Implementatation of Principle the Best Interest of Child based on the Perspective of Child Criminal Justice System Law

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Abstrak
Children's rights must be upheld and implemented in all nations that have established conventions on the rights of the child. This includes taking all necessary legislative and other measures. This is because only a child can determine whether a decision or policy will be applied to him or her, it must be prioritized for the best interests of the child, one of which is by implementing the settlement of a child's case in conflict with the law, a child should not be convicted, but they must given protection and assistance. The purpose of this study is to find out how the principle of the best interests of children is regulated in the SPPA Law. The method used is normative juridical. The study found that cases involving children must be resolved according to the juvenile criminal justice system through diversion which must be pursued at every stage of the criminal justice system. This is important for the fulfillment of the child's future and the opportunity to become a productive and responsible individual. Children need to be protected through the principle of the best interests of the child. According to the principle of the best interests of the child, all decisions regarding the child, including those made by parents, society and the government, must be made with the best interests of the child in mind.

Kata Kunci: the best interest of child, uu sppa, legal protection

INTRODUCTION
Children are a generation of national assets that must be considered the main needs for children that have an impact on quality human resources. (Zachra Wadjo et al., 2020) The principle of the main needs for children is the making and action of decisions related to the child, whether applied by the family, society, judicial bodies, legislative bodies, by the government, the survival and growth of children must be an important point. The child needs a special way and a special effort in his mental, physical and sausage development. Children do not have the ability to protect themselves, therefore the role of the family and the environment is needed to bear the fulfillment of children's rights. (Afifah & Hadi, 2018)

In its application, there are many misappropriations of the fulfillment of the principle of interest for children which causes it not to run in accordance with the Child Protection Law which should be fulfilled so as not to increase the case of road children, one of the reasons is because parents do not pay attention to the interests of children. The Law on Child Protection contains 4 principles of child defense control, namely no distinction, the main needs of the child, survival, freedom of life, and child development. (Anwar & Wijaya, 2020) The above laws and regulations are an effort to encourage in all government actions, rules, and decisions that bind children so that they hope to realize the best needs for children.

The problems regarding this study, the first is the principle of primary needs for children based on the perspective of child protection laws and indicators of the implementation of the principle of primary needs for children. The purpose of the study was to understand whether the main principle of relevance for children was implemented. Based on the Perspective of the Child Protection Law, it has been running properly or not. In order to create awareness of parents, the community, and law enforcement of the principle of the interests of the child, as knowledge, the fulfillment of the needs of the child, and for the implementation of this principle under the Child Protection Law.
METHOD

This scientific journal is compiled by means of qualitative methods. This type of research uses normative juridical, namely by looking for problem solving of legal issues that are happening or have become by researching and analyzing legal norms without looking at the practices that occur in the field and using the legal approach method. (Triana Ohoiwutun & Samsudi, 2017) Marzuki Mahmud said that the legal approach is implemented by taking into account all laws and rules related to the legal issues handled, as well as the theoretical framework. This study used documentation data collection techniques. Marzuki Mahmud said that a researcher can use a conceptual approach, which offers an analytical point of view in solving legal research problems in terms of legal concepts whose approach is, or a conceptual approach, that is, a strategy used when the researcher does not depart from the existing legal regulations.

RESULTS AND DISCUSSION

Asas Best Interests For Children

Through a Presidential Decree, Indonesia ratified the Convention on the Rights of the Child in Presidential Decree 36/1990. Nondiscrimination, the main needs for children, the right to life, directness of life, and growth, as well as respect for children's views are the four basic guidelines for child protection in Indonesian positive law and the Convention on the Rights of the Child. The child needs to be protected, and the principle of the child's best interests is very important. (Zachra Wadjo et al., 2020) According to the principle of the best interests of the child, all decisions regarding the child, including those made by parents, society, and government, must be made taking into account the best interests of the child. (Muthalib et al., 2021) The concept of primary needs for children is defined in Article 3 of the Convention on the Rights of the Child, Article 2 letter b of the Child Protection Law Number 23 of 2003, and Article 2 letter d of the Juvenile Criminal Justice System.

