

## **The Legal Protection for Children in Conflict with the Law through Virtual Courts: Implementation of *United Nation Convention on The Rights of The Child***

**Rizki Adi Pinandito<sup>\*)</sup> and R. Sugiharto<sup>\*\*)</sup>**

<sup>\*)</sup> Universitas Islam Sultan Agung, Indonesia, E-mail: [rizkyadi@unissula.ac.id](mailto:rizkyadi@unissula.ac.id)

<sup>\*\*)</sup> Universitas Islam Sultan Agung, Indonesia, E-mail: [sugiharto@unissula.ac.id](mailto:sugiharto@unissula.ac.id)

**Abstract.** *The conventional juvenile justice system has a bad impact on children's lives. The negative effects continue after the child is sentenced to a sentence, such as continuous stigma, trauma until the child is expelled from school which then has an impact on dropping out of school. This study aims to determine how the legal protection of the rights of children who are in conflict with the law based on positive law in Indonesia and the United Nations Convention On The Rights Of The Child and how the urgency of virtual justice can be an alternative juvenile justice in Indonesia. This research was conducted using a literature study method through juridical analysis with a normative juridical approach. From the results of the study, it was found that positive law in Indonesia has provided regulations regarding legal protection of the rights of children who are in conflict with the law. Virtual justice can be an alternative model for implementing courts for children and still be able to maintain the dignity of children.*

*Keywords: Child; Justice; Juvenile.*

### **1. INTRODUCTION**

The children are the next generation who have a strategic role in the sustainability of human life in general.<sup>1</sup> Children are a gift and a mandate from Allah Subhanahu Wa Ta'ala that we must protect and care for together so that they can become a legacy of human achievements. Children are the next generation of ideas and implementers of the ideals of all human beings in the world. As humans who are still in the process of growing physically, mentally and socially, it proves that children need guidance from adults and the surrounding community. Islamic teachings place children as fitroh as explained in the Hadith History of Bukhari: every child is born in a state of fitroh, their

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<sup>1</sup> Nowsheen Goni<sup>1</sup> , Mukesh Kumar Goyal<sup>2</sup> , Chahat Shikarwar<sup>3</sup> , Chahat Jangir<sup>4</sup>. (2020). A questionnaire-based Study of Knowledge and Attitude in Healthcare Professionals about Child Sexual Abuse related to POCSO (Protection of Children from Sexual Offences) Act: A Cross-sectional Study, *Indian Journal of Forensic Medicine & Toxicology*, Volume 15 No.1, 1398–1405. <https://doi.org/10.37506/ijfmt.v15i1.13609>

parents make them Jews or Christians or Zoroastrians.<sup>2</sup> From this history it has been conveyed that the fate of children in the future is very dependent on the guidance of the adults around them. So that if in the future the child becomes a person who is not like what Allah Subhanahu Wa Ta'ala wanted in his creation, then the child is actually a victim of adult negligence. Therefore, optimal child growth and development should be lived as the main interest for the survival of mankind. In the Indonesian constitution, it has been regulated regarding legal protection of the interests of children's rights, namely in Article 28B of the 1945 Constitution of the Republic of Indonesia. Consequently, the government needs to implement follow-up actions in the form of policies aimed at protecting children.

The Government of Indonesia has ratified the Convention on the Rights of the Child by Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child.<sup>3</sup> In addition, the government has also passed Act No. 3 of 1997 concerning Juvenile Courts which aims to protect and protect children who are in conflict with the law.<sup>4</sup> However, in practice, children are often positioned as objects and the treatment of children who are in conflict with the law tends to harm children.<sup>5</sup> Therefore it is necessary to change the paradigm in handling children in conflict with the law, based on among others the roles and duties of the community, government and other state institutions which are obliged and responsible for improving the welfare of children and providing special protection for children in conflict with the law. The handling of child cases, especially children in conflict with the law in the investigation process refers to the Convention on the Rights of the Child (KHA). The national laws governing the legal protection of children have been harmonized with the KHA and the Beijing Rules, namely Act No. 23 of 2002 concerning Child Protection as amended by Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 and Act No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA).<sup>6</sup>

The SPPA Law is a form of implementation of restorative justice in enforcing the law on child cases in Indonesia and is a guarantee for the protection of children's rights when children face the law. UN Basic Principles on The Use of Restorative Justice Programs in Criminal Matters has provided an overview of the minimum standards in the

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<sup>2</sup> Kahar, (2016), *Fitrah Manusia (Konsep Fitrah Manusia dalam Tinjauan Hadits)*, *Al-Qalam Jurnal Kajian Islam & Pendidikan*, Volume 8 No. 2, 40-47, DOI: <https://doi.org/10.47435/al-qalam.v8i2.233>

<sup>3</sup> Subekti, R. (2018). Urgensi Ratifikasi Konvensi International Labor Organization: Perspektif Perlindungan Pekerja Anak Pada Sektor Rumah Tangga. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Volume 7 No 1, 24-36. DOI: <https://doi.org/10.24843/JMHU.2018.v07.i01.p03>

<sup>4</sup> Mochamad Anwar, (2019), *Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana Narkotika Dalam Sistem Peradilan Pidana Anak*, *Syiar Hukum*, Volume 17 No 1, 39-49, DOI: <https://doi.org/10.29313/sh.v17i1.5361>

