

## Reconstruction of legal protection of children as defendant in the Indonesian juvenile justice system

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### Abstract

Justice for Children as Defendant in the court in Indonesia needs attention because its conditions still not reflect the value of justice. This problem encourages the author to examine it more deeply into a study with the subject discussed are how to protect the defendant in the juvenile justice system in Indonesia today and how the ideal construction of child protection as a defendant in a juvenile justice system is more just. In analyzing this problem, the author used the sociological juridical approach. The research specification is descriptive analysis where Research locations are the District of Cirebon. Primary data sources were obtained directly from respondents whereas the secondary data are literature study. Data is presented in the form of descriptions that are arranged systematically, logically and rationally, analyzed using qualitative descriptive techniques. Research shows that regulation of child protection as a defendant in the juvenile criminal justice system still share similarities and differences in determining the categories of children and adults. This similarities and differences in determining the maturity and punishment that can be imposed on a child who is a criminal offender need to be differentiated as the system does not yet reflect the value of justice because it equates people aged under 18 who are already married and those who are not. Therefore, The ideal reconstruction of child protection as a defendant in a more just juvenile justice system should be in Article 1 number 3 of the Juvenile Justice System (UU-SPPA), which changed in to: Juvenile (ABH) is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old. And unmarried who are suspected of committing a criminal act. And Article 7 UU-SPPA changed in to: At the level of investigation, prosecution and examination of cases of children in district courts, it is mandatory for Diversion to be sought without being burdened with the provisions.

**Keywords:** reconstruction, juvenile crime, criminal justice process

### Introduction

Justice for Children as defendant in front of the court of justice is very necessary for the state wellbeing considering that behavior that is not in accordance with the norms can cause problems in the field of law and harm society at large. The Child Protection Commission stated that every year, there are no less than 6,000 children faced the law, during 2011 - 2016 alone based on statistics released by the Indonesian Child Protection Commission (KPAI) <sup>[1]</sup>.

This problem is quite concerning, considering that behavior that is not in accordance with norms can cause problems in the field of law and harm the society at large. Not to mention the problem of Juvenile prisoners that are mixed with adult inmates are as many as 3,916. The Reason of this situation is because many children who face the law have to be detained in a place, which is not proportional to the capacity of the existing juvenile penitentiary, so it is not surprising that child prisoners are then entrusted to adult prisons.

In relation to child criminal responsibility in Indonesia, the matter is closely related to the idea of shifting the minimum age limit from the Criminal Code and to the Juvenile Court Law, then the most recent is the Juvenile Criminal Justice

System Law. These shifting ideas includes philosophical, juridical, and historical ideas although the provisions on the age limit for criminal responsibility for children in the Criminal Code still have shortcomings. These shortcomings are

1. In the Criminal Code, there is no minimum age limit for juvenile to be responsible, while The Beijing Rules recognize the concept of minimum age limit for criminal responsibility for juveniles.
2. In addition to the Criminal Code, there is no explanation regarding the institutions that support child protection in this law.
3. The rules regarding Juvenile law in the Criminal Code are too simple and not in accordance with the development of Indonesian society.

The matter mentioned above are really necessary to study because if there is a minimum age for a child to be categorized as a "juvenile" then child that are below the minimum age cannot be charged in the court. Historically, the age of the Criminal Code is quite long and simple. It prioritizes the theory of retaliation in its regulations regarding the criminal law of children, the Indonesian

<sup>1</sup> Kompas, (2010), "3.916 Napi Anak "Dicampur" Napi Dewasa", <https://apple.co/3hXWJ0Lhttp://nasional.kompas.com/read/2010/12/23/16372023/3.916.Napi.Anak.Dicampur.Napi.Dewasa>, Accessed on December 2019.

Criminal Code (KUHP) regulations that specifically regulate child criminal law, especially Article 45, 46, 47 are deleted and replaced by laws that are more in nature, specifically Law Number 3 of 1997 concerning Juvenile Court.

The Juvenile Court Law stipulates that the age for children that can be held responsible for their crime are 8 (eight) years old and must not reached the age of 18 (eighteen) years and has never been married. The philosophical ideas regarding the determination of the age limit for criminal liability in the Juvenile Court Law are:

1. The determination of the age limit for criminal responsibility is based on the consideration that psychologically, at that age the child already has a sense of responsibility.
2. There is an excuse for a child who commits a crime but is not yet 8 years old.
3. The need to increase legal protection for children.

