



LEGAL PROTECTION FOR CHILD WITNESSES BASED ON THE PRINCIPLE OF THE CHILD'S BEST INTERESTS

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ABSTRACT

Children who witness criminal cases are in a vulnerable position because of their psychological limitations and lack of full intellectual maturity. Although Indonesian law provides special protection for child witnesses, in criminal justice practice, child testimony is often positioned as weak secondary evidence. This situation indicates a gap between normative regulations (written law) and their implementation in practice (law in action). This study seeks to examine how children who are minors are legally protected and treated as witnesses within the juvenile criminal justice system, as well as to evaluate how their testimonies are assessed during the process of gathering evidence. The research method employed is normative juridical, incorporating both legal and conceptual approaches. The legislative approach is carried out by examining various legal provisions relating to the protection and status of child witnesses, specifically Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2014 concerning Child Protection, and the Criminal Procedure Code. The results show that the legal position of child witnesses must be understood as protective-participatory, by recognizing the role of children in the evidentiary process while guaranteeing the protection of their rights and best interests.

A. INTRODUCTION

In the country's society, children are considered citizens who have fundamental human rights that the government has a responsibility to ensure and safeguard.¹ The government is required to ensure that children have the right to live, grow, and develop, receive an education, and be protected by the law.² Children's status goes beyond being the future of the nation; they are also recognized as legal entities who have rights and responsibilities that should be acknowledged, carried out, and safeguarded. In a legal context, children are regarded as individuals who have rights protected by different laws, including the Convention on the Rights of the Child, which was adopted by the United Nations, and national laws like the Child Protection Law in Indonesia.³

Children's rights include protection from violence, discrimination, and exploitation, the right to education, the right to health, and the right to have their opinions heard.⁴ As legal subjects, children also have an obligation to comply with applicable regulations and respect the rights of others, but this obligation must be adapted to the child's development and abilities. Children have rights and obligations, including complying with regulations (at home, school, and in the community) and respecting the rights of others, even though their legal capacity is limited and they need guidance from parents/guardians, As outlined in child protection laws and the Convention on the Rights of the Child (CRC).⁵ These obligations align with their rights to be protected and develop optimally. This demonstrates that children are not merely objects of protection but also have an active role in society, with rights and obligations recognized by law.⁶

The well-being of children, as the future generation and a key national resource, is now under significant risk. This is due to the reality of life in

¹ Muhammad Ansori Lubis, Ariani Yestati, Leni Dwi Nurmala, and Dince Aisa Kodai, *Buku Referensi Perlindungan Hukum Anak Perspektif Hak Asasi Dan Keadilan Restoratif* (Medan: PT. Media Penerbit Indonesia, 2025), 5.

² Meilan Lestari, "Hak Anak Untuk Mendapatkan Perlindungan Berdasarkan Peraturan Perundang-Undangan," *UIR Law Review* 1, no. 2 (2017): 22.

³ Soo Joo Lee, "A Child's Voice Vs. A Parent's Control: Resolving A Tension Between The Convention On The Rights Of The Child And U.S. Law," *Colombia Law Review* 117 No. 3 (2017): 689.

⁴ Ahmad Tang, "Hak-Hak Anak Dalam Pasal 54 UU No. 35 Tahun 2014 Tentang Perlindungan Anak," Al Qayyimah, *Jurnal Pendidikan Islam, Pascasarjana IAIN Bone*, 2 no. 2 (2019): 99.

⁵ Febri Prihatin, Gunawan Santoso, Sri Utami, "Analisis Hak Dan Kewajiban Peserta Didik Di Sekolah Dan Di Rumah Jurnal Pendidikan Transformatif," *Jurnal Pendidikan Transformatif Volume 02, Nomor 04* (2023): 270. See too, Candra Hayatul Iman, "Kebijakan Hukum Pidana Perlindungan Anak Dalam Pembaharuan Sistem Peradilan Dan Pidana Anak Di Indonesia," *Jurnal Hukum Dan Peradilan* 2, no. 2 (2013): 12.

⁶ Mochammad Aditia Gustawinata, Lastuti Abubakar, and Ema Rahmawati, "Analisis Hukum Terhadap Perlindungan Dan Integrasi Hak Anak Sebagai Hak Asasi Manusia Dalam Sistem Hukum Indonesia," *Jurnal Tana Mana* 6, no. 2 (2025): 245.

Indonesia, which shows that many children are still involved in legal violations and criminal acts.⁷ Many children become involved in crime due to complex factors such as disharmonious family environments (parental conflict, lack of attention, divorce) that lead children to seek escape, social pressure and negative stigma, school dropout, unmet economic needs, and a lack of moral understanding, all of these issues are made worse by difficulties within the juvenile criminal justice system, which has not adequately safeguarded their rights in a complete manner.⁸ On the other hand, in social reality, there is still a perception among society that children who have encountered the criminal justice system will carry a negative stigma.⁹ Children are often labeled as "problematic" or "naughty," resulting in ostracization, discrimination, and even obstacles in their social lives later in life. This stigmatization not only impacts the child's psychological well-being but can also hinder their recovery and social reintegration.¹⁰ Therefore, the juvenile criminal justice system must not only guarantee a fair legal process but also avoid creating stigma that can harm a child's future.¹¹

The involvement of children in conflicts with the law not only impacts their future but also has the potential to hinder national human resource development.¹² Children who should receive protection, guidance, and opportunities for optimal development instead face a legal system that can lead to stigma, trauma, and the severance of educational and social access. This situation requires urgent action from both the government and society to safeguard children's rights and establish a justice system that prioritizes the best interests of children.¹³

In the juvenile criminal justice system of Indonesia, the legal framework specifically addresses the status of children, ensuring they are recognized as

⁷ Bogi Yuliawan, Hartanto Hartanto, and Teguh Satya Bhakti, "Efektivitas Kebijakan Restitusi Dalam Perlindungan Hak Anak Korban Kejahatan Seksual," *Binamulia Hukum* 14, no. 1 (2025): 36.