<sup>5</sup> Hamilton, Carolyn & Apland, Kara. (2015). *Children in Conflict with the Law: needs assessment of primary, secondary and tertiary prevention services in Moldova*, Moldova: Unicef , P. 10-25 [https://www.researchgate.net/publication/314079417\\_Children\\_in\\_Conflict\\_with\\_the\\_Law\\_needs\\_assessment\\_of\\_primary\\_secondary\\_and\\_tertiary\\_prevention\\_services\\_in\\_Moldova](https://www.researchgate.net/publication/314079417_Children_in_Conflict_with_the_Law_needs_assessment_of_primary_secondary_and_tertiary_prevention_services_in_Moldova)

<sup>6</sup> Rosmi Darmi, (2016), *Implementasi Konvensi Hak Anak Terkait Dengan Perlindungan Anak Yang Berhadapan Dengan Proses Hukum*, *Jurnal Penelitian Hukum De Jure*, Volume 16 No 4, 439-450, DOI: <http://dx.doi.org/10.30641/dejure.2016.V16.439-450>

application of the SPPA Law.<sup>7</sup> The minimum standard referred to is the condition of a case that can be transferred to Restorative Justice, the Diversion method used in the application of Restorative Justice, the qualifications of the facilitator, the party authorized to administer restorative justice, as well as competence and rules of conduct in the operation of Restorative Justice. Of all these minimum standards, what is not regulated by the SPPA Law is only the last standard, namely competence and rules of conduct in the operation of restorative justice. This diversion is regulated in the Regulation of the Head of Bareskrim Polri No. 1 of 2012 concerning Standard Operational Procedures for Handling Children in Conflict with the Law within the Police Criminal Investigation Unit.

Various regulations both in law, religious teachings and culture have discussed a lot about child protection, but still from year to year violations of child protection continue to increase along with the times, as a result of regulations that are less visionary so that they tend to be seen as a new problem. Especially at this time children are faced with the shock of the third wave of technological progress. Cultural stuttering due to the rapid advancement of information technology has become a new threat to the safety of children's rights today. Data compiled by the Child Protection Commission (KPAI) in 2020 recorded 123 cases of children dealing with law (ABH) as perpetrators until August 2020.<sup>8</sup> The most crimes were physical violence with 30 cases and sexual violence with 28 cases. In addition, children as perpetrators of traffic accidents and theft followed with 13 and 12 cases respectively.

Empirical research studies show that placing children in the criminal justice system has a negative impact on children's lives. The negative effects continue after the child is sentenced to punishment, such as continuing stigma, trauma until the child is expelled from school which then has an impact on dropping out of school.

At this time, Indonesia is being hit by the Covid 19 pandemic situation since March 2020. To prevent Covid-19, the Supreme Court (MA) has issued Circular Letter No. 1 of 2020 concerning Guidelines for the Implementation of Tasks During the Period to Prevent the Spread of Corona Virus Disease (Covid-19) within the Supreme Court and the Judiciary Bodies below it (SEMA No. 1 of 2020). SEMA No. 1 of 2020 was later amended by SEMA No. 2 of 2020 and amended again with SEMA No. 3 of 2020. This regulation stipulates that judges and judicial officials can carry out their official duties by working at home or where they live (work from home/WFH). The WFH includes the implementation of the case examination trial agenda which is carried out electronically via teleconference. The policy to conduct trials electronically was strengthened by the cooperation agreement between the Supreme Court, the Attorney General's Office, and the Ministry of Law and Human Rights which agreed to hold trials electronically for criminal cases during the Covid-19 pandemic. With SEMA No. 1 of 2020 and its amendments and the cooperation agreement between the Supreme Court, the Attorney General's Office, and the Ministry of Law and Human Rights which agreed to hold trials electronically, electronic trials have been widely carried out during the Covid-

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<sup>7</sup> Annette Vogt & Yvon Dandurand, (2018), The Use of Restorative Justice Approaches in Criminal Matters, Restorative Justice Note 1, International Centre For Criminal Law Reform and Criminal Justice Policy, DOI: <https://doi.org/10.13140/RG.2.2.33554.91844>

<sup>8</sup> Rega Maradewa, (2020, August 31th), Update Data Infografis KPAI-Per 31-08-2020, <https://www.kpai.go.id/publikasi/infografis/update-data-infografis-kpai-per-31-08-2020>

19 pandemic. The Attorney General's Office noted that from March 30 to July 6 2020, a total of 176,912 cases of general crimes had undergone electronic trials.<sup>9</sup> Meanwhile, the Corruption Eradication Committee has held electronic trials in 40 cases.

Seeing the course of a virtual trial which does not require the accused to be present in the courtroom is in line with the diversion effort which is an alternative for law enforcers to avoid children's cases from entering the trial process as much as possible. Cases handled by ABH whose settlements are directed to the trial process have a negative impact on children. On the other hand, the Court is a law enforcement agency that has a major role in child protection. In the SPPA Law it is stated that the Court is the last diversion effort for children before being brought to trial.

From the description of the background above, the proposing team has conducted research which aims to find out the form of legal protection for children's rights in conflict with the law based on positive law in Indonesia and the United Nations Convention on the Rights of the Child and the urgency of virtual justice as an alternative to justice of children in Indonesia. Through research entitled: Legal Protection for Children in Conflict with the Law Through Virtual Courts: Implementation of the United Nation Convention On The Rights Of The Child ", researchers found that virtual justice can be an alternative to juvenile justice processes in conflict with the law for the realization protection of children's rights in court.