The rights of the child must be upheld and exercised in all nations that have established the Convention on the Rights of the Child. This includes taking all necessary legislative and other measures. (Triana Ohoiwutun & Samsudi, 2017) These measures include making the best interests of children a top priority in all areas, from the enforcement of children's rights to their protection, the formulation of public policies, and the handling of criminal cases involving children while taking into account the rights of children and the interests of children to protect them.

It is only the child who can determine the good or bad of a decision or policy, so it must be prioritized in the best interests of the child. (Breen, n.d.) If the child argues that the policy taken is bad, then it is an obligation to avoid it, even if the policy is classified as a child's right. The right of the child to obtain care from his own parents is reflected in Article 14 of the Child Protection Law. However, in certain situations, such as when the best interests of the child dictate that he does not want the direct upbringing of the parents, the child can be separated from his parents for legitimate reasons, in other words this right can be violated.

The principle of primary need for children is also reflected in the Juvenile Criminal Justice System Law. The law governing the juvenile criminal justice system in Indonesia is Law Nomor 11 of 2012, which recognizes diversion and restorative justice and applies the principle of "ultimum remedium". (Zachra Wadjo et al., 2020) The idea of what is in the best interest of the child is used today. The implementation of the principle of primary care for children occurred when Indonesia had established the Convention on the Rights of the Child since 1990, so that the law contains to protect children who face the law, including perpetrators, victims, and witnesses, in order to prevent the confiscation of children in the criminal justice system for minors. (Triana Ohoiwutun & Samsudi, 2017)
The implementation of one type of child protection is the principle of the main needs for children in solving children's problems facing the law. The criminal behavior of children is an indication of social ills. (Muthalib et al., 2021) Child delinquency or juvenile delinquency is described by Paul Moedikno as all acts that if carried out by a person who has grown up are a crime, but if they are carried out by every child including child delinquency or delinquency, all acts that require social protection and all acts that clash against the norms of a certain group in society that have an impact on disturbing order in society. (Anwar & Wijaya, 2020) The handling of cases of children who have conflicts of laws based on the principle of primary needs for children is also in line with the principle that requires the state to provide assistance to children in need. Therefore, if every child wants to get help then the authorities must have further action, while a child should not be convicted, but they must be given a protection and assistance.

The principle of the best interests of the child must be aligned with the purpose of the judiciary, which is not to interfere with or damage the future of the child. (Anwar & Wijaya, 2020) This includes the basic rights of the child, which should be understood, justified, and protected for the sake of fundamental human rights. Thus, the judge must put the interests of the child first when considering whether to imprison someone, and putting imprisonment is only a last resort when all other options have been exhausted. Article 71 of the SPPA Law gives courts a variety of options in terms of sentencing. The concept of the best interests of the child limits the discretion of the judge because in deciding a case involving a child, the judge must consider the special circumstances of the child as well as their motivation for committing the crime to reach a fair verdict conclusion. In accordance with the idea of the best interests of the child, it reflects the human side of the child. By guaranteeing the rights of the child throughout the legal process and during the course of the sentence, the application of the concept of the best interests of the child can be achieved.

The general understanding as a reference to Article 2 Letter B of the SPPA Law on the principle of the main needs for children can be understood that the continuity and development of children must always be considered in making decisions. At every level, the primary need for the child deserves to be seen as a benefit to society, the family, and the country. (Cronin, 2020; Jiang et al., 2014) According to the constitution, every child has the right to state protection to avoid acts of violence to discrimination, as well as the right to life, and growth and development. When deciding how to handle situations involving the child and the law, then the best interests of the child should always come first. This situation is needed so that a child can prepare for his future. As referred to in Article 1 paragraph 11 of the Criminal Procedure Code, the decision is a statement made by the judge after an open hearing. It can be a sentence, a declaration of innocence, or acquittal. A judge performs an important function as a representative of God. Therefore, a child's best interest must be put first by a judge when making decisions in a case where there are legal issues. Every child will undoubtedly face risks as a result of the judge’s sentence, which is incompatible with the purpose of integrative punishment. According to Ohoiwutun and Muladi, mandatory punishment is integrative, meaning protecting society, upholding harmony, balance or exclusion.