⁸ Bambang Sarutomo, "Penyebab Anak Di Bawah Umur Melakukan Tindak Pidana Pencurian Di Kabupaten Demak," *Internasional Journal of Law Society*, 1 no. 1 (2021): 26.

⁹ Marlina, *Peradilan Pidana Anak di Indonesia, Pengembangan Konsep Diversi dan Restoratif Justice* (Bandung: Refika Aditama, 2019), 13.

¹⁰ Ani Lestari and Khairul Huda, "Loving Not Labelling: Dampak Negatif Labelling Terhadap Perkembangan Bakat Dan Kreatif Anak," *Genta Mulia* 12, no. 1 (2021): 28.

¹¹ Meliana Kartika Herningsih and R. Rahaditya, "Stigmatisasi Pada Anak Nakal Dan Bermasalah Dengan Hukum," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 3 (2025): 2041.

¹² Imam Haryanto Azzhara Nikita Wahdah, Anisa Almagfira, Dean Putri Amelia, Ilham Indra Mulya, and Joy Catherine Carina Tambunan, "Konsep Perlindungan Hukum Bagi Anak Turut Serta Dalam Melakukan Tindak Pidana Berdasarkan Hukum Positif Indonesia," *Media Hukum Indonesia (MHI)* 2, no. 3 (2024): 186.

¹³ Mashuril Anwar and M Ridho Wijaya, "Fungsionalisasi Dan Implikasi Asas Kepentingan Terbaik Bagi Anak Yang Berkonflik Dengan Hukum: Studi Putusan Pengadilan Tinggi Tanjung Karang," *Undang: Jurnal Hukum* 2, no. 2 (2019): 266.

protected individuals rather than simply as individuals who commit crimes.¹⁴ The Juvenile Criminal Justice System Law categorizes children into three main groups. The first group includes children who are in conflict with the law. These are children who are between the ages of 12 and under 18 years and are suspected of having committed a crime.¹⁵ Second: Child Victims of Crime, which refers to children who suffer physically, psychologically, or experience a loss as a result of a crime. Third; Child Witnesses of Crime are children who give information to help with the investigation, prosecution, or trial of a crime.¹⁶

In this study, the author aims to emphasize the role of children as witnesses within the juvenile criminal justice system and the challenges that occur when the witnesses are young individuals. Children are recognized as witnesses within the Juvenile Criminal Justice System, but their role is complicated by their psychological vulnerability.¹⁷ Because of this, their statements are often not sworn under oath and are treated more as hints or clues rather than formal evidence, despite being protected under the Juvenile Criminal Justice System Law No. 11 of 2012.¹⁸ The main problems include the challenges in presenting reliable evidence, the risk of causing further trauma, and the fact that even with required support from parents or social workers, the protection provided is not always sufficient. Children as witnesses in criminal cases are legal subjects who have an important role in revealing material truth, especially in cases involving violence, exploitation, or crimes that occur within the scope of close relationships.¹⁹ However, children are also a vulnerable group who may have limitations in their psychological, emotional, and cognitive development, meaning their involvement in the criminal justice

¹⁴ S. Masribut Sardol, "Praktek-Praktek Penanganan Anak Berkonflik Dengan Hukum Dalam Kerangka Sistem Peradilan Pidana Anak (Juvenile Justice System) Dalam Tinjauan Hukum Pidana Di Indonesia," *Jurnal Judiciary* 1, no. 2 (2017): 69.

¹⁵ Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak di Indonesia* (Bandung: Refika Aditama, 2008), 39.

¹⁶ Republik Indonesia, "Undang-Undang Republik Indonesia 2012 Nomor 11 Tahun Tentang Sistem Peradilan Pidana Anak," 2012.

¹⁷ Angelica Putri and Hisar Siregar, "Peran Kejaksaan Dalam Memberikan Perlindungan Hukum Terhadap Anak Sebagai Saksi Dalam Sistem Peradilan Pidana," *Judge : Jurnal Hukum* 06, no. 04 (2025): 897.

¹⁸ Azis Akbar Ramadhan, "Keabsahan Alat Bukti Saksi Anak Dalam Sistem Pembuktian Peradilan Pidana," *Jurnal Studi Hukum* 06, no. 1 (2024): 28.

¹⁹ Samuel Jarno Kase, Rudepel Petrus Leo, and Deddy R Ch Manafe, "Law Enforcement And Protection For Child Victims Of Sexual Violence : A Case Study In Tesi Ayofanu Village , South Central Timor Regency Penegakan Hukum Dan Perlindungan Terhadap Anak Korban Tindak Pidana Kekerasan Seksual : Studi Kasus Di Desa Tesi Ayofa," *Jurnal Hukum Sehasen* 12, no. 1 (2026): 225.

process could lead to stress and trauma unless proper protection measures are in place.²⁰

In accordance with legal standards, the Indonesian legal system offers specific acknowledgment and safeguards for children involved in legal matters, such as children who serve as witnesses. The Law on the Juvenile Criminal Justice System emphasizes that the best interests of the child should be the main consideration at every stage of the judicial process. Furthermore, criminal procedural law also regulates special mechanisms for the examination of child witnesses, such as providing testimony without oath and the obligation of assistance. These provisions demonstrate that lawmakers do not position children merely as passive objects of protection, but rather as legal subjects whose role is recognized in the judicial process.