## **2. RESEARCH METHODS**

This type of research is library research, by conducting a juridical analysis regarding the legal protection of children's rights in conflict with laws based on positive law and the United Nations Convention on the Rights of the Child. This research is included in the nature of descriptive analytical research, which describes in detail the implementation of virtual trials as an implementation of legal protection of children's rights in conflict with the law based on positive law in Indonesia and the Convention on the Rights of the Child. The author will also analyze using laws and regulations that have relevance to the problem. This study uses a juridical-empirical approach, by presenting material for discussion systematically through various legal norms that exist in legislation and literature related to this research and observing how the laws contained in these statutory regulations are applied in daily public life.

## **3. RESULTS AND DISCUSSION**

### **3.1. Legal Protection for Children in Conflict with the Law According to Positive Law in Indonesia**

Legal protection is the provision of protection for human rights that suffer losses from other people and this protection is provided by law.<sup>10</sup> Legal protection is also understood as an effort to provide a sense of security, both physically and mentally, from disturbances and threats from various parties provided by law enforcement

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<sup>9</sup> Achmad Nasrudin Yahya, (2020, July 8<sup>th</sup>), Kejagung: Ada 176.912 Sidang Online Tipidum Selama Pandemi Covid-19, <https://nasional.kompas.com/read/2020/07/08/11355211/kejagung-ada-176912-sidang-online-tipidum-selama-pandemi-covid-19>

<sup>10</sup> Satjipto Rahardjo, 2000, Ilmu Hukum, PT. Citra Aditya Bakti, Bandung, p.54

officials to the whole community.<sup>11</sup> These efforts aim to protect or provide assistance to legal subjects by using all legal instruments.<sup>12</sup>

Legal protection is a universal concept that was born from a rule of law. Legal protection can be classified into two forms, preventive and repressive.<sup>13</sup> Preventively, this protection is manifested in the form of prevention provided by the government which is based on freedom of action because with this legal protection the government will be encouraged to be careful in making decisions. In its implementation, the government can design and pass laws and regulations that aim to prevent violations and provide limits on carrying out obligations. Meanwhile, repressive protection has the goal of resolving disputes arising from violations. Repressive protection can be interpreted as final protection in the form of imposing sanctions on violations that have occurred.

In the case of children who are in conflict with the law, legal protection for them is a discussion and study that will continue to develop. Starting from Act No. 4 of 1979 concerning Child Welfare, Act No. 39 of 1999 concerning Human Rights, amendments to Act No. 3 of 1997 concerning Juvenile Justice with Act No. 11 of 2012 concerning the Juvenile Justice System, to the ratification of the United Nations Convention on the Rights of the Child (UN Convention on the Rights of the Child) to become Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection. This shows an effort to change the paradigm of criminal law against children by providing space and opportunities for children to continue to obtain their rights which are also protected by the Constitution of the Republic of Indonesia, the 1945 Constitution.<sup>14</sup> The following are the results of a literature study conducted by the team regarding arrangements in positive law in Indonesia which guarantee legal protection for the rights of children in conflict with the law.

#### **a) Act No. 4 of 1979 concerning Child Welfare**

In this Law, this legal protection can be found in Article 6 which explains that children who experience behavior problems are given services and care aimed at helping and overcoming obstacles they encounter in the process of their growth and development, these services and care are given to children who are found guilty of committing violation of the law based on a judge's decision.<sup>15</sup>

Article 6 provides meaning to the efforts that need to be taken by the government in providing guarantees for the most basic rights of children to ensure the survival of

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<sup>11</sup> C.S.T. Kansil, 1989, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Balai Pustaka, Jakarta, h.102

<sup>12</sup> Philipus M. Hadjon, 2011, *Pengantar Hukum Administrasi Indonesia*, Gajah Mada University Press, Yogyakarta, h.10

<sup>13</sup> Satjipto Raharjo, 2002, *Ilmu Hukum*, Bandung, Citra Aditya Bakti, P. 69

<sup>14</sup> Dudung Mulyadi, (2018), *Perlindungan Hukum Bagi Anak Korban Perkosaan Dalam Peradilan Anak*, *Jurnal Ilmiah Galuh Justisi*, Volume 6 No 2, 170-183, DOI: <http://dx.doi.org/10.25157/jigj.v6i2.1712>

<sup>15</sup> Act No. 4 of 1979 Concerning Child Welfare.

##### Article 6

(1) Children who experience behavior problems are provided with services and care aimed at helping them to overcome obstacles that occur during their growth and development.

(2) Services and care, as referred to in paragraph (1), are also given to children who have been found guilty of violating the law based on a judge's decision.

these children. This guarantee includes efforts to maintain, foster and improve the welfare of children, both physically and spiritually, including children who are in conflict with the law. This is because children at that age do not yet have the ability to be independent. Efforts to guarantee, maintain and secure are the obligations of the parties who are under the care of state supervision and guidance. It is the state's obligation to protect children from various disturbances that may be present both from the child and the surrounding environment. Guaranteeing the welfare of children is the responsibility of the state.

Fundamentally, parenting is the main responsibility and obligation of parents and families, but for the sake of the child's survival, which will later grow in the social order of society, assistance from parties other than parents is needed to protect the child's interests.<sup>16</sup> If the child is an orphan or the identity of the parents is unknown (a case of abandoned children) or the parents are unable to fulfill their rights and obligations towards their child, then the state must be present in implementing and fulfilling the rights and obligations of the child.

