



Faculty of Law Unissula

# THE 1ST PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor : Comparative Review

June 27 2020

June **27<sup>th</sup>** 2020

# THE 1<sup>st</sup> PROCEEDING

International Conference And Call Paper

*" Omnibus Law Opportunities And Challenges Towards  
Entrepreneurs And Labor : Comparative Review law"*

## IMAM AS' SYAFEI BUILDING

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :  
**UNISSULA PRESS**

**ISBN. 978-623-7097-74-7**

# COMITTEE OF THE 6<sup>th</sup> PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

*" Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor  
: Comparative Review"*

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Hal I-IX, 1-258

**Cetakan Pertama Tahun 2020**

**Penerbit UNISSULA PRESS**

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

ISBN. 978-623-7097-74-7

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Desain Lay Out :

Suryo Atmojo, SH

**ISBN :**

**978-623-7097-74-7**

**Penerbit :**

UNISSULA PRESS

**Alamat :**

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## KATA PENGANTAR

*Bismillahirrohmanirrohim*

*Assalamu'alaikum Wr. Wb.*

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor : Comparative Review" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

Sesungguhnya keberhasilan dalam mencapai tujuan pendidikan yang dicita-citakan sangat tergantung pada sikap mental, partisipasi serta disiplin setiap unsur yang terlibat dalam proses belajar mengajar. Mudah-mudahan seminar Internasional yang sederhana ini dapat memberi sumbangsih dalam mencerdaskan bangsa Indonesia serta semoga Allah SWT selalu menyertakan ridho-Nya. Amin. Akhir kata, kami mengucapkan terima kasih kepada pimpinan Universitas Islam Sultan Agung, pimpinan fakultas Hukum Unissuala, pemakalah, editor dan serta pihak-pihak yang telah membantu terselenggaranya seminar ini dengan lancar tanpa hambatan suatu apapun.

*Wassalamu'alaikum Wr.Wb.*

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# THE IMPLEMENTATION OF CRIMINAL CONVICTION FOR CHILDREN UNDER THE AGE OF CRIMINAL RESPONSIBILITY BASED ON JUSTICE VALUE

**Yustinus Bowo Dwinugrono**  
10301700189

## **Abstract**

*The sentence handed down by the court under the age of criminal responsibility aims to restore the victim's state before the occurrence of a criminal event. According to Law No. 35 of 2014, changes to Child Protection can be interpreted as all efforts aimed at preventing rehabilitation and empowering children who experience acts of mistreatment, exploitation, and neglect to ensure survival, growth, and development, both physically and physically mentally and socially. In the criminal justice system, children in criminal responsibility age should be applied to the principle of restorative justice. So far, imprisonment is used as the main sanction for perpetrators of crimes found guilty in court. Whereas what is needed by the community is the maximum condition as before the crime. The value of justice determined by the government apparatus is based on the laws in force in Indonesia. Researchers can investigate the value of justice through diversion and restorative justice that is enforced by children in conflict with the law. The research method used is normative legal research. In this study, a positivistic paradigm through sociological juridical approach is used. Concerning the study of positive law and legislation. Researchers used a descriptive qualitative approach. The method of approach used in research conducted, in legal research, with material collection techniques with library research. Protection and care for children is a form of accountability for parents, families, communities, governments, and the state. Moreover, it is a series of activities carried out continuously in order to protect the rights of children, whether children as victims or perpetrators or children in conflict with the law do not deserve to be punished moreover then put in jail. This justice value is through diversion and restorative justice that is applied by children who conflict with the law on the Reconstruction of the Age of Children and the Requirements of Restorative Justice in Law No. 35 of 2014 Regarding Changes to Law No. 23 of 2012 Concerning Child Protection Based on Justice Value.*