However, in criminal justice practice, this normative protection for children as witnesses has not been fully implemented effectively. Implementation in the field often encounters challenges like fear, intimidation, psychological trauma, and a lack of understanding from law enforcement officers. This results in suboptimal testimony and a disregard for children's special rights as vulnerable subjects, who should be protected through special examination methods, assistance, and the avoidance of discriminatory treatment. Although the Juvenile Criminal Justice System Law provides protection, its implementation has not fully protected children from trauma and psychological stress when providing testimony. Therefore, greater attention is needed, for example, the implementation of diversion, shelter, and child-friendly examinations to ensure their rights are truly fulfilled.²¹

Several empirical studies have shown that law enforcement officers still tend to evaluate child witness testimony formally and consider it weak secondary evidence.²² This assessment is often based on the absence of an oath, the child's age, and assumptions about the child's memory and emotional instability. As a result, child witness testimony is often used only as supplementary evidence, rather than as an integral part of building the judge's confidence in the material truth.²³ This situation reflects a gap between

²⁰ Ainul Mardiyah, Evi Yuliani, Sakhi Nabila Al-husna, and Mira Shaila Ardana, "Trauma Psikologis Anak Binaan Akibat Pengkhianatan Dan Respons Keluarga Pasangan Pada Kasus Asusila Di LPKA Kelas 1 Medan," *Fatih: Journal of Contemporary Research* 03, no. 01 (2026): 5.

²¹ No April, Mizan Mizan, and Universitas Negeri Gorontalo, "Perlindungan Anak Yang Dipanggil Menjadi Saksi Dalam Kasus Pidana Oleh Peran Dinas Pengendalian Penduduk, Keluarga Berencana, Pemberdayaan Perempuan Dan Perlindungan Anak (PP2KPPA) (Studi Di Dinas PP2KPPA Kota Gorontalo) Berhadap Dengan Hukum Yang S," *Jurnal Begawan Hukum (JBH)* 2, no. 1 (2024): 224.

²² Amrizal Siagian and Esi Sumarsih, "Kekuatan Saksi Anak Sebagai Alat Bukti Dalam Tindak Pidana Persetubuhan Terhadap Anak," *Mizan: Journal of Islamic Law* 4, no. 2 (2020): 203.

²³ Mario Valentino Latupeirissa, Dasar Kekuatan Mengikat, and Rodrigo Fernandes Elias, "Dasar Kekuatan Mengikat Keterangan Anak Yang Belum Cukup Umur Sebagai Alat Bukti Dalam Perkara Pidana," *Lex Crimen* XII, no. 3 (2023): 342.

normative regulations (law on the books) and judicial practice (law in action). On the one hand, the law demands maximum protection for child witnesses; on the other hand, judicial practice is still dominated by a formalistic paradigm that has the potential to reduce the role of children in the evidentiary process. This gap not only impacts the effectiveness of child rights protection but also has implications for the achievement of substantive justice in criminal cases.

Based on the review of prior research, studies on children involved in the criminal justice system continue to focus mainly on procedural protections and have not fully developed the role of child witnesses within the theory of criminal evidence. This is because children are viewed not only as individuals requiring protection during legal proceedings but also as persons who play a significant part in the evidence-gathering process. Children are considered a valid and important source of information when uncovering the facts of a case, but their participation should be accompanied by specific safeguards that take into account their age and mental state.²⁴ This study is anticipated to offer both theoretical and practical insights into developing a juvenile criminal justice system that is more equitable, compassionate, and grounded in the principles of children's rights. Therefore, children are not merely seen as subjects to be examined in their role as witnesses, but are recognized as legal persons who take an active part, while still being safeguarded within the framework that protects their rights and best interests.

Based on the description above, the researcher formulates the problem into several questions that will be further examined in relation to Legal protection for child witnesses based on the principle of the child's best interests, as follows:

1. What is the position of children as witnesses in the Indonesian juvenile criminal justice system?
2. What is the legal protection for children as witnesses in the juvenile criminal justice system based on the principle of the child's best interests?

B. RESEARCH METHODS

The research method used is Normative Juridical Research. Namely legal research by conducting a review of library materials related to the problem being studied. The normative juridical approach is based on existing legal regulations or legislation. The approach to this research uses a legislative approach, namely research on legal products.²⁵ Normative legal research

²⁴ Ksatria Anantiar Putra Bima, Aditya Ramadhan, Anak Agung Ngurah Bayu Adhi Perdana, Fadlan Razak, Abid Triasa, and Novri Hardiansyah, "Kapabilitas Anak Sebagai Saksi Dalam Persidangan," *Politika Progresif: Jurnal Hukum, Politik Dan Humaniora* 1, no. 2 (2024): 288.

²⁵ Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif* (Jakarta: Rajawali Press, 2001), 53.

always emphasizes secondary data sources. Primary data used in this study include Legislation, namely the 1945 Constitution of the Republic of Indonesia, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2014 concerning Child Protection, the Criminal Procedure Code. To obtain data related to the problem being studied, the author uses a descriptive research type with the main research material sourced from the library (library research), namely: the writing process carried out by studying books or literature related to the problem being studied from the library.²⁶ The analysis of legal materials in this study was conducted qualitatively using a prescriptive analysis method, which provides legal arguments regarding how legal norms should be applied in the protection and position of child witnesses based on the principle of the best interests of the child. Furthermore, this study also uses a systematic interpretation method, which interprets the provisions of laws and regulations by connecting one rule with another to obtain a complete and harmonious understanding of the law, in order to find the appropriateness of legal norms in providing protection for child witnesses in the Indonesian criminal justice system.