In Article 6 of the Law it is clearly stated that children who experience behavior problems are given services and care that aim to help them. These services and care are also provided to children who are found guilty of violating the law based on a judge's decision in court.

## **b) Act No. 39 of 1999 concerning Human Rights**

Human rights are fundamental and inherent in human beings. These universal rights must be protected, respected and maintained and may not be ignored, diminished or seized by any party. As part of a member state of the United Nations (UN), the Government of Indonesia has a moral and legal responsibility in upholding human rights that have been established by the United Nations along with all the instruments agreed upon by the government of the Republic of Indonesia.

As a continuation of human survival, children also have human rights. In Act No. 39 of 1999 concerning Human Rights, the protection of the rights and obligations of children in conflict with the law is contained in Article 64, Article 65 and Article 66.

Articles 64 and 65 in Act No. 39 of 1999 concerning Human Rights provide guarantees for children's rights so that they receive protection from economic exploitation activities, sexual harassment, kidnapping to drug abuse which endanger themselves, so that they can affect and disrupt education, health, physical, moral, social life, and mental spiritual.<sup>17</sup>

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<sup>16</sup> I Gusti Ngurah Made Kusuma Negara; Md Rismawan; I Gd Satria Astawa, (2019), Analisis Faktor Yang Mempengaruhi Peranan Orang Tua Dalam Pengembangan Sikap Tanggung Jawab Pada Anak, Jurnal Riset Kesehatan Nasional, Volume 3 No. 1, 59-62, DOI: <https://doi.org/10.37294/jrkn.v3i1.133>

<sup>17</sup> Act No. 39 of 1999 concerning Human Rights

Article 64

Every child has the right to obtain protection from economic exploitation activities and any work that endangers him, so that it can interfere with his education, physical health, morals, social life, and mental-spiritual

The guarantee of legal protection for children in conflict with the law is stated in Article 66 of Act No. 39 of 1999 concerning Human Rights. The article states that it is not permissible for any child to be subjected to abuse, torture, or inhumane punishment. Death or life sentences are not allowed to be applied to children who are found guilty by a judge in a trial. The process of arrest, detention or imprisonment of children may only be carried out in accordance with applicable law and as an *ultimum remedium*.<sup>18</sup> For children who have received a court decision in the form of deprivation of liberty (prison) then he has the right to receive humane treatment. The child must also be separated from adults (different detention rooms). The child is also entitled to receive legal assistance or other assistance effectively at every stage of the applicable legal proceedings. Justice for children must also be objective and impartial in a closed session to the public.<sup>19</sup>

This law regulates that human rights are determined by referring to the Declaration of Human Rights, the United Nations, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, the United Nations Convention on the Rights of the Child, and various other instruments. other international regulations governing human rights. This law is also guided by Pancasila and the 1945 Constitution as the basis of state law and as a guideline for life and development of national law. This law regulates the fulfillment of the right to life and the right not to lose one's life, the right to justice, the right to freedom, the right to feel safe, the right to welfare, the right to participate in government, women's rights, children's rights and the right to freedom of religion, as well as regulate the fulfillment of basic human obligations, duties and responsibilities of the government in upholding human rights.

This law regulates the fulfillment of children's rights that must be carried out by the government and society. Fulfillment of these rights is carried out by prioritizing the best interests of the child for the future of the child.

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#### Article 65

Every child has the right to obtain protection from sexual exploitation and abuse, kidnapping, child trafficking, and from various forms of abuse of narcotics, psychotropics and other addictive substances.

<sup>18</sup> Achmad Feryliyan, Nur Aisyah Komariah, (2020), Tinjauan Yuridis Mengenai Anak Dibawah Umur Sebagai Kurir Dalam Tindak Pidana Narkoba, Justice Pro: Jurnal Ilmu Hukum Universitas Yos Soedarso, 42-51, DOI: <https://doi.org/10.53027/jp.v4i2.106>

<sup>19</sup> Act No. 39 of 1999 concerning Human Rights

#### Article 66

- (1) Every child has the right not to be subjected to abuse, torture or inhumane punishment.
- (2) Capital punishment or life imprisonment cannot be imposed on juvenile offenders.
- (3) Every child has the right not to be deprived of his liberty unlawfully.
- (4) Arrest, detention or imprisonment of a child may only be carried out in accordance with applicable law and can only be carried out as a last resort.
- (5) Every child deprived of liberty has the right to be treated humanely and with due observance of the needs for personal development according to his age and must be separated from adults, except for his own interests.
- (6) Every child who has been deprived of his liberty has the right to receive effective legal aid or other assistance at every stage of the applicable legal remedy.
- (7) Every child who has been deprived of his liberty has the right to defend himself and obtain justice before an objective and impartial Juvenile Court in a session closed to the public.

### **c) Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection (UUPA)**

This law is the result of ratification of the UN Convention on the Rights of the Child. The Child Protection Act (UUPA) not only includes arrangements regarding legal protection of children's rights and obligations, but also regulates legal protection of children's rights in conflict with the law.