**Keywords:** *Criminal Conviction, The Age of Criminal Responsibility of Children, Justice Value*

## **A. Introduction**

Creating a healthy, independent, faithful and devoted community to God Almighty is indeed not an easy job, especially the condition of the nation, which is in an atmosphere of a multidimensional crisis caused by the prolonged monetary crisis. Although much progress has been achieved which has been tempered by

high economic growth, there are still many challenges and problems.<sup>1</sup> Particularly in the field of law, there has been a controversial development. On the one hand, the legal material products, the development of the apparatus, legal facilities, and infrastructure have shown an increase. However, on the other hand, it is not matched by an increase in the moral integrity and professionalism of the legal apparatus, legal awareness, service quality, and the absence of legal certainty and justice so that the rule of law cannot be realized.<sup>2</sup>

Diverse social situations and conditions in the community, even the economic gap between the community, the perpetrators of the crime try to defend themselves to survive by committing crimes that cause fear and loss both material and non-material in the community. Ironically, some of the perpetrators of these crimes are children.<sup>3</sup> Protection should be done because children are the foundation of children to become adults in responding to future challenges.<sup>4</sup> It was explained that the child was not yet 18 (eighteen) years old, including children who were still in the womb.<sup>5</sup>

Indonesia as a State Party in the Convention on the Rights of the Child regulates the principle of legal protection with special protection for children who are dealing with the law. One form of child protection by the state is realized through a special criminal justice system for children dealing with the law. This was confirmed in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, that the purpose of juvenile justice is: the criminal justice system for children/adolescents will prioritize adolescent welfare and will ensure that any reaction to violations of juvenile law will always be commensurate with good conditions to the violators of the law and violations of the law.<sup>6</sup>

According to Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, Child Protection is all activities to guarantee and protect children and their rights so that children can live, grow, develop and develop optimally following the dignity and a happy dignity to be protected from protests Child protection that can help improve and empower children who need help, exploitation, and neglect, to support survival and grow development as required, both physically, mentally and socially. Article 13 of Law No. 23 of 2002 concerning Child Protection stipulates that: (1) Every child during the care of a parent, guardian or another party responsible for the care, is entitled to protection and assistance<sup>7</sup>.

- A. Discrimination
- b. Exploitation, both economic and sexual;
- c. Neglect;
- d. Cruelty, violence, and persecution;
- e. Other wrong treatment

(2) "In the case of parents, guardians or carers of children doing all forms of help as referred to in paragraph (1), then the responsibility of empowering penalties".<sup>8</sup>

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1. Iin ratnasumirat, "Perlindungan Hukum Terhadap Perempuan Dan Anak Korban Kejahatan Perdagangan Manusia," *Journal of Gender and Child Studies* Vol. 3, No. 1 (January-June 2016): p. 19.
  2. TAP MPR RI. No. IV / MPR / 1999 concerning Outlines of State Policy.
  3. Faidir Marlina, "Peran Polri Dalam Proses Penyidikan Tindak Pidana Terhadap Anak Yang Berkonflik Dengan Hukum," *Journal of Mercatoria* Vol. 5 No.1, (2012) p. 12.
  4. Nasciana, *Perlindungan Hukum Pidana Bagi Anak Di Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2011). o.13
  5. Law No. 35 of 2014 concerning Changes to Law No. 23 of 2012 concerning Child Protection. Article 1.
  6. United Nations, United Nations Standard Minimum Rules for The Administration of Juvenile Justice, United Nations, <http://www.un.org/documents/ga/res/40/a40r033.htm>
  7. Article 13 of Law No. 23 of 2002 concerning Child Protection.
  8. Iin Ratna Sumirat, *Perlindungan Hukum Terhadap Perempuan Dan Anak Korban Kejahatan Perdagangan Manusia*, *Journal of Gender Studies and Children*, Vol. 3 No. 1, January-June 2016

During the investigation or trial process in court, get the child to follow up because it supports the surrounding environment. Because in a criminal act, he became not only a crime but also a victim. Law No. 23 of 2002 concerning Child Protection concerning Protection must be given to children in conflict with the law. It's through agreement also by humane with the dignity and rights of children. Besides, facilities and infrastructure must also be provided specifically for children so that adult criminals do not contaminate children.<sup>9</sup>

Based on the description above that shows the value of justice determined by the government apparatus based on the laws in force in Indonesia, researchers can explore the value of justice through diversion and restorative justice that is enforced by children in conflict with the law, regarding Restorative Justice in the Act No. 35 of 2014 concerning Amendment to Law No. 23 of 2012 concerning Child Protection Based on Justice. Then the problem to be formulated is related to the application of sentencing on the criminal responsibility age of children based on the value of justice?