According to the legislature, the maker of the Juvenile Court Law at that time, sociologically, psychologically, and pedagogically an 8-year-old child cannot be held accountable for his or her actions.

Philosophical ideas are also contained in the Manuscript of Law Number 3 of 1997 concerning Juvenile Court in the explanation section which explains that it is necessary to consider the position of the child with all its characteristics, so it is necessary to differentiate treatment and threats in order to provide the right direction in coaching and child protection.

The government's attempt in 1957 by sending several experts from several departments abroad resulted in an oral agreement between the Attorney General's Office, the Police and the Judiciary to provide special treatment for children who had committed crimes, as well as the ideas in the Minutes of the Special Committee Working Meeting. The Draft Law on Juvenile Justice with the Minister of Justice of the Republic of Indonesia is a historical idea of shifting the age limit for criminal responsibility for children from the age limit stipulated in the Criminal Code.

However, history shows that in the end, Law Number 3 Year 1997 regarding Children's Court was tested in the Constitutional Court (MK). This examination resulted in the Constitutional Court Decision Number I / PUU-VIII / 2010 finally granted some of the petitioners' petition, namely Article 1 Number 2 letter b, Article 4 Paragraph 1, and Article 5 Paragraph 1 of Law Number 3 Year 1997 concerning Juvenile Courts which declared conditional unconstitutional. In this decision, the Constitutional Court expressed its opinion regarding the age of criminal responsibility for children is 12 years.

Finally, the government passed a new law which it hoped would be more in line with international ideals of protecting children. The enactment of Law Number 11 of 2012 concerning the Criminal Justice System for Children determines the age limit for new criminal responsibility for children who are 12 (twelve) years old, but not yet 18 (eighteen) years old. There are philosophical ideas in determining the age limit for criminal responsibility for children in the SPPA Law, these ideas are as follows:

1. Consideration of adolescence as a critical period for child development, psychologically, is still very vulnerable to environmental influences.
2. A restorative and diversion approach that is suitable to be applied in child criminal law.
3. Avoiding stigmatization of children in conflict with the law.
4. After 14 years, the person can be deprived of his liberty. Thus, those who are 12 are indeed processed but cannot be deprived of their liberty as a form of punishment.
5. Whereas, marital status should not be used as an excuse to change the status of a person who is basically still a child biologically.

**The above problems are interesting to be researched further. This is the reason for the author to research this matter with the following issue**

1. How is the protection for the Juvenile Defendant in the juvenile justice system in Indonesia currently?
2. What is the ideal construction of child protection as a defendant in a more just system of juvenile justice in Indonesia?

#### **Method of Research**

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge <sup>[2]</sup>. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (approach) the research is to use the approach of *Normative-Juridical* <sup>[3]</sup>, which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

#### **As for the source of research used in this study are0**

1. Primary Data, is data obtained from information obtained from literature review derived from the existing regulation, credible news and data obtained from interested parties.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, researchers uses data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data <sup>[4]</sup>.

<sup>2</sup> Faisal, (2010), "Menerobos Positivisme Hukum", Rangkang Education, Yogyakarta.

<sup>3</sup> Johnny Ibrahim, (2005), "Teori dan Metodologi Penelitian Hukum Normatif", Bayumedia, Surabaya.

<sup>4</sup> L. Moleong, (2002), "Metode Penelitian Kualitatif", PT Remaja Rosdakarya, Bandung.

## Research Result and Discussion

### 1. The Protection For The Juvenile Defendant In The Juvenile Justice System In Indonesia Currently

In Islam, legal proficiency is a person's obedience to carry out an obligation and leave prohibitions and the merits of a person are judged by their actions so that they have legal consequences. Legal proficiency here relates to *Ahliyah al-wujud* (ability to own and bear rights), while appropriateness of action concerns a person's appropriateness to act completely in law which in *fiqh* terms is called *Ahliyah al-ada* (the ability to give birth to obligations on oneself and rights for other people). Therefore, the ulama's *'ushul fiqh* defines the ability to act as a person's appropriateness for the emergence of an action (action) from himself in a manner determined by *syara'*<sup>[5]</sup>.