Children who are in conflict with the law are children who are involved in a legal issue, these children can be perpetrators, victims and/or witnesses. A child who is in conflict with the law really needs definite legal protection in order to protect the rights and obligations of the child so as not to sacrifice the child's future because every child has the right to a good future.<sup>20</sup> Article 16 stipulates that a child who is in conflict with the law has the right to obtain protection from being subjected to persecution, torture or inhumane punishment. Children who are in conflict with the law also have the right to obtain freedom in accordance with the provisions of the law. In the event that the arrest, detention or criminal act of imprisonment for children is the last resort that can be done in accordance with the provisions of the applicable law.

Every child facing the law as an actor who is deprived of his liberty has the right to be treated humanely, not to be placed with adults, to receive legal assistance or other assistance effectively in every process of resolving legal issues he faces, children who are deprived of their liberty also have the right to be kept secret and defend himself in order to obtain justice before the juvenile court in an objective and impartial manner in a hearing which is closed to the public. This is regulated in Article 17 and Article 18.

In Article 59 and Article 64 it is explained that the government, local government and state institutions also have an obligation to make special efforts to protect children. Special protection for these children is given to children in emergency situations, children in conflict with the law, children from minority groups, children who are exploited economically and/or sexually, and so on. Special protection for children facing the law in article 64 includes efforts to treat humanely by taking into account their needs according to their age, separation from adults, effective provision of legal assistance and other assistance, implementation of recreational activities, exemption from torture, punishment or other treatment. that is cruel, inhuman and degrading in dignity and degree, avoidance of imposition of capital punishment and/or life imprisonment, avoidance of arrest, detention or imprisonment except as a last resort and in the shortest time, granting justice before an objective juvenile court, be impartial, and in a closed session to the public, avoiding publication of their identity, providing assistance to parents/guardians and people trusted by the child, providing social advocacy, providing personal life, providing accessibility, especially for children with disabilities, providing education n, the provision of health services, and the provision of other rights in accordance with the provisions of laws and regulations.

In accordance with Article 59 and Article 64 in Article 66, children who are economically and/or sexually exploited are entitled to special protection which is the

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<sup>20</sup> Olif Sekar Prabasini, (2021), Legal Protection For Children In Conflict With The Law: Process And Problems, The Indonesian Journal of International Clinical Legal Education, Volume 3 No 3, 381-396, DOI: <https://doi.org/10.15294/ijicle.v3i3.48264>

obligation of the government and society. This special protection is carried out through the dissemination and/or dissemination of statutory provisions relating to the protection of children who are exploited economically and/or sexually, monitoring, reporting, and imposing sanctions and involving various government agencies, companies, trade unions, non-governmental organizations, and society in eliminating economic and/or sexual exploitation of children. In order to support these protection efforts, everyone is prohibited from placing, allowing, doing, ordering to do, or participating in the exploitation of children. All forms of child protection efforts must be carried out with the support and participation of all state institutions and society itself. Children are a mandate and a gift from God Almighty, in whom dignity and human dignity are attached. Children are young shoots, potentials, and the next generation of successors to the aspirations of the nation's struggle who have a strategic role and have special characteristics and characteristics to ensure the continued existence of the nation and state in the future. Children have the right to get the widest possible opportunity to grow and develop optimally, both physically, mentally and socially so that children are able to be responsible and have good morals. Children need protection in order to realize child welfare by providing guarantees for the fulfillment of rights without discrimination. All of these protection efforts certainly require support and participation from all levels of society, such as state institutions and laws and regulations to the community throughout society.

Protection of children is specifically carried out for children who are in conflict with the law with the aim of fulfilling the rights and obligations of the child, without compromising the child's future.<sup>21</sup> This really needs to be obtained by children who are in conflict with the law because basically children are individuals who are not yet mature mentally and physically so that children who are dealing with the law need special protection from the government and society.

#### **d) Act No. 11 of 2012 Concerning the Juvenile Justice System (UUSPA)**

The Convention on the Rights of the Child regulates the principles of legal protection for children. Therefore, as a country that has ratified the convention, the Indonesian government has an obligation to provide special protection for children who are in conflict with the law. This becomes mandatory to maintain the dignity of the child in legal protection, especially in the care system that will be adopted by the child.

As the next generation, children have a strategic role and it is expressly stated that the state guarantees every child for human survival. Article 28B of the 1945 Constitution is followed up with government policies aimed at protecting the rights and obligations of the child. Ensuring the welfare of children is an important matter to be discussed and studied. The principles of juvenile justice contained in the UUSPA are:<sup>22</sup>

##### 1) Protection

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<sup>21</sup> Laili Hanifah, M. Ishaq, (2020), Legal Protection for Children: A Conceptual Paper, Proceedings of the 6th International Conference on Education and Technology (ICET 2020), Advances in Social Science, Education and Humanities Research, volume 501, p. 231-235, Atlantis Press, DOI: <https://doi.org/10.2991/assehr.k.201204.043>

<sup>22</sup> Shanty Dellyana. Wanita dan Anak Dimata Hukum. Yogyakarta: Liberty. 2004. hlm. 18-19.

- 2) Justice
- 3) Non Discrimination
- 4) The best interests of the child
- 5) Respect for Children
- 6) Survival and child development.
- 7) Guidance and guidance of children.
- 8) Proportional
- 9) Deprivation of liberty and punishment as a last resort
- 10) Avoidance of retaliation.