### C. Research Method

The paradigm used in this study uses a positivistic paradigm through the application of sociological juridical. Invite positive invitations and laws. The researcher uses descriptive qualitative, which explains in detail and detail.

The method used in the research conducted, in legal research, study-used can use statute approach, case approach, historical approach, comparative approach, and conceptual approach.<sup>10</sup> Law No. 35 of 2014 Regarding Child Protection Based on Value Law No. 23 of 2012 Concerning Child Protection Based on Justice for children in conflict with the law, which is normative legal research, Therefore, it needs to be discussed relating to the discussion proposed in this discussion is statute approach, conceptual approach, and comparative approach.

The technique of obtaining materials is through library research so that legal materials are obtained using integrated methods. All legal materials, both primary and secondary, are obtained through library materials consisting of books, print, and electronic media, as well as the internet and several other relevant sources. The author collects with the steps of an inventory, understanding, and interpretation, also the classification of legal principles, legal theories, legal doctrines, and also laws relevant to the protection of children in conflict with the law.

This research is normative legal research, then legal materials obtained based on the formulation of the problem, and then resolved prescriptive, evaluative, argumentative, and interpretive, both creatively and extensively. So, the legal materials that have been collected can be used to analyse the rationale for legislators by including the court. So, the authors use inductive logic, which is a process that starts with concrete elements leading to abstract things because concrete facts are used to conclude in the form of concepts from these facts. Also, through deductive logic, which starts with abstract things to be applied, there are concrete concepts.<sup>11</sup>

The process is carried out by linking criminal law theories that can be used in incidents or cases of criminal imprisonment against children. They are repeatedly evaluated through creative and extensive

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9. Introduction to Child Protection: Based on Law Number 23 of 2002 concerning Child Protection, compiled by Apong Herlina et al., (Jakarta: UNICEF, 2003).

10. Peter Mahmud Marzuki, 2004, Penelitian Hukum, Prenada Media, Jakarta, p.93 (hereinafter referred to as Peter Mahmud Marzuki I).

11. Sorjono Soekanto, 1982, Kesadaran Hukum dan Kepatuhan Hukum, Rajawali, Jakarta, p. 144

interpretations/explanations.

## **D. Discussion**

### **1. Definition of Criminal Responsibility Age of Children**

Children are the trust and the gift of God Almighty, which we must always guard because inherent dignity, dignity, and rights as human beings must be upheld. Child rights are part of human rights contained in the 1945 Constitution and the United Nations Convention on the Rights of the Child. In terms of national and state life, children are the future of the nation and the next generation of the ideals of the nation, so that every child has the right to survival, grow and develop, participate and be entitled to protection from violence and discrimination and civil rights and freedoms.<sup>12</sup>

Although Law No. 39 of 1999 concerning Human Rights has stated the rights of children, the implementation of the obligations and responsibilities of parents, family, community, government, and state to protect children still requires a law on child protection as a basis juridical for the implementation of these obligations and responsibilities. Thus, the formation of this law is based on the consideration that the protection of children in all aspects is part of national development activities, especially in advancing the life of the nation and state.

Parents, families, and communities are responsible for safeguarding and maintaining these human rights following the obligations imposed by law. Likewise, in the context of implementing child protection, the state and the government are responsible for providing facilities and accessibility for children, especially in ensuring optimal and directed growth and development.

This law emphasizes that the responsibilities of parents, family, community, government, and the state are a series of activities carried out continuously for the protection of children's rights. The series of activities must be continuous and directed to ensure the growth and development of children, both physical, mental, spiritual, and social. This action is intended to realize the best life for children who are expected to be the nation's potential, strong, have nationalism imbued with noble morals and Pancasila values, and are determined to maintain the unity and integrity of the nation and state.