Application of the Principle of Best Interest to Children in the Juvenile Criminal Justice System Law

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) fundamentally changes Indonesia's juvenile justice system which is shown to be for the benefit of children. This principle confirms that in Article 2 letter d. SPPA Act. Considering the best for the needs of the child, the punishment of one of the last resorts (ultimum remedium). (Anwar & Wijaya, 2020) Before entering the scene, additional efforts must be made, especially through the diversion process. This law gives hope to children to avoid a negative stigma towards justice because case
resolution focuses more on recovery not retaliation. Article 71 of the SPPA Law gives judges many options to impose sentences. The child's case must be solved by the criminal justice system in criminal cases. Because in the case of children, it must consider not only the child's formal acts but also the personal circumstances of the child and criminal acts until the determination of the verdict is expected to touch the human side of the child, have limited flexibility because it is in the best interest of the child and in accordance with the principles of best interests of the child.

The principle of ultimum remedium seeks to ensure that the right parties are consulted regarding criminal law because it concerns human rights by using the concept of ultimum remedium in the Indonesian legal system that focuses on explaining criminal law is a new chapter of Indonesian criminal law. (Anwar & Wijaya, 2020) When justice is upheld, the world gets better and better, that's restorative justice. Punishment is the last remedy in contrast to retributive justice, which emphasizes satisfaction. Criminal convictions against children should only occur as ultimum remedium, that is, a last resort against a child who is experiencing legal problems. For example, the actions of a child whose behavior has reached the level of criminality that concerns the family and society, crimes are committed repeatedly, punished repeatedly, and no parent or guardian is present. Establishing the settlement of criminal acts against children in order to correct and confirm the existence of child crimes and prioritize the main needs. (Anwar & Wijaya, 2020) The implicit rules of the SPPA Law on the juvenile criminal justice system, known as ultimum remedium, were used to realize this idea. Although it is not specifically provided for in the Law on Final Settlement, this principle completely permeates the idea of diversion, which is not precisely regulated in Article 2, which effectively provides that the child cannot be deprived of his freedom except in urgent circumstances.

Legal principles are the legal principles on which actual legislation is based. (Fitriani, 2016) The theoretical basis for the study of this topic is the principle of ultimum remedium and is carried out that it is in the best interest of the child. Such legal rules exist to resolve any dispute that arises in the legal system. As a means of social control in social engineering, legal principles can be carried out as a foundation for the creation of dynamic and supportive national laws. (Candra et al., 2019) In its application a criminal ukumis not widely used. Simply put, criminal law can be enforced when other options fail. According to Van Bemmelen, the fact that criminal law puts people in danger of suffering distinguishes it from other areas of law. (Anwar & Wijaya, 2020) The last resort, or ultimum remedium, for this distinction is criminal law. This last tool is what Sudikno Mertokusumo refers to as ultimum remedium. That is, criminal penalties are only used when other means of punishment are unsuccessful. The principle of ultimum remedium is in line with the principle of best interest. (Zachra Wadjo et al., 2020) Because if the right of anak applies only to legislative ethics during the criminalization stage, itu is not a constitutional principle.

The diversion regulations in the Juvenile Justice System Act are designed to move cases involving children who are in legal difficulties from the courtroom arrangements of the criminal justice system beyond that. (Oleh & Hamdan, 2013) Diversion should be used in criminal cases of children already in court so that when the law is violated, the rights of the child can be upheld and not deprived. It should be prioritized as part of a mechanism for providing protection of children's rights, although the implementation of the revision prioritizes revisions in t

the resolution of children's cases rather than covering the resolution of children's case problems. (Falch-Eriksen & Backe-Hansen, n.d.) In accordance with the upheld objectives of Indonesia's juvenile criminal justice system, the protection of children's interests is prioritized in the juvenile criminal justice system. (Bennett & Mcdonald, 1977)

The SPPA Law states that diversion methods are available throughout the examination process, including the stages of investigation, prosecution, and juvenile justice. Using diversion, problems involving children can be transferred from the realm of traditional criminal justice to the realm of external criminal justice. In accordance
with Articles 5 and 7 of the SPPA Law, diversion must be pursued in every stage of the criminal justice system. (Sudrajat, n.d.) To be pursued is a requirement and therefore has the meaning of governing. The diversion method is carried out by deliberation with the participation of the parties, parents or guardians of the victim or perpetrator, legal counsel, and professional social workers using justice or justice strategies based on deliberation. (Santa et al., 2018) The diversion process must then pay attention to the rights and interests of the victim, as well as the needs and obligations of the child avoiding revenge, maintaining peace and obedience in society, being polite, and maintaining public order are all goals. (Syafiuddin et al., 2021)