In relation to the protection of the accused in the juvenile criminal justice system in Indonesia today, namely that in the legal system in Indonesia, the maturity of a person when viewed from various applicable legal provisions is very diverse. Maturity based on age is one of the parameters concerned that it is considered competent and entitled to what is regulated by legal provisions. So from the competency or maturity research, legal competence can be interpreted as a condition in which someone has been declared legally mature so that they can be burdened with legal responsibility and carry out legal actions such as getting married, entering into agreements and so on.

In the law of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, what is called a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Thus, declared adult is everyone who has reached the age of 18 (eighteen) years. Likewise, with other laws promulgated after the promulgation of the Child Protection Act (UU-PA), which is declared as a person who is not yet an adult or referred to as a child is a person under the age of 18 (eighteen) years.

Meanwhile, in the Criminal Code (KUHP) Article 45 states that

*"In the case of a criminal prosecution against an underaged person for committing an act in which the guilty have done before the age of sixteen, the judge can determine to order that the guilty be returned to his parents or guardian, without any punishment; or ordered the guilty to be handed over to the government without any punishment, if the act constitutes a crime or one of the offenses based on articles 489, 490, 492, 496, 497, 503 - 505, 514, 517-519, 526, 531, 532, 536, and 540 and it has not been two years since being found guilty of a crime or one of the violations mentioned above, and the verdict has become permanent; or impose punishment on the guilty"*.

Based on the elucidation of the article, those who can be called adults are those who are 16 (sixteen) years old. This is in line with the Customary Law and Jurisprudence of the Supreme Court of the Republic of Indonesia, namely: Indonesian Customary Law states that the limit to be called a child is pluralistic. In terms of the criteria for saying that someone is no longer called a child and has grown up, there are various terms. For example: the "*Kuat gawe*", "*akil*

*baliq*", "*menek bajang*", and so on<sup>6</sup>. Meanwhile, according to the jurisprudence of the Indonesian Supreme Court which is oriented towards customary law in Bali, the age limit of children is under 15 (fifteen) years, such as the Decision of the Indonesian Supreme Court Number: 53 K / Sip / 1952 dated 1 June 1955 in the case between I Wayan Ruma and Ni Ktut Kartini for example<sup>[7]</sup>.

The Criminal Code is historically quite old and too simple and prioritizes on the theory of retaliation in its regulations regarding the criminal law of children as seen in the KUHP regulations that specifically regulate child criminal law, especially Articles 45, 46, 47 that are deleted and replaced by laws that are more specific, namely Law Number 3 Year 1997 regarding Juvenile Court.

The Juvenile Court Law stipulates that the age of criminal responsibility for children is age of 8 (eight) years at minimum and has not reached the age of 18 (eighteen) years and has never been married. The philosophical ideas about determining the age limit for criminal responsibility in the Juvenile Court Law are:

- a. The determination of the age limit for criminal responsibility is based on the consideration that psychologically, at that age the child already has a sense of responsibility.
- b. There is an excuse for forgiveness for a child who commits a crime but is not yet 8 years old.
- c. The Improvement of the legal protection for children.
- d. According to the legislature, the maker of the Juvenile Court Law at that time, sociologically, psychologically, and pedagogically an 8-year-old child is accountable for his actions.
- e. Philosophical ideas are also contained in the Manuscript of Law Number 3 of 1997 concerning Juvenile Court in the explanation section which explains that it is necessary to consider the position of the child with all its characteristics and characteristics, so it is necessary to differentiate treatment and threats in order to provide the right direction in coaching. And child protection.
- f. The government's attempt in 1957 by sending several experts from several departments abroad resulted in an oral agreement between the Attorney General's Office, the Police and the Judiciary to provide special treatment for children who had committed crimes, as well as the ideas in the Minutes of the Special Committee Working Meeting. The Draft Law on Juvenile Justice with the Minister of Justice of the Republic of Indonesia is a historical idea of shifting the age limit for criminal responsibility for children from the age limit stipulated in the Criminal Code.