C. DISCUSSION

1. The Position of Children as Witnesses in the Indonesian Juvenile Criminal Justice System

Law Number 11 of 2012 regarding the Juvenile Criminal Justice System clearly states that child witnesses to criminal activities are considered children in conflict with the law. This formulation shows that the legislators intentionally aimed to broaden the protection offered in the juvenile criminal justice system, covering both child offenders and child victims and witnesses.²⁷

This recognition has significant legal significance. Child witnesses are no longer positioned as marginalized parties in the judicial process, but rather as legal subjects whose existence is recognized and protected.²⁸ Therefore, having children as witnesses is closely connected to the state's duty to offer special care that matches the child's specific situation and requirements. This official acknowledgment also shows that safeguarding child witnesses is a key part of the goals of the juvenile criminal justice system.²⁹

²⁶ Lexy J. Moelong, *Metodologi Penelitian Kualitatif* (Jakarta: Remaja Rosdakarya, 2010), 53.

²⁷ Law Number 11 of 2012 concerning the Criminal Justice System. See too, Republik Indonesia, "Undang-Undang Republik Indonesia 2012 Nomor 11 Tahun Tentang Sistem Peradilan Pidana Anak," 2012.

²⁸ Erwin Asmadi, "Perlindungan Hukum Bagi Anak Sebagai Saksi Dalam Pemeriksaan Perkara Pidana," *Iuris Studia: Jurnal Kajian Hukum* 1, no. 2 (2020): 53.

²⁹ Chindi Oeliga, Yensi Afita, and M Nanda Setiawan, "Perlindungan Hukum Terhadap Anak Sebagai Saksi Dalam Perkara Tindak Pidana," *Datin Law Journal* 3, no. 1 (2022): 65.

The acknowledgment of children as witnesses has legal implications, which means that all essential principles of the juvenile justice system, such as the protection of children and the best interests of the child, must be applied throughout the entire process of examining child witnesses. In other words, this form of recognition demands that law enforcement officers change how they view children when they are acting as witnesses.³⁰

The legal status of children as witnesses has special characteristics that distinguish them from adult witnesses. These differences stem from the child's developmental stage, which has not yet reached physical, psychological, and emotional maturity. Children have different ways of thinking, remembering, and expressing experiences than adults, so their testimony cannot be judged by the same standards as adult witnesses.³¹

Indonesian criminal procedure law recognizes these differences by establishing special mechanisms for the examination of child witnesses. One such provision is the provision of testimony without oath. This provision is not intended to diminish the value of children's testimony, but rather to protect them from being burdened with heavy moral and psychological responsibilities. Therefore, the characteristics of a child witness's status must be understood as an attempt to adapt the law to the child's circumstances, not as a reason to weaken their evidentiary value.³² Furthermore, a child's position as a witness is also characterized by the need for assistance. The presence of a parent, guardian, or professional companion is crucial to ensuring that children can provide testimony safely and without pressure. This characteristic emphasizes that child witnesses are in a position that requires extra protection, so every examination process must be designed in a child-friendly manner.³³

In the criminal evidence system, children as witnesses are recognized as a relevant source of legal information in uncovering material truth. Child witness testimony can have significant evidentiary value, particularly in certain cases such as child violence, sexual crimes, or crimes occurring within the family. In these contexts, children are often the only parties directly witnessing

³⁰ Made Indri Wulandari, Anak Agung, Adi Lestari, "Perlindungan Hukum Terhadap Pendampingan Anak Sebagai Saksi Korban Dalam Peradilan Anak," *Jurnal Mahasiswa Hukum Saraswati* 04, no. 02 (2024): 1599.

³¹ Dhea Hafifa Nanda, "Eksistensi Kedudukan Anak Sebagai Korban Dalam Perkara Perlindungan Anak," *Jurnal Verstek* 9, no. 3 (2021): 633.

³² Arya Permana Aji and Siti Munawaroh, "Analisis Yuridis Terhadap Kesaksian Anak Di Bawah Umur Dalam Perspektif Hukum Acara Pidana," *Jurnal Magister Ilmu Hukum 'DEKRIT* 12, no. 2 (2022): 48.

³³ Yusuf Budiarto, Bagio Kadaryanto, and Rudi Pardede, "Perlindungan Hukum Bagi Korban Anak Tindak Pidana Pencabulan Pada Proses Penyidikan Di Polres Meranti Berdasarkan Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan," *Rio Law Jurnal*, no. 6 (2014): 1155.

criminal events.³⁴ However, the procedures for gathering evidence from child witnesses should be carried out in a way that prioritizes the child's best interests. Children should not be made to carry a heavy responsibility in proving something, let alone be the main way to show that the defendant is guilty without proper evidence.³⁵ Therefore, using child witness testimony as the primary tool without supporting evidence is an evidentiary practice that is inconsistent with the principles of child protection and ignores the principle of prudence in issuing criminal sentences. A balanced approach demands that child witness testimony be assessed contextually, correlated with other valid evidence, and used to strengthen the judge's conviction without compromising the child's right to protection.

From this perspective, the position of child witnesses is protective and participatory. Children's role in the evidentiary process is recognized, but such participation is limited and directed so as not to harm their interests. This approach aligns with the objectives of the juvenile criminal justice system, which is not solely oriented towards punishment but also towards the protection and welfare of children.

Although normatively, the position of children as witnesses has been regulated in a protective manner, in criminal justice practice there is still a tendency to use a formalistic paradigm. Law enforcement officials often view child witness testimony as weak secondary evidence, particularly because it is given without oath and is considered inconsistent. This assessment reflects the dominance of a legal-positivist approach that emphasizes the formal aspects of evidence.

This formalistic paradigm has resulted in the marginalization of the role of child witnesses in the evidentiary process. Children's testimony is often used only as a supplement, rather than as an integral part of building a judge's conviction. As a result, the normative recognition of children as witnesses is not optimally implemented in judicial practice. This situation indicates a gap between the law on the books and the law in action.

