



URGENCY OF INSTITUTIONALIZING COLLABORATIVE GOVERNANCE IN THE LEGAL SYSTEM FOR THE PROTECTION OF CHILDREN IN CONFLICT WITH THE LAW

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ABSTRACT

This article aims to analyze the legal protection of children in conflict with the law (ABH) from a normative legal perspective and assess the urgency of institutionalizing collaborative governance within Indonesia's legal system. Although Law No. 11 of 2012 on the Juvenile Justice System has adopted a rehabilitative approach, the practical protection of ABH still faces many challenges, particularly in inter-agency coordination. This study shows that the absence of explicit legal provisions regarding cross-sector cooperation mechanisms has led to collaboration occurring only on a personal, non-institutional, and sporadic basis. Using a conceptual and regulatory approach, this article proposes that the principle of collaborative governance can be interpreted as a new administrative legal norm that must be institutionalized through positive regulation. Recommendations include the establishment of a permanent legal-based collaborative body, regulatory harmonization, and strengthening institutional accountability. Thus, the ABH protection system can become more effective, participatory, and socially just.

1. Introduction

Children in conflict with the law (*Anak Berhadapan dengan Hukum*/ABH) represent the most vulnerable group within the criminal justice system, whether as

perpetrators, victims, or witnesses of criminal acts.¹ Article 1, paragraph 3 of Law No. 11 of 2012 on the Juvenile Justice System (*Undang-Undang Sistem Peradilan Anak/UU SPPA*) explicitly states that ABH refers to children who are suspected of committing criminal acts, children who are victims of criminal acts, and children who are witnesses in criminal cases. Therefore, ABH is entitled to special protection during the judicial process, considering their physical and emotional immaturity.²

In line with the development of understanding about child protection, the UU SPPA prioritizes a restorative and rehabilitative approach, which focuses on the recovery of children's rights and social reintegration, rather than merely imposing punishment³. This approach aligns with the basic principles of the Convention on the Rights of the Child (CRC), which emphasizes the importance of protecting children as a vulnerable group with the right to life, development, and participation in society.⁴

However, although the legal approach applied is more humane, the implementation in practice is still far from hope. The limited coordination between institutions involved in handling ABH is one of the main causes of the ineffectiveness of the existing protection system.⁵ In many cases, institutions such as the police, prosecutor's office, courts, juvenile correctional institutions, and child protection institutions do not work in a coordinated manner, resulting in fragmentation in the process of handling children.⁶

One of the biggest challenges in protecting ABH in Indonesia is the lack of cohesion in coordination between agencies that have a role in handling ABH cases.⁷ Institutions involved in handling ABH, such as the police, prosecutor's office, courts, juvenile correctional institutions, and child protection institutions, have not been well coordinated, both in operational and policy aspects.⁸ Although there has

¹ Fiska Ananda., Penerapan Diversi Sebagai Upaya Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana, *Jurnal Daulat Hukum*, Vol.1, no.1, 2018, page.3.

² Ursula Kilkelly, Louise Forde, Sharon Lambert, and Katharina Swirak., *Children in Conflict with the Law: Rights-Based Approaches to Juvenile Justice*, Bristol, Policy Press, 2023, page.21.

³ End Corporal Punishment of Children., Reports on Every State and Territory, Indonesia, *End Corporal Punishment of Children*, June 18, 2024.

⁴ United Nations, *Convention on the Rights of the Child*, Geneva, United Nations, 1989, page.3.

⁵ Fiska Ananda., Penerapan Diversi Sebagai Upaya Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana, *Jurnal Daulat Hukum*, Vol.1, no.1, 2018, page.11.

⁶ Sharyn Graham Davies, Adrianus Meliala, and John Buttle., Juvenile (In)justice: Children in Conflict with the Law in Indonesia, *Asia-Pacific Journal on Human Rights and the Law*, Vol.17, no.1, 2016, page.7. See too, Azwad Rachmat and Zainuddin Zainuddin., Implementation of Diversion for Children in Conflict with the Law by the National Police of Indonesia, *European Journal of Law and Political Science*, Vol.2, no.6, 2023, page.16.

⁷ Achmad Surya and Hasiun Budi., Problems of Central Aceh Resort Police Investigators in Implementing Diversion against Children as Perpetrators of Narcotics Crimes, *Resam Jurnal Hukum*, Vol.9, no.1, 2023, page.29. See too, Oscar Stefanus Setjo and Umar Ma'ruf., Investigation of Children which Conflicting with Law in Narcotics Criminal Acts in Law Area of the Semarang City Police Jurisdiction, *Jurnal Daulat Hukum*, Vol.3, no.2, 2020, page.85.