However, history shows that in the end, Law Number 3 Year 1997 regarding Children's Court when tested in the Constitutional Court (MK) resulted in the Constitutional Court Decision Number I / PUU-VIII / 2010 that finally granted some of the petitioners' petition, namely Article 1 Number 2 letter b, Article 4 Paragraph 1, and Article 5 Paragraph 1 of Law Number 3 Year 1997 concerning

<sup>5</sup> Al-Amidy, in Muhammad Abu Zahrah, (2011), "Ushul Fiqih", Pustaka Firdaus, Jakarta, p.503.

<sup>6</sup> Rakasiwi, Saraswati & Syamsudin, Muhammad & Pudyaningtyas, Adriani. (2019). "Diversifikasi Budaya Pada Perilaku Prosocial Anak (Jawa, Arab Dan Tionghoa)". Kumara Cendekia. 7. 138. 10.20961/kc.v7i2.36376.

<sup>7</sup> Darmika, Ika. (2019). "Pembaharuan Sistem Peradilan Pidana Anak Di Indonesia". De'rechtsstaat. 5. 85. 10.30997/jhd.v5i2.2046.

Juvenile Courts which declared a conditional unconstitutional. In this decision, the Constitutional Court expressed its opinion regarding the age of criminal responsibility for children is 12 years. Then, related to the status of marriage which determines the limits of a child to be said to be an adult, as regulated in Article 1 number 1 of Law Number 3 of 1997 concerning Children's Court, which states that a child is a person who in the case of a naughty child has reached the general 8 (eight) years but have not reached the age of 18 (eighteen) years and have never been married. Furthermore, the phrase "never married" is abolished by Law Number 11 of 2012 concerning the Criminal Justice System for Juvenile (UU-SPPA), so that everyone who is not yet 18 (eighteen) years old is still declared a child regardless if he or she married or not. This means that a person who is not yet 18 (eighteen) years old who has been married or married, if he commits a criminal act of rape or adultery is still declared a child because he is not considered an adult, even though the marriage itself according to Indonesian customary law and Islamic law describes that a person is an adult.

Likewise, for unmarried children, if they commit rape and adultery, they are still considered children, even though rape and adultery are unlawful sexual intercourse because they are sexual intercourse outside of marriage, and it is impossible for someone who is not yet in age to commit rape.

In the provisions of Article 28 B paragraph (2) of the 1945 Constitution, it is emphasized that: *"Every child has the right to survive, grow and develop and have the right to protection from violence and discrimination"*.

This provision has provided a strong foundation that children have the right to live, grow and develop and have the right to obtain protection from violence, exploitation and discrimination. The Indonesian nation as part of the world community is committed to ensuring the fulfillment of children's rights and child protection which are part of human rights, including the right to life, survival, growth and development, to participate optimally in accordance with human dignity and protection from violence and discrimination for the sake of creating prosperous, qualified and protected Indonesian children.

Child protection is also emphasized in the 1945 Constitution, namely Article 28 D paragraph (1) of the 1945 Constitution states that:

*"Everyone has the right to recognize, guarantees protection and legal certainty that is just and equal treatment before the law"*.

Before discussing further about the protection of children in conflict with the law (ABH), it must first be understood what is meant by ABH. Based on Article 1 number 2 and number 3 UU-SPPA what is meant by ABH are:

- a. Children in conflict with the law. Children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old, who are suspected of committing a criminal act.
- b. Children who are victims of criminal acts, Children Who Are Victims of Crime, hereinafter referred to as Child Victims, are children under the age of 18 (eighteen) who have suffered physical, mental and / or economic losses due to criminal acts.
- c. Children who are witnesses of crime. A child who is a witness to a criminal act, hereinafter referred to as a

child witness, is a child under the age of 18 (eighteen) who can provide information for the purposes of investigation, prosecution and examination in court regarding a criminal case he has heard, seen and / or experienced.

The ABH that is divided into 3 (three) categories as mentioned above, is closely related to the first paragraph of UU-SPPA which states that as an inseparable part of human survival and the sustainability of a nation and state In the Indonesian constitution, children have a strategic role which explicitly states that the state guarantees the rights of every child to survival, growth and development as well as protection from violence and discrimination. Therefore, the best interests of children should be carried out as the best interests for the survival of mankind. The consequences of the provisions of Article 28B of the 1945 Constitution of the Republic of Indonesia need to be followed up by making government policies aimed at protecting children.