Efforts to protect children need to be carried out as early as possible, namely from the foetus in the womb to children aged 18 (eighteen) years. Based on the conception of child protection as a whole, comprehensive, and comprehensive, this law lays down the obligation to protect children based on the following principles:

- a. non-discrimination;
- b. the best interests of the child;
- c. the right to life, survival and development; and
- d. respect for children's opinions

In carrying out the development, development, and protection of children, it is necessary for the community's role, whether through child protection institutions, religious institutions, non-governmental organizations, social organizations, social organizations, the business world, mass media, or educational institutions.

Understanding children in Article 1 of the Convention on The Rights of the Child, children are defined as individuals under the age of 18 (eighteen) years, except based on the laws that apply to children,

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12. General Explanation of the Law of the Republic of Indonesia No. 23 of 2002 Regarding Child Protection.

maturity has been obtained previously. If the definition of a child contained in Law Article 1 No. (1) of Law No. 23 of 2002 concerning Child Protection, is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. In Article 1 No. (1) of Law No. 3 of 1997 describes the Juvenile Court which regulates that a child is a person who in the case of a naughty child has reached the age of 8 (eight) years but has not reached the age of 18 (eighteen) years and has never Marry.

The concept of children according to Article 1 No. (5) of Law No. 39 of 1999 concerning Human Rights is that every human being under the age of 18 (eighteen) years and has never been married, also explained that including children who are still in the womb if it is for his sake. Children are a trust as well as a gift from God Almighty, in him inherent dignity, dignity, and rights as human beings who must be upheld that always must be maintained.

Child rights are part of human rights contained in the 1945 Constitution and the United Nations Convention on the Rights of the Child. In terms of national and state life, children are the future of the nation and the next generation of the nation's ideals, so that every child has the right to survival, growth, development, participation, protection from violence and discrimination as well as civil rights and freedom. Based on the decision of the Constitutional Court No. 1 / PUU-VIII / 2010 that the age limit of criminal liability for children is a change in the minimum age limit for legal liability for children is 12 (twelve) years, the Court believes that this has legal implications for the minimum age limit for children naughtiness as stipulated in Article 1 No. (1) of the Juvenile Court Law which states, "Children are people who in the case of Naughty Children have reached the age of 8 (eight) years but have not reached the age of 18 (eighteen) years and have never been married.

## **2. The Application of Criminal Law under the Criminal Responsibility of Children Based on Justice Value**

The application of juvenile justice processes that conflict with the law tends to be incompatible with laws or laws that bind institutions, especially legal advisors and community counsellors (BAPAS). This is evident from the monitoring by the Indonesian Child Protection Commission (KPAI) of several legal advisories and social advisory bodies (BAPAS) in Indonesia. The Indonesian Child Protection Commission (KPAI) received a report that there were some irregularities such as the majority of children not accompanied by a legal advisory body and social guidance (BAPAS) during the trial process, the majority of prison criminal judge decisions, many children's rights were deprived during the judicial process, including education rights, the right to health, the right to be creative, and street children who are children in conflict with the law are often arrested because there is no guarantee.<sup>13</sup>

The purpose of child protection is stated in Article 3 of Law No. 23 of 2002 to ensure the fulfilment of children's rights to live, grow, develop, and participate optimally in accordance with human dignity and dignity, and get protection from violence and discrimination, for the realization of Indonesian children of good quality, noble, and prosperous.<sup>14</sup>

What makes the basis for the investigators to apply a restorative approach to cases in children is law No. 11 of 2012 concerning the juvenile criminal justice system article 7 paragraph (2), that the criminal threat is under 7 years and not a repeat of a criminal act and therefore the investigator applies a restorative

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13. Introduction to Child Protection: Based on Law No. 23 of 2002 concerning Child Protection, compiled by ApongHerlina et al., (Jakarta: UNICEF, 2003).