⁸ Sainul Hermawan., *Implementasi Perlindungan Anak di Indonesia: Teori dan Praktik*, Jakarta, Pustaka Siswa, 2016, page.136. See too, Erna Trimartini and Widodo Tresno Novianto., Child Diversion Application Policy that has a Conflict with Law to Make a Restorative Justice in Indonesia, In *International Conference on Law, Economics and Health (ICLEH 2020)*, pp. 319-322. Atlantis Press, 2020.

been a Memorandum of Understanding (MoU) between several institutions, the coordination that has been established is more personal and not formally institutionalized. This causes the process of handling ABH cases to be hampered in several important stages, ranging from investigation to social reintegration.⁹ Some institutions, such as child protection agencies and social rehabilitation institutions, often work in silos, resulting in difficulties in integrating services and ensuring the sustainability of child mentoring.¹⁰

Based on data from the Ministry of Women's Empowerment and Child Protection (KEMENPPPA), in 2022 there were 4,088 cases of children facing the law, an increase of 1.3% compared to the previous year.¹¹ Meanwhile, data from the Indonesian Child Protection Commission (KPAI) shows a significant fluctuation trend in the number of ABH cases as criminal offenders. In 2019, 1,251 cases were recorded, which then decreased to 1,098 cases in 2020. However, in 2022, the number of cases increased again to 184 cases, although it then stabilized at 126 cases in 2023.¹² These figures illustrate that the problem of ABH in Indonesia is a very dynamic and complex issue, with various causative factors that are not only limited to individual factors, but also influenced by social, economic, and cultural conditions of the community.¹³

In addition to limited coordination, the fragmentation of authority between institutions is also a significant problem in handling ABH. Each institution has different Standard Operating Procedures (SOPs), and there is often no synchronization between one institution and another.¹⁴ For example, the process of psychological assistance and social rehabilitation that should be the responsibility of social institutions and forensic psychology is often not carried out optimally due to budget limitations and lack of capacity of existing institutions.¹⁵ In addition, population administration issues such as Personal or Family ID of children of ABH perpetrators who are not registered in Jakarta are also obstacles in the legal process. Children from areas outside Jakarta are often hampered in

⁹ Rumah Faye., Restorative Justice for Children in Conflict with the Law: A Way of Embracing and Removing Stigma, *Rumah Faye*, June 18, 2024.

¹⁰ Elza Qorina Pangestika., Pengaturan Hak Menyusui Anak Pada Waktu Kerja Dalam Hukum Ketenagakerjaan, *Jurnal Wacana Hukum*, Vol.24, no.2, 2019, page.83.

¹¹ Kementerian Pemberdayaan Perempuan dan Perlindungan Anak (KEMENPPPA), Laporan Tahunan Kementerian PPPA: Perlindungan Anak dalam Menghadapi Hukum, *kemenpppa.go.id*, March 1, 2024.

¹² Komisi Perlindungan Anak Indonesia (KPAI)., Data dan Statistik Kasus Anak yang Berhadapan Hukum di Indonesia Tahun 2023, *bankdata.kpai.go.id*, March 6, 2024.

¹³ Siddharth Agarwal and Aradhana Srivastava., Social Determinants and Their Impact on Children in Conflict with the Law: A Comprehensive Study, *Journal of Health Care for the Poor and Underserved*, Vol.20, no.4, 2009, page.146.

¹⁴ Nur Rochaeti and Nurul Muthia., Socio-Legal Study of Community Participation in Restorative Justice of Children in Conflict with the Law in Indonesia, *International Journal of Criminology and Sociology*, Vol.10, 2021, page. 296.

¹⁵ Kevin Morrell and Ben Bradford., *Policing and Public Management: Governance, Vices and Virtue*, London, Routledge, 2019, page.31.

their legal administrative process.

In some cases, investigators at the North Jakarta Metro Police reported that they had difficulty accessing medical services (such as *Visum et Repertum* and forensic psychological assistance) due to limited budgets.¹⁶ Another problem is the lack of temporary daycare for the child of the perpetrator, which requires that children involved in legal proceedings be placed in an inappropriate place.¹⁷

The above phenomenon shows that the sectoral approach accommodated in the current Indonesian legal system is not effective enough in dealing with the complexity of the ABH problem. Therefore, a more collaborative and integrative legal approach is needed. One of the relevant models to adopt is collaborative governance. Collaborative governance is the concept of joint governance between various actors, both from the public, private, and civil society sectors, in solving public problems. This concept prioritizes the principles of participation, transparency, and accountability. Although it has been widely discussed in public administration, the application of collaborative governance in the Indonesian legal system is still very limited and has not been institutionalized in existing laws and regulations.^{18,19}

The implementation of collaborative governance in the juvenile justice sector can provide solutions to the problem of coordination between institutions that has been fragmented. Through the formation of more structured and binding institutions, collaboration between institutions in dealing with ABH can be more coordinated and effective. This approach can integrate the various sectors involved in child protection, from law enforcement to social and psychological services. This article aims to examine in a juridical-normative manner the urgency of institutionalizing collaborative governance in the legal protection system for ABH in Indonesia. Using the approach of laws and regulations and administrative law theory, this article examines whether the principle of collaborative governance can be used as a new legal principle in the child protection system in Indonesia, as well as how regulations and institutions are ideal to support the implementation of the approach in a systemic and sustainable manner.