This implementation challenge is further exacerbated by law enforcement officials' limited understanding of child psychology and child protection principles. Without adequate understanding, the protection mechanisms stipulated in the law have the potential to become mere formalities. Therefore, a critique of the formalistic paradigm is crucial to

³⁴ Ajiza Amelia Putri, Erry Gusman, and Riki Zulfiko, "Pelaksanaan Perlindungan Hak Anak Sebagai Saksi Dalam Tindak Pidana Pembunuhan Oleh Ayah Kandung Terhadap Ibu Kandung Di Unit Ppa Polres Sijunjung," *PALAR (Pakuan Law Review)* 09, no. 3 (2023): 39.

³⁵ Rendi Alfianto Alfianto and Agus Rasyid Chandra Chandra, "Tinjauan Yuridis Kekuatan Pembuktian Saksi Unus Testis Nullus Testis Dalam Perkara Asusila Terhadap Anak (Studi Putusan PN Cibadak No. 449/Pid.Sus/2021/PN Cibadak)," *Truth de Journal* 1, no. 1 (2024): 12.

encourage a shift towards a more substantive approach with a child rights perspective.

The legal position of children as witnesses has a direct impact on how well child rights are protected within the criminal justice system. Insensitive evaluations of children's statements can compromise the principle of acting in the child's best interest and weaken the pursuit of true justice. Children who are meant to be protected can instead face psychological suffering and new trauma because of a judicial process that is not suitable for children.

On the other hand, if the role of child witnesses is correctly recognized as both protective and participatory, the juvenile justice system can operate in a more fair and compassionate manner. The safeguarding of children's rights and the search for factual accuracy can coexist without conflict, as both can function in harmony. The pursuit of material truth is not inherently mutually exclusive but can instead operate in a balanced and mutually reinforcing relationship. The safeguarding of children who are witnesses is essential to uncovering the true facts. Testimony given by a child in a secure setting, without any undue influence, and in line with their psychological ability is more likely to be genuine and reliable.³⁶ Therefore, safeguarding children's rights should not be seen as a barrier to the criminal justice process, but rather as a tool to enhance the accuracy and trustworthiness of testimony given by child witnesses.

The evaluation of a child's testimony by judges in the criminal justice system is closely connected to the principle of proof in Indonesian criminal procedure law, as well as the principle of safeguarding children as a vulnerable group. Judges fundamentally have the authority to assess the evidentiary strength of evidence based on their convictions, as long as such assessment is based on law and accountable logic. In the context of child witnesses, this authority must be exercised with a more contextual approach and a child rights perspective.

The primary basis for assessing child witness testimony is the principle of legally valid evidence, as stipulated in criminal procedure law. Child witness testimony is recognized as valid evidence, even if given without an oath. This provision demonstrates that the absence of an oath does not automatically diminish the evidentiary value of a child's testimony; rather, it is a factor that must be considered proportionally by the judge in assessing its evidentiary weight.

The second basis is the consistency and rationality of the child witness's testimony. The judge assesses whether the child's testimony has a logical flow, is not contradictory, and is related to other facts revealed during the trial. In

³⁶ Amrizal Siagian and Esi Sumarsih, "Kekuatan Saksi Anak Sebagai Alat Bukti Dalam Tindak Pidana Persetubuhan Terhadap Anak," *Mizan: Journal of Islamic Law* 4, no. 2 (2020): 204.

assessing this consistency, the judge must take into account the child's age and maturity level, so that minor discrepancies in the testimony are not automatically viewed as untruths.

The third foundation is the alignment of the child witness's statement with the rest of the evidence. The child's statement is not considered on its own but is connected to other forms of evidence, including statements from adult witnesses, expert opinions, written communications, investigative clues, and the testimony provided by the defendant. This consistency can enhance the reliability of the child's statement and lower the chance of mistakes in the judge's decision.

The fourth basis is the conditions and process of the child witness's examination. The judge must consider whether the child's examination is conducted in a child-friendly manner, accompanied by competent parties, and free from pressure or intimidation. An examination process that does not comply with child protection principles can affect the quality of the testimony provided, and therefore must be a key consideration in the judge's assessment.

The fifth foundation is the concept of prioritizing the child's best interests. These principal mandates that judges assess children's testimony in a way that protects their psychological and social well-being. Judges should not require evidence that might harm or overly stress children, even if such evidence is relevant to a criminal case.³⁷

Thus, the basis for a judge's assessment of child witness testimony is not only normative and procedural, but also substantive and contextual. Judges are required to integrate the principles of criminal proof with child protection principles to achieve a balance between the search for material truth and the protection of children's rights. This approach reflects the judge's role as an enforcer of justice who adheres not only to legal texts but also to the values of justice and humanity.

2. Legal Protection for Children as Witnesses in the Juvenile Criminal Justice System Based on the Principle of the Child's Best Interests

Legal safeguards for children acting as witnesses in the juvenile criminal justice system are established on the premise that children are legal entities possessing unique weaknesses.³⁸ This vulnerability stems from psychological, emotional, and cognitive limitations that affect a child's ability to understand,

³⁷ Ksatria Anantiar Putra Bima, Aditya Ramadhan, Anak Agung Ngurah Bayu Adhi Perdana, Fadlan Razak, Abid Triasa, and Novri Hardiansyah, "Kapabilitas Anak Sebagai Saksi Dalam Persidangan," *Politika Progresif: Jurnal Hukum, Politik Dan Humaniora* 1, no. 2 (2024): 289.