Diversion is discussed in certain meetings, the parties involved in the restorative justice process decide together how the impacts and future events will be handled. It is based on a restorative strategy or strategy. (Dardhak Saputro, n.d.) Restorative justice involving victims and perpetrators in solving problems that harm victims can be used to handle juvenile criminal cases. (Candra et al., 2019) In other words, by using restorative justice for the child who committed the crime, the offender will eventually realize that solving the crime is by returning to its original state, not retaliation. (Dahlia, 2019) In addition, strategies for implementing restorative justice include victim-offender mediation efforts, meetings and discussions between victims and perpetrators involving families and the larger community, and increasing victim-offender knowledge. (Mahmud, 2019) Instead of focusing solely on the prosecution or conviction of the perpetrator, the fundamental goal of restorative justice is to heal and restore both the victim and the perpetrator. Therefore, the key elements of restorative justice include cooperation, reconciliation, reparation, regret and repentance, responsibility, honesty, and sincerity.

A victim is treated with respect in a restorative setting, and the perpetrator is required to be honest and reintegration into society. Characters and enemies always need it because it needs to be eliminated. Not only are there significant problems, but there are also significant costs associated with the addition of materials and psychological maintenance that make restoration impossible. (Mahmud, 2019)

As stated in Article 6 of the Juvenile Criminal Justice System Law, the form of review includes realizing peace between children and victims, cases involving children outside the legal system, preventing children from losing their freedom, encouraging community participation, and a restorative justice approach more suitable for dealing with child crimes because it encourages children to take responsibility for their actions. The resolution of cases involving children must be guided by the principle of best interests of the child. (Candra et al., 2019) The best interests of children must be upheld as per Article 28B paragraph (2) of the Constitution of the Republic of Indonesia of 1945. The survival and growth of the child must always be taken into account when making decisions. As stated in the SPPA Law Article 2 letter b, "the best interests of the child". In addition, the phrase "ultimum remedium" states that the use of formal judicial proceedings against children is only an option in cases as a last resort.

In addition to the interests of society, the nation, and the motherland, the best interests of the child must come first. (Said, 2018) According to the constitution, every child has the right to live, develop and be protected, of violence and discrimination. (Oleh & Hamdan, 2013) In resolving disputes between the child and the law, the principle of best interests of the child should be the main concern. This is important for the fulfillment of the future of the child and the opportunity to be a productive and responsible individual. The principle of non-discriminating (Article 2), the primary fulfillment of the child (Article 3), the right to life and development (Article 6), and the suppression of the child's solution (Article 12) are among these principles referring to child protection. One of the important principles that focuses on a number of issues that are at the core of relevant invention is the principle of primary fulfillment for the child.
The principle of the main fulfillment principle for children has been ratified through the Decree of the President of Indonesia Number 36 of 1990. The child needs to be protected, and the best interests of the child or the principle of the best interests of the child are very important. According to the principle of the main needs of the child, all decisions regarding the child, including those made by parents, society, and the government, should be made taking into account the best interests of the child. The implementation of one type of child protection is the principle of the main need for children in solving children's problems that are contrary to the law with diversion and restorative justice with the aim of realizing a judiciary that does not interfere with or damage the future of the child. This includes the rights of the child, which should be understood, recognized, and protected as fundamental human rights.

The implementation of the principle of the best interests for children is realized such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) fundamentally changing the Indonesian juvenile justice system which is demonstrated by prioritizing the interests of children. This principle is affirmed in Porigin 2 letter d. SPPA Act. Considering best in the interests of the child, the punishment of one of the last resorts (ultimum remedium).

According to the SPPA Law, the diversion method is available at all stages of the examination, including the investigation stage, the prosecution stage, and the juvenile trial. Diversion is a method of moving disputes involving minors from the scope of conventional criminal justice into the sphere of external criminal justice. As stated in Article 6 of the Juvenile Criminal Justice System Law, the objectives of diversion include: a. realizing peace between the child and the victim; b. cases involving the child outside the legal system; c. preventing the child from losing his freedom; d. encouraging community participation; and e. a restorative justice approach more suitable for dealing with child crimes because it encourages the child to take responsibility for his actions.

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