2. Research Methods

This study uses a normative juridical method, which focuses on the study of applicable positive legal norms. The main objective of this study is to analyze the provisions of legislation, legal principles, doctrines, and legal principles related to the protection of Children Facing the Law (ABH).

¹⁶ Achmad Ratomi., Konsep Prosedur Pelaksanaan Diversi Pada Tahap Penyidikan Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak, *Arena Hukum*, Vol.6, no.3, 2013, page.395.

¹⁷ David H. Rosenbloom, Robert S. Kravchuk, and Richard M. Clerkin., *Public Administration: Understanding Management, Politics, and Law in the Public Sector*, 7th ed., New York, McGraw-Hill, 2010, page.316.

¹⁸ Chris Ansell and Alison Gash., Collaborative Governance in Theory and Practice, *Journal of Public Administration Research and Theory*, Vol.18, no.4, 2008, page.544.

¹⁹ Kirk Emerson and Tina Nabatchi., *Collaborative Governance Regimes*, Washington, D.C., Georgetown University Press, 2015, page.100.

The approach used in this study includes three aspects. First, the legislative approach used to review Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and Law No. 35 of 2014 concerning Child Protection and its derivative regulations. Second, a conceptual approach, which focuses on theories and ideas about collaborative governance in relation to administrative and child protection laws. Third, the comparative approach, which is used in a limited way to compare collaborative legal practices or models in other countries as a normative consideration for Indonesia.

The legal materials used in this study consist of three types. Primary legal materials include relevant laws and regulations, such as the SPPA Law and the Child Protection Law. Secondary legal materials include legal literature, scientific journals, expert opinions, and books related to public administration and child protection law. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other references that support the understanding of the concepts used in this study. The data obtained in this study was analyzed using systematic and teleological interpretation methods, which focused on interpreting regulations in their entirety and in accordance with the legal objectives of child protection. In addition, the authors use a constructive approach to offer a prescriptive collaborative governance-based institutional model.

3. Results and Discussion

3.1. Legal Protection of Children Facing the Law in Indonesia

Legal protection of children facing the law (ABH) is a very important part of the national and international legal system, which ensures that every child involved in legal proceedings receives their full rights. Children as psychologically, emotionally, and socially immature legal subjects require special treatment in the criminal justice system. The Convention on the Rights of the Child (CRC), which was adopted by Indonesia through Presidential Decree No. 36 of 1990, provides guidance on the principles of child protection that must be used as a basis in the legal process.²⁰

The main principle underlying child protection in the criminal justice system is restorative justice, which prioritizes the restoration of children's rights and rehabilitation over repressive punishment.²¹ This is in line with the principle of the best interest of the child, which must be a guideline in every legal decision taken, both by law enforcement agencies and by other institutions involved in handling

²⁰ Vivi Nurqalbi., Analysis of Diversion Arrangements in the Beijing Rules and the Juvenile Criminal Justice System in Indonesia, *European Journal of Law and Political Science*, Vol.2, no.1, 2023, page.52.

²¹ Randy Pradityo., Restorative Justice dalam Restorative Justice in Juvenile Justice System, *Jurnal Hukum Dan Peradilan*, Vol.5, no.3, 2016, page.322. See too, Lidya Rahmadani Hasibuan., The Concept of Restorative Justice in the Juvenile Criminal Justice System: A Narrative Review of the Indonesian Context, *Sch Int J Law Crime Justice* 5, no.7, 2022, page.263.

ABH.²² therefore, the legal system must ensure that any legal process involving a child is grounded in such principles to ensure optimal protection. However, even though at the normative level the regulation of protection for ABH in Indonesia is quite progressive, the challenges in implementation in the field are still very large.²³ The gap between established legal norms and practice in the field is often a major obstacle in ensuring that the rights of ABH are properly protected.

The definition of ABH according to Article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) is a child who is suspected of committing a criminal act, being a victim of a criminal act, or being a witness in a criminal act. This definition expands the scope of legal protection that is not only given to children involved as perpetrators of criminal acts, but also to children who are victims and witnesses. This concept suggests that legal protection for ABHs should include psychological, social, and legal aspects that affect their well-being in the entire legal process.

In the juvenile criminal justice system, children who are confronted with the law not only function as objects to be processed by law, but also as subjects whose rights must be maintained and protected during the process. Comprehensive legal protection includes the right to be protected from violence, the right to legal assistance, and the right to treatment that does not degrade his dignity during the judicial process.²⁴ Therefore, a more humane and non-repressive approach is essential to ensure that these rights are well protected.