³⁸ Abintoro Prakoso, *Pembaharuan Sistem Peradilan Pidana Anak* (Yogyakarta: Aswaja Presindo, 2016), 21. See too, Harrys Pratama Teguh, *Teori dan Praktek Perlindungan Anak dalam Hukum Pidana* (Yogyakarta: Andi Publishing, 2018), 43.

remember, and convey legal events. Therefore, the involvement of children as witnesses cannot be equated with that of adult witnesses, but must be placed within a special legal protection framework oriented toward children's rights.³⁹ The participation of children as witnesses is governed by a specific legal structure, known as Law No. Law Number 11 of 2012 pertains to the Juvenile Criminal Justice System and aligns with the Convention on the Rights of the Child. This law upholds children's rights, which encompass the right to assistance from parents, social workers, and community mentors, safeguarding them from harm, providing rehabilitation, and ensuring the confidentiality of their identity. These measures are essential so that the judicial process can be performed justly and without compromising the child's mental health.⁴⁰

Conceptually, child protection in the criminal justice process is not only interpreted as an effort to prevent physical violence, but also as a guarantee that children do not experience psychological stress, stigmatization, or secondary trauma due to the legal process. This protection reflects a rights-based approach, which positions children as active legal subjects with the right to be heard, as well as individuals who require special treatment. Therefore, the protection of children as witnesses is an integral part of efforts to realize substantive justice, namely justice that truly protects the rights and interests of all parties, not simply fulfilling formal procedures. Children serving as witnesses find themselves in a delicate situation—psychologically, emotionally, and socially. Without sufficient safeguards, the legal process may inflict additional trauma and hinder children from giving truthful and unpressured testimonies.⁴¹

Therefore, protecting children as witnesses encompasses various aspects, such as: assistance by parents, guardians, or professionals, the use of child-friendly examination methods, protection from intimidation, threats, and stigmatization, and guarantees of the child's security and confidentiality.⁴² With this protection, children can participate safely and with dignity in the legal process. In summary, this measure protects children's rights and enables law enforcement to gather more precise information, ensuring that the outcomes genuinely represent fair justice.

³⁹ Wiwik Afifah, "Perlindungan Hukum Anak Sebagai Saksi Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal DIH Jurnal Ilmu Hukum* 10, no. 20 (2014): 66.

⁴⁰ Republik Indonesia, "Undang-Undang Republik Indonesia 2012 Nomor 11 Tahun Tentang Sistem Peradilan Pidana Anak," 2012.

⁴¹ Artista Helendian Loemnanu and Ni Nengah Ayudhya Shantika Devi, "Perlindungan Anak Dalam Sistem Peradilan Pidana Anak," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 3 (2025): 1760.

⁴² Made Indri Wulandari, Anak Agung, Adi Lestari, "Perlindungan Hukum Terhadap Pendampingan Anak Sebagai Saksi Korban Dalam Peradilan Anak," *Jurnal Mahasiswa Hukum Saraswati* 04, no. 02 (2024): 1600.

The standard and moral foundation for safeguarding child witnesses emphasizes the importance of applying the principle that serves the best interests of the child. This principle mandates that all actions and choices within the juvenile justice system must focus on the well-being and growth of the child. In the realm of criminal evidence, this principle requires finding a balance between what law enforcement needs and safeguarding the rights of children. Children should not be treated solely as tools to establish the defendant's guilt; instead, their involvement should be handled thoughtfully and appropriately. Every decision within the justice system should take into account the well-being, safety, and growth of children. This is an important parameter in evaluating whether the judicial process is conducted fairly and humanely, and whether children's rights are truly respected and protected. When children become witnesses, they cannot be viewed merely as evidence. Children must be treated sensitively and carefully, ensuring that the process does not negatively impact their emotional, psychological, and social development. Therefore, in criminal evidence, there must be a balance between the goal of upholding the law and the obligation to protect children's rights.⁴³

For example, in the process of examining children as witnesses, special arrangements are needed regarding the location and method of the examination. The examination process should be conducted in a manner that does not pressure or intimidate the child, and, if necessary, with the assistance of a psychologist or other party who can help reduce stress or trauma in the child. Furthermore, information obtained from the child must be carefully evaluated, considering that the child may not fully understand the consequences of the statements made. Therefore, this principle guarantees that although children participate in the legal process for the purpose of law enforcement, their rights remain completely safeguarded.⁴⁴

The implementation of the principle safeguarding the best interests of the child indicates that the assessment process for child witnesses should be tailored to match the child's level of maturity and psychological state. Repeated, intimidating, or unsupervised examinations have the potential to violate children's rights and contradict the objectives of protection. Therefore, this principle serves as an evaluative parameter in assessing whether the criminal justice process has been conducted fairly and humanely for child witnesses. The principle of prioritizing the child's best interests acts as a

⁴³ Imam Haryanto Azzhara Nikita Wahdah, Anisa Almagfira, Dean Putri Amelia, Ilham Indra Mulya, and Joy Catherine Carina Tambunan, "Konsep Perlindungan Hukum Bagi Anak Turut Serta Dalam Melakukan Tindak Pidana Berdasarkan Hukum Positif Indonesia," *Media Hukum Indonesia (MHI)* 2, no. 3 (2024): 187.

⁴⁴ Fri Hartini, "Perlindungan Anak Dari Tindakan Atas Perilaku Yang Berkonflik Dengan Hukum," *Syakhshiyah Jurnal Hukum Keluarga Islam* 1, no. 21 (2022): 28.

standard to determine if the criminal justice system effectively seeks legal truth while also respecting humanitarian values and safeguarding children's rights.⁴⁵

In addition to the Child Criminal Justice System Law, the protection of child witnesses is also enhanced by Law Number 35 of 2014 regarding Child Protection. This law confirms that the government and police are required to ensure the safety of children from every type of violence, even during legal procedures. This law highlights that the state, government, law enforcement personnel, and all involved parties have a constitutional and legal duty to ensure the protection of children from every type of violence, such as structural and psychological violence that can occur throughout the criminal justice process.⁴⁶

Article 64 of the Child Protection Law provides more details about the different types of special protection measures.

1. Humane treatment that respects the child's dignity and upholds their rights.
2. Special assistance from the examination stage;
3. Ensures that the child is not subjected to any form of pressure, intimidation, or treatment that lowers their sense of worth or respect.
4. A legal procedure that considers the child's age, mental state, and what is most beneficial for the child.

