of several provisions of the SPPA Law, becoming a major obstacle in efforts to fulfill the rights of children in conflict with the law.

Furthermore, preparation of Human Resources for implementing the SPPA Law is another challenge. This law requires police offices, prosecutors and courts to have juvenile investigators, juvenile public prosecutors and juvenile judges within five years of the law's enactment. Limited budgets and the number of trainers have resulted in limited implementation of the SPPA Law's integrated training, creating disparities in the handling of child cases between officers who have undergone training and those who have not (Mulyadi, 2014). An adequate budget and adequate training are needed to overcome this problem. Apart from that, the pattern of coaching for children who are in conflict with the law is also not optimal. Government regulations governing education, coaching and mentoring programs have not yet been formed, hampering efforts to protect children's rights as mandated by the SPPA Law. The unavailability of implementing regulations also results in the absence of a special budget allocation for child development programs. As a result, coaching facilities at various institutions such as Bapas, LPAS and LPKA do not meet standards, including residential facilities, recreation areas, libraries and classrooms. Limited budgets also affect the coaching programs at LPKA and LPAS, causing non-compliance with standards and sub-optimal coaching.

## **6. Conclusions**

The issuance of the Juvenile Criminal Justice System Law (UU SPPA) has had a significant impact on the dynamics and development of law, especially in the criminal law framework involving children. Legal analysis and evaluation of the juvenile criminal law system does not only focus on dismantling the SPPA Law, but also includes a search for other laws and regulations that are substantially related to the rights and interests of children.

The results of legal analysis and evaluation show that most of the laws and regulations that have been analyzed have attempted to provide protection for children and regulate laws that are different from those of adults. However, there are special aspects that require further technical operational arrangements. In terms of understanding and implementation by the authorities, improvement is still needed through integrated socialization and education regarding all laws and regulations related to children's rights and welfare.

The main obstacle that causes the implementation of the juvenile criminal law system to not be optimal is the absence of a supportive implementation framework, in accordance with the provisions contained in the law. Therefore, concrete action is needed to ensure that the pattern of guidance and protection for children in conflict with the law can run optimally, in accordance with the mandate of the applicable law.

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