Basic principles in international law and national law emphasize that children as immature legal subjects have the right to be treated differently compared to adults.²⁵ One of the main principles contained in the Convention on the Rights of the Child (CRC) is non-discrimination, which requires states not to discriminate against children on the basis of anything, including their social, economic, or legal status.²⁶

Another principle is the best interest of the child, which is explicitly stated in Article 3 of the CRC and is also reflected in the SPPA Law and the Child Protection Law No. 35 of 2014. This principle requires that every decision taken in juvenile justice must consider the effects on the child's welfare and ensure that the decision prioritizes the interests of the child above all other interests. One application of this principle is to apply a restorative justice approach, which focuses not only on

²² Kilkelly, Forde, Lambert, and Swirak., *Children in Conflict with the Law: Rights-Based Approaches to Juvenile Justice*, page.23. See too, United Nations, *Convention on the Rights of the Child*, page.7.

²³ Raden Siti Sumartini, Hamja Hamja, and Farhan Fathurrahman, Legal Analysis of the Determination of the Age Limit of Children Related to Sexual Crimes Committed by Children (ABH) in the Perspective of Law Enforcement in Indonesia and International Law, *Gema Wiralodra*, Vol.15, no.3, 2024, page.1028.

²⁴ Kirk Emerson and Tina Nabatchi., *Collaborative Governance Regimes*, Washington, D.C., Georgetown University Press, 2015, page.103. See too, Sopacua, Margie Gladies, and Iin Karita Sakharina, The Legal Protection of Women from Violence (Human Rights Perspective), *International Affairs and Global Strategic* 67, no.8, 2018, page.47.

²⁵ Geraldine Van Bueren., *The international law on the rights of the child*, Martinus Nijhoff Publishers, 2021, page.122.

²⁶ United Nations, *Convention on the Rights of the Child*, Geneva, United Nations, 1989, page.10.

punishment but also on the rehabilitation and rehabilitation of the child.

Diversion, or out-of-court settlement of cases, is also an important principle in the juvenile criminal law system in Indonesia. Article 8 of the SPPA Law stipulates that diversion must be prioritized in the juvenile justice process as a form of settlement that is more in favor of the interests of the child, prevents stigmatization, and provides opportunities for improvement without going through formal judicial procedures.²⁷ Diversion provides a more humane alternative to settlement, such as mediation and social rehabilitation, which focuses on the recovery of children and their social reintegration into society.²⁸

In the context of administrative law, especially related to juvenile justice, governance theory has become very relevant. Administrative law is the branch of law that regulates the relationship between the state and individuals in public administration, as well as how the state exercises its power in regulating the public interest, including the protection of children who are in conflict with the law. According to Denhardt and Denhardt²⁹, modern administrative law focuses not only on formal regulations, but also on the principles of good governance involving public participation, accountability, and transparency.

The application of administrative law theory in the context of ABH protection leads to the management of interactions between various institutions involved in handling ABH, ranging from the police, prosecutor's office, to social rehabilitation institutions. This theory also emphasizes the importance of inter-institutional coordination to create an integrated and effective system in handling cases of children facing the law. One of the main pillars in administrative law theory is collaboration between institutions which must be carried out with the principles of justice, transparency, and accountability.^{30,31}

Using the perspective of administrative law theory, we can see the importance of an institutional structure that not only regulates the authority of each institution, but also facilitates cooperation between institutions in a formal and coordinated institutional form. This collaborative model based on administrative law allows the various actors involved in the handling of ABH to work together in achieving the goal of child protection optimally.

²⁷ Azwad Rachmat Hambali., Diversions for Children in Conflict with the Laws in the Criminal Justice System, *Jurnal Ilmiah Kebijakan Hukum*, Vol.13, no.1, 2019, page.16.

²⁸ Roger Smith., Diversion, rights and social justice, *Youth Justice*, Vol.21, no.1, 2021, page.21.

²⁹ Janet V. Denhardt and Robert B. Denhardt., *The New Public Service: Serving, Not Steering*, 4th ed., New York, Routledge, 2015, page.136.

³⁰ Stephen P. Osborne., The New Public Governance?, *Public Management Review*, Vol.8, no.3, 2006, page.377.

³¹ Kirk Emerson and Tina Nabatchi., *Collaborative Governance Regimes*, Washington, D.C., Georgetown University Press, 2015, page.106.

3.2. Weaknesses of the Current Legal Structure of ABH Protection

Although Indonesia already has a fairly comprehensive legal framework for the protection of children facing the law (ABH), its implementation still faces various obstacles. This problem does not only stem from the content of legal norms, but also from the weakness of governance design and weak integration between actors in the legal system.

Although the regulations governing child protection in the criminal justice system are quite progressive and based on the principles of restorative justice, the challenges in practice are still enormous. Some of the main challenges found in the implementation of legal protection for ABH in Indonesia include:

3.2.1 Non-Institutionalized Institutional Coordination

Although the Law on the Juvenile Criminal Justice System (UU SPPA) provides space for relevant institutions to play a role in the process of diversion, mentoring, and rehabilitation, the real implementation of this role is still far from optimal. The SPPA Law does mandate to involve various institutions in handling ABH, but there are no legally binding regulations regarding the form and mechanism of cooperation between institutions. The Memorandum of Understanding (MoU) between relevant agencies is non-mandatory, which means it does not have any coercive legal force.³² The existing MoU is only an administrative agreement that relies on the willingness of these institutions to cooperate. Therefore, the main weakness in this system is the uncertainty and unsustainability of inter-agency cooperation which can change depending on personal relationships and informal relationships between officers, which ultimately hinders collaborative implementation in the resolution of ABH cases.