Therefore, Articles 59 and 64 create essential rules that require all law enforcement personnel, including judges, to take proactive measures to ensure that the process of gathering evidence does not lead to children experiencing further victimization.

Judicial practices that still treat child witnesses with the same procedures as adult witnesses without adjusting examination methods, without adopting a psychological approach, and without sensitivity to trauma constitute a direct violation of Articles 59 and 64 of the Child Protection Law.

When judges rigidly evaluate child witnesses' testimony based on absolute chronological consistency, their ability to explain events logically from an adult perspective, or the child's courage in providing testimony in the courtroom, the judges are simultaneously ignoring the special protection obligations mandated by law. These evaluations are not only methodologically incorrect but also demonstrate the government's inability to carry out its responsibility to safeguard children within the legal system.

⁴⁵ Yudha Pradana, "Implementasi Prinsip 'Kepentingan Terbaik Bagi Anak' Dalam Proses Persidangan Anak Secara Elektronik Pada Masa Pandemi Di Kota Jakarta Barat," *Jurnal Ilmiah Hukum Dan Hak Asasi Manusia* 1, no. 2 (2022): 48.

⁴⁶ Endang Prastini, "Kekerasan Terhadap Anak Dan Upaya Perlindungan Anak Di Indonesia," *Jurnal Citizenship Virtues* 4, no. 2 (2024): 760. See too, Law Number 35 of 2014 concerning Child Protection.

Furthermore, ignoring these special protections directly impacts the quality of the truth produced. An examination process that is oppressive or instills fear will encourage children to provide defensive, fragmented, or even silent testimony. In such circumstances, it is not the child who is unable to tell the truth, but rather the justice system that has failed to create conditions that allow the truth to be revealed.

In the context of criminal procedural law, an examination process that is not child-friendly such as pressurizing questions, unnecessary repetition of questioning, direct confrontation with the defendant, or evaluating the child's testimony with adult standards can be classified as a form of non-physical violence against children. This goes against the child protection principles outlined in Articles 59 and 64 of the Child Protection Law, which obligate the state to offer special protection to children involved in legal matters, including those who act as witnesses. The term "special protection" should not be understood simply as physical safety; instead, it includes legal, psychological, and procedural safeguards at every stage of the judicial process.

Furthermore, the Child Protection Law prioritizes the welfare of the child as the main principle in all matters related to children⁴⁷. This principle is binding not only at the investigation and prosecution stages but also directly limits and directs judges' discretion in assessing evidence in the form of child witness testimony. Therefore, judges cannot solely assess a child's testimony based on formal consistency, adult logic, or conformity with law enforcement officials' version of events, without considering the child's psychological condition, age, maturity level, and the power relations faced by the child.

Within this framework, the protection of child witnesses is not an obstacle to the search for material truth, but rather a prerequisite for achieving it. Child testimony provided in a safe, non-intimidating, and child-friendly environment has higher probative value than testimony obtained through processes that pressure or instill fear. Therefore, an approach that downplays or disqualifies a child's testimony solely on the grounds of inconsistency reflects a flawed evidentiary paradigm and has the potential to perpetuate injustice.⁴⁸

By integrating the Child Criminal Justice System Law and the Child Protection Law, progressive judges should view the protection of child witnesses' rights and the pursuit of material truth as not mutually exclusive interests, but rather two goals that must operate simultaneously and reinforce

⁴⁷ Ahmad Haris Muizzuddin, Nur Muhammad, Rofiatun Azizah, Anggun Juliantoro, and Bagus Dian Mahendra, "Implementasi Prinsip Kepentingan Terbaik Untuk Anak Dalam Sistem Peradilan Anak Melalui Pemidanaan Edukatif," *Jurnal Syariah Dan Hukum Islam* 1, no. 2 (2022): 346.

⁴⁸ Nosama Telaumbanua, "Kekuatan Alat Bukti Keterangan Anak Dalam Pembuktian Tindak Pidana Persetubuhan," *Jurnal Panah Hukum* 2, no. 2 (2023): 182.

each other.⁴⁹ Assessment of child witnesses' testimony must be conducted contextually, empathetically, and based on the protection of children's human rights, as a form of justice that is not merely legalistic but also substantive justice.⁵⁰

Legal safeguards for child witnesses in the juvenile criminal justice system are achieved through multiple methods. These include assistance from parents, guardians, or professionals; interviews conducted in a manner suitable for children; limits on the quantity and length of examinations; and assurances that the child's identity will remain confidential. Moreover, the participation of child psychologists is essential for assisting law enforcement personnel in comprehending the psychological condition of the child and evaluating the provided testimony in a more impartial manner.⁵¹

This legal protection demonstrates that the effectiveness of criminal evidence does not have to sacrifice children's rights. On the contrary, an appropriate protection approach can actually improve the quality of children's testimony as witnesses, as they can provide information more safely and free from pressure. Thus, legal protection for child witnesses and the pursuit of material truth are two complementary objectives.⁵²

In summary, the legal safeguards for children who act as witnesses in the juvenile criminal justice system should be viewed as the essential basis for establishing the legal status of child witnesses. This safeguard highlights that children are not just pieces of evidence; they are legal entities with both protective rights and a role in participation. This method is consistent with the principle of prioritizing the child's best interests and is essential for establishing a juvenile criminal justice system that is fair, compassionate, and focused on the rights of children.⁵³

Criminal justice practice still frequently demonstrates a tendency to assess child witness testimony using the paradigm of adult evidence. Judges frequently disqualify or downplay the evidentiary value of children's testimony solely due to differences in detail, chronological inconsistencies, or the child's inability to explain events coherently and logically according to adult standards

⁴⁹ Aprilia S Tumbel, "Perlindungan Hukum Terhadap Anak Sebagai Saksi Tindak Pidana Menurut Sistem Peradilan Pidana Anak," *Jurnal Lex Crimen* IV, no. 5 (2015): 42.