Furthermore, it is stated in the third paragraph which states that the principle of legal protection for children must be in accordance with the Convention on the Rights of the Child as ratified by the government of the Republic of Indonesia with Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child).

Legal protection in this case is providing protection to human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights provided by law or in other words legal protection are various legal measures that must be provided by law enforcement officials to provide a sense of security, both physically and mentally from disturbances and various threats from any party.

Legal protection is the protection of dignity and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that can protect one thing from other things. With regard to children, it means that the law provides protection for children's rights from something that results in the fulfillment of these rights.

## **2. The ideal construction of child protection as a defendant in a more just system of juvenile justice in Indonesia**

In the juvenile criminal justice system, there are activities to investigate and terminate cases if it involves the interests of children, namely all activities carried out by the police, prosecutors, judges and other officials, must be based on a principle for the welfare of the child and the interests of the child.

The purpose of child welfare in the criminal justice system has been emphasized in both international laws, namely in The Beijing Rules, and has been accommodated nationally in Law No. 3 of 1997 on Juvenile Court. Given the tendency for judges to impose imprisonment on children, it can be pointed out that law enforcers in the juvenile justice system still place more emphasis on formal juridical aspects, and have not emphasized the objectives of the interests and protection of children. The number of cases of children as suspect who have been sentenced to imprisonment at this time indicates that the judge has not been able to make the sanctions against children effective. According to the author, law enforcers in juvenile justice are currently still

dominant in emphasizing the juridical aspect (the aspect of seeing only regulatory considerations), so that aspects of the interests of child protection tend to be ignored. Therefore, imprisonment decisions for juvenile always comes first.

With this condition, there needs to be a change in the ways of seeing of law enforcers when they judge or resolve conflicts in cases of Juvenile crimes as the point of view of law enforcers in juvenile justice is still dominated by a perspective that emphasizes that "*humans are for the law*", not "*law for humans*"<sup>[8]</sup>.

Law for human's means that all legal provisions are used to serve human needs. So that human needs are the main, not the main law. Law only as a tool to fulfill their needs. So if the law does not fulfill the main need, of course it will be modified, reformed, interpreted, to the law. The latter point of view is known as the viewpoint of progressive law enforcement. It is hoped that by enforcing the law with a progressive approach in law enforcement in every stage of the juvenile criminal justice system, law enforcers will emphasize or not forget about the interests of child protection.

In general, protection means protecting something from things that are dangerous, something that can be in the form of interests or things or things. Besides that, protection also implies the protection given by someone to someone who is weaker. Thus, legal protection can be defined as all government efforts to ensure legal certainty to provide protection to its citizens so that their rights as citizens are not violated, and those who violate them will be subject to sanctions in accordance with applicable regulations.

The problem with the obscure norms in the UU-SPPA is related to the definition of a child who will eventually lead to the criminal responsibility of the child concerned, where in the UU-SPPA, a child who is originally married or has increased is declared an adult, but UUSPPA itself stipulates that marriage for a person who is under 18 (eighteen) years of age is still categorized as a child or has not been declared an adult, even though the said child already has children. The question is whether it can be equated if an adult man, both married and unmarried, and a Boy who is married to an unmarried Girl, does not commit immorality or obscenity, for example squeezing a girl's breast. Of course, adult men and married children have different intentions when compared to unmarried children. Thus equating a married child with an unmarried child because it is based on the age limit that is not yet 18 (eighteen) years old does not fulfill a sense of justice.

Starting from the basic idea of "justice" as a good goal of an act that is formally against the law (in this case the purpose of educating) is not always a justification for the action. A child who is already married should still be declared an adult as stipulated in the UU-SPPA Law not declared still a child as determined in lieu of UU-SPPA, because by equalizing age under 18 years of age, both those who are married and those who are not married, of course this provision is not a protection for children, but instead plunges married children into violations of law or other legal norms, for example for boys who are married if they commit obscene acts or the criminal act of rape, then not only violates the criminal provisions in the criminal law (KUHP) it also violates the provisions in the marriage law,

especially the purpose of the marriage, if the UU-SPPA that still recognizes that a child who is married because he is not yet 18 years old is still declared a child as UU-SPPA is a law that violates the norms of The Marriage Law, even though UU-SPPA is a lex-specialist.