In UUSPA Article 3, there is a guarantee for the protection of children's rights during a criminal period. During his period, a child must be treated humanely by paying attention to the needs according to his age. In addition, the child is also entitled to a detention room that is separated from adults. Children also have the right to legal aid and other effective assistance, and have the right to carry out other recreational activities. This article also protects the child's right to be free from torture, punishment or other cruel, inhuman and degrading treatment of the child's degree and dignity. The sentence imposed by the judge is not permitted in the form of death penalty or life imprisonment. A child who is in conflict with the law may not be arrested, detained or imprisoned, unless this is a last resort. A child has the right to obtain justice before an objective, impartial juvenile court and in a session closed to the public. The child has the right to guarantee the protection of the confidentiality of his identity, to receive social advocacy, to obtain a private life, to gain accessibility (especially for children with disabilities), to receive education, to receive health services and to obtain other rights in accordance with statutory provisions.<sup>23</sup>

This arrangement is a ratification of article 37 and article 40 of the United Nations Convention On The Rights Of The Childs (Convention of Rights of the Child). Article 37 contains the same guarantee as stated in Article 3 of the UUSPA. The Convention on the Rights of the Child contains principles for the treatment of children involved in juvenile justice. Every child who is accused, prosecuted and declared to have violated the criminal law has the right to receive treatment in accordance with an understanding of his or her dignity. The juvenile criminal justice system is carried out in ways that strengthen children's respect/respect for human rights and integrate children's lives as before and develop hopes that children will return to carry out their role in society in a productive and constructive manner. The state must try to establish laws, procedures, authorized officials and institutions specifically intended/applied to

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<sup>23</sup> Jayati, Yunni. (2020). The Role of Child Protection in Fulfilling Children's Rights: A Literature Review, *Proceedings of the 6th International Conference on Education and Technology (ICET 2020)*, Advances in Social Science, Education and Humanities Research, volume 501, P. 402-405, Atlantis Press, DOI: <https://doi.org/10.2991/assehr.k.201204.078>

children who are accused, prosecuted or declared to have violated the criminal law. If it is necessary to take/take action against children without going through a judicial process, it must be stipulated that human rights and legal guarantees for children must be fully respected. Various decisions on children (including orders/actions to carry out treatment/coaching, guidance, supervision, education and training programs and other institutional development) must be able to guarantee that children are treated in ways that are appropriate to their environmental conditions. and violations committed.

UUSPA substantively regulates the placement of children who are undergoing criminal justice processes to be placed in the Special Child Development Institution (LPKA). This is a substantive matter of implementing the ideas of restorative justice and diversion which aims to prevent children from being stigmatized against children who are in conflict with the law and it is hoped that these children can return to the social environment as before.

Realizing the idea of restorative justice through diversion is intended so that all parties involved in a particular crime jointly overcome problems and create an obligation so that everything can get better by finding solutions to repair, reconcile and reassure hearts so as to eliminate the idea of retaliation. Diversion is the transfer of settlement of child cases from the criminal justice process to processes outside the criminal justice. A child who is proven to have committed a crime cannot be sentenced to a criminal sentence other than what has been determined in the applicable statutory system.

Article 71 UUSPA stipulates that the basic punishment for children consists of warning sentences, sentences with conditions, job training, coaching in institutions and prisons. Meanwhile, what is included in the additional punishment is the confiscation of profits derived from criminal acts and the fulfillment of customary obligations if proven to have violated customary law. In this article, cumulative punishment in the form of criminal fines can be replaced with job training. The Law on the Juvenile Justice System guarantees that children will receive all their rights while serving their sentence. These rights are the right to get a reduced sentence, get assimilation, get leave to visit family, get parole, leave before release, leave on parole and obtain other rights in accordance with the provisions of the law.

The idea of restorative justice contained in this law focuses on the objectives of the justice system which is towards the rights and obligations of children. So a fair settlement needs to involve all parties, be it the perpetrator, the victim, each family and of course the parties involved in the crime by emphasizing the process of restoration to its original state and not retaliation.

### **3.2. The Urgency of Virtual Courts as an Alternative to Juvenile Courts**

The global pandemic from the Coronavirus Disease 2019 (Covid-19) outbreak has had a significant impact on all aspects of national and state life in Indonesia. All kinds of activities, including law enforcement in Indonesia, have also experienced changes. Until this research report was compiled, the Indonesian Government had not revoked the National Disaster status from the spread of the Covid 19 outbreak in Indonesia. In order to prevent the spread of Covid 19, the Supreme Court issued Circular No. 1 of 2020 concerning Guidelines for the Implementation of Duties During the Period to

Prevent the Spread of Corona Virus Disease (Covid-19) within the Supreme Court and  
<sup>24</sup> The Judiciary Body Under it (SEMA No. 1 of 2020). SEMA No. 1 of 2020 was later amended by SEMA No. 2 of 2020 and amended again with SEMA No. 3 of 2020. This regulation stipulates that judges and judicial officials can carry out their official duties by working at home or where they live (work from home/WFH). The WFH includes the implementation of the case examination trial agenda which is carried out electronically via teleconference. This arrangement was strengthened by a cooperation agreement between the Supreme Court, the Attorney General's Office, and the Ministry of Law and Human Rights, which agreed to hold virtual trials for criminal cases during the pandemic.