⁵⁰ Arya Permana Aji and Siti Munawaroh, "Analisis Yuridis Terhadap Kesaksian Anak Di Bawah Umur Dalam Perspektif Hukum Acara Pidana," *Jurnal Magister Ilmu Hukum 'DEKRIT* 12, no. 2 (2022): 49.

⁵¹ Montisa Mariana and Irma Maulida, "Strategi Pusat Pelayanan Terpadu Pemberdayaan Perempuan Dan Anak Dalam Pendampingan Perempuan Dan Anak Korban Kekerasan Seksual," *LOGIKA: Jurnal Ilmiah Lemlit Unswagati Cirebon* 23, no. 1 (2019): 6.

⁵² Syamsuddin Muchtar and Abd Asis, "Perlindungan Hukum Terhadap Anak Saksi Dalam Sistem Peradilan Pidana Legal Protection of Witness Children in The Criminal Justice System," *Jurnal Al-Qadāu Peradilan Dan Hukum Keluarga Islam* 7, no. 2 (2020): 9.

⁵³ Chindi Oeliga, Yensi Afita, and M Nanda Setiawan, "Perlindungan Hukum Terhadap Anak Sebagai Saksi Dalam Perkara Tindak Pidana," *Datin Law Journal* 3, no. 1 (2022): 68.

of rationality. Such an approach is legally flouted and contradicts the principles of child protection.⁵⁴

Assessments that require absolute formal consistency in child witness testimony ignore the scientific fact that children's cognitive abilities, memory, and verbal expression are significantly influenced by age, trauma, power relationships, and the examination situation. Thus, minor inconsistencies in a child's statement cannot be immediately interpreted as an indication of untruth, but rather can be an indicator of a traumatic experience the child has experienced.

Moreover, legal procedures that still permit frequent questioning, leading questions, or direct interactions between child witnesses and defendants, without sufficient protective measures, represent a type of procedural harm. This aggression is not always in a physical form, but it significantly affects the child's mental health and can negatively influence the quality of the statements given. In this situation, the state, via its law enforcement officers, not only does not safeguard children but also deliberately establishes circumstances that weaken the integrity of the evidence.

Another practice worthy of criticism is the tendency of judges to treat child witness testimony as secondary evidence, valuable only if fully corroborated by other evidence. This approach reflects a flawed understanding of the law of evidence, as Indonesian criminal procedure law does not recognize a hierarchy of evidentiary value. Child witness testimony, as long as it is obtained legally and carefully assessed, has equal standing with other witness testimony.⁵⁵

D. Conclusion

Normatively, the Indonesian legal system has provided special legal recognition and protection for children as witnesses in the Juvenile Criminal Justice System through various legal instruments, particularly Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Child Protection. This protection reflects the application of the principle of the child's best interests, which positions children as legal subjects with the right to protection of their dignity, safety, and psychological well-being during the judicial process. In this context, the legal status of children as witnesses is protective and participatory, recognizing children as parties who can provide testimony for evidentiary purposes, while still

⁵⁴ Febriana Nur Hidayati, Siti Fatimah, and Bambang Santoso, "Kekuatan Alat Bukti Saksi Korban Yang Masih Dibawah Umur Dan Tidak Disumpah Dalam Persidangan Perkara Pencabulan Anak," *Jurnal Verstek* 4, no. 2 (2016): 73.

⁵⁵ Nur Fitriani, "Tinjauan Yuridis Kekuatan Pembuktian Keterangan Saksi Anak Dalam Persidangan Perkara Pidana," *Jurnal Legalitas* 12, no. 1 (2023): 15.

receiving special treatment commensurate with their age and psychological development. The difference in legal treatment between child witnesses and adult witnesses is a form of affirmative protection aimed at realizing substantive justice in the criminal justice system.

However, in law enforcement practice, a gap remains between normative regulations (law on the books) and implementation (law in action). Child witness testimony in judicial practice is often viewed formally and treated as evidence with weak probative value, resulting in inadequate legal protection for child witnesses. Furthermore, the process of examining children as witnesses still has the potential to cause psychological distress due to an examination approach that is not entirely child-friendly.

Therefore, strengthening the implementation of legal protection is necessary through the establishment of Standard Operating Procedures (SOPs) for examining child witnesses, integrated into every stage of the criminal justice process. These SOPs need to clearly regulate the obligation to be accompanied by parents, legal counsel, social workers, or psychologists; the use of child-friendly examination methods; the intensity and duration of the examination; and the provision of a dedicated examination room for children. Thus, legal protection for child witnesses is not only normative but can also be effectively implemented in criminal practice in Indonesia.

Based on this, the following suggestions can be put forward by researchers to ensure Legal Protection For Child Witnesses Based On The Principle Of The Child's Best Interests: The government and lawmakers need to strengthen regulations regarding the status and protection of children as witnesses by improving implementing regulations within the Juvenile Criminal Justice System. These regulations should provide certainty regarding the examination mechanism for child witnesses, standards for psychological protection, and strengthen the evidentiary value of child witness testimony so that it is not viewed as weak evidence in the criminal justice process. Law enforcement officials need to prioritize a child-friendly justice approach. Law enforcement officials need to improve their understanding of the principle of the child's best interests through special education and training to prevent trauma or psychological distress for children. An integrated and mandatory Standard Operating Procedure (SOP) for the examination of child witnesses needs to be established and implemented at the investigation, prosecution, and trial levels. This SOP should include mandatory assistance from a psychologist or social worker, the use of language accessible to children, limitations on the duration of the examination, and the provision of a special, child-friendly examination room.

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