The purpose of the crime as put forward by the relative theory or the goal theory also called the utilitarian theory, is not just retaliation, but to create order in society. As stated by Koeswadji, the main objectives of punishment are:

- a. To maintain public order (*dehandhaving van de maatschappelijke orde*);
- b. To repair losses suffered by the community as a result of the occurrence of crimes. (*Het herstel van het doer de misdaad onstane maatschappelijke nadeel*);
- c. To correct the criminal (*verbetering vande dader*);
- d. To destroy the criminal (*onschadelijk maken van de misdadiger*);
- e. To prevent crime (*tervoorkonning van de misdaad*).

Muladi and Barda Nawawi Arief<sup>[9]</sup> explained that crime is not just for retaliating or rewarding people who have committed a criminal act, but has certain useful purposes. Therefore, this theory is also often called the goal theory (utilitarian theory). So the basis for justifying the existence of crime according to this theory lies in its goal. The punishment imposed is not "*quia peccatum est*" (because people make crimes) but "*nepeccetur*" (so that people do not commit crimes)<sup>[10]</sup>.

Thus, the purpose of crime according to relative theory is to prevent order in society from being disturbed. In other words, the punishment imposed on the perpetrator of the crime is not to pay back his crime, but to maintain public order.

Based on the explanation above, it can be concluded that the ideal construction of Child Protection as a Defendant in a More Just Child Criminal Justice System in Indonesia is to reconstruct Article 1 number 3 UU-SPPA, where children in conflict with the law, hereinafter referred to as Children, are children who have above 12 (twelve) years of age, but not yet 18 (eighteen) years of age and unmarried who are suspected of committing a criminal act. And Article 7 UU-SPPA which also changed in to: At the level of investigation, prosecution and examination of cases of children in district courts, it is mandatory for Diversion to be sought. Without being burdened with the provisions of paragraph (2). Then, in addition to construction substantially, structural construction is also needed, in this case the Special Guidance Institution for Children, hereinafter abbreviated as LPKA, is an institution or a place for children to undergo their criminal period, has not materialized as stipulated in UU-SPPA, because not all districts / cities have LPKA. Therefore, in accordance with the mandate of the 1945 Constitution and UU-SPPA, LPKA should have been established in all districts / cities throughout Indonesia, because currently detention centers or prisons are used as LPKA which of course are not conducive to providing protection for ABH who are currently serving a crime, because it is inevitable that there

<sup>8</sup> Satjipto Rahardjo, (2006), "Membedah hukum progresif", Kompas, Jakarta, p. 106.

<sup>9</sup> Muladi and Barda Nawawi Arief, in Prasetyo, Teguh. (2015). "Penerapan Diversi Terhadap Tindak Pidana Anak Dalam Sistem Peradilan Pidana Anak". Refleksi Hukum: Jurnal Ilmu Hukum. 9. 1. 10.24246/jrh.2015.v9.i1.p1-14.

<sup>10</sup> Lane, Jodi. (2018). "Addressing Juvenile Crime". Criminology & Public Policy. 10.1111/1745-9133.12362.

are interactions with adults that can affect the ABH's mind in serving their sentence.

### Conclusion

1. The protection of the defendant in the juvenile criminal justice system does not reflect the value of justice because it equates people under 18 years old who are already married and those who are not married, so that all people under 18 years old are still categorized as children even though they even already have children, and the provision of diversion is limited by the level of criminal threats that can be imposed in accordance with the provisions of the Criminal Code.
2. The ideal construction of child protection as a defendant in a more just child criminal justice system in Indonesia is to reconstruct Article 1 point 3 of the UU-SPPA, where children who are in conflict with the law, hereinafter referred to as children, are children aged over 12 (twelve) years old, but not yet 18 (eighteen) years old and are unmarried that are suspected of having committed a criminal act. and Article 7 UU-SPPA changed in to: At the level of investigation, prosecution and examination of cases of children in district courts, it is mandatory for Diversion to be sought. Without being burdened with the provisions mentioned in paragraph (2).

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