This showed that there is limited coordination between institutions in handling ABH cases. Despite the existence of memorandums of understanding (MoU) between institutions, such as between the police, prosecutor's offices, correctional institutions, and child protection institutions, coordination between institutions is still often not effective. Limited resources, especially budgets and experts, often hinder the achievement of optimal protection goals.³³

According to Greenwood et al.³⁴, the success of collaboration between public institutions is often hampered by the unclear legal obligations that govern such collaboration. The existence of stronger regulations such as Presidential Regulation (Perpres) or Ministerial Regulation that regulates the obligation of institutions to collaborate formally, is an important step to realize a more integrative and sustainable judicial system.

One of the relevant regulations to overcome this is Government Regulation

³² Kirk Emerson and Tina Nabatchi., *Collaborative Governance Regimes*, Washington, D.C., Georgetown University Press, 2015, page.123.

³³ Kevin Morrell and Ben Bradford., *Policing and Public Management: Governance, Vices and Virtue*, London, Routledge, 2019, page.32.

³⁴ Stephen Greenwood, Laurel Singer, and Wendy Willis., *Collaborative Governance: A Guide for Public Sector Leaders*, Cambridge, Cambridge University Press, 2021, page.132.

(PP) No. 65 of 2015 concerning the Implementation of the Juvenile Criminal Justice System, which regulates the cooperation mechanism between related institutions. However, although this PP provides technical guidelines, there is no regulation that requires cooperation between institutions in a more structured form and has stronger legal force, such as in a Presidential Regulation (Perpres) or Ministerial Regulation that binds all parties involved in the protection of ABH.

Moreover, there is gap between legal norms and implementation in the field. Although there have been various regulations governing child protection, implementation in the field is still constrained by the lack of understanding of law enforcement, insufficient supporting facilities such as rehabilitation institutions, and lack of socialization about child protection principles.³⁵

3.2.2. Sectoral Ego and Functional Fragmentation

Another major problem in the ABH protection system is the fragmentation of functions and sectoral egos that arise between the institutions involved. Each institution, whether the police, the prosecutor's office, the courts, or the social service and rehabilitation institutions, carries out their duties based on their own internal regulations that are not always in harmony with other institutions.³⁶ Although the SPPA Law provides clear guidance on the duties of each institution, in practice, this fragmentation hinders the achievement of the desired collaborative goals in the protection of ABH. This is further exacerbated by the lack of structured coordination in the implementation of these tasks.

This fragmentation not only hinders the effectiveness of protection programs, but also lowers accountability between agencies. According to Hermawan³⁷, the misalignment between regulations and field practices often creates a distortion of goals that should be the main focus. Solving this problem requires regulatory harmonization and the establishment of a single system that allows for more structured cross-agency coordination.

The regulation that can improve this is Presidential Decree (Keppres) No. 88 of 2014 concerning the Implementation of Child Protection, which provides guidelines on the integration of services for ABH between institutions. This Presidential Decree needs to be strengthened with a Government Regulation (PP) that regulates synergy between institutions, as well as an integrated SOP that clarifies the coordination flow from

³⁵ Sainul Hermawan., *Implementasi Perlindungan Anak di Indonesia: Teori dan Praktik*, Jakarta, Pustaka Siswa, 2016, page.163.

³⁶ Yunan Prasetyo Kurniawan and Hari Purwardi., Restorative justice (Diversi, page.A harmonization effort of legal protection against child criminal as offender and victim, In *International Conference on Law, Economics and Health (ICLEH 2020)*, pp. 710-718. Atlantis Press, 2020.

³⁷ Sainul Hermawan., *Implementasi Perlindungan Anak di Indonesia: Teori dan Praktik*, Jakarta, Pustaka Siswa, 2016, page.213.

investigation to rehabilitation.

3.2.3. Lack of Legal Basis for a Permanent Collaborative Structure

To date, although ABH protection involves many institutions, there is no legal basis that permanently governs collaborative institutional structures. Inter-agency collaboration, which ideally takes place in a structured and ongoing manner, often occurs only in ad hoc situations, such as coordination forums that are conducted incidentally and have no binding legal obligations. This leads to ambiguity in the division of duties and responsibilities of institutions, as well as uncertainty in terms of resource management.

There is lack of resources to support children's recovery and social reintegration. In many cases, the institutions responsible for the social rehabilitation of children do not have adequate capacity, both in terms of manpower and facilities.³⁸ As a result, the child rehabilitation process becomes ineffective and the child does not receive adequate assistance.