14. Article 3 of Law No. 23 of 2002 concerning Child Protection.

justice.<sup>15</sup> Explanation of the Handbook on Restorative Justice Program published by the UN stated that: “Restorative justice is an approach to problem-solving that, in its various forms, involves the victims, the offenders, their social networks, justice agencies, and the community.”<sup>16</sup> Relationship with criminal law enforcement, restorative justice is an approach to solving criminal problems involving victims, perpetrators, and society’s elements to create justice.

Protection and care for children is a form of accountability for parents, families, communities, governments and the state and is a series of activities carried out continuously in order to protect the rights of children, whether children as victims or perpetrators or children in conflict with the law do not deserve to be punished moreover then put in jail. In this case, the Indonesian state embodies qualified Indonesian human resources and can lead and maintain the unity and integrity of the nation in the republican unitary state of Indonesia based on Pancasila. Regarding the value of justice determined by the government apparatus based on the laws in force in Indonesia, the value of justice is through diversion and restorative justice that is enforced by children in conflict with the law on the Reconstruction of the Criminal Responsibility Age of Children and the Requirements of Restorative Justice in Law No. 35 of 2014 Regarding Amendments to Law No. 23 of 2012 concerning the Protection of Children Based on Justice Value.

## **E. Conclusion**

Based on criminal law, the notion of a child essentially refers to the age limit of criminal liability. The discussion in the Juvenile Court Law, the age limit for criminal liability is determined between the ages of 8 to 18 years. Based on the criminal law, there is an age range in the Juvenile Court Law, it is recognized that as progress when compared to the existing provisions in the Criminal Code which do not regulate the minimum age limit. So, with efforts to implement a justice system used by applying a restorative approach to cases in children is Law No. 11 of 2012 concerning the juvenile criminal justice system article 7 paragraph (2), that the threat of criminal under 7 years and not a repeat of criminal acts and because The investigator applies restorative justice.

The application of the justice value is through diversion and restorative justice applied by children who conflict with the law, with the implementation of the Reconstruction of the Criminal Responsibility Age of Children and Restorative Justice Requirements in Law No. 35 of 2014 Concerning Changes to Law No. 23 of 2012 Concerning Child Protection Justice-Based Values.

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# Re-Conceptualizing Workers' Constitutional Rights in the *Cipta Kerja* Bill based on the Indonesian Welfare State Principles

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## Abstract

*As an important material in the Preamble of the 1945 Constitution, the welfare state principle become one of the directions of legal development in Indonesia. Therefore, legal development which also done through the formation of statute, must adhere to the principle of advancing public welfare. The formulating process of the Cipta Kerja Bill which has arrived at the Parliament's discussion, raises concerns among many people especially workers, because its content considered to threaten their well-being. Based on theoretical and conceptual approach, this article shows that the regulation of constitutional workers rights in the Cipta Kerja Bill, is not in line with the principles of the Indonesian welfare state. Substantial adjustments are needed so that workers' rights can be better protected in achieving prosperity. Exceedingly, Indonesia has launched the 2030 SDGs as part of a global action plan to end poverty as well as inequality.*

**Keywords:** *Cipta Kerja Bill, Constitutional Rights, Welfare State, Workers'*

## Introduction

The concept of welfare state has become an alternative model for involving the state in the lives of citizens. The model of state involvement in the concept of welfare state run with different variants in practice in the countries. For Indonesia, the main points of the concept of welfare state expressly stated in the objectives of the Indonesian State at the Preamble of the 1945 Constitution: "...to establish an Indonesian Government that protects all of the Indonesian people and all of Indonesia's blood and to promote public welfare..."

Based on that concept, it can be seen that the formation of the government of the Indonesian state is nothing but for the welfare of its people, overall. So efforts to embody "public welfare" must become the orientation of government actions. It includes government actions that have both direct and indirect effects for the welfare of its people. Leaving aside "public welfare" in governmental action can be interpreted as a betrayal of the Indonesian state goals.

The government's actions to regulate citizens in Indonesia are institutionalized in the issuance of laws/ regulations. Specifically in the case of regulation through laws, the government issues them with the mutual agreement of the House of Representatives, which is preceded by a discussion of the draft law (RUU). A bill that quite important being discussed at the moment is the *Cipta Karya (Ciptaker)* Bill.