The Circular Letter aims to minimize the spread of Covid 19 within the Supreme Court and the Judicial Bodies under it. This decision was taken based on the principle that people's safety is the highest law (*Salus Populi Suprema Lex Esto*). The circular letter regulates several work system adjustments, some of which are working from home by utilizing the E-Court application for trial administration activities and the e-Litigation application in conducting virtual trials. As a form of administering an electronic-based government system, e-Court was developed through a website that can be accessed by advocates and non-advocates with the help of the One Stop Integrated Service (PTSP) at the District Court and the High Court.<sup>25</sup> The e-Court system is an innovation of alternative court administration. The follow-up to this circular letter was the issuance of Supreme Court Regulation No. 4 of 2020 concerning Administration and Trial of Criminal Cases in Online Courts. The Perma for the online trial is supported by a Memorandum of Understanding between the Supreme Court, the Attorney General's Office, the Police, the Directorate General of Corrections of the Ministry of Law and Human Rights regarding the Conduct of Trials via Teleconference in the Context of Covid-19 Prevention on 13 April 2020.<sup>26</sup>

If you look at the development of the justice system in Indonesia, virtual justice is a necessity. This is because the development of information technology will be in harmony with changes in the development of society in the digital era. Although virtual justice is something new, the international community has known the virtual trial model since 1998 in the Los Angeles and Indianapolis Courts, United States of America. The e-Court system at that time was presented through the "Courtroom 21" program which was connected to 8 state institutions and 32 states.<sup>27</sup> The program has provided easier access to virtual examinations, access to virtual law firms, online traffic

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<sup>24</sup> Dewi Asimah, (2021), *Persidangan Elektronik Sebagai Upaya Modernisasi Peradilan Di Era New Normal*, Jurnal Hukum Peratun, Volume. 4 No. 1, P. 31-44, Doi: <https://doi.org/10.25216/peratun.412021.31-44>

<sup>25</sup> Nafiatul Munawaroh,(2023, February 22<sup>nd</sup>), *Pelaksanaan E-Court dalam Pengadilan dan Manfaatnya*, <https://www.hukumonline.com/klinik/a/%20ecourt-pengadilan-agama-lt5e2577a68ea0d>

<sup>26</sup> Neisa Angrum Adisti, Nashriana Nashriana, Isma Nurillah, Alfian Mardiansyah,(2021), *Persidangan Perkara Pidana Di Pengadilan Secara Elektronik Pada Masa Pandemi Covid-19 Ditinjau Dari Asas Peradilan Pidana*, Jurnal Simbur Cahaya, Volume 28 No 1, P. 40-57, DOI: <http://dx.doi.org/10.28946/sc.v28i2.1167>

<sup>27</sup> Ahmad Sahuri,(2021), *Penerapan E-Court di Berbagai Negara Studi Perbandingan Dalam rangka Pengembangan Penerapan E-Court di Indonesia*, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/penerapan-e-court-di-berbagai-negara-studi-perbandingan-dalam-rangka-pengembangan-penerapan-e-court-di-indonesia-oleh-achmad-sahuri-s-sy-8-4>.

fine payments, online testimony presentations, online forensic expert/laboratory testimony, and electronic presentation of evidence.<sup>28</sup> The development of a virtual justice system continues in various countries. For example, since 2001 European countries have developed virtual justice systems. Starting from the case management system at the investigative level to the judge's decision. This is implemented as an alternative to more efficient administration of justice.<sup>29</sup>

Jan Hoesada explained that there are Twelve Principles of Virtual Courts. Those principles are:<sup>30</sup>

#### 1) The Principle of Openness

In virtual courts, a transparent system is the main key in holding trials that are open to the public for all people who can access them through the availability of internet networks and supporting facilities.

#### 2) Principle of No Choice

Virtual trials can be carried out in emergency conditions for the sake of law enforcement. This principle ensures that the judicial process is not delayed in order to achieve justice for the whole community.

#### 3) Principles of Effectiveness and efficiency

Various studies have shown a significant increase in the effectiveness of the court process and a significant amount of savings in the state budget, the level of satisfaction of judges and lawyers with the effectiveness of online trials is no different from offline trials, with case studies the cost of bringing someone out of prison covers police and escort costs, vehicle and fuel depreciation costs, waiting time costs for the face-to-face trial schedule.

#### 4) The principle of agreement of the litigants

In certain virtual courts, it is mandatory to obtain the approval of the litigants. Several types of virtual courts that can be carried out only with the consent of the parties, namely (1) events-submission of evidence in criminal trials, family and governmental disputes, (2) crimes of perpetrators under the age of majority according to law, (3) parties Mutual presentation of evidence based on criminal jurisprudence in previous trials, (4) parties presenting evidence to each other in administrative matters that may result in imprisonment or loss of certain licenses, (5) trial for termination of parental

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<sup>28</sup> Laderer, "Courtroom technology: for trial lawyers, the future is now", Criminal Justice, Vol. 19 Nos 2004-2005 dalam Ahmad Sahuri, Penerapan E-Court di Berbagai Negara Studi Perbandingan Dalam rangka Pengembangan Penerapan E-Court di Indonesia, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/penerapan-e-court-di-berbagai-negara-studi-perbandingan-dalam-rangka-pengembangan-penerapan-e-court-di-indonesia-oleh-achmad-sahuri-s-sy-8-4> diakses pada tanggal 22 November 2021.

<sup>29</sup> Ahmad Sahuri, Loc.Cit

<sup>30</sup> Jan Hoesada, (2021), *Prinsip Sidang Daring*, <https://kpap.go.id/wp-content/uploads/2021/07/PRINSIP-SIDANG-DARING.pdf>

custody, (6) ) the parties show evidence of the guardian's incompetence. The judge will adjourn the trial if there are parties who object to a virtual hearing, until face-to-face hearings are possible again.