Moreover, there is absence of legal institutions that regulate the cross-sectoral work mechanism more firmly. Although there are policies that encourage inter-agency cooperation, there are no regulations that explicitly govern how this mechanism should be applied in the protection of ABH, so that collaboration that occurs is often informal and does not have a strong legal basis.³⁹

According to Osborne⁴⁰, to improve the quality of public governance in the protection of ABH, it is necessary to establish a clear and legally binding collaborative institutional structure. One of the steps that can be taken is to introduce a Presidential Regulation (Perpres) that regulates the establishment of an Integrated Child Protection Agency, which facilitates collaboration between institutions involved in handling ABH, such as the police, courts, social services, and rehabilitation institutions. With a clear legal basis, these institutions will have an obligation to cooperate in a more integrated manner.

3.2.4. Weak Accountability and Evaluation

Without a formal and institutionalized institutional structure, accountability and evaluation of the success of ABH protection programs are very weak. Without binding legal obligations, it is difficult to objectively measure the success or failure of the programs that have been implemented, because performance indicators still tend to be sectoral and not based on collaboration between institutions. This makes it difficult to evaluate the overall effectiveness of ABH protection.

³⁸ Kilkelly, Forde, Lambert, and Swirak., *Children in Conflict with the Law: Rights-Based Approaches to Juvenile Justice*, page.26.

³⁹ Stephen Greenwood, Laurel Singer, and Wendy Willis., *Collaborative Governance: A Guide for Public Sector Leaders*, Cambridge, Cambridge University Press, 2021, page.136.

⁴⁰ Osborne., *The New Public Governance?*, *Public Management Review*, Vol.8, no.3, 2006, page.380.

As a solution, there is a need for a Regulation of the Minister of Social Affairs that regulates the collaborative evaluation mechanism between institutions in handling ABH, as well as establishing performance indicators that are integrated and synergistic between agencies. Thus, the success of the program can be evaluated holistically, and each institution can be held accountable for its duties and contributions in the ABH protection system. Research conducted by Morrell & Bradford⁴¹ shows that integrated evaluation in the juvenile justice system can improve accountability and transparency in policy implementation.

3.3. Conceptual Analysis of Collaborative Governance in a Legal Perspective

Collaborative Governance (CG), or collaborative governance, initially developed in the realm of public administration as a response to the ineffectiveness of traditional bureaucratic approaches and the failure of vertical coordination between government agencies.⁴² According to Ansell and Gash⁴³, collaborative governance is a process of decision-making and implementation of public policies that involves various cross-sectoral actors from the government, civil society, and the private sector operating in one equal forum. Thus, CG introduced the concept of collaboration-based management, which leads to the establishment of more inclusive and effective solutions to solve complex social problems, including in the context of public law, in particular the protection of children facing the law (ABH).

Further development of this concept recognizes that collaborative governance is not only a strategy in public administration, but can also be integrated into the legal system, both in the context of state governance and in efforts to solve social problems that are cross-sectoral. In this context, CG serves to unite the roles of various institutions and related actors in achieving common goals that cannot be achieved with sectoral approaches alone.

3.3.1. Collaborative Governance as a Principle of Modern Administrative Law

From the perspective of administrative law, collaborative governance can be placed as part of the principles of good governance, which have been recognized in the Indonesian legal system. This principle is contained in various laws and regulations such as the Government Administration Law and the Public Service Law, which are based on the principles of transparency, accountability, public participation, and efficiency in government administration. Collaborative governance expands on the principles of good governance by adding four main pillars that are highly

⁴¹ Kevin Morrell and Ben Bradford., *Policing and Public Management: Governance, Vices and Virtue*, London, Routledge, 2019, page.36.

⁴² Kapucu, Naim, Farhod Yuldashev, and Erlan Bakiev, Collaborative public management and collaborative governance: Conceptual similarities and differences, *European Journal of Economic and Political Studies*, Vol.2, no.1, 2009, page.43.

⁴³ Chris Ansell and Alison Gash., Collaborative Governance in Theory and Practice, *Journal of Public Administration Research and Theory*, Vol.18, no.4, 2008, page.548.

relevant in the context of child protection in the face of the law (ABH):

a. Multi-actor Involvement in Decision Making

In this approach, not only governments play a role, but also civil society, non-governmental institutions, and the private sector, working together to make decisions that impact child protection. In the case of ABH, various institutions such as the police, prosecutor's office, courts, social rehabilitation institutions, and child protection institutions must work together in a single goal for child protection.⁴⁴

b. Transparency in the Public Handling Process

Collaborative governance prioritizes transparency in every decision-making process, thereby minimizing the potential for abuse of power and ensuring that all processes related to ABH are carried out clearly, openly, and can be supervised by the public.⁴⁵ This is especially important given that ABH involves vulnerable children and has the right to obtain protection without discrimination.

c. Shared Accountability

One of the main challenges in protecting ABH is the absence of a joint accountability mechanism between the institutions involved.⁴⁶ Shared accountability in collaborative governance requires each actor to be responsible for the results achieved. In the case of ABH, each institution involved in the handling process must be able to provide a clear report on their actions in achieving child protection.

d. Creation of Consensus-Based Solutions

Collaborative governance encourages the search for consensus-based solutions that bring together different perspectives and interests.⁴⁷ In the context of ABH, this is particularly relevant because it concerns the many sectors involved in child protection. A consensus-based approach allows for more holistic and comprehensive solutions.

Overall, the implementation of collaborative governance in ABH protection is in line with the principles of good governance as stipulated in various laws in Indonesia. This concept requires more structured, organized, and clearer collaboration in terms of accountability and transparency.

3.3.2. The Potential of Legal Construction on Collaborative Governance

⁴⁴ Peter J. Pecora, James K. Whittaker, Richard P. Barth, Sharon Borja, and William Vesneski., *The child welfare challenge: Policy, practice, and research*, Routledge, 2018, page.128.

⁴⁵ Carey Doberstein, Designing collaborative governance decision-making in search of a 'collaborative advantage', *Public Management Review*, Vol.18, no.6, 2016, page.821.

⁴⁶ Sharyn Graham Davies, Adrianus Meliala, and John Buttle., *Juvenile (In)justice: Children in Conflict with the Law in Indonesia*, *Asia-Pacific Journal on Human Rights and the Law*, Vol.17, no.1, 2016, page.120.

⁴⁷ James Agbodzakey., *Collaborative Governance Primer: An Antidote to Solving Complex Public Problems*, Springer Nature, 2024, page.224.

Normatively, collaborative governance has the potential to be formalized in the Indonesian legal system in several ways. One of them is the recognition of collaborative principles in laws, such as in the Child Protection Law or the SPPA Law, which regulates in more detail the role of institutions involved in the ABH settlement process. This regulation can be strengthened by including the principle of collaborative governance as a general norm that applies to all institutions involved in handling ABH.

In addition, to further strengthen implementation, there needs to be the establishment of a cross-sectoral collaborative body regulated through Government Regulations (PP) or Presidential Regulations (Perpres) that have a strong legal basis. The establishment of this body will ensure that all relevant institutions can work in one more integrated and coordinated system. Some of the regulations that can support this collaboration are Government Regulation No. 65 of 2015 concerning the Implementation of the Child Criminal Justice System and Presidential Regulation No. 88 of 2014 which regulates the Implementation of Child Protection. However, these two regulations need to be strengthened with more detailed provisions regarding cooperation and data management between institutions.

Finally, to ensure that collaboration is not voluntary, each institution involved in handling ABH needs to have binding legal obligations. This can be achieved by integrating coordination obligations in SOPs and technical regulations of related agencies. Thus, collaborative governance is no longer a policy that is only implemented based on voluntary agreements, but is a legal obligation that is structured and has a clear evaluation mechanism.

3.3.3. Juridical Implications: The Need for Regulatory Reformulation

The absence of regulations that explicitly regulate collaborative governance in the context of ABH leads to inconsistencies in practices and weak ties between the actors involved. As a result, while there are various policies that support child protection, their implementation is often poorly coordinated. Therefore, to achieve optimal child protection, the reformulation of legal norms is very important. Some of the steps that can be taken in this reformulation include:

- a. Affirm the joint role of institutions in the protection of ABH, by ensuring that each institution has clear duties and obligations, which support each other.
- b. Establish a formal legal collaborative mechanism, by providing a legal basis for a coordination body or forum that will regulate cooperation between institutions.
- c. Provide a legal basis for role sharing, data exchange, and integrated evaluation, so that all institutions can be held accountable to each other in the implementation of ABH protection policies.

This model can be realized through the revision of the SPPA Law, the drafting of a new PP, or through a cross-sectoral approach in the form of a collaboration-based national policy on child protection. Thus, the state will be better prepared to deal with ABH comprehensively, integrate various related institutions, and increase accountability and transparency in the juvenile criminal justice system.

3.4. Legal Recommendations

Based on the juridical analysis of legal protection for Children Facing the Law (ABH) and the urgency of implementing collaborative governance, concrete steps are needed in the form of legal and institutional reforms. The goal is to make collaboration between actors not only a voluntary initiative, but part of a binding and sustainable legal structure. Thus, the juvenile justice system in Indonesia can be more effective and comprehensive in handling ABH cases.

3.4.1. Establishment of a Collaborative Institutional Legal Basis

The establishment of a permanent coordination body or forum between state institutions, civil society, and the private sector is very important to overcome coordination problems in the protection of ABH. One of the regulatory options that can be considered is:

- a. Presidential Regulation (Perpres) which regulates an integrated child protection coordination system based on collaborative governance. This Presidential Regulation will provide clear directions regarding the collaboration mechanism between related institutions in handling ABH.
- b. Government Regulation (PP) as a derivative of the SPPA Law, which establishes mechanisms for joint work, data exchange, and evaluation between institutions. This will ensure that all actors involved in handling ABH have the same obligations and share responsibilities clearly.
- c. Revision of the SPPA Law to accommodate special articles on the principle of collaboration between institutions in handling ABH. This revision can add chapters or articles that describe the roles and obligations of each institution within a collaborative framework, so that no institution works in silos.