5) The principle of transparency is balanced by the principle of confidentiality.

The principle of judicial transparency of open-virtual-trials on the one hand, maintaining the confidentiality of certain information on the other hand, certain restrictions for livestream viewing, for example replays of domestic violence, because it causes chaos/riot in society.

6) The principle of limited resources.

The implementation of virtual justice must pay attention to this principle. . Awareness of the limited resources of litigants in virtual courts, limitations in displaying live images and sound due to limited resources for livestream or real-time performances, not livestream depiction of virtual court-open-to-the public atmosphere. Therefore, the court needs to implement a dress rehearsal procedure for all parties who are required to attend the trial, which includes requirements for appropriate electronic equipment to be used to enter the virtual courtroom, dress code, attendance (absence procedure), behavior, questions and answers, testifying , arguments, documentation, demonstration of evidence, to ensure the legal trial will take place and be successful.

7) The principle of data request service.

The court maintains a list of parties permitted to gain access to the videotape of the virtual-trial, according to local state law.

8) Principle of Official Court Records.

Official records in the form of Transcriptions are made by Virtual Court clerks. It is intended that the course of the trial can be well documented.

9) The principle of data for the mass media.

The court must provide access to virtual court records, evidence to the mass media in accordance with applicable legal provisions.

10) The principle of legality of the technology used.

The court must determine the technology to be used so that virtual justice can run properly.

11) The principle that in advantages there are weaknesses, in weaknesses there are advantages.

For example, the advantages of online trials include that parties injured in acts of violence are traumatized, do not like being in the same room with perpetrators of violence, panic, fear and choose to remain silent, solved by the approach of online

trials. On the other hand, in various jurisdictions, judges and lawyers are unable to carry out their duties in this type of criminal trial if they are not face-to-face.

From the presentation of the principles of virtual trials above, the research team found that there is alignment of goals with the application of the idea of restorative justice through diversion efforts in the juvenile justice system, namely avoiding the negative effects of conventional juvenile criminal justice examinations on children, both the negative effects of the judicial process and the effects negative stigma (bad label) in the judicial process, then conventional examinations are diverted and the child is subject to diversion programs. Regarding efforts to provide protection for children who are in conflict with the law, the juvenile justice system must be interpreted broadly, it is not only interpreted as merely handling children who are in conflict with the law. However, the juvenile criminal justice system must also be interpreted to include the root causes why children commit criminal acts and efforts to prevent them. Furthermore, the scope of the juvenile justice system includes a wide variety and complexity of issues, starting from the child's first contact with the police, the judicial process, detention conditions, and social reintegration, including the actors in the process. Thus, the term juvenile justice system refers to legislation, norms and standards, procedures, mechanisms and provisions, institutions and agencies that specifically apply to children who commit crimes.

The implementation of virtual justice can be an alternative to child-friendly justice because:

1. Children in litigation will not feel pressured or intimidated by conventional courtrooms.
2. Confidentiality of the child's identity (both as perpetrators and victims) can be well maintained because of the minimal contact between the child perpetrators of the crime and the general public.
3. Avoiding stigmatization of the child.
4. Judiciary will be held effectively and efficiently. Children do not need to be present in a conventional courtroom. Virtual trials can be carried out within the scope of the Special Child Development Institution (LPKA).
5. The goal of instilling a sense of responsibility to children can be realized in a way that is friendlier and safer for the psychological development of children. This of course makes it possible for children to be able to return to society because they avoid bad stigma.

A virtual justice system for children who are dealing with criminal law can be a way for the goals of diversion to be realized. According to the concept of diversion in handling cases of children in conflict with the law, because of the adventurous nature of children, punishment of children through virtual justice is not solely to punish but to re-educate and improve. In addition, virtual justice can realize the goal of diversion, namely to provide an opportunity for children who violate the law to become good people again through non-formal channels involving community resources.

By implementing virtual justice as an alternative trial for children in conflict with the law, it is hoped that it can be one of the implementations of guaranteeing legal protection for children in conflict with the law in accordance with the UN Convention on the Rights of the Child. As the researcher has stated above, the PP Convention on the Rights of the Child provides guarantees for all rights and obligations of children without exception for children who are in conflict with the law. The UN Convention on the Rights of the Child is the root of guaranteeing legal protection for children who are in conflict with the law. Article 40 of the Convention clearly guarantees that every child who is in the judicial process has the right to be treated in such a way, in accordance with the progress of the child's understanding of his or her dignity, while ensuring that the child has respect for the human rights and freedoms of other parties, by continue to consider the age and wishes of the child in order to reintegrate it according to its constructive role in society. In this way, member countries are obliged to organize juvenile justice that can accommodate their rights. Virtual justice can be an alternative in providing legal protection for children's rights. Children who undergo virtual trials will still receive learning about responsibility without having to experience stigmatization, psychological pressure and even degradation of dignity as is the case with conventional justice..

#### **4. CONCLUSION**

Legal guarantees for the rights of children who are in conflict with the law in Indonesia contained in several laws. The guarantee is intended so that the child can continue to live a decent life after the sentence ends. Virtual justice can be an alternative to carrying out criminal trials for children because it is in line with the basic idea of the UN Convention on the Rights of the Child, namely protecting the dignity of children from stigmatization, intimidation and things that can interfere with their growth and development.

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