It is important to ensure that this collaboration is not only voluntary, but is governed within a clear legal framework so that it can operate on a sustainable basis and not depend on momentary policies.

3.4.2. Strengthening the Principle of Collaboration in Legal Norms

The principles of collaborative governance must be formulated as positive legal norms in existing laws and regulations. Some aspects that need to be strengthened include:

- a. Articles that regulate cross-sector responsibility. This includes establishing a mechanism for sharing roles between institutions involved in handling ABH, so that there is no overlap of duties or

vacancies in responsibilities.

- b. Integrated Standard Operating Procedures (SOPs) between agencies based on joint regulations. This SOP will serve as a common guideline for each institution involved to ensure that every action taken is in line with the policies and procedures that have been determined in the regulations.
- c. The obligation of collaborative reporting and evaluation is not just sectoral. This is important to ensure accountability throughout the ABH protection process. Each institution must be accountable for the results of its collaboration and contribution in safeguarding the best interests of children.

Thus, collaboration in the juvenile justice system not only becomes an administrative practice that relies on the will of the individual, but acquires binding juridical legitimacy for all relevant institutions.

3.4.3. Harmonization of Cross-Sector Regulations

Regulations related to ABH are currently spread across various sectors, such as law, social, health, education, and even information technology. This often leads to overlap and confusion of the flow of responsibilities between the relevant agencies. Therefore, some of the steps that need to be taken are:

- a. Mechanism for harmonizing cross-sector regulations. There must be a policy that clearly integrates existing regulations in various sectors so that there is no clash between one policy and another.
- b. An integrated regulatory system that integrates the duties and functions of ABH protection. This can be in the form of a regulatory system that brings together various rules spread across various sectors to address the problem of ABH in a more coordinated manner.
- c. The principle of "no wrong door" is applied in all related sectors. This concept emphasizes that every child who enters the protection system, whether through the legal, social, or other sectors, must receive comprehensive and coordinated protection, without being constrained by which sector they enter.

This step will help avoid fragmentation in the handling of ABH, so that all relevant sectors can provide comprehensive and integrated protection.

3.4.4. Implementing Implications

To ensure the effectiveness of collaborative regulation in ABH protection, some of the implementing measures that must be considered are:

- a. Dedicated budget support for cross-sectoral efforts. The handling of ABH based on collaboration between agencies requires adequate

budget support to ensure that each institution involved can carry out its role effectively. Without sufficient budget allocation, this collaboration will remain hampered.

- b. A digital-based information system that allows real-time data exchange between agencies. The use of information technology will accelerate the coordination process between agencies, allowing the information needed for handling ABH to be accessed quickly and appropriately by all parties involved.
- c. Legal training and collaboration for child protection officials, investigators, companions, and facilitators. For inter-agency collaboration to run smoothly, regular training is needed to ensure that all parties involved understand the latest regulations, principles of collaboration, and skills in cross-sectoral cooperation.

4. Conclusion

Legal protection of ABH is a fundamental constitutional mandate and is the state's obligation to guarantee the rights of children, especially those involved in the criminal justice process. Although Indonesia has progressive regulations through the Juvenile Criminal Justice System Law (SPPA Law), which regulates the principles of protection for ABH, the practice of such protection still faces many obstacles. These constraints include structural, functional, and coordinating problems between institutions involved in handling ABH. The most fundamental weakness is the absence of a legal basis that explicitly requires collaboration between institutions. As a result, the collaborative practices that occur tend to be personal, sectoral, and incidental, so that they are not able to answer the complexity of ABH problems that involve many aspects, such as legal, social, psychological, and administrative.

This disintegration of roles between agencies leads to fragmentation of responsibilities, weak accountability, and reduced effectiveness in providing optimal protection to children involved in the law. In this case, the collaborative governance approach has great potential to be a solution. This approach allows for the creation of a more integrated, synergistic, and accountable system, involving all relevant actors in the settlement of ABH cases. Collaborative governance can be a legal principle that is accommodated in the child protection system as part of the principles of good governance, which have been recognized in the Indonesian legal system, to ensure that each institution involved has clear and coordinated responsibilities.

To realize this principle, it is necessary to reformulate the law in the form of laws and regulations that explicitly regulate the establishment of permanent collaborative institutions in handling ABH. In addition, the division of authority and responsibility between institutions needs to be clearly regulated, accompanied by a collaboration-based evaluation and supervision mechanism. The preparation of joint SOPs and integrated information systems is also an important step in increasing the effectiveness of collaboration. By making collaborative governance a positive legal principle, the state not only guarantees normative child protection, but also creates a legal system that is more operational, adaptive, and socially

just. This system will enable a more effective and holistic handling of ABH, which does not only rely on sectoral policies, but prioritizes collaboration between institutions in solving